LIST OF IMPORTANT CASE LAWS

INCOME FROM HOUSE PROPERTY

M. Ramalakshmi Vs. CIT

Where the assessee has a well in the compound of her dwelling house from which she supplies water to outsiders on payment basis, the assessee's claim that the well is ***"land appurtenant to building"*** and as such income therefrom is taxable under the head IHP cannot be accepted.

SALARIES

Gestetner Duplicators Pvt. Ltd. Vs. CIT (SC)

Salary = Basic salary + D.A. if terms of employment so provide + Commission based on fixed % of turnover received by the employee.

CAPITAL GAINS

Travancore Rubber & Tea Co. Ltd. Vs. CIT (Supreme Court)

A situation may arise where advance money forfeited is more than the COA. In such a case, the excess of advance money forfeited over the COA of such asset shall be a capital receipt not taxable.

B. C. Srinivasa Setty (Supreme Court)

COA of a self-generated asset is indeterminate. Amount received from transfer will be a capital receipt and hence no CG.

Bai Shirinbai K. Kooka (Supreme Court)

There is no ***transfer*** when assessee converts a capital asset into stock-in-trade of business carried on by him.

The act of conversion is similar to taking out the money from one pocket and keeping the same in the other pocket of the same person.

PROFIT & GAINS OF BUSINESS OR PROFESSION

Khodidas Motiram Panchal

Insurance policy on the lives of the partners is personal expenditure and not deductible.

Attar Singh Gurmukh Singh (Supreme Court)

Purchases of stock or raw materials ***constitute expenditure*** referred to in Section 40A (3). Therefore if payments are made exceeding Rs. 20,000/- otherwise than by account payee cheque or account payee bank draft, then 100% of such expenditure will be disallowed under Section 40A (3).

Aloo Supply Company (Orissa High Court)

For applicability of Section 40A (3), the ***expenditure as well as payment*** should exceed Rs. 20,000/-.

Vijay Kumar Ajit Kumar (Allahabad High Court)

Where the goods are purchased against cash whether the payment is made prior to the delivery of the goods or after the delivery of goods, it is payment in cash and it payment of consideration for the goods purchased and the same is covered by Section 40A (3).

Newdeal Finance & Investment Limited (Chennai High Court)

It is not for the assessee to establish that the debt had become bad in the previous year. If it has been written off as irrecoverable in the accounts of the assessee for the previous year, it will be sufficient for claiming it as bad debt.

It is for the assessee to decide whether the debt has become bad or not and the Assessing Officer can never insist on production of demonstrative and reliable proof that the debt had become bad.

P. K. Kaimal (Madras High Court)

Assessee who claimed the bad debt and who recovers must be the same for applicability of Section 41 (4).

No taxability if the assessee who recovers the bad debt is different from the assessee who claimed the bad debt.

Hazi Aziz & Abdul Shakoor Brothers (Supreme Court)

Penalty for infraction of ***any law*** is not deductible.

Malwa Vanaspati & Chemicals Company (Supreme Court)

Assessee paid sales tax of Rs. 1,00,000/- instead of Rs. 2,00,000/- after giving an undertaking to the sales Tax Department that he will sell the goods in the State of M.P. only. Because of his failure to sell the goods in the State Of M. P. only, he had to pay a **penalty** of Rs. 1,25,000/- to the Sales Tax Department.

Held that Rs. 25,000/- represents ***penalty*** which is disallowable and Rs. 1,00,000/- partakes the ***nature of compensation and represents nothing but sales tax*** which is deductible under Sec. 37 (1).

Indo Asian Switch Gears (Pvt.) Ltd.

Where the assessee pays certain penalty to the State Electricity Board on account of late delivery of goods, under a contractual obligation, the loss is incidental to business, and hence cannot be disallowed.

M. R. Dhawan

When a debt becomes barred by time, the creditor would not be able to recover the amount by enforcing the right in the court. But that will not mean that the liability has come to an end. The assessee may voluntarily pay the liability even when it has become time barred. Therefore, Section 41 (1) is not attracted if a liability becomes time barred.

INCOME FROM OTHER SOURCES

Padmavati Jaikrishna Vs. Additional CIT (SC)

Interest paid on amounts borrowed for meeting tax liabilities is not deductible, since the liability to pay income tax and wealth tax is a personal one.

Director of State Lotteries Vs. CIT (Gauhati)

Income accruing to an agent/trader in respect of prizes on unsold/unclaimed lottery tickets in possession of the agent/trader is income from business and does not constitute winning of lotteries.

AGRICULTURAL INCOME

CIT Vs. Raja Benoy Kumar Sahas Roy (Supreme Court)

Since the expressions "agriculture" and "agricultural purposes" have not been defined in the Income-tax Act, 1961, there were divergent views of the Indian courts on this issue which have been afterwards settled by the Supreme Court in this case. Bhagwati, J. laid down the following principles to serve as a guide in the determination of the scope of the terms "agriculture" and " agricultural purposes" :

(1) Basic operations;

(2) Subsequent operations;

(3) Agriculture not merely includes food and grains;

(4) Mere connection with land not sufficient.

CIT Vs. R. Venkataswamy Naidu (Supreme Court)

Onus of proving that an income is agricultural income is on the assessee.

Soundarya Nursery (Madras, 2000) and Sudisha Farm Nursery (Delhi, 2004)

Unless an assessee carries out the basic operations upon the land, i.e., tilling of land, sowing of the seeds, planting etc., requiring the expenditure of human skill and labour upon the land, it cannot be said that the income earned by the assessee is agricultural income.

SET-OFF, OR CARRY FORWARD & SET-OFF OF LOSSES

CIT Vs. S. S. Thyagarajan

Loss in respect of exempt income can't be S/O against taxable income under Section 70 & 71.

CIT Vs. J. H. Gotla (Supreme Court)

B/F ***business*** losses of an individual can be S/O against the ***PGBP*** of spouse/minor clubbed U/S 64.

Harprasad & Co. Pvt. Ltd. (Supreme Court)

Loss from a non-taxable source can't be C/F.

Western State Trading Co. (Pvt.) Ltd. Vs. CIT (Supreme Court)

Where shares are held by an assessee as stock-in-trade, dividend on such shares would form part of business income and consequently, he will be entitled to claim S/O of business loss B/F from earlier years against dividend of the current year. However, for taxation purpose such dividend will be taxable under the head "IOS".

RETURN OF INCOME

East Asiatic Company India Private Limited

"Set-off and carry forward" of depreciation is governed by Section 32(2) and is not governed by Chapter VI. Section 80 overrides Chapter VI but it does not override Section 32(2). Section 32(2) nowhere provides that ROI should be filed on or before the due date for carry forward of unabsorbed depreciation.

Therefore, unabsorbed depreciation can be carried forward even if the ROI is furnished after the due ate specified in Section 139(1).

Dhampur Sugar Mills Limited Vs. CIT

The revised return substitutes the original return from the date the original return was filed. Once a revise return is filed, the original return is deemed to have been withdrawn and the revised return is deemed to have been filed on the date the original return was filed. The revise return steps into the shoes of the original return.

Niranjan Lal Ram Chandra

If the assessee discovers any omission or any wrong statement in a revised return, it is possible to revise such a revise return provided it is revised within the prescribed time.

Hargovind Damji

Return filed within the period extended by the CBDT beyond the due date mentioned under Section 139 (1) is a return filed under Section 139 (1). It can therefore be revised under Section 139 (5).

Kumar Jagdish Chandra Sinha (Supreme Court)

Section 139 (5) provides that only a return filed U/S 139 (1) or in pursuance of a notice issued U/S 142 (1) can be revised. Therefore, a return filed U/S 139 (4) cannot be revised under Section 139 (5).

Behari Lal Chatterjee

An unsigned return is not a defective return but is void ab-initio.

Hotel Diwakar Niwas

Merely because a return is filed under improper jurisdiction, it cannot be treated as void ab-initio.