



Digest of CASE LAWS (March, 2009 revised)

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Direct Taxes Reporter Vol. 18 & Vol. 19 / ITR Vol. 309 / TTJ Vol. 120 / TAXMAN Vol. 177 Part 1 to 3 / CTR Vol. 221 / SOT Vol. 28 / ITD Vol. 116 Part 6

SUPREME COURT

B.

Block Assessment- Computation of Undisclosed Income- Set off of inter se losses 158BB (4).

Section 158 BB (4) read with explanation (a) mandates that only brought forward losses of the past years under Chapter V1 and unabsorbed depreciation under section 32 (2) are to be excluded while aggregating the total income or loss of each previous year in the block period, and set off of inter se losses and depreciation against income assessed in other previous years in the block period is not prohibited.

E.K.Lingamurthy & Sons v Settlement Commission (Income tax & wealth Tax) & ANR. (2009) 19 DTR (SC) 99.

R.

Retraction – Effect of retraction of statement of confession

Held that

- (i) The retracted statement must be substantially corroborated by other independent and cogent evidences, which would lend adequate assurance to the court that it may seek to rely thereupon;
- (ii) The initial burden to prove that the confession was voluntary in nature would be on the Department.
- (iii) The burden is on the prosecution to show that the confession is voluntary in nature and not obtained as an outcome of threat, etc. if the same is to be relied upon solely for the purpose of securing a conviction.
- (iv) With a view to arrive at a finding as regards the voluntary nature of statement or otherwise of a confession which has since been retracted, the Court must bear in mind the attending circumstances which would include the time of retraction, the nature thereof, the manner in which such retraction has been made and other relevant factors. Law does not say that the accused has to prove that retraction of confession made by him was because of threat, coercion, etc. but the requirement is that it may appear to the court as such.

Vinod Solanki vs. UOI Civil Appeal No. 7407 of 2008 arising out of SLP (C) No. 3537 of 2008 dated 18th December, 2008 Source : www.itatonline.org

T.

Tax deducted at source – S. 192



Where the assessee-employer allowed the employees the benefit of deduction under section 10 (5) of the Act without collecting evidence to show that its employees had actually utilized the amounts paid towards Leave Travel Concessions/Conveyance Allowance it was held that as the beneficiary of exemption under Section 10(5) is an individual employee and there is no circular of the Central Board of Direct Taxes (CBDT) requiring the employer under Section 192 to collect and examine the supporting evidence to the Declaration to be submitted by an employees, the employer was not at fault.

CIT vs. M/s I.T.I. Limited, Civil Appeal No. 989 of 2005 - dated 21st January, 2009

Source : www.itatonline.org

HIGH COURTS

A.

Appeal – Block Assessment- s 246 A (1) (K) & 253 (1) (b)

Appeal against order of A.O merely giving effect to the order of the tribunal would lie only to the Tribunal and not CIT (A).

Paras Rice Mills v CIT (2009) 18 DTR (P& H) 149.

B.

Business Expenditure – Interest u/s 36(1)(iii)

Where an assessee has his own funds as well as borrowed funds, a presumption can be made that the advances for non-business purposes have been made out of the own funds and that the borrowed funds have not been used for this purpose.

CIT vs. Reliance Utilities & Power Ltd. ITA No. 1398 of 2008 dated 9th January, 2009

Source : www.itatonline.org

Business Expenditure- Retrenchment Compensation and legal expenses to closer of one unit –s 37

When there is interconnection ,interlacing ,unity of control and management, common decision making mechanism and use of common funds in respect of all the four units, retrenchment compensation to employees of closer of one unit and legal expenses on closure of one unit is allowable as business expenditure.

CIT v D.C.M. Ltd (2009) 221 CTR (Del) 513.

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.

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

Business Disallowances- s, 36 (1) (va) 43B.

Deletion of second proviso to section section 43B, by way of amendment by Finance Act ,2003, is retrospective in nature.



Amounts paid by employer towards provident fund contributions after due date prescribed under Employees, Provident Fund Act but before due date for furnishing of return of income are allowable in view of section 43B read with section 36 (1) (va).

CIT v P. M. Electronics Ltd (2009) 177 Taxman 1 (Delhi).

Block Assessment- Non Resident- Agent- s . 163, 158BD.

The assessee was not having any business connection with the non resident Indian brother nor any income came into existence as having been received by the Non resident Indian to attract the provisions of section 163 (1) (c) of the Act and the department has also failed to prove the assessee as a trustee of the non resident Indian so as to attract section 163 (1) (d). Proceedings under section 158BD was not valid.

CIT v Rakesh Chander Goyal (2009) 177 taxman 15 (Punj & Har).

Block Assessment- Penalty- s. 158BF A (2).

Levy of penalty under section 158BF A (2) is discretionary and not mandatory. In the main provision providing for imposition of penalty the word “may “ has been used .

CIT v Satyendra Kumar Dosi (2009) 18 DTR (Raj) 236.

Block Assessment – Penalty – s 158BFA (2).

Levy of penalty under section 158 BFA (2) is not mandatory. Where undisclosed income had been computed on the basis of surrender made by assessee in course of block assessment proceedings and de hors surrender ,there was no evidence ,which could have been said to have been found as a result of search, “computation “ of undisclosed income by Assessing officer in block assessment proceedings could not be construed as a “determination “ of undisclosed income contemplated under section 158 BC (c) or section 158 BB and no penalty would be imposable under section 158BFA (2) in such case.

CIT v Harkaran Das Ved Pal (2009) 177 Taxman 398 (Delhi).

Block Assessment- Search and Seizure- s 158BA.

The assessment in the block period can only be done on the basis of the evidence found as a result of Search .

CIT v Ashok Dua (2009) 177 Taxman 494 (Delhi).

Block Assessment-Deduction – 80 I and 80IA.

As the provisions of section 158BB , as amended by the Finance Act, 2002, retrospectively w.e.f 1st july ,1995 , no fault can be found with the impugned order of the tribunal holding that the assessee is entitled to claim deduction under section 80 I or section 80 IA in block assessment.

CIT v Suman paper & Boards Ltd (2009) 18 DTR (Guj) 297.



C.

Capital Gains –Business income – s 28 (1) ,45,

Assessee dealing in real estate ,tenancy right in respect of a building occupied by it for a long time constituted capital asset in its hands ,notwithstanding that it was shown as stock in trade in its books of accounts and receipts from surrender thereof in favour of the owner gave rise to capital gains /loss.

CIT v Hitashi Estates Ltd (2009) 18 DTR (Del) 206.

Cash credit – Source of source – S. 68

The A.O. is not permitted to examine the source of source, once the assessee has been able to establish that the transactions with his creditors are genuine and the creditors identities and creditworthiness have been established.

CIT vs. Diamond Products Ltd. (2009) 177 Taxman 331 (Delhi)

D.

Deduction – Claim not made in the return- Industrial Undertaking -S. 80IB.

Assessee having duly furnished the documents and submitted Form no 10 CCB, which was not claimed in the return, deduction is admissible even in the absence of a revised return.

CIT v Ramco International (2009) 221 CTR (P& H) 491.

Editorial . After considering the judgment of supreme court in Goetze (India) Ltd v CIT (2006) 284 ITR 323 (sc).

J.

Jurisdiction- s 127.

Transfer of case without recording reasons and without giving an opportunity of hearing is bad in law and liable to be quashed.

Manohar Sweets v CIT (2009) 177 Taxman 23 (MP.)

I.

Interest-Book Profit – s 115J, 234B & 234C.

Interest under section 234B and 234C is not leviable in case of computation of income under section 115JA.

Snowcm India Ltd v DY CIT (2009) 18 DTR (Bom) 58.



Interest – TDS- S 234B.

When a duty is cast on the payer to deduct tax at source ,on failure of the payer to do so ,no interest can be imposed on the payee assessee under section 234B.

Director of Income tax (International Taxation) v NGC net work Asia LLC.(2009) 18 DTR (Bom) 203.

Income- Mutuality.- Interest – Dividend- s. 4.

Assessee society having been formed for the mutual benefit of its members ,income earned by it by way of interest and dividend by making investment of surplus fund which is wholly contributed by the members is governed by the principle of mutuality and is not taxable.

Canara Bank Golden Jubilee staff welfare fund v Dy CIT (2009) 19 DTR 64.(kar).

Income – Real income accrual is liable to Tax – S. 4

What could be assessed was real income as income tax is tax on income. The test therefore, before income can be taxed is whether there is real accrual of income. Since there was no real accrual of income to the assessee and it was only on arbitral proceedings coming to an end and award being passed, that income received by assessee would be liable to be assessed.

FGP Ltd. vs. CIT (2009) 177 Taxman 147 (Bom)

R.

Revision – Summary Assessment – s 143 (1) (a) , 263 .

CIT has no power of revision under section 263 in the course of summary assessment where only intimation and acknowledgement are sent to the assessee after filing the return.

CIT v Karrtar Singh & Co Pvt Ltd (2009) 221 CTR (P& H) 479.

Rectification of Mistakes – Tribunal – S. 254(2) - Judgements not cited by parties during the hearing should not be referred to in deciding the appeal.

Where the ITAT decided the appeal against the assessee by relying on judgements that had not been cited by the Departmental Representative and without giving the assessee an opportunity to explain why those judgements had no application to the assessee's case, the High Court set aside the order of the Tribunal for a fresh hearing.

Note: The order of the Tribunal is reported as Naresh Pahuja v DCIT (2008)12 DTR 436 (2008), 17 SOT 636, 118 TTJ 319.

Also See: Vindhya Telelink Ltd v JCIT (2008) 15 DTR 238 (Jab) (TM) and Lakhmini Merwal Das v ITO 84 ITR 649 (Cal) (659) and Hon'ble President's Guidelines to Hon'ble Members for drafting orders.



Naresh K. Pahuja vs. ITAT, Writ Petition No. 2515 of 2008, dated 19th January, 2009
Source : www.itatonline.org

TRIBUNAL

B.

Business Expenditure- Interest – s 36 (1) (111).

Interest on borrowing utilized for setting up a new section in its existing business though capitalized in the books of account is allowable as deduction.

Asst CIT v Ashima Syntex Ltd (2009) 18 DTR 91 (Ahd) (SB) (Trib).

Business Expenditure- Disallowance- TDS- Domain Registration- s 40.(a) (1) , 195 (2).

Expenditure for Domain registration and server charges for hosting websites are not in the nature of interest or Royalties or for technical services or such services chargeable to tax in India . Payment made out side India deduction of tax at source not required.

Millenium Infocom technologies Ltd v Asst CIT (2009) 309 ITR (AT) 18 (Delhi).

C.

Capital gains- Cost of acquisition- Family settlement- s .49 (1)

Family settlement is analogous to partition attracting section 49 (1) ,hence in case of property acquired by way of family settlement dt istsept, 1997 effective from 31 st july ,1992 ,for purposes of computing capital gains. Deduction has to be allowed on indexed cost of acquisition by taking into account its fair market value as on 1 st April 1981,the property having been acquired by previous owner in 1966.

Asstt CIT v Baldev Raj Charla & ors (2009) 18 DTR (Del) (Trib) 413.

Capital gains- Conversion of stock in trade into capital asset. S 45(2)

Land was kept as stock in trade up to March 31 ,2002, and was converted into investment on April 1, 2002and sold on December 12, 2002.Since it was held as capital asset for not more than 36 months ,the capital gain arising on its transfer was taxable as short term capital gains.

Splendor Constructions (P) Ltd. vs. ITO (2009) 27 SOT 39 (Delhi)

Editortial note- In Asst CIT v Bright Star Investments (P) Ltd (2008) 24 SOT 288 (Mum), the tribunal held that the date of acquisition will be not from the date of conversion but from the date of actual acquisition as there is no similar provision like section 45 (2). Also refer Kalyani Exports & Investments (P) Ltd. & Ors. Vs. DCIT (2001) 78 ITD 95 (Pune)(TM)(139 & 140)

Capital or Revenue receipt – Forfeiture of loan amount S.4, 2(28)(1)

Amount initially received as loan for setting up business would not become business income chargeable to tax by its being taken to reserve and surplus account by assessee by forfeiture.

Velocent Technologies Ltd v ITO (2009) 120 TTJ (Del) 659.



Capital Gain – Exemption u/s 54EC

There is no requirement in section 54EC that investment should be in the name of assessee and only condition is that sale proceeds of assets must be invested in certain specified bonds.

ITO vs. Smt. Saraswati Ramanthan (2009) 116 ITD 234 (Delhi)(SMC)

D.

Deduction – profits and gains from publication of books- s 80 Q.

The word “book “ is a word of widest amplitude which would not only include literary work or other work authored by some one , but may also include mere collection of sheets within its ambit .It can be said that “ yellow pages “which is in form of a directory listing address and telephone numbers of various persons under various classifications , such as lawyers, doctors, etc,can be treated as “books”

Income generated from advertisement given a Yellow Pages Directory could not be ignored and would

Have to be taken into consideration while computing income derived from business of publication of books.

Tata Informedia Ltd v Asst CIT (2009) 116 ITD 426 (Mum).

Dividend- Deemed Dividend- Such share holder -s 2 (22) (e).

For the purpose of invoking section 2 (22) (e) , “such shareholder “ in the concern to which loan is advanced must be both a registered shareholder as also beneficial shareholder . Loan obtained by assessee company in which N trust had 20 % shareholding from a company in which n trust had 10 per cent shareholding could not be taxed as deemed dividend under s.2(22)(e) since N trust was only a registered shareholder and not beneficial shareholder.

Asstt CIT v Bhaumik Colour (P) LTD (2009) 18 DTR (Mumbai) (SB) (Trib) (2009) 120 TTJ (Mumbai) (SB) 865.

Dividend- Deemed Dividend- Loan in the course of Business -s 2 (22) (e).

Money lending being one of the six main objects of the lender company and the said business having been carried on by it in preference to other business ,the loan given to the assessee was in the course of money lending business and therefore , assessee's case is not covered by the provisions of section 2(22) (e) , income criteria from a particular source of income was not relevant.

ITO v Krishnoics Ltd (2009) 120 TTJ (Ahd) (650)

Deemed Dividend- Loan prior to shareholding- s 2 (22) (e).

Loan received by assessee before becoming a registered shareholder of the lender company can not be treated as deemed dividend under section 2 (22) (e).

ITO v Sagar Sahil Investment (P) Ltd (2009) 120 TTJ (Mumbai) 925.



Depreciation – Goodwill – Intangible – s 32 (1) (11)

Goodwill is not an intangible asset within the meaning of section 32(1)(11) hence acquisition cost of goodwill is not entitled to depreciation.

R. G. Keswani vs. ACIT (2009) 116 ITD 133 (Mum) / 120 TTJ 1081.

I.

Interest – Book Profit- s 115JA, 234 C.

Provisions of section 234C are attracted even in a case where a company is assessed on the income computed under section 115 JA.

Asst CIT v Asima Syntex Ltd (2009) 18 DTR (Ahd) (SB) (Trib) 91.

P.

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

Merely because the addition is confirmed does not ipso facto attract penalty provision. Penalty provision requires a strict adherence and onus to prove that there was a concealment of income with a view to avoid the tax ,is on the department ,penalty is not automatic.

Gem Granites (Karnataka) v DY CIT (2009) 18 DTR (Chennai) (Trib) 358.(2009) 120 TTJ (Chennai) 992.

Editorial note- Judgement in UOI V Dharmendra Textile Processors (2008) 306 ITR 277 (SC)(2007) 212 CTR (sc) 432, has been considered.

Precedent- Decision of High court- special Bench.

Solitary judgment of any High court in the country on a particular point or issue , should be followed in its letter and spirit by all Benches of the tribunal ,unless there are strong reasons to deviate from the view expressed by the High court .Otherwise ,the hierarchical judicial system would collapse.

ITO v Ranisati Febric Mills P. Ltd (2009) 309 ITR (AT) 117 (Mumbai).

R.

Residential status- Resident but not ordinary resident – s.6, 10(15).

In order to acquire status of “resident but not ordinary resident “ (RNOR) , in India ,either of conditions enshrined in section 6 (6) (a) should be fulfilled i.e. either assessee should not be a resident in India in 9 out of 10 previous years preceding current year or he should not be in India for 730 days or more in 7 years preceding current year .

Section 6 (6) as substituted by Finance Act, 2003, with effect from 1-4-2004 is prospective in operation and, hence would not be applicable to assessment year 2001-2002.

Jayram Rajgopal Poduval v Asstt . CIT (2009) 116 ITD 482 (Mum) .



Re assessment- Notice- s 143 (2), 147, 148, 292BB.

Reassessment made in the absence of service of notice under section 143 (2) is invalid .Neither amended section 148 nor section 292BB were applicable on the facts of the case.

Chandra R. Gandhi v ITO (2009) 18 DTR (Mumbai) (Trib) 165.(2009) 120 TTJ (Mumbai) 786.

Revision – Intimation – s 143 (1) , 263.

An intimation under section 143(1) is not amenable to revisional jurisdiction of CIT under section 263.High Courts in India are not unanimous whether provisions of section 263 are applicable where only Intimation under section 143 (1) has been issued..Two reasonable views being possible ,the one favourable to the assessee has to be preferred.

Vinod Kumar Rai v CIT (2009) 116 ITD 72 (Agra) (TM). (2009) 18 DTR (Agra) (TM) (Trib)171.(2009) 120 TTJ (Agra) (TM) 1009.

Return- Signature- s 140.

Where affairs of a company are managed by executive committee any member of executive committee could sign return.

Maharastra Krishna Valley Development Corporation v Asstt CIT (2009) 27 SOT 235 (Pune).

T.

TDS- Outsourced manufactured Goods. S. 194 C.

The supply of outsourced manufactured goods by the contract manufacturer constituted an outright sale and could not be treated as a works contract within the scope of section 194 C , consequently , the assessee was not liable to deduct tax at source from the purchase price of the goods paid by it to the contract manufacturer or the supplier.

Tuareg Marketing (P) Ltd v Asstt CIT(2009) 28 SOT 1 (Delhi).

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 can not be included in assets as defined in section 2 (ea).

DY CWT v Brilliant Estate Ltd (2009) 120 TTJ (Ind) 716.

Wealth tax -House property – Trust- Beneficiaries -Exemption – s 5 (1) v1).

Both the assesses being beneficiaries of a trust to the extent of 50 percent each they are entitled to exemption under section 5 (1) v1) in respect of their shares of the residential property belonging to the



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trust and the claim for exemption is allowable and there was no need to file revised return for claiming exemption .

Asstt CWT v Ku Ragini Sanghi (Ind) (2009) 120 TTJ (Ind) 1116.

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