



Digest of CASE LAWS (NOV., 2008) (Vol 1. Part 2.) KSA LEGAL.

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SUPREME COURT

1. Company – Book Profits – Provision for Doubtful Debts – S. 115JA

Provision for bad and doubtful debts being a provision made to cover up the probable diminution in the value of asset i.e. debt receivable by the assessee, it can not be said to be a provision for liability and therefore, item (c) of the explanation to section 115JA is not attracted and the provision for doubtful debts can not be added back under Cl. (c).

CIT vs. HCL Comnet Systems & Services Ltd. (2008) 13 DTR 105 (SC)

2. Depreciation – Motor Trucks - S. 32

Higher depreciation to be allowed only if there is evidence that the assessee was in business of hiring out motor vehicles.

CIT vs. Gupta Global Exim P. Ltd. (2008) 305 ITR 132 (SC)

3. Income - Capital or Revenue – Subsidy - S. 4

Incentive subsidy under a scheme floated with a view to boost the tempo of establishing new sugar factories and substantial expansion of existing factories and to facilitate repayment of term loans for that purpose was capital in nature, notwithstanding the mechanism of price and duty differential through it was routed.

CIT vs. Ponni Sugars & Chemicals Ltd. & Ors . (2008) 13 DTR 1 (SC)



4. **Precedent - Decision of High Court - Supreme Court - Retrospectively**

A judicial decision acts, retrospectively. According to Blackstonian theory, it is not the function of the Court to pronounce a “new rule” but to maintain and expound the “old one”. In other words, judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying the legal position which was earlier not correctly understood.

It is no doubt true that the Court has accepted the doctrine of “prospective overruling”. It is based on the philosophy; “the past cannot always be erased by new judicial declaration”. It may, however, be stated that this is an exception to the general rule of doctrine of precedent.

ACIT vs. Saurashtra Kutch Stock Exchange Ltd. (2008) 12 DTR 346 (SC)

5. **Rectification of Mistake – Appellate Tribunal – S 254(2)**

Non consideration of decision of Jurisdictional High court or Supreme Court is a mistake apparent from record rectifiable under section 254(2).

ACIT vs. Saurashtra Kutch Stock Exchange of India. (2008) 305 ITR 227 (SC) / (2008) 12 DTR 346 (SC) / (2008) 173 TAXMAN 322 (SC)



HIGH COURTS

A.

Annual Value - S. 23 (1)

Property let out to Tenant and tenant sub letting the property for higher rent. Amount paid by sub lessees cannot be assessable as income of the assessee, unless there is evidence to show that the transaction was not genuine.

CIT vs. Akshay Textiles Trading and Agencies P. Ltd. (2008) 304 ITR 401 (Bom.)

Appellate Tribunal – Powers – S. 254

The Tribunal cannot direct the assessing officer to follow an order which is not pronounced.

CIT vs. Modi Revlon (P) Ltd. (2008) 174 TAXMAN 192 (Delhi)

B.

Block Assessment - Rectification of Mistake – Surcharge – S. 113, 154

When the Tribunal passed the order, the issue of levy of surcharge by retrospective application of proviso to section 113 being a debatable issue, levy of surcharge by invoking section 154 was invalid.

CIT vs. Kirti Kumar Shah (2008) 12 DTR 344 (Raj.)

Editorial Note:- After considering the Supreme Court Judgment in *CIT vs. Suresh N. Gupta (2008) 297 ITR 322 (SC)*, also see *ACIT vs. Saurashtra Kutch Stock Exchange Ltd. (2008) 12 DTR 346 (SC)*



Block Assessment - Search and Seizure - Chapter VI-A - Advance Tax – S. 158BB

While computing the undisclosed income for the Block period, deduction under Chapter VI-A, allowable. Amount in respect of advance tax has been paid must be taken in to account.

CIT vs. V. Subramaniyan (Late) (2008) 305 ITR 289 (Mad.)

Business Expenditure – Advertisement Expenses – S. 37(1)

Advertisement expenditure incurred on products of sister concern. Assessee is sole distributor and marketing agent of products of sister concern. Amount spent wholly and exclusively for the purpose of the company's business and allowable as deduction.

CIT vs. Sabena Detergents P. Ltd. (2008) 303 ITR 320 (Mad.)

Business Loss - Shares of Subsidiary – S. 28

The subsidiary company had been ordered to wound up, there was no question of any party dealing in the shares of that company. The tribunal had come to the conclusion that the shares were stock in trade and therefore allowed the loss. The loss has to be treated as a trading loss. The mere fact that the shares were not sold was of no significance, since the fact the shares could not have been sold and had become worthless. The departmental appeal was dismissed.

CIT vs. H. P. Mineral and Industrial Development Corporation Ltd. (2008) 305 ITR 111 (HP)

Business Loss - Exchange Fluctuation - S. 28



Loss occurring on account of foreign exchange fluctuation in respect of cost of imported machinery is allowable.

CIT vs. L. G. Electronics India (P) Ltd. (2008) 12 DTR 263 (Del.)

C.

Capital Gains - Long Term – Short Term – S. 45

Assessee purchased the Land in 1970. The construction of house partly in 1980. The Assessee sold the land and house in the year 1982. The court held that the Gains attributable to land assessable as long term Capital Gains and Gains attributable to house is assessable as short term Capital Gains.

CIT vs. A. S. Aulakh (2008) 304 ITR 27 (P& H)

Capital Gains - Mortgage Debt – S. 48

The assessee was not entitled to the deduction on account of mortgage debt to the Bank. It was application of income and not diversion of income by overriding title.

CIT vs. Sharad Sharma (2008) 305 ITR 24 (All)

Capital or Revenue - Expenses on issue of Debentures - Revenue Expenditure – S. 37

The expenses incurred for the issue of debentures are allowable deduction as revenue expenditure.

CIT vs. First Leasing Co. of India Ltd. (2008) 304 ITR 67 (Mad.)

Capital or Revenue Expenditure - Replacing Fence with Compound Wall - Revenue Expenditure - S. 37



The expenditure incurred on construction of compound wall in the place of barbed wire fencing was a revenue expenditure.

CIT vs. Southern Roadways Ltd. (2008) 304 ITR 84 (Mad.)

Capital or Revenue Expenditure - Development of website – S. 37(1)

Expenditure on development of website with a view to disseminate information about assessee's business activities amongst its clients is revenue expenditure even though resulting in enduring benefit.

CIT vs. Indian Visit Com. (P) Ltd. (2008) 13 DTR 258 (Del.)

Capital or Revenue – Expenditure on Software Replacement of UPS System and Printer - Revenue Expenditure – S. 37

The Court held that the concept of enduring benefit must respond to the changing economic realities of the business. The expenses incurred by installation of software packages in the present computer world, which revolves the modern communication technology, enables the assessee to carry on business operation effectively, efficiently, smoothly and profitably. However, such software itself does not work on a stand alone basis. It has to be fitted to a computer system to work. Such software enhances efficiency of the operation. It is an aid in the manufacturing process rather than tool itself. Therefore, the payment for such application software, though there is an enduring benefit, does not result in acquisition of any capital asset hence has to be treated as revenue expenditure.

The Court also held that expenditure incurred on replacement of printer was also revenue expenditure.

CIT vs. Southern Roadways Ltd. (2008) 304 ITR 84 (Mad.)



Capital or Revenue Receipt – Restrictive Covenant - S. 17(3)(1)

Assessee after retirement executing agreement to refrain from taking up any competitive employment / assignment in future. Receipt is capital in nature being a special compensation after cessation of employment the said receipt can not be taxed as profit in lieu of salary.

CIT vs. Shyam Sundar Chhaparia (2008) 305 ITR 181 (MP)

Editorial Note: See Bombay High Court decision in case of Narendra Desai (2008) 214 CTR (Bom) 190 = (2008) 1DTR 106

D.

Deduction Actual Payment – Provident Fund – S. 43B

Provident fund and ESI contribution paid belatedly but prior to filing of return could not be disallowed under section 43B.

CIT vs. Nexus Computers (P) Ltd. (2008) 12 DTR 77 (Mad.)

Deduction of Tax at Source - Packing Material - S. 194C

Packing material carrying printed work, transaction essentially a sale. Purchaser not liable to deduct tax at source on price.

CIT vs. Dy. Chief Accounts Officer, Marketed Khanna (2008) 304 ITR 17 (P & H)

Deemed Income - Stock Valuation – S. 4

There was difference between stock value shown in accounts and value disclosed to Bank. Inflated stock submitted to avail of higher credit



facility from Bank. Neither Bank nor the Assessing officer physically verifying and certifying the stock. Additions deleted.

CIT vs. Das Industries (2008) 303 ITR 199 (All)

E.

Export Undertaking – Interest – S. 10B

Interest received by assessee from sister concern on advances against purchase of goods is “profits and gains” eligible for exemption under section 10B.

CIT vs. Hycron India Ltd. (2008) 13 DTR 13 (Raj.)

H.

Hotel - Special Deduction – S. 80IA(4)(iii)

When the Hotel granted certificate by prescribed authorities Income tax authorities has no jurisdiction to decide on basis of his own criteria that the assessee is not entitled to special deduction under section 80IA.

Gujarat JHM Hotels Ltd. vs. Director General of I. T. (2008) 305 ITR 386 (Guj.)

I.

Income - Capital or Revenue Receipt - Non Compete Fees - S. 4

Assessee, after selling his business as a going concern entering into another agreement with the purchaser not to compete with purchaser in the same line of business in the specified territory consideration received for such non-compete agreement was capital receipt not chargeable to tax.



CIT vs. Amol Narendra Dalal (2008) 13 DTR 87 (Bom.)

Income from Undisclosed Source – Sales – S. 4, 143 (3)

The entire sale proceeds cannot be regarded as profit or treated as undisclosed income of the assessee only is the net profit rate which has to be adopted in such cases.

Man Mohan Sadani vs. CIT (2008) 304 ITR 52 (MP)

Industrial Undertaking - Duty Drawback - S. 80IB

Deduction under section 80IB is not entitled in respect of duty draw back.

Shakthi Footwear vs. ACIT (2008) 13 DTR 157 (Mad.)

K.

Kar Vivad Samadhan Scheme, 1998 – Reassessment – S. 148

Amount paid under KVS Scheme and certificate obtained, assessment cannot be reopened.

A. Ramamurthy vs. ITO (2008) 305 ITR 260 (Mad.)

M.

Mutuality – Income - Interest Income from Bank – S. 4

Notwithstanding the fact that the assessee company has been formed by certain shopkeepers essentially for the benefit of the members,



principle of mutuality is not applicable to interest earned by the assessee on FDRs with banks, more so when the memorandum and articles of association permits various kinds of business which can be carried on by the assessee.

Devi Ahilya New Cloth Market Co. Ltd. vs. CIT (2008) 12 DTR 33 (MP)

N.

Notice – Assessment – S. 143, 282

Notice under section 143(2) was sent by registered post, which was received back undelivered. The notice ought to have been sent along with acknowledgment due. Hence, no notice under section 143(2) of the Act had been served upon the assessee within the prescribed period, and therefore the assessment was invalid.

CIT vs. Eqbal Singh Sindhana (2008) 304 ITR 177 (Delhi)

R.

Reassessment - Block Assessment – S. 147, 148, 158BA, BC, BE, BG, & 158 BH

Once assessment has been framed under section 158 BA, in relation to undisclosed income of the block period as a result of search, A.O. can not issue notice under section 148, for reopening such assessment.

Cargo Clearing Agency (Gujarat) vs. Jt. CIT (2008) 12 DTR 50 (Guj.)

Reassessment – Notice - Assessment Not Finalised - S. 147, 148

When the valid assessment is pending, the assessing officer cannot issue notice under section 148 for the purposes of reopening under section 147.

CIT vs. K. M. Pachayappan (2008) 304 ITR (264) (Mad).



Recovery of Tax - S. 220(6)

When assessee files an application for stay when the appeal is pending before the CIT(A), unless the assessing officer rejects the application, he cannot direct for attaching the assessee's bank Account.

Dr. T. K. Shanmugasundaram vs. CIT and Others (2008) 303 ITR 387 (Mad.)

Editorial Note : Refer Bombay High Court in KEC International vs. B.R. Balakrishnan & Ors (2001) 251 ITR 158 (Bom).

Return – Assessment - Signed by Dead Person Null and Void - S. 139, 143 (3)

Return signed by dead person filed after his death. Return was null and void and no valid assessment could have been made on the basis of invalid return.

CIT vs. Moti Ram (Decd) Through L/H. Dharam Pal (2008) 13 DTR 212 (P&H)

S.

Search and Seizure – Addition - Retraction of Statement – S. 132 (4), 158 BB

Statement made in the course of search and seizure was retracted only after issue of summons, addition can not be made merely on the basis of statement.

CIT vs. K. Bhuvanendra and Others (2008) 303 ITR 235 (Mad.)

Search and Seizure - Block Assessment - Warrant in the name of Dead Person - Assessment Invalid – S. 158BC, 144

Search warrant being issued in the name of dead person and panchanama also prepared in the name of dead person, the search and



authorization invalid and void ab initio and therefore block assessment under section 158BC, read with section 144 in pursuance thereof is also invalid.

CIT vs. Rakesh Kumar, Mukesh Kumar L/H of late Mohar Singh (2008) 13 DTR 209 (P& H)

T.

Tribunal - Remarks against Counsel - S. 254(2)

Self restraint and temperate language are virtues of a judicial or quasi-judicial authority. Judicial language does not use whip-lashing scathing or disparaging remarks. These are uncalled for deciding a lis. A presiding officer is expected to watch the forensic battle of wits from a higher pedestal rather than becoming part of din and dust of battle. With this word of caution, nothing needs to be said more in view of the fact that by the order impugned. Tribunal recalled the order, thus the remarks stand obliterated. The Tribunal ought not have made scathing remarks against counsel for the assessee.

CIT vs. S. Kumar Tyres Mfg. Company (2008) 13 DTR 30 (MP)

TRIBUNAL

A.

Additional Evidence - Commissioner (Appeals) – S. 251

Where assessee voluntarily files additional evidence before Commissioner (Appeals), later is obliged to allow Assessing Officer a reasonable opportunity before admitting additional evidence. Where assessee under directions of Commissioner (Appeals) files additional evidence before him, there is no requirement for confronting Assessing Officer, with documents /evidence entered by Commissioner (Appeals) at first appellate stage.

Dy. DIT vs. Thorsesen Chartering Singapore (PTE) Ltd. (2008) 24 SOT 433 (Mum.)



Assessment – Validity – Notice – S. 143 (2), 143 (3)

Notice under section 143(2) having been served in the status of individual without citing PAN, assessment on the basis of said notice on assessee HUF was without jurisdiction.

Karamshibhai M. Thumar (HUF) vs. ITO (2008) 12 DTR 534 (Ahd.) (Trib.)

B.

Business Expenditure - Premium on key Insurance – S. 37 (1)

Premium on Keyman Insurance Policy is allowable business expenditure in view of CBDT Circular No. 762 dt. 18th Feb., 1998.

Sunita Finlease Ltd. vs. Dy. CIT (2008) 118 TTJ 263 (Bilaspur)

Business Loss – Debentures – S. 29

Rights allotment of non convertible debentures with detachable warrants. Difference between face value of debenture with the warrant and sale value of debenture without warrant treated as loss, which is allowable under section 29.

Medicare Investments Ltd. vs. Jt. CIT (2008) 304 ITR (AT) 44 (Delhi)

Bad Debt - Business Loss – S. 28(1), 36(1)

Amount due to the assessee share broker on account of business dealings with the clients considered for computing income was allowable as bad debt being written off as irrecoverable.



Amounts due from clients becoming irrecoverable and written off is allowable as business loss.

Angel Capital & Debt Market Ltd. vs. ACIT (2008) 12 DTR 433 (Mum.) (Trib.) / (2008) 118 TTJ 351 (Mum.)

Editorial Note:- Refer Bombay High court in

CIT vs. P.R. Share & Stock Brokers P. Ltd.

Income Tax Appeal No. 79 of 2008, dated 26/6/2008 (unreported)

Mumbai Tribunal in *India Infoline Securities (P) Ltd. vs. ACIT (2008) 25 SOT 123 (Mum.)* has held that the amount written off is not allowable as bad debt, however, the same may be allowable as business loss and matter remanded to the A.O., however, the judgment of Bombay High Court has not been referred. The Tribunal may have to follow the judgment of Bombay High Court or may have to refer to special Bench.

C.

Capital Gains - Dissolution of Firm - S. 45(4)

The assessee firm consisted of two brothers as two partners, of whom one retired and other took over the business along with all immovable and moveable properties, liabilities, etc., subsequently, with admission of another person, a new partnership was drawn. The tribunal held there was dissolution of firm and the provisions of section 45(4) were attracted, accordingly the market value of capital asset on the date of dissolution was to be compared with the cost of acquisition or indexed cost of acquisition as the case might be and it was chargeable to tax as capital gains.



ITO vs. Marketers (2008) 24 SOT 59 (Asr.) (URO)

Capital Gain – TDR – S. 2(14), 45

Amount received by a member of the housing society from a developer holding TDR, who constructed additional floors in a building owned by the housing society. The A.O. was not justified in levying the Capital Gains Tax from the member of the housing Society.

Deepak S. Shah vs. ITO. ITA NO 1483/M/2001 Bench 'D' Asst. Year 1995-96 dt. 16-6-2008 (2008) 40 BCAJ 559 (August, 2008)

Capital or Revenue Expenditure - Access to Computer Software – S. 37

Assessee share broker made payment for access to certain software used by share brokers for accessing NSE for controlling trading functions. The payment was required to be made periodically, the expenditure is revenue in nature.

Editorial Note:- Special Bench in Amway India Enterprises & Co. vs. Dy. CIT (2008) 114 TTJ 476 (Del.) (SB) is considered.

Angel Capital & Debt Market Ltd. vs. ACIT (2008) 12 DTR 433 (Mum.) (Trib.)

Capital or Revenue Expenditure – Website – S. 37

By hoisting a website, no new capital asset came in to existence as the website contains the details of the assessee company, its product, directors, etc., which in a way promotes the business activity. By incurring the expenditure, the assessee has not acquired any software though the software itself may be needed to access the website. The website requires regular updates. Therefore, the expenses incurred for



development of website can not be equated with acquisition of software or treat it as capital expenditure. The expenses being incurred just to promote the business interest are allowable as revenue expenditure.

Polyplex Corporation Ltd. vs. ITO (2008) 12 DTR 289 (Del.) (Trib.)

D.

Deduction - Actual Payment - Interest on Custom Duty – S. 43B

Interest on custom duty can not fall under the ambit of section 43B.

Royal Cushion Vinyl Products Ltd. vs. ACIT. ITAT Mumbai Bench 'F', ITA No. 2824/M/2006 Asst. Year 2002-2003 dt. 31-7-2008 (2008) 40 BCAJ 25 (October, 2008)

Deduction at Source - Credit for Tax Deducted at Source - Cash Method of Accounting – S. 199

Credit for Tax Deducted at source if income is not assessable in relevant assessment year. Credit shall be allowed on prorata basis and on same proportion in which such income is offered for taxation in different assessment years.

Pradeep Kumar Dhir vs. ACIT (2008) 303 ITR (AT) 45 (Chand.) (TM)

Deduction of Tax at Source – Salary - S. 199, 205

TDS certificate was not furnished by employer. TDS could not be recovered from assessee in view of section 205 of the Income Tax Act.

Capt . J. G. Joseph vs. Jt. CIT (2008) 303 ITR (AT) 395 (Mum.)



Deemed Dividend – S. 2(22)(e)

Assessee became a registered share holder of the lender company much after receiving the loan, hence, the loan amount can not be treated as deemed dividend.

ITO vs. Sagar Sahil Investmnt (P) Ltd. (2008) 13 DTR 350 (Mum.) (Trib.)

Deemed Dividend – Loan to a Company – S. 2(22)(e)

For purposes of section 2(22)(e), it is not necessary that payer or payee must have shareholdings in other company, if payment of any sum by way of advance or loan is made by one private Limited company to another private limited company in which there is a common shareholder having sufficient holding or beneficial interest in both companies, provisions of section 2(22)(e) can be invoked and those loans and advances shall be deemed dividend under section 2(22)(e).

Skyline India Recruit.com (P) Ltd. vs. ITO (2008) 24 SOT 402 (Mum.) (SMC)

Demerger – S. 2 (19AA), 47(vi)(b)

All the conditions have to be satisfied in section 2 (19AA) have to be satisfied in a case to be called a demerger for the purposes of section 47(vi)(b). In the present assessee no shares have been issued by resulting company and there being no consideration of section 2 (19AA) were satisfied and benefit of section 47(vi)(b) was not available.

Avaya Global Connect Ltd vs. ACIT (2008) 13 DTR 309 (Mum.) (Trib.)



Demerger - Unabsorbed Depreciation and Unabsorbed Capital Expenditure on Scientific Research – S. 72(A)(7)

Unabsorbed portion of capital expenditure and unabsorbed depreciation on scientific research in the hands of demerged company can not form part of either “accumulated loss” or “unabsorbed depreciation” in the hands of resulting company therefore, assessee i.e. the resulting company, is not entitled to carry forward and set off the said expenditure under section 72A(4).

ITO vs. Mahyco Vegetable Seeds Ltd. (2008) 13 DTR 574 (Mum.) (Trib.) / (2008) 25 SOT 46 (Mum.)

Depreciation - Intangible Asset - Right Acquired under Contract to Carry on Business – S. 32(1)(i) & 32(i)(ii)

Assessee having acquired from a person rights of catering for HLL along with all paraphernalia and articles lying at the canteen of HLL for consideration of Rs. 27 lakhs, was entitled for depreciation under section 32(1)(i) in respect of such articles and paraphernalia and under section 32(i)(ii), in respect of right of catering which was a tool to carry on the business, hence, intangible.

Skyline Catering (P) Ltd. vs. ITO (2008) 13 DTR 150 (Mum.) (Trib.)

H.

Housing Project - S. 80IB(10)(a)

The expenses incurred for change of land use and administrative / other land development expenses incurred prior to statutory approvals can not result in to commencement of the project. On the facts the land was purchased in the year, 1996. Wall was constructed. WIP of this project on 31-3-1998 was stated to be Rs 10,17,615/-. Original plan was expired after validity period of one year. Revised plan was approved and commencement certificate was issued on 30-9-2000,



user of land for non agricultural purposes was permitted on 28-6-2001. The Tribunal held that the A.O. was not justified in denying the deduction u/s. 80IB(10)(a) viz. commencement of the construction after 1-10-1998.

ITO vs. Shri Vimal Chand Dhokia. ITAT Mumbai Bench 'A' ITA No. 5520/M/2005 Asst. Year 2002-2003 dt. 19-5-2008 (2008) 40 BCAJ 23 (October, 2008)

I.

Income - Capital or Revenue - Restrictive Covenant – S. 4

Consideration for transfer of marketing information for a period of three years was revenue receipt, while receipt under non-compete covenant for a period of five years was capital receipt.

Dy. CIT vs. Lyka Labs Ltd. (2008) 13 DTR 519 (Mum.) (Trib.)

Income - Capital or Revenue Receipt – Share Application Money - S. 4

Share Application Money forfeited by assessee in terms of prospectus and credited to Capital account is Capital receipt not chargeable to tax.

Dy. CIT vs. Brijlakshmi Leasing & Finance Ltd. (2008) 12 DTR 150 (Ahd.)

Income – TDR - S. 4

Transfer of TDR rights by individual members of assessee society, which was not owner of the land, to developer, against repairs of the building and construction of additional floor without receipt of any consideration by individual flat owners or the society and without



allocating any area in the constructed portion did not give rise to any chargeable income or for that matter, capital gains.

ITO vs. Lotia Court Co-op Housing Society Ltd. (2008) 12 DTR 396 (Mum.) (Trib.) / (2008) 118 TTJ 199 (Mum.)

Income - Waiver of Loan – S. 2(24)

Loan obtained and utilized for purchase of capital assets, hence, sum received by waiver of loan is capital receipt and not taxable.

Fidelety Textiles P. Ltd vs. ACIT (2008) 305 ITR 97 (Chennai) (A.T) (TM)

Infrastructure Undertakings – Road – S. 80IA(4)

The assessee, who only engaged in developing the infrastructural facility i.e. road and not engaged in the operating and maintaining the said facility, was entitled to the benefits of the deduction under section 80IA(4). The provisions of sub-clause (c) of clause (1) of section 80IA(4) were inapplicable to the instance case.

ACIT vs. Bharat Udyog Ltd. (2008) 24 SOT 412 (Mum.)

L.

Loss – Speculative – Derivative - S. 28(1), 43(5)

Dealings in the derivative is a separate kind of transaction which does not involve any purchase and sale of shares and therefore loss on account of F & O transactions cannot be treated as, speculative loss.

R. B. K. Securities (P) Ltd. vs. ITO (2008) 13 DTR 255 (Mum.) (Trib.)



M.

Manufacture - Software Duplication – S. 80IA

Software duplication tantamounts to manufacture hence, eligible for deduction under section 80 IA.

Oracle India (P) Ltd. vs. Dy. CIT (2008) 13 DTR 371 (Del.) (Trib.)

P.

Precedent – Appeal - S. 260A

Dismissal of appeal on ground no substantial question of law arises, amounts affirmation of decision of tribunal on merits binding on Tribunal.

Medicare Investments Ltd. vs. Jt. CIT (2008) 114 ITD 34 (Delhi) (SB) / (2008) 304 ITR (AT) 44 (Delhi) (SB)

R.

Reassessment – S. 148

An attempt on part of Assessing Officer to probe into return further, without any fresh facts or change in law coming to his notice, would be a case of “reason to suspect” and not “reason to believe”. In the instant case, the only reason for reopening the assessment was that the balance sheet of the assessee revealed that he had received a gift of certain amount for which no details had been filed. There was no reference to any investigation carried out in the assessee’s own case or in the case of the donor or any other evidence or material collected as a result of any investigation carried out by any investigating agency including the income tax Department in any case which could have afforded the required nexus or live link or rational connection with the belief that the income chargeable to tax had escaped assessment. Accordingly the reopening of assessment was void ab initio and bad in the eyes of law.



ACIT vs. O. P. Chawala (2008) 114 ITD 69 (Delhi) (TM)

S.

Search and Seizure - Block Assessment - S. 132A, 158BC

Jurisdiction to complete block assessment under section 158BC is conferred on the AO only on the physical handing over the books of accounts, assets, etc., requisitioned under section 132A to the IT authorities concerned.

ACIT vs. Sonu Verma (2008) 13 DTR 257 (Asr.) (SB)

Search and Seizure - Block assessment - Limitation - Prohibitory Order - Last Panchanama - S. 132, 158BE

Assessee's premises having been completely searched on 29th July, 1997 when assets were inventorised and Panchanama prepared, limitation under section 158BE would be reckoned qua 29th July, 1997 and not qua 8th Sept., 1997 when the prohibitory order in respect of shares was revoked and second Panchanama was prepared as the second Panchanama could not be said to have been prepared in pursuance to warrant of authorization, hence, block assessment made on 30th Sept., was barred by limitation.

Nandlal M. Gandhi vs. ACIT (2008) 13 DTR 35 (Mum.)(Trib.)(TM) / (2008) 118 TTJ 289 (Mum.) (TM)

Editorial Note:- 1. See Smt. Krishna Verma vs. ACIT (2008)

113 ITD 655 (SB)

2. Special Bench is Constituted at Jodhpur in M/s. Shree Ram Lime Products Ltd. Jodhpur



ITA No. 27/Ju/06 C.O. No. 37/Ju/06 (A/o. ITA No. 27/JDPR/06), Block A.Y. 1997-98 to 2003-04

“Whether on the facts and in the circumstances of the case the period of limitation for completion of the block assessment as per sec. 158BE read with explanation 2 is to be reckoned from the end of the month in which last Panchanama on the conclusion of search is drawn on the assessee or last Panchanam of the last authorization even when it is not last Panchanama drawn on the assessee and on or more valid panchanamas are drawn on the assessee thereafter in execution of any former authorization.”