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LATEST CIRCULARS & NOTIFICATIONS

SECTION 2(42A) OF THE INCOME TAX ACT 1961 – CAPITAL GAINS – SHORT TERM CAPITAL ASSETS – CAPITAL GAIN IN RESPECT OF UNITS OF MUTUAL FUNDSUNDER MATURITY PLANS ON EXTENSION OF THEIR TEAM

CIRCULAR NO. 6/2015, DATED 09-04-2015

As per the provisions of the income Tax Act, 1961 (hereinafter referred to as the Act) prior to the amendment made by the Finance Act, 2014, assets in the nature of shares, listed securities, units of mutual funds and zero coupon bonds qualified as long term capital assets if held for a period of more than 12 months as against the holding period of more than 36 months in case of other assets. Accordingly, units of mutual fund under the fixed maturity plans (FMPs) held for a period of more than twelve months qualified as long term capital asset. The amendment in sub-section (42A) of section 2 of the Act by the Finance Act, 2014 changed the period of holding in case of unlisted shares and units of a mutual fund (other than an equity oriented fund) for their qualification as long-term capital asset to more than 36 months. As a result, gains arising out of any investment in the units of FMPs made earlier and sold/redeemed after Finance Act, 2014 would be taxed as short term capital gains if the unit was held for a period of 36 months or less.

FMPs are closed ended funds having a fixed maturity date wherein the duration of investment is decided upfront. The funds collected by FMPs are invested by the Asset Management Companies (AMCs) in securities having similar maturity period. To enable FMPs to qualify as a long term capital asset, some AMCs administering mutual funds have offered extension of the duration of the FMPs to a date beyond 36 months from the date of original investment by providing to the investor an option of roll-over of FMPs in accordance with the provisions of Regulation 33(4) of the SEBI (Mutual Fund) Regulations, 1996. In this regard representations have been received in the Board seeking clarification regarding applicability of tax on capital gains in the hands of the unit holder at the time of roll over of FMPs that are closed ended schemes.

In this matter the Securities and Exchange Board of India (SEBI) has informed that Regulations 33(4) of the SEBI (Mutual Funds) Regulations, 1996 allows the rollover of close ended schemes. Such regulation provides the following:-

"(4) A close ended scheme shall be fully redeemed at the end of maturity period.

Provided that a close-ended scheme may be allowed to be rolled over if the purpose, period and other terms of the roll over and all material details of the scheme including the likely composition of assets immediately before the roll over, the net assets and net asset value of the scheme, are disclosed to the unit holders and a copy of the same has been filed with the board.

Provided further that such roll over will be permitted only in case of those unit holders who express their consent in writing and the unit holders who do not opt for the roll over or have not given written consent shall be allowed to redeem their holdings in full at net asset value based price."

SEBI has clarified that in case of roll over in accordance with the aforesaid regulation the scheme remain the same and it does not constitute a different scheme.

In case of mutual funds, the unit of a mutual fund constitutes a capital the unit of a mutual fund constitutes a capital asset and any sale exchange or relinquishment of such unit is a 'transfer' under clause (47) of section 2 of the Act. The roll over in accordance with the aforesaid regulation will not amount to transfer as the scheme remains the same. Accordingly, it is hereby clarified that no capital gains will arise at the time of exercise of the option by the investor to continue in the same scheme. The Capital Gains will, however, arise at the time of redemption of the units or opting out of the scheme, as the case may be.

SECTION 9 OF THE INCOME-TAX ACT, 1961 - INCOME DEEMED TO ACCRUE OR ARISE IN INDIA - CLARIFICATION ON EXPLANATION 5 TO CLAUSE (i) OF SUB-SECTION (1) OF SECTION 9

CIRCULAR NO.4/2015, DATED 26-3-2015

Section 9 of the Income-tax Act provides for incomes which are deemed to accrue or arise in India. Clause (i) of sub-section (1) of the said section reads as under:—

"9. (1) The following incomes shall be deemed to accrue or arise in India:—

(i) all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India."

2. The Finance Act, 2012 inserted Explanation 5 to clause (i) of sub-section (1) of section 9. The said explanation reads as under:—

"Explanation 5.—For the removal of doubts, it is hereby clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be and shall always be deemed to have been situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India"

3. A number of representations have been received by the Board stating that the purpose of introduction of Explanation 5 was to clarify the legislative intent regarding the taxation of income accruing or arising through transfer of a capital asset situate in India. **Apprehensions have been expressed about the applicability of the Explanation to the transactions not resulting in any transfer, directly or indirectly of assets situated in India. It has been pointed out that such an extended application of the provisions of the Explanation may result in taxation of dividend income declared by a foreign company outside India. This may cause unintended double taxation and would be contrary**

to the generally accepted principles of source rule as well as the object and purpose of the amendment made by the Finance Act, 2012.

4. The Explanatory Memorandum to Finance Bill, 2012 clearly provides that the amendment of section 9(1)(i) was to reiterate the legislative intent in respect of taxability of gains having economic nexus with India irrespective of the mode of realisation of such gains. Thus, the amendment sought to clarify the source rule of taxation in respect of income arising from indirect transfer of assets situated in India. **Viewed in this context, Explanation 5 would be applicable in relation to deeming any income arising outside India from any transaction in respect of any share or interest in a foreign company or entity, which has the effect of transferring, directly or indirectly, the underlying assets located in India, as income accruing or arising in India.**

5. Declaration of dividend by such a foreign company outside India does not have the effect of transfer of any underlying assets located in India. It is therefore, clarified that the dividends declared and paid by a foreign company outside India in respect of shares which derive their value substantially from assets situated in India would not be deemed to be income accruing or arising in India by virtue of the provisions of Explanation 5 to section 9(1)(i)of the Act.

CLARIFICATION REGARDING AMOUNT NOT DEDUCTIBLE UNDER SECTION 40(a)(i)

CIRCULAR NO.3/2015, DATED 12-2-2015

Doubts have been raised about the interpretation of the term 'other sum chargeable' i.e. whether this term refers to the whole sum being remitted abroad or only the portion representing the sum chargeable to income-tax under relevant provisions of the Act.

The Assessing Officer shall determine the appropriate portion of the sum chargeable to tax, as mentioned in sub-section (1) of section 195, to ascertain the amount of TDS which the deductor has to deduct. It is clarified that such appropriate portion of the said sum will depend on the facts and circumstances of each case taking into account the nature of remittances, income component therein or any other fact relevant to determine such appropriate proportion.

CBDT clarifies that for the purpose of making disallowance of 'other sum chargeable' under section 40(a)(i) of the Act, the appropriate portion of the sum which is chargeable to tax under the Act shall form the basis of such disallowance and shall be the same as determined by the Assessing Officer having jurisdiction for the purpose of section 195.

Illustration:
Indian Company has to pay professional fees to a U.K. firm. The U.K. firm has rendered services partly in India and partly in U.K. The fee payable in £ 1,00,000. The Assessing Officer determines under section 195 that out of £ 1,00,000, £ 25,000 is taxable in India. The Indian company fails to deduct TDS on £ 25,000. Now as per the CBDT clarification No. 3/2015, the disallowance under section 40(a)(i) shall be £ 25,000 and not £ 1,00,000.

SECTION 143 OF THE INCOME-TAX ACT, 1961 - ASSESSMENT - GENERAL - CLARIFICATION AS TO WHETHER PROVISION OF SECTION 143(1D) PERMITS PROCESSING OF RETURNS HAVING A REFUND CLAIM, WHERE NOTICE UNDER SECTION 143(2) HAS BEEN ISSUED

INSTRUCTION NO.1/2015, DATED 13-1-2015

Sub-section (1D) of section 143 of the Income-tax Act, 1961 ('Act') provides that where a notice has been issued to a taxpayer under sub-section (2) of section 143 of the Act, it shall not be necessary to process the return in such a case.

2. Some doubts have been expressed, in view of the words "shall not be necessary" used in the said sub-section, as to whether this provision permits processing of returns having a refund claim, where notice under section 143(2) of the Act has been issued.

3. The matter has been examined by the Board. Sub-section (1D) of section 143 of the Act was introduced by the Finance Act, 2012 with effect from 01.07.2012. The purpose of introduction of this sub-section has been stated in the Explanatory Note to the Finance Act as under:

"Under the existing provisions, every return of income is to be processed under sub-section (1) of section 143 and refund, if any, due is to be issued to the taxpayer. Some returns of income are also selected for scrutiny which may lead to raising a demand for taxes although refunds may have been issued earlier at the time of processing.

It is therefore proposed to amend the provisions of the Income-tax Act to provide that processing of return will not be necessary in a case where notice under sub-section (2) of section 143 has already been issued for scrutiny of the return."

Thus, in cases where an unprocessed return is selected for scrutiny, the legislative intent is to prevent the issue of refund after processing as scrutiny proceedings may result in demand for taxes on finalisation of the assessment subsequently.

4. Considering the unambiguous language of the relevant provision and the intention of law as discussed above, the Central Board of Direct Taxes, in exercise of the powers conferred on it under section 119 of the Act hereby clarifies that the processing of a return cannot be undertaken after notice has been issued under sub-section (2) of section 143 of the Act. It shall, however, be desirable that scrutiny assessments in such cases are completed expeditiously.

5. This may be brought to the notice of all concerned for strict compliance.

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LATEST CASE LAWS APPLICABLE FOR CA FINAL NOVEMBER 2015 EXAMINATIONS

1. Japan Airlines Co. Ltd. *v.* Commissioner of Income-tax [2015] 60 taxmann.com 71 (SC)

Landing and parking charges payable by Airlines in respect of aircrafts are not for the 'use of land' per se but the charges are in respect of number of facilities provided by the Airport Authority of India. Thus, landing and parking charges payable by Airlines would attract TDS under Section 194C and not under Section 194-I.

Facts:

(a) The issue that was disputed in the instant case was as to whether landing and parking charges paid by Airlines would attract TDS under Section 194-I or under Section 194C of the income-tax Act ('the Act').

(b) The High Court of Delhi in case of CIT v. Japan Airlines Co. Ltd. [2009] 180 Taxman 188 (Delhi) has held that landing and parking charges would attract TDS under Section 194-I of the Act.

(c) However, the Madras High Court in case of CIT v. Singapore Airlines Ltd. [2012] 24 taxmann.com 200 (Madras) has taken a contrary view the landing and parking charges would attract TDS under Section 194C. The two judgments are in conflict with each other and it has to be determined as to which judgment should be allowed to hold the field.

The Supreme Court held as under:

(1) In the instant case, the Airlines are allowed to land and take-off their Aircrafts at Indira Gandhi International Airport ('IGIA') for which landing fee is charged. Likewise, they are allowed to park their Aircrafts at IGIA for which parking fee is charged. It is done under an agreement and/or arrangement with Airport Authority of India ('AAI'). The moot question is as to whether landing and take-off facilities on the one hand and parking facility on the other hand, would mean to 'use of land'.

(2) We are convinced that the charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the 'use of land'. That would be too simplistic an approach, ignoring other relevant details which would amply demonstrate that these charges are for services and facilities offered in connection with the aircraft operation at the airport. These services include providing of air traffic services, found safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport.

(3) Therefore, it is not mere use of land. On the contrary, it is the facilities that are to be compulsorily offered by the AAI in tune with the requirements of the protocol, which is the primary focus. For example, runways are not constructed like any ordinary roads. Special technology of different type is required for the construction of these runways for smooth landing and take-off of the aircrafts. Specialized kind of orientation and dimensions are needed for these runways which are prescribed with precision and those standards are to be adhered to. Further, there has to be proper runway lighting, runway safety are, runway markings etc.

(4) Technological aspects of runways were emphasized to highlight the precision with which designing and engineering goes into making these runways to be fool proof for safety purposes. The purpose is to show that the AAI is providing all these facilities for landing and take-off of and aircraft and in this while process, 'use of the land' pails into insignificance. What is important is that the charges payable are for providing of these facilities.

(5) Thus, it becomes very clear that the charges are not for use of land per se and, therefore, it cannot be treated as 'rent' within meaning of Section 194-I of the Act. Therefore, the view taken by the Madras High Court (Supra) is correct and the judgment of the Delhi High Court (Supra) is over-ruled.

2. Rental income from properties of Company shall be taxable under the head 'Profits and Gains of Business or Profession' and not under the head 'Income from House Property' if the main object of the Company is to let out the properties.

Chennai Properties & Investments Ltd. (Supreme Court) [2015]

Facts:

The appellant-assessee is a company incorporated under the Indian Companies Act. Its main objective, as stated in the Memorandum of Association, is to acquire the properties in the city of Chennai and to let out those properties. The assessee had rented out such properties and the rental income received therefrom was shown as income from business in the return filed by the assessee. The Assessing Officer, however refused to tax the same as business income. According to the Assessing Officer, since the income was received from letting out of the properties, it was in the nature of rental income. He, thus, held that it would be treated as income from house property and taxed the same accordingly under that Head.

Decision:

The Supreme Court distinguished its earlier judgment in **East India Housing and Land Development Trust Ltd.'s**. That was a case where the company was incorporated with the object of buying and developing landed properties and promoting and developing markets. Thus, the main objective of the company was to develop the landed properties into markets. It so happened that some shops and stalls, which were developed by it, had been rented out and income was derived from the renting of the said shops and stalls. In those facts, the question arose for consideration was: whether the rental income that is received was to be treated as income from the house property or the income from the business. This court while holding that the income shall be treated as income from the house property, rested its decision in the context of the main objective of the company and took note of the fact that **letting out of the property was not the object of the company at all.** The court was therefore, of the opinion that the character of that income which was from the house property had not altered because it was received by the company formed with the object of developing and setting up properties.

In the circumstances of the present case we arrive at irresistible conclusion that in this case, letting of the properties is in fact is the business of the assessee. The assessee therefore, rightly disclosed the income under the Head Income from Business. It cannot be treated as 'income from the house property'. **If the business of the assessee is acquiring the properties and letting them on hire, then, the rental income shall be assessed as business income.**

3. **Professional fees received by assessee after elevation to post of Judge would not be taxable as income of the assessee.**

   Anil R. Dave (Gujarat High Court)

   The assessee was sitting Judge of the Gujarat High Court. Prior to his elevation as Judge in High Court, he was practicing as a senior advocate in High Court. After being elevated to the post of Judge of High Court he discontinued his legal profession as an advocate. The assessee received certain outstanding dues from his past clients. The assessee in his returns claimed these amounts as non-taxable. The Assessing Officer concluded that the said amount was received after discontinuation of the legal profession and therefore, would be taxable under the head 'Income from business or profession'.

   Held that professional fee received by the assessee after the alleviation to the post of Judge of the Hon'ble High Court is not taxable.

4. **Commissioner of Income-tax *v.* Bhagat Construction Co. (P.) Ltd. [2015] 60 taxmann.com 334 (SC)**

   Interest under Section 234B forms part of income-tax computation form ('I.T.N.S. 150') as it contains the calculation of interest under Section 234B payable on the tax assessed. Accordingly, this form must be treated as part of the assessment order. Therefore, levy of interest under Section 234B was not invalid even assessment order did not contain any direction for payment of interest under Section 234B

5. **Commissioner of Income-tax *v.* Smt. B.S. Shanthakumari [2015] 60 taxmann.com 74 (Karnataka)**

   Where assessee sold a property on 6-10-2015 and purchased another residential plot on 13-10-2015 and commenced construction, which was not completed within three years, and she claimed benefit of section 54F, once it was established by assessee that she had invested entire net consideration in construction of residential house within stipulated period, it would meet requirement of section 54F and she would be entitled to get benefit of section 54F.

6. **Commissioner of Income-tax, Bangalore *v.* Filtrex Technologies (P.) Ltd. [2015] 59 taxmann.com 371 (Karnataka)**

   Where assessee-company made payment to a foreign company without deduction of tax at source on basis of certificate issued by Chartered Accountant, same was a bonafide mistake and hence, assessee was not liable to penalty for concealment of income.

   Assessee-company was engaged in manufacture of carbon blocks used in water purifying filters. Assessee made payment for technical services to a foreign company 'F' without deduction of tax. Assessing Officer treated non-deduction of tax regarding said company as concealment of income and initiated penalty proceedings.

   It was found that Chartered Accountant had given a certificate to effect that assessee was not required to deduct tax at source while making payment to a company 'F'. Thus, assessee remitted payments to said company based on certificate issued by CA and no violations were reported in Form No. 3CD. Failure to deduct tax by assessee was a bona fide mistake and hence this was not a case to levy penalty. Therefore, no business disallowance could be made under section 40(a)(ia).

7. **Eicher Goodearth Ltd. *v.* Commissioner of Income-tax [2015] 60 taxmann.com 268 (Delhi)**

   Interest paid on amount borrowed to subscribe rights issue of another company E in order to retain control on it has to be allowed under section 36(1)(iii).

8. **CIT v. Handicrafts and Handlooms Export Corporation of India Ltd. (2014) 360 ITR 0130 (Delhi)**

   What is the nature of grant received by a subsidiary company from its holding company to recoup the losses incurred year after year and to enable it to meet its liabilities - Capital or Revenue?

   Facts of the case: The assessee, a Government company, operates a channelising agency for sale of handicrafts and handlooms abroad. In the relevant previous year, it received a grant of ₹ 25 lakh from its holding company, the State Trading Corporation of India (STC). The Assessing Officer opined that the said amount was a revenue receipt chargeable to tax.

   High Court's Observations: The High Court examined the judgment of the Supreme Court in Sahney Steel and Press Works Ltd. v. CIT (1997) 228 ITR 253, which laid down the test for determining whether subsidy received by an assessee is taxable as capital or revenue receipt. As per the said test, if any subsidy is given, the character of the subsidy in the hands of the recipient - whether revenue or capital - will have to be determined by having regard to the purpose for which the subsidy is given. The point of time, the source and the form of subsidy are immaterial. The object for which the subsidy is given, would, thus determine the nature of subsidy. If it is given by way of assistance to the assessee in carrying on of his trade or business, it has to be treated as trading receipt.

   The High Court observed that, in this case, ₹ 25 lakhs was not paid by a third party or by a public authority but by the holding company. It was not on account of any trade or commercial transaction between the subsidiary and holding company. The intention and purpose behind the said payment was to secure and protect the capital investment made by STC Ltd. The payment of grant by STC Ltd.

and receipt thereof by the assessee was not during the course of trade or performance of trade, and thus, could not partake the character of a trading receipt. The same was in the nature of a capital grant.

9. **CIT v. Modi Industries Ltd. (2011) 339 ITR 467 (Del.)**

What is the nature of expenditure incurred on demolition and re-erection of a cell room and expenditure incurred on purchase of pumping set, mono block pump and two transformers, which were parts of a bigger plant – revenue or capital?

High Court's Observations: On the issue of allowability of expenditure on demolition and re-erection of a cell room, the High Court referred to the Supreme Court ruling in CIT v. Saravana Spinning Mills P. Ltd. (2007) 293 ITR 201, wherein it was observed that "current repairs" under section 31 refer to expenditure effected to preserve and maintain an already existing asset and the object of expenditure must not be to bring a new asset into existence or to obtain a new advantage. In that case, it was held that since the entire machine had been replaced, the expenditure incurred by the assessee did not fall within the meaning of "current repairs" in section 31(1).

Applying the rationale of the Apex Court ruling, the Delhi High Court observed that if a part of a structure becomes dilapidated and repairs/reinforcement of some parts of the structure is required, it would be treated as "current repairs". However, on the other hand, if a part of the building is demolished and a new structure is erected on that place, it has to be treated as capital expenditure, as in that case a totally new asset is created even if it may be a part of the building.

High Court's Decision: In this case, it was clear that after completely demolishing the old cell room, an entire new cell room was erected. The money spent was not merely on repairs of the cell room, but for constructing a new cell room. Even the nomenclature of the entry, as given by the assessee, was "fabrication and erection charges of cell room". Thus, it was nothing but a complete demolition of the old cell room and construction/erection of a new cell room in its place. The expenditure incurred on the cell room was capital expenditure.

However, so far as purchase of pumping set, mono block pump with HP motors and two transformers were concerned, they were not stand alone equipment, but were part of the bigger plant. Therefore, it would be treated as replacement of those parts and the expenditure would be eligible for deduction under section 37(1).

10. **CIT v. Priya Village Roadshows Ltd. (2011) 332 ITR 594 (Delhi)**

Would expenditure incurred on feasibility study conducted for examining proposals for technological advancement relating to the existing business be classified as a revenue expenditure, where the project was abandoned without creating a new asset?

Facts of the case: In this case, the assessee, engaged in the business of running cinemas, incurred expenditure towards architect fee for examining the technical viability of the proposal for takeover of cinema theatre for conversion into a multiplex/ four-screen cinema complexes. The project was, however, dropped due to lack of financial and technical viability. The issue under consideration is whether such expenses can be treated as revenue in nature, since no new asset has been created.

High Court's Observations: On this issue, the High Court observed that, in such cases, whether or not a new business/asset comes into existence would become a relevant factor. If there is no creation of a new asset, then the expenditure incurred would be of revenue nature.

11. CIT v. Smt. Rama Rani Kalia (2013) 358 ITR 0499 (All.)

Where a leasehold property is purchased and subsequently converted into freehold property and then sold, should the period of holding be reckoned from the date of purchase or from the date of conversion for determining whether the resultant capital gains is short-term or long-term?

Facts of the case: The assessee purchased a leasehold property on July 7, 1984. Such leasehold rights in the property were converted into freehold rights on March 29, 2015. She sold the property on March 31, 2015 and declared long-term capital gains on the transfer. The Assessing Officer opined that since the property was acquired by converting the leasehold right into freehold right on March 29, 2015, and was sold within three days on March 31, 2015, the resultant capital gains would be short-term.

High Court's Observations: The High Court observed that the difference between "short-term capital asset" and "long-term capital asset" is the period over which the property has been held by the assessee and not the nature of title over the property. The lessee of the property has rights as the owner of the property subject to the covenants of the lease deed. Accordingly, the lessee may, subject to covenants of the lease deed, transfer the leasehold rights of the property with the consent of the lessor.

High Court's Decision: The High Court, therefore, concurred with the views of the Tribunal that conversion of the rights of the lessee from leasehold to freehold is only by way of improvement of her rights over the property, which she enjoyed. It would not have any effect on the taxability of gain from such property, which is related to the period over which the property is held. Since, in this case, the period of holding is more than 36 months, the resultant capital gains would be long-term.

12. CIT v. K and Co. (2014) 364 ITR 93 (Del)

Is interest income on margin money deposited with bank for obtaining bank guarantee to carry on business, taxable as business income?

Facts of the case: The assessee running a lottery, deposited certain funds with a bank in order to obtain bank guarantee to be furnished to the State Government of Sikkim. Such guarantee enabled the assessee to carry on the business of printing lottery tickets and for conducting lotteries on behalf of the State Government of Sikkim. The funds which were held as margin money, earned some interest.

Issue: The issue under consideration is whether such interest income would be taxable under the head „Profits and Gains from Business or Profession‟ or under the head „Income from other sources‟.

High Court‟s Observations: The High Court noted that the interest income from the deposits made by the assessee is inextricably linked to the business of the assessee and such income, therefore, cannot be treated as income under the head „Income from other sources‟. The margin money requirement was an essential element for obtaining the bank guarantee which was necessary for the contract between the State Government of Sikkim and the assessee. If the assessee had not furnished bank guarantee, it would not have got the contract for running the said lottery

High Court Decision: The High Court, accordingly, held that the interest income received on funds kept as margin money for obtaining the bank guarantee would be taxable under the head "Profits and gains of business or profession".

13. CIT v. TVS Motors Ltd (2014) 364 ITR 1 (Mad)

Is the expenditure on replacement of dies and moulds, being parts of plant and machinery, deductible as current repairs?

Facts of the case: The assessee company, engaged in manufacture of motor cycles and spares, filed its return of income for the relevant assessment year. It later filed a revised return in which it claimed deduction under section 31 in respect of expenditure incurred on replacement of dies and moulds in the place of worn out dies and moulds. The claim was rejected by the Assessing Officer on the ground that the assessee had claimed depreciation in respect of such expenditure in the earlier years.

High Court's Decision: The High Court held that "moulds & dies" are not independent of plant and machinery but are parts of plant and machinery. Once the dies are worn out, they had to be replaced so that the machine can produce the product according to business specifications. Thus, the expenditure incurred by the assessee towards replacement of parts of machinery to ensure its performance without bringing any new asset or advantage, is eligible for deduction as „current repairs‟ under section 31.

14. Commissioner of Income-tax (TDS) v. Bharat Electronics Ltd. [2015] 55 taxmann.com 475 (Allahabad)

Where assessee-company entered into contract with transporters for providing buses for giving pick-up and drop facilities to its employees, in view of fact that transporters were contractually obliged to maintain buses in proper condition and drivers and conductors were also to be provided by them, assessee was liable to deduct tax at source under section 194C while making payments to transporters.

Assessee-company entered into contract with transporters for providing buses for giving pick-up and drop facilities to its employees. In terms of contract, possession of buses remained with transporters. Further, transporters were contractually obliged to maintain buses in proper condition and drivers and conductors were also to be provided by them. Assessee deducted tax at source under section 194C whereas revenue authorities opined that tax was to be deducted under section 194-I while making payments to transporters.

It is held, on facts of this case, that agreement between assessee and transporters was not akin to taking of any 'plant' or 'machinery' on lease or any other similar arrangement and, therefore, assessee had correctly deducted tax at source under section 194C.

15. Commissioner of Income-tax v. Ram Gopal [2015] 55 taxmann.com 536 (Delhi)

Even where assessee acquired property by provisional booking, he was eligible for section 54 deduction for cost of improvement along with cost of investment

Assessee sold capital assets. Assessee claimed that he acquired another property out of sale consideration and also claimed cost of improvement under section 54. Assessing Officer held that in absence of an agreement to sell, rights acquired by provisional booking of property was not acquisition of new capital asset and cost of improvement was not deductible.

It is held that since right of acquiring of property by assessee amounted to capital asset, improvement cost was eligible for exemption alongside cost of investments.

16. Commissioner of Income-tax v. Alpex Exports (P.) Ltd. [2014] 49 taxmann.com 389 (Delhi)

Merely because shares were issued belatedly in subsequent year, share application money cannot be treated as loan or deposits or advance for invoking provisions of section 2(22)(e)

Assessing Officer observed that share application money remained with assessee for more than three months during relevant assessment year and shares were issued in subsequent year, and therefore, treated such money as advance under section 2(22)(e). Tribunal, however, held that section 2(22)(e) was not applicable as amount was received as share application money.

Once Tribunal recorded finding that amount received by assessee was share application money, said amount could not be treated as loan or deposit or advance for invoking provisions of section 2(22)(e).