Summary of Recent case laws of DT applicable for Nov., 2012 Exams

(A) Basic Concepts

S.No.	Issue	Decision	Case law
1.	What is the nature of exp. incurred on demolition & re-erection of a cell room & exp. incurred on purchase of pumping set, mono block pump & two transformers, which were parts of a bigger plant – revenue or capital?	It was held that purchase of pumping set, mono block pump with HP motors & two transformers were concerned, they were NOT standalone equipment, but were part of the bigger plant. Therefore, it would be treated as replacement of those parts & exp. would be **eligible for deduction u/s 37(1)-Revenue**.	CIT V. Modi Industries Ltd (2011) 339 ITR 467 (Del.)
2.	In case the s/capital is raised in a foreign country & repatriated to India as Need basis from time to time for approved uses, can the gain arising on the b/sheet date due to fluctuation in foreign exchange, in respect of that part of s/capital which is to be used as working capital, be treated as a revenue receipt?	The High court held that for determining the nature of receipt, due consideration shud be given to the source of fund & NOT to the ultimate use of the funds. Therefore, the **entire gain has to be treated as c/receipt** as the source of fund in this case is capital in nature.	CIT V. Jagatjit Industries Ltd (2011) 337 ITR 21 (Del.)
3.	In case thr is no possibility of recovery of loan given by a NBFC, which is an NPA as per RBI guidelines, can the intt. On such loan be treated as income of the NBFC, following mercantile system of accounting?	Therefore in this case, the High court held that thr was NO real accrual of intt. Income in the hands of assesses & hence, it would **NOT be chargeable to Tax u/s 5**.	DIT V. Brahamputra Capital Financial Services Ltd (2011) 535 ITR 182 (Del.)
4.	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)
5.	What is the nature of incentives received under the scheme formulated by the C/G for recoupment of capital employed & repayment of loan taken for setting up/expansion of a sugar factory – capital or revenue?	The High court held that the main eligibility condt. For the scheme was that the incentive had to be utilized for the repayment of loans taken by the assesses to setup a new units or substantial expansion of a existing unit. The subsidy receipt by the assesses was, therefore NOT in the course of a trade & hence, **was of capital nature**.	CIT V. Kisan Sahkari Chini Mills Ltd. (2010) 328 ITR 27 (All.)
6.	What is the nature of liquidated damages received by a co. from the supplier of plant for failure to supply M/C to the co. within the stipulated time - a capital receipt or a revenue receipt?	The Apex court affirmed the decision of High court holding that the damages were directly & intimately linked with the procurement of a capital asset. i.e the cement plant which lead to delay in coming into existence of the profit making apparatus. It was NOT a receipt in course of profit earning process. Therefore, the amt. received, NOT in the ordinary course of biz, **is a capital receipt** in the hands of the assesses. **(Already asked in CA Final's Nov.,2011 attempt)**	CIT V. Saurashtra Cement Ltd (2010) 325 ITR 422 (SC)
7.	Where the hotel industry was established based on subsidy announced by the SG, can such subsidy be treated as a revenue receipt solely due to the reasons that the same was received by the assesses after completion of the hotel project & commencement of the biz?	The High court held that the hotel industry was established based on the subsidy announced by the SG to encourage tourism & the SG was in the habit of releasing the subsidy amt. depending upon the budgetary allocation in each yr. Therefore, the **subsidy** received has to be **treated as a capital receipt** & would NOT be liable to tax.	CIT V. Udupi Builders (P) Ltd (2009) 319 ITR 440 (Karn.)

(B) House Property

8.	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)
9.	Can Notional intt. On interest free deposit received by an assesses in respect of a shop let out on rent be brought to tax as "Business Income" or "I/H/P"?	The High court held that the Notional intt. Is **NOT assessable** either as **"Business Income" or "I/H/P"**	CIT V. Asian Hotels Ltd. (2010) 323 ITR 490 (Del.)

(C) Profit and Gains of Business or Profession

10.	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. **(Already asked in CA Final's May,2012 attempt)**	Yamaha Motors India Pvt. Ltd. V. CIT (2010) 328 ITR 297 (Delhi)
11.	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)
12.	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%. **(Already asked in CA Final's May,2012 attempt)**	Federal Bank Ltd. V. ACIT (2011) 332 ITR 319 (Kerala)
13.	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.** **(Already asked in CA Final's May,2012 attempt)**	Priya Village Roadshow Ltd. V. CIT (2011) 332 ITR 594 (Delhi)
14.	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.** **(Already asked in CA Final's May,2012 attempt)**	Echjay forging Ltd. V. ACIT (2010) 328 ITR 286 (Bom.)
15.	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.)
16.	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.)
17.	Can the prov. Of sec. 41(1) be invoked both in respect of waiver of working capital loan utilized for day to day biz. Operation & in respect of waiver of term loan taken for purchase a capital asset?	The high courts held that loan were for circulating capital & not for fixed capital. Therefore, the W/off of these loans on the cash credit account which was received for carrying out the day to day operation amts. to remission of a trading liability & hence, has to be **treated as income** in the hands of the assesses by **virtue of sec. 41(1)**.	Rollatainers ltd. V. CIT (2011) 339 ITR 54 (Del.)
18.	Can a co. engaged in the biz. Of owing, running & managing hotels claim intt. On borrowed funds, used by it for investing in the equity s/capital of a wholly owned Subsi. co., as deduction where the subsi. Co. was formed for exercising effective control of new hotels acquired by the parent co. under its mgmt.?	The High court held that Exp. incurred was for Biz. Purpose & was thus **allowable u/s 36(1)(iii)**.	CIT V. Tulip Star Hotels Ltd. (2011) 338 ITR 482 (Del.)
19.	Can the exp. incurred on the assesses lawyer's heart surgery be allowed as biz. exp. u/s 31 by treating it as current repairs considering heart as P&M or u/s 37 by treating it as exp. incurred wholly & exclusively for the purpose of biz. Or profession?	The High court held that the heart CANNOT be said to be P&M for the biz. Or Prof. of the assesses. There fore, the exp. on heart surgery is NOT allowable as repair to plant u/s 31. Accordingly to the prov. Of sec. 37 the claim for allowing the said exp. u/s 37 is also NOT tenable. Hence, **heart surgery exp. shall NOT be allowed** as biz. Exp.	Shanti Bhushan V. CIT (2011) 336 ITR 26 (Del.)
20.	Would the exp. incurred for issue & collection of convertible debenture be treated as revenue or capital Exp.?	The Karnataka High court held that the exp. incurred on the issue & collection of deb. Shall be **treated as revenue exp.** even in case of convertible debenture.	CIT V. ITC Hotels Ltd. (2011) 334 ITR 109 (Kar.)

21.	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)
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 exp. incurred for purchase of second hand Medical equipment for the use as spare parts for existing equipment be claimed as revenue expenditure?	The High Court held that since the second hand Medical equipment was purchased for the use as spare parts for existing equipment. Therefore the assesses was **eligible to claim deduction** of exp. in the relevant p/y ended 31st March.	DR. Aswath N Rao V. ACIT (2010) 326 ITR 188 (karn.)
24.	Can the amt. incurred by the assesses for replacing the old mono sound system in its cinema theatre with a new dolby stereo system be treated as revenue exp.?	In such a case, High court held that exp. on such change of sound system could **NOT be considered capital in nature**.	CIT V. Sagar talkies (2010) 325 ITR 133 (karn.)
25.	For claiming deduction of bad debt, is it necessary for the assesses to establish that the debt had, in fact, become irrecoverable?	On this issue, the Apex court held that it is NOT necessary for the assesses to establish that the debt, in fact, has become irrecoverable. It is **enough if the bad debt is w/off** as irrecoverable in the account of the assesses for the relevant p/y. **(Already asked in CA Final’s Nov.,2011 attempt)**	T.R.F. Ltd. V. CIT (2010) 323 ITR 397 (SC)
26.	Can the payment to police personnel & gundas to keep away from the cinema theatres run by the assesses be allowed as deduction?	Any payment made to police illegally amts. to bribe & illegal payment for which **NO deduction is allowable** under the Act.	CIT V. Neelavathi & others (2010) 322 ITR 643 (karn.)
27.	Can exp. incurred on alteration of a dam to ensure adequate supply of water for the smelter plant owned by the assesses be allowed as revenue exp.?	The High court observed that the exp. incurred by the assesses for commercial expediency relates to carrying on of biz. The operational exp. incurred by the assesses solely intended for the enterprise can by **NO means be treated** as exp. of **capital nature**.	CIT V. Hindustan Zinc. Ltd (2010) 322 ITR 478 (Raj.)
28.	Is the amt. paid by a construction co. as regularization fee for violating building bye laws allowable as deduction?	The High court held that amt. paid to compound an offence is obviously a penalty & hence, does **NOT qualify for deduction u/s 37**.	Millennia Developers (P) Ltd. V. DCIT (2010) 322 ITR 401 (karn.)
29.	Would beneficial ownership of asset suffice for claim of deprecation on such asset?	The High court observed that she is the beneficial owner, she is **entitled to claim deprecation** even though she is NOT the legal owner of the asset.	CIT V. Smt. A Sivakami & Another (2010) 322 ITR 64
30.	Is the exp. incurred on payment of retrenchment compensation & intt. On money borrowed for the payment of retrenchment compensation on closure of one of the textile manufacturing units of the assesses co. revenue in nature?	The High court concurred with these finding of the tribunal & accordingly, held that **deduction was allowable** in respect of exp. on payment of retrenchment compensation & intt. On money borrowed for payment of retrenchment compensation.	CIT V. DCM Ltd (2010) 320 ITR 307 (Del.)
31.	Can an assesses manufacturing textile goods claim additional depreciation u/s 32(1) (iia) on setting up a windmill?	It was held that the assesses is **entitled to additional depreciation** on setting up a windmill.	CIT V. VTM Ltd (2009) 319 ITR 335 (Mad.)
32.	Can the reimbursement of exp. towards custom duty be included for computing profit u/s 44BB?	The High court held that reimbursement of exp. towards custom duty paid by assesses, being statutory in nature, could NOT form part of amt. for the purpose of deemed profits. Therefore same would **NOT** form part of amt. **taxable u/s 44BB**.	DIT V. Schlumberger Asia Services Ltd (2009) 317 ITR 156 (Uttarkhand)
33.	Is the exp. incurred by the assesses towards commitment charges for issuing debenture deductible as biz exp., whr the borrowing is for the purpose of meeting the working capital needs of the existing biz?	The High court held that commitment charges were **allowable as deduction u/s 36(1)**.	CIT V. Mihir Textiles Ltd (2009) 316 ITR 403 (Guj.)

(D) Capital Gain

34.	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.)

35.	Can the assesses claim exemption u/s 54F, on account of c/gin arising on t/f of depreciable asset held for more than 36 months i.e a long term capital asset, though the same is deemed as capital gain arising on t/f of short term capital gain by virtue of sec. 50?	The High court held that sec. 54F being an independent section will NOT be bounded by the prov. Of sec. 50. Therefore, the **exemption u/s 54F** on t/f of depreciable asset held for more than 36 month **CANNOT be denied** on account of fiction created by sec. 50.	CIT V. Rajiv Shukla (2011) 334 ITR 138 (Del.)
36.	Whether indexation benefit in respect of the gifted asset shall apply from the year in which the asset was first held by the assesses or from the year the same was first acquired by the previous owner?	The High court held that indexed COA in case of gifted asset has to be **computed with reference** to the year in which the **previous owner first held** the asset & NOT from the year in which the assesses become the owner of the asset.	CIT V. Manjula J. Shah 16 Taxmann 42 (Bom.)
37.	Can exemption u/s 54B be denied solely on the grounds that the new agricultural land purchased is not wholly owned by the assesses, as the assesses's son is a co-owner as per sale deed?	The High court concurred with the tribunal's view that merely bcoz the assesses's son was shown in the sale deed as co-owner, it did NOT make any difference. Therefore, the assesses was **entitled to deduction u/s 54B**.	CIT V. Gurnam Singh (2010) 327 ITR 278 (P&H)
38.	In determining the POH of c/asset received by a partner on dissolution of firm, can the POH of the c/asset by the firm be taken into account?	The High court held that **POH** of the asset by the assesses in this case has to be **reckoned from** the **date of dissolution** of the firm. Since the assesses sold the property within 3 days of acquiring the same, the gain have to be treated as STCG.	P. P. Menon V. CIT (2010) 325 ITR 122 (Ker.)
39.	Can exemption u/s 54EC be denied on account of the bonds being issued after 6 month of the date of t/f even though the payment for the bond was made by the assesses within the 6 month period?	The High court, therefore, held that if such payment is within a period of 6 month from the date of t/f, the assesses would be **eligible to claim exemption u/s 54EC**.	Hindustan Unilever Ltd V. DCIT (2010) 325 ITR 102 (Bom.)
40.	What would be the POH to determine whether the c/gain on renunciation of right to subscribe for additional shares is short term (ST) or long term (LT)?	On this issue, the Apex court held that for determining whether the c/gain on renunciation of right to subscribe for additional shares is ST or LT, the **POH would be from** the date on which **such right** to subscribe for additional shares **come into existence** up **to** the **date of renunciation** of such right.	Navin Jindal V. ACIT (2010) 320 ITR 708 (SC)

(E) Other Source

41.	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.)
42.	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)
43.	Would the prov. Of deemed dividend u/s 2(22)(e) be attracted in respect of financial tranx entered into in the normal course of biz?	The High court held that such financial tranx **CANNOT** under any circumstances be treated as loans or advances received by the assesses from ths concerns for the purpose of **appl. Of sec. 2(22) (e)**. **(Already asked in CA Final's May,2012 attempt)**	CIT V. Ambassador Travels (P) Ltd (2010) 318 ITR 376 (Del.)

(F) Chapter VI A (Deductions)

44.	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.)
45.	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)
46.	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)

47.	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)
48.	Can an industrial undertaking engaged in manufacturing or producing articles or thing treat the persons employed by it through agency (incl. contractors) as "workers" to qualify for claim of deduction u/s 80IB?	The employment of 10 or more workers is what is relevant & NOT the mode and the manner in which the workers are employed by the assesses. The High court, therefore, held that the tribunal was justified in holding that the condt. Of sec. 80IB(2)(iv) had been fulfilled & therefore **deduction u/s 80IB is allowed**.	CIT V. Jyoti Plastics Works (P) Ltd (2011) 339 ITR 491 (Bom.)
49.	Can freight subsidy arising out of the scheme of CG be treated as a "Profit derived from the biz" for the purpose of sec. 80IA?	The High court held that the freight **subsidy CANNOT be treated as Profit** derived from the biz for the purpose of sec. 80IA.	CIT V. Kiran Enterprise (2010) 327 ITR 520 (HP)
50.	Does the period of exemption u/s 80IB commence from the year of trial production or year of commercial production? Would it make a diff. if sale was effected from out of trial production?	Therefore, the condt. Stipulated in sec. 80IB were fulfilled with the commercial sale of the two items in that A/Y, & hence **period of exemption u/s 80IB** has to be **reckoned** from period **when sale took place**.	CIT V. Nestor pharmaceuticals Ltd/ Sidwal Refrigeration Ind. Ltd V. DCIT (2010) 322 ITR 631 (Del.)
51.	Can the Duty entitlement passbook scheme (DEPB) benefit & Duty Drawback be treated as profit derived from the biz. Of industrial undertaking to be eligible for deduction under sec. 80IB?	The Apex court held that Duty Drawback receipt & DEPB benefit do **NOT form part of the profit** derived from the eligible biz for the purpose of the deduction u/s 8-IB.	Liberty India V. CIT (2009) 317 ITR 218 (SC)

(G) Assessment of Various Entities

52.	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)
53.	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.)
54.	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)
55.	In a case where the partnership deed does not specify the remuneration payable to each individual working partner but lays down the manner of fixing the remuneration, would the assesses firm be entitled to deduction in respect of remuneration paid to partner?	The High court held that method of remuneration having been laid down, the assesses firm is **entitled to deduct the remuneration** paid to the partner u/s 40(b)(v) of Income tax Act.	CIT V. Anil Hardware Store (2010) 323 ITR 368 (HP)
56.	Can LTCG exempted by virtue of erstwhile sec. 54E be included in the book profit computed under erstwhile sc. 115J?	The High court held that LTCG are part of the profit incl. in the P&L a/c prepared in accordance with the prov. Of Part II & III of schedule VI to co. Act, 1956, **capital gain CANNOT be excluded** unless provided under the explanation to sec. 115J (IA). **(Already asked in CA Final's Nov.,2011 attempt)**	N. J. Jose & Co. (P) Ltd V. ACIT (2010) 321 ITR 132 (Ker.)

57.	Can t/f fees received by a co-operative housing society from its incoming & outgoing members be exempt on the ground of principal of mutuality?	The High court held that t/f fee received is **NOT liable to tax** on the ground of principal of mutuality.	Sind co-operative Housing Society V. ITO (2009) 317 ITR 47 (Bom.)
58.	Is it necessary that there be a written agreement betw. persons to prove the status of association of persons, in a case whr the accounts seized from the persons prove joint investment & sharing of profit in biz?	The High court held that the status of **AOP need NOT** be **proved through an agreement**. The biz carried on by the members together was proved through account recovered on search, which justifies the assessment of the assesses in that status.	CIT V. T. George & M. Syed Alavi (2009) 316 ITR 333 (Ker.)
59.	Can an AOP be constituted by inheritance under will?	The Association should be voluntary. Forced association of persons on account of inheriting joint property under a will or such other circumstances NOT being voluntary would **NOT constitute such joint legatees as "AOP"** for the purpose of sec. 2(31).	CIT V. Laxmi Pd & Sons (2009) 316 ITR 330 (All.)

(H) Income Tax Authority

60.	Does the CBDT have the power u/s 119(2)(b) to condone the delay in filing ROI?	The High court held that the **board has the power to condone** the delay in case of a return which was filed late & whr a claim for c/f of losses was made. **(Already asked in CA Final's Nov.,2011 attempt)**	Lodhi Property Co. Ltd V. Under Secretary (ITA-II), DOR (2010) 323 ITR 441 (Del.)
61.	Can extension of the maximum period of retention of 15 days of books of accounts & document impound be granted indefinitely?	The High court held that the extension can only be a one time exercise & supplementing the outer limit of 15 days for few more days depending on the circumstances. Since outer limit is specified in days, the **period can be extended only in days** & NOT in Months or Years.	Subha & Prabha Builders (P) Ltd Vs ITO (2009) 318 ITR 29 (Karn.)

(I) Assessment Procedure

62.	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)
63.	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)
64.	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.)
65.	In case of change of incumbent of an office, can the successor AO initiate reassessment proceeding on the grounds of change of opinion in relation to an issue which the predecessor AO, who had framed the original assessment, had already applied his mind & came to a conclusion?	The Guj. High court observed that thr was nothing on records to show that income had escaped assessment in respect of which the successor AO received info. Therefore, **notice of re-assessment** was, therefore **NOT Valid**.	H. K. Buildcon Ltd V. ITO (2011) 339 ITR 535 (Guj.)
66.	Can the unabsorbed depreciation be allowed to be c/f in case the ROI is not filed within the due date?	The High court held that the **unabsorbed depreciation will be allowed to be c/f** to subsequent year even though the ROI of current A/Y was NOT filled within the due date.	CIT V. Govind Nagar Sugar Ltd (2011) 334 ITR 13 (Del.)
67.	Can the AO reopen an assessment on the basis of merely a change of opinion?	The High court observed that the reason recorded for reopening the assessment constituted a mere change of opinion. Therefore, the **reassessment was NOT Valid**.	Aventis Pharma Ltd V. ACIT (2010) 323 ITR 570 (Bom.)
68.	Would the doctrine of merger apply for calculating the period of limitation u/s 154(7)?	After merge, the order of the original authority ceases to exist & the order of the appellate authority prevails. Thus, the **period of limitation** of 4 years for the purpose of sec. 154(7) has to be **counted from the date of** the **order of the Appellate Authority**.	CIT V. Tony Electronics Ltd (2010) 320 ITR 378 (Del.)

(J) Appeal & Revision

69.	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)
70.	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]
71.	Does the Appellate Tribunal have the power to review or re-appreciate the correctness of its earlier decision u/s 254(2)?	The High Court held that **re-appreciation** of the correctness of its earlier decision on merit, which **is beyond the scope** of the power conferred **u/s 254(2)**.	CIT V. Earnest Export Ltd (2010) 323 ITR 577 (Bom.)
72.	Does the High court have on inherent power under the Income Tax act, 1961 to review an earlier order passed on merit?	The Power of re-admission/restoration of the appeal is always enjoyed by the High court. However, such power to restore the appeal **CANNOT** be treated to be a power to **review** the earlier order passed on Merit. **(Already asked in CA Final's Nov.,2011 attempt)**	Deepak Kumar Garg V. CIT (2010) 327 ITR 448 (MP)

(K) Penalties

73.	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)
74.	Can the penalty u/s 271(1)(c) be imposed whr the assessment is made by estimating the net profit at a higher % applying the prov. Of sec. 145?	The High court held that in order to impose penalty thr has to be concealment of particular of income of assesses or the assesses must have furnished inaccurate particulars of his income. Here assesses **CANNOT be held guilty** of furnishing particulars.	CIT V. Vijay Kumar Jain (2010) 325 ITR 378 (Chhattisgarh)
75.	Would making an incorrect claim in the ROI per se amt. to concealment of particular of income or furnished inaccurate particulars for attracting the penal prov. u/s 271(1)(c), when no info. Given in ROI is found to be incorrect?	The Apex court held that a **mere making of a claim**, which is NOT sustainable in law, by itself, **will NOT amt.** to **furnishing inaccurate particulars** reg. the income of assesses.	CIT V. Reliance Petro Product (P) Ltd (2010) 322 ITR 158 (SC)

(L) Offence & Prosecution

76.	Would prosecution proceeding u/s 276CC be attracted whr the failure to furnish return in time was not willful?	In this case, it was observed that thr were sufficient grounds for delay in filling the ROI & such delay was NOT willful. Therefore, prosecution proceeding **u/s 276CC are NOT attracted** in such a case.	UOI V. Bhavecha Machinery & others (2010) 320 ITR 263 (MP)

(M) TDS

77.	Can the payment made to contractors for hiring dumpers by an assesses engaged in transportation of building material, be treated as Rent for M/C or equipment to attract TDS u/s 194I?	The High court observed that the assesses had given contract to the parties for the transportation of goods & had NOT taken M/C & equipment on rent. Such payment could NOT be termed as rent paid for the use of M/C & Prov. Of **sec. 194I** would, therefore, **NOT be applicable**.	CIT (TDS) V. Shree Mahalaxmi Transport Co. (2011) 339 ITR 484 (Guj.)
78.	Do the tips collected by hotel & disbursed to employee constitute salary to attract TDS u/s 192?	The High court held that when tips were charged to the bill & was subseq. Disbursed to the employees, then tips would constitute income within the meaning of sec. 2(24) & it was obligatory upon the **co. to deduct TDS** from such payments **u/s 192**.	CIT (TDS) V. ITC Ltd (2011) 338 ITR 598 (Del.)
79.	What is the nature of landing & parking charges paid by an airline co. to AAI & is TDS required thereof?	The landing & parking charges were definitely "Rent" within the meaning of the prov. Of **sec. 194I**, as they were payment for the use of the airport & **TDS was req. to deducted**. **(Already asked in CA Final's Nov.,2011 attempt)**	CIT V. Japan Airlines Co. Ltd (2010) 325 ITR 298 (Del.)
80.	Whether retention of a % of advertising charges by the advertising agencies for the payment to Doordarshan for telecasting advertisement, would attract TDS u/s 194H?	It was held when Agent pays 85% of advertising charges collected by them from customer, & agent simultaneously get paid comm. Of 15%, which he is free to appropriate as his income. So **TDS on comm.. charges** of 15% has **to be paid** to income tax Dept.	CIT V. Director, Prasar Bharti (2010) 325 ITR 205 (Ker.)

81.	Can services rendered by a hotel to its customer in providing hotel room with various facilities/amenities (Like house keeping, bank counter, beauty salon, car rental, etc) amt. to “carrying out any work” to attract TDS u/s 194C?	However, facilities or amenities made available by a hotel to its customer do NOT fall within the meaning of work u/s 194C & therefore **TDS u/s 194C are NOT attracted**.	East India Hotels Ltd V. CBDT (2010) 320 ITR 526 (Bom.)
82.	Can the Intt. u/s 234B & C, be levied on the basis of intt. Calculation given in the computation sheet annexed to the assessment order, though the direction to charge such intt. is not mentioned in the assessment order?	The Court held that the **levy of intt. & basis** for arriving at the quantum thereof have been **explicitly indicated** in the **computation sheet** & therefore, **such intt. has to be paid**.	CIT V. Assam Mineral Development Corporation Ltd (2010) 320 ITR 149 (Gau.)
83.	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. **(Already asked in CA Final’s May,2012 attempt)**	Qatar Airways V. CIT (2011) 332 ITR 253 (Bom.)
84.	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)

(N) Wealth Tax

85.	Whether the Best judgment assessment order passed without giving the assesses an opportunity of being heard is valid in a case whr the notice u/s 16(4) has already been given?	It was held that second prov. to sec. 16(5) comes into operation & **NO further notice or opportunity** to be heard **is req**. to be given to the assesses.	CWT V. Motor General Finance Ltd (2011) 332 ITR 1 (Del.)
86.	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)

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.

“All d Best & Gud Luck 4 ur Xams..”