"For everything you have missed, you have gained something else; And for everything you gain, you lose something else.
It is about your outlook towards life. You can either Regret or Rejoice."

Summary of Recent case laws of DT applicable for May, 2012 Exams

(A) House Property Head

S.No.	Issue	Decision	Case law
1.	Can an assesses engaged in letting out of rooms in a lodging house also treat the income from renting of a business to bank on long term lease as business income?	On the issue, it was decided that while lodging is a business, however, letting out the building to the bank on long term lease could NOT be treated as business income. Therefore, the **rental income** from bank has to **assessed as Income of house property.**	Joseph George & Co. V. ITO (2010) 328 ITR 161 (Kerala)

(B) Profit and Gains of Business or Profession Head

S.No.	Issue	Decision	Case law
2.	Would the refund of excise duty & grant of interest subsidy under the incentive scheme formulated by CG for public interest, namely, to accelerate industrial development, generate employment & create opportunity for self-employment in state of J&K be treated as a revenue or a capital receipt?	The Tribunal contended that excise duty refund & grant of interest subsidy received were revenue receipt on basis of various grounds but High court overruling it observed that incentives were provided to achieve a public purpose shud also be considered to determine the nature of subsidy & Hence the aforesaid incentives are **Capital receipt NOT liable to taxation.**	Shree Balaji Alloys V. CIT (2011) 333 ITR 335 (J&K)
3.	Would the phrase "used for the purpose of business" in respect of discarded M/c include use of such asset in the earlier years for claim of depreciation u/s 32?	On the issue, it was held that the discarded M/c may NOT be actually used in the Relevant P/Y but depreciation **can be Claimed** as long as it was used for the purpose of business in the earlier years provided the block continues to exist in the Relevant P/Y.	Yamaha Motors India Pvt. Ltd. V. CIT (2010) 328 ITR 297 (Delhi)
4.	Is the assesses entitled to depreciation on the value of Goodwill considering it as "other business or commercial right or similar nature" within the meaning of an intangible asset?	It was held that G/w paid was for ensuring retention & continued business in the hospital, it was for acquiring a business & commercial right and it was comparable with trade mark, franchise etc referred to in the first part of clause (ii) of sec. 32(1) and so, **G/w** was covered by the above provision of the Act **entitling** the assesses **for depreciation.**	B. Raveendran Pillai V. CIT (2011) 332 ITR 531 (Kerala)
5.	Can EPABX & Mobile phones be treated as computers to be entitled to higher depreciation at 60%?	On the issue, the High court held that the rate of depreciation of 60% is available to computers & there is no ground to treat the communication equipment as computers. Hence **EPABX & Mobile phones are NOT computers** and therefore, are NOT entitled to higher depreciation of 60%.	Federal Bank Ltd. V. ACIT (2011) 332 ITR 319 (Kerala)
6.	Would expenditure incurred on feasibility study conducted for examining proposals for technological advancement related to the existing business be classified as revenue expenditure, where the project was abandoned without creating a new asset?	The High court observed that, in such cases, whether or not a new business/asset comes into existence would be a relevant factor. If there is no creation of a new asset, then the **expenditure** incurred would be a **revenue nature.**	Priya Village Roadshow Ltd. V. CIT (2011) 332 ITR 594 (Delhi)
7.	Can expenditure incurred by a Co. on higher studies of the director's son abroad be claimed as business exp. u/s 37 on the contention that he was appointed as a trainee in the co. under "apprentice training scheme", where there was no proof of existence of such scheme?	On this issue, it was observed that there was no evidence on records to show that any other person at any time was appointed as trainee or sent abroad for higher education. Further, there was No nexus betw. the education exp. incurred in abroad for director's son & business of assesses. Therefore, the aforesaid exp. was **NOT deductible.**	Echjay forging Ltd. V. ACIT (2010) 328 ITR 286 (Bom.)
8.	Can the waiver of principal amount of loan taken for purchase of capital asset by the bank be treated as "benefit arises out of business" or "a remission of trading liability" for taxability as business income of the Co.?	Since the loan was taken for purchase of capital asset, waiver of a portion of principal would **NOT amount to remission** of trading liability to attract the provision of sec. 41(1). Further, such waiver **CANNOT be treated** as a **benefit arising out of business** & consqt. Sec. 28(iv) will NOT apply in respect of such loan tranx.	Iskraemees Regent Ltd. V. CIT (2011) 331 ITR 317 (Mad.)

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9.	Is disallowance u/s 40(a) (i) for non-deduction of TDS attracted in respect of payment for purchase of software from a non-resident, by treating the same as royalty in case where the purchase is for subsqty. Resale in the Indian Mkt?	The Delhi high court held that since the assesses had purchased the software from Microsoft & subsqty. Sold in Indian Mkt, he has acted as a dealer & payment made CANNOT be termed as royalty. Therefore, sec. 40(a) (i) has NO application and payment to non-resident **CANNOT be disallowed** u/s 40(a) (i).	Dynamic Vertical Software India (P) Ltd. V. CIT (2011) 332 ITR 0222 (Delhi)
10.	Can "Money payable" in respect of a building sold by the assesses (which has to be reduced from the opening WDV of the block of asset for calculating depreciation) be construed as the FMV of asset instead of actual sale price?	On the issue, the High court held that WDV of asset falling within that block of asset at the begn. of P/Y has to be adjusted by the amount for which the asset is actually sold & **NOT by its FMV.**	Cable Corporation of India Ltd. V. CIT (2011) 336 ITR 56 (Bom.)

(C) Capital Gain Head

11.	Can exemption u/s 54 be claimed in respect of more than 1 residential flat acquired by the assesses under a joint development agreement with a builder, where in the property owned by the assesses was developed by the builder who constructed 8 residential flat in the said Propty., 4 of which were given to the assesses?	The Karnataka High court, applying the decision of Anand Basappa (2009) 309 ITR 329 (Kar.) to the present case, held that all the 4 flats are situated in the same residential building & hence, will constitute "a residential house" for the purpose of sec. 54. Therefore, the assesses would be **entitled to deduction u/s 54** in respect of all 4 flats.	Smt. K G. Rukminiamma V. CIT (2011) 331 ITR 211 (Kar.)
12.	In a case where there is a t/f of shares in a non-resident Co. from 1 non-resident to another non-resident, is it possible to infer that the tranx. Has significant nexus with India to attract the taxability provisions, if it ultimately resulted in t/f of controlling interest in Indian Co.?	The Bombay high court held that rights & entitlement of HTIL in HEL (Hutchison Essar Ltd.) constituted capital asset within the meaning of sec. 2(14) to be covered in the phrase "Property of any kind held by an assesses". The consideration that was paid to HTIL by VIH BV included consideration for acquisition of diversified right & entitlements. Therefore, the **tranx. had a significant nexus with India**. The essence of tranx. Was a change of controlling interest in HEL which represented a source of income in India.	Vodafone International Holding **(VIH)** B.V. V. UOI (2010) 329 ITR 126 (Bom.) (The judgment of Apex court in favor of Vodafone is also ruled out in 2012 but ICAI has not considered that for May, 12 attempt)

(D) Other Source Head

13.	What can be the tests to determine "substantial part of business" of lending Co. for the purpose of application of exclusion provision under sec. 2(22)?	In this case, 42% of the assets of lending Co. were deployed by it by way of loan & advance. Further if interest income is excluded, the other business had resulted in a Net loss. These factors were considered in concluding that lending of money was a substantial part of business of the co. hence money given by way of loan & advance to the assesses could **NOT** be **regarded as a divided**, as it had to be excluded from the definition of "dividend" by virtue of the specific exclusion in sec. 2(22).	Parle Plastics Ltd. V. CIT (2011) 332 ITR 63 (Bom.)
14.	Can winning of prize money on unsold lottery ticket held by the distributor of lottery be assessed as business income & be subj. to normal rates of tax instead of the rates prescribed u/s 115BB?	The receipt of the prize Money is NOT in his capacity as a lottery ticket distributor but as a holder of the lottery ticket which won the prize. Therefore, the High court held that the rate of **30% prescribed u/s 115BB is applicable** in respect of winnings from lottery received by the distributor.	Manjoo & Co. V. CIT (2011) 335 ITR 527 (Kerala)

(E) Chapter VI A (Deductions Head)

15.	Would the procurements of parts & assembling them to make wind Mill falls within the meaning of "Manufacturing" & "Production" to be entitled for deduction u/s 80-IB?	The Madras High court held that different parts procured by assesses could NOT be treated as a "wind mill" individually, but when assembled & got transformed into an ultimate product which was commercially known as "wind mill". Thus, such activity amounts to "Manufacture" as well as "Production" to **qualify for deduction u/s 80-IB**.	Chiranjjeevi Wind Energy Ltd. V. CIT (2011) 333 ITR 192 (Mad.)
16.	Can an assesses NOT claiming deduction u/s 80-IB in the initial years claim the said deduction for the remaining years during the period of eligibility, if the condt. are satisfied?	The Delhi High court held that the provision of sec. 80-IB does NOT stipulate any condt. For claiming the deduction. Therefore, **the deduction u/s 80-IB** shud. Be **allowed** to the assesses **for** the **remaining years** during the period of eligibility, provided condt. u/s 80-IB are fulfilled.	Praveen Soni V. CIT (2011) 333 ITR 324 (Delhi)

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17.	Does income derived from sale of export incentives qualify for deduction u/s 80-IB?	The High court held that income derived from sale of export incentives CANNOT be said to be income "derived from" the industrial undertaking & therefore, such income is **NOT eligible for deduction** u/s 80-IB.	Jaswand Sons V. CIT (2010) 328 ITR 442 (P&H)
18.	Would grant of transport subsidy, interest subsidy & refund of excise duty qualify for deduction under sec. 80-IB?	The High court held that there shud. be a direct nexus betw. The generation of profits & gains AND source of profit & gains, the latter being directly relatable to the business of the assesses. In this case, **subsidy had NO direct nexus** with profit derived by assesses from its industrial activity, so the subsides could NOT be taken into account for purpose of deduction u/s 80-IB. But **refund of the excise** had a **direct nexus** with manufacturing activity, being a profit linked incentives. Therefore, the refund of excise duty had to be **taken** into account **for** purpose of **deduction u/s 80-IB.**	Meghalaya Steels Ltd. V. CIT (2011) 332 ITR 91 (Gauhati)

(F) TDS Head

19.	Would the payment made be a Co. to BSNL/MTNL for the services provided through interconnect/port/access/toll be treated as "fees for technical services" to attract the provision of TDS u/s 194J?	The issue involved requires technical expert opinion on to the matter. Therefore, **Apex court remitted the matter back to AO**; directing him to examine the same with the assistance of a technical expert & to decide the matter within a period of four months.	Bharti cellular Ltd. & Hutchison Essar Telecom Ltd. V. CIT (2011) 330 ITR 239 (SC)
20.	Can difference betw. Published Price & Minimum fixed commercial price be treated as additional special commission in the hands of the agents of an airline co. to attract TDS provision u/s 194H?	The High court held that **TDS was NOT deductible on the difference** betw. the actual sale price & the minimum fixed commercial price, even though the amount earned by the agent over & above minimum fixed commercial price would be taxable as income in his hand.	Qatar Airways V. CIT (2011) 332 ITR 253 (Bom.)
21.	Can discount given on supply of SIM cards & recharge coupons by a telecom co. to its distributors under a prepaid scheme be treated as commission to attract TDS provision u/s 194H?	The High court held that the distributor only acted as a middleman on behalf of the assesses for procuring & retaining customer. Therefore, the discount given to him was within the meaning of commission u/s 194H on which **TDS was deductible**.	Vodafone Essar cellular Ltd. V. ACIT (TDS) (2011) 332 ITR 255 (Kerala)

(G) Foreign Taxation Head

22.	Would the special provision for computing profit u/s 44BB be applicable to a Non-resident carrying on business of seismic data acquisition & processing under contract with Indian concern?	In this case, **AAR ruled** that the said activities & services of applicant clearly fell within the description of sec. 44BB and the **income derived** by the applicant under the contract with Indian concern for seismic data acquisition & processing were to be **computed under the provision of sec. 44BB.**	Global Geophysical Service Ltd., In re (2011) 332 ITR 418 (AAR)
23.	Can the AO bring to tax the actual profit as per books of accounts, if the same is higher than 10% of receipt which are deemed to be the profit u/s 44BBB in case of a foreign co. engaged in turnkey project?	The Delhi High court held that if an assesses fulfills all the condt. Mentioned in sec. 44BBB(1); then a sum equal to 10% of amount paid or payable to such foreign co. would be deemed as its business income. Further u/s 44BBB (2) **revenue CANNOT** take recourse of this sub-section to **claim** that the profit earned by the assesses were more than 10%.	DSD Noel Gmbh V. DIT (2011) 333 ITR 304 (Delhi)
24.	Would non resident match referees & umpires in the games played in India fall within the meaning of sportsmen to attract taxability u/s 115BBA, and consequently attract the TDS u/s 194E in the hands of the payer?	The High court held that the payment made to non resident match referees & umpires are "income" which has accrued & arises in India, the same are NOT taxable u/s 115BBA and thus, the assesses is NOT liable to deduct TDS u/s 194E. Further they render professional services but sec. 194J CANNOT be imposed as on a non resident. **<u>Note</u>:-** It may be noted that since income has accrued & arisen in India to the non resident match referees & umpires, the **TDS provisions u/s 195 would be attracted** and tax would be deductible at the rate in force.	Indcom V. CIT (TDS) (2011) 335 ITR 485 (Calcutta)

Note: - Refer to Module of ICAI for more clarity, it's only meant for quick revision.
Once counter check each case law's decision at your end too.

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(H) Assessment & Penalties Head

25.	Can the AO issue notice u/s 154 to rectify a mistake apparent from records in the intimation u/s 143(1), after issue of a valid notice u/s 143(2)?	On the issue, the P & H High court concluded that proceeding **u/s 154** for **rectification** of intimation u/s 143(1) **CANNOT be initiated** after issuance of notice u/s 143(2) by the AO to the assesses.	Haryana State Handloom & Handicraft Corpn. Ltd. V. CIT (2011) 336 ITR 694 (P&H)
26.	Can the AO reassess issue other than issues in respect of which proceeding were initiated u/s 147 when the original "reasons to believe" on basis of which the notice was issued ceased to exit?	The High court held that if the income, the escapement of which was the basis of the "reasons to believe" is NOT assessed or reassessed, it would **NOT** be **open to the AO to independently assess only that income** which comes to his notice subsq. if he intends to do so a fresh notice u/s 148 would be necessary.	Ranbaxy Lab. Ltd. V. CIT (2011) 336 ITR 136 (Delhi)
27.	Would the word "shall be issued" used in sec. 149 means "mere signing of notice by the AO" or "handing over of the said notice in hands of the proper officer for serving it to the assesses" to constitute a valid notice issued within the prescribed time limit?	The Guj. High court observed that the expression **"shall be issued" means** the date of issue on which the same were **handed over** for service **to the proper officer/post officer**, NOT the date on which such notice was signed by the AO.	Kanubhai M. Patel (HUF) V. Hiren Bhatt or his Successors to office (2011) 334 ITR 0025 (Guj.)
28.	Can the CIT initiate revision proceeding u/s 263 on the grounds that the AO's order NOT initiating penal proceeding was erroneous and prejudicial to the interest of the revenue, in a case where non initiation of penal proceeding was a pre-condt. for surrender of income by the assesses?	The High court observed that, as perusal of the office note issued by the AO, it was clear that the assesses had made surrender of income with a clear condt. that no penal action u/s 271(1) (c) would be initiated. Once that was so, the **CIT CANNOT** take a different view & levy penalty.	Subhash Kr. Jain V. CIT (2011) 335 ITR 364 (P&H)
29.	Can the Tribunal exercise its power of rectification u/s 254(2) to recall its order in entirety?	The Tribunal does NOT have inherent power to review its order on merit; it can recall its order for the purpose of correcting a mistake apparent from the records. While applying the decision of Apex court in case of Honda Siel Power Products Ltd. in this case the high court held that the **tribunal**, while exercising the power of rectification u/s 254(2), **can recall its order in entirety** if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake or error and error committed is apparent.	Lachman Dass Bhatia Hing Wala (P) Ltd. V. ACIT (2011) 330 ITR 243 (Delhi) [FB]
30.	Can penalty u/s 271(1) (c) for concealment of income be imposed in a case where the assesses has raised a debatable issue?	On the issue, the high court observed that, mere raising of a debatable issue would NOT amount to concealment of income or furnishing inaccurate particulars and therefore, **penalty u/s 271(1) (c) CANNOT be imposed**.	Indersons Leather (P) Ltd. V. CIT (2010) 328 ITR 167 (P&H)

(I) Residual Head

31.	Can interest u/s 234B & 234C be levied where a co. is assessed on the basis of book profits u/s 115JB **(MAT)**?	The Apex court observed that there is a specific provision in sec.115JB (5) providing that all other provision of the IT Act, 1961 shall apply to every assesses, being a Co. Therefore, **interest u/s 234B & 234C shall be payable** on failure to pay advance tax in respect of tax payable u/s 115JB.	Rolta India Ltd. V. JCIT (2011) 330 ITR 470 (SC)
32.	Would interest earned on surplus fund of a **Club** deposited with institutional members satisfy the Principle of Mutuality to escape taxability?	The High court held that **interest earned** from investment of surplus funds does NOT satisfy the Principle of Mutuality & Hence CANNOT be claimed as exempt. Therefore **taxable**.	Madras Gymkhana Club V. DCIT (2010) 328 ITR 348 (Mad.)

(J) Wealth Tax Head

33.	Is wealth tax leviable on the value of house under construction where the construction was still incomplete on the relevant valuation date?	Incomplete building neither falls within the definition of a "building", as contemplated u/s 2(ea) of WT Act nor within the purview of "urban land" as excluded by explanation 1(b). Hence, in such a case, the value of house under construction incl. investment on construction is NOT liable to wealth tax. Therefore, land & incomplete building thereon is NOT an asset. **(Already asked in CA Final's Nov.,2011 attempt)**	Smt. Neena Jain V. CIT (2011) 330 ITR 157 (P&H)

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