

CASE LAWS

INCOME TAX JUDGEMENTS

- ① P.S. Kapur Vs. Assistant Commissioner of Income tax [2009]
 ⇒ Section 43(5) of the Income tax Act, 1961 — Speculative transaction — whether insertion of clause (d) in proviso to section 43(5) vide finance Bill, 2005, with effect from 1.4.06 is clarificatory in nature and, therefore, it has retrospective operations — It was held - Yes
- ② Mimosa Investment Co. Vs. I.T.O. [2009]
 ⇒ Section-271(1)(c) — when assessing officer re-calculates total income in accordance with law and such total income is different from that calculated by Assessee, there is no concealment of income particulars or furnishing of inaccurate particulars of income or deemed concealment in accordance with Explanation 1 to Section 271(1).
- ③ Commissioner of Income tax Vs. Contimeters Electrical(P) Ltd.
 ⇒ Revision — validity — Revision on issue not mentioned in show-cause notice — Not permissible. ⇒ Commr. of Customs Vs. Toyo Engg India Ltd. (2006) applied.

④ Commissioner of Income tax Vs. Varinder Agro Chemicals Ltd.

⇒ Business expenditure — Capital or revenue expenditure —
Expenditure on computer software — There is nothing to show that the software used by the assessee is of enduring nature and will not become outdated — Therefore, expenditure on computer software rightly allowed as revenue expenditure — No substantial question of law arises.

⑤ Commissioner of Income tax Vs. Jyoti Prabha Society (2009)

⇒ Charitable trust — Exemption under sec. 11 — Income from letting out building — assessee charitable society registered under section — 12A could not be denied exemption under sec. 11 on the ground that its activity of letting out building to other society to run educational institution did not constitute charitable purpose because such rental income was again being utilised for imparting education by maintaining and constructing new buildings for same purpose.

⑥ Arya Global Connect Ltd. Vs. Assistant Comm. of Income Tax.

⇒ Business income — Business Loss — Obsolete stock written off — complete details and break-up of obsolete items and value thereof furnished by the assessee — Also method followed by the assessee was the same as in past — Therefore, A.O. was not justified in disallowing the claim of write off without pointing out as to how the write off was not correct or bona-fide.

⑦ Commissioner of Income tax Vs. Pass Trading & Holding (P) Ltd. ③

⇒ Penalty under Sec-271(1)(c) — concealment — Declaration of additional income in revised return. Assessee had shown substantial ~~income~~ agricultural income in its original return. It is only after the addl. Director of I.T. (Invsh.) inquired into the matter and found that the assessee had declared bogus agricultural income and filed the revised return accepting the fact that the aforesaid income was not agricultural income and declared the same as taxable income. Inquiries revealed that the assessee had not sold any agricultural produce and that even the agri. land in question did not exist. Thus, the contention of assessee that the revised return was filed suo motu and that there was no concealment cannot be accepted. There was a deliberate concealment and/or filing of false return. Penalty rightly imposed. Revenue's appeal is allowed with costs of Rs. 25,000.

⑧ UCO Bank, Regional office Vs. Union of India [2009]

⇒ writ-maintainability — clearance from committee on disputes — writ petition preferred by bank against the IT Department seeking to quash the notice under Sec-226(3) issued by TRO to the bank directing it to deposit the sale proceeds of the defaulter's property which was under attachment with the department. It is not a matter of High power committee to decide. Therefore single judge was not justified in holding that a high power committee has to be constituted to resolve the dispute.

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⑨ Commissioner of Income tax Vs. Gold coin Health food
⇒ Penalty — Concealment of income — Provision for (P) Ltd. [2009]
imposing penalty even if after addition of concealed income
there was no positive income — Is clarificatory and
retrospective in nature — applies with effect from April 1, 1976 —
Income Tax Act, 1961, Sec. 271(1)(c)(iii); Explan-4 — Circular No.
204, dated 24, 1976.

⑩ BHPE Kinkhill Joint Venture Vs. Additional director
of Income Tax.

⇒ Assessment — Notice — Service of notice — plea that notice
had not been received — Onus on Revenue to prove proper
service of notice — No such proof — so assessment held
not valid. [Sec-143].

⑪ Commissioner of Income tax, Delhi-IV

Vs.

HCL Comnet Systems & Services Ltd. (2008)

⇒ Section-115JA of Income Tax Act, 1961 — Minimum Alternate tax —
Assessment year 1997-98 — Whether provision for bad & doubtful
debts made by Assessee in its profit & Loss a/c is an ascertained
liability and therefore, cannot be included in its book profit
v/s 115JA — It was held to be YES

⑫ C.I.T. Vs. Chemplast Sanmer Ltd. & Ors. [2009]

⇒ Credit under Sec-115JAA should be given effect to before
charging of interest under Section-234B and 234C.

(13) Delhi Cloth & General Mills Co. Ltd.

Vs.

Commissioner of Income Tax [2008]

⇒ Section-37(1) of Income Tax Act, 1961 — Business expenditure — Allowability in question — whether expenses incurred on foreign tour of director of assessee-company, who visited abroad as a member of Federation of Indian Chambers of Commerce, was in nature of an admissible deduction — Held, yes

(14) Commissioner of ~~Tax~~ Income Tax, Delhi - II

Vs.

Jai Parabolic Springs Ltd. [2008]

⇒ Section-37(1) of Income Tax Act, 1961 — Business expenditure — Allowability in question — assessment year 1990-91 — whether revenue expenditure, which is incurred wholly and exclusively for the purpose of business, must be allowed in its entirety in year in which it is incurred even if assessee has written it off in his books over a period of a number of years. It was held - YES.

(15) C.I.T. Vs. A.G. Granites (P) Ltd. [2009]

⇒ Rectification of mistakes — Interest income offered by assessee under head "Other income" sought to be assessed under head "Income from other sources" — Debatable issue — Not to be rectified under Sec-154 of I.T. Act, 1961.

(16) CIT Vs. Greenworld Corporation - [2009]

(6)

⇒ Section-263 provides for a revisional ~~order~~ power. It has its own limitations. An order can be interfered suo motu by the said authority not only when an order passed by the AO is erroneous but also when it is prejudicial to the interest of the Revenue. Both the conditions precedent for exercising the jurisdiction under Sec. 263 are conjunctive ~~precedent for exercising the jurisdiction~~ and not disjunctive. An order of assessment passed by an ITO, therefore, should not be interfered with only because another view is possible. The CIT, however, has specified a number of reasons in support of its order.

(17) Shanti Ram Metha Vs. Assistant CIT [2009]

⇒ Business expenditure — Disallowance under Sec. 40A(3) — multiple payments to same party on a single day. Each payment below Rs. 20,000. A.O. made disallowance under Sec. 40A(3) on the ground that the total payments of one day exceeded Rs. 20,000. — Not Justified —

Disallowance under Sec. 40A(3) is applicable for each payments and not for the aggregate of the various payments made to same party during one day. Thus, disallowance can not be sustained.

(18) J.C. Bansal, Chief Engineer, Kanoria Sugar & General Mfg. Co. Ltd. Vs. Tax Recovery Officer [2009]

⇒ TDS — assessee in default — Tax duly paid by payee. Tax on the amount received under licence having been paid by the licensor payee and evidence of the same having been furnished before CIT(A), CIT(A) was justified in holding that tax could not be recovered once gain from the Assessee.

(19) Commissioner of Income Tax

Vs.

Smt. Jyoti Devi (High Court of Rajasthan)

⇒ Reassessment — Change of opinion — Assessment under section 143(1)(a) — A.O. issued notice under Sec. 148 on the ground that there was under assessment of income in as much as tractors being agricultural implement, depreciation was wrongly allowed to assessee. — Revenue (Dept.) — could not point out any information or material which had subsequently come to the notice of the A.O. to enable him to form the requisite belief that any income liable to be assessed had escaped assessment — Therefore, it was rightly held that the re-opening of assessment was based merely on a change of opinion about admissibility of claim of depreciation on tractors, and initiation of re-assessment proceedings was not valid.

(20) ATS Infrastructure Ltd. Vs. C.I.T. [2009]

(8)

⇒ Section-127 of I.T. Act, 1961 — Income Tax authorities — power to transfer cases — Assessee's cases were transferred from Delhi to Meerut by an order under Sec. 127 on ground that a search was conducted in cases of ATS group which included assessee's case as well and there being an intimate connection between assessee and said group, it was necessary that cases be centralized with Assessing officer handling other cases of group — Assessee filed writ petition challenging transfer of its cases — Whether, on facts, there being no material to come to conclusion that decision to transfer assessee's cases out of Delhi was mala-fide, writ petition was liable to be dismissed — It was held to be YES

(21) Income Tax Officer Vs. Orbital Communications (P) Ltd. [2009]

⇒ Income — case credit — Share application money — Amount received as share application money added as unexplained income by A.O. despite assessee furnishing details of the applicant, PAN, Copy of IT Return, bank statement etc. Addition was not sustainable solely on the ground that the share applicant was not produced before the A.O. by the Assessee. C.I.T. justified in deleting the addition.

(22) C.I.T Vs. Woodward Governor India (P) Ltd. [2009]

⇒ Business Expenditure — Mercantile system of Accounting — Loan taken for revenue purposes — Additional liability arising out of fluctuation in rate of exchange — Allowable in year of increase in rate.

(23) Granges Lines (India) Pvt. Ltd. Vs. Dy. CIT (Mumbai) 2009

⇒ Appeal (Tribunal) — Rectification u/s 254(2). Suo motu rectification vis-a-vis Subsequent Supreme court decision. In view of subsequent decision of S.C. holding that proviso to Sec-113 was clarificatory and the levy of surcharge was retrospective in nature, order of Tribunal deleting levy of surcharge suffered from mistake apparent from record. Mistake suo motu rectified by tribunal while disposing of miscellaneous application of assessee and levy of surcharge held justified. Tribunal is bound to correct such mistake even if no petition is moved from either side.

(24) C.I.T. Vs. Pranoy Roy [2009]

⇒ Interest under Sec-234A. Chargeability — Tax paid before the due date though return filed late. Assessee having paid the tax before the due date of filing of return which was not less than the tax payable on the returned income which has been accepted, interest under Sec-234A is not chargeable on delayed filing of return.

(25) C.I.T. Vs. Hughes Escorts Communications Ltd. [2009]

⇒ Business Expenditure — Previous year — year in which expenditure is deductible. Business — Difference between setting up and commencement of business. Business of Satellite business communication. Purchase order for equipment in July, 1994. Installation of equipment completed in March, 1995. Business set up in July, 1994. Expenditure on equipment deductible in Assessment year 1995-96.

(26) Travancore Cements Limited

Vs.

Assistant C. I. T. [2009]

⇒ Section-147, read with Section-148 of the Income Tax Act, 1961. — Income escaping assessment.

Non-disclosure of primary facts — Assessment year 2000-01 and 2001-02 — whether Assessing officer gets jurisdiction under Sec. 147 to assess or reassess income which has escaped assessment only after sub-section (2) of Section-148 is complied with i.e. when reasons for issuing such notice have been recorded — Held-Yes

- whether when proceeding under section-147 have been initiated in respect of one item of income for which A.O. had already recorded reasons, it is necessary for him to record reasons for assessing or re-assessing any other items of income which are totally unconnected with proceedings already initiated — Held Yes

- whether in re-assessment proceedings, A.O. can make any fishing enquiry in concluded matters unconnected with issue on the basis of which proceedings under Section-147 have been initiated — Held-No