Judicial decisions relating to clauses covered in Tax Audit

Judicial decisions at times throw very interesting propositions of law which are helpful for assessees and tax professionals alike while dealing with tax matters. Below is an attempt to list certain propositions of law expounded by the courts' decisions which may be found useful.

Section 40A (2)

BURDEN OF PROOF ON REVENUE-

- **Assessment year 1998-1999 –** Whether for invoking provision of section 40A(2) ***onus lies upon Assessing Officer*** to prove that payment is excessive or unreasonable having regard to fair market value of goods or legitimate needs of business, there is no presumption of unreasonableness – Held, Yes – ***S.K. ENGG V. JT CIT 103 ITD 97 (BANG).***

- **Business expenditure----Disallowance under s. 40A(2)**—Payment of commission to sister concern---Department not being able to show as to how 0.5 per cent higher commission paid by assessee company to its sister concern, which was also being assessed at higher rate, ***resulted in tax evasion,*** Tribunal was justified in deleting the addition.---***CIT vs. Indo Saudi Services (Travel) (P) Ltd. 12 DTR 304(Bom)***

- ---Payment of salary to director----AO having made no enquiry to ascertain whether the payment of remuneration by the assessee company to the director in the relevant year was excessive or unreasonable having regard to the fair market value of the services, no disallowance could be made u/s. 40A(2) on the basis that the remuneration paid in the relevant year was substantially more than that paid in the earlier year.----***Jagdamba Rollers Flour Mill Ltd. vs. Asstt. CIT 20 DTR 370 (Nag)(TM)(Tribunal).***

- **---Disallowance under s. 40A(2)----**Excessive Interest payment to relatives of directors---AO having no information as to what should be the fair market rate of interest, he could not have treated interest paid by assessee to relatives of directors @ 24 per cent per annum as excessive or unreasonable so as to invoke provisions of s. 40A(2)(b) and disallow part of it by reopening the assessment---***Satya Narain Kesho Ra, (P) Ltd. vs. Dy. CIT 21 DTR 1(Lucknow)***

- **--Disallowance under s. 40A(2)**—Trade discount—Ad hoc disallowance of trade discount to sister concern was not justified especially when bulk sales were made to sister concern and similar discount was allowed in earlier year on lower sales—That apart, trade discount is not any expenditure and therefore s. 40A(2) was not attracted at all.—***United Exports vs. CIT 28 DTR 315(Del.)25 Aug., 2009***

- --Payment of interest at excessive rate—In view of difficulties involved in obtaining loan from bank or financial institution, the interest paid by the assessee on unsecured loans taken from relatives at a rate little higher than the market rate cannot be disallowed under s. 40A(2).—***Som Dutt Goel & Sons vs. ITO 27 DTR 263(Del.)***
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Section 41(1)

Business income---Profits chargeable to tax under s. 41(1)----Remission or cessation of liability---AO having not brought anything on record to prove that the liabilities ceased to exist as on last date of relevant previous year, same could not be taxed as income under s. 41(1).---- ***Wilson & Co. Ltd. vs. Asstt. CIT 16 DTR 428(Chennai)***

Business income---Cessation of liability---Unilateral writing off of unclaimed liability---Not statutory but contractual liability---Taxable as income---Income-tax Act, 1961, s. 41(1)---***JAY ENGINEERING WORKS LTD. 167 Taxman 130 (Delhi)***

Income----Business----Waiver of loan taken by assessee for business purposes---Amount transferred to profit and loss account---Amount assessable as business income---Income-tax Act, 1961, s. 41(1)---***SOLID CONTAINERS LTD. V. DEPUTY CIT 308 ITR 417(Bom.)***

S. 41(1) – Income – Business income – Remission of liability – Amount shown as liability in balance sheet – No evidence of cessation of liability – Amount not assessable under section 41 – **CIT VS. TAMILNADU WAREHOUSING CORPORATION 292 ITR 310 (MAD.)**

Business income – Profits chargeable to tax under section 41(1) – Amounts carried forward for years – In the absence of any evidence of cessation of liability amount which has been merely carried forward to years in the books of accounts is not assessable under section 41(1) – **CIT VS. SOUTHERN ROADWAYS LIMITED 202 CTR 279 (MAD).**

Business income—Profit chargeable to tax under s. 41(1)—Advance against goods to be supplied—In the absence of any material being brought on record to show that the liability shown in the balance sheet has actually ceased, the amount of such liability cannot be added when the assessee has not written off the liability in the books of account.—***Asstt. CIT vs. Nirmala Overseas 37 DTR 321 (Del. 'F')***

Deemed profit—Amount received credited in profit and loss account and adjusted in book profits—Findings by Tribunal that loan liability never claimed or allowed as deduction by way of loss, expenditure or trading liability—Not to be included as profit chargeable to tax—Assessment Order not erroneous or prejudicial to interests of Revenue—Proceedings under section 263 not proper—***CIT vs. Goyal M G Gases Ltd. 321 ITR 437 (Delhi)***

Liability outstanding for last six years—Assessee having shown the impugned liabilities in its balance sheet and filed copies of accounts sundry creditors signed by the concerned creditor, such liabilities cannot be treated to have ceased merely because they are outstanding for six years and, therefore, the addition made by invoking s. 41(1) cannot be sustained, more so when the AO has failed to show that deduction has be allowed in respect of any trading liability or that the assessee has obtained any benefit concerning such liabilities by way of remission or cessation thereof in the relevant year.—***CIT vs. Smt. Sita Devi Juneja 33 DTR 201(P&H)***

Profits chargeable tax under s. 41(1)—Amount payable to creditor—Assessee having shown the amount payable by it to another company as an existing liability in its books and not written back the same, it cannot be said that the aforesaid liability has ceased to exist and, therefore, it cannot be treated as income by invoking the provisions of s. 41(1).—***CIT vs. GP International Ltd. 33 DTR 163(P&H)***

SECTION 40(a)(i)/(ia)

Rejection of books vis-à-vis amount paid without TDS—Once estimation of income is made, further disallowance under s. 40(a)(ia) for non-deduction of TDS is not warranted—That apart, if the assessee has paid the impugned amount and the amount is not payable at the end of the year on the date of balance sheet, then the provisions of s. 40(a)(ia) are not applicable—***Teja Constructions vs. Asstt. CIT 129 TTJ 57 (Hyd. 'A')(UO)***

Disallowance under s.40(a)(i) – Applicability of proviso to s.40(a)(i) vis-à-vis absence of claim for deduction in earlier year – Where the tax deducted in respect of any payment has been paid in a subsequent year, the payment has to be allowed as a deduction in that year by virtue of proviso to s.40(a)(i) whether or not the same was claimed as deduction in the earlier year – **ABN AMRO BANK NV VS. JT.CIT 96 TTJ 1041 (CAL `E') (TM).**

Disallowance under s. 40(a)(ia) –Payment of hire charges for trucks—Revenue having no brought any material on record to establish that the hiring of vehicles by the assessee transporter from the truck owners and payments therefore where in consequence of any written or oral agreement, provisions of s. 194C were not applicable to the payments of freight or hiring charges made by the assessee to the trucks owners and the same could not be disallowed under s. 40(a)(ia).—***Chandrakant Thackar Vs. Asstt. CIT 129 TTJ 1 (Ctk)(UO)***

Disallowance under s. 40(a)(iii)—Overseas maintenance allowance—Overseas maintenance allowance paid to employees, being reimbursement of expenses, did not call for disallowance under s. 40(a)(iii) on account of failure to deduct tax.—***CIT vs. Information Architects 40 DTR 85 (Bom)***

Disallowance under s. 40(a)(i)—Payment to German parent company for the purchase of asset.—Provisions of s. 40(a)(i) are not applicable for claim of deduction of depreciation under s. 32—Payment for purchase of capital asset (software) without deduction of tax will not be subject to the provisions of s. 40(a)(i).—***SMS Demag (P) Ltd. Vs. Dy. CIT 37 DTR 78(Del. 'G')***

Reimbursement of expenses to clearing agent—Assessee was not obliged to deduct tax at source from the payment made by it to the clearing agent towards customs duty and other expenses paid by the latter while clearing the imported goods on behalf of the assessee as no element of income is embedded in reimbursement of expenses and therefore, impugned payments could not be disallowed under s. 40(a)(ia).—***<u>Asstt. CIT vs. Grandprix Fab. (P) Ltd. 34 DTR 248(Del. 'D')</u>***

Disallowance under s. 40(a)(ia)—Payment to contractor for civil job vis-à-vis supply of material—Assessee having made payments to the contractor for the civil work under a composite contract for repairs and maintenance of building, it was required to deduct tax at source in respect of the entire amount relating to the labour charges as well as material and, therefore, payment made by assessee towards cost of material without deducting tax at source is to be disallowed under s. 40(a)(ia).—***<u>Asstt. CIT vs. Grandprix Fab. (P) Ltd. 34 DTR 248(Del. 'D')</u>***

Disallowance under s. 40(a)(ia)—Payment of hire charges of trucks—In the absence of any thing on record to suggest existence of any contract between the assessee and other transporters whose vehicles were engaged by assessee for executing various contracts, there was no contractor and sub-contractor relationship between the assessee and said other transporters and therefore assessee was not liable to deduct tax under s. 194C from the payments made to other transporters and therefore, same could not be disallowed under the provisions of s. 40(a)(ia).— ***<u>R.R. Caryying Corporation vs. Asstt. CIT 30 DTR 569(Ctk)</u>***

Disallowance under s. 40(a)(i)—Reimbursement of expenditure to parent non-resident company—No income accrued or arose to the payee from the payments made by the assessee to its non-resident parent company in respect of the expenditure incurred by the latter in connection with the business activity carried on by assessee in India and thus provisions of s. 195 were not applicable and assessee was not required to deduct tax at source and therefore, the payments could not be disallowed by invoking the provisions of s. 40(a)(i)—Disallowance could not be made also for the reason that the income of the assessee is to be computed as per the special provisions of s. 42 which override the general provisions of computation of income.—***<u>Cairn Energy India Pty. Ltd. vs. Asstt. CIT 30 DTR 258(Chennai 'D')</u>***

Payments for hiring trucks—Assessee utilizing trucks for own use—No agreement for carrying out any work—Not amounting to a contract for carrying out any work under section 194C—Tax need no be deducted on amount paid as hire charges—Income-tax Act, 1961, ss. 40(a)(ia), 194C—***<u>Deputy CIT vs. Satish Aggarwal And Co. 317 ITR 196(Amritsar)</u>***

Disallowance under s. 40(a)(ia)—Payments made to lorry owners for hiring lorries vis-à-vis sub-contract—Assessee, a transport contractor, having itself executed the whole of the contract for transportation of bitumen by hiring lorries from other lorry owners who simply placed the vehicles at the disposal of the assessee without involving themselves in carrying out any part of the work undertaken by the assessee, it cannot be said that the payments made for hiring of vehicles fell in the category of payments towards sub-contracts and, therefore, assessee was not liable to deduct tax at source as per the provisions of s. 194C(2) from the payments made to the lorry owners and consequently, provisions of s. 194C(2) from the payments made to the lorry owners and consequently, provisions of s. 40(a)(ia) were not applicable to such payments.— ***<u>Mythir Transport Corporation vs. Asstt. CIT 28 DTR 129(Visakha) 9th January, 2009</u>***

Disallowance under s. 40(a)(ia)—Payment of consultation fees and rent by hospital—Income derived by assessee doctor from the running of a multi-facility hospital is to be treated as business income and not professional income and since the total receipts of the assessee did not exceed Rs.40 lacs in the relevant assessment year, he is not liable to get his accounts audited under s. 44AB and, therefore, the provisions of s. 40(a)(ia) are not applicable to the consultation fees paid to the visiting doctors and the rent paid for the hospital premises.—***Dr. Deepak Assudant vs. ITO 26 DTR 454(Del.'E')***

Business expenditure----Disallowance under s. 40(a)(ia)---Purchase of goods vis-à-vis contract for works---Supply of outsourced manufactured goods by contract manufactures constituted outright sale and not contract of work within the scope of s. 194C, hence assessee was not liable to deduct tax at source from the purchase price of goods paid by assessee to contract manufacturers, therefore, such payment could not be disallowed by invoking s. 40(a)(ia)-***--Tuareg Marketing (P) Ltd. vs. Asstt. CIT 21 DTR 178(Del.)***

Section 43B/2(24)(x)/36(1)(va)

- **Business expenditure---Disallowance under s. 43B**---Contribution to provident fund----Payment of PF contribution made by the assessee after the due date prescribed under the Employees Provident Fund Act and The Rules made thereunder but before the due date of filing of return could not be disallowed under s. 43B--- ---***CIT vs. P.M. Electronics Ltd. 15 DTR 258(Del)***

  Disallowance under s. 43B—Employees' contribution towards PF and ESI—Deduction of payment of employees' contribution towards PF and ESI cannot be disallowed under s. 43B if the actual payment is made before the due date of filing of return though beyond the due dated prescribed under the relevant Acts.—***CIT vs. Aimil Ltd. & Ors. 321 ITR 508 (Del.)***

  Deduction only on actual payment—Contribution to provident fund—Existing provision creating difficulties—Amendment to remove difficulty—Has retrospective effect—Finance Act, 2003, making amendment but as if with effect from April 1, 2004—To be read as having retrospective effect from April 1, 1988—Income-tax Act, 1961, s. 43B—***CIT vs. Alom Extrusions Ltd. 319 ITR 306(SC)***

- **Certain deduction to be only on actual payment –** Assessment year 1999-2000 – Assessee was following mercantile system of accounting – Assessee did not deposit part of service tax collections with concerned authorities – Assessee neither claimed any deduction in this regard nor did it debit said amount as an expenditure in profit and loss account – Assessing Officer after disallowing said amount made addition to assessee's income – Whether in view of facts any question of disallowing deduction not claimed would arise – Held, yes – **CIT VS. IDEAL SHEET METAL STAMPINGS & PRESSING PVT.LTD. 166 TAXMAN 48 (DEL).**

- **Disallowance under s.** 43B—Service-tax billed but not received- Service-tax though billed but not received not having become payable to the credit of the Central Government by virtue of s. 68 of the Finance Act, 1994, r/w.r. 6 of the Service-tax Rules, 1994, same could not be disallowed under s. 43B-Further, assessee service provider is merely acting as an agent of the Government and is not entitled to claim deduction on account of service-tax and therefore no disallowance can be made on the analogy of sales-tax, excise duty, ect. ----**Asstt. CIT vs. Real Image Media Technologies (P) Ltd. 116 TTJ, 964(Chennai)**

<u>Section 269 SS and 269 T/271D/271E</u>

Penalty under ss. 271D and 271E---Contravention of ss. 269SS and 269T-----Reasonable cause----Family transaction between two independent assessees, based on an act of casualness, specially in a case where the disclosure thereof is contained in the compilation of accounts, and which has no tax effect, establishes "reasonable cause" under s. 273B for not invoking the penal provisions of ss. 271D and 271E.---***<u>CIT vs. Sunil Kumar Goel 21 DTR 43(P&H)</u>***

--------Deposits and loans in cash in excess of prescribed limit---Finding that amounts were mere book entries and transactions on behalf of family members---No violation of sections 269SS and 269T------Penalty could not be imposed---Income-tax Act, 1961, ss. 269SS, 269T,271D, 271E----**<u>CIT v. NATVARLAL PURSHOTTAMDAS PAREKH 303 ITR 5(Guj)</u>**

- **<u>Validity-Limitation-</u>**Penalty under s.271D was invalid as, it was not initiated during any proceedings under the Act and was also initiated after a lapse of 7years.—**<u>SHARDA EDUCATIONAL TRUST V/S ASSTT. CIT-VOL.99-TTJ-212(AGRA).</u>**

- **Penalty Under s. 271 D – Leviability –** Deposit treated as undisclosed income- Revenue having taken the stand that the alleged deposit was undisclosed income of the assessee,it could not resort to penalty proceedings under s. 271D - **<u>CIT VS. Standard BRANDS LTD. 204 CTR 48 (DEL).</u>**

- **S.271D –** Penalty – Deposit or loan in cash exceeding prescribed limit – Amount received by private company from director – Not a deposit or loan – Penalty cannot be imposed – **<u>CIT VS. IDHAYAM PUBLICATIONS LTD. 285 ITR 221 (MAD)</u>**

- **Section 271D—Penalty—**Acceptance of loans in cash exceeding specified limit—Finding that transactions entered in books of account and amount involved was not very high—Penalty cannot be imposed—***<u>CIT VS RATNA AGENCIES 284 ITR 609 (MAD)</u>***

Penalty under s. 271D and 271E—Contravention of ss. 269SS and 269T—Capital contribution towards proposed partnership—Assessee having received amount in cash from one P as his capital contribution towards the proposed partnership between them which is corroborated by an MoU and confirmed by P in his statement recorded under s. 131 , and later returned the amount by cheques when the said proposed partnership failed to materialize, it could not be regarded as a loan or deposit within the meaning of ss. 269SS and 269T more so in view of the fact that there was no provision for payment of any interest on the said amount and, therefore penalty levied under ss. 271D and 271E was not sustainable.—***Bhikabhai Dhanjibhai Patel vs. Asstt. CIT 127 TTJ 479 (Ahd 'A')***

Penalty under s. 271D—Contravention of s. 269SS—Acceptance of trade advances—Sec. 269SS is applicable only in case of loan or deposit and does not cover cash advance received from the purpose of supply of goods—Assessee having received the amount of Rs.1 lakh in cash from a party as an advance against sale of goods and later supplied goods to it against the said advance, provisions of s. 269SS are not applicable and therefore, penalty under s. 271D is not leviable.—***CIT & Anr. Vs. Kailash Chandra Deepak Kumar 32 DTR 336(All)***

Penalty under s. 271E—Contravention of s. 269T—Current account transactions vis-à-vis reasonable cause—Receipts and payments on behalf of sister concern being in the nature of current account, there was no violation of s. 269T attracting penalty under s. 271E—Further, assessee's bona fide belief that transactions with sister concern involving cash were not hit by s. 269T r/w. s. 273B—***Canara Housing Development Co. Vs. Addl. CIT 30 DTR 232(Bang 'B')***

Penalty—Acceptance and return of loans exceeding specified limit in cash—Penalty under section 271D and 271E not mandatory—Cash transactions with sister concern—Finding that there was not attempt to evade tax—Deletion of penalty—Valid—Income-tax Act, 1961, ss. 269SS, 271D, 271E, 273B—***CIT v. Sunil Kumar Goel 315 ITR 163 (P&H)***

Deposits and loans in cash in excess of prescribed limit---Finding that amounts were mere book entries and transactions on behalf of family members---No violation of sections 269SS and 269T------Penalty could not be imposed---Income-tax Act, 1961, ss. 269SS, 269T,271D, 271E----**CIT v. NATVARLAL PURSHOTTAMDAS PAREKH 303 ITR 5(Guj)**

SECTION 40A (3)

Disallowance—Payment otherwise than by crossed cheque or crossed demand draft of sum exceeding prescribed limit—Payment by banker's cheques, pay order and call deposit receipts issued in favour of public sector undertaking—Instruments within definition of bill of exchange—Payments found to be genuine—Payments could not be disallowed—Negotiable Instruments Act, 1981, ss. 5, 6—Income-tax Rules 1962, r . 6DD(d)(iv)—Income-tax Act, 1961, s. 40A(3)—***CIT vs. Vijay Kumar Goel 324 ITR 376 (Chhattisgarh)***

- **Disallowance under s. 40A(3)**—Cash payment vis-à-vis genuineness of purchases—When the Government has chosen to liberalise the operation of s. 40A(3) to augment trade by providing exception under r. 6DD, the Department cannot insist the assessee to get the suppliers confirm to the Department about the supplies made to the assessee and the payments received by them—The assessee should be taken to have discharged burden by furnishing the copies of purchase bills or vouchers issued containing the names and addresses of the suppliers with date, value, quantity etc, and where the purchases are not found bogus, they cannot be disallowed.—***CIT v. Interseas 40 DTR 143 (Ker.)***

- **Disallowance under s. 40A(3)**—Burden of proof—Three parties having denied the purchases ostensibly made by assessee from them, there is a clear presumption that such purchases were made from other parties against cash payments—However onus is on the Revenue to show cash payment exceeding Rs. 20,000/- and as there is nothing on record to show, either directly or indirectly that the relevant payments were made in sums exceeding Rs.20,000 each, s. 40A(3) could not be invoked.—***Sai Construction vs. ITO 127 TTJ 15 (Ctk)(UO)***

  S. 40A(3) – Business expenditure – Disallowance – Payments in cash exceeding prescribed limit – Exceptions provided in rule 6DD – List given in rule 6DD not exhaustive – Rule 6DD must be interpreted liberally – Genuineness of transaction and identity of receivers established – Payments could not be disallowed – CBDT Circular No. 220, dated May 31, 1977 – ***SMT. HARSHILA CHORDIA V. ITO 298 ITR 349 (RAJ)*****.**

- Whether when income of assessee was computed nu applying gross profit rate, provisions of section 40A(3) could not be invoked – Held, yes – ***CIT VS. SMT. SANTOSH JAIN 159 TAXMAN 392 (PUNJ. & HAR)***

- **Business expenditure – Disallowance under section 40A(3) –** Direct payment into bank account of payee – payment made by depositing cash directly into the bank account of the payee is not in violation of provisions of section 40A(3) and, therefore, cannot be disallowed – There was no violation of section 40A(3) also for the reason that the payment was made for purchase of agricultural produce to the agent operating in the market yard set up under the State RMC Act, and accordingly fell within the scope of exclusionary cls.(f) and (1) of 6DD – **SRI RENUKESWARA RICE MILLS VS. ITO 93 TTJ 912 (BANG `B').**

CONTINGENT LIABILITY

Business expenditure – **Contingent or ascertained liability – Provision for future liability under warranty – Warranty clause part of sale document – Committed liability – Can be construed as arising in definite terms in accounting year – Though actual quantification deferred to future date – Provision for future warranty expenses made on basis of figures for past years – Allowable in year of sale – Income tax Act, 1961, s.37** – *CIT VS. VINITEC CORPORATION PVT.LTD. 278 ITR 337 (DEL).*

Business expenditure—Allowability---Increase in revenue liability on account of foreign exchange rate fluctuation---Increase in revenue liability on account of foreign exchange rate fluctuation is not notional or contingent, hence allowable as deduction.---***CIT vs. Hughes Escorts Communications Ltd. 14 DTR 346(Del)***

Business expenditure – Allowability – Provision for warranty claims – Liability towards future warranty claim based on past experience not an unascertained liability, deduction of adhoc provision could not be disallowed –**ROTORK CONTROLS INDIA LTD vs CIT 314 ITR 62 (SC)**

SECTION 32

- **Goodwill**—Goodwill is not an intangible asset within the meaning of s. 32(1)(ii) hence not entitled to depreciation.—***Modular Infotech (P) Ltd. vs. Dy. CIT 40 DTR 172 (Pune 'B')***

  New industrial undertaking—Special deduction—Commencement of trial production does not amount to commercial production—Period of exemption starts from year of commencement of commercial production—Income-tax Act, 1961 ss. 80-IA, 80IB—***CIT v. Nestor Pharmaceuticals Ltd. 322 ITR 631 (Delhi)***

- **Tetra pack machine**—Condition precedent—Tetra Pack machine neither sold, discarded nor demolished but lying idle covered with a paper and kept locked in a room—To be assumed as kept in readiness for use—Entitled to depreciation—***CIT vs. Premier Industries (India) Ltd. 323 ITR 672 (MP)***

- **Depreciation—Rate**—Office equipments and electric installations—Transformer, control panels, fax machine and CCTV systems which are being used in the business of the assessee are to be treated a part and parcel of plant and machinery and not as office furniture and therefore, same are entitled to depreciation @ 25 per cent.—***CIT vs. Subrata Dutta Choudhary 33 DTR 259 (P&H)***

- **User for business**—Active or passive use—For claiming depreciation, it is sufficient if the machinery is kept ready for use during the relevant pervious year, though not actually used due to circumstances beyond the assessee's control—Gas sweetening plant kept ready for use, though could not be actually used due to lack of raw material, was eligible for depreciation.—***Asstt. CIT vs. Chennai Petroleum Corporation Ltd. 32 DTR 184(Chennai 'A')(TM)***

- Non-furnishing of audit report—Non-furnishing of Form No. 3AA i.e. audit report along with original return cannot be a ground for disallowing the claim of additional depreciation under s. 32(1)(iia) made by assessee in the revised return.—***CIT vs. Sharda Motor Industrial Ltd. 30 DTR 260(Del.)***

- **Assessment year 2002**-03 – Whether, goodwill does not all in category of intangible assets as prescribed by section 32(1)(ii) and, therefore, acquisition cost of goodwill is not entitled for depreciation – ***Held, yes – R.G. Keswani v. Asstt. CIT 116 ITD 133(Mum.)***

- **Rate**---Computer peripherals----Peripherals such as printers, scanners, NT server. Etc. form integral part of the computer and the same, therefore, are eligible for depreciation @

60 per cent as applicable to a computer.----***Expeditors International (India)(P) Ltd. vs. Addl. CIT 13 DTR 435(Del)***

- Depreciation----User for business---No business carried out in particular division---Vehicles, furnitures, fixtures and building forming part of block of assets and used by employees were eligible for depreciation, notwithstanding the fact that no business was carried on in a particular division of assessee.----***Goetze (India) Ltd. vs. Dy. CIT 14 DTR 195(Del)***

- **Depreciation – Additional depreciation -** Computers – Computer installed by assessee engineering company used for processing raw materials, data, wages and salary payment and for monitoring the details of production was entitled to additional depreciation – **TRF LIMITED VS. CIT 213 CTR 557 (JHARKHAND).**

- Depreciation – Allowability – Disallowance on land component of building – considering the agreement as a whole assessee had purchased building and proportionate undivided portion of land and A.O. was justified in the absence of valuation of land submitted by assessee to take 1/3rd of total consideration as cost of land and disallowing depreciation thereon – Issue whether assessee has used the land and building for less than 180 days having not been raised before A.O. or CIT(A) could not be raised before the Tribunal – **DY. CIT VS. CAPITAL CARS PVT.LTD. 113 TAXMAN 1120 (DEL `D').**

- Proof of installation of machinery – Assessee having produced evidence of installation of the new machinery and also carried out trial production of the machinery in the relevant year, it has to be presumed that the machinery was utilized for the purpose of the business and, therefore, depreciation is allowable – **B.R. INDUSTRIES VS. ITO 114 TTJ 103 (JP `A').**

  S. 32 – Depreciation – Land and building – Purchase of part of commercial complex – Claim to depreciation on entire consideration – Agreement clearly providing for sale of land and building – That consideration was calculated per square foot of constructed area including common areas, service areas and facilities – Does not mean assessee acquired no right in undivided proportionate share of land beneath building – Failing to produce separate valuation for land and building – Disallowance of one-third consideration estimated to be for land – Proper – ***DEPUTY CIT V. CAPITAL CARS P. LTD. 295 ITR 224 (DELHI).***

- **Depreciation – Use for business –** Active or passive user – Where the machinery is kept ready for use but could not be put to use for non-receipt of orders, the assessee would be entitled to depreciation – **CIT VS. NAHAR EXPORTS LTD. 213 CTR 20 (P&H)**

- **Higher depreciation**—Colour Xerox machine run with help of computer—Printer and scanner are integral part of computer system—Colour Xerox machine to be treated as computer—Entitled to higher rate of depreciation—Income-tax Act, 19671, s.36(1)(xi), Expln.(a)—**ITO V/S SAMIRAN MAJUMDAR—280-ITR-74 (AT)(KOLKATA).**

SECTION 37

- **Capital or revenue expenditure**—Payment for using logo in trade fairs—NO enduring benefit was received by the assessee by using the logo of its parent company in trade fairs and, therefore, the payment made by the assessee fro using the logo is allowable as revenue expenditure.----***Dy. CIT vs. Messee Dusseldorf India (P) Ltd. 129 TTJ 81 (Del. 'F')(UO)***

- —Overload charges for transportation of goods—Penalty paid by the assessee transporter for carrying excess load under the Gold Card Scheme of the Government of Gujarat was not for infringement of law but in the nature of compensation and an expenditure incurred in the course of business of transportation of goods, hence same is allowable as deduction.—***Agrawal Roadlines (P) Ltd. 129 TTJ 49 (Ahd 'C')(UO)***

- Penalty, fine etc.—Interest paid on late deposit of service-tax in Government account—Interest paid for delayed payment of service-tax is compensatory and has the same character as service-tax and, therefore, it is allowable as deduction.—***Dy. CIT vs. Messee Dusseldorf India (P) Ltd. 129 TTJ 81 (Del. 'F')(UO)***

- Technical know-how fees—Assessee did not acquire an asset of a capital nature by obtaining a non-exclusive licence for five years restricted to the territory of India to manufacture and use tube-making machines as the proprietary rights in the patents continued to vest in the licensor and, therefore the technical know-how fees paid by the assessee under the terms of the agreement is allowable as revenue expenditure.—***CIT vs. Essel Propack Ltd. 40 DTR 26 (Bom.)***

- Firm—Insurance premium of Keyman insurance policy to insure life of partner—Effect of section 10(10D) and Circular No. 762 dated 18-02-1998—Finding that insurance was for benefit of firm benefit of firm—Insurance premium deductible—Income-tax Act, 1961 ss. 10(10D), 37—***CIT vs. B.N. Exports 323 ITR 178 (Bom.)***

- Commission paid to directors—Directors giving guarantee for loan taken by company—Commission deductible—Royalty payment for use of trade mark—Revenue expenditure—Income-tax Act, 1961, s. 37—***CIT vs. Khemchand and Motilal Jain Tobacco Products P. Ltd. 323 ITR 498 (MP)***

- **Capital or revenue expenditure**—Expenditure on expansion of business vis-à-vis new business—New project set up by the assessee company is a part of the existing business as there is unity of control, common management ad funds as well as interlacing of two businesses and, therefore, expenditure incurred on salaries, rent, traveling, etc. in relation to the new project is allowable as revenue expenditure.—***CIT vs. Honda Siel Power Products Ltd. 36 DTR 456 (Del.)***

- **Capital or revenue expenditure**—Expenditure on upgrading computers—Revenue expenditure—Income-tax Act, 1961—***CIT v. Sundaram Clayton Ltd. 321 ITR 69(Mad.)***

- Expenditure on repairs—Expenses incurred on granite, tiles hardware, pipe replacement of existing water pump, colour, aluminium sliding, carpentry work, water-proofing and sun control films etc. on repairs of office and the consultancy charges of the architect are allowable as revenue expenditure.—***Power Build Ltd. vs. Asstt. CIT 126 TTJ 551 (Ahd. 'D')***

- Premium paid by firm in respect of Keyman insurance policies on the lives of working partners—Premium paid by firm in respect of Keyman insurance policies on the lives of working partners is allowable as business expenditure—Employer-employee relationship is not essential for allowing deduction of premium paid on Keyman insurance policy.—***ITO vs. Modi Motors 126 TTJ 495 (Mumabi 'B')***

- **Business expenditure—Allowability**—Donation made on appeal of the State Government—Payment made by assessee on the direction of the State Government to suppliers who supplied fodder to various cattle camps in the wake of severe drought conditions, for maintaining smooth relations with the Government, satisfies the test of commercial expediency and, therefore, it is allowable as deduction under s. 37(1)—***Surat Electricity Co. Ltd. vs. Asstt. CIT 35 DTR 272 (Ahd 'D')***

- **Penalty, fine, etc.**—Payment for non-compliance of SEBI Regulations—Payment made under SEBI Regulation Scheme, 2002 for failure to make disclosure as required under SEBI (Substantial Acquisition of Share and Takeovers) Regulations, 1997 could not be treated as penalty as it is a payment for regularizing the default committed under the provisions of the said Regulations and, therefore, such payment cannot be disallowed by invoking Explanation to s. 37(1).—***Kaira Can Co. Ltd. vs. Dy. CIT 32 DTR 485(Mumbai 'B')***

- Payment for consultation services—Payment for consultation services made by the assessee being in connection with expansion of the existing project, same was allowable as revenue expenditure.—***Jyoti Ltd. Vs. CIT 224 CTR 399(Guj.)***

- **Advertisement expenditure**—Assessee displaying neon sign and glow sign boards—Not of enduring nature—To be treated as revenue expenditure—***CIT v. Liberty Group Marketing Division 315 ITR 125(P&H)***