

1 2010 TMI - 35399 - BOMBAY HIGH COURT

COMMISSIONER OF INCOM-TAX Versus ARTHUR ADERSEN AND CO.

Dated: 11-03-2008

Sections - 80HHE,

Whether the Tribunal was correct in law in deleting the disallowance on account of reimbursement of expenses (software services) and disallowance of deduction under section 80HHE? - Whether the action of the Tribunal in merely following its observations in relation to the assessment year 1997-98 while deleting disallowance on account of reimbursement of expenses without appreciating the differential facts of the two years is judicially justifiable? - Once the Assessing Officer allowed the deduction and the Revenue did not prefer an appeal against the said order of the Assessing Officer in so far as the present issue is concerned that would be binding on the Revenue. - Revenue is precluded from raising the issue in the present appeal – Assessee entitled to its claim of special deduction in subsequent years

2 2010 TMI - 35397 - UTTARAKHAND HIGH COURT

COMMISSIONER OF INCOME-TAX Versus KISAN SAHKARI CHINI MILLS LTD.

Dated: 22-08-2008

Sections - -

Revenue receipt or capital receipt – amount received as incentive and production incentive bonus received from govt. - we are of the view that where the incentive has been given to an assessee only for expansion of the plant and machinery of the industry, run by the assessee, or for the purposes of payment of term loan received by the assessee from the Government of India or financial institutions, the amount of incentive is nothing but a capital receipt. However, if such amount received by the assessee is permissible to be used, or used in day-to-day business of the assessee, the receipts earned by the assessee by selling the additional quantity of the levy sugar as free sugar cannot be said to be capital receipt and the same is nothing but revenue receipt of the assessee. – Further it is held that the production incentive bonus is deductible

3 2010 TMI - 35396 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus FOOD CORPORATION OF INDIA, CONTRIBUTORY PROVIDENT FUND TRUST

Dated: 28-07-2008

Sections - 194A,

Applicability of section 194A – status of assessee – AO found that the amounts being credited to the account of the ex-employees after cessation of

INCOME TAX ACT 1961

CASE LAWS

employment had the character of interest and as such, according to the Assessing Officer, the assessee was required to deduct tax at source under section 194A. The assessee having failed to do so was treated as being in default - Tribunal came to a correct conclusion, firstly, that before it could be determined as to whether the respondent-assessee was required to deduct tax at source under section 194A, its status had to be determined, and, secondly, since status of assessee was that of an individual, the provisions of section 194A could not be applicable to the respondent-assessee. – Held that assessee cannot be treated as defaulter u/s 194A

4 2010 TMI - 35394 - KERALA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus M. M. NAGALINGA NADAR SONS

Dated: 17-06-2008

Sections - 036,

Disallowance of proportionate interest on the sum advanced by the assessee to the partners as interest-free loans - Tribunal has not gone into the question whether borrowals were justified when the assessee had funds with it. The assessee was well aware of the maturity of the deposit and they could have easily limited the borrowals in such a way so that interest for the deposit amount is avoided after its maturity. The assessee, which advanced its funds as interest-free loans to the partners, has no justification to claim interest on borrowals on so much of amount. It cannot be denied by the assessee that the funds reaching its hands on maturity of deposits could not be utilised for its own business purposes - we reverse the order of the Tribunal and the first appellate authority and restore the assessment on disallowance

5 2010 TMI - 35393 - KERALA HIGH COURT

VENGAT BAVA Versus COMMISSIONER OF INCOME-TAX

Dated: 24-06-2008

Sections - 068, 069, 158BC,

Block assessment - additions are made under section 69 on unexplained investments and under section 68 on unexplained cash credit - relatives did not prove the transactions of advances made to the assessee and the assessee could not prove even substantial amount of withdrawals from his own account - contention raised by the assessee's counsel is that block assessment under section 158BC itself is not tenable because it is not based on any evidence gathered in the course of search, is rejected because assessment was based on the materials gathered on inspection – additions under sections 68 and 69 are permitted in an assessment under section 158BC

6 2009 TMI - 35103 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus J. K. PANTHAKI AND CO.

Dated: 24-10-2008

Sections - 037,

Commission paid for obtaining contract – payment prohibited by law - assessee had inflated the steel purchases debited in its books and claimed it as an

INCOME TAX ACT 1961

CASE LAWS

allowable expenditure. The assessee admitted that he had obtained the computation bills from steel vendors and, therefore, the assessments were reopened under sections 147 and 148 – assessee claimed that it had paid commission in cash to the Mehta group who were allegedly instrumental in having the contract awarded to the assessee – held that - Tribunal has failed to consider the case in the light of the Explanation to sub-section (1) of section 37. Further, the Tribunal in its order dated July 8, 1996, has held that there was no loss caused to the Revenue inasmuch as the recipients of the commission had offered the said commission amount for payment of tax in their individual accounts and, therefore, the commission paid by the assessee ought to be deducted for the purpose of computing business income of the assessee – matter remanded

7 2009 TMI - 35102 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus EDS ELECTRONICS DATA SYSTEMS (INDIA) P. LTD.

Dated: 29-09-2008

Sections - 115JA, 145,

Mercantile system of accounting - payment made to expatriates in the sum of Rs 4,03,31,726/- - The case of the revenue is that since the approval for remittances had been received in the subsequent year, there could not have been an accrued liability in the current year - provision made for bad/doubtful debts – section 115JA – held that - , there was no legal bar to the assessee entering into the agreement with EDS Global Services Inc., USA. The only question was of seeking approval for remittances of the amounts outside India for which approval of the Reserve Bank of India was required. The fact that the liability had accrued as per the contract cannot be disputed. Once that is the case, then, where the assessee follows the mercantile system of accounting, it cannot be said that the liability had not accrued in terms of the contract.

8 2009 TMI - 35101 - KARNATAKA HIGH COURT

KARNATAKA STATE AGRO CORN PRODUCTS LTD. Versus DEPUTY COMMISSIONER OF INCOME-TAX

Dated: 28-02-2008

Sections - 032AB, 037,

Investment deposit account - Whether the interest earned by the appellant out of the deposits were excludible from the eligible profits for the purpose of deduction under section 32AB of the Act - Whether the Tribunal was justified in holding that the surplus out of the amount approved by the Government for meeting additional expenditure by the appellant would constitute the income in spite of the fact that the said amount was held in a fiduciary capacity by the appellant on behalf of the Government of Karnataka – held that - Assessing Officer has failed to record any specific and categorical findings with regard to the facts of this case, the nature of the business activities being carried out by the assessee and the reason for its earning interest on certain deposits. The same have not been gone into in detail to record a finding if it would form part of business income or it would be income from other sources – matter remanded.

INCOME TAX ACT 1961

CASE LAWS

9 2009 TMI - 35099 - ALLAHABAD HIGH COURT

DEY'S MEDICAL (U.P.) P. LTD. Versus UNION OF INDIA AND OTHERS

Dated: 15-02-2008

Sections - 040, 194C,

Consequences of failure to deduct TDS u/s 194C – application of section 40(a)(ia) – held that - . Section 4 of the Act provides that for the income of the year concerned, income-tax shall be charged in accordance with the provisions enacted by the legislature. The income is defined under Section 2(24) of the Act. - A sum paid for advertisement towards advancement of the business is liable to be deducted from computation of the total income strictly in accordance with the provisions of the Act and not otherwise - he was liable to deduct tax at source by virtue of Section 194C of the Act failing which Section 40 (a)(ia) provides that such payment shall not be allowed to be deducted from computation of total income and shall be treated to be the income of the assessee. Once a deduction of a particular amount is not allowable under the Act, it is liable to be taxed and merely because some other person may also be liable to tax after receiving the said amount in one or the other manner, it cannot be said that former assessee is entitled for exemption and cannot be taxed.

10 2009 TMI - 35098 - KERALA HIGH COURT

UNITED FILM EXHIBITORS Versus COMMISSIONER OF INCOME-TAX

Dated: 04-06-2008

Sections - 037,

Payment of electricity charges by the lessee – claim of deduction on account of reimbursement of electricity charges by lessee – held that - assessee originally returned entire rental income of Rs.27,60,000/- and later filed a revised return claiming deduction of Rs.5,40,000/- being reimbursement of electricity charges paid to the lessee - if at all assessee's claim is bonafide, assessee could have produced documents in the form of assessment order completed in the name of the lessee showing inclusion of Rs.5,40,000/- being the reimbursement received from the appellant. Since rental income originally returned by the assessee is a deduction in the computation of business income of the lessee, the amount subsequently paid by the assessee in the form of reimbursement of electricity charges should have been assessed in the hands of the lessee. In the absence of any clear evidence towards this, we feel the Tribunal was justified in assuming that original agreement providing for payment of electricity charges by the lessee continue to be operative

11 2009 TMI - 35097 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus ASEA BROWN BOVERI LTD.

Dated: 20-08-2008

Sections - 035AC,

Expenditure on Eligible Projects - donation made by the assessee to hospital prior to its being declared as eligible under a notification as per section 35AC –

INCOME TAX ACT 1961

CASE LAWS

held that - the authorities have concurrently held that the donation paid by the assessee to Vidya Sagar Hospital has to be allowed as deduction in view of the exemption granted to Vidya Sagar Hospital for three consecutive assessment years. Considering the exemption order granted to Vidya Sagar Hospital, the authorities have come to the conclusion that the exemption was not operating from a particular date and the same was effective for all the full assessment year - there is no specific date showing the validity of exemption granted to hospital – relief granted to assessee justified.

12 2009 TMI - 35096 - RAJASTHAN HIGH COURT

LAXMI ENGINEERING INDUSTRIES Versus INCOME-TAX OFFICER

Dated: 28-08-2008

Sections - 037,

Payment of commission – Disallowed as bogus in some assessment year – Allowed in different assessment years as paid to same parties – held that - Since, it has been found by the learned Tribunal, that the only basis for making other addition, by the Assessing Officer, is the disallowance of the commission, to the same party, which has been upheld up to the Tribunal, in our view, when the disallowance has been set aside by this court, by the aforesaid judgment dated December 13, 2007, for the same reasons, rather of necessity, disallowance in this case, has also to be set aside. – commission paid for erection and installation charges allowed.

13 2009 TMI - 35093 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus UDAIPUR DISTILLERY CO. LTD. (and other appeals)

Dated: 21-11-2008

Sections - 037, 040A,

Payment of lease rent – group company - excessive and unreasonable payment – fair market value – section 40A(2) – held that - The Assessing Officer observed that two companies were substantially owned by Vijay Mallya, whose United Breweries own the assessee-company. It was also observed by the Assessing Officer, that the lease rent, as paid, gave annual rate of return of 33.6 per cent. Since in his opinion these companies were related to the assessee, hence the provisions of section 40A(2)(a) were applicable. It was also considered that the prime lending rates of bank was 15.6 per cent, therefore, he allowed the deduction at 15.6 per cent, and made additions of the remaining amount – held that - learned Commissioner (Appeals) and the learned Tribunal had not ignored the relevant considerations which were required to be taken into account in terms of section 40A(2)(a) of the Act – deduction allowed fully

14 2009 TMI - 35092 - ALLAHABAD HIGH COURT

COMMISSIONER OF INCOME-TAX Versus PT. VISHWANATH SHARMA

Dated: 21-02-2008

Sections - -

Commission paid to Government Doctors - contravention of the Public Policy –

INCOME TAX ACT 1961

CASE LAWS

held that - that the sum of Rs. 1,08,678/- paid as commission to Government Doctors/wards cannot be allowed as business expenditure under the Act and, therefore, the question has to be answered in favour of the Revenue and against the assessee - The explanation to section 37(1) disallowed an expenditure which is incurred by an assessee for a purpose which is an offence or which is prohibited by law. The explanation thus makes it clear that such an expenditure shall not be treated to be a business or professional expenditure - The amount paid to the Government Doctors by the assessee clearly comes within the category of "illegal gratification" or "bribe". - payment as commission to Government Doctors for obtaining a favour therefrom by prescribing medicines in which the assessee was dealing cannot be said to be a "business expenditure" and no deduction can be allowed thereof under the Act

15 2009 TMI - 35091 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SPECIALITY PAPER CO.

Dated: 07-07-2008

Sections - 037,

Payment of Commission - Whether the Tribunal was right in holding that the payment of commission by the assessee to a private limited company where its partners were directors is valid in law, when there is no evidence to show that the company had in fact rendered any service – held that - From the particulars available on record, it is seen also that the turnover of the appellant-company has steadily risen and the sales commission paid represents two per cent, of the turnover for the year 1999-2000 and 1.50 per cent. for the period under appeal on a turnover of Rs. 9,93,51,290 and Rs. 13,00,97,698 respectively - it is clear that both the authorities have given concurrent finding that commission is paid for rendering service. It is not a perverse order. It is a question of fact. Hence, we do not find any error or infirmity in the order of the Tribunal warranting interference and the same is in accordance with law and accordingly, it is confirmed. – deduction allowed

16 2009 TMI - 35090 - KARNATAKA HIGH COURT

BANASHANKARI MEDICAL AND ONCOLOGY RESEARCH CENTRE LTD. Versus JOINT COMMISSIONER OF INCOME-TAX

Dated: 25-08-2008

Sections - 037,

Hiring of equipments - Capital Expenditure versus Revenue Expenditure – The appellant-assessee has taken certain equipments on lease for which a sum of Rs. 10,00,000 is paid as deposit and it is also paying rentals payable to the owner of the equipments – held that - It is no doubt true that the assessee has paid the deposit of Rs. 10,00,000 which has to be adjusted towards the rentals. When such being the case, we are of the opinion that the Commissioner of Income-tax (Appeals) was justified in reversing the findings of the Assessing Officer, but the Tribunal without considering the legal aspect and without any basis has wrongly come to the conclusion that the assessee has acquired the equipments. On facts, we notice that the assessee has not acquired any assets and only the rentals were paid by the assessee which has to be treated only as an expenditure and not to acquire the assets. In the result, we have to answer

INCOME TAX ACT 1961

CASE LAWS

the question of law in favour of the assessee

17 2009 TMI - 35089 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME TAX Versus MIHIR TEXTILES LTD.

Dated: 05-05-2008

Sections - 037,

Issue of debentures – commitment charges – deduction u/s 37(1) – held that - the appellate authorities have rightly examined the issue by appreciating as to whether the quantum of expenditure is substantial when compared to gross block of assets so as to suggest that there is a replacement of assets on capital account. It has been found on facts that the expenditure is not very high when compared to gross block of assets in light of the depreciation claimed and allowed during the year which comes to the tune of Rs. 2.82 crores - It has to be borne in mind that once statutory appeals are provided in hierarchy where the appellate authority is superior to the Assessing Authority the order of Assessing Authority merges, on the issue contested, in the order of the appellate authority. The powers of the first appellate authority are co-extensive and co-terminus with that of the Assessing Officer and hence, on facts, once the appellate authority finds that the facts recorded by the Assessing Officer are not correct, in the proposed questions, there should be no suggestion to the contrary.

18 2009 TMI - 35088 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SESA GOA LTD.

Dated: 11-12-2008

Sections - 036, 037,

Payment of Bonus – exceeding statutory limit – general practice – ITAT held that the amount of Rs. 18,73,192 paid by the assessee to its workers over and above the Payment of Bonus Act is in the nature of customary bonus and allowed as deduction u/s 36(1)(ii) – held that - , the assessee had been paying bonus for the last 10 years otherwise in excess of the Bonus Act and this had become a practice and the Commissioner of Income-tax (Appeals) as well as the Tribunal have recorded the finding that such bonus was payable as a general practice followed in similar business or profession. – decision of ITAT upheld

19 2009 TMI - 35087 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus BANK OF RAJASTHAN LTD.

Dated: 24-03-2008

Sections - 037, 143,

Deduction of Interest – Security transaction – adjustment u/s 143(1) – whether the difference in interest amount accounted for by the assessee on accrual basis in his books of account and the amount actually offered for taxation in computation of income submitted by the assessee should be the subject-matter of adjustment under section 143(1)(a) for raising a demand of tax and additional tax on that basis – held that - in view of the ratio laid down in Vijaya Bank Ltd.'s case [2008 -TMI - 5316 - SUPREME Court] which very much

INCOME TAX ACT 1961

CASE LAWS

applies to the circumstances and facts of the present case, the judgment of the learned Tribunal cannot be sustained - the questions framed in all the four cases are answered as above in favour of the Revenue and against the assessee

20 2009 TMI - 35084 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus TAMIL NADU ROAD DEVELOPMENT CO. LTD. (No.1)

Dated: 08-07-2008

Sections - 035D, 037,

Amortization of preliminary expenditure – section 35D - expenditure incurred by the assessee on techno-economic feasibility report for the manufacture of the new product – held that - It is an uncontroverted fact that the assessee is in the business of laying road and also a Government of Tamil Nadu company incorporated as a nodal agency for implementation of the Industrial Policy in the State of Tamil Nadu and for creation of infrastructure facilities such as road system highways bridge projects in the State on a commercial frame work. On the abovesaid finding of fact, the Commissioner (Appeals) has come to the conclusion that those expenses cannot be treated as capital expenditure for the current year and the expenses clearly come within the ambit of the provisions of section 35D because these have not been incurred for the expansion or extension of business but merely to find out new ideas by conducting test studies and pilot studies for improving the existing business.

21 2009 TMI - 35077 - KARNATAKA HIGH COURT

DEPUTY COMMISSIONER OF INCOME-TAX AND ANOTHER Versus KARNATAKA BANK LTD.

Dated: 19-03-2008

Sections - 036,

Advances – Bad Debts – held that - According to the Tribunal, the assessee-bank is entitled to the deduction under clause (vii) only of the difference between the provision made under clause (vii) and the bad debts written off in the accounts, without making any distinction in respect of debts relating to urban advances or rural advances. According to us, the Tribunal has not approached the issue in the proper perspective with reference to the provisions of sections 36(1) (vii), (vii) and 36(2)(v) of the Act. Now that we have explained the scope of the provisions of the proviso to clause (vii) of section 36(1) of the Act, we are of the view that the matter requires fresh consideration in the light of the said interpretation.

22 2009 TMI - 35076 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus OMEGA FORWARDERS P. LTD.

Dated: 18-06-2008

Sections - 036,

Money Lending Activity – Bad Debts – held that - Tribunal have categorically found that there was systematic money-lending activity carried on by the

INCOME TAX ACT 1961

CASE LAWS

assessee and further found that the assessee was offering such income as part of business activity in the earlier assessment years such as 1996-97 to 1998-98 and that has been accepted by the Department. It is also brought on record that the Assessing Officer has recorded a finding that after perusal of the memorandum of association, one of the objectives of the assessee has been stated to be money-lending – Deduction on account of bad debts allowed.

23 2009 TMI - 35074 - KERALA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus T. GEORGE AND M. SYED ALAVI

Dated: 17-06-2008

Sections - -

Association of persons - During search, statements were recorded under Section 132 (4) of the I.T. Act. From the seized records it was found that these two persons were engaged in contract work for slaughter tapping and sale of rubber trees from two rubber estates - When Section 147 notice was issued for making income escaping assessment in the hands of association of persons constituting T George and M. Syed Alavi, both of them filed individual returns denying existence of association of persons. Therefore separate assessments were made as protective measure in the hands of both the persons – Before CIT(A) they claimed the existence of AOP – CIT(A) assessed in the hand of AOP – ITAT reversed the order of CIT(A) - held that – AOP was inexistence – Agreement is not required to prove AOP – ITAT order reversed – Assessment to be made in the hands of AOP

24 2009 TMI - 35066 - ALLAHABAD HIGH COURT

COMMISSIONER OF INCOME-TAX Versus LAXMI PD. AND SONS

Dated: 25-02-2008

Sections - 002(31),

Interpretation of will – meaning of person u/s 2(31) – AOP - unexplained assets – held that - Thus it is apparent that an association of persons is a voluntary association of two or more persons who joined together for a particular purpose which may not necessarily be with the object of deriving of income profits or gains. It is also obvious that although the initial object may not have been deriving of income etc. but subsequently income must have arisen, because otherwise the association of persons will not be concerned with the Act. Whatever the object of associating, the association has to be voluntary on the part of the persons forming association. Forced association of persons because of inheriting joint property by a will or such other circumstances not being voluntary would not constitute such joint legatees as association of persons - that the assessee cannot be said to be an association of persons because of the terms of the will under which the two legatees have inherited the assets of the testator jointly, shares of each legatees not being specified

25 2009 TMI - 35065 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus LAND DEVELOPMENT CORPORATION

INCOME TAX ACT 1961

CASE LAWS

Dated: 03-01-2008

Sections - -

Assessment on the basis of survey u/s 133A – cross examination of witness – principle of unnatural justice – held that - . The records show, that the said witnesses were not actually tendered at any time for their cross-examination by the assessee. Thus, according to us, there was no proper opportunity afforded to the assessee to cross-examine the witnesses whose statements were recorded earlier, behind the back of the assessee – matter remanded to the Assessing Officer for affording an adequate and proper opportunity to the assessee for cross-examination of all those witnesses whose statements were recorded earlier and whose statements have already been supplied to the assessee

26 2009 TMI - 35064 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME TAX Versus MOTI RAM (DECEASED)
(through his legal heir Dharam Pal)

Dated: 17-07-2008

Sections - 139, 140, 143,

Return whether null and void – signature u/s 140 – assessment u/s 143(3) – legal heirs – deceased person can or can not authorized a person to represent his case or to sign his return – held that - the return was filed on 28.11.2003. On that day, the assessee had already expired. The return filed with the signatures of the assessee after his death cannot be taken as a valid return filed by the assessee himself. Undisputedly, the return was neither signed nor verified by the legal heirs of the deceased. - Therefore, the return filed in this case was null and void, because the assessee was not alive at the time of filing of the return - no valid assessment could have been made on the basis of an invalid and void return

27 2009 TMI - 35063 - PATNA HIGH COURT

COMMISSIONER OF INCOME-TAX AND OTHERS Versus MD. RIZWAN

Dated: 27-11-2008

Sections - 143, 158BC,

Search and Seizure during appeal before ITAT – merger of block assessment with assessment u/s 143(3) - ITAT allowed the same – held that - the Tribunal erred in holding that assessment framed for the assessment year 1998-99 under section 143(3) of the Act shall merge with the assessment to be made under section 158BC of the Act for the block period April 1, 1996, to October 29, 2002 - there could be a regular assessment in addition to a block assessment under Chapter XIV-B of the Act

28 2009 TMI - 35062 - PATNA HIGH COURT

LALU PRASAD Versus COMMISSIONER OF INCOME-TAX AND OTHERS

Dated: 11-11-2008

Sections - 014, 015, 268A,

Appeal to ITAT – monetary limit – CBDT instruction – change of head of

INCOME TAX ACT 1961

CASE LAWS

income – income from other sources versus salary income - held that - instruction fixing monetary limit for filing of appeal u/s 268A before the Tribunal has statutory flavour and in the back-ground thereof, we are of the opinion that the appeal preferred by the Revenue against the order of the Commissioner of Income-tax (Appeals) was wholly unjustified - that the Tribunal was justified in affirming the change of head of income, income from other source declared by the assessee to income from salary by the Assessing Officer in exercise of the power under section 143(1)(a) of the Act. The natural corollary of the answer of the aforesaid question is that the finding of the Tribunal in regard to the change of head of the income is legal and valid

29 2009 TMI - 35061 - MADRAS HIGH COURT

SOUTHERN PETROCHEMICAL INDUSTRIES CORPORATION LIMITED Versus INCOME-TAX OFFICER

Dated: 21-11-2008

Sections - 144B,

Period of limitation – draft assessment order – depreciation – held that - that when deprecation is not claimed, it cannot be “allowed” - When the original return is withdrawn and revised return is filed, there is no basis on which depreciation can be taken note of. So, the taxation is the consequence of imposition of deprecation, which is not permissible. So, he cannot take advantage of something that he cannot do and then say that since this is prejudicial to the assessee, he will take advantage of the extended period of limitation - Any variation which is illegal or impermissible will cause prejudice per se. No one can take advantage of one's own illegal act or an act which is not legally sustainable. - the invocation of section 144B is impermissible - if Parliament intended that imposition of any variation which is prejudicial to the assessee gave the ITO the power to invoke the provisions of section 144B, then it need not have included the words “in the income or loss returned”. It would have been sufficient to merely say “any variation which is prejudicial to the assessee”.

30 2009 TMI - 35060 - GUJARAT HIGH COURT

SANJAY OILCAKE INDUSTRIES Versus COMMISSIONER OF INCOME-TAX

Dated: 04-03-2008

Sections - -

Assessment – Undisclosed sources – inflated purchase price – held that - the apparent sellers who had issued sale bills were not traceable. That goods were received from the parties other than the persons who had issued bills for such goods. Though the purchases are shown to have been made by making payment thereof by Account Payee Cheques, the cheques have been deposited in Bank Accounts ostensibly in the name of the apparent sellers, thereafter entire amounts have been withdrawn by bearer cheques and there is no trace or identity of the person withdrawing the amount from the bank Accounts - In the aforesaid set of facts and circumstances of the case, the impugned order of the Tribunal is an order which is made in accordance with law and does not require any interference – decided in favor of revenue.

INCOME TAX ACT 1961

CASE LAWS

31 2009 TMI - 35059 - KERALA HIGH COURT

SOUTH INDIAN BANK LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 28-05-2008

Sections - 036, 143,

Bad Debts – prima facie adjustment u/s 143(1) – section 36(1)(ii) – held that - Since assessee is a Scheduled Bank, the further question that requires to be considered is whether in assessee's case that provision for bad debt claimed stands on a different footing - Section 36(1)(vii)(a) in terms of RBI guidelines pertaining to advances made in rural areas. Besides the claim under Section 36(1)(vii)(a), it is seen that assessee had in fact made a huge claim of Rs.8,97,66,930/- towards bad debt written off which included provision of Rs.2,18,56,250/- claimed and disallowed in the preceding year - Since assessee itself does not have a case that it is not written off in the accounts and the claim was only a provision for bad debt, we are of the view that the claim is prima facie inadmissible under Section 36(1)(vii) as the Section does not authorize granting of deduction of any debt unless it is written off in the accounts for the previous year - claim is rightly treated as prima facie inadmissible and no enquiry or hearing is required to disallow the claim

32 2009 TMI - 35058 - PUNJAB AND HARYANA HIGH COURT

R. B. L. BANARSI DASS AND CO. P. LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 12-03-2008

Sections - 143, 154,

Rectification of mistake – assessment – held that - The order dated February 28, 1995, passed by the Assessing Officer under section 143(3) read with section 263 of the Act had attained finality and it was only the order dated February 2, 1996, passed by the Assessing Officer under section 154 of the Act, seeking rectification, which was the subject-matter of challenge before the Commissioner of Income-tax (Appeals). However, the Commissioner of Income-tax (Appeals) illegally set aside the assessment order dated February 28, 1995, passed under section 143(3) of the Act, vide his order dated October 4, 1996 (A-2), with a direction to the Assessing Officer to examine the issue in the light of the provisions of section 50 of the Act - the Commissioner of Income-tax (Appeals) did not enjoy any jurisdiction to set aside the appeal in rectification order

33 2009 TMI - 35056 - MADRAS HIGH COURT

PAY AND ACCOUNTS OFFICER AND OTHERS VERSUS INCOME TAX OFFICER

Dated: 08-07-2008

Sections - 253,

Delay in filing an appeal to ITAT – application of the provisions of limitation act, section 5 – held that - It is an admitted fact that interest imposed on the appellant under Section 201(1A) has been paid by the appellant on protest and pursued the appellate remedy by obtaining necessary sanction from the

INCOME TAX ACT 1961

CASE LAWS

Government in G.O.Ms.No.114 dated 27.3.2002. Thus there is a delay of 701 days, which is explained as administrative delay. The said reason cannot be rejected as it is not sufficient cause. In the facts of the present case, every day's delay cannot be explained and as such the pedantic approach should not be made. The doctrine must be applied in a rational common sense pragmatic manner. The delay in this case cannot be regarded as occasioned deliberately or on account of negligence or on account of malafides. A litigant does not stand to benefit by resorting to delay, but he runs a serious risk. Courts are not respected on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

34 2009 TMI - 35054 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus OFFICE OF THE OFFICIAL LIQUIDATOR

Dated: 11-02-2008

Sections - 035B, 035D, 041, 043B,

Amortization of Preliminary expenses – Business Expenses – Allowance – Remission or cessation of liability – deduction on actual payment basis – held that - the debenture issue expenditure in question is for the purposes of working capital in course of modernisation of the existing plant and machinery. Therefore, this is not a case which can fall within section 35D(1)(i) of the Act - the assessee will not be entitled to any deduction unless the assessee can establish that the advertisement or publicity was being done outside India for and on behalf of the assessee and in respect of goods the assessee deals in or provides in the course of his business u/s 35B - Mere withdrawal of the court cases and submitting the disputes to arbitration would, in no case, amount to cessation of liability, which is the pre-requisite condition, for applying the provisions of section 41 of the Act. The Tribunal has rightly come to the conclusion that in the absence of cessation of liability section 41 of the Act cannot be made applicable

35 2009 TMI - 35053 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus JARNAIL SINGH KARTA

Dated: 12-05-2008

Sections - 056,

Agriculture Income – Income from other sources – estimate – bonafide – held that - the approach adopted by the Assessing Officer, by not relying upon the material produced by the assessee in support of the estimation of income is wrong, because there is no finding that the material sought to be relied upon by the assessee was lacking in credibility. The certificate of average income per acre of land issued by the Village Patwari indicates the income level of Rs.36,000/- per acre which cannot be ignored. Moreover, the assessee had submitted the J-forms evidencing the sale of agricultural produce. No doubt, there is always an element of subjectivity in estimation. However, if it can be made out that the estimate is without any basis or is totally lacking the bona fides and only then the Assessing Officer would be justified in substituting his estimate in place of the estimation of agricultural income done by the assessee. There is no such situation in this case – addition can not be made.

36 2009 TMI - 35049 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus ISHER SINGH

Dated: 24-07-2008

Sections - 253,

Delay in filing an appeal before ITAT – non filing of an application for condonation of delay – held that - Sub-section (3) of section 253 of the Act provides that every appeal under sub-section (1) or sub-section (2) of section 253 of the Act shall be filed within a period of 65 days of the date on which the order sought to be appealed against is communicated to the assessee or the Commissioner, as the case may be. The Appellate Tribunal under sub-section (5) of section 253 of the Act may admit an appeal after the expiry of the relevant period provided it is specified that there was sufficient cause for not presenting the appeal within the time stipulated. Since no application for condonation of delay was filed and there being no reason on record much less sufficient cause for not presenting the appeal within the time stipulated, the Tribunal was left with no option but to dismiss the appeal.

37 2009 TMI - 35048 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME TAX VERSUS MANOJ KUMAR BERIWAL

Dated: 26-06-2008

Sections - 002(43), 249,

Appeal to CIT(A) – condition precedent for entertainment of appeal – pre deposit of tax – held that - Section 249(4) is the provision whereby the remedy of the party is taken away, if there is non compliance with that provisions. It is well settled that when legislature seeks to make a law denying a remedy on failure to comply with deposit, the courts would save the remedy, if possible by the interpretative process. Further in taxing statute, if a view can be taken in favour of an assessee that view is ordinarily preferred - the penalty and interest under the Income Tax Act are different concepts and that definition of tax under Section 2(43) does not include penalty or interest

38 2009 TMI - 35047 - KARNATAKA HIGH COURT

ENDEAVOUR ESTATES P. LTD. Versus ASSISTANT COMMISSIONER OF INCOME-TAX

Dated: 30-01-2008

Sections - 144,

Assessment – sale deed and agreement regarding easmentary rights - The Assessing Officer considered the sale deed executed by the assessee in favour of M/s. McDowell and Co. Ltd. and referred to para 2 thereof which mentions that the right of way for the ingress and egress between the schedule property and the nearest road with all other privileges, easements, tights, incidental to the ownership and enjoyment of the schedule property has been provided. Thus, considering the different clauses of the sale deed, it was held that it is a composite sale deed of land, building and right of way – held that - the appeal does not show or reflect any substantial question of law

INCOME TAX ACT 1961

CASE LAWS

39 2009 TMI - 35046 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus DEV MUSCO LIGHTING P. LTD.

Dated: 02-05-2008

Sections - -

Admission of fresh evidence by commission (appeals) – production of certificate on direction of CIT(A) - opportunity to AO - the production of the certificate cannot strictly be treated as additional evidence having been produced on the direction of the Commissioner of Income-tax (Appeals). This is because the Commissioner of Income-tax (Appeals) has clearly mentioned in his order that it is only to confirm the stand taken by the assessee that the certificate was required. It appears to be quite clear that the Commissioner of Income-tax (Appeals) merely wanted to play safe and, therefore, required the certificate from Musco clarifying the stand of the assessee because even otherwise, without the certificate, the Commissioner of Income-tax (Appeals) could very well have taken a decision on the merits of the matter - , it was not necessary for the Commissioner of Income-tax (Appeals) to obtain the Assessing Officer's response on the facts of this case

40 2009 TMI - 35045 - GUJARAT HIGH COURT

ASSISTANT COMMISSIONER OF INCOME-TAX Versus EMMTICI ENGINEERING LTD.

Dated: 18-07-2008

Sections - 215,

Interest for non deposit of advance tax – debatable addition – held that - Tribunal has observed in its order that the liability for charging interest u/s 215 arose due to addition in total income declared by the assessee and due to acceptance of differences regarding status of the assessee. The Tribunal has further observed, the additions made in the assessment order by the AO were highly debatable and the same were not foreseen at the time of filing the estimate of advance-tax. At the same time, it cannot also be denied the fact that the assessee was under a bona fide belief that its status of a company in which public are substantially interested would be accepted.

41 2009 TMI - 35044 - RAJASTHAN HIGH COURT

SRIRAM AND CO. Versus ASSISTANT COMMISSIONER OF INCOME-TAX

Dated: 28-07-2008

Sections - 144, 145,

Rejection of Books of Accounts – Best Judgment Assessment – held that - when the rejection of books of account was admitted to be correct before the learned Commissioner, these grounds need not have detained the learned Tribunal – appeal dismissed.

42 2009 TMI - 35023 - GUJARAT HIGH COURT

ASSISTANT COMMISSIONER OF INCOME-TAX Versus COROMANDAL INVESTMENT P. LTD.

Dated: 28-07-2008

INCOME TAX ACT 1961

CASE LAWS

Sections - 145,

Accounting – change in the method of accounting – ACIT disapproved a change in the method of accounting effected in the accounting for income and expenditure by way of interest from the mercantile method of accounting which the assessee was following hitherto, to the cash method of accounting the change in the method of accounting adopted by the assessee is genuine and bonafide – held that - There was no reason for the learned Assistant Commissioner of Income Tax to disapprove the said change and merely on the basis of such disapproval, to make an addition of interest income which, in fact, has not been received by the assessee in the year under consideration

43 2009 TMI - 35022 - KARNATAKA HIGH COURT

BHISHMA PITHAMAHA Versus TAX RECOVERY OFFICER

Dated: 01-10-2008

Sections - 222, 223, 224, 225, 226,

Recovery of Tax – Garnishee Proceedings – Mutt property – Attachment – Recovery from third party - the assessee, who is due in money to the Department is the mutt. The petitioner is willing to pay the amounts due to Department by the mutt, provided he is recognised by the Department as the successor of Krishnananda Giri Gowswami of mahant of the mutt. But the Department is not willing to recognise him as the person who has inherited any right in the properties of the mutt or as a successor to the mahant of the mutt - Department issued notice to the garnishee of the petitioner who is holding the money which belongs to the petitioner – held that - the notices issued under section 226(3) of the Act are without jurisdiction and require to be quashed. If any money is already received by the Department from the banks in pursuance of the said notice, they are bound to refund the money to the persons from whom they have received it, i.e., the bankers who have made payment to the Department, as the collection of the said money has no legal basis and is without authority of law.

44 2009 TMI - 35020 - KARNATAKA HIGH COURT

V. K. SUBRAMANIAN Versus ASSISTANT COMMISSIONER OF INCOME-TAX

Dated: 04-01-2008

Sections - 115E, 115H,

Non-resident – concessional rate of tax - The assessee as a doctor was a non-resident and thereafter he returned to India and he brought his earnings earned abroad and invested the same in a bank and was getting interest from such investment as NRI. He was also getting the benefit, namely, the concessional rate of income tax at 21 per cent. under section 115E of the Income-tax Act, thereafter, he filed a declaration to change his status from NRI to resident. The assessee after filing such declaration claimed certain reliefs under section 115H of the Income-tax Act – held that - , in view of the provisions of section 115H of the Income-tax Act, we are of the opinion that the Tribunal was justified in allowing the appeal of the Revenue and setting aside the order passed by the Commissioner of Income-tax (Appeals). - , is not entitled to contend that the amount invested by him in fixed deposit still has to be

INCOME TAX ACT 1961

CASE LAWS

considered as an asset brought from abroad – benefit not allowed

45 2009 TMI - 35006 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus CONCORD PHARMACEUTICALS

Dated: 05-08-2008

Sections - 268A,

Appeal before ITAT – binding nature of CBDT circular – held that - that simply because the appeal is filed by the Department in contravention of the circular, the Tribunal is not bound to decide the appeal on the merits. Due weightage should invariably be given by the Tribunal to the circular issued by the Board. Even otherwise, the newly inserted provisions contained in section 268A(4) make it obligatory for the Tribunal to consider such circular. It is not open for the Department to contend that circulars are internal matters of the Department and the assessee cannot object to filing of an appeal on the basis of such circular. - It is also true that when the hon'ble Supreme Court or the territorial High Court have declared the law on a question, it is not open to the Tribunal to direct that the circular issued by the Board prescribing the monetary limit should be given effect to and not the decision of the hon'ble Supreme Court or the territorial High Court.

46 2009 TMI - 35005 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus DEARAM PAL PREM CHAND LTD.

Dated: 27-11-2008

Sections - 80IB,

Refund of excise duty – deduction u/s 80IB – held that - The finding of the authorities below is that the refund of excise duty is pivoted on the manufacturing activity carried on by the assessee. Once such a finding of fact has been returned we need not go further and examine the immediate and proximate source of refund of excise duty. In other words, as to whether there was direct nexus between the refund of excise duty and industrial activity. As a matter of fact, in the questions proposed by the Revenue, there is no specific question, that this finding of the authorities below is perverse. - There is no ground taken by the Revenue whereby the substantial findings of fact have been challenged by the Revenue as being perverse. - test of proximity, i.e., direct nexus with the industrial activity is not necessary while claiming deduction under section 80-IB of the Act. – Deduction allowed u/s 80IB – decision in the matter of Eltek SGS (2008 -TMI - 3086 - DELHI HIGH COURT) followed

47 2009 TMI - 35004 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX AND OTHERS Versus M. CHELLADURAI AND OTHERS

Dated: 25-02-2008

Sections - 10(10C),

Exemption – voluntary retirement – conditions of the scheme - The assessee

INCOME TAX ACT 1961

CASE LAWS

claimed deduction under section 10(10C) of the Income-tax Act, 1961, for a sum of Rs. 5 lakhs from the benefit received on his voluntary retirement under the scheme called "Early Retirement Option Scheme" – during scrutiny assessment AO demanded the copy of scheme – assessee said the scheme was not available and could not produce the same – AO denied the exemption – before ITAT assessee submitted the scheme and ITAT allowed the exemption accordingly – held that - In order to entitle the person the benefit under section 10(10C) of the Act the provisions of section 10(10C) and rule 2BA (Circular No. 640) should be complied with cumulatively and compliance with some of them would not entitle the employee the benefit as claimed for – Exemption is not allowed – order of ITAT reversed

48 2009 TMI - 35001 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus M. AROKIAM AND ANOTHER

Dated: 01-08-2008

Sections - 010(10C), 260A,

Voluntary retirement scheme – exemption u/s 10(10C) – appeal before high court – CBEC circular no. 279/126/98 dated 27.3.2000 – held that – decision of ITAT is not correct and liable to be set aside allowing the exemption to assessee – but - , the tax effect in one appeal is Rs. 1,49,913 and in another appeal is Rs. 1,83,480, which is below the tax effect fixed in Instruction 1979 Circular F. No. 279/126/98 dated March 27, 2000, wherein it has been stated that an appeal to the High Court could be filed by the Revenue only if the tax effect is more than Rs. 2 lakhs. - rejected the appeal filed by the Revenue on the premise that not only the tax effect involved was below the sum fixed in the circular but also the other qualifications prescribed therein were also not available to carve out and bring the case outside the purview of the circular

49 2009 TMI - 35000 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus DINESHCHANDRA S. SHAH

Dated: 09-07-2008

Sections - 017, 268A,

Appeal to Supreme Court – Certificate of Fitness - whether incentive bonus earned by the assessee as Development Officer of LIC was part of salary within the ambit of section 17 of the Act and no deduction on account of expenses were permissible – held that - we are of the view that even if it is assumed that substantial question of law may arise, looking to the facts of this particular case and considering that low tax effect involved and further considering the Board's "instructions" for the purpose of filing appeal or application, we do not think it just and proper to grant certificate of fitness in the present case. Section 268A of the Act does not render any assistance to the Revenue in the present case. Accordingly, the application for leave to appeal filed by the Revenue deserves to be rejected. It is accordingly rejected.

50 2009 TMI - 34997 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus CHANDULAL alias VALLABHDAS DAMJI

INCOME TAX ACT 1961

CASE LAWS

Dated: 05-08-2008

Sections - 154,

Rectification of mistake - . The Tribunal has also observed in its order that it was clearly mentioned in the assessment order that in the assessment proceedings, the assessee agreed to disallowance on appreciation on trucks and claimed for reducing the income offered of Rs. 1,38,422 as a short-term capital gains under section 50 of the Act. The Tribunal has further observed that the Assessing Officer has not appreciated the contents of the assessment order and has proceeded to invoke the proceedings of section 154 in an arbitrary manner. The Tribunal has also given its finding that there is no case of double benefit of set off of capital gains as pointed out by the Assessing Officer. Since there was no mistake apparent on the face of the record, the Tribunal has confirmed the order of the learned Commissioner of Income-tax (Appeals) whereby the order passed by the Assessing Officer under section 154 of the Act was cancelled. – order of ITAT maintained.

51 2009 TMI - 34952 - ALLAHABAD HIGH COURT

COMMISSIONER OF INCOME-TAX Versus RATAN LAL AGRAWAL

Dated: 07-08-2008

Sections - 271,

Penalty – concealment of income - Tribunal hold that the additions made are intangible and it would be improper to impose any penalty – held that - In the instant case, the assessee was confined to jail in MISA. Unconcerned with the additions which were finally sustained in quantum proceeding, the assessee has given a list of creditors who were not traceable after a gap of about 14 years. The Assessing Officer, vide his order dated March 23, 1985, has observed that money was already refunded along with the interest to the cash creditors - From the above, it appears that there was no mala fide intention on the part of the assessee. In the absence of mens rea, no penalty is sustainable - The answer to the question is in the affirmative, i.e., in favour of the assessee and against the Revenue.

52 2009 TMI - 34937 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus HOYSALA BLOW MOULDERS (INDIA) LTD.

Dated: 13-02-2008

Sections - 80HHC, 143,

Intimation u/s 143(1)(a), (1A) - Deduction u/s 80HHC – whether additional tax under section 143(1A) of the Act can be levied on the assessee in rectification proceedings, which had not been made during the assessment year and that the prima facie adjustment and additional tax levied had been made in the original intimation itself? – held that - The deduction u/s 80HHC can be permitted only if there is positive profit in the exports of both self-manufactured goods as well as in trading goods. If there is loss in either of the two, then that loss could be taken into account for the purposes of computing the profit – yes, additional tax under section 143(1A) of the Act can be levied on the assessee in rectification proceedings, which had not been made during the assessment year and that the prima facie adjustment and additional tax levied had been

INCOME TAX ACT 1961

CASE LAWS

made in the original intimation itself

53 2009 TMI - 34896 - RAJASTHAN HIGH COURT

SARAF SEASONING UDYOG Versus INCOME-TAX OFFICER

Dated: 21-08-2008

Sections - 80IB,

Industrial Undertakings – exemption u/s 80IB – sale / transfer of DEPB licence – ITAT hold that the income derived by the assessee from the sale of DEPB licences was not the profit and gains from the industrial undertaking – held that - the question, as framed, is required to be, and is, answered in favour of the assessee, and against the Revenue, in the manner, that the Tribunal was not justified in holding that the income derived by the assessee from the sale of DEPB licences was not profit and gain from industrial undertaking which was held to be eligible to claim deduction under section 80-IB of the Income-tax Act, 1961, otherwise - is held entitled to deduction under section 80-IB, for both the years

54 2009 TMI - 34894 - MADRAS HIGH COURT

SAKTHI FOOTWEAR Versus ASSISTANT COMMISSIONER OF INCOME-TAX (No. 2)

Dated: 06-08-2008

Sections - 80IB,

Industrial under taking – exemption under section 80IB – duty drawback - While completing the assessment, the Assessing Officer disallowed the claim of deduction under section 80-IB on export incentives in a sum of Rs. 1,45,85,838 on the premise that the claim of the appellant that the duty draw back benefit was derived from the industrial undertaking – held that - Having regard to the language of section 80-I, in the face of the decisions of the apex court which were consistently followed by this court, we do not find any wound to admit the appeal on the first ground, viz., entitlement of the appellant to deduction under section 80-I in respect of duty drawback – benefit denied.

55 2009 TMI - 34681 - SUPREME COURT

COMMISSIONER OF INCOME-TAX Versus MOSER BAER INDIA LTD.

Dated: 14-11-2008

Sections - 271,

Penalty u/s 271(1)(c) – amendment to section 271(1) was only clarificatory in nature and applicable to earlier years also – penalty is leviable even if the assessed income is NIL – since question of concealment was not gone through was not considered by ITAT or HC, the matter is remanded back to ITAT for consideration.

56 2009 TMI - 34673 - ALLAHABAD HIGH COURT

OXFORD ACADEMY FOR CAREER DEVELOPMENT Versus CHIEF COMMISSIONER OF INCOME-TAX AND OTHERS

Dated: 04-12-2008

INCOME TAX ACT 1961

CASE LAWS

Sections - 012A,

Cancellation of registration u/s 12A – Charitable Institution – Held that - , the assessee is preparing students by providing coaching/guidelines to get admissions in professional institutions to pursue their studies. The sense in which the word “education” has been used in section 2(15) of the Act is the systematic instruction, schooling or training given to the young in preparation for the work of life. Similarly, extending financial assistance/scholarship, etc., to students for their educational purpose would squarely and fairly fall within the connotation of “education” - after registration, further probe into object is not permissible – order for cancellation of registration quashed – exemption restored.

57 2009 TMI - 34671 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus RAM DEV KUMAR CHITLANGIA

Dated: 16-05-2008

Sections - 068,

Genuineness of NRI Gift - assessee failed to prove the capacity of the donor who is stranger as gift was not made on any social occasion – held that - , the question as whether it is established on record that the gift given is genuine would essentially be a question of fact - , identity of all the donors is not in dispute, the transactions have been channelised through bank and four of the gifts are by the blood relations, apart from the fact, that blood relationship is not necessary. There is no tangible material collected by the Assessing Officer to show anything, which may cast any doubt on the genuineness of the gift or to establish that the purported transactions of gift were otherwise transactions of money laundering, or the like - , since the authorities below, i.e., the learned Commissioner and the learned Tribunal, have examined the matter on correct parameters and have arrived at a conclusion in favour of the assessee, in our view, the findings do not require any interference – decided in favor of assessee

58 2009 TMI - 34668 - MADRAS HIGH COURT

GENERAL OPTICS (ASIA) LTD. Versus DEPUTY COMMISSIONER OF INCOME-TAX

Dated: 22-12-2008

Sections - 080HHC, 080IA,

Relief under two sections simultaneously – effect of amendment - ITAT hold that relief under section 80-IA should be deducted from the profits and gains of the business before computing the relief under section 80HHC – held that - amendment has been brought by the Act of 1998 and made effective from April 1, 1999 - the Tribunal erred in applying it to the assessment year 1998-99 when the amendment had not yet come into effect - substantial question of law is answered in favour of the assessee, but restricting it only to the assessment year 1998-99

59 2009 TMI - 34667 - RAJASTHAN HIGH COURT

INCOME TAX ACT 1961

CASE LAWS

COMMISSIONER OF INCOME-TAX Versus PADAM SINGH CHOUHAN

Dated: 06-02-2008

Sections - 068,

Addition on account of Gifts received – ITAT deleted the addition of Rs. 4,50,000, Rs. 2,50,000 and Rs. 2,00,000, which have been received on account of gift – Held that - there is no legal basis to assume, that to recognize the gift to be genuine, there should be any blood relationship, or any close relationship, between the donor and the donee. Instances are not rare, when even strangers make gifts, out of very many considerations, including arising out of love, affection and sentiments - when the assessee has produced the copies of the gift deeds and the affidavits of the donors, in the absence of anything to show, that the act of the assessee in claiming gift, was an act by way of money laundering, simply because he happens to receive gifts, it cannot be said that, that is required to be added in his income.

60 2009 TMI - 34662 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus JINDAL VEGETABLES PRODUCTS LTD.

Dated: 06-11-2008

Sections - 032, 068,

Disallowance of depreciation Rs. 22,67,980 – expenditure on purchase of plant and machinery Rs. 39,46,250 – unexplained expenditure - Commissioner of Income-tax (Appeals) came to the conclusion that the Assessing Officer had erred in treating the value of the said purchases as unexplained expenditure by the assessee - The Commissioner of Income-tax (Appeals) concluded the evidence produced by the assessee in the form of relevant invoices, correspondence with the supplier as well as sales tax declaration form given by the said supplier, and also, the fact that transactions were duly reflected in the books of account of the assessee lent credence to the stand taken by the assessee – C(A) deleted both the additions – ITAT upheld the order of C(A) – held that - There is no question of any perversity in the findings of fact. There is, in our opinion, no question of law, much less a substantial question of law, which has arisen for our consideration – revenue appeal dismissed.

61 2009 TMI - 34660 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus ANSAL PROPERTIES AND IND. P. LTD.

Dated: 24-07-2008

Sections - 113, 263,

Application of surcharge u/s 113 on search – power to initiate proceedings u/s 263 – Held that - Supreme Court has taken the view that the proviso to section 113 is clarificatory in nature and, therefore, surcharge on undisclosed income would be leviable - once the Commissioner of Income-tax (Appeals) had already shut the issue of levy of surcharge by the order dated December 11, 2003, it was not open to the Commissioner to invoke the provisions of section 263 and to reopen the issue over again - the issue was clearly debatable at the time when the notice and the order under section 263 were issued and passed.

INCOME TAX ACT 1961

CASE LAWS

Consequently, the only conclusion that can be arrived at is that the initiation of proceedings under section 263 were without jurisdiction – order u/s 263 is not maintainable.

62 2009 TMI - 34659 - PATNA HIGH COURT

BIHAR STATE HOUSING CO-OPERATIVE FEDERATION LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 28-03-2008

Sections - 80P,

Deduction / exemption u/s 80P(2)(a)(i) - interest on bank deposit is not ancillary and incidental to carrying on of the business of providing credit facility to its members – held that - a sum of Rs. 15,98,592 received by way of interest on bank deposit is ancillary and incidental to carrying out the business of providing credit facility to its members, and, as such, exempt under section 80P(2)(a)(i) of the Act - the Tribunal was not correct in remitting the case back to the Assessing Officer for fresh computation of income in the face of the income of the assessee being exempt from tax

63 2009 TMI - 34658 - MADRAS HIGH COURT

C. PACKIRISAMY Versus ASSISTANT COMMISSIONER OF INCOME-TAX

Dated: 05-12-2008

Sections - 80U, 144,

Disallowance of opening capital - held that - In case the estimate made by the Assessing Officer is based on some materials, no interference is possible. Such estimation also involves some guess work and no mathematical formula could be developed in such cases for the purpose of making the estimation and to pass a best judgment assessment. The estimation made by the Assessing Officer by determining the net profit at 5 per cent. was reduced by the Commissioner (Appeals), and the said estimate being made on the basis of the established principles, we do not find any error so as to interfere in such estimation. The authorities below were fully justified in estimating the income from the business on the best judgment basis - deduction on account of disallowance of opening capital was made on account of the failure of the assessee to explain the source of opening capital in a satisfactory manner – decided against the assessee

64 2009 TMI - 34657 - PUNJAB AND HARYANA HIGH COURT

CHAND PARKASH VIJ Versus COMMISSIONER OF INCOME-TAX

Dated: 12-12-2008

Sections - 147, 148,

Notice u/s 148 - After assessment, the Assessing Officer received information from the Assistant Director of Income-tax (Investigation), vide letter dated February 11, 2004, that the assessee deposited a sum of Rs. 11,33,800 on September 24, 1997, in cash in his savings bank account. On receiving the said information, notice for reassessment under section 148 of the Act was given to the assessee, proposing to treat the amount of the said cash deposit in the bank as undisclosed income – Held that - The assessee had put up the

INCOME TAX ACT 1961

CASE LAWS

story - , the story put forth by the assessee remained unproved - assessee did not provide his address to the Assessing Officer nor was this person produced before the authorities – Order of ITAT upheld confirming the orders of the authorities below upholding the addition of Rs. 11,33,800 as unexplained credit in the bank account of the assessee

65 2009 TMI - 34654 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus LUCAS INDIAN SERVICES LTD.

Dated: 10-11-2008

Sections - 145,

Interest Accrued but not due – ITAT hold that that a sum of Rs. 7,93,423 being the interest accrued but not due should not be included in the taxable income of the assessee - mercantile system of accounting – held that - The Assessing Officer accepted the method of accounting followed by the assessee during the earlier assessment years, but, without any change in circumstance, changed the method of assessment during the financial years in question, which, in our considered opinion, is unsustainable - appeals are dismissed answering the substantial question of law raised against the Revenue and in favour of the assessee

66 2009 TMI - 34653 - KARNATAKA HIGH COURT

SMT. GANGAMBIKA Versus INCOME-TAX OFFICER

Dated: 29-02-2008

Sections - 147, 148,

Reopening of assessment - no fresh facts or materials – the assessee and her other three sons are the co-owners of the property and as such are entitled to receive the income from the said property in their individual right and the dual ownership of the house property with regard to the land and superstructure has been legally recognised under section 22 of the Act - held that – in similar situation the case was remanded back in earlier proceeds – this case also remanded back.

67 2009 TMI - 34650 - KARNATAKA HIGH COURT

CIT AND ANOTHER Versus VIDYA SAGAR EDUCATIONAL TRUST (and vice versa)

Dated: 16-07-2008

Sections - 010(22), 010(23C), 272A,

Penalty u/s 272A(2)(e) - ITAT granted relief in part by holding that when the application was not filed by the assessee claiming exemption under sections 11 and 12 of the Act and when the Department has refused to grant exemption claimed by the assessee under sections 11 and 12 of the Act, the Revenue cannot invoke section 139(4A) of the Act and, therefore, held that levying of penalty invoking the provisions of section 272A(2)(e) of the Act was not proper – held that - of penalty levied under section 272A(2)(e) of the Act has to be re-examined by the Assessing Officer - assessing authority directed to consider the effect of grant of registration in favour of the assessee under section 12A of the Act and pass an appropriate order in accordance with law

INCOME TAX ACT 1961

CASE LAWS

68 2009 TMI - 34649 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus STATE BANK OF MYSORE

Dated: 27-02-2008

Sections - -

Tax on Interest on securities as per the provisions of the Interest-tax Act, 1974 – held that - that there is a basic difference between loans and advances on the one hand and investment/securities on the other hand. This difference is indicated in the Income-tax Act, the Companies Act as well as the Banking Regulation Act - interest earned by the banks on dated Government securities is not liable to interest-tax under section 2(7) read with section 4 of the Interest Act, 1974 - question of law as formulated in the appeal has to be answered in favour of the assessee and against the Revenue

69 2009 TMI - 34647 - GUJARAT HIGH COURT

DEPUTY COMMISSIONER OF INCOME-TAX (ASSESSMENT) Versus ASSOCIATED CROWN CLOSURES P. LTD.

Dated: 18-07-2008

Sections - 115J, 234B, 234C,

Charging of interest u/s 234B and 234C – ITAT directed not to charge interest under sections 234B and 234D of the Act since the total income was determined under section 115J of the Act – held that - that interest is not leviable under sections 234B and 234C of the Income-tax Act, 1961, in the case of an assessment of a company on the basis of book profits under section 115J, since the entire exercise of computing income under section 115J can only be done at the end of the financial year, and the provisions of sections 207, 208, 209 and 210 cannot be made applicable until and unless the accounts are audited and the balance-sheet prepared – decided in favor of assessee.

70 2009 TMI - 34646 - CALCUTTA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus MCC INVESTMENT AND LEASING COMPANY LTD.

Dated: 07-02-2008

Sections - -

Tax on interest u/s 12A of the Interest tax Act, 1974 - The Commissioner of Income-tax invoking section 19 of the Act cancelled the assessment made by the Assessing Officer and directed the Assessing Officer to levy interest-tax treating the assessee as financial institution - learned Tribunal dealt with the matter extensively and thereafter came to the conclusion that the assessee does not fall under the definition of section 2(58)(iv) of the Act and, therefore, the assessee is not liable for interest-tax as levied by the Department – Held that - We do not find any reason to interfere with the order so passed by the learned Tribunal nor the order so passed by the learned Tribunal suffers from any legal infirmity nor we find that any substantial question of law is involved in this appeal – revenue appeal dismissed.

INCOME TAX ACT 1961

CASE LAWS

71 2009 TMI - 34644 - KERALA HIGH COURT

SATHYAPALAN AND CO. Versus CHIEF COMMISSIONER OF INCOME-TAX

Dated: 01-02-2008

Sections - 119, 234B, 234C,

Application for waiver of interest - Chief Commissioner has declined petitioner's application for waiver of interest payable under sections 234B and 234C - the Chief Commissioner has pointed out that the petitioner has not satisfied any of the conditions for waiver referred to in the circular issued under section 119(2)(a) of the Income-tax Act, 1961 - Commissioner noticed that the assessee made substantial investment in immovable property and in the construction of hospital building during the previous years which go to show that the assessee had liquidity to pay advance tax – held that - original petition is dismissed as devoid of any merit

72 2009 TMI - 34622 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus ORIENTAL INSURANCE CO. LTD.

Dated: 21-10-2008

Sections - 194A,

TDS – Insurance Claim - Compensation paid to victim along with Interest – Held that - It is pertinent to note that most of the victims in the motor vehicle accident who get compensation belong to poorer strata of the society. They may not incur any tax liability. The Tribunal has rightly directed that the interest paid above Rs. 50,000 is to be split and spread over the period from the date interest is directed to be paid till its payment. If the spread over is given in majority of cases the respondent may not incur liability to pay any TDS. In the event, the respondent remits TDS amount as directed by the Tribunal, the Revenue is directed to hold suo mottu enquiry by issuing notice to the persons who have received compensation to find out their tax liability on the interest received. If it is found that there is a tax liability on the person concerned, the Revenue should collect the tax from the person concerned and refund the amount to the respondent. So also, if there is no tax liability on the person concerned, the TDS collected should be refunded to the respondent.

73 2009 TMI - 34608 - CALCUTTA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus COATS OF INDIA LTD.

Dated: 08-09-2008

Sections - 047,

Transfer of business undertaking – applicability of section 47(iv) - After taking such into account, the learned Tribunal held that from the facts as are brought on record, CC IPL was 100 per cent. subsidiary of the respondent-company and the said company was an Indian company. In the said factual circumstances, the provisions of section 47(iv) were applicable in respect of transfer of business undertaking. – Held that - we do not find that there is any illegality or irregularities in respect of the order so passed by the learned Tribunal and we

INCOME TAX ACT 1961

CASE LAWS

express the same view as has been expressed by the learned Tribunal and uphold the order

74 2009 TMI - 34606 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus KISHAN KUMAR AND OTHERS

Dated: 05-02-2008

Sections - 158BB, 158BC,

Valuation – Stamp Duty Valuation – whether the consideration shown in the document of conveyance, is the actual amount paid by way of consideration to be taken to be undisclosed income of the assessee, or it is a deflated figure and, therefore, addition is required to be made - Held that - Admittedly, in the present case, apart from relying upon the Stamp Valuation Authority's rates there is no other material and in our view, the Stamp Valuation Authority's rates cannot be taken, by itself, as the price, for which the property was purchased by the seller for the purpose of making assessment under section 158BC read with section 158BB of the Act - The net result of the aforesaid discussion is that the question as framed is answered against the Revenue and in favour of the assessee

75 2009 TMI - 34603 - UTTARAKHAND HIGH COURT

COMMISSIONER OF INCOME-TAX Versus HOTEL SAKLANI

Dated: 08-08-2008

Sections - 142A,

Interpretation of section 142A - Estimate by Valuation Officer in certain cases - appellant submitted that the Income-tax Appellate Tribunal has erred in law in rejecting the application for rectification moved by it before said authority. It is further pointed out that section 142A of the Act was made applicable with effect from November 15, 1972. – Held that - the proviso contained in section 142A of the Act excludes those assessments from the purview of the section which were concluded before September 30, 2004. Had the Revenue filed appeal in the High Court against the order passed by the Income-tax Appellate Tribunal on March 22, 2004, it could have been said that the assessment has yet not been finalized. - In such circumstances, it cannot be said that the ITAT has committed any error of law in rejecting the application for rectification moved by the Revenue/appellant particularly when no mistake is shown to have been committed.

76 2009 TMI - 34602 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus GILLETTE GROUP INDIA P. LTD.

Dated: 25-02-2008

Sections - 035D, 043A,

Payment related to advice on business strategy, marketing and sales planning, possibilities of joint venture and acquisition, etc., etc. –the assessee has already commenced its business and, therefore, the first part of section 35D of the Act would not be applicable the assessee has already commenced its business and, therefore, the first part of section 35D of the Act would not be

INCOME TAX ACT 1961

CASE LAWS

applicable - the assessee does not have any industrial undertaking and, therefore, the second part of section 35D, would also not be applicable - the expenses incurred towards consultancy charges are for the purposes of carrying out the existing business more efficiently. - Regarding the applicability of section 43A of the Act with regard to additional liability incurred on account of fluctuations in the foreign exchange rate - held that the additional liability was for the purpose of the business of the assessee and not in relation to a capital expense. On this basis, the Tribunal allowed a deduction of the enhanced liability of the assessee. – Revenue appeal dismissed.

77 2009 TMI - 34345 - PATNA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus ALKEM LABORATORIES P. LTD.

Dated: 21-02-2008

Sections - 030, 037,

Expenditure on repairs of rental premises and plumbing work - The Assessing Officer disallowed both the claims as he was of the opinion that these two items were capital expenditure of the assessee - Sections 30 to 36 of the Act provides for various deductions which is available while computing the income from business and profession. Section 37 is a general section which provides for deduction of expenditure not included in any of the sections 30 to 36 of the Act. - the provisions of section 37 of the Act cannot be given a restricted meaning. Mere fact that the claim does not fall in any of the sections 30 to 36 will not automatically make the claim unsustainable under section 37(1) of the Act as well. Section 37 being a general section, is for grant of deduction on certain accounts not enumerated in sections 30 to 36 of the Act

78 2009 TMI - 34342 - PATNA HIGH COURT

LAWLYS ENTERPRISES P. LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 30-07-2008

Sections - 036,

Bad debts - The Assessing Officer did not allow the bad debts because in his opinion there was no evidence to establish that the debts had actually become bad during the relevant accounting period – ITAT confirmed the disallowance of bad debts - on the ground of absence of bill No. and date – Held that claim of bad debts should be allowed – However on the issue of evidence matter forwarded to the Patna Bench of the Income-tax Tribunal.

79 2009 TMI - 34338 - SUPREME COURT

SHREYANS INDUSTRIES LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 23-09-2008

Sections - 037, 260A,

Revenue Expenditure Versus Capital Expenditure - Nature of expenditure on construction of the open drain for disposal of effluents – ITAT allowed the expenditure under the head 'building account', for the construction of drainage for disposal of effluents by treating the same as revenue expenditure – HC

INCOME TAX ACT 1961

CASE LAWS

reversed the order of ITAT – held that - , framing of a proper substantial question of law is a mandatory requirement under section 260A of the Income-tax - since the High Court has not formulated a correct substantial question of law and since the High Court is required to take into account all the above mentioned facts and circumstances of the case, we set aside the impugned order and remit the matter to the High Court for fresh consideration in accordance with law

80 2009 TMI - 34335 - SUPREME COURT

DIRECTOR OF INCOME-TAX AND OTHERS Versus DR. NALINI MAHAJAN

Dated: 30-09-2008

Sections - 132,

Search and Seizure – Section 132(1) - Jurisdiction of Additional Director (Investigation) - High Court declared the Notification dated September 6, 1989, as void to the extent indicated in the judgment. It is this decision of the High Court, basically which is under challenge before us in these civil appeals. The above question has become academic for the simple reason that after the impugned judgment, the Commissioner of Income-tax, Delhi, has issued order under section 132B for release of cash, for release of jewellery and for release of books of account that were seized during the search and seizure operation conducted under section 132(1) of the 1961 Act.

81 2009 TMI - 34245 - KARNATAKA HIGH COURT

ASSISTANT COMMISSIONER OF INCOME-TAX Versus MAINI PRECISION PRODUCTS P. LTD.

Dated: 21-02-2008

Sections - 80HHC,

Deduction u/s 80HHC – Machining Charges – ITAT held that the machining charges are not to be excluded for the purposes of determining the 'profits of the business' as defined in clause (baa) of the Explanation to sub-section (4B) of section 80HHC of the Act – Held that when the Tribunal had been taking inconsistent view for different assessment years, matter remanded to ITAT

82 2009 TMI - 34243 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus PRO SEAL CLOSURES P. LTD.

Dated: 22-07-2008

Sections - 80HHC,

Deduction u/s 80HHC – was while computing deduction under section 80HHC, whether the loss incurred by the assessee for the previous years has to be given set off or not – In view of the decision of hon'ble Supreme Court in Synco Industries Ltd. v. Assessing Officer (Income-tax) [2008 -TMI - 3485 - Supreme court] AO directed to follow the guidelines prescribed therein.

83 2009 TMI - 34242 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus B. SUMANGALADEVI

INCOME TAX ACT 1961

CASE LAWS

Dated: 08-01-2008

Sections - 148,

Authority to issue notice u/s 148 - the notice should have been issued under section 151(2) of the Act, which requires that it should have been issued by an officer holding a rank of not less than a Deputy Commissioner - assessment order framed under section 143(3) read with section 147 as bad in law and consequently quashed.

84 2009 TMI - 34172 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus ADAR TEA PRODUCTS COMPANY

Dated: 23-12-2008

Sections - 032,

Rate of Depreciation – 100% depreciation on certain goods - The table includes energy saving device in the context and for the purpose of encouraging industries to adopt energy saving measures - While it was possible, in the context of encouraging industrial activity, to bring within the net of exemption, manufacture of products which may even be remotely considered as “paper” – but the same reasoning can not be adopted here - since the table indicates its intention to afford depreciation at the rates mentioned only to the specifically listed equipments - It is not even proved that a drier of the kind mentioned herein is an energy saving device – tribunal is not correct to allow 100% depreciation on fluid bed drier.

85 2009 TMI - 34171 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus FAL INDUSTRIES LTD.

Dated: 12-11-2008

Sections - 80HH, 80HHC, 145,

How to calculate ten years for claiming exemption u/s 80HH – tribunal allowed deduction u/s 80HH for the 11th year on the ground that for the first year there was no specific previous year – held that tribunal is incorrect in allowing deduction for the 11th year – sales tax does not form part of total turnover for the purpose of calculation of deduction under section 80HHC - interest accrued but had not become due in the present assessment year is not assessable to tax for the assessee following the mercantile system of accounting

86 2009 TMI - 34130 - KARNATAKA HIGH COURT

MOTOR INDUSTRIES CO. LTD. Versus COMMISSIONER OF INCOME-TAX AND ANOTHER

Dated: 22-01-2008

Sections - 154, 244A,

Rectification of Mistake - When the assessee has seriously contested contending that section 154 of the Income-tax Act has no application in regard to the withdrawal of interest awarded under section 244A(3) of the Income-tax Act, the Assessing Officer while passing the order under section 154 of the Income-tax Act was required to give his reasoning to reject the contention of

INCOME TAX ACT 1961

CASE LAWS

the assessee. But such a reasoning is not available in the order passed by the Assessing Officer. Though the Commissioner has made an attempt to justify the order passed by the Assessing Officer, we are of the opinion that it was for the Assessing Officer to give the reasoning to reject the contention of the assessee – matter remanded to pass and order on the merits

87 2009 TMI - 34116 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus WELCAST STEEL LTD.

Dated: 21-02-2008

Sections - 80HHC,

Export – Negative export profits - Undoubtedly, section 80HHC has been incorporated with a view to provide incentive to export houses. Even though a liberal interpretation has to be given to such a provision, interpretation has to be as per the wording of the section. If the wording of the section is clear, then the benefits which are not available under the section can not be conferred by ignoring or misinterpreting words in the section - negative export profits can not be ignored when aggregating the total turnover including other export by not taking into consideration the specific definition adduced in section 80HHC read with section 80AB of the Act for the purpose of computing deduction under section 80HHC of the Act – decided in favor of revenue – tribunal order is not correct.

88 2009 TMI - 34057 - CALCUTTA HIGH COURT

SIMPLE VINIYOG P. LTD. Versus COMMISSIONER OF INCOME

Dated: 20-11-2008

Sections - 127,

Change in Jurisdiction – Section 127 – Opportunity of being heard - Files Transferred from Kolkata to Ranchi – Assessee raised the objection – From the order impugned at appeared the department “considered” the written objection. “consideration” means taking into account and dealing with the materials on record leading to a decision. However, the order impugned is silent how the replies and enclosures on record were considered. Therefore, the logical conclusion would be that the materials on record were not considered at all. Further, section 127 of the Act postulates that the assessee should be given a reasonable opportunity of being - Held that the order impugned passed under section 127 of the Act cannot be sustained and is, thus, set aside and quashed. The writ petition is allowed. Department directed to proceed afresh in accordance with law after giving the petitioner an opportunity of hearing on the basis of materials already on record.

89 2009 TMI - 34053 - MADHYA PRADESH HIGH COURT

VINDHYA TELELINKS LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 19-08-2008

Sections - 80HH, 80I,

Interest Income from short term deposit of money and security deposit – Deduction u/s 80HH and 80-I - The word “derived” is not a term of art. Its use in

INCOME TAX ACT 1961

CASE LAWS

the definition indeed demands an enquiry into the genealogy of the product. But the enquiry should stop as soon as the effective source is discovered. In the genealogical tree of the interest land indeed appears in the second degree, but the immediate and effective source is rent, which has suffered the accident of non-payment. And rent is not land within the meaning of the definition - assessee is not entitled to deduction on interest received on term deposit with M. P. E. B. for supply of high tension electricity.

90 2009 TMI - 34052 - PUNJAB AND HARYANA HIGH COURT

HMM LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 30-09-2008

Sections - 032A, 035B, 037, 040, 040A,

Various Issues - Cash Payment towards the medical expenses by way of payment of premium towards group medical insurance scheme and reimbursement of medical expenses, electricity, water and gas charges shall not be treated as perquisite while computing disallowance under section 40(c)/40A(5) – But the provisions of section 40A(5)(C) applicable to salary and perquisite paid to employees - roads constructed within the factory premises does not constituted plant and does not qualified for the grant of investment allowance under section 32A – Surtax is not deductible while arriving at the taxable income – freight expenses, octroi duty, bank charges, trunk call charges, insurance charges are not eligible for weighted deduction u/s 35B

91 2009 TMI - 34051 - KERALA HIGH COURT

KALPAKA BAZAR Versus COMMISSIONER OF INCOME-TAX

Dated: 26-11-2008

Sections - 271,

Penalty – Concealment of Income - disputed amount represents proforma invoices which do not represent actual purchases and so much so, the disputed expenditure is bogus purchase accounted by the assessee. Accounting of bogus purchase expenditure is nothing but concealment and therefore, penalty was rightly levied which got confirmed in appeal.

92 2009 TMI - 34040 - KERALA HIGH COURT

ALLEPPEY FINANCIAL ENTERPRISES Versus COMMISSIONER OF INCOME-TAX

Dated: 07-04-2008

Sections - 120, 127, 158BC,

Search and Seizure – Special Jurisdiction by Notification - Even though appellant was an assessee before the Income Tax Officer, Ward II, Alleppey, file was sent to the Assistant Commissioner of Income Tax, Investigation circle, Kottayam for completing the block assessment pursuant to search under Section 158BC – HC observed that this is not a case of transfer of file u/s 127 – validity of assessment upheld.

93 2009 TMI - 34038 - DELHI HIGH COURT

INCOME TAX ACT 1961

CASE LAWS

COMMISSIONER OF INCOME-TAX Versus HITASHI ESTATES LTD.

Dated: 26-11-2008

Sections - 045,

Surrender of Tenancy Right – Capital Gains – Property was taken on rent by the assessee. Assessee made improvements in the said rented premises and retained the same for more than five years. The said property was shown as inventory in its balance-sheets for several years. Later the assessee surrendered the tenancy rights in the said property to the owner for a consideration. In the year in question, the assessee showed the said property as a capital asset and the loss incurred on surrender of the tenancy rights in the said property was claimed at Rs. 14,10,737 after claiming the benefit of indexation. The Assessing Officer did not allow this claim. CIT(A) confirmed the stand of AO but tribunal upheld the claim of assessee – HC upheld the order of Tribunal on various grounds and reasonings

94 2009 TMI - 34037 - SUPREME COURT

**RAJASTHAN STATE MINES AND MINERALS LTD. Versus
COMMISSIONER OF INCOME-TAX**

Dated: 25-08-2008

Sections - 035E, 037,

Capital Expenditure versus Revenue Expenditure – AO observed that in view of the past history of the case, the expenditure towards development and prospecting charges amounting to Rs.1460729/- is treated as of capital nature and disallowed – tribunal upheld that disallowance as prospecting expenses were included on expenditure of corporate plan which does not pertain to prospecting expenses. High dismissed the petition on the ground of substantial question of law. Assessee contended that this expenditure was incurred for orientation of the administrative set up and this was in the nature of revenue receipt – SC held that impugned judgment proceeded to invoke the provisions of Section 37(1) of the Income Tax Act. Had the High Court considered the claim of the appellant in the light of Section 35E(2), it might have arrived at a different conclusion. Matter remanded to HC for reconsideration.

95 2009 TMI - 34035 - KARNATAKA HIGH COURT

**COMMISSIONER OF INCOME-TAX AND ANOTHER Versus KARNATAKA
VIDYUTH KHARKHANE LTD.**

Dated: 09-01-2008

Sections - 148,

Period of limitation - section 148 – notice for reassessment – Notice under section 148 of the Act was issued on the assessee on October 11, 1999, and served on the assessee on October 30, 1999 - Finance Act, 2006, a proviso is introduced to section 148 with retrospective effect on October 1, 1991. This proviso was not there when the case was decided by the Tribunal. Held that, by considering the amended provisions of section 148, we are of the opinion that the notice issued under section 143(2) of the Income-tax Act by the Revenue on the assessee was well within time. – Revenue appeal allowed in its favour and against the assessee relying upon the amended provisions of section 148

INCOME TAX ACT 1961

CASE LAWS

– Matter remanded to tribunal for decided the remaining issues.

96 2009 TMI - 34034 - KERALA HIGH COURT

KUTTOOKARAN MACHINE TOOLS Versus ASSISTANT COMMISSIONER OF INCOME-TAX AND ANOTHER

Dated: 18-03-2008

Sections - 271,

Penalty – Concealment of Income - assessee made bogus claims of investment allowance and depreciation in respect of machinery which were not purchased, installed or commissioned during the previous year. The assessee has no case that it had in fact purchased and installed the machinery in respect of which benefits were claimed under the statute. On the other hand, the assessee's case is that this is a mistake committed by the auditor and so much so the assessee is not liable to be subjected to penalty. – Held that though prepared by the auditor for the assessee, it was for the assessee to ensure that wrong claims are not made by the practitioner or auditor. Penalty imposed u/s 271(1)(c) is valid.

97 2009 TMI - 34032 - KERALA HIGH COURT

MRS. MEERA JACOB Versus INCOME-TAX OFFICER

Dated: 09-06-2008

Sections - 54F,

Capital Gains – Exemption u/s 54F - Construction of a house only qualifies for exemption on the investment. Even addition of a floor of a self-contained type to the existing house would have qualified for exemption. However, since the assessee has only made addition to the plinth area, which is in the form of modification of an existing house, she is not entitled to deduction claimed under section 54F of the Act.

98 2009 TMI - 34031 - SUPREME COURT

COMMISSIONER OF INCOME-TAX Versus R. M. P. PLASTO P. LTD.

Dated: 03-11-2008

Sections - 271,

Penalty – concealment of income – tribunal cancelled the penalty levied under section 271(1) (c) of the Act on the ground that there was loss assessed in the year under consideration – where facts was that there was positive income which was reduced to nil only after allowing set off of carried forward losses of earlier years – SC uphold the levy of penalty.

99 2009 TMI - 33990 - GUJARAT HIGH COURT

ELSCOPE P. LTD. Versus COMMISSIONER OF INCOME-TAX (and vice versa)

Dated: 23-01-2008

Sections - 028, 037, 041,

Capital or Revenue Expenditure – Going Concern – Payment of guarantee

INCOME TAX ACT 1961

CASE LAWS

commission can not disallowed – The assessee had acquired four divisions during the year as going concerns along with their assets and liabilities which included amounts payable to four investment companies in five annual equal instalments - The amount due to these investment companies, by mutual agreement, commuted at a discounting rate of 12 per cent. and the difference of Rs. 32,50,557 was credited to the capital reserve of the assessee-company – Assessee contended this amount was not of the character of income or deemed income and that it had nothing to do with the trading activities of the assessee, instead the amount represented capital receipt and was not liable to tax – AO rejected the submissions of the assessee and assessed the amount as taxable income – Held that the profits arising on reduction of liabilities was not trading profits liable to be taxed as business income – amount is not taxable as income.

100 2009 TMI - 33989 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SHREE RAJASTHAN SYNTAX LTD.

Dated: 06-05-2008

Sections - 32, 147, 148,

Claim of Depreciation u/s 32 on leased goods – reassessment - Assessing Officer had formed a particular opinion on a particular set of documents simply because the Assessing Officer at Mumbai had formed a different opinion on the same set of documents the action was sought to be initiated here for reassessment which - it was a “borrowed satisfaction” under the opinion of the Assessing Officer at Mumbai – Held that it borrowed satisfaction is sufficient to confer power on the Assessing Officer to initiate reassessment proceedings – Further, lease agreement shows that the lessee shall not claim any relief by way of any deduction, allowance, or grant available to the lessor as owner of the equipment under the Income-tax Act, 1961, or any other statute, rule of regulation issued by the Government or any statutory authority – the benefit of depreciation is allowed in the hands of lessor.

101 2009 TMI - 33988 - PATNA HIGH COURT

BIHAR RAJYA SAHKARI BHOO MI VIKAS CO-OPERATIVE BANK LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 03-09-2008

Sections - 80P,

Deduction u/s 80P(2)(a)(i) – Interest Income and Rental Income – AO, Comm(A) and Tribunal has disallowed the claim observing that the interest earned on the investment of the provident fund money was not eligible for exemption under section 80P(2) (a) (i) of the Income-tax Act, because the said income has not been earned from regular business of banking. It also observed that the interest earned on investment of the provident fund amount did not form part of either the stock-in-trade or the circulating capital. For parity of reasons the Tribunal disallowed the deduction of the rental income also - Held that interest derived from investment of the provident fund amount and the rental income do not qualify for deduction under section 80P(2)(a) (i) of the Act. Appeal dismissed.

INCOME TAX ACT 1961

CASE LAWS

102 2009 TMI - 33987 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus KOVAI MEDICAL CENTRE AND HOSPITALS LIMITED

Dated: 21-10-2008

Sections - 032,

Depreciation u/s 32(1)(iv) at – Rate of Depreciation - Commissioner of Income-tax (Appeals) came to the conclusion that the assessing authority was wrong in not accepting that the hospital is a “welfare centre” and that in view of section 32(1) (iv) of the Income-tax Act, as it then stood, concluded that the “welfare centre” would include hospital. The Tribunal also accepted the decision – “In taxing statute particularly it is not the dictionary meaning which has to be seen but the meaning as understood in common parlance specially in commercial circles” and that, “in interpreting words and phrases in taxing statutes it is the popular meaning which has to be followed it” - It is also well settled that “exemptions under taxing statutes must be strictly construed”. This is a case of depreciation and there is no definition for either “welfare centre” or “hospital” – Hospitals can not be treated as par with welfare centre – benefit of higher depreciation is not allowed.

103 2009 TMI - 33986 - PUNJAB AND HARYANA HIGH COURT

CIT Versus (1) RAJIV GARG, (2) SIYA RAM GARG, (3) SANJAY GARG, (4) SUSHIL KUMAR GARG

Dated: 22-07-2008

Sections - 271,

Penalty u/s 271(1)(c) for concealment of Income - on the basis of an information, a notice under section 148 of the Act was issued on the ground that certain income chargeable to tax had escaped assessment. In response to the said notice, the assessee filed the return of income; wherein income was declared at Rs. 63,39,640, which, inter alia, included the entire amount of receipts on account of sale proceeds of the shares at Rs. 33,10,380 against long-term capital gain of Rs. 29,74,951 declared in the original return of income. Assessee submitted that return of income is being voluntarily revised to include the entire amount of receipt along with other amount to buy peace of mind and to avoid hazards of litigation and also to save himself from any penal action – Held that The assessing authority had failed to take any objection that the declaration of income made by the assessee in his revised return and in his explanation were not bona fide. Penalty has been deleted rightly.

104 2009 TMI - 33984 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus KONKAN MARINE AGENCIES

Dated: 28-07-2008

Sections - 037,

Expenditure u/s 37 – the assessee who is carrying on business as stevedoring, clearing and forwarding agents and is being assessed in the status of a firm. For the assessment year 1996-97, a sum of Rs. 32,32,601 was debited as

INCOME TAX ACT 1961

CASE LAWS

stevedoring charges. On verifying these expenses claimed, it was found by the Assessing Officer that the assessee had produced certain self-made vouchers endorsed by the assessee's own employees and that these were other than the regular salary and other allowances which itself was taxable under the provisions of the Act. AO, on the basis of absence of proper voucher disallowed Rs. 13,17,243 – Held that in order to ensure that work of handling goods are done within a reasonable time and to handle emergency operations of cargo handling beyond the working hours, such payments are made either through labour or workers' union, cannot be considered to be either prohibited by law and further the assessee cannot be expected to take the receipt from individual workers or make payment by way of cheques. Expenditures are allowed to be deducted.

105 2009 TMI - 33983 - KERALA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SITARAM TEXTILES

Dated: 26-11-2008

Sections - 143, 154,

Rectification of Mistake u/s 154 – An intimation was sent u/s 143(1)(a) for acceptance of return filed by the assessee – thereafter regular assessment was done u/s 143(3) - Later, the Assessing Officer noticed that the intimations sent were incorrect inasmuch as adjustments towards prima facie inadmissible items, namely, disallowance under rules 6B, 6D and section 37(2A) were not made. Accordingly notice u/s 154(1)(b) issued for rectification – Tribunal has held that rectification can not be made under section 154 in the present situation – HC held that, Tribunal have misunderstood the facts and have not referred to the statutory provisions applicable at the relevant time – matter remanded to the tribunal for reconsideration after setting aside the order.

106 2009 TMI - 33982 - GUJARAT HIGH COURT

GUJARAT STATE FERTILIZER AND CHEMICALS LTD. Versus ASSISTANT COMMISSIONER OF INCOME-TAX

Dated: 22-08-2008

Sections - 36,

Interest Paid on Capital Borrowed – Section 36 – Interest Paid Rs. 27,96,55,759 - The hon'ble Supreme Court has held that section 36(1) (iii) of the Income-tax Act, 1961, has to be read on its own terms : it is a code by itself. It makes no distinction between money borrowed to acquire a capital asset or a revenue asset. All that the section requires is that the assessee must borrow capital and the purpose of the borrowing must be for business which is carried on by the assessee in the year of account. Unlike section 37 which expressly excludes an expense of a capital nature, section 36(1) (iii) emphasises the user of the capital and not the user of the asset which comes into existence as a result of the borrowed capital. The Legislature has, therefore, made no distinction in section 36(1) (iii) between capital borrowed for a revenue purpose and capital borrowed for a capital purpose - Actual cost of an asset has no relevancy in relation to section 36(1) (iii) of the Act – tribunal order disallowed the claim of interest not correct – interest is allowable – appeal allowed.

INCOME TAX ACT 1961

CASE LAWS

107 2009 TMI - 33980 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus VYSYA BANK LTD.

Dated: 09-01-2008

Sections - 037,

Capital versus Revenue Expenditure - The Commissioner of Income-tax on perusal of the records of the assessee, found that the claim of Rs. 5,00,000 being paid to SEBI during the assessment year as authorisation fee, had wrongly been allowed as revenue expenditure. Hence, he disallowed the sum of Rs. 5,00,000 deposited by the assessee as authorisation fee to SEBI was capital expenditure. This payment was made in order to meet the requirements of the Securities of Exchange Board of India Act, 1992. According to the appellate authority, payment was made only once. Hence, the expenditure incurred by the assessee rendered the assessee with a benefit of enduring nature and, therefore, treated it as capital expenditure. – Tribunal held that that the amount is revenue in nature and allowed the deduction – HC held that, if the Revenue had been treating the amount of Rs. 5,00,000 deposited by the similarly situated assessee with SEBI as revenue expenditure, then there is no reason why a different treatment should be meted out to the present assessee – allowed as revenue expenditure.

108 2009 TMI - 33979 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus RAMA ENGINEERING WORKS

Dated: 19-08-2008

Sections - -

Valuation of Closing Stock and Plant & Machinery in Transit as on March 31 – AO found that the plant and machinery purchased on March 31, 1996, was not reflected in the closing stock and similarly, the statement shown to the banker and in the return of income filed by the assessee before the Department there is a difference in value of closing stock to an extent of Rs. 5,65,000 – Held that merely because assessee has not reflected the machines, is not a ground to assess the value of the goods received by the assessee after March 31, 1996 as an income – on the issue of closing stock Commissioner as well as the Tribunal have given a categorical finding that the stocks available with the assessee were in the warehouse and governed by the excise rules and it is also expressed by both the parties that it was always possible for the assessee to show the value of the stock-in-trade based on the actual realisable value to the Department and reflected value of the stock-in-trade for the purpose of banking – Therefore, both the questions answered in favor of assessee and against the Revenue.

109 2009 TMI - 33978 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus RAMAKRISHNA NURSING HOME

Dated: 20-10-2008

INCOME TAX ACT 1961

CASE LAWS

Sections - 069,

Income From Undisclosed Sources - The assessee (a nursing home) has on its panel as many as 36 visiting doctors who were specialists in various fields of medicine. The assessee had not accounted the fee collected by the specialists in its accounts. The assessee, explained that it is the practice of the nursing home that the visiting specialists collected their fee directly from the patients and it was not charged to the account of the nursing home anytime. The assessee also filed a joint statement of 36 visiting specialists, wherein all the visiting specialists have stated that they were collecting the fee from the patients directly and it was not charged to the accounts of the assessee – AO has not conducted inquiry to establish the truth of the joint statement - The technical insistence by the Assessing Officer that the assessee should have examined all the specialists is an untenable view. In the absence of contra material, the Assessing Officer cannot reject the genuineness and correctness of the statement. Question is answered in favour of assessee.

110 2009 TMI - 33976 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus B. SUMANGALADEVI

Dated: 08-01-2008

Sections - 148,

Notice u/s 148 - Tribunal held that the assessment order framed under section 143(3) read with section 147 as bad in law and consequently quashing the same – Held that, It is well-settled that the Income-tax Officer's jurisdiction to reopen an assessment, depends upon the issuance of a valid notice. If the notice issued by him is invalid for any reason the entire proceedings taken by him would become void for want of jurisdiction." – Appeal dismissed as no substantial question of law arose.

111 2009 TMI - 33975 - SUPREME COURT

**COMMISSIONER OF INCOME-TAX Versus (1) MADRAS REFINERIES LTD.
(2) CHENNAI PETROLEUM CORPORATION LTD.**

Dated: 08-09-2008

Sections - 037,

Assessee claimed the aid given to the residents living in the vicinity of the factory of the assessee as a business expenditure under section 37 of the Income-tax Act. Tribunal and HC allowed the amount of aid given to residents living in the vicinity as business expenditure – SC observed no finding on this aspect in the impugned judgment of the Tribunal as well as in the judgment of the High Court – therefore matter remanded to tribunal after setting aside the orders.

112 2009 TMI - 33882 - KARNATAKA HIGH COURT

**VINIR ENGINEERING P. LTD. Versus DEPUTY COMMISSIONER OF
INCOME-TAX**

Dated: 24-10-2008

Sections - 043B, 143,

INCOME TAX ACT 1961

CASE LAWS

Tribunal was not justified in law in concluding that the funded interest could be said to be non-payment of interest in the relevant year to invoke the proviso to section 43B of the Act to disallow the deduction of interest as claimed by the appellant. The Assessing Officer was not justified in law to make a prima facie adjustment in a proceeding under section 143(1)(a) of the Act by holding that there was no deemed payment of interest in the relevant year without appreciating the interest outstanding for the earlier years 1994-95 and 1995-96 had been funded by K.S.F.C. during the relevant year by a fresh loan and that the proviso to section 43B of the Act was not applicable.

113 2009 TMI - 33881 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus NEXUS COMPUTER P. LTD.

Dated: 18-08-2008

Sections - 043B,

Nature and effect of amendment to Section 43B – payment of contribution to provident fund - the amendment is made applicable from the assessment year 2004-05 - held that amendment is retrospective - the contribution has been paid prior to the filing of the return. The Supreme Court decision in Vinay Cement Ltd.'s in which the the benefit extended to assessee squarely covers the issue and the assessee is entitled to the benefit under section 43B of the Income-tax Act – amendment retrospective in nature.

114 2009 TMI - 33840 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus PARAS RICE MILLS

Dated: 16-09-2008

Sections - 132, 158BC, 253,

Tribunal when hearing an appeal against the order of assessment could not go into the question of validity or otherwise of any administrative decision for conducting the search and seizure. The same may be the subject-matter of challenge in independent proceedings where the question of validity or otherwise of administrative order could be gone into. The appellate authority was concerned with the correctness or otherwise of the assessment.- Appeal of the revenue allowed

115 2009 TMI - 33837 - BOMBAY HIGH COURT

KESRI K. DEBOO Versus ASSISTANT COMMISSIONER OF INCOME-TAX

Dated: 14-07-2008

Sections - 132,

Tribunal affirmed the finding of the Assessing Officer that the assessee had unaccounted income of Rs. 35 lakhs and the search and seizure operation conducted in the premises of the persons who are closely related to the assessee in the business revealed transaction reflecting the undisclosed income. No merit against the order of Tribunal. Appeal Dismissed

116 2009 TMI - 33826 - DELHI HIGH COURT

MAYUR RECREATIONAL DEV. SERVICES LTD. Versus COMMISSIONER

INCOME TAX ACT 1961

CASE LAWS

OF INCOME-TAX

Dated: 24-07-2008

Sections - 254,

The original grievance of the appellant that the order dated December 12, 2002, which had been passed by the Tribunal without considering all the material on record. It is another matter that the Tribunal itself did not have power to recall the order and enter into a review. However, we feel that it is a fit case for remand. Consequently, the order dated December 12, 2002, is set aside and the matter is remanded to the Tribunal to hear the parties and arrive at a decision afresh.

117 2009 TMI - 33824 - CALCUTTA HIGH COURT

PEERLESS GENERAL FINANCE AND INVESTMENT CO. LTD. Versus INCOME TAX SETTLEMENT COMMISSION

Dated: 22-02-2008

Sections - 142, 245C, 245D,

Legislature has contemplated complexity of different nature in Sections 142(2A) and 245D of the Act. The expression used in Section 142(2A) of the Act, is "complexity of the accounts of the assessee," whereas in Section 245D(1), the expression is "complexity of the investigation." Though the word "complexity" is common in both these provisions, it does not automatically follow that the respective authorities exercising their powers under these two different provisions have to take into consideration the same materials while taking their decision - The date of the order of rejection of the petitioners' application is 31-5-2007. It was despatched to the petitioners under the cover of a letter dated 12th June 2007. The petitioners claim to have received this communication on 14-6-2007 – held that the date of order shall remain as 31-5-2007 – Deviation from established procedure if not fatal or prejudice to assessee the same can not make the proceedings liable to be dismissed..

118 2009 TMI - 33823 - UTTARAKHAND HIGH COURT

COMMISSIONER OF INCOME-TAX Versus DESH RAKSHAK AUSHDHALAYA LTD.

Dated: 12-05-2008

Sections - 043B,

Nature and effect of amendment to Section 43B – payment of contribution to provident fund - the amendment is made applicable from the assessment year 2004-05 - held that amendment is retrospective - Decision of Allied Motors P. Ltd. v. CIT [2008 -TMI - 5575 - SUPREME Court] followed in which the three judges-Bench of the apex court having considered views of various High Courts on a similar issue relating to deduction of deposits of sales tax under clause (a) of section 43B and Explanation 2 to the said section, has held that the first proviso to section 43B and Explanation 2 if read together make it clear that Explanation 2 is retrospectively applicable

119 2009 TMI - 33822 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME-TAX Versus PAMWI TISSUES LTD.

INCOME TAX ACT 1961

CASE LAWS

Dated: 04-02-2008

Sections - 043B,

Nature and effect of amendment to Section 43B – payment of contribution to provident fund - the amendment is made applicable from the assessment year 2004-05. The section as it stood earlier was that the employers' contribution to provident fund if not paid within the due date the employer was not entitled to deduction – held that amendment is prospective and not retrospective - dismissal of the special leave petition cannot be said to be the law decided

120 2009 TMI - 33821 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME-TAX Versus STAR CHEMICALS (BOMBAY) P. LTD.

Dated: 27-02-2008

Sections - 036,

Bad Debts - if the assessee has written off the debt as a bad debt, that would satisfy the purpose of the section 36(1)(vii) – Deduction is allowed despite the debt has not become bad – merely written off in the books of account are sufficient

121 2009 TMI - 33816 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus (1) D. RAJA alias ILAYARAJA (2) ILAYARAJA MULTINATIONAL

Dated: 18-03-2008

Sections - 80HHC,

Deduction under section 80HHC could be allowed in respect of export of prerecorded audio and video cassettes together with the right of exploitation - Export of pre-recorded audio and video cassettes together with the right of exploitation, can be treated as a sale of goods or merchandise eligible for the purpose of deduction under section 80HHC

122 2009 TMI - 33814 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus PRASAD PRODUCTIONS P. LTD.

Dated: 24-03-2008

Sections - 80HHC,

Transfer of rights for manufacture of cassettes outside India as export of goods eligible for deduction under section 80HHC for the assessment years 1996-97, 1997-98, 1998-99, 1999-2000, 2000-01 and 2001-02, when the relief for the same is available under section 80HHF only from the assessment year 2000-01

123 2009 TMI - 33813 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus HOTEL HILLTOP

Dated: 17-03-2008

Sections - 002(22),

INCOME TAX ACT 1961

CASE LAWS

Deemed dividend under section 2(22)(e) - The assessee in the present case is not shown to be one of the persons being shareholder - Of course, the two individuals being Roop Kumar and Devendra Kumar are the common persons holding more than requisite amount of shareholding and having requisite interest in the firm but then thereby the deemed dividend would not be deemed dividend in the hands of the firm rather it would obviously be deemed dividend in the hands of the individuals on whose behalf or on whose individual benefit being such shareholder the amount is paid by the company to the concern - The assessee-firm whose partners hold 100% share in M/s. Hilltop Palace Hotels (P.) Ltd., had received the payment of Rs. 10 lakhs by way of security - the fact that substantial portion of this Rs. 10 lakhs of amount, say more than Rs. 9 lakhs, have been advanced only during January 7, 1991, to March 22, 1991, it is difficult to accept it as a security

124 2009 TMI - 33764 - GAUHATI HIGH COURT

GAURIKANTA BARKATAKY Versus COMMISSIONER OF INCOME-TAX

Dated: 16-05-2008

Sections - 143, 171,

Individual income or income of family - Original assessment of assessee in status of HUF had attained finality - absence of any material on record showing that there was any partition of property recorded in the past in terms of Section 171(3) - finding, reached by the learned Tribunal, to the effect that the appellant could not prove that it was a Hindu undivided family is perverse - therefore having been assessed as HUF, the assessee could not have been treated or assessed, in any status, other than a Hindu undivided family

125 2009 TMI - 33762 - SUPREME COURT OF INDIA

COMMISSIONER OF INCOME TAX Versus SIRMOUR TRUCK OPERATORS UNION (No.2)

Dated: 07-04-2008

Sections - 194C, 260A,

Appeal to High Court - whether freight paid by the assessee (AOP) to truck owners who in turn are members of the said AOP is subject to TDS under Section 194C(2) of the Income Tax Act - impugned order of the High Court stating that no substantial question of law arises is set aside - we remit the matter to the High Court for reconsideration in accordance with law.

126 2009 TMI - 33747 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus R.K. CONSTRUCTION CO.

Dated: 30-07-2008

Sections - 263,

Order which is erroneous and prejudicial to Revenue - Assessing Officer has taken a particular view on the basis of evidence produced before him. On the basis of the said material and materials which were collected by the CIT in revisional proceedings, the Commissioner has taken a different view - since there is nothing on record to suggest that the view taken by the Assessing Officer is unsustainable at law, in the revisional proceedings under Section

INCOME TAX ACT 1961

CASE LAWS

263, it is not open for the Commissioner to take such a different view - Commissioner's order u/s 263 is liable to be quashed and set aside

127 2009 TMI - 33745 - SUPREME COURT

COMMISSIONER OF INCOME-TAX Versus OSWAL AGRO MILLS LTD.

Dated: 01-02-2008

Sections - 260A,

Whether the assessee is entitled to deduction of Rs.1,16,89,327/- incurred as 'Issue Management Expenses' - Reading the judgments of the Tribunal and the High Court, we find that the assessee has succeeded only on the basis of 'Rule of Consistency'. In our view, the High Court should have examined the nature of the said expenses - In our view, substantial question of law did arise for determination - Consequently, the impugned judgment of the HC is set aside and the matter is remitted to HC

128 2009 TMI - 33700 - DELHI HIGH COURT

A. S. Chhachhi Versus Commissioner of Income-tax

Dated: 25-04-2008

Sections - 048, 053, 054,

Computing taxable capital gain –assessee claim that first deductions u/s 48 are to be made and then the provisions of sections 53 and 54 are to be applied – assessee claim that deduction u/s 48(2) should be first allowed and then cost of new residential flat and the bonds should be deducted – AO however first deducted the amount of investment made by assessee in purchase of the flat and bonds – Commissioner is justified in accepting assessee's claim – held that deduction u/s 48(2) to be allowed on amount calculated u/s 48(1)(a) before giving deduction u/s 53 and 54

129 2009 TMI - 33698 - DELHI HIGH COURT

Sangeeta Exports P. Ltd. and others Versus Union of India and others

Dated: 23-04-2008

Sections - 276C, 277, 279, 119,

Petition against impugned order of Chief CIT rejecting the petition filed for compounding of offence u/s 276C(1)/277 - prosecution has successfully established that there was an act of concealment on the part of the petitioner and had filed its return by concealing facts - it is a clear case of tax evasion - Contention of petitioner that Chief CIT alone has power to compound an offence and CBDT only had the authority to issue general directions with regard to composition of offences, is rejected – held that Commissioner has to exercise the discretion in conformity with instructions of CBDT - present petition is, hereby, dismissed.

130 2009 TMI - 33696 - BOMBAY HIGH COURT

Indian Hume Pipe Co. Ltd. Versus Deputy Commissioner of Income-tax and others

Dated: 22-08-2008

INCOME TAX ACT 1961

CASE LAWS

Sections - 040A,

Whether the company was entitled to claim deduction as business expenses in respect of conditional donations made to an engineering college to secure admissions to the children of the employees of the assessee-company - appellant have failed to satisfy that the amount donated by them was towards staff welfare expenditure and, therefore, in furtherance of its business interest - question of law raised in this appeal is answered by us in the negative, i.e., in favour of the Revenue

131 2009 TMI - 33673 - GUJARAT HIGH COURT

Commissioner of Income-tax Versus Shankerlal Nebhumal Uttamchandani

Dated: 10-03-2008

Sections - 271,

Assessee filed revised return surrendering amount standing in names of family members – AO levied penalty on ground that revised returns had not been filed voluntarily but filed only after search and seizure - Admittedly some steps were taken by the Departmental authorities for finding out the concealment but no specific notice was issued by the Departmental authorities Thus, there was only a prima facie belief that the assessee has concealed his income – family members assessed on such income – held that there is no concealment – penalty not imposable u/s 271(1)(c)

132 2009 TMI - 33651 - KERALA HIGH COURT

Commissioner of Income-tax Versus Binoy Mathai

Dated: 04-04-2008

Sections - 158BB, 158BA,

Whether on an interpretation of clause (d) of S. 158BB(1) the Tribunal is right in holding that AO is not justified in including in the block assessment the sum as the undisclosed income for A.Y. 1995-96– time extended to file return for a particular year - In the absence of any finding by AO in the block assessment or by the Tribunal that the assessee has not entered the income returned for the year 1995-96 in the books of account or the transactions pertaining to the same in the books of account at least on the date of search and since the assessment is based on income returned, we have to assume that the assessee filed the return based on the books of account only – that year's income to be included in block assessment - question is answered in favour of assessee

133 2009 TMI - 33643 - MADRAS HIGH COURT

Commissioner of Income-tax Versus Sanmar Consolidations Ltd.

Dated: 04-03-2008

Sections - -

Surtax - Chargeable profits - Whether Tribunal is right in law in cancelling the order of CIT passed u/s 16 of the Companies (Profits) Surtax Act holding that rule 2 of the Second Schedule to the Act cannot be applied - assessee contend

INCOME TAX ACT 1961

CASE LAWS

that it has had no income in the return of dividends and, consequently, the provisions of rule 1(viii) of the First Schedule to the Surtax Act would not apply. It followed, therefore, that rule 2 of the Second Schedule pertaining to the reduction in the capital base would also not apply – contention of assessee accepted – order of tribunal is upheld

134 2009 TMI - 33635 - DELHI HIGH COURT

Magnum Power Generation Ltd. Versus Additional Commissioner of Income-tax

Dated: 23-04-2008

Sections - -

Assessee had given an intercorporate deposit to M/s. PPL with interest - According to the assessee, the interest amount due for the entire period was not liable to be taxed, even though he was maintaining a mercantile system of accounting, since the income had not accrued to the assessee and the debt was a sticky debt - Tribunal found that not only has the assessee received the entire principal amount over a period of time but it has also received a part of the interest. - there is nothing to suggest that the financial condition of PPL was such that it was unable to pay its debts - Tribunal rightly concluded that income had accrued to the assessee and that the debt was not a sticky debt and liable to tax

135 2009 TMI - 33582 - KERALA HIGH COURT

Season Rubber Ltd. Versus Commissioner of Income-tax

Dated: 15-01-2008

Sections - 037,

Contribution made by the assessee to a school and to a hospital development committee were claimed for benefit under section 80G - assessee's prospects are not advanced by making these contributions - Even though assessee's employees are getting treatment from the hospital and the employees' children are students in the school which got the benefit we find the benefit, if at all, is quite remote – therefore, assessee is not entitled to the claim u/s 37(1)

136 2009 TMI - 33581 - UTTARKHAND HIGH COURT

Commissioner of Income-tax Versus Bhawani Shankar Vyas

Dated: 18-11-2008

Sections - 131, 142, 142A, 144, 145,

Whether Tribunal was justified in holding that without rejecting the books of account, AO was not justified in making reference to the Departmental Valuation Officer, ignoring the retrospective effect of the provisions of section 142A - Whether it is mandatory to reject the books of account before making reference u/s 131(1)(d) - Tribunal was not justified in holding that without rejecting the books of account AO was not justified in making reference to the DVO - we also hold that it is not mandatory for AO to reject the books of account first before making reference u/s 131(1)(d) or calling for a report of valuer u/s 142A

INCOME TAX ACT 1961

CASE LAWS

137 2009 TMI - 33580 - MADRAS HIGH COURT

Rayala Corporation P. Ltd. versus Commissioner of Income-tax

Dated: 19-11-2008

Sections - 264,

Assessee instead of approaching Commissioner u/s 264 filing writ petition – HC dismissed writ petition giving liberty to assessee to approach within 30 days from receipt of order - Delay in preferring the revision petition within a period of 30 days from the date when the copy was obtained – under proviso to S. 264(3) Commissioner have power to admit an application after limitation, if sufficient case shown for delay - revisional authority should not have rejected the revision petitions on the ground that period prescribed by the Court for filing the revision petition was over

138 2009 TMI - 33579 - BOMBAY HIGH COURT

ORNATE TRADERS PVT. LTD. Versus INCOME-TAX OFFICER (and other connected appeals)

Dated: 29-08-2008

Sections - 260A,

Appeal to High Court - Delay in filing of appeal - prayer for condonation of delay - showing of sufficient cause - provisions of section 5 of the Limitation Act are applicable to the appeals filed under section 260A of the Income-tax Act - there is no proper explanation and no sufficient cause shown by revenue for condonation of delay and there is apparent negligence and callousness on the part of the officer/officials of the Department to the extent that even correct statements have not been made – delay not condoned

139 2009 TMI - 33578 - PUNJAB AND HARYANA HIGH COURT

CHANDI RAM Versus COMMISSIONER OF INCOME-TAX

Dated: 25-02-2008

Sections - 045,

Capital gains - held that section 45(5)(b) will be attracted only when the assessee receives the enhanced compensation in pursuance of a final award/order of a court, Tribunal or other authority increasing the compensation. If any amount is received after stay of the award, in pursuance of any interim order, as a payment subject to the final result, it will not be an amount received as enhanced compensation as contemplated u/s 45(5)(b) - amendment to S. 45 by inserting clause (c) would not apply prior to April 1, 2004, or any assessment year prior to the A.Y. 2004-05

140 2009 TMI - 33577 - HIMACHAL PRADESH HIGH COURT

COMMISSIONER OF INCOME-TAX Versus RAMESHWAR LAL AHUJA (and vice versa)

Dated: 08-08-2008

Sections - 132, 133A, 158BC, 271,

Additions towards undisclosed income – block assessment – Tribunal has

INCOME TAX ACT 1961

CASE LAWS

allowed deduction on account of interest accrued and embedded in the fixed deposits at the rate of Rs. 12,000 per annum – held that such deduction is not contrary to law because of the receipts recovered during the search – appellant/assessee is not entitled to any further deduction on account of the amount of interest accrued and embedded in the fixed deposits - no material indicating that additions on account of household expenses and marriage expenses sustained by tribunal were not justified

141 2009 TMI - 33537 - GUJARAT HIGH COURT

SAHITYA MUDRANALAYA AND OTHERS Versus INCOME-TAX SETTLEMENT COMMISSION AND OTHERS

Dated: 03-03-2008

Sections - 234B, 245D, 245F,

Settlement commission hold that interest was leviable u/s 234B even in a case where the conditions stipulated under s.s (1) of S. 234B were not fulfilled - while passing an order u/s 245D(4) the Commission exercises powers of an income-tax authority as provided u/s 245F and the Commission cannot be precluded from fastening liability to pay interest for that portion of income forming part of the total income as determined by the Commission which was not earlier disclosed before the AO, even if no interest could have become leviable if originally disclosed income is considered in isolation by operation of section 234B(1)

142 2009 TMI - 33536 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus MANGILAL RAMESHWAR LAL (vice versa)

Dated: 18-01-2008

Sections - 158BD, 158BE,

Notice was issued under section 158BD, consequent upon search – block assessment – undisclosed income of third person - starting point of limitation for the purpose of section 158BE(2) is from the end of the month in which the notice under this Chapter was served - notice under this Chapter, i.e., under section 158BD was issued to the assessee on March 8, 1999 - assessment order has been passed on March 28, 2001, which obviously is, much after expiry of one year, and is clearly barred by time

143 2009 TMI - 33535 - GUJARAT HIGH COURT

INCOME-TAX OFFICER Versus VXL INDIA LTD.

Dated: 06-08-2008

Sections - 80HHC,

Claim of Special deduction u/s 80HHC - report of chartered accountant, certifying that the deduction has been correctly claimed - Tribunal was right in holding that the Assessing Officer should not have rejected the legitimate claim of the assessee on mere technical ground, i.e., non-furnishing of the chartered accountant's report along with the return of income – if report is submitted at subsequent stage and in any case, before the completion of assessment proceeding, the assessee's claim for deduction under section 80HHC cannot

INCOME TAX ACT 1961

CASE LAWS

be disallowed

144 2009 TMI - 33534 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus PRAVEEN ELECTRONICS LTD.

Dated: 03-10-2008

Sections - -

Tribunal deleting the disallowance of loss in trading of shares – loss in share transactions by broker – since assessee is giving reasonable explanation with necessary data, assessee cannot be penalized for infraction committed by broker - question whether the impugned share transaction in which the assessee was engaged was a colourable device or not is essentially a question of fact - nothing has been brought by Revenue which would persuade us to hold that the findings returned by the authorities below were either contrary to the evidence placed on record, and, hence perverse

145 2009 TMI - 33533 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus (1) HARDWARI LAL, HUF and others

Dated: 26-03-2008

Sections - 045,

Held that interest on enhanced compensation would not accrue till the issue of enhanced compensation is finally decided and thereafter on attaining the finality of determination of enhanced compensation by the court, the interest accrued to the assessee has to be spread over on an annual basis right from the date of delivery of possession till the date of the order of the court on the time basis – therefore Tribunal is right in holding that holding that the interest is taxable when the issue relating to enhanced compensation attains its finality

146 2009 TMI - 33532 - KERALA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus NILGIRI TEA ESTATE LTD.

Dated: 14-02-2008

Sections - 115J, 207, 234B, 234C,

Revenue challenging the order of the Tribunal cancelling the interest levied u/s 234B and 234C, for non-payment/short payment of advance tax on 30 per cent. of the book profit as deemed income assessed u/s 115J – there is no provision either under Chapter XVII or Chapter XII-B requiring the assessee to estimate book profit and to remit advance tax thereon - the provision for advance tax under Chapter XVII do not have any application for the tax payable u/s 115J - Revenue appeal dismissed –tribunal's order is upheld

147 2009 TMI - 33531 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus (1) BHOOP RAM DAGAR, HUF and others

Dated: 08-04-2008

Sections - 045,

INCOME TAX ACT 1961

CASE LAWS

Acquisition of land - Interest on enhanced compensation – accrual of income - held that the interest on enhanced compensation would not accrue till the issue of enhanced compensation is finally decided and thereafter on attaining the finality of determination of enhanced compensation by the court, the interest accrued to the assessee has to be spread over on an annual basis right from the date of delivery of possession till the date of the order of the court on the time basis – revenue's appeals are dismissed

148 2009 TMI - 33528 - ALLAHABAD HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus PRAMOD KUMAR SHUKLA

Dated: 15-07-2008

Sections - 271,

Assessee is carrying on the business of exhibition of cinema films - assessee had received grants-in-aid in the form of entertainment tax rebate - held that the grant-in-aid received from the State Government by the cinema owners is capital receipt. That being the position, the assessee had rightly not included in its income the grant-in-aid. Consequently, no penalty is exigible. The order of the Tribunal of cancelling the penalty does not give rise to any substantial question of law

149 2009 TMI - 33355 - KERALA HIGH COURT

CIT Versus NEDUNGADI BANK LTD., DHANALAKSHMI BANK LTD. & SOUTH INDIAN BANK LTD.

Dated: 04-03-2008

Sections - -

Whether interest earned by Banks on Government securities is chargeable to tax under the Interest-tax Act, 1974 – deletion of exclusion clause in S. 2(7) - that interest on securities of the Government, whatever be the nature of security, cannot be treated as a loan or advance and consequently interest from security cannot be assessed under the Interest-tax Act - Tribunal is right holding that interest-tax is not payable under the Interest-tax Act, 1974, as amended by the Finance (No. 2) Act of 1991, on interest on Government securities received by the respondent-banks

150 2009 TMI - 33354 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus MADHWAN BASHYAM

Dated: 07-01-2008

Sections - 163, 148, 149,

On a plain reading of section 163(2) of the Act, it appears to us that when an order adverse to the assessee/agent is passed by the Assessing Officer, then a written order is required to be made. However, if there is no objection to the agent continuing the proceedings on behalf of the assessee, no specific order needs to be passed by the Assessing Officer - notice was issued to the assessee under section 148 on January 14, 2000, and it was served on the assessee on January 31, 2000 - the notice was time barred in view of the provisions of section 149(3)

INCOME TAX ACT 1961

CASE LAWS

151 2009 TMI - 33353 - BOMBAY HIGH COURT

NISHMUKH INVESTMENTS AND TRADING PVT. LTD. Versus DEPUTY COMMISSIONER OF INCOME-TAX AND ANOTHER

Dated: 17-11-2008

Sections - 143,

Assessee contested the legality of notice issued u/s 143(2) on the ground that the notice should have been issued within prescribed period – only issue before Commissioner was whether the return was valid – Commissioner conclusion that return was valid on finding delay in filing revised return condonable, by itself would not remove the bar of limitation prescribed and would not entitle the AO to issue any notice u/s 143(2) – so, notice was invalidly issued and assessment made in pursuance thereto was also invalid

152 2009 TMI - 33352 - BOMBAY HIGH COURT

JOHN WYETH AND BROTHER LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 23-09-2008

Sections - 044C,

Head office expenses in the case of non-residents - CIT (A), holding that laboratory expenditure are not covered by clauses (a), (b), (c) and (d) of Expl. (iv) to section 44C - CIT (A) clarified that laboratory expenses would be in addition to 5% of the allowable expenses as per provisions of section 44C in respect of other expenditure incurred - assessee's statement that the laboratory expenses will not include any expenditure stated in the clauses of the Explanation appeared to have been accepted by the CIT (A) without verification – matter rightly remanded by ITAT

153 2009 TMI - 33351 - BOMBAY HIGH COURT

PRAKASH (by legal heir of assessee) Versus ITO & CIT AND OTHERS

Dated: 12-09-2008

Sections - 054, 054F, 254,

Capital gains tax – exemption - Sale proceeds from sale of Capital assets invested by assessee in residential house in name of his adopted son – deceased assessee admittedly had no domain or right whatsoever on the said property – this fact itself therefore, disentitled him to claim any exemption for non-compliance with conditions of sections 54 and 54F - For qualifying the exemption it is necessary and applicable to have the investments made in residential house in the name of the assessee only

154 2009 TMI - 33350 - KERALA HIGH COURT

SOUTH INDIA CORPORATION LTD. Versus ADDITIONAL COMMISSIONER OF INCOME-TAX AND OTHERS

Dated: 01-02-2008

Sections - 115VA, 115VB, 115VC, 115VD, 115VP,

Interpretation of provisions in Chapter XII-G, relating to the income of shipping

INCOME TAX ACT 1961

CASE LAWS

companies - petitioner application for opting the tonnage tax scheme was rejected by the Additional Commissioner- Addl. Commissioner on basis of Memorandum holding that business of operating ships was not a main object of assessee, was illegal – this order is quashed – however finding that income from shipping business and the income from the qualifying ship form only a small portion out of the gross income of the company, is one which rests on facts, therefore it is improper to subject it to judicial review in writ jurisdiction

155 2009 TMI - 33349 - GUJARAT HIGH COURT

AUSTIN ENGINEERING CO. LTD. Versus JOINT COMMISSIONER OF INCOME-TAX

Dated: 18-06-2008

Sections - 148, 147, 143,

Notice u/s 148 – assessment was completed u/s 143(3) and in the assessment the assessee was allowed deduction u/s 80HH on Export incentive benefits - on basis of subsequent decision of SC in the case of CIT Vs. Sterling Foods, AO changed his opinion and issued reassessment notice beyond time limit of four years forming a belief that income chargeable to tax has escaped assessment because excess deduction was allowed – held that since it is not a case of any failure on the part of the assessee, notice is quashed as time-barred

156 2009 TMI - 33347 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus LAKHANI RUBBER UDYOG LTD.

Dated: 04-02-2008

Sections - 154, 143B,

Disallowance of expenditure u/s 43B - AO, while rectifying its earlier order, disallowed Rs. 49,59,304 on account of provident fund (PF) being paid after due dates and Rs. 57,184 on account of ESI contribution not paid within due date - CIT (Appeals) deleted the said addition on the ground that the issues were debatable and that all the payments have been made within grace period - ITAT was right in law in confirming the order of Ld. CIT (A) holding that since the issue is debatable and therefore is not rectifiable u/s 154

157 2009 TMI - 33346 - KARNATAKA HIGH COURT

DEPUTY COMMISSIONER OF INCOME-TAX Versus BPL SANYO FINANCE LTD.

Dated: 05-02-2008

Sections - 100(47), 1045,

Loss on account of forfeiture of share application money of the assessee - consequent to the assessee's default in not paying the balance of money on allotment, its right in the shares stood extinguished on its forfeiture - loss suffered by the assessee, i.e, non-recovery of share application money is consequent to the forfeiture of its right in the shares and the same is to be understood to be within the scope and ambit of transfer - Tribunal was justified in holding that it would amount to short-term capital loss to the assessee

INCOME TAX ACT 1961

CASE LAWS

158 2009 TMI - 33345 - KARNATAKA HIGH COURT

VELAN TEXTILES PVT. LTD. Versus DEPUTY COMMISSIONER OF INCOME-TAX (ASSESSMENT)

Dated: 04-01-2008

Sections - 032A,

Claim for investment allowance - assessee had purchased plants and machineries in the three financial assessment years i.e. 1985-85, 1986-87 and 1987-88. But the same could not be shown in the return as the return filed for the said period were loss income - The assessing authority declined to accept the claims made by assessee in A.Y. 1991-92 – since assessee could not create Reserve account in earlier years as assessee incurred loss in A.Y 1985-86 to 1987-88, assessee is entitled to Investment allowance

159 2009 TMI - 33344 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus RUBAMIN P. LTD.

Dated: 04-07-2008

Sections - 115J,

Depreciation - AO while reworking the profit of the company for the purposes of section 115J, added depreciation – held that, for the purposes of s. 115J, only those adjustments, which are specified in the Explanation to the section 115J, can be made from the book profits and depreciation not being one of them and further that the accounts of the company having been prepared in accordance with the Schedule VI to the Companies Act, the AO was in error in disallowing the depreciation as claimed by the Company -AO does not have the jurisdiction to go beyond the net profit shown in the P/L account except to the limited extent provided in the Expl. to section 115J

160 2009 TMI - 33342 - KARNATAKA HIGH COURT

DEPUTY COMMISSIONER OF INCOME-TAX Versus MAHARAJA SHOPPING COMPLEX

Dated: 07-01-2008

Sections - 056,

Assessee-lessee is sub-letting the shopping complex to various tenants along with certain facilities which, according to the assessee, is an equipment and furniture - assessee contends that since the assessee has let out the building with equipment and furniture, income derived has to be treated as “Income from business” only, and not as ‘Income from house property’ – no finding given by AO regarding profit, nature of business and income derived, matter has to be considered by the Assessing Officer afresh

161 2009 TMI - 33341 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus HINDUJA EXPORTS

Dated: 21-02-2008

Sections - 080AB, 080HHC,

INCOME TAX ACT 1961

CASE LAWS

Claim for special deduction u/s 80HHC - Supreme Court in the case of A. M. Moosa, observed that word 'profit' in section 80HHC(1) and (3) of the Income-tax Act, 1961, means a positive profit – therefore, Tribunal was not correct in holding that the negative export profits should be ignored when aggregating the total turnover including other exports in view of the specific definition adduced in section 80HHC r.w.s. 80AB for the purpose of computing deduction u/s 80HHC

162 2009 TMI - 33298 - HIGH COURT OF KERALA

COMMISSIONER OF INCOME TAX, TRICHUR Versus M/S.KERALA STATE FINANCIAL ENTERPRISES LTD.

Dated: 04-02-2008

Sections - 037,

Assessee engaged in kury business and financing. The wage settlement with the employees expired on 31.7.1992, i.e. towards the middle of the previous year relevant for the assessment year 1993-94. Negotiations for settlement were going on in the previous year and the actual agreement approving wage increase with effect from 1.8.1992 was signed on 9.6.1993. This was approved by the Government by order dated 20.10.1993. The assessee claimed increased wages payable to the employees during the previous year as a deduction in the return filed for the assessment year 1993-94. The assessing officer disallowed the claim on the ground that liability arose under the agreement approved by the Government in the succeeding year. - Held that deduction allowed as claimed by the assessee on the ground that by the time the accounts were finalised and returns were filed, the assessee had ascertained the actual liability attributable to the previous year and therefore the actual amount payable only was claimed based on mercantile system of accounting followed by the assessee.

163 2009 TMI - 33018 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME TAX Versus WALFORT SHARE AND STOCK BROKERS P. LTD.

Dated: 08-08-2008

Sections - 094, 014A,

Tax avoidance – insertion of s.s. (7) in S. 94 - transaction of purchasing dividend bearing units of Mutual Fund and redeeming the same at a loss immediately after receiving the dividend income – transaction between mutual fund and assessee were at arm's length – moreover, SEBI had not found any illegality in the transaction – such loss cannot be treated as expenditure for earning the tax free income - loss arising on sale of the units can be set off against other taxable income of assessee

164 2009 TMI - 33016 - KARNATAKA HIGH COURT

ASSISTANT COMMISSIONER OF INCOME-TAX AND ANOTHER Versus DR. K. SATISH SHETTY

Dated: 22-02-2008

Sections - 044AB, 271B,

INCOME TAX ACT 1961

CASE LAWS

Assessee, a proprietor of three concerns filed return and obtained audit report only in respect of one concern - due to his ignorance of law and bona fide mistake, he had not obtained audit report with regard to other two concerns – assessee was under bona fide belief that audit reports are not required if total turnover has not exceeded the prescribed limit - assessee had no dishonest intention in not obtaining audit report for all the three businesses – penalty rightly cancelled by tribunal

165 2009 TMI - 33015 - MADHYA PRADESH HIGH COURT

COMMISSIONER OF INCOME-TAX Versus H. E. G. LTD.

Dated: 15-12-2008

Sections - 244, 244A,

Interest on refund – claim for interest on interest u/s 244A - case of Assessee is that on the date refund was given, from that date interest should have been given – revenue submit that section 244A which holds the field from April 1, 1989, is different from section 244 and, hence, no interest is payable – held that change in provision does not affect the grant of interest on interest – held that assessee is entitled to interest even on the amount of interest allowed or allowable u/s 244A

166 2009 TMI - 33009 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus MANJIT SINGH SACHDEVA

Dated: 22-02-2008

Sections - 154, 143,

Whether rectification proceedings can be initiated by AO u/s 154 when notice u/s 143(2) had already been issued – addition tax levied under section 143 (1A) as in the meanwhile notice under section 143(2) of the Act, had already been initiated – held that no action under section 154 could be initiated once notice under section 143(2) of the Act was issued to the assessee

167 2009 TMI - 32901 - BOMBAY HIGH COURT

BALMUKUND ACHARYA VERSUS DEPUTY COMMISSIONER OF INCOME-TAX AND OTHERS

Dated: 19-12-2008

Sections - 143, 246,

Effect of deletion of the explanation w.e.f. 1.6.1999 on the right of appeal vis-a-vis intimation u/s 143 (1) – Since the case in hand relates to A.Y 1995-96, this explanation will be very much applicable - Tribunal was not justified in holding that no appeal lies against the order of intimation u/s 246 – held that appeal is maintainable from order of intimation

168 2009 TMI - 32900 - GUJARAT HIGH COURT

KRISHNA TEXTILES VERSUS COMMISSIONER OF INCOME-TAX

Dated: 18-07-2008

Sections - 069C, 037,

INCOME TAX ACT 1961

CASE LAWS

Cash credits in account of person from whom assessee made purchases – even if the assessee did incur expenditure, the equivalent debit in the P/L Account would neutralize each other and no addition could be made – proviso to S. 69C inserted w.e.f. 1.4.99 not applicable for A.Y. 1987-88 - therefore, amount covered by cash credits would be an allowable deduction u/s 37 and it cannot be treated as income of the assessee

169 2009 TMI - 32898 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX VERSUS EMTICI ENGINEERING LTD.

Dated: 20-06-2008

Sections - 002(18), 108,

Case of the Assessee is that the Assessee Company is the Company in which the public are substantially interested as defined u/s 2(18) since more than 50% of the shares are held by two Companies “to which this clause applies” – contention of assessee is acceptable – two companies even if not fulfilling conditions laid down in section 108(b), but covered under definition of S 2(18) – therefore, assessee company is also covered by S. 2(18) - assessee should be treated as a Public Limited Company

170 2009 TMI - 32896 - CALCUTTA HIGH COURT

SANJIB KUMAR AGARWAL VERSUS COMMISSIONER OF INCOME-TAX

Dated: 15-09-2008

Sections - -

Time of accrual of income - assessment - assessee was director of the company - assessee was to receive commission at the rate of 1 per cent. on the net profits of the said company - no due date was fixed for the payment of the commission - held that the commission was taxable in the year in which the profit of the company was finalised and the accounts were assessed – reference is answered in favour of the appellant

171 2009 TMI - 32895 - KARNATAKA HIGH COURT

**NORTH WEST KARNATAKA ROAD TRANSPORT CORPORATION
VERSUS DEPUTY LABOUR COMMISSIONER AND OTHERS**

Dated: 25-02-2008

Sections - 010(10),

Deduction of income tax by the employer from the gratuity amount - contention that the gratuity amount is also liable for income-tax is rejected - Income-tax Act excludes the gratuity amount to the extent of limit prescribed under the IT Act - Hence, deduction of income-tax by the Corporation is contrary to S. 10(10) (iii) - in so far as the deduction towards damage is concerned, which was caused to bus due to accident by employee, employer is entitled to deduct damages from the gratuity amount

172 2009 TMI - 32891 - DELHI HIGH COURT

**COMMISSIONER OF INCOME-TAX VERSUS INTERNATIONAL
AMUSEMENT LTD.**

INCOME TAX ACT 1961

CASE LAWS

Dated: 21-10-2008

Sections - 037,

Assessee, conducting rides at amusement park - payment made for advice on application of techniques of predictive breakdowns so that the assessee can execute predictive maintenance of the structures from time to time - Tribunal concluded that there was no addition in the capital field and the expenditure was incurred by the assessee in the interest of its business - Tribunal rightly held that the expenditure was of a revenue nature and was not in the capital field.

173 2009 TMI - 32845 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus MCDOWELL AND COMPANY LTD.

Dated: 07-03-2008

Sections - 254, 035D,

Scope of power of tribunal u/s 254 (2) to rectify mistakes in its order – held that tribunal has no power to recall and review the earlier order which is beyond the scope of S. 254 (2) – Tribunal in earlier order allowed deduction of 1/10th of expenditure incurred on issue of shares – on application, tribunal is not justified in allowing entire claim of deduction holding them as revenue expenditure - impugned order deserves to be set aside by allowing this appeal

174 2009 TMI - 32844 - KERALA HIGH COURT

M.V.GANESH (legal representative of M. S. Viswambharan) Versus CIT AND ANOTHER

Dated: 15-10-2008

Sections - 245,

AO has granted relief only of interest under KVSS and adjusted refund of AY 1982-83 to the demand of AY 1984-85. Petitioner has challenged the authority of the relief under KVSS to claim benefit beyond interest and adjustment of refund without prior intimation under section 245 – HC did not find the merit in the case and rejected the writ petition.

175 2009 TMI - 32843 - MADHYA PRADESH HIGH COURT

COMMISSIONER OF INCOME-TAX Versus (1) C. K. KHANNA & (2) SMT. VIMALA KHANNA

Dated: 28-11-2008

Sections - 132, 143,

Search and seizure – savings bank accounts, F.D.'s, bank lockers standing in the name of S and N – assessee contended that they did not belong to him and belonged to his father - during the appeal proceedings, assessee filed the order of probate of will of late father, which included the assets standing in the names of S and N and were found to be correct – finding of tribunal that father of assessee had the resources to bequeath, is finding of fact – no substantial question of law arise

INCOME TAX ACT 1961

CASE LAWS

176 2009 TMI - 32842 - GUJARAT HIGH COURT

KANCHANLAL MAGANLAL KAPADIA AND OTHERS Versus INCOME TAX OFFICER

Dated: 26-06-2008

Sections - 147, 148,

Reassessment notice to individual on ground that he and other fourteen others functioned as an AOP – notice was issued to petitioner stating that there was failure on the part of AOP to file a return of income offering the prize money for taxation – it is clear that claim of prize winning ticket was made by 15 individual persons - held that, since there was no failure on part of petitioner to file a return, notice issued after 4 years is time barred, so it is quashed

177 2009 TMI - 32841 - PATNA HIGH COURT

OM PRAKASH KATYAL AND OTHERS Versus UNION OF INDIA

Dated: 30-03-2008

Sections - 276B, 278B,

Tax collected at source not deposited to credit of Central Govt. within due date – Directors cannot be responsible for the default in deposit of the TDS amount – prosecution was to be quashed against the petitioners (directors)

178 2009 TMI - 32840 - HIMACHAL PRADESH HIGH COURT

PARVEEN KUMAR Versus COMMISSIONER OF INCOME-TAX AND ANOTHER

Dated: 08-08-2008

Sections - 158BB, 158BC, 132,

Search – block assessment - additions on basis of search proceedings, record and reply submitted by assessee to questionnaire - Assessee contend that addition to undisclosed income was in contravention of S. 158BB & 158BC – but assessee has failed to point out as to how the additions on account of income from hotel to the income from other sources, were contrary – hotel was functional throughout the relevant year - moreover addition were not made on higher side – additions are sustainable

179 2009 TMI - 32839 - UTTARAKHAND HIGH COURT

COMMISSIONER OF INCOME-TAX Versus JYOTI PRABHA SOCIETY

Dated: 29-08-2008

Sections - 011,

Assessee, charitable society letting out the building to another society to run the educational institution – whether assessee is entitled to exemption on such rental income – rental income earned by the assessee was being utilized for the purposes of imparting education by maintaining the buildings and constructing new buildings for the same purpose – Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal have rightly held that assessee is entitled to exemption u/s 11

INCOME TAX ACT 1961

CASE LAWS

180 2009 TMI - 32838 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX, PATIALA Versus VARDHMAN SPINNING AND GENERAL MILLS LTD.

Dated: 14-08-2008

Sections - 80J,

Industrial undertaking - Assessee sought deductions u/s 80J on the gross total income before allowance - Whether Tribunal was right in law in allowing deduction u/s 80J and investment allowance of the current year before allowing depreciation of the current year – held that, before allowing deduction under section 80J, the gross total income which is arrived at after granting of deductions for the previous year prior thereto has to be considered - question is answered in favour of the Revenue

181 2009 TMI - 32834 - KERALA HIGH COURT

SOUTH INDIA CORPORATION LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 12-12-2008

Sections - -

Eligibility of petitioner for benefits of Kar Vivad Samadhan Scheme - for becoming eligible for applying under the Scheme, the issue in respect of which the benefit is claimed should be one pending in appeal, revision, reference etc. before any authority or court on the date of application - admittedly, the draft statement did not contain the question of law in respect of the issue for which the petitioner sought the benefit of the Scheme – assessee not eligible for benefit of Scheme

182 2009 TMI - 32833 - DELHI HIGH COURT

COMMISSIONER OF INCOME –TAX Versus V. L. S. FINANCE LTD.

Dated: 16-10-2008

Sections - 254,

Application for rectification of mistake filed by assessee u/s 254 (2) were allowed by tribunal on ground that certain decision of the SC overruling the decisions of the HC had not been considered by it while disposing of the appeals – mistake can be said to be a "mistake apparent from the record" which could be rectified u/s 254(2) - tribunal rectifying its mistake could not be found fault with - no question of law can be said to arise out of the impugned order – revenue's appeal dismissed

183 2009 TMI - 32831 - PATNA HIGH COURT

DR. AJITH KUMAR PANDEY Versus INCOME-TAX APPELLATE TRIBUNAL

Dated: 06-05-2008

Sections - 253, 271,

Liability to pay court fee for preferring an appeal to the Tribunal - person aggrieved by an order imposing penalty, approaches the Tribunal by preferring an appeal – Tribunal calling for fees based on income assessed - Imposition of

INCOME TAX ACT 1961

CASE LAWS

penalty under section 271 of the Income-tax Act, 1961, has no connection or bearing with the total income of the assessee – order of the Tribunal is set aside and the matter is remitted back to the Tribunal decide the appeal of the petitioner on the merits

184 2009 TMI - 32829 - KERALA HIGH COURT

M. S. VISWABHARAN Versus COMMISSIONER OF INCOME-TAX

Dated: 14-03-2008

Sections - 155,

Kar Vivad Samadhan Scheme – petitioner discharged the liability after reckoning the adjustment – petitioner having discharged the balance tax liability after reckoning the adjustment made, cannot request for reversal of the adjustment subsequently – petitioner's contention that adjustment under section 155 is made without notice to the petitioner and, therefore, adjustment is not binding on the petitioner, is not acceptable

185 2009 TMI - 32809 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus KUSHAL BAGH MINERALS P. LTD. & others

Dated: 27-03-2008

Sections - 115JA, 80IA, 80IB, 115JB,

Special deduction – industrial undertaking - contention of assessee is, that assessee company is an industrial undertaking, situated in the backward industrial State of District, therefore, the income earned is 100% exempted from tax, as per the provisions of S. 80-IA(2)(iv)(c) and S. 80IB - therefore, for determination of "book profit" as per Section 115JA, the 100 per cent. exempted income is required to be deducted – contention of assessee is acceptable - revenue's appeal dismissed

186 2009 TMI - 32808 - MADRAS HIGH COURT

G.V. FILMS LTD. Versus S. PRIYADARSHAN AND ANOTHER & TAX RECOVERY OFFICER

Dated: 19-08-2008

Sections - 293, R039, R040,

Attachment, sale and auction of property for recovery of tax – objection raised by lessee of property – Tax recovery officer (TRO) found that lease was sham & appellant can't be recognized as valid tenant – letter issued by dept. to vacate the premises – held that appellant can't challenge the jurisdiction of TRO - Suit for a permanent injunction restraining the auction purchasers, is dismissed as not maintainable because it is not against department, therefore, bar of S. 293 not applicable

187 2009 TMI - 32806 - MADHYA PRADESH HIGH COURT

CIT Versus GEI ENGINEERING LTD. (now GEI Hamon Industries Ltd.)

Dated: 11-08-2008

Sections - 143, 044AB, 080O,

INCOME TAX ACT 1961

CASE LAWS

Deduction claim on account of late delivery charges & penal interest - Tribunal is justified in holding that the adjustments (disallowance) made by AO by treating the late delivery damages and penal interest as contingent liabilities were not within the scope of prima facie adjustments u/s 143(1)(a) - view expressed by Tribunal cannot be found fault with – issue are debatable hence, not come under the purview of prima facie adjustment as contemplated u/s 143(1)(a) - revenue appeal dismissed

188 2009 TMI - 32741 - KARNATAKA HIGH COURT

**SECRETARY, CENTRAL BOARD OF DIRECT TAXES AND ANOTHER
Versus B. K. SINHA**

Dated: 12-09-2008

Sections - 80RRA,

Assessee under an agreement with Foreign Company (employer) rendered his services from India - claim for deduction under section 80RRA rejected on the ground that, no visits to abroad for rendering service is envisaged in the agreement - merely because assessee rendered services to a foreign employer by remaining in India, they cannot be entitled to the benefit of section 80RRA – petition dismissed

189 2009 TMI - 32740 - GUJARAT HIGH COURT

**COMMISSIONER OF INCOME-TAX Versus NIRMA CHEMICALS WORKS P.
LTD. (and vice versa)**

Dated: 04-02-2008

Sections - 263,

Jurisdiction of CIT to pass order u/s 263 - preconditions for exercise of jurisdiction u/s 263 were not fulfilled – AO partially disallowing the claim u/s 80I – Commissioner (Appeals) allowed the appeal of assessee against the AO's order – subsequently, Commissioner u/s 263 in revision order disallowed the claim – since it is not a case of an order prejudicial to revenue, Tribunal is not justified in upholding the exercise of powers under section 263 by Commissioner of Income Tax to be valid

190 2009 TMI - 32739 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus K. THANGAMANI

Dated: 05-12-2008

Sections - 002(24),

Assessee indulged in the act of fabricating TDS certificates and collecting refund from the income tax department – fraudulent practice adopted by him for preparation of false TDS certificates and returns and obtaining refunds from Department - inclusion in the income of the assessee - income from such refunds is taxable as an income under a “residuary” head - Income tax Act considers the income earned legally as well as tainted income alike

191 2009 TMI - 32738 - ORISSA HIGH COURT

ROLAND EDUCATIONAL AND CHARITABLE TRUST Versus CHIEF

INCOME TAX ACT 1961

CASE LAWS

COMMISSIONER, INCOME-TAX

Dated: 17-09-2008

Sections - 010(23C), R002CA,

Educational institution – It filed an application for exemption u/s 10(23C)(vi) with another application for condonation of delay in presenting the application under section 10(23C) (vi) - Chief Commissioner refused to entertain and admit the application made u/s 10(23C)(vi) on the ground that it was filed belatedly & statute does not vest any power with him to condone the delay – held that there is no provision in IT Act to condone delay in filing application u/s10(23C)(vi)

192 2009 TMI - 32737 - KARNATAKA HIGH COURT

M. V. AMAR SHETTY Versus CHIEF COMMISSIONER OF INCOME-TAX AND ANOTHER (No.2)

Dated: 02-06-2008

Sections - 220,

Refusal of granting relief of waiver of interest u/s 220(2A) – assessee pleaded that on account of his ill-health and financial problems, he was seeking relief u/s 220(2A) - no reasoning given regarding the genuine hardship of the assessee – no reasoning on fact that default was beyond the control of assessee – impugned order merely states that the assessee has not satisfied the conditions of s. 220(2A) and had not co-operated with dept. - order refusing the waiver of interest is set aside

193 2009 TMI - 32736 - GUJARAT HIGH COURT

PREHLADBHAI NARANBHAI PATEL Versus N.K.C NAIR, INCOME-TAX OFFICER

Dated: 02-07-2008

Sections - 148, 147,

Notice u/s 148 – claim made with insurance company on account of loss due to fire – subsequent report of insurance company stating loss was less than claimed - in the absence of any failure on the part of the petitioner, the impugned notice could not have been issued beyond a period of 4 years to reduce the loss - - it is not possible to state that there was any omission to fully and truly disclose all material facts relevant for the assessment - impugned notice is quashed and set aside

194 2009 TMI - 32735 - UTTARAKHAND HIGH COURT

COMMISSIONER OF INCOME-TAX Versus TIDE WATER MARINE INTERNATIONAL INC.

Dated: 28-07-2008

Sections - 195, 234B,

Failure to deduct tax at source - assessee, a non-resident foreign company - another non-resident foreign company has engaged the assessee in the business of exploration/production of mineral oils, which did not deduct tax at source u/s 195 on payment to assessee – held that it was the duty of the non-resident foreign company to deduct the tax at source – assessee is not liable to

INCOME TAX ACT 1961

CASE LAWS

pay interest u/s 234B for default on part of that foreign company (employer) in deducting TDS

195 2009 TMI - 32734 - HIMACHAL PRADESH HIGH COURT

COMMISSIONER OF INCOME-TAX Versus KANGRA CO-OPERATIVE BANK LTD.

Dated: 27-08-2008

Sections - 80P,

Interest earned from investment (out of reserve) in another Society - Whether Tribunal was right in law in holding that the interest income earned by the assessee (a co-operative society) on deposits made with H. P. State Co-operative Bank in the shape of F. D., is income derived from banking business and, therefore, eligible for deduction under section 80P(2) (a) (i) – Held, yes - no merit in appeal of the Revenue so it is rejected

196 2009 TMI - 32731 - HIMACHAL PRADESH HIGH COURT

COMMISSIONER OF INCOME-TAX Versus H. P. STATE CIVIL SUPPLIES CORPORATION LTD.

Dated: 27-08-2008

Sections - 145,

Whether Tribunal was right in holding that the change in the method of valuation of closing stock by the assessee from FIFO method to average cost method was justified – Whether Tribunal was justified in deleting the addition made on account of change in the method of valuation of closing stock – practical difficulties was given reason for change in method - assessee has given reasonable grounds for changing the method – therefore, questions are answered in affirmative and against the Revenue

197 2009 TMI - 32728 - GUJARAT HIGH COURT

MAHALAXMI FABRIC MILLS LTD. Versus ASSISTANT COMMISSIONER OF INCOME-TAX

Dated: 17-06-2008

Sections - 80HHC,

Profits derived by the assessee from the export of goods – claim for deduction u/s 80HHC – tribunal was right in reducing the said profits by the amount of carried forward depreciation and investment allowance, before allowing deduction u/s 80HHC – appeal of assessee is dismissed

198 2009 TMI - 32727 - PUNJAB AND HARYANA HIGH COURT

UPLAKSH METAL INDUSTRIES Versus COMMISSIONER OF INCOME-TAX

Dated: 25-09-2008

Sections - 254,

ROM application – tribunal restored the order of AO of madding additions on account of entries relating to trade credits - Application for rectification before the Tribunal u/s 254(2) dismissed on ground that it amounts to review – held

INCOME TAX ACT 1961

CASE LAWS

that rectification is confined to correction of mistake apparent on the face of record and not a mistake with regard to debatable questions – tribunal rightly dismissed the application filed by assessee

199 2009 TMI - 32726 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus MALBOROUGH POLYCHEM P. LTD.

Dated: 25-09-2008

Sections - 80HH, 80I,

Industrial unit – claim for deduction under section 80HH and 80-I - such deduction was never denied to the assessee in the earlier assessment years - principle of consistency requires, that the view taken by the Department in the preceding years should not be disturbed, unless there is a change in the factual and legal position – since deduction was given in previous year, deduction is allowed to assessee

200 2009 TMI - 32725 - ORISSA HIGH COURT

PADMASHREE KRUTARTH ACHARYA INSTITUTE OF ENGINEERING AND TECHNOLOGY Versus CHIEF CIT

Dated: 15-05-2008

Sections - 10(23C),

Petitioner's application for grant of approval for exemption u/s 10(23C) (vi) - application was not considered by Chief Commissioner and rejected on the ground that the said application was filed beyond time – Chief Commissioner may condone the delay - there is no clear statutory bar preventing such condonation - application for condonation should be considered on the merits. Then the application for grant of exemption may be considered on the merits

201 2009 TMI - 32724 - GUJARAT HIGH COURT

MEHSANA DIST. CO.OP. MILK PRODUCERS' UNION LTD. Versus CIT

Dated: 10-03-2008

Sections - 28, 37,

Whether Tribunal was right in law in holding that the amount transferred by Co-operative society to reserve fund u/s 67 of Gujarat Co-operative Societies Act, 1961 was not a diversion of income at source by overriding title – Held, yes - Tribunal was right in law in holding that the transfer to reserve fund cannot be treated as a business expenditure and allowed deduction under section 28/37 of the Income-tax Act, 1961

202 2009 TMI - 32693 - KARNATAKA HIGH COURT

CHIEF COMMISSIONER OF INCOME-TAX AND ANOTHER Versus PAMPAPATHI

Dated: 31-01-2008

Sections - 132,

Search – one of the partners send a letter to dept. stating that partners are

INCOME TAX ACT 1961

CASE LAWS

willing to voluntarily offer an additional income subject to deduction u/s 80HHC - solely relying upon that letter, AO passed an assessment order rejecting the revised return filed by the assessee – held that it was duty of AO to scrutinize the revised return – claim u/s 80HHC could be rejected only if AO found any irregularity in revised return – said letter can't be treated as return filed or statement u/s 132(4)

203 2009 TMI - 32691 - GUJARAT HIGH COURT

ECHKE LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 12-03-2008

Sections - 145,

Assessee had changed the method of accounting from mercantile to cash which resulted in reduction of profits - assessee explained that he was acting as indenting agent/commission agent for textile mills and due to deterioration in the financial position of the textile mills the commission was not being received by the assessee the method of accounting had been changed from mercantile to cash bona fide – held that bona fide change should be accepted by Income Tax authorities

204 2009 TMI - 32689 - GUJARAT HIGH COURT

HIABEN JAYANTILAL SHAH Versus INCOME-TAX OFFICER AND ANOTHER

Dated: 21-04-2008

Sections - 55A,

Computation of capital gains - reference to the DVO - reference by AO was made before filing of return of income by the assessee - AO could not have formed any opinion as to existence of difference between the value of the asset as claimed by the assessee and the fair market value – reference can be made only when AO records opinion that value had been underestimated by assessee - S. 55A could not have been resorted to by the AO - reference to valuation officer is quashed and set aside

205 2009 TMI - 32684 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus HAZARI LAL

Dated: 12-12-2008

Sections - 158BB, 158BC,

Search operation was conducted & certain documents were seized - During block assessment, inference of income from commission agency for sale and purchase of vehicles was sought to be drawn - Block assessment made on basis of inferences drawn, was upheld by CIT - CIT partly allowed the appeal of the assessee, which was also upheld by tribunal - findings recorded by the Tribunal are findings of facts based on appreciation of evidence- No question of law arises – revenue's appeal is dismissed

206 2009 TMI - 32620 - SUPREME COURT OF INDIA

M/S NIRMA CREDIT & CAPITAL LTD. Versus ACIT

INCOME TAX ACT 1961

CASE LAWS

Dated: 08-08-2008

Sections - 032,

Assessee claims that despite suspension of operation assessee was still entitled to claim depreciation on the ground of passive user. This aspect has not been gone into by the High Court on dismissing the assessee's appeal under Section 260A. Therefore SC set aside the impugned judgment and remit the matter to the High Court for fresh decision.

207 2009 TMI - 32596 - UTTARKHAND HIGH COURT

Commissioner of Income-tax Versus ONGC Ltd. (No. 2)

Dated: 08-04-2008

Sections - 115A, 044D, 044BB,

Assessee has rendered its services to ONGC (representative of the non-resident company, respondent-assessee) for the purposes of exploration, extraction and production of mineral oils - whether in respect of the receipts for the aforementioned services rendered by the NRC, the tax is chargeable under section 44BB, or u/s 115A r.w.s. 44D - assessee as a technical service provider is directed to pay tax @ 15 per cent. under section 44D r.w.s. 115A, instead of 10 per cent. chargeable u/s 44BB

208 2009 TMI - 32595 - GUJARAT HIGH COURT

Patel Chemicals Works Versus Assessing Officer

Dated: 08-09-2008

Sections - 271,

Concealment of income - When the issue is raised in penalty proceedings the factum of the very same income having been taxed substantially in the hands of other entity becomes a relevant factor for determining whether the assessee has concealed the said income which has already been taxed after being shown in the hands of different entity - Tribunal committed error by not treating the assessment of amount in the hands of a third person as a relevant factor - matter remanded

209 2009 TMI - 32546 - SUPREME COURT

COMMISSIONER OF INCOME-TAX Versus SWARAJ ENGINES LTD.

Dated: 06-05-2008

Sections - 035AB, 260A,

Agreement of transfer of technology know-how and trade mark - royalty was paid by the assessee as a percentage of net selling price of the licensed goods products - expenditure on know-how - question, "whether the expenditure incurred is revenue expenditure or whether it is an expenditure which is capital in nature", are substantial question of law - impugned judgment of the High Court is set aside and the matter is remitted for fresh consideration - appeal is allowed

210 2009 TMI - 32544 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus C.A. TAKTAWALA

INCOME TAX ACT 1961

CASE LAWS

Dated: 15-09-2008

Sections - 271, 273,

Levy of penalty under sections 271(1)(a), 271(1)(c) and 273(2)(a) – tribunal deleting penalty by giving benefit under Amnesty Scheme – revenue contend that assessee had revised its returns on a number of occasions subsequent to search operation so it shows that return was not voluntary – contention of revenue not acceptable - mere filing of revised returns on a number of occasions cannot show that the returns were not voluntary – no evidence of undisclosed income – penalty not imposable

211 2009 TMI - 32543 - SUPREME COURT

COMMISSIONER OF INCOME-TAX Versus C.A. TAKTAWALA

Dated: 12-02-2008

Sections - 260A, 271, 273,

Whether Tribunal was right in cancelling the penalty levied under section 271(1)(a) and 273(2)(a), on the ground that benefit under the Amnesty Scheme was available to the Assessee, particularly when subsequent to search operation, the Assessee itself had revised its returns on a number of occasions, which would go to show that the return was not voluntary – held that impugned question is a substantial question of law and HC ought to have considered the appeal of dept. on this question

212 2009 TMI - 32542 - SUPREME COURT

COMMISSIONER OF INCOME-TAX Versus WELL PACK PACKAGING

Dated: 06-05-2008

Sections - 260A,

Question of law - Whether the revaluation of the assets of the assessee firm on conversion of the firm into Limited Company will not result into any capital gain liability under the I.T. Act - Whether there is no transfer involved when the assessee gets itself registered as a company - Whether the assessee is not liable to any capital gain tax – held that above questions are question of law u/s 260A of IT Act 1961

213 2009 TMI - 32484 - HIMACHAL PRADESH HIGH COURT

NEW PLAZA RESTAURANT Versus INCOME TAX OFFICER

Dated: 30-07-2008

Sections - -

Best judgment assessment - question as to whether the estimation made by the Assessing Officer is correct or not is normally treated as a question of fact. However, when the concerned authority like in the present case, does not follow a uniform practice and applies different yardsticks in similar cases then such action is hit by article 14 and becomes arbitrary and capricious - appeal filed by the assessee is allowed - order of the CIT of reducing the enhanced income, is restored

214 2009 TMI - 32483 - PUNJAB AND HARYANA HIGH COURT

INCOME TAX ACT 1961

CASE LAWS

COMMISSIONER OF INCOME-TAX Versus VARINDER AGRO CHEMICALS LIMITED

Dated: 31-10-2008

Sections - 037,

Computer software expenses - There is nothing to show that the software used by the assessee was of enduring nature and will not become outdated - Since technology is fast changing and day-by-day systems are being developed in a new way, software may be needed like raw material - view taken by the Tribunal that computer software expenses were revenue in nature, is correct – revenue's appeal is dismissed

215 2009 TMI - 32482 - KERALA HIGH COURT

LATHA S. NAIR Versus COMMISSIONER OF INCOME-TAX AND ANOTHER

Dated: 10-06-2008

Sections - -

Assessee claimed loss of value of goods on transfer - goods stated to have been transferred from one business concern to another were not found on inspection and the assessee's manager gave statement confirming the same - assessee not maintaining proper bills or vouchers for the purchase or sales – AO was justified in taking the transfer value as unaccounted sale and consequently disallowing the loss claimed by the assessee

216 2009 TMI - 32481 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus D. ANANDA BASAPPA

Dated: 20-10-2008

Sections - 054, 054F,

Exemption u/s 54 - assessee purchased two residential flats adjacent to each other - assessing authority gave exemption for capital gains to the extent of purchase of one residential flat on ground that section 54(1) does not permit exemption for the purchasers for more than one residential premises – purchase of two flats which were combined to make one residential unit - held that two flats has to be treated as one single residential unit and that the assessee is entitled for full exemption

217 2009 TMI - 32480 - KARNATAKA HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus CHAMUNDESHWARI SUGAR LIMITED

Dated: 16-10-2008

Sections - 032,

Machinery – depreciation - machinery that was installed was found to be defective - therefore, AO held that the machinery was not used for the purpose of business as required under section 32 - When the assessee bona fide installs any machinery and to his misfortune, it becomes defective and non-functional, it cannot be said that it is not put into use for the purpose of business – merely because it did not effectively function is not a ground to

INCOME TAX ACT 1961

CASE LAWS

reject the depreciation - depreciation entitled

218 2009 TMI - 32478 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SMT. DEIVAMALAR

Dated: 09-06-2008

Sections - 249,

Assessee made payment of tax due on the admitted income but had wrongly remitted in subsequent year - CIT (Appeals) dismissed the assessee's appeal on the ground that the admitted tax on the returned income was not paid till the date of filing of the appeal - Tribunal set aside the order of the Commissioner with a direction to decide the issue on the merits after verifying the payment of tax on admitted income - no infirmity in the order of tribunal

219 2009 TMI - 32477 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SMT. SHOBHA RANI SHAH

Dated: 15-09-2008

Sections - 150,

Assessment - limitation - notices issued to the assessee u/s 148 on the ground that there would be no period of limitation since the matter fell within the ambit of section 150(1) and the consequent proceedings were made to frame assessment – held that grant of probate by the Additional District Judge, Rohtak, had no consequence/effect to the assessment proceedings and would not extend the period of limitation – assessment framed was barred by limitation - Revenue's appeal is dismissed

220 2009 TMI - 32475 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus HARYANA C. M. RELIEF FUND

Dated: 15-12-2008

Sections - 011, 013,

Assessee is a registered society and is also registered u/s 12A - AO sought to tax interest income received by the assessee from the deposit in the bank - Revenue's submit that the assessee is not a Trust - assessee plea is that the income was exempt u/s 11 - in view of explanation to S. 13(1), which defines the term 'Trust', inter alia for purposes of S. 11, to include any other legal obligation, revenue's submission is not acceptable – hence interest on deposits is entitled to exemption

221 2009 TMI - 32474 - UTTARAKHAND HIGH COURT

COMMISSIONER INCOME-TAX AND ANOTHER Versus ONGC LTD. (No.1)

Dated: 10-04-2008

Sections - 044D, 115A,

Assessee, a non-resident company, was engaged by ONGC, representative of assessee for rendering technical service to it – whether in respect of the receipts for the aforementioned services rendered by the NRC, the tax is chargeable under section 44BB, or under section 115A r.w.s. 44D (as

INCOME TAX ACT 1961

CASE LAWS

contended by department)- held that assessee as a technical service provider is liable to pay tax @ of 15 % under section 44D r.w.s. 115A of the Income-tax Act, 1961, instead of 10 % chargeable u/s 44BB

222 2009 TMI - 32473 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus AVON CYCLES LTD.

Dated: 14-08-2008

Sections - 254,

Tribunal dismissed the appeal without deciding the case on merits – both parties were requesting for adjournment - Once both the parties were requesting for adjournment and that too in the absence of their respective counsel, the Tribunal could very well consider their request or proceed to decide the case on merits instead of dismissing the same in default - parties should be afforded opportunity to address arguments on merits - impugned order passed by the Tribunal is set aside

223 2009 TMI - 32472 - MADRAS HIGH COURT

TAMILNADU WAREHOUSING CORPORATION Versus DEPUTY COMMISSIONER OF INCOME-TAX

Dated: 04-08-2008

Sections - 260A,

Internal controversies of two government departments – dispute raised in High Court - certificate from COD has not been obtained - hence, the appeal is dismissed as not entertainable in the absence of the clearance – appellant is given liberty to move this High Court after obtaining clearance from CoD

224 2009 TMI - 32470 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SMT. NILOFER I. SINGH

Dated: 27-08-2008

Sections - 036, 045, 048, 055A,

Computation of capital gains - in the case where full value of consideration was the sale price of two properties sold by the assessee, there is no need to compute fair market value – hence AO could not have referred the matter to Valuation Officers – in respect of assessee writing off bad debt in relevant previous year, revenue is not justified in disallowing the same on the ground that RBI's permission to write off the debts communicated to assessee only after end of the previous year

225 2009 TMI - 32469 - SUPREME COURT

COMMISSIONER OF INCOME TAX, AND ANOTHER Versus PRANOY ROY ANR ANOTHER & INDIA METERS LTD.

Dated: 17-09-2008

Sections - 234A,

Levy of interest u/s 234A – HC held that interest would be payable in a case, where tax has not been deposited prior to the due date of filing of the income-

INCOME TAX ACT 1961

CASE LAWS

tax return. - High Court is justified in holding that that interest is not a penalty and that the interest is levied to compensate the revenue - Since the tax due had already been paid which was not less than the tax payable on the returned income which was accepted, the question of levy of interest does not arise – this appeal is dismissed

226 2009 TMI - 32462 - PUNJAB AND HARYANA HIGH COURT

COCA COLA INDIA INC. Versus ASSISTANT COMMISSIONER OF INCOME-TAX AND OTHERS

Dated: 17-12-2008

Sections - 092CA, 148, 147,

Multinational company entering into service agreement with Indian company - petition questions application of Transfer Pricing Provisions in Chapter X of the Income Tax Act, 1961 to the petitioner and quashing of notices under Sections 148 and 92CA (3) of the Act - language of Chapter X dealing with transfer pricing being clear, the provisions will be attracted to an international transaction – notice of reassessment based on order of Transfer Pricing Officer, is also held valid

227 2009 TMI - 32461 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME-TAX Versus KODATHIL KALLYATAN AMBUJAKSHAN

Dated: 04-07-2008

Sections - 010C, R002BA,

Whether Tribunal was justified in holding that the amount received by the assessee under “Optional Early Retirement Scheme of RBI” is eligible for exemption u/s 10(10C) – assessee’s submission that scheme satisfies all the requirement, of both section 10(10C) as also Rule 2BA, is acceptable – therefore, amounts upto 5 lakh entitled to exemption u/s 10 (10C) - and for the amount in excess of Rs.5 lac, the assessee would be entitled to the benefits u/s 89 in addition to the benefits u/s 10(10C)

228 2009 TMI - 32460 - GUJARAT HIGH COURT

ROSHANLAL S. JAIN Versus DEPUTY COMMISSIONER OF INCOME-TAX (ASSESSMENT)

Dated: 23-09-2008

Sections - 234A, 234B, 234C,

Defaults in payment of advance tax and in furnishing return of income - levy of interest under sections 234A and 234B - challenge to constitutional validity of the provisions of sections 234A and 234B – held that levy of interest under above sections is valid – further, levy of interest on interest is also valid – both sections are constitutionally valid

229 2009 TMI - 32459 - BOMBAY HIGH COURT

GAL OFFSHORE SERVICES LTD. (now the Great Eastern Shipping Co. Ltd.) Versus CIT

INCOME TAX ACT 1961

CASE LAWS

Dated: 17-11-2008

Sections - 033AC,

Deduction of amount credited to reserve account – held that to claim deduction it is not required that the amount credited to reserve account has to be income earned from shipping business – assessee should have operation of ships as its main object - claim for deduction u/s 33AC disallowed on ground that assessee is not engaged in the shipping business, is not justified — amendment to section 33AC came w.e.f. 1.4.96 is not clarificatory/retrospective, hence not applicable to instant case

230 2009 TMI - 32458 - BOMBAY HIGH COURT

GOBIND BUILDERS AND DEVELOPERS Versus INCOME TAX SETTLEMENT COMMISSION AND OTHERS

Dated: 04-03-2008

Sections - 002(45), 245C, 245D,

Application for settlement of case - Assessee paid additional tax with interest on May 26, 2007 – by amendment to section 245D (2) there was obligation to pay additional tax and interest on or before July 31, 2007 – Commission is not justified in rejecting the application holding that carry forward of loss of previous year to be ignored on total income – assessee can carry forward the loss of the preceding assessment year - finding recorded that the application has abated, has to be set aside

231 2009 TMI - 32457 - KARNATAKA HIGH COURT

EAST WEST HOTELS LTD. Versus DEPUTY COMMISSIONER OF INCOME-TAX

Dated: 18-01-2008

Sections - 028, 056,

Hotel business activities - hotel has been given to the Indian Hotels Company on lease under an agreement for an initial period of 33 years and giving option to renew the same for a further period of 33 years – since assessee has no intention to resume its business of hotel in the premises, amount received by the assessee from such company has to be treated as income from other sources and not a business income

232 2009 TMI - 32454 - BOMBAY HIGH COURT

NATIONAL PLASTICS INDUSTRIES Versus INCOME-TAX OFFICER

Dated: 29-08-2008

Sections - 145,

AO on noticing the deficiencies in books of account, determined the sales of assessee by applying the gross profit rate of 25% as against 7% shown by the Assessee – whether action of AO is justified – held that, once the authorities had come to the conclusion that books of account were not properly maintained and suffered from deficiencies, the Assessing Officer was justified in computing income on reasonable basis in appropriate manner

INCOME TAX ACT 1961

CASE LAWS

233 2009 TMI - 32428 - BOMBAY HIGH COURT

AVINASH BHOSALE Versus UNION OF INDIA

Dated: 08-10-2008

Sections - -

Retention of petitioner's passport by department – held that impounding of the passport could not be made by having recourse to Income Tax Act, regulating the seizure of documents - Directorate of Enforcement is directed to return the passport - non furnishing the details of accounts to revenue - Thus, in order to balance the equities between the parties, we consider it appropriate to direct the Petitioner to furnish to the Respondents all these statements with details of transactions

234 2009 TMI - 32383 - MADHYA PRADESH HIGH COURT

COMMISSIONER OF INCOME-TAX Versus KRISHI UPAJ MANDI SAMITI (No. 1)

Dated: 08-01-2008

Sections - 012AA, 012A, 011, 002(15), 010(20), 010(29),

Krishi Upaj Mandi Samitis – exemption of market committees was withdrawn due to omission of clause (29) of section 10 - respondent-market committees filed applications for registration u/s 12A and 12AA and for grant of exemption certificate u/s 12AA(1)(b)(ii) - held that the respondent fulfil all the requirements of section 11 to get exemption and, therefore, are entitled to registration - hence, the Tribunal has rightly allowed the appeals filed by the krishi upaj mandi samitis

235 2009 TMI - 32382 - BOMBAY HIGH COURT

SHREE NIRMAL COMMERCIAL LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 07-08-2008

Sections - 271, 068,

Cash credits – penalty could not levied on the ground that the assessee could not produce the depositors after a lapse of 17 years from the date of the loan received from the parties by the assessee - Tribunal was wrong in confirming penalty, relying upon the statements made by the depositors in some other proceedings – assessee was not given any opportunity to confront the said depositors by way of cross examination – no evidence of concealment – penalty not justified

236 2009 TMI - 32381 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus PEAREY LAL AND SONS (EP) LTD.

Dated: 25-09-2008

Sections - 271, 147, 273,

There is no required format for recording of satisfaction of AO regarding concealment of income - An indication as to the initiation of the penalty proceedings separately in the assessment order is tantamount to an indication

INCOME TAX ACT 1961

CASE LAWS

as to the satisfaction of the authorities that the assessee has concealed income - Tribunal has erred in deleting the penalty levied u/s 271(1)(c) on ground that mere mention of initiation of penalty proceedings separately did not justify initiation of penalty proceedings

237 2009 TMI - 32380 - PATNA HIGH COURT

BENGALI SINGH Versus COMMISSIONER OF INCOME-TAX

Dated: 16-04-2008

Sections - 171, 147,

Rental income - Partition of HUF – assessee submit that status of HUF stood disrupted by family arrangement - state of affairs demonstrated that the partition pursuant to the family arrangement, did not take effect – even the lease deed did not say anything about the family arrangement - appreciating the deed of family arrangement as well as the deed of lease, assessment of rental income from the building was rightly assessed in the hands of assessee as the owner of the building

238 2009 TMI - 32379 - MADHYA PRADESH HIGH COURT

CIT Versus KRISHI UPAJ MANDI SAMITI (No.2) (and connected appeals)

Dated: 18-01-2008

Sections - 012AA, 012A, 011, 002(15), 010(20), 010(29),

Krishi Upaj Mandi Samitis – exemption of market committees was withdrawn due to omission of clause (29) of section 10 - respondent-market committees filed applications for registration u/s 12A and 12AA and for grant of exemption certificate u/s 12AA(1)(b)(ii) - held that the respondent fulfil all the requirements of section 11 to get exemption and, therefore, are entitled to registration - hence, the Tribunal has rightly allowed the appeals filed by the krishi upaj mandi samitis

239 2009 TMI - 32378 - KERALA HIGH COURT

SOUTH INDIAN BANK LTD. Versus COMMISSIONER OF INMCOME-TAX

Dated: 17-06-2008

Sections - 080M,

Appellant, a scheduled bank, claimed deduction of 4/5th of the dividend income received from the UTI under proviso (a) to Section 80 M(1) - argument of the Revenue that admissible deduction for dividend income from UTI for the year 1994-95 is only 4/5th of 60% of such income is rejected - assessee is entitled to deduction of 4/5th of the dividend income received from the UTI - For the year 1995-96, the limitation is only what is provided in clause (b) of the proviso to S. 80M(1)

240 2009 TMI - 32376 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus GROZ BECKERT SABOO LTD.

Dated: 17-09-2008

Sections - 032A, 263,

INCOME TAX ACT 1961

CASE LAWS

Assessee claimed investment allowance under Section 32A (2) - the assessee company was manufacturing needles which are used in the textile machinery as its accessories and, therefore, assessee was entitled to investment allowance - Tribunal was right in law in allowing the Investment allowance - Tribunal was right in law in cancelling the order of the Commissioner of Income-tax passed under section 263

241 2009 TMI - 32375 - KERALA HIGH COURT

SUSHIL THOMAS ABRAHAM Versus ASSISTANT COMMISSIONER OF INCOME TAX AND ANOTHER

Dated: 23-07-2008

Sections - 253, 249,

Appealable orders – CIT (A) dismissed appeal on ground of non-payment of tax - maintainability of appeal to tribunal - whether Tribunal was justified in entertaining appeal u/s 253 against Ext.P4 order of the C.I.T.(Appeals) – held that no appeal is provided against order of the Commissioner (Appeals) declining to entertain appeal as defective or one not maintainable on account of non-payment of tax

242 2009 TMI - 32352 - BOMBAY HIGH COURT

SOLID CONTAINERS LTD. Versus DEPUTY COMMISSIONER OF INCOME-TAX AND ANOTHER

Dated: 29-08-2008

Sections - 041,

Loan taken for trading activity (business purposes) and upon waiver amount retained in business - Assessee claimed that the said loan was the capital receipt and has not been claimed as deduction from the taxable income as expenses and therefore, did not come under section 41(1) - held that amount had become the income of assessee; and hence assessable as business income of assessee – appeal of assessee is dismissed

243 2009 TMI - 32351 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME-TAX Versus LOK HOLDINGS

Dated: 15-01-2008

Sections - 028, 056,

Business of development of properties - in the course of its business, the assessee received monies in advance from customers intending to purchase flats in the properties – this money is temporarily invested/deposited with the bank - AO assessed this interest income earned on money deposited with the bank as income from other sources - Tribunal is right in holding that the interest income cannot be assessed as income from other sources, but it is assessable as business income

244 2009 TMI - 32348 - PUNJAB AND HARYANA HIGH COURT

UJAGAR SINGH AND OTHERS Versus UNION OF INDIA AND OTHERS

Dated: 12-11-2008

INCOME TAX ACT 1961

CASE LAWS

Sections - 269UD,

Property acquired u/s 269UD(1) - decision was taken to use the said property for the office of the Income Tax Department – petitioner claim that they are lessees and are in possession of the property – but there is no any record to show that the petitioners continued in possession of property – petitioner had not taken an steps when Government earlier tried to take possession of property – even in this petition, that order of pre-emptive purchase was not challenged – petition is dismissed

245 2009 TMI - 32347 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus IMPROVEMENT TRUST

Dated: 31-10-2008

Sections - 002(15), 010(20A), 012AA,

Assessee is an Improvement Trust constituted under the provisions of Punjab Town Improvement Trust Act, 1922 - principal object of the Trust is to bring about improvement in the town - On account of amendment dated 01.04.2003, the assessee applied for registration u/s 12A(b)(ii), which was declined – held that, since, assessee is carrying on activities of general welfare covered by the expression “any other object of general public utility” in Section 2(15), assessee is entitled to registration

246 2009 TMI - 32345 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus MAHAVIR SPINNING MILLS LTD.

Dated: 05-11-2008

Sections - 80HHC, 80M,

Assessee claim special deduction u/s 80HHC - held that 90% of interest on belated payment by customers had to be reduced for calculation of profits and gains of business - Tribunal was correct in holding that the sales tax and excise duty were not includible in total turnover for computing deduction under section 80HHC – in respect of deduction under section 80M, held that proportionate management expenses had to be deducted form gross dividend – revenue's appeal is partly allowed

247 2009 TMI - 32344 - MADHYA PRADESH HIGH COURT

VIJITRAJ PATNI Versus COMMISSIONER OF INCOME-TAX

Dated: 31-07-2008

Sections - 158BC, 132A,

Whether the Tribunal is justified in rejecting the appeal of the assessee on the ground that no specific ground was advanced with regard to the maintainability of assessment under section 158BC - assessee had submitted written note of submission wherein emphasis was laid on the aspect that the assessment made under section 158BC was not maintainable –tribunal did not adjudicate the issue relating to validity of assessment made u/s 158BC - order of the Tribunal is set aside – matter is remanded

INCOME TAX ACT 1961

CASE LAWS

248 2009 TMI - 32343 - KERALA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus KERALA CHEMICALS AND PROTEINS LTD.

Dated: 03-06-2008

Sections - 80IA, 043B, 040A, 035AB, 036,

Deduction u/s 80-IA in respect of the “third series” of plant put up for production of ossein – AO submit that plant is not a distinct/separate industrial unit - held that tribunal should verify the facts after inspection to entitle the assessee relief u/s 80IA – tribunal rightly allowed deduction in respect of payments made for technical know-how & expenditure on feasibility study, as it was for business purpose – payments in cash exceeding the specified limit were rightly disallowed by ITAT

249 2009 TMI - 32211 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SIEMENS AKTIONGESELLSCHAFT

Dated: 19-11-2008

Sections - 009, 090,

Agreement to provide patents, information regarding certain contract products, assistance for the manufacture etc. – royalty, technical assistance fee - taxability in India – Tribunal rightly hold that the definition of the term “royalty” in Explanation 2 to Section 9(1)(vii) will not apply to the said term as used in DTAA between India & Federal Republic of Germany - income would be royalty but fall within expression ‘industrial or commercial profits’ within the meaning of Article III of DTAA

250 2009 TMI - 32207 - MADRAS HIGH COURT

ANURAG JAIN Versus AUTHORITY FOR ADVANCE RULINGS AND ANOTHER

Dated: 30-09-2008

Sections - 245S, 245T,

Held that authority had not gone beyond the jurisdiction holding that the two documents, namely, the associated employment agreement and the share purchase agreement were interlinked with each other and not totally different – AAR have considered the issue in best way – assuming that AAR had not interpreted the agreement, it would not be open for writ court to go into correctness of Authority - Petitioner voluntarily invited the ruling from AAR, so he is bound by the ruling - Petition dismissed

251 2009 TMI - 32206 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus LAXMI ENGINEERING INDUSTRIES

Dated: 18-03-2008

Sections - -

Difference in the stock valuation - additions - even if there is some difference in the valuation of the said quantity of the stock in the balance sheet, as against

INCOME TAX ACT 1961

CASE LAWS

the valuation shown in the bank, it cannot be said to be resulting into any income from undisclosed sources - AO had not been able to point out any discrepancy in the quantity of stock hypothecated to the bank and the quantity of stock as per accounts books – enhanced value was for obtaining loans – additions not justified

252 2009 TMI - 32205 - GUJARAT HIGH COURT

DEPUTY COMMISSIONER OF INCOME-TAX Versus CORE HEALTHCARE LTD.

Dated: 07-10-2008

Sections - 80HH, 80I, 35D,

Advertisement expenses incurred by the assessee to create a brand image with enduring benefit are allowable as revenue expenditure - income on sale of empty containers (in which raw materials were purchased) – directly relatable to manufacturing activity of the industrial undertaking, hence entitled to special deduction u/s 80HH & 80I – further, loans/borrowings from specified financial institutions are includible in computing capital for the purpose of section 35D

253 2009 TMI - 32204 - DELHI HIGH COURT

J. K. SYNTHETICS LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 22-04-2008

Sections - 40,

Commission paid to the directors - there is no fixed commission that is paid to any of the directors and the amount of commission may vary depending upon the decision of the board of directors of assessee - different amounts were paid to different directors and no fixed amount was paid or determined – therefore, it is held that the commission paid to the directors cannot be said to be remuneration as contemplated by section 40(c) - disallowance was permissible in view of section 40(c)

254 2009 TMI - 32203 - MADHYA PRADESH HIGH COURT

KRISHNAGOPAL Versus DIRECTOR OF INCOME-TAX (INVESTIGATION) AND ANOTHER

Dated: 03-07-2008

Sections - 132A,

Petitioner prays for quashing of warrant of requisition issued u/s 132A - respondent was in possession of the information from which he had reason to believe that the money & silver seized from the petitioner represent wholly or partly assets which have not or would not have been disclosed for the purposes of income-tax - It cannot be held that the belief of respondent was either unreasonable or based on irrelevant information - hold that the warrant of requisition is valid – petition dismissed

255 2009 TMI - 32202 - MADRAS HIGH COURT

MRS. FARHANA SAIT Versus ASSISTANT COMMISSIONER OF INCOME-TAX AND OTHERS

INCOME TAX ACT 1961

CASE LAWS

Dated: 21-10-2008

Sections - 281,

Recovery proceedings against assessee and her husband – attachment/sale of property – assessee could not claim to be third party on the ground that she was the ex-wife of the assessee and that the properties in question which were attached, were “orally gifted” to her by her ex-husband - no evidence shown to prove said oral gifts - proceedings relating to period prior to divorce ("Talaq") cannot be held invalid – appeal dismissed

256 2009 TMI - 32201 - KARNATAKA HIGH COURT

KARNATAKA URBAN INFRASTRUCTURE DEVELOPMENT FINANCE CORPORATION Versus CIT AND ANOTHER

Dated: 04-08-2008

Sections - 195, 201,

Failure to deduct TDS from the reimbursement of expenditure made to its non-resident consultant-companies – assessee contend that it had deducted taxes on behalf of the non-resident companies on the payments made to them, it was under the bona fide belief that the amount spent towards accommodation and conveyance of the officers/employees of the non-resident companies was not required to be treated as a part of their income - penalty u/s 201 is set aside - interest u/s 201(1A) is confirmed

257 2009 TMI - 32200 - MADRAS HIGH COURT

RAMGOSRI CONSTRUCTIONS P. LTD. Versus INCOME-TAX OFFICER

Dated: 11-11-2008

Sections - -

Tribunal remitted the matter back for fresh ascertainment of facts - since there were materials before the Assessing Officer as well as the appellate authority for them to draw the respective conclusions, tribunal was not justified in remanding the case - assessee's submission that tribunal was not correct in remitting the matter to AO, is acceptable - finding of the Tribunal that the appellate authority had not gone into the relevant details, is not correct.

258 2009 TMI - 32199 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus OFFICIAL LIQUIDATOR OF ESSAB COMPUTER P. LTD.

Dated: 11-08-2008

Sections - 043B,

Addition u/s 43B – Certificate produced by the assessee certified that the sales-tax amount collected by the assessee was not paid to Govt. but was converted into loan - Circular No.496 made clear that if the sales tax due to the Government is converted as a loan which may be repaid by the assessee subsequently by installments, the Dept. shall treat the sales tax dues as actually paid for all purposes – additions were rightly deleted by CIT (A) & ITAT – amount could not be disallowed

INCOME TAX ACT 1961

CASE LAWS

259 2009 TMI - 32198 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus TAMILNADU SMALL INDUSTRIES DEVELOPMENT CORPORATION

Dated: 17-11-2008

Sections - 037,

Assessee who advances loan, levies penal interest in case of default – assessee's claim for bad debts on ground that it had waived the penal interest and interest received was subsequently written off - there is no any evidence with regard to the write off or with regard to waiver of penal interest – matter is remitted to AO to ascertain whether the assessee refunded the penal interest to the debtors and if so, relief shall be granted in the year in which such amounts were refunded.

260 2009 TMI - 32197 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus AMRIT SOAP CO.

Dated: 03-11-2008

Sections - 036, 040A, 043,

Interest on capital borrowed - proviso to Section 36(1)(iii) was introduced w.e.f. 1.4.04 - proviso is prospective and it is not applicable to the A.Y. 2001-02 – AO was not right in disallowing the claim for deduction - Whether Tribunal was justified to allow interest @ 18% to close relatives covered under S. 40A(2)(b) - Tribunal finding that the interest paid was not higher than rate of interest paid to other creditors, is finding of fact - no question of law arise – disallowance not justified

261 2009 TMI - 32196 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus GUJARAT GAS CO. LTD.

Dated: 10-09-2008

Sections - 032,

Depreciation - assessee has got the electrical equipment and leased out the same on rent to Rajasthan State Electricity Board under his lease agreement – assessee received lease rent - tribunal after appreciation of evidence found that transaction of leasing out the equipment was genuine and allowed the depreciation – tribunal's finding is a finding of fact – therefore, no question of law arise – revenue's appeal dismissed

262 2009 TMI - 32195 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus REALEST BUILDERS AND SERVICES LTD.

Dated: 28-08-2008

Sections - 036,

AO disallowing the deduction claimed in respect of bad debts - It is a settled position of law that the assessee does not have to establish the bad debt and he merely has to indicate that the bad debt was written off in his books in the year in question. That has already been done – therefore, deduction is allowable u/s 36(1)(vii) – revenue's appeal dismissed

INCOME TAX ACT 1961

CASE LAWS

263 2009 TMI - 32194 - MADRAS HIGH COURT

COMMISSIONER OF INCOME TAX Versus QATALYS SOFTWARE TECHNOLOGIES LTD.

Dated: 29-07-2008

Sections - 143, 147, 148,

Validity of reassessment - Tribunal held that reassessment proceedings were invalid - Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessing officer is barred in initiating the proceedings under section 148 when the time for issuance of notice under section 143(2) had not expired – revenue's appeal dismissed

264 2009 TMI - 32193 - KERALA HIGH COURT

SAKTHI TOURIST HOME Versus COMMISSIONER OF INCOMETAX

Dated: 26-05-2008

Sections - 069B,

Assessee claim for spreading over of unexplained investment for several years, is not permissible because S. 69B specifically states that the unexplained investment should be treated as the income of the year in which investment is made - claim for spreading over of the investment can be granted only if it is proved that the investment is made in several years - valuation of assets which is a pure factual issue, therefore, tribunal's decision of rejecting the claim require no interference

265 2009 TMI - 32176 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SHRI MAHESH CHANDRA SHARMA

Dated: 31-10-2008

Sections - 080IA, 080IB,

Special deduction - Tribunal was right in law in holding that process of assembling (of wheel using different components) carried out by the assessee is to be understood as amounting to 'manufacture' or production of an article – held that distinct article with distinctive name, character and use emerged - end product could not be held to be an article or thing – deduction u/s 80IB is granted – deduction cannot be denied mere because that tribunal erroneously referred to wrong section i.e. 80IA

266 2009 TMI - 32175 - KARNATAKA HIGH COURT

CANARA BANK GOLDEN JUBILEE STAFF WELFARE FUND Versus DEPUTY COMMISSIONER OF INCOME TAX

Dated: 31-07-2008

Sections - -

Society – members' contribution towards corpus fund was utilized for advancing loans to the members – society received interest on said loans & surplus funds of society were invested in bank deposits – assessee claimed exemption from tax on basis of principle of mutuality - interest on investment

INCOME TAX ACT 1961

CASE LAWS

and dividend on shares is deemed income from the property of the assessee (funds contributed by its members) and is governed by the principle of mutuality. Therefore, assessee's claim is accepted

267 2009 TMI - 32174 - BOMBAY HIGH COURT

ASTEROIDS TRADING AND INVESTMENTS P. LTD. Versus DEPUTY COMMISSIONER OF INCOME TAX

Dated: 10-07-2008

Sections - 148, 147,

Reassessment – notice u/s 148 - neither any change of law nor any new material been brought on record – fresh application of mind by officer to same set of facts and reassessment proceedings were initiated merely on basis of change of opinion of the officer – assessee had fully disclosed material facts necessary for claiming deduction u/s 80M – therefore, reassessment is not valid

268 2009 TMI - 32173 - BOMBAY HIGH COURT

ASIAN PAINTS LTD. Versus DEPUTY COMMISSIONER OF INCOME TAX

Dated: 10-07-2008

Sections - 147, 148,

Reassessment - notice issued u/s 148 - “reason to believe” - change of opinion - no new material has come on record, no new information has been received, it is merely a fresh application of mind by the same Assessing Officer to the same set of facts - reopening of assessment u/s 147 merely because there is a change of opinion cannot be allowed. In our opinion, therefore, in the present case, it was not permissible for the respondent to issue notice u/s 148.

269 2009 TMI - 32172 - MADRAS HIGH COURT

T.N. ARUMUGAM Versus CHIEF COMMISSIONER OF INCOME-TAX AND ANOTHER

Dated: 18-09-2008

Sections - 234B, 234C,

Petitioner's claim for waiver of interest under Sections 234B and 234C - rejected the request for waiver on the ground that he has not satisfied the condition prescribed in the Board's circular – held that respondent (Chief Commissioner of Income Tax) shall consider the circumstances under which the petitioner was unable to pay the tax earlier and also the justification of his seeking for waiver and refund of the interest amount paid

270 2009 TMI - 32171 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus SALORA INTERNATIONAL LIMITED

Dated: 18-08-2008

Sections - 35D, 37, 260A,

Advertisement expenditure for launching of products – held that there was a

INCOME TAX ACT 1961

CASE LAWS

direct nexus between the advertising expenditure and the business of the assessee and that unless the assessee made its products known to the market, its business would suffer, therefore, entire expenditure on advertising to be of a revenue nature – whether unutilized DEPB credit is allowable, whether professional fee for human resource engineering to be amortized are question of law, so appeal is admitted

271 2009 TMI - 32170 - GUJARAT HIGH COURT

AMIT SURESH BHATNAGAR Versus INCOME-TAX OFFICER

Dated: 21-10-2008

Sections - 179,

Petitioners is a Director of a Company – order issued u/s 179 by the respondent-authority for recovery of tax due by company tax from director – held that Revenue was required to establish that such recovery could not be effected from the Company and only then could the Directors be called upon to discharge the liability of the Company – but revenue failed to do so – therefore, order issued u/s 179 is quashed and set aside

272 2009 TMI - 32168 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus P. K. GANESHWAR

Dated: 24-11-2008

Sections - 158BB,

Fixed deposits in the fictitious names not detected during search but detected by investigation which was carried after the search – Tribunal holding that the information not found during the course of search cannot be used to arrive at an undisclosed income under the block assessment as per section 158BB – order of tribunal is justified

273 2009 TMI - 32166 - ORISSA HIGH COURT

U. K. MAHAPATRA AND CO. AND OTHERS Versus INCOME-TAX OFFICER AND OTHERS

Dated: 29-10-2008

Sections - 133A,

Survey in premises of Chartered Accountant of assessee – retention of impounded books of account/documents belonging to their clients – in absence of statement from client that their account books were kept in the premises of C.A., authorities lacked jurisdiction to enter the premises of petitioner-firm – violation of s.133A – held that income tax officer was not an authority competent to conduct survey u/s 133A in the premises of petitioner– petitioner entitled to get back the impounded books

274 2009 TMI - 32165 - MADRAS HIGH COURT

COMMISSIONER OF INCOME TAX Versus PIONEER PRESS P. LTD.

Dated: 21-11-2008

Sections - -

INCOME TAX ACT 1961

CASE LAWS

Contingency deposits for payment of possible tax liability - assessee's contention that the contingency deposit collected during the year is not a trading receipt but only a deposit, is not acceptable – held that if and when the amounts collected are refunded to the persons from whom the collection had been made, the assessee can claim deduction in the year in which such refund is effected - Tribunal was not right in holding that the contingency deposit would not form part of the income

275 2009 TMI - 32121 - JHARKHAND HIGH COURT

SMT. NAMITA ROY Versus UNION OF INDIA AND ANOTHER

Dated: 12-08-2008

Sections - 227,

Prosecution - petitioner very fairly stated that she was made victim of mischief by one A. K. Chatterjee, who filed her return through her signature and wrongly claimed refund and she immediately deposited the whole amount of refund along with interest with the Department immediately after receiving SCN for prosecution - From these facts, it can very well be said that the petitioner had no required mens rea for commission of the offence - criminal prosecution is hereby quashed.

276 2009 TMI - 32120 - MADRAS HIGH COURT

C. MALATHY Versus INCOME-TAX OFFICER

Dated: 14-10-2008

Sections - 068,

Cash credits – additions - genuineness of the creditors could not be verified - case of assessee is that report was not made available with regard to one creditor (Sivagamasundari) - Tribunal was right in law in remitting the matter back to the file of the Assessing Officer only with regard to that particular report regarding the credit in the name of Smt. Sivagamasundari - Now, this complaint that the matter should have been remitted in entirety is an after thought – tribunal's order is valid

277 2009 TMI - 32119 - MADRAS HIGH COURT

COMPUTER GRAPHICS LTD. Versus ASSISTANT COMMISSIONER OF INCOME-TAX

Dated: 06-08-2008

Sections - 080IB,

Industrial undertaking – special deduction - converting jumbo rolls into marketable small sizes - Tribunal was right in law in holding that the appellant was not entitled to deduction under section 80-IB of the Income-tax Act, 1961, on the ground that conversion of jumbo rolls into salable packets/rolls of standard size was not manufacture or production of article or thing

278 2009 TMI - 32118 - PATNA HIGH COURT

VIMLA STORES Versus COMMISSIONER OF INCOME-TAX AND ANOTHER

INCOME TAX ACT 1961

CASE LAWS

Dated: 24-10-2008

Sections - 069, 234B,

Survey - unaccounted stock – business income estimated by CIT (A) & affirmed by ITAT was based on available materials – thus, tribunal was justified in upholding the estimation of Rs. 50,000 under the head Business income - held that addition was made on the basis of material found in the course of survey and it cannot be said to be on mere suspicion, surmises and conjectures – but tribunal was not justified in upholding interest u/s 234B on the les advance tax, in absence of any order by AO

279 2009 TMI - 32108 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX (TDS) Versus RELIANCE INDUSTRIES LTD.

Dated: 11-09-2008

Sections - R003, 192, 201, 271C,

Salaries - Free meal coupons – taxability as perquisite within the rule 3(7) (iii) – deduction of tax at source - coupons were not utilized by employee for purchasing meals at an eating joints but were mis-used to purchase grocery items, cosmetics items, etc., from shops/super stores – held that employer is not expected to presume misuse of coupons to warrant deduction of tax at source – further, conveyance allowance in respect of vehicles owned by employees cannot be treated as perquisite

280 2009 TMI - 32107 - PATNA HIGH COURT

BIMLA SINGH and NAWAL KISHORE SINGH Versus COMMISSIONER OF INCOME-TAX

Dated: 22-10-2008

Sections - 158BB,

Construction of house property - determination of value - undisclosed income - difference of less than 15 % between the amount disclosed by the assessee in construction of the house – difference between the plea of the assessee on the issue on investment on house property and valuer's report is so meagre that one can assume it to be bona fide difference, fit to be ignored - Tribunal was not justified in adding the amount as an undisclosed income - impugned orders of AO and ITAT are set aside

281 2009 TMI - 32106 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus M. S. AGGARWAL

Dated: 08-09-2008

Sections - 113, 154,

Block assessment – whether surcharge could be levied in the case of a search carried out prior to June 1, 2002 i.e. prior to insertion of proviso to section 113 - Tribunal concluded that issue with regard to the levy of surcharge was debatable when the AO passed his order on June 11, 2003, u/s 154, therefore the rectification proceedings were not in order – held that issue was debatable one and hence provisions of s. 154 couldn't be invoked – no reason to interfere

INCOME TAX ACT 1961

CASE LAWS

with the findings of tribunal

282 2009 TMI - 32105 - DELHI HIGH COURT

ATS PROMOTERS AND BUILDERS P. LTD. AND OTHERS Versus CHIEF CIT AND ANOTHER

Dated: 05-12-2008

Sections - 127,

Transfer of case of petitioner by Commissioner – petitioners submitted detailed representations before the said Commissioner of Income-tax containing several objections to the proposal for transferring their cases - CIT's transfer order does not disclose proper application of mind to the objections - order of transfer under section 127(2) ought to disclose proper application of mind to the objections which the assessee may have raised – order of transfer is set aside

283 2009 TMI - 32084 - ORISSA HIGH COURT

TATA SPONGE IRON LIMITED Versus COMMISSIONER OF INCOME-TAX

Dated: 24-04-2008

Sections - 143, 253,

In view of CBDT Circular no. 549, AO should issue intimation u/s 143(1) before issuance of notice u/s 143(2) – it is not open to AO to make prima facie adjustment u/s 143(1), after issuance of notice u/s 143(2) – further, as required u/s 253(4), the ITAT should have disposed of memorandum of cross-objection as if it were an appeal presented before it – ITAT was not correct in holding that the cross-objection filed by assessee supported the action of CIT(A) and became academic and infructuous

284 2009 TMI - 32082 - MADHYA PRADESH HIGH COURT

DIRECTOR OF INCOME-TAX (INVESTIGATION) Versus PAYAL SELECTION AND CO. AND OTHERS

Dated: 02-04-2008

Sections - 132A,

Sessions Judge, directing the department to deposit seized silver items in the treasury and consequent to the decision of the case to be handed over to the appropriate person – petitioner (dept.) urged that such an order was contrary to the provisions of law - neither the police nor the CIT had gathered any information on record as to arrive to a conclusion that the silver pertains to undisclosed assets of the assessee – order of session court is correct

285 2009 TMI - 32081 - HIGH COURT RAJASTHAN

C.I.T. UDAIPUR Versus M/S SECURE METERS LTD.

Dated: 20-11-2008

Sections - 80HHC, 037, 010(2),

Whether Octroi, sales Tax and Excise Duty received by the assessee is not includable in the total turn over vis-à-vis the export turn over for computing deduction u/s 80HHC – question is answered in favour of assessee -

INCOME TAX ACT 1961

CASE LAWS

Admittedly the debentures when issued is a loan, and therefore, whether it is convertible, or non convertible, does not militate against the nature of the debenture, being loan, and therefore, the expenditure on issue of debenture are admissible as revenue expenditure

286 2009 TMI - 32080 - HIGH COURT RAJASTHAN

C.I.T AJMER Versus M/S UNIQUE PRECURED RETRADERS

Dated: 12-09-2008

Sections - 271, 260A,

Concealment of income – penalty – return submitted in pursuance of notice u/s 148 showing higher income than returned in original return,- ITAT set aside the penalty on ground that assessee had voluntarily surrendered the income - nothing was produced by revenue to establish, that the assesses had concealed the income – revenue’s contention that Mens-rea is not one of the essential ingredient, for attracting liability, u/s 271, is not acceptable – penalty was rightly set aside

287 2009 TMI - 32079 - HIGH COURT RAJASTHAN

C.I.T BIKANER Versus MANAGER S.B.I. BIKANER

Dated: 26-08-2008

Sections - 195, 194I, 010(15),

Liability to deduct TDS on interest paid on TDR/STDR and on rent paid for the office building to four co-owners - interest paid by the Bank to the NRIs on deposits in Indian Currency was exempt u/s10(15)(iv)(fa) and thereby not subject to TDS u/s195 – further, when there are a number of owners of a property, the limit/ceiling of Rs.1,20,000 was applicable to each co-owner separately and thus, no tax was required to be deducted at source u/s 194I – revenue’s appeal dismissed

288 2009 TMI - 32078 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SOBTI CONSTRUCTION (INDIA)

Dated: 25-04-2008

Sections - 044AD,

Whether Tribunal was correct in applying Section 44AD (1) even though the gross receipts from the construction business of the Assessee were more than Rs. 40 lakhs – held that section 44AD (1) does not deal with undisclosed receipts but deals with gross receipts – admittedly, gross receipts were above 40 lacs – tribunal could not have assumed the estimated profit at 8% - tribunal directing AO to restrict addition by estimating net profits at 8 % of unaccounted receipts is not proper

289 2009 TMI - 32077 - DELHI HIGH COURT

SHRIRAM PISTONS AND RINGS LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 29-04-2008

INCOME TAX ACT 1961

CASE LAWS

Sections - 037, 036, R006B,

Technical collaboration agreement for manufacture – there was no sale of technical know-how but there was transfer of only a right to use the technical know-how – hence payment made by assessee should be treated as revenue expenditure – further, gifts given by dealers (of assessee) to customers are not in nature of advertisement, hence would not fall within the financial limits as laid down u/r 6B – “GOOD WORK REWARD” doesn’t amount to bonus, hence deductible u/s 37(1) not u/s 36(1)(ii)

290 2009 TMI - 32076 - HIGH COURT RAJASTHAN

C.I.T. UDAIPUR versus M/S K.K. ENTERPRISES UDAIPUR

Dated: 18-08-2008

Sections - 158BB,

Addition on account that assessee sold land as per sale-deeds at a low price - in absence of evidence on record, higher price for sale of land cannot be presumed – so additions were rightly deleted by tribunal – in respect of depreciation on tankers, when tankers were duly registered, insured and given on lease and diesel was filled, assessing authority was not right in holding that tankers were neither given on lease nor put in use – so, ITAT was right in allowing depreciation on said tankers

291 2009 TMI - 32075 - HIGH COURT RAJASTHAN

C.I.T. UDAIPUR Versus INANI MARBLES (P) LTD.

Dated: 19-08-2008

Sections - 145,

AO invoked S.145 and made assessment by applying gross profit rate of 15% on the sales disclosed by the assessee, and accordingly additions were made to the different result – on appeal by assessee tribunal reduced the G.P. rate at 2.51%. – revenue challenging the acceptance of GP Rate by the Tribunal on ground that tribunal ignored the relevant material concerning assessee's own result of the previous year, is not justified – tribunal's decision cannot be vitiated – revenue's appeal dismissed

292 2009 TMI - 32074 - HIGH COURT RAJASTHAN

C.I.T. Versus M/S SIROHI S.B.V.BANK LTD.

Dated: 24-09-2008

Sections - 80P,

Assessee is a co-operative society, and carries on banking activities, including providing credit facilities to its members – additions on account of interest received by the assessee various loans given to the staff - Whether the amount of interest earned by the respondent Bank on various loans extended to its employees from deposit of P.F. and Housing loan is eligible to be exempted u/s 80P (2) (a) (i) – Held, no – revenue's appeal allowed

293 2009 TMI - 32073 - HIGH COURT RAJASTHAN

C.I.T JODHPUR Versus M/S POKAR HOTEL JODHPUR

INCOME TAX ACT 1961

CASE LAWS

Dated: 22-09-2008

Sections - 143, 147, 148, 271, 132, 133,

Additions on account of unexplained investment in construction of hotel building – reopening of assessment on basis of cost of the construction valued by in departmental valuation Officer's report – held that the assessee's income could not be assessed, under the head of investment in construction of building, in an amount, beyond what was shown to be the cost, by the Departmental Valuation Officer, on the ground, that the assessee has shown investment, to be at lesser figure.

294 2009 TMI - 32072 - HIGH COURT RAJASTHAN

C.I.T BIKANER Versus DR. DEVENDRA GUPTA

Dated: 21-08-2008

Sections - 143, 147, 148,

Income to have escaped assessment – whether in case where despite existence of material on record, to arrive at a conclusion about escapement of certain income from assessment, in the re-assessment proceedings where such income is not found to have escaped assessment, it is open to AO to complete the re-assessment proceedings, by finding some other income, to be liable to be subjected to tax – Held, no - Tribunal rightly quashed the reassessment and the consequential additions made therein

295 2009 TMI - 32071 - HIGH COURT RAJASTHAN

C.I.T. Versus SHRI SINDHUJA FOODS PVT. LTD.

Dated: 24-10-2008

Sections - -

Additions made on account that assessee had recorded bogus purchase in his books of accounts - Tribunal reduced additions considering the fact that in the previous year the Gross Profit rate applied was 7.09%, and the same was applied by the learned Commissioner this year also, that was upheld - Revenue could not show as to what material has not been considered by Tribunal, and what irrelevant material has been considered in reducing the additions – order of tribunal cannot be vitiated

296 2009 TMI - 32070 - HIGH COURT RAJASTHAN

C.I.T. UDAIPUR Versus KANHAIYA LAL, MOHAN LAL GURNANI & SMT. LEELA DEVI

Dated: 05-08-2008

Sections - -

Search - addition of Rs. 15,71,001/-, being the difference amount between the price shown in the registered sale deed and the agreement of sale – tribunal deleted the addition holding that stamp duty charges cannot be relevant for determining the exact sale consideration & assumed price, on the basis of incomplete and irrelevant document cannot be sustained - no appeal filed by revenue against this judgment of Tribunal and it has acquired finality – therefore revenue's appeal is dismissed

INCOME TAX ACT 1961

CASE LAWS

297 2009 TMI - 32069 - HIGH COURT RAJASTHAN

C.I.T. Versus M/S RAJESH KUMAR DINESH KUMAR & M/S. LAL CHAND PREM CHAND

Dated: 10-11-2008

Sections - 220, 146,

Cancellation of interest u/s 220(2) – relevant date - Tribunal relying upon the Circular No.334 dated 3.4.1982 hold that interest under Section 220(2) can be awarded only from the due date of demand notice issued for the reframed assessment order on the amount finally determined as taxable, and not from the due date of the original assessment order – there is no any error in the finding recorded by the Tribunal – revenue's appeal have no force and are dismissed

298 2009 TMI - 32061 - HIGH COURT BOMBAY

SHIVSAGAR VEG. RESTAURANT Versus ASSTT. COMMISSIONER OF INCOME-TAX, MUMBAI

Dated: 14-11-2008

Sections - 254, 255,

Whether the impugned order passed by the Tribunal after more than 4 months from the date of hearing without dealing with propositions and case laws relied by the Appellant, suffers from non application of mind and non consideration of material on record and therefore bad in law – Held, yes – impugned order is set aside - President of ITAT is directed to frame guidelines and issue administrative directions to all the Benches of the said Tribunal to prevent delay in delivery of judgments

299 2009 TMI - 32060 - HIGH COURT RAJASTHAN

C.I.T. JODHPUR Versus M/S MEC SHOT BLASTING EQUIPMENT

Dated: 25-09-2008

Sections - 037,

Admissibility of the commission, paid to the sister concern - Whether ITAT was justified in confirming the order passed by CIT (A) whereby the payment of commission @ 15% of the net sales has been held to be justified - Whether ITAT was justified in allowing the assessee's claim of deduction of bank guarantee commission to its directors and the relatives - both the questions are answered, against the Revenue and in favour of the assessee

300 2009 TMI - 32059 - HIGH COURT RAJASTHAN

C.I.T. UDAIPUR Versus M/S HYCON INDIA LTD. UDAIPUR

Dated: 20-08-2008

Sections - 010B,

Entitlement to claim exemption u/s 10B on the interest income earned from M/s Wolkem India Ltd.(sister concern) – assessee's submission that income was the result of business transactions between the assessee and seller, and therefore, it clearly falls within the definition of "Profits and Gains" and

INCOME TAX ACT 1961

CASE LAWS

therefore, the assessee was entitled to exemption under section 10B, is acceptable – revenue's appeal are dismissed – tribunal was justified in granting exemption

301 2009 TMI - 32058 - HIGH COURT RAJASTHAN

C.I.T. AJMER Versus M/S BHILWARA SPINNERS LTD.

Dated: 24-09-2008

Sections - 031, 037,

Whether Tribunal was justified in holding that the amount was allowable deduction as current repairs of plant and machinery under Section 31(1) or as revenue expenditures incurred wholly laid out for the purpose of business under Section 37(1), by considering the entire plant as one single unit – Held, yes – in view of decision of SC in CIT, Madurai Vs. Saravana Spinning Mills (P.) Ltd., question is answered in favour of the assessee, and the appeal of revenue is dismissed.

302 2009 TMI - 32057 - HIGH COURT RAJASTHAN

C.I.T. JODHPUR Versus UDAI MOHAN & COMPANY

Dated: 01-07-2008

Sections - 185, 142, 144, 143, 139,

Whether Tribunal was justified in affirming order passed by CIT (A) setting aside the order passed by the AO u/s 185(5) refusing to grant registration to the respondent-firm & treating the assessee firm as URF (unregistered Firm) - if the assessee had complied with the notice u/s 142 (1), and the ITO was not satisfied with the compliance, it cannot be said that there was non compliance of the notice – therefore, order u/s 185 (5) & assessment made u/s 144 has rightly been set aside by ITAT

303 2009 TMI - 32056 - HIGH COURT RAJASTHAN

CIT, UDAIPUR Versus THE BANK OF RAJASTHAN LTD.

Dated: 28-08-2008

Sections - -

Whether the interest/penal interest, charged by the Bank, on delayed payment of installments, in recurring deposit account, by the depositor, can be subjected to levy of tax, under the provisions of Interest Tax Act, 1974 – held that, it cannot be said, that the interest or penal interest, charged by the assessee, on the delayed payment of installments, by the depositors of the recurring deposit accounts, is exigible to tax, under the provisions of I.T. Act, 1974 – revenue's appeal dismissed

304 2009 TMI - 32055 - ALLAHABAD HIGH COURT

Commissioner of Income Tax, Lucknow Versus M/s U.P. Rajkiya Nirman Nigam Ltd., Lucknow

Dated: 03-04-2008

Sections - 032AB,

INCOME TAX ACT 1961

CASE LAWS

Whether Tribunal was justified in holding that even if the company did not fulfill the condition of sub section (5) of Section 32 AB, it is entitled for deduction u/s 32 AB – Held, yes - held that the filing of auditor's report along with return is not mandatory and in case, if it is not filed along with return, but filed subsequently and was available for consideration at the time of passing of the assessment order, deduction u/s 32 AB cannot be disallowed – revenue's appeal dismissed

305 2009 TMI - 32054 - ALLAHABAD HIGH COURT

Commissioner of Income Tax (Central) Kanpur Versus Late Sri Surendra Kumar Malhotra

Dated: 09-09-2008

Sections - 132, 158BB,

Search - computation of undisclosed income - Tribunal was justified in holding that the income shown by the wife of the assessee from knitting and tailoring was not the undisclosed income of the assessee within Chapter XIVB - Tribunal was justified in law in holding that no addition under Chapter XIVB was warranted in the hands of the assessee on account of the income shown in the name of the wife of the assessee as no document had been found during the search – revenue's appeal dismissed

306 2009 TMI - 32030 - KERALA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus P. NATESAN ACHARY

Dated: 13-03-2008

Sections - 69A,

Additions made u/s 69A – seizure of gold ornaments – assessee's statement that other goldsmiths are owner of those seized items was not accepted by excise and income-tax authorities – finding of excise authorities and income-tax authorities that assessee was owner of those items, cannot be discarded - Tribunal acted perversely in accepting the explanation offered by the assessee and other goldsmiths and subsequently deleting the additions - Held that additions were rightly made

307 2009 TMI - 32029 - HIGH COURT ALLAHABAD

Commissioner Income Tax Versus M/s Kashipur Rice Mills P. Ltd.

Dated: 08-07-2008

Sections - 260A,

Maintainability of the appeal – revenue's submission that copy of the judgment and order dated 20.04.2005 passed by ITAT was served in the office of the CIT on 21.04.2008 and as such the appeal preferred by them is well within time, is rejected – revenue has not approached this Court with clean hands as he was aware about the contents of the judgment and order dated 20.04.2005 in the year 2005 itself - impugned revenue's appeal is dismissed on the ground of limitation.

308 2009 TMI - 32028 - HIGH COURT ALLAHABAD

Commissioner of Income Tax Versus M/s Kanpur Colonisers (P) Ltd.

INCOME TAX ACT 1961

CASE LAWS

Dated: 23-05-2008

Sections - 037,

Whether Tribunal was justified in allowing the expenditure incurred on agricultural operation by the assessee - question is answered in favour of Revenue holding that the Tribunal erred in treating the expenditure incurred towards the plantation of eucalyptus trees as revenue expenditure and the same could not have been treated to be expenditure incurred on agricultural operation – assessee's contention that eucalyptus trees planted by him could be treated to be stock in trade, is rejected

309 2009 TMI - 32027 - HIGH COURT ALLAHABAD

[CIT-I Versus Pradeshia Industrial & Investment Corporation](#)

Dated: 05-08-2008

Sections - 145,

Whether Tribunal was justified in holding that the income could be properly reduced from the method of accounting employed by the assessee within the meaning of proviso to Section 145 (1) only because it was in accordance with Section 209 (3) (b) of the Companies - Whether Tribunal was justified in law in deleting the said disallowance – in view of decision of this Court in CIT vs (PICUP) U.P. Ltd., issue is decided in favour of the assessee and against the Revenue.

310 2009 TMI - 32026 - HIGH COURT ALLAHABAD

[The Commissioner of Income Tax, Varanasi and another Versus M/s. Jhunjhunwala Vanaspati Ltd.](#)

Dated: 24-04-2008

Sections - 022, 056,

Temporary use of the borrowed funds by investing and earning interest according to the Tribunal was not an investment of a nature which would bring the interest income under the head 'income from other sources' - decision of the Tribunal on the above point is correct - whether Tribunal was justified in holding that the expenses incurred for raising public issue is revenue expenditure in nature - matter be listed again for further hearing on this question

311 2009 TMI - 32025 - HIGH COURT ALLAHABAD

[Assistant Commissioner of Income Tax Versus M/s Vikram Tractors](#)

Dated: 03-04-2008

Sections - 037,

Claim of discount for the sale of tractors - For the claim of such discount the full details, including the date of payment, name and address of the customer, Bill No., cost of tractor, amount of discount paid and other details, have been furnished before the Assessing Authority - no case has been made out that the discount has actually not been paid by the assessee - Tribunal was justified in upholding the admissibility of expenses – discount are allowable - Revenue's appeal is dismissed

INCOME TAX ACT 1961

CASE LAWS

312 2009 TMI - 32024 - HIGH COURT ALLAHABAD

Dr. Vinod Kumar Rai & Subhash Chandra Kesarwani Versus The ITAT, Allahabad & others

Dated: 14-03-2008

Sections - 253,

Period of limitation prescribed under sub-section 3 of Section 253 would commence from the date the order is communicated to the Commissioner, Income Tax and not from the date of communication of the order to Assessing Authority - order dated 3.10.2006 was received by C.I.T. on 17.11.2006 and, therefore, the appeal filed by revenue before tribunal on 12.1.2007, was well within time – hence, assessee's appeal dismissed

313 2009 TMI - 32012 - HIGH COURT DELHI

SILVER OAK LABORATORIES PRIVATE LIMITED AND ANOTHER Versus DEPUTY CIT

Dated: 18-12-2008

Sections - 148, 147, 143,

Reassessment – sole and entire basis of re-opening the assessment is the additions made in A.Y. 1998-99 and 2001-02, no other reason given by AO - Since the tribunal has already deleted the additions in respect of the A.Y. 1998-99 and 2001-02, the very basis for continuing any further with the re-assessment proceedings does not survive any more - no specific allegation with regard to the A.Y 1999-2000 regarding suppression of sale figures – proceedings u/s 147 and notice u/s 148 are quashed

314 2009 TMI - 32010 - HIGH COURT ALLAHABAD

C.I.T., Agra Vs. M/s Chamba Mal Harjeet Singh, Shri Harjeet Singh, Etawah

Dated: 14-03-2008

Sections - 171, 143, 144,

Partition of a HUF - revenue contention that business of smaller HUF cannot be treated to be that of bigger HUF only on the basis of family arrangement, is acceptable - Tribunal was not correct in holding that the business income pertaining to the sales and manufacture of rice and other grain etc. was assessable in the hands of the bigger HUF and not in the hands of the smaller HUF

315 2009 TMI - 32009 - HIGH COURT ALLAHABAD

C.I.T., Lucknow Versus Shri Ram Prakash

Dated: 19-02-2008

Sections - 271,

Penalty u/s 271(1)(c) - explanation of assessee was not found to be false & therefore, it was not a case covered by Explanation I(A) of Section 271(1) of the Act as it stood in 1977-78 - Revenue could not show as to what relevant material was not disclosed by the assessee which it ought to have disclosed

INCOME TAX ACT 1961

CASE LAWS

and how and in what manner it could say that the explanation offered by the assessee was not bona fide – therefore, tribunal was justified in holding that no penalty u/s 271(1)(c) was leviable

316 2009 TMI - 32008 - HIGH COURT ALLAHABAD

Sri Banarsi Prasad Versus Commissioner of Income Tax, Allahabad

Dated: 29-02-2008

Sections - 068,

Whether Tribunal was justified in law in holding that in the case of cash credits in the assessee's books in the names of close relatives, the burden of proof is on the assessee u/s 68 to establish the nature and source of the amount – held that in such cases, the assessee under section 68 has to prove three conditions, viz. (1) the identity of the creditor, (2) the "capacity" of such creditor to advance the amount, and (3) the genuineness of the transaction - reference is answered, as above

317 2009 TMI - 32007 - HIGH COURT ALLAHABAD

CIT-I, Lucknow Vs. M/s Sohan Lal Sewa Ram Jaggi, Prop. Raghav Jaggi

Dated: 05-02-2008

Sections - 143, 124,

ITAT annulled the assessment - transfer of jurisdiction from Income Tax Officer, Ward-I (2) to Ward-I (3) - assessee had not challenged the jurisdiction of the subsequent assessing officer within one month of the receipt of notice u/s 143(2)/142(1) as required u/s 124(3) – Tribunal was not justified in annulling the assessment mere on the ground that the assessing officer completing the assessment did not had the jurisdiction over the case- Revenues' appeal is allowed by way of remand

318 2009 TMI - 32006 - ALLAHABAD HIGH COURT

M/s Pradeshik Cooperative Dairy Federation Limited Versus Deputy CIT, Special Range, III, Lucknow

Dated: 17-01-2008

Sections - 143, 154,

In view of amendment in Section 143 (1A) amended retrospectively, proceeding u/s 154 initiated to demand additional tax - Appellant submits that no additional tax can be levied where the assessed income is at loss and therefore, by subsequent amendment, the liability cannot be fixed - law has been clarified by the Parliament by making a retrospective amendment in the statute – held that appellant cannot take benefit of the ratio laid down by SC in Hindustan Electro Graphites Ltd.

319 2009 TMI - 31984 - HIGH PUNJAB AND HARYANA COURT

Commissioner of Income Tax, Amritsar Versus M/s. Partap Steel Rolling Mills Pvt. Ltd.

Dated: 17-12-2008

Sections - 215,

INCOME TAX ACT 1961

CASE LAWS

Whether Tribunal was correct in law in upholding the order of CIT(A) canceling the interest charged u/s 215 - Tribunal set aside the levy of interest only on the ground that opportunity of hearing was not given to the assessee. It is not disputed that the said provision is mandatory and interest is in the nature of compensation and is leviable if advance tax paid was less than 75% of the assessed tax – therefore, question is answered in favour of revenue and against the assessee.

320 2009 TMI - 31983 - PUNJAB AND HARYANA HIGH COURT

M/s Accent for Living Versus Commissioner of Income Tax.

Dated: 22-12-2008

Sections - 80IB, 80HHC,

Assessee claimed deduction in respect of income from duty drawback u/s 80IB, on sale of replenishment licence and currency fluctuation - claim was disallowed by ITAT on the ground that the said income was not income derived from business undertaking - similar claim for deduction u/s 80 HHC was also disallowed - view taken by the Tribunal is justified and it is in accordance with the view already taken by SC in CIT v. Sterling Foods. and judgment of this Court in Liberty India v. CIT

321 2009 TMI - 31982 - HIGH COURT PUNJAB AND HARYANA

Commissioner of Income Tax. Versus The Assistant Manager (Accounts), FCI.

Dated: 22-12-2008

Sections - 194A, 194I, 194C,

Assessee is a Government undertaking - AO created a demand, on the allegation that the assessee failed to make deductions at source in respect of payments made towards transportation and other charges - Tribunal rightly set aside the same on the ground that the payments made were not on behalf of the assessee but were part of cost of procurement of wheat and thus, provision for deduction at source was not applicable – no substantial question of law arises – revenue's appeal is dismissed

322 2009 TMI - 31981 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax Versus Sh. Mahipal Singh.

Dated: 22-12-2008

Sections - 44AB, 271B,

Violation of provisions of section 44AB - assessee filed his return as proprietor of two concerns but audit report was filed in respect of one concern. The Assessing Officer levied penalty under Section 271B - finding recorded by the Tribunal that non-filing of audit report was for bona fide reasons being pure finding of fact, we are unable to hold that any substantial question of law arises - appeal by revenue is dismissed - ITAT has not erred in deleting the penalty

323 2009 TMI - 31980 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax, Patiala Versus The Improvement Trust.

INCOME TAX ACT 1961

CASE LAWS

Patiala

Dated: 22-12-2008

Sections - 139,

Revised return was rejected by AO on ground that assessee has changed the method of accounting - revised return was within the prescribed time - assessee has only made correction by bringing closing stock in consonance with the principle, on which opening stock was valued, so that the income can be correctly arrived at - CIT (A) & ITAT were right in directing AO to re-compute the income by adopting value of closing stock at cost or market price whichever is lower – revenue's appeal dismissed

324 2009 TMI - 31979 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax-I, Chandigarh Versus Shri Waheguru Singh

Dated: 22-12-2008

Sections - 271E, 269T,

Penalty u/s 271E - repayment of cash loan in violation of Section 269T - assessee did not act deliberately in defiance of law and his conduct was not dishonest, neither he acted in conscious disregard of its obligation, since the transactions were genuine and entered due to business exigency - this breach was a venial breach and flows from a bonafide belief. Therefore, the assessee was not liable to the penalties

325 2009 TMI - 31978 - PUNJAB AND HARYANA.HIGH COURT

Commissioner of Income Tax, Chandigarh-II Versus Sh. Harbans Lal Sarna

Dated: 23-12-2008

Sections - 132, 131,

Search and seizure – assessee claimed sale of jewellery as source of income, which was alleged to be un-disclosed income - AO did not accept the explanation of the assessee - I.T.A.T. holding that assessee had discharged his onus of explaining genuineness of the sale of jewellery to M/s RKE - finding of the Tribunal is a finding of fact based on appreciation of evidence and material on record – revenue's appeal is dismissed

326 2009 TMI - 31949 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus UNIQUE INDUSTRIES

Dated: 07-05-2008

Sections - -

Addition made on account of Modvat Credit - assessee had not utilized the credit for payment of excise duty or adjusted the amount against the purchase - merely because Modvat credit is an irreversible credit available to the manufacturers upon purchase of duty paid raw material, it would not amount to income which is liable to be taxed under the Income Tax Act – tribunal was right in deleting the additions made on above ground

327 2009 TMI - 31948 - DELHI HIGH COURT

INCOME TAX ACT 1961

CASE LAWS

COMMISSIONER OF INCOME-TAX Versus MOHINDER LAL HARYANI

Dated: 06-05-2008

Sections - -

Block assessment - search – documents recovered showing certain payments made by assessee to M and some jewellery found – dismissing the appeal of revenue, held that there was no doubt that M was closed down several years ago and the documents could not be attributed to the block period – Tribunal rightly accepted the fact that assessee received gifts from friends and relatives - no substantial question of law arises for consideration

328 2009 TMI - 31936 - HIGH COURT OF BOMBAY

Clifford Chance Versus The Deputy Commissioner of Income Tax

Dated: 19-12-2008

Sections - 009,

Foreign law firms, even though working as solicitors for multinational corporations with operations in India, will pay tax only in those countries where they give legal advice and not in India - Services which are to be taxed must be both "rendered in India" and "utilized in India" for them to fall under the income tax bracket.

329 2008 TMI - 31919 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SAJUMA CO-OP. CREDIT AND SERVICE SOCIETY LTD.

Dated: 22-02-2008

Sections - 271B,

During assessment proceedings it was noticed that gross turnover of assessee exceeded Rs. 40 lakhs, but assessee has not got its accounts audited - Tribunal has recorded a finding of fact that, the assessee under a bona fide belief did not get its accounts audited from the chartered accountant or from the inspector of co-operative societies because the sales turnover of the assessee were less than Rs. 40 lakhs – hence penalty was rightly cancelled by ITAT

330 2008 TMI - 31913 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus VALUE CAPITAL SERVICES P. LTD.

Dated: 25-04-2008

Sections - 068,

Share application money - existence of the applicants - genuineness of the transaction – additions - Held that additional burden was on the Revenue to show that even if the share applicant did not have the means to make the investment, the investment made by them (share applicant) actually emanated from the coffers of the Assessee so as to enable it to be treated as the undisclosed income of the Assessee – hence revenue's appeal is dismissed

331 2008 TMI - 31911 - PUNJAB AND HARYANA HIGH COURT

INCOME TAX ACT 1961

CASE LAWS

VIKAS W.S.P. LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 11-09-2008

Sections - 010B, 145,

AO made addition on account that assessee who is engaged in manufacture of Gaur Gum Pulverized, has transferred guar splits at rate much lower than the market rate - AO can, from the material on record, reject a particular claim in the return unless the decision of AO can be held to be erroneous – therefore finding recorded by AO to the extent the same has been affirmed by the CIT (A) as well as by the ITAT, unless shown to be perverse, will be a finding of fact – assessee's appeal dismissed

332 2008 TMI - 31895 - ALLAHABAD HIGH COURT

MOTORS AND DIESELS P. LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 22-08-2008

Sections - 032A,

Assessee derived income from cold storage and claimed for investment allowance u/s 32A by stating that the assessee is producing chilled air in the cold storage, which amounted to "production of a thing" – industrial undertaking - as a result of long storage, scientific examination might indicate loss of moisture content, that is not sufficient for holding that the stored articles have undergone a process - no processing/manufacturing - Tribunal have rightly denied claim of investment allowance

333 2008 TMI - 31894 - GUJARAT HIGH COURT

DEEPAK NITRITE LIMITED Versus COMMISSIONER OF INCOME-TAX

Dated: 06-05-2008

Sections - 254, 143, 032AB,

In original return assessee claimed deduction u/s 32A - Revised return claiming deduction u/s 32AB - Tribunal was correct in holding that mere intimation u/s 143(1)(a) could not be equated with an Assessment Order – hence, claim for deduction u/s 32AB, on the basis of revised Return of income is allowable – further, since question regarding quantum of loss was not in issue before AO or CIT(A), tribunal is not allowed/empowered to consider such question regarding quantum of loss

334 2008 TMI - 31893 - GUJARAT HIGH COURT

GUJARAT CARBON AND INDUSTRIAL LTD. Versus JOINT COMMISSIONER OF INCOME-TAX

Dated: 19-06-2008

Sections - 147, 148,

Petition challenges notice issued u/s 148 – no failure on part of the assessee to fully and truly disclose all material facts relevant for the assessment – it is a case wherein the AO has formed an incorrect opinion as per opinion of the successor AO - hence, the successor AO cannot treat the assessee to be in default of non-disclosure - admittedly the impugned notice is issued beyond a

INCOME TAX ACT 1961

CASE LAWS

period of four years from the end of the relevant Assessment Year the said notice is required to be quashed

335 2008 TMI - 31892 - GUJARAT HIGH COURT

DEPUTY COMMISSIONER OF INCOME-TAX Versus AMOD PETROCHEM P. LTD.

Dated: 27-06-2008

Sections - 068,

Cash credits – business of predecessor entity was transferred as a going concern to assessee-company - Is the Tribunal right in holding that liability to pay tax in respect of the unexplained deposits did not arise on the ground that the company was incorporated on 14-02-85 while the cash credits were shown to have been introduced in the books of accounts of the company on 16-01-1985 – Held, yes – tribunal had found as a matter of fact that there were no fresh credits

336 2008 TMI - 31891 - CALCUTTA HIGH COURT

P. G. AND SAWOO P. LTD. AND ANOTHER Versus ASSISTANT CIT, AND OTHERS

Dated: 26-09-2008

Sections - 143, 147, 148,

Reassessment - escapement of income regarding the enhanced rent - Question relates to whether additional or extra rent attributable to preceding years of account which could not be taxed under Section 22 of the Act should be taxed under the head “income from other sources” – petitioner claim that impugned notice issued u/s 148 is vitiated – held that when intimation is done u/s 143(1)(a), impugned notice issued u/s 148 cannot be held invalid – petitioner’s appeal is dismissed

337 2008 TMI - 31890 - RAJASTHAN HIGH COURT

UMAID CHARITABLE TRUST Versus UNION OF INDIA AND OTHERS

Dated: 02-05-2008

Sections - 80G, R011AA,

Trust spent a sum for repairing & colouring of Lord Vishnu’s temple – CIT hold that Trust had incurred expenditure exceeding 5% of its total income on a particular religion, hence Trust was not entitled to renewal of exemption u/s 80G – held that Revenue is not allowed to take a narrow approach that character of charitable trust was lost if one particular expenditure was made for such/above purpose and that too by way of contribution to another trust - Order of Commissioner is set aside

338 2008 TMI - 31871 - AUTHORITY FOR ADVANCE RULINGS

M/s Rural Electrification Corporation Ltd., In re.,

Dated: 23-12-2008

Sections - 036, 010(23G),

INCOME TAX ACT 1961

CASE LAWS

Swapping premium - applicant, PSU is registered as Non-Banking Financial Company by RBI to provide long-term finance to State Electricity Boards. It was held that swapping premium is the profit derived from the business of providing long-term finance, hence merits allowance of the deduction u/s 36(1)(viii) - swapping premium can be termed as compensation for the breach of contract - disclosure of swapping premium in Balance Sheet as 'other income' instead of business income is immaterial.

339 2008 TMI - 31870 - AUTHORITY FOR ADVANCE RULINGS

Ikea Trading (Hong Kong) Ltd. In re.,

Dated: 23-12-2008

Sections - 005, 009,

Applicant, a tax resident of Hong Kong, established a liaison office in New Delhi for undertaking liaisoning activities in connection with purchase of goods from India – Admittedly, the applicant does not effect any sales in India – hence in view of nature of activities carried on or to be carried on by the liaison office, as listed in Annexure III, any income would not accrue or arise or deemed to accrue or arise in India in terms of s. 5(2)(b) - applicant can not be subjected to tax in India

340 2008 TMI - 31869 - DELHI HIGH COURT

The Commissioner of Income Tax-III Versus M/s SIEL Industrial Estate Ltd.

Dated: 04-12-2008

Sections - 271,

Tribunal deleted additions/penalty holding that authority had not recorded its satisfaction regarding concealment of income or furnishing of inaccurate particulars - mere absence of the words "I am satisfied" may not be fatal but such a satisfaction must be spelt out from the order of the Assessing Authority – Tribunal rightly followed the decision in the case of CIT v. Rampur Engineering Co. Ltd which has already been considered by the Full Bench - order of tribunal was justified

341 2008 TMI - 31868 - DELHI HIGH COURT

Commissioner of Income Tax Versus M/s India Crafts and others

Dated: 04-12-2008

Sections - 271,

Tribunal deleted the additions and penalty holding that the authority had not recorded its satisfaction regarding concealment - present cases relate to assessment orders made after 01.04.1989 and, therefore covered by the amendment brought in Section 271 by the insertion of s.s. 1B – Since Tribunal limited itself only to the question of recording of satisfaction & didn't go into the question on merits, in view of the amendment, matters is remitted to the Tribunal for consideration on merits

342 2008 TMI - 31867 - DELHI HIGH COURT

INCOME TAX ACT 1961

CASE LAWS

Commissioner of Income Tax Versus Late Shri A.R. Chadha Th. L/H Sh. C. M. Chadha

Dated: 04-12-2008

Sections - 271,

Penalty u/s 271(1)(c) - matters in which assessment orders were made prior to 01.04.1989 are unaffected by the retrospective amendment brought by the insertion of s.s. (1B) in s. 271 w.e.f. 01.04.89 - In the light of Full Bench decision in CIT v. Rampur Engineering Co. Ltd., Tribunal rightly deleted additions & penalty holding that the authority had not recorded its satisfaction regarding concealment – held that satisfaction must be spelt out clearly from the order of the Assessing Authority

343 2008 TMI - 31862 - DELHI HIGH COURT

M/S BHAV SHAKTI STEEL MINES PVT. LTD. Versus COMMISSIONER OF INCOME TAX, NEW DELHI

Dated: 16-12-2008

Sections - 068,

Whether the ITAT was justified in law in remanding the case to AO when the matter has been examined on merits by CIT(A) – since, Commissioner of Income Tax (A) has examined the question of identity, credit worthiness and genuineness of each of the share holders, Tribunal was not justified in coming to the conclusion that the CIT(A) had not considered the matter in the right perspective – question is decided in favour of the assessee and set aside the order passed by the Tribunal.

344 2008 TMI - 31861 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus J. K. SYNTHETICS LIMITED

Dated: 17-12-2008

Sections - 037, 043,

Licence and Technical Assistance Agreement which include training of personnel in Italy etc. - expenditure incurred by the assessee on know-how during the year, under consideration, was in respect of, a business which was already in existence and hence, the payments were made for user of licence – hence money paid was required to be treated as revenue expenditure – consequently, any interest paid in relation to delayed payments will also, have to be treated, as one, which is, on revenue account

345 2008 TMI - 31860 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX (CENTRAL)-I, NEW DELHI Versus SAIN PROCESSING and WEAVING MILLS (P) LTD.

Dated: 17-12-2008

Sections - 115J, 115JA,

Whether the Tribunal was correct in law in allowing depreciation in computation of book profits u/s 115J, even though it was not debited in the P/L account – held, yes - if unabsorbed depreciation can be reduced from 'net profit' to arrive at book profit we see no reason why current year's depreciation even though,

INCOME TAX ACT 1961

CASE LAWS

not charged, to the profit and loss account though disclosed in the notes appended to the accounts cannot be deducted from the 'net profit' in determining 'book profit' u/s 115J

346 2008 TMI - 31859 - DELHI HIGH COURT

MOSER BAER INDIA LTD. Versus THE ADDITIONAL COMMISSIONER OF INCOME TAX and ANR.

Dated: 19-12-2008

Sections - 092CA, 220, 143, 092, R011, R046A,

Writ Petitions to challenge the orders passed by the Transfer Pricing Officer (TPO) whereby he has determined the Arm's Length Price (ALP) in relation to 'International transactions' entered into by each of the petitioners with their Associated Enterprises - TPO has not granted an oral hearing before determining the ALP - failure on the part of the TPO to consider documents and information filed by the petitioners – held that order passed by TPO are quashed – Writ Petitions are allowed

347 2008 TMI - 31858 - BOMBAY HIGH COURT

SET SATELLITE (SINGAPORE) PTE LTD. Versus DEPUTY DIRECTOR OF INCOME-TAX, INTERNATIONAL TAXATION AND ANOTHER

Dated: 22-08-2008

Sections - 145, 119, 195, 234B, 234C, 234A,

Appellant, resident of Singapore - Appellant through its dependent agent in India is carrying on marketing activities - in view of treaty & Circular No.23 of 1969, in so far as marketing services are concerned by the arm's length principle what has been paid is more than 10%, advertisement revenue received by the appellant are not taxable in India - Merely because tax on income was paid for some assessment years would not estop the assessee from contending that its income is not liable to tax

348 2008 TMI - 31857 - BOMBAY HIGH COURT

PENINSULA LAND LIMITED Versus COMMISSIONER OF INCOME-TAX AND OTHERS

Dated: 20-02-2008

Sections - 154, 264, 143, 144,

Writ Petition filed seeking to quash the orders passed by the respondents u/s 154 and 264 as they deny the petitioner's right to set-off unabsorbed depreciation – power of IT Officer to amend the assessment in consequence of decision in an appeal, revision, reference or by HC or the SC was not traceable to s. 154 but was inherent and traceable to s. 143 & 144 – so limitation contained in s. 154(7) would not apply to passing of such an order – petition allowed

349 2008 TMI - 31856 - ANDHRA PRADESH HIGH COURT

B.F. DITIA AND OTHERS Versus APPROPRIATE AUTHORITY, INCOME-TAX DEPARTMENT

INCOME TAX ACT 1961

CASE LAWS

Dated: 13-08-2008

Sections - 269UD,

Appropriate authority, without giving the petitioners an opportunity of being heard, passed orders purchasing the property, on behalf of the Central Government – SCN issued less than a week before the last date on which final order could be passed - respondents could not take advantage of their own wrong in issuing the SCN belatedly – respondents having pre-determined the issue, the order is liable to set aside for violation of principles of natural justice

350 2008 TMI - 31855 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus KHAITAN CHEMICALS AND FERTILIZERS LTD.

Dated: 23-09-2008

Sections - 115JA,

Computation of book profit - prior period / extraordinary items shown separately in the P/L A/c due to the specific requirement of the Accounting Standards prescribed by the ICAI - Tribunal was correct in law in holding that the AO failed to appreciate that the net profit (as referred to in Section 115 JA) of the assessee company is to be computed only after deducting the expenses on prior period / extraordinary items which are business expenditure – revenue's appeal is dismissed

351 2008 TMI - 31854 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus IDEAL GARDEN COMPLEX P. LTD.

Dated: 19-08-2008

Sections - 260A,

Tribunal dismissed the appeal preferred by the Revenue without going into the merits of the case on the ground that the disputed tax exceeds the monetary limit prescribed in the CBDT circular dated 27.3.2000 - on the admitted fact that the tax effect is negligible and less than Rs.1,00,000/- and the case not falling under any of the stipulations of the circular, we do not find any justification to admit these appeals – order of tribunal require no interference

352 2008 TMI - 31849 - PUNJAB AND HARYANA HIGH COURT

JANAK RAJ CHAUHAN Versus COMMISSIONER OF INCOME-TAX

Dated: 25-08-2008

Sections - 215, 217, 139, 154,

Application for rectification of mistake on ground of mistake apparent from record - assessee claim of non-leviability of interests under sections 139(8) and 215/217 - Tribunal, held that application u/s 154 was not maintainable after four years from the date of intimation – order of tribunal is justified – no question of law arise - further, Section 154 of the Act could not be invoked where two views are possible

353 2008 TMI - 31847 - DELHI HIGH COURT

INCOME TAX ACT 1961

CASE LAWS

COMMISSIONER OF INCOME-TAX Versus SHRI PASHUPATI TOURS AND TRAVELS

Dated: 30-09-2008

Sections - 158BE,

Assessment order pursuant to search & seizure - limitation – assessee in the present case was not a company, but a partnership firm – tribunal found that Panchnama was not pertaining to assessee (firm) but to a company - revenue had sought time to file the relevant Panchnama, but the same has not been filed - no argument/contention of revenue before the Tribunal that Panchnama was containing a typographical / clerical error – assessment was rightly cancelled by ITAT on ground of limitation

354 2008 TMI - 31844 - GUJARAT HIGH COURT

HYNOUP FOOD AND OIL INDUSTRIES LTD. Versus ASSISTANT COMMISSIONER OF INCOME-TAX

Dated: 17-07-2008

Sections - 147, 148, 80HH, 80I,

Reopening of assessment u/s 147 - claim for special deduction u/s 80HH and 80-I was allowed after considering the material – hence relief granted earlier cannot be denied mere for change of opinion on the same facts, which were available before the Assessing Officer – notice after four year for withdrawal of special deduction is not valid – further, it is held that successor AO cannot issue notice on the basis of reasons recorded by predecessor AO

355 2008 TMI - 31812 - AUTHORITY FOR ADVANCE RULINGS

Dr. Virindra Kumar Raina In re.,

Dated: 17-12-2008

Sections - 115H, 115E, 115C, 115D,

Non-resident Indian citizen - Non-Resident Ordinary Rupee Accounts (NRO accounts) with SBI through convertible foreign currency remittances – held that income from above investment shall be taxed @ 20% plus applicable surcharge & cess - After his return to India, the applicant can invoke s. 115H until conversion of his NRO account into rupee account - Until conversion, income from NRO account shall be segregated from other income of the applicant and subjected to tax @ 20% plus surcharge & cess

356 2008 TMI - 31811 - DELHI HIGH COURT

RANBAXY LABORATORIES LTD. versus THE COMMISSIONER OF INCOME TAX NEW DELHI

Dated: 11-12-2008

Sections - 80IA, 80IB,

Whether Tribunal erred in law in denying deduction u/s 80IA on duty drawback and profit on sale of REP licences – in view of decision of this court in CIT v. Dharampal Prem Chand Limited: ITA 1441/2006, question raised above, is answered in favour of the assessee and against the revenue - To that extent the impugned order is set aside. The appeal stands allowed to this extent.

INCOME TAX ACT 1961

CASE LAWS

357 2008 TMI - 31810 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX DELHI –VI Versus INTEGRATED DATABASES INDIA LTD.

Dated: 12-12-2008

Sections - 263, 80IA, 010B, 80HQB, 80J,

Interpretation of S. 10B (5) which is virtually identical to the provisions of Section 80IA (7) as also 80HQB (3) (ia) - Denial of claim for deduction u/s 80-IA by Commissioner (A) - held that as long as the audit report is filed before the framing of the assessment, the provisions of Section 80IA (7) would be complied with inasmuch as the same are directory and not mandatory – tribunal's order require no interference – revenue's appeal dismissed

358 2008 TMI - 31809 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX DELHI –I Versus AXIS COMPUTERS (INDIA) PVT. LTD.

Dated: 12-12-2008

Sections - 80IA, 80HQB, 80J, 010A,

Interpretation of Section 10A (5) which is virtually identical to Section 80IA (7) as also 80HQB (3) (ia). It is also identical to provisions of Section 80J (6A) - contention of the revenue was that unless and until the audit report is filed along with the return, the benefit of Section 10A cannot be available to the assessee, is not acceptable - held that the provisions are directory and not mandatory - No substantial question of law arises for our consideration - appeal is dismissed.

359 2008 TMI - 31808 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus SMT. RANI SHANKAR MISHRA

Dated: 12-12-2008

Sections - 017, 015, 016,

Addition in respect of the amount of compensation and interest received by the assessee from the Government of the USA – CIT & ITAT have rightly concluded that said amounts received by the assessee were in the nature of capital receipts because the amount was received by way of compensation for not being offered the job on the basis of gender discrimination - decision of the tribunal, therefore, does not call for any interference – appeal of revenue are dismissed

360 2008 TMI - 31807 - HIGH DELHI COURT

COMMISSIONER OF INCOME TAX DELHI – VI Versus WEB COMMERCE (INDIA) PVT. LTD.

Dated: 12-12-2008

Sections - 010B, 80J, 80HQB, 80IA, 010A,

Interpretation with regard to the provisions of Section 10B (5) which is virtually identical to the provisions of Section 80IA (7) as also 80HQB (3) (ia). It is also identical to the erstwhile provisions of Section 80J(6A) - held that as long as

INCOME TAX ACT 1961

CASE LAWS

the audit report is filed before the framing of the assessment, the provisions of Section 80IA (7) would be complied with inasmuch as the same are directory and not mandatory - No substantial question of law arises – revenue's appeal dismissed

361 2008 TMI - 31806 - DELHI HIGH COURT

J. P. GUPTA Versus COMMISSIONER OF INCOME TAX

Dated: 11-12-2008

Sections - -

Whether the licence fee payable to the railways for use of land as a depot, could be regarded as an accrued liability or a contingent liability - matter stood concluded in favour of assessee by virtue of the decision of Tribunal in respect of the A.Y. 1995-96 and, therefore, there was no occasion for re-entering into the dispute – assessee's plea is that revenue had been preferred any appeal and the issue had become final - hence appeals are remanded to the Tribunal for a consideration afresh

362 2008 TMI - 31805 - DELHI HIGH COURT

RANBAXY LABORATORIES LTD. Versus THE COMMISSIONER OF INCOME TAX NEW DELHI

Dated: 11-12-2008

Sections - 80IA, 80IB,

Whether Tribunal erred in law in denying deduction u/s 80IA on duty drawback and profit on sale of REP licences – in view of decision of this court in CIT v. Dharampal Prem Chand Limited: ITA 1441/2006, question raised above, is answered in favour of the assessee and against the revenue - To that extent the impugned order is set aside. The appeal stands allowed to this extent.

363 2008 TMI - 31804 - DELHI HIGH COURT

A. B. HOTELS LIMITED Versus COMMISSIONER OF INCOME TAX

Dated: 10-12-2008

Sections - 201,

Impugned appeal is against the decision of Tribunal accepting Application for rectification of mistake as filed by revenue - apparent mistake - further directions were required to be given in the matter regarding charging of interest under section 201(1A) in case the assessee has been found to be in default within the meaning of section 201(1) – noting wrong in tribunal's order where ROM application of revenue was accepted – assessee's appeal is dismissed

364 2008 TMI - 31803 - DELHI HIGH COURT

JSRS UDYOG LIMITED Versus INCOME-TAX OFFICER

Dated: 10-12-2008

Sections - 148, 143, 147, 142,

Notice u/s 148 – allegation that receipts of the share application money were bogus and sham transactions - said order has not dealt with any of the

INCOME TAX ACT 1961

CASE LAWS

objections raised by the petitioner - no indication of any specific information with regard to any accommodation entry being provided by the assessee / petitioner - impugned order and notice u/s 148 are set aside

365 2008 TMI - 31802 - DELHI HIGH COURT

ANIL KUMAR SAHA Versus CHIEF COMMISSIONER OF INCOME TAX DELHI (1), NEW DELHI and ANR.

Dated: 05-12-2008

Sections - 127,

Order of transfer of cases – Assessee’s contention that the order of transfer u/s 127(2) ought to disclose proper application of mind to the objections which the assessee may have raised, is acceptable – order does not disclose proper application of mind to the objections and obviously the order does not indicate as to how the objections raised by the petitioners have been met - we set aside the impugned order passed by Commissioner of Income Tax (Delhi)-I, New Delhi

366 2008 TMI - 31801 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX DELHI (CENTRAL) – II Versus SAMIR BIO-TECH (PVT.) LTD.

Dated: 04-12-2008

Sections - 068,

Addition had been made u/s 68 on account of the share application money received by the assessee company - assessee had discharged the onus of establishing the identity of each of the subscribers - it is also a fact that they have shown the said amounts in their audited balance sheets and have also filed returns before the Income Tax Authorities - Tribunal rightly reversed the findings of the authorities below and deleted the addition - revenue’s appeal is dismissed

367 2008 TMI - 31800 - DELHI HIGH COURT

ULTIMATE FASHION MAKER LTD. Versus COMMISSIONER OF INCOME TAX

Dated: 02-12-2008

Sections - 080IB, 080HHC,

Whether Tribunal was justified in holding that the appellant was not entitled to deduction u/s 80 IB on the duty drawback – this question is answered in favour of assessee - Whether Tribunal was justified in holding that the appellant was not entitled to deductions u/s 80 IB and u/s 80HHC, on interest earned on FDRs – this question is answered in favour of revenue

368 2008 TMI - 31798 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX, DELHI (CENTRAL) – I versus CONTIMETERS ELECTRICALS PVT. LTD.

Dated: 02-12-2008

Sections - 263, 080IA, 080IB,

INCOME TAX ACT 1961

CASE LAWS

Denial of claim for deduction u/s 80-IA by Commissioner (A) - Tribunal was of the view that the ground that the assessee had not fulfilled the conditions laid down u/s 80-IA did not form part of the SCN - Tribunal held that as the said issue did not form part of the SCN and the assessee was not even confronted with it, even before the CIT, it cannot form the basis for revision of the assessment order u/s 263 – tribunal's order require no interference – revenue's appeal dismissed

369 2008 TMI - 31789 - GUJARAT HIGH COURT

CARGO CLEARING AGENCY (GUJARAT) Versus JOINT COMMISSIONER OF INCOME TAX

Dated: 08-08-2008

Sections - 148, 158BA, 147,

Once assessment has been framed u/s 158BA in relation to undisclosed income for the block period as a result of search there is no question of the Assessing Officer issuing notice u/s 148 for reopening such assessment as the said concept is abhorrent to the special scheme of assessment of undisclosed income for block period - no notice u/s 148 is required to be issued for the purpose of proceeding under Chapter XIV-B – hence impugned notice u/s 148 is hereby quashed and set aside

370 2008 TMI - 31787 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus MEHSANA DISTRICT CO-OP. MILK PRODUCERS' UNION LTD. (and vice versa)

Dated: 10-03-2008

Sections - 028, 037,

Society - Tribunal was right in law in holding that the amount transferred to the reserve fund account as per provisions of Section 67 of the Gujarat Co-operative Societies Act, 1962 was not diversion of income at source by overriding title nor can such transfer be treated as a business expenditure deductible either under Section 28 or Section 37

371 2008 TMI - 31782 - HIGH COURT DELHI

Commissioner of Income Tax-V versus M/s Rampur Engineering Co. Ltd. and others

Dated: 27-11-2008

Sections - 271,

Tribunal deleted the additions and penalty holding that the authority initiating the penalty proceedings had not recorded its satisfaction regarding concealment of income or furnishing of inaccurate particulars thereof by the assessee - mere absence of the words "I am satisfied" may not be fatal but such a satisfaction must be spelt out from the order of the Assessing Authority as to the concealment of income or deliberately furnishing inaccurate particulars – order of tribunal was justified

372 2008 TMI - 31774 - HIGH COURT DELHI

INCOME TAX ACT 1961

CASE LAWS

COMMISSIONER OF INCOME TAX versus SHRI SANJIV MISHRA

Dated: 25-11-2008

Sections - 037,

Assessee received a sum of Rs 35,07,000/- in consideration for entering into a negative covenant / non-compete agreement - whether this receipt was a capital receipt and was, therefore, exempt from tax - held that the receipt was in the nature of a capital receipt and, therefore, was not exigible to income-tax – revenue's appeal is dismissed

373 2008 TMI - 31773 - HIGH COURT DELHI

**DIRECTOR OF INCOME TAX DELHI (EXEMPTION) versus JAPAN
CHAMBER OF COMMERCE & INDUSTRY IN INDIA**

Dated: 25-11-2008

Sections - 011, 012, 012A, 012AA,

Society - registration u/s 12A - held that the society's motive of promotion of trade and commerce and industry between India and Japan would undoubtedly also benefit the Indian public at large – tribunal was justified in directing the revenue to accord registration to the assessee society - question of exemption under Section 11 and 12 is to be dealt with separately by the Assessing Officer at the time of assessment for each year - No substantial question of law arises - appeal is dismissed

374 2008 TMI - 31744 - HIGH COURT OF BOMBAY

Vodafone International Holdings B.V., Versus Union of India and others

Dated: 03-12-2008

Sections - 195, 191, 201

The very purpose of entering into agreements between the two foreigners is to acquire the controlling interest which one foreign company held in the Indian company, by other foreign company. This being the dominant purpose of the transaction, the transaction would certainly be subject to municipal laws of India, including the Indian Income Tax Act - petitioner has withhold the information / documents deliberately - Petitioner accordingly was under obligation to withhold tax as required u/s 195.

375 2008 TMI - 31743 - SUPREME COURT

Dy. Commissioner of Income Tax Versus State Bank of India & Ors.

Dated: 03-12-2008

Sections - -

Trial of offences related to transactions in securities - Whether the Special Court constituted under Trial of Offences Relating to Transactions in Securities Act, 1992, was right in scaling down the priority tax demand by delving into the merits of the assessment orders and by deciding the matter as an appellate authority which directions according to the appellant are in violation of the decision of this Court in the case of Harshad S. Mehta v. Custodian & Ors. – Matter remanded

INCOME TAX ACT 1961

CASE LAWS

376 2008 TMI - 31720 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX DELHI-XI, NEW DELHI versus M/S COSMOS INTERNATIONAL

Dated: 27-11-2008

Sections - 080HHC,

Tribunal held that interest income on fixed deposits earned by the assessee be treated as “business income”, as against, “income from other sources”. Consequently assessee would be required to deduct 90% of such interest from the “profits of the business” under Section 80HHC – held that interest earned for the purpose of availing of credit facilities from the bank, does not have an immediate nexus with export business – hence impugned judgment of the Tribunal is held erroneous

377 2008 TMI - 31719 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX DELHI-IV Versus DHARAM PAL PREM CHAND LTD.

Dated: 27-11-2008

Sections - 080IB,

Issue pertains to allowance of deduction u/s 80-IB on an income which, according to the Revenue, arose to the assessee from its industrial undertaking located in Agartala unit, due to refund of excise duty and not by way of a profit derived from “any business” of the said industrial undertaking – in view of decision in assessee’s own case, appeal of revenue is liable to be dismissed

378 2008 TMI - 31718 - HIGH COURT DELHI

THE CIT-V Versus NATRAJ STATIONERY PRODUCTS (P) LTD.

Dated: 21-11-2008

Sections - 080IA, 080IB,

Whether the assessee was entitled to deduction as claimed, in respect of the profits derived from an industrial undertaking – held that both the Assessing Officer, as well as, the CIT (A) had failed to appreciate the facts and circumstances obtaining in the present case, as well as, the state of the law. The Tribunal’s judgment over-turning the said view of the authorities below and holding that assessee was entitled to the claim, cannot be faulted and hence, does not require any interference

379 2008 TMI - 31717 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX DELHI-IX Versus HARKARAN DAS VED PAL

Dated: 12-11-2008

Sections - 158BFA, 158BC, 158BB, 271,

Whether the Tribunal was correct in cancelling the penalty imposed by AO u/s 158 BFA (2), on the ground that the assessee himself had surrendered the amount and therefore it could not be said that the assessee had either concealed or furnished inaccurate particulars of income – Held that Tribunal was correct in law in cancelling the penalty, but tribunal was not required to

INCOME TAX ACT 1961

CASE LAWS

consider the question of concealment of income and/ or furnishing of inaccurate particulars of income

380 2008 TMI - 31716 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX DELHI-VIII Versus SHRI S.K. KATYAL

Dated: 12-11-2008

Sections - 158BE, 132, 158BC,

Appellant/revenue is aggrieved by the fact that the Tribunal held the block assessment order to be beyond the time specified under section 158BE(1)(b) - no search whatsoever was conducted on 03.01.2001 - hence, the panchnama drawn up on 03.01.2001 cannot be regarded as a document evidencing the conclusion of a search. If that be so, 03.01.2001 cannot be regarded as the date on which the warrant of authorization was executed – revenue' appeal against tribunal's decision is dismissed

381 2008 TMI - 31715 - HIGH COURT DELHI

SUBODH KUMAR BHARGAVA Versus COMMISSIONER OF INCOME-TAX

Dated: 26-11-2008

Sections - 275, 271B, 044AB,

Whether the Tribunal was right in law in interpreting the provisions of Section 275(1)(c) correctly and holding that the penalty order passed u/s 271B was within the limitation period - held that once the period of limitation prescribed by either of the clauses (a) to (c) has expired, the departmental authorities had no powers to impose penalty - question of law is, answered in favour of the appellant and against the revenue

382 2008 TMI - 31714 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX DELHI-IV Versus DCM SRIRAM CONSOLIDATED LTD.

Dated: 21-11-2008

Sections - 115JA,

Computation of Minimum Alternate Taxation (MAT) u/s 115JA - Whether provision for bad and doubtful debts was to be added back to the net profit while computing book profit u/s 115JA in view of Explanation (c) to Section 115JA (2) - Whether Tribunal was correct in reducing the amount allegedly claimed by the assessee as profit from business of generation of power while computing book profit under Section 115JA – questions are answered in favour of assessee

383 2008 TMI - 31713 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX DELHI-II Versus MONNET INDUSTRIES LTD.

Dated: 21-11-2008

Sections - 036,

Interest on monies borrowed for setting up sugar plant – assessee set up Ferro

INCOME TAX ACT 1961

CASE LAWS

Alloys Plant in 1991 & sugar plant in 1995 - Tribunal rightly hold that there is a unity of control and management, in respect of both plants and there is also intermingling of funds and dove-tailing of businesses - hence it cannot be said that the assessee had not commenced its business and hence, interest would have to be capitalized - financial charges i.e., interest is allowable as deduction u/s 36(1)(iii)

384 2008 TMI - 31712 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX Versus DELHI BRASS and METAL WORKS LTD.

Dated: 21-11-2008

Sections - 037, 080HHC,

Whether the interest earned on fixed deposits would enter the ring of profits u/s 80 HHC - held that interest earned does not have any immediate nexus with the export business and hence, will have to be treated as 'income from other sources' - held that assessee cannot be allowed to adjust interest paid to the bank on overdraft facility against the interest received on fixed deposits as this was not laid out 'wholly and exclusively' for the purpose of earning interest on fixed deposits.

385 2008 TMI - 31679 - HIGH COURT DELHI

THE COMMISSIONER OF INCOME TAX CENTRAL versus P. P. JEWELLERS

Dated: 18-11-2008

Sections - -

Tribunal rejected the revenue's appeal filed on the ground that the CIT had erred in deleting the addition made on account of gross profit on suppressed sales, which in turn, arose out of the unexplained shortage of stock found on the date of the search - explanation offered by the assessee with regard to the discrepancy in the weight of the gold and diamond jewellery - held that the explanation offered by the assessee had been rightly accepted by the Tribunal - no question of law arise

386 2008 TMI - 31678 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX DELHI-IV versus UPPAL HOTELS LTD.

Dated: 24-11-2008

Sections - -

Addition on account of interest allegedly due on delay in payment of installment - As per assessee, the interest didn't accrue to it in as much as the original agreement dated 3.7.2002 had been modified by a letter dated 1.8.2002. - if the amendment to the agreement is taken into account, there would have been no delay in making the payment of installment and consequently, the assessee would not have any right to receive any interest from the intending purchaser - additions were rightly deleted

387 2008 TMI - 31676 - HIGH COURT DELHI

INCOME TAX ACT 1961

CASE LAWS

COMMISSIONER OF INCOME TAX DELHI versus HUGHES SOFTWARE SYSTEMS LIMITED

Dated: 07-11-2008

Sections - 037,

Allowability of direct expenses incurred by assessee in respect of a Jakarta Project in Indonesia - agreement for installation, testing and commissioning of a fixed digital radio cellular network system and related services – held that the direct expenses incurred by the assessee were allowable as they were identifiable – revenue is unable to show that the expenses were not actually incurred by the assessee for the completion of Project – CIT & ITAT were justified in allowing the expenses

388 2008 TMI - 31675 - HIGH COURT DELHI

DIRECTOR OF INCOME TAX (EXEMPTION) versus SPAN FOUNDATION

Dated: 04-11-2008

Sections - 011, 012, 013,

Charitable trust – building given on rent to concerns in which some of trustees were directors – trust contended that the money received as rentals by the trust was used for charitable purpose - considering the fact that the rents paid by the so-called interested persons were adequate and was more than the standard rent as computed in accordance with the Delhi Rent Control Act, the question of any benefit being derived by an interested person does not arise on facts – revenue appeal dismissed

389 2008 TMI - 31674 - HIGH COURT DELHI

THE COMMISSIONER OF INCOMETAX, DELHI-VIII versus M/S DELUXE ENTERPRISES

Dated: 03-11-2008

Sections - 080IB, 080I,

Deduction u/s 80-IB – AO disallowed the amount which was received by the assessee from its customers on account of interest towards delayed payments holding that it could not be regarded as part of profits & gains arising from an industrial undertaking - Tribunal allowed the payments subject to the verification by AO that interest had been received on account of late payment of sale consideration - no reason to interfere with the order passed by the Tribunal – revenue appeal dismissed

390 2008 TMI - 31598 - HIGH COURT DELHI

DIRECTOR OF INCOME TAX versus JINDAL DRILLING and INDUSTRIES LTD.

Dated: 17-11-2008

Sections - 009, 044BB,

Whether the services rendered by the non-resident company NDAL for the transportation and jacking up of rigs, review of design and issuance of suitability certificate is covered u/s 9(1)(vii) OR u/s 44BB - sums of money received by the NDAL from the assessee were not includable in the definition

INCOME TAX ACT 1961

CASE LAWS

of “fees” for technical services as provided in Section 9(1)(vii) read with Explanation 2 - Such receipts are covered u/s 44-BB – no substantial question arise – no infirmity in order of CIT & ITAT

391 2008 TMI - 31597 - HIGH COURT DELHI

THE COMMISSIONER OF INCOME TAX-XVII versus M/S DEWAN CHAND

Dated: 17-11-2008

Sections - 201, 194C,

TDS in respect of amounts paid to persons who have already paid tax on the said receipts – ITAT was right in holding that whatever assessee pays, payee would be required to claim the refund & whole exercise will be in futility - both CIT and ITAT have concluded on facts that the payments made by the assessee were not in the nature of payments under contract but had the character of wages, hence liability to deduct tax under Section 194C not arises - no substantial question of law arises

392 2008 TMI - 31596 - AUTHORITY FOR ADVANCE RULINGS

Mr. Mustaq Ahmed., In re

Dated: 19-11-2008

Sections - 009, 005,

Applicant is a non-resident - applicant sells jewellery in local market as well as by export, mostly to Singapore – income arising to the applicant on the purchase in India of gold for the purpose of manufacturing gold jewellery in India for export – held that such income attracts charge to tax under sub-section (2) of Sec.5 as the income is received in India and has accrued in India - Explanation 1(b) to Sec. 9(1)(i) does not come to the aid of the applicant - income is taxable in India

393 2008 TMI - 31595 - AUTHORITY FOR ADVANCE RULINGS

Burmah Castrol Plc., In re

Dated: 19-11-2008

Sections - 112, 245R, 055, 010(5),

Applicant, Non-resident – held that the tax payable on the long term capital gains arising on sale of equity shares of FIL (Indian company) being listed securities, will be 10% of the amount of capital gains as per the proviso to s. 112(1) – held that while calculating the long term capital gain chargeable to tax, interest paid by the applicant to the shareholders of FIL as per the directives of the SEBI will also be treated as a part of the cost of acquisition of the shares

394 2008 TMI - 31553 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SHRI RAM SINGH

Dated: 20-05-2008

Sections - 147, 148,

Tribunal was justified in holding that the proceedings for re-assessment u/s 148/147 were initiated by the Assessing Officer on non-existing facts because

INCOME TAX ACT 1961

CASE LAWS

ultimately, the assessee has been able to explain the income which the AO believed to have escaped assessment – tribunal was justified in holding that as the proceedings were based on non-existing facts so they were not valid - revenue's appeal dismissed

395 2008 TMI - 31552 - MADRAS HIGH COURT

Dr. C. M. K. Reddy Versus SETTLEMENT COMMISSION (IT/WT) AND OTHERS

Dated: 17-04-2008

Sections - 245C,

Writ petition is filed for the issue of writ of certiorarified mandamus to quash the order of the Settlement Commission and direct the Commission to take up the application filed by the petitioner u/s 245C(1) – assessee failed to disclose full and true income in order to maintain an application u/s 245C & failed to pay admitted tax – principle of acquiescence would apply – order of Commission non-suited the petitioner for admission of the case for settlement required no interference

396 2008 TMI - 31551 - RAJASTHAN HIGH COURT

RAJESH SURANA Versus COMMISSIONER OF INCOME-TAX

Dated: 28-01-2008

Sections - 053,

Transfer of asset (residential house) – capital gains - a plot of land having a boundary wall and a garage-cum-room, can not be treated as “residential house” – section 53 does not exempt merely a building nor does it exempt merely the land appurtenant thereto – claim for exemption u/s 53 is not accepted, as asset did not fulfill the character of a residential house

397 2008 TMI - 31550 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus BANK OF RAJASTHAN LTD. and vice versa

Dated: 23-01-2008

Sections - 143, 154,

Question of assessability of Interest which had not been received, is a debatable question - in view of the settled legal position, the provisions of under Section 143(1) (a) were not attracted, and since the action had been taken under Section 143(1) (a), obviously, it rightly attracted the right of the assessee, to move application under Section 154, and the same was rightly allowed by the CIT, as well as the Income-tax Appellate Tribunal.

398 2008 TMI - 31546 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus CARPET INDIA and vice versa

Dated: 13-05-2008

Sections - 080HHC,

Assessees, who are supporting manufacturers, are receiving export incentives

INCOME TAX ACT 1961

CASE LAWS

as duty draw back and claimed deduction of this amount, under section 80HHC - assessee is deriving income from manufacturing and sale of textile goods as supporting manufacturers. In the returns of income, the assessee is claiming deduction under section 80HHC, claiming themselves at par with the direct exporter – claim of assessee is accepted

399 2008 TMI - 31543 - HIMACHAL PRADESH HIGH COURT

COMMISSIONER OF INCOME-TAX Versus WINSOME DYEING AND PROCESSING LTD.

Dated: 28-05-2008

Sections - 056,

Loan taken from bank for construction work and installation of machinery – part of loan utilized for capital investment and balance money was not required for business at relevant time so it was kept in short-term deposit – interest on that short-term deposit is assessable as “Income from other sources” u/s 56 - revenue’s appeal allowed

400 2008 TMI - 31539 - KERALA HIGH COURT

COMMON WEALTH TRUST (INDIA) LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 08-04-2008

Sections - 045,

Acquisition of property - payment of consideration in the form of allotment of fully paid shares - scheme of amalgamation involved transfer of shares to the shareholders of foreign company from which the property was transferred to assessee under the scheme - assessee will not be entitled to contend that the acquisition of land by them did not involve any cost to them – remand the matter to the AO for fresh consideration after verifying the terms of amalgamation approved by the HC

401 2008 TMI - 31536 - KERALA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus BENHUR TRADES AND INVESTMENTS P. LTD.

Dated: 14-01-2008

Sections - 041,

Chitty business - entire books of accounts not produced by assessee - AO has accepted the profit and loss account and made certain additions based on a guess work - addition towards undistributed dividend on estimated basis – addition towards foreman’s commission on estimation basis – addition made on assumption of facts, is not justified, hence they are set aside - remand the matter to the Assessing Officer for reconsideration - petitioner is directed to produce books of accounts

402 2008 TMI - 31535 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX-II versus MANTEC CONSULTANTS (P) LTD.

INCOME TAX ACT 1961

CASE LAWS

Dated: 14-11-2008

Sections - 010A, 080HHE, R016D,

Tribunal in first round of appeal was of the view that the assessee was fully justified in raising the claim u/s 10A, for the first time, before the CIT (A), who ought to have entertained it and decided on merits – thereafter, CIT found that assessee's claim is justified - Tribunal in second round hold that the revenue, having accepted the order of the Tribunal in the first round, cannot raise those objections in the second round - no infirmity in Tribunal's order - No question of law arises

403 2008 TMI - 31533 - SUPREME COURT

Khoday Distilleries Ltd. versus Commissioner of Income Tax and Anr. ...

Dated: 14-11-2008

Sections - 002(22),

Whether any "gift" arose in terms of Section 2(xii) of the Gift-tax Act on the allotment of rights issue by the company to its shareholders - on question of evasion of tax, contention of Department is conflicting – Dept. has messed up entire case - Department has not kept in mind the difference between "allotment" & "renunciation" – Dept. has not invoked the provisions of Gift-tax Act against renouncer shareholder despite the observation of the CIT(A) in that regard - Assessee's appeal allowed

404 2008 TMI - 31532 - SUPREME COURT

M/s India Cine Agencies & Computer graphics Ltd. Versus CIT

Dated: 12-11-2008

Sections - 032AB, 080HH, 080I,

Entitlement of benefit in terms of Section 32AB, Section 80HH and Section 80I - effect of conversion of Jumbo rolls of photographic films into small flats and rolls in the desired sizes - whether activity undertaken was manufacture or production – After analyzing the expressions 'production' and 'manufacture' from different sources honorable SC allowed the appeal of the assessee.

405 2008 TMI - 31520 - SUPREME COURT

UNION OF INDIA AND OTHERS Versus DHARAMENDRA TEXTILE PROCESSORS AND OTHERS

Dated: 29-09-2008

Sections - 271, 276C,

Penalty u/s 271(1)(c) is a civil liability - Wilful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under Section 276C - Section 11AC of Central Excise Act and Rules 96ZQ and 96ZO have no scope for any discretion – Wilful concealment is not an essential ingredient for imposing penalty thereunder

406 2008 TMI - 31518 - GUJARAT HIGH COURT

HARIKRISHNA FAMILY TRUST Versus COMMISSIONER OF INCOME-TAX

INCOME TAX ACT 1961

CASE LAWS

Dated: 25-02-2008

Sections - 002, 028, 056,

Taxability of rental income from sub-lessee – assessee-trust lessee of property had sub-let the property - assessee trust at no point of time indulged in any systematic business activity, hence income is not taxable as “Income from Business”. – assessee is not a owner of property, so income is not assessable as “Income from House Property” - income is liable to be taxed as “Income from other Sources” and not as “Income from House Property” or “Income from Business”

407 2008 TMI - 31516 - KERALA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SOUTHERN TUBES

Dated: 26-02-2008

Sections - 002(47), 045,

“Transfer” - Section 2(47) - tax on capital asset u/s 45(4) – dissolution of firm consisting of two partners – held that the transaction resulted in dissolution of the firm and partner or partners getting rights over the immovable property. Subsequent reconstitution of the firm does not affect the liability of the dissolved firm to be assessed for capital gains in terms of Section 45 (4) - hold that the transaction in both the cases is transfer within the meaning of Section 2(47)(vi)

408 2008 TMI - 31515 - HIMACHAL PRADESH HIGH COURT

H. P. FINANCIAL CORPORATION Versus COMMISSIONER OF INCOME-TAX

Dated: 09-04-2008

Sections - -

Assessee was showing interest on sticky loans on accrual basis – interest not brought to P/L A/c but taken to Suspense A/c -as per circular dated 9/10/84, assessee can take benefit only in respect of interest payable on those loans where no recovery has taken place for 3 consecutive accounting years and it is only from the 4th year onwards that the interest accrued is not to be considered as income – AO should have decided matter in view of said circular- matter remanded for fresh assessment

409 2008 TMI - 31513 - GUJARAT HIGH COURT

GANESH VALABHAI FAMILY TRUST Versus DEPUTY COMMISSIONER OF INCOME-TAX

Dated: 27-02-2008

Sections - 148,

Reassessment - Notice under section 148 of the Act has been issued after a period of four years from the end of Assessment Year - absence of any evidence to show any failure or omission on the part of the assessee to disclose truly and fully all relevant particulars of income in the return of income - impugned Notice is hereby quashed and set aside

INCOME TAX ACT 1961

CASE LAWS

410 2008 TMI - 31511 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus A.CHANDRAN

Dated: 15-02-2008

Sections - 158BC,

Whether in the facts and circumstances of the case, the Tribunal was right in holding that surcharge is not applicable to block assessments if the search took place prior to introduction of the proviso to Section 113 with effect from 1.6.2002 - Held that even prior to 1.6.2002 the Department is entitled to levy surcharge as the proviso introduced on that is only curative in nature

411 2008 TMI - 31510 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus RAMNEET SINGH

Dated: 13-02-2008

Sections - 068,

ITAT uphold the order of the CIT (A) and deleted the addition made by the Assessing Officer, on account of unexplained loans - ITAT has affirmed the order of CIT (A) while observing that the creditors were produced and their statements were recorded and in their statements, the creditors have confirmed having advanced loan to the assessee - held that in view of this material, the Assessing Officer was not justified in making addition – no substantial question of law arise

412 2008 TMI - 31508 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME-TAX Versus BHANSALI ENGINEERING POLYMARS LTD.

Dated: 01-04-2008

Sections - 080HH,

Tribunal was justified in holding that the interest income of Rs.95,97,864/- recovered from delayed payments from the Sundry Debtors to whom the industrial unit of the assessee had sold the goods could be treated as interest income derived from the industrial undertaking of the assessee in light of the provisions of section 80HH - even though the assessee has realised income from other sources, Assessing Officer is directed to recompute the deduction under sec.80HH.

413 2008 TMI - 31409 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus SHRI RAVINDER NATH GOEL

Dated: 06-11-2008

Sections - -

Additions made by the AO on account of the disallowance of commission & service charges paid by the assessee to one M/s CIL, in which the assessee was a director – revenue contend that tribunal is not justified in relying on the assessee's own case of A.Y. 1996-97 & giving decision in favour of assessee, because in the year under consideration, increase in sale was less than 15% when compared to the immediately preceding year – revenue's plea is rejected & order of tribunal is sustained

INCOME TAX ACT 1961

CASE LAWS

414 2008 TMI - 31408 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus DR R. N. GOEL

Dated: 06-11-2008

Sections - 040A,

Whether the expenses claimed towards payment of commission, as well as, service charges to CIL was reasonable having regard to the provisions of Section 40A - impugned issue is a pure question of fact – SC also in its various decisions have held that whether or not an expenditure is unreasonable and hence, merits disallowance u/s 40A, is essentially a question of fact – no perversity in the findings of tribunal deciding the issue in favour of assessee - no substantial question of law

415 2008 TMI - 31407 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX DELHI-II Versus JINDAL VEGTABLES PRODUCTS LTD.

Dated: 06-11-2008

Sections - -

Addition made by AO by disallowing the claim of depreciation on machinery items – supplier of machinery items has neither denied receipt of payments from the assessee company, nor stated that the said money was returned to the assessee company in cash - Assessing Officer by solely relying upon the information received from the bankers of the suppliers - genuineness of the purchase cannot be questioned – additions were rightly deleted by Tribunal

416 2008 TMI - 31406 - ORISSA HIGH COURT

EPARI SADASIVA RAO Versus CHIEF COMMISSIONER OF INCOME-TAX AND OTHERS

Dated: 07-05-2008

Sections - 154, 220, 234B, 234C,

Held that in absence of seizure of any cash belonging to the HUF during the search, the assessee's case was not covered under notification issued by the CBDT for the purpose of waiver of interest u/s 234B and 234C – therefore, levy of interest is not justified – Held that notice u/s 156 was mandatory before initiating recovery proceedings, as no notice of demand was given it was not permissible for AO to levy interest

417 2008 TMI - 31404 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus NEHA PROTEINS LIMITED

Dated: 29-04-2008

Sections - 035D,

Held that interest earned/accrued by the assessee on the share application money, lying with the Bank, under the mandate of Section 73 of the Companies Act, is not taxable as "Income from other source", and was required to be set off or adjusted, against the public issue expenses, so as to reduce the amount of public issue expenses, for the purpose of enabling the assessee to claim

INCOME TAX ACT 1961

CASE LAWS

amortization, under and in accordance with the provisions of Section 35D

418 2008 TMI - 31402 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME-TAX Versus METRO SHOES LTD.

Dated: 03-03-2008

Sections - -

Tribunal was justified in determining the gross profit on basis of similar/comparable cases of assessee's business i.e. of shoe business - question as to what should be the gross profit for the purposes of taxing such income is purely a question of fact - no substantial question of law involved

419 2008 TMI - 31399 - DELHI HIGH COURT

SARAYA INDUSTRIES LTD. Versus UNION OF INDIA AND OTHERS

Dated: 27-02-2008

Sections - 153C, 153A,

Constitutional validity of Section 153C read with Section 153A – contention of petitioner that, the provisions treat unequal persons as equals for the purposes of assessing or reassessing their income, is not acceptable – second contention that the principles of natural justice appear to be excluded from the provisions of Section 153C, is also not acceptable because principles of natural justice are clearly incorporated in the provision – hence provision of section 153C are valid

420 2008 TMI - 31398 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SHIV CHARAN MATHUR

Dated: 28-08-2008

Sections - 015, 017,

Assessee, at the relevant time, was sitting MLA, and former Chief Minister of the State – held that the remuneration, received by the MLA or MP, cannot be taxed, under the head "Income from salary", but can be taxed under the head, "Income from other sources" because there is no relationship of employer and employee – further reimbursement for medical treatment taken by assessee cannot be treated as perquisite

421 2008 TMI - 31397 - BOMBAY HIGH COURT

KISHORE JAGJIVANDAS TANNA Versus K. RANGRAJAN AND OTHERS

Dated: 25-03-2008

Sections - 132, R112A,

Seizure of cash from hotel room where assessee was staying – assessee replied that amount is related to advance payment against sale of goods – copies of statement not given to assessee relied upon by revenue, while passing the order – violation of principle of natural justice - is directed to issue a fresh Show Cause Notice to the petitioner u/r 112A - petitioner will also be furnished copies of all statements/documents - if no notice is issued amount seized will be refunded to petitioner

INCOME TAX ACT 1961

CASE LAWS

422 2008 TMI - 31395 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus KANUBHAI MULJIBHAI PATEL

Dated: 04-03-2008

Sections - 271,

Reasonable cause for delay in filing of return – bona fide belief that in view of SC decision capital gains arising out of sale of agricultural land are not taxable - Tribunal is justified in holding that the penalty under section 271(1)(a) was not impossible for part of period

423 2008 TMI - 31391 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus REEBOK INDIA CO.

Dated: 31-07-2008

Sections - 194C, 201,

Nature of the transaction - assessee had agreements with various manufactures who manufacture the items according to the specifications, drawings and designs provided by the assessee – Tribunal's finding that the transaction between the assessee and the manufacturer was that of purchase and sale of goods and not of works contract u/s 194C, is the finding of fact based on various decisions of HC & SC – order of tribunal is justified - No substantial question of law arises

424 2008 TMI - 31390 - AUTHORITY FOR ADVANCE RULINGS

Intertek Testing Services India Pvt. Ltd.

Dated: 05-11-2008

Sections - 115A, 245R, 040, 009, 195, 092,

Applicant, a company in India is subsidiary of ITM, UK - business of rendering testing and inspection services to its Indian and overseas clients - it is not possible to hold that all the services rendered do not fall under FTS (Royalties & Fee for Technical Services) & that the entirety of service fee charged to the applicant does not constitute the income of ITM, UK under Article 13 of the Treaty - applicant is directed to approach the competent authority to determine the issue of TDS

425 2008 TMI - 31389 - SUPREME COURT

Commissioner of Income Tax Versus J.K. Charitable Trust

Dated: 07-11-2008

Sections - 011, 013, 261,

Whether the respondent, assessee's trust was hit by the provisions of Section 13(1)(c) & 13(2)(a)(f) & (h) and therefore cannot be given the benefit of exemption u/s 11 - assessee submitted that for several years(i.e. for the A.Y 1983-84 to 2007-08) no appeal has been filed by revenue against any of the judgments of the different High Courts, even though the factual position is the same – assessee's submission is accepted – revenue's appeals are without merit and are accordingly dismissed

INCOME TAX ACT 1961

CASE LAWS

426 2008 TMI - 31388 - KERALA HIGH COURT

**COMMISSIONER OF INCOME-TAX Versus KERALA SOLVENT
EXTRACTIONS LTD.**

Dated: 04-02-2008

Sections - 029, 037, 043B, 145,

Sales tax payments made by the assessee – deduction is allowed only on actual payment - assessee itself conceded that it was a liability of the next financial year – AO was justified in disallowing the claim in proceedings completed u/s 143(1) – even if the claim of assessee was allowed by mistake by AO, the amount was assessable in the next year based on refund as provided under section 41(1) – assessee's claim not allowable

427 2008 TMI - 31385 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus RAJESH KUMAR

Dated: 04-04-2008

Sections - 069,

Reassessment proceedings - addition made u/s 69 as income from undisclosed sources - since the Revenue relied upon the statement of Maheshwari, it should have been made available to the Assessee with an opportunity of cross-examine him - This was not done by the Assessing Officer. It clearly shows that the principles of natural justice have been violated

428 2008 TMI - 31384 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus MOKUL FINANCE LTD.

Dated: 03-04-2008

Sections - 147, 148,

Reassessment – notice - all the relevant material available with the Assessee in this regard was placed before the Assessing Officer and, therefore, it cannot be said that the Assessee had not furnished full and true particulars of its income - Tribunal was justified in holding that the re-assessment proceedings as well as the notice issued to the Assessee for reassessment were without any justification.

429 2008 TMI - 31383 - DELHI HIGH COURT

**COMMISSIONER OF INCOME-TAX Versus TOYOTA MOTOR
CORPORATION**

Dated: 02-04-2008

Sections - 271C,

AO concluded that penalty is not leviable - no reasons given by AO – CIT found that the order is erroneous and prejudicial to the interest of the Revenue - order passed by the Assessing Officer should be a self-contained order giving the relevant facts and reasons for coming to the conclusion based on those facts and law - order passed by the Assessing Officer is cryptic - remand the matter to AO to decide the issue afresh in terms of the order passed by the CIT

INCOME TAX ACT 1961

CASE LAWS

430 2008 TMI - 31381 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME-TAX Versus S.D.INVESTMENT AND TRADING COMPANY

Dated: 01-04-2008

Sections - 068,

Interest free loans were given by the assessee as a prudent businessman with certain commercial and business purpose in mind - Tribunal has given a finding of fact that the interest free advances of Rs.1,54,20,945 given represents only 8.8% of loans aggregating to Rs.17,52,67,529 - Tribunal after considering the explanation and confirmation has given a finding to the effect that the ledger accounts of the parties in the books of accounts have duly been confirmed – no questions of law involved

431 2008 TMI - 31377 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus ARVINDBHAI NAROTTAMBHAI (HUF)

Dated: 09-04-2008

Sections - 036,

Interest on borrowings - allowability of deduction - held that the Tribunal was right in allowing interest on borrowed fund at the rate of 4 per cent and not at the rate of 7.5 per cent for acquisition of preference shares carrying coupon rate of 4 per cent dividend

432 2008 TMI - 31375 - SUPREME COURT

TOYOTA MOTOR CORPORATION Versus COMMISSIONER OF INCOME-TAX

Dated: 25-08-2008

Sections - 263, 271C,

Failure to deduct tax at source – AO dropped penalty without giving any reasons – CIT in revision hold that order of AO is prejudicial to interest of revenue – CIT hold that AO should have gone into facts of the case before disposing penalty proceedings – it shall be duty of AO to take into account all the relevant aspects including the materials, if any, already placed by the assessee, and pass a reasoned

433 2008 TMI - 31374 - HIMACHAL PRADESH HIGH COURT

COMMISSIONER OF INCOME-TAX Versus PRAKASH NATH

Dated: 17-06-2008

Sections - 154, 155, 139, 215, 246

Provisional assessment - Tribunal was not justified in law in entertaining the assessee's appeal against charging of interest u/s 139(8) & 215 in the order passed u/s 154, when the assessee had not challenged the enhancement of income – admittedly assessee did not exercise his right u/s 155(4) – hence assessee's appeals were not maintainable as the same were filed only against the levy of interest payable u/s 215 pursuant to the orders passed u/s 154/155

INCOME TAX ACT 1961

CASE LAWS

434 2008 TMI - 31364 - SUPREME COURT

PNB Finance Ltd. versus Commissioner of Income Tax-I, New Delhi

Dated: 06-11-2008

Sections - 041, 045, 055, 048, 050,

Whether transfer of Banking Undertaking gave rise to taxable capital gains u/s 45 - in this case, it was not possible to allocate the full value of compensation (sale consideration) received between various assets of the undertaking - it was not possible to determine the cost of acquisition & cost of improvement - since computation was inextricably linked with the charging provisions u/s 45 it was not possible to tax the surplus u/s 45 – decision of SC in Artex Manufacturing Co. not applicable

435 2008 TMI - 31362 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX DELHI-X Versus AHUJA RADIOS

Dated: 20-10-2008

Sections - 080HHC,

Just as excise duty does not involve any element of 'turnover' (as held by the Supreme Court in Lakshmi Machine Works), modvat credit also does not involve any such element of 'turnover' - Tribunal was correct in law in holding that modvat credit has not to be included in the total turnover for the purposes of computing the eligible deduction under Section 80HHC

436 2008 TMI - 31361 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX DELHI –IV Versus GUPTA ABHUSHAN PVT. LTD.

Dated: 20-10-2008

Sections - 068, 147, 148, 133, 143, 133A,

Survey - Re-opening of the assessments - additions on account of unaccounted expenditure on renovation of premises as also in respect of unexplained credits u/s 68 - reason to believe - Tribunal, therefore, concluded that the reasons, as recorded, do not show or indicate existence of any evidence regarding escapement of income in the three years in question - Assessing Officer was not justified in re-opening the assessment – order of tribunal is totally justified

437 2008 TMI - 31360 - DELHI HIGH COURT

DIRECTOR OF INCOME-TAX, NEW DELHI Versus KLM ROYAL DUTCH AIRLINES

Dated: 22-10-2008

Sections - 057,

Whether the recovery of rent from CSC pvt. Ltd. by the assessee was an income chargeable to tax in India – assessee, a company incorporated in the Netherlands - main activity is operation of aircrafts in international traffic - held that the assessee did not carry on any business operations in India by letting out the premises on lease or by subletting the same - entitled to deduction u/s

INCOME TAX ACT 1961

CASE LAWS

57 (iii) - provisions of Article 6 of the DTAA were not applicable - additions deleted

438 2008 TMI - 31358 - DELHI HIGH COURT

Commissioner of Income Tax Versus Union of India

Dated: 03-11-2008

Sections - -

Petitioner has challenged a charge sheet issued to him - There is nothing to suggest, nor has it been argued before us, that anyone in the CBDT acted in a mala fide manner against the Petitioner - it is very difficult for us to hold that because the officers of NAFED had acted in a mala fide manner and had allegedly harassed and victimized the Petitioner - There is nothing to suggest that there was no application of mind by the CBDT before issuing the charge sheet to the Petitioner

439 2008 TMI - 31357 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX DELHI-VI Versus TULIP FINANCE LTD.

Dated: 15-10-2008

Sections - 068, 032,

Additions on account of unexplained share capital and alleged unexplained security deposits u/s 68 - disallowance of depreciation in respect of cast iron moulds and in respect of rolls which were machinery items – assessee had discharged the burden for establishing the identity of the shareholders as well as the genuineness of the transactions - hence additions has been rightly deleted by tribunal and depreciation has been rightly been allowed by tribunal – appeal by revenue is set aside

440 2008 TMI - 31356 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX-V Versus P. M. ELECTRONICS LTD.

Dated: 03-11-2008

Sections - 036, 002(24), 043, 143, 043B,

EPF contributions - allowability of deduction u/s 36(1)(5a) read with S. 2(24)(x) & S. 43(B) – matter pertain to a period prior to the amendment in S. 43B – Whether the deletion of 2nd Proviso to S. 43 is retrospective - held that the view taken by the Tribunal deserves to be sustained as it is no longer res integra in view of the decision of SC in CIT v Vinay Cement Ltd. which has been followed by a Division Bench of this Court in CIT v. Dharmendra Sharma- no substantial question of law arises

441 2008 TMI - 31355 - DELHI HIGH COURT

**HARYANA ACRYLIC MANUFACTURING COMPANY Versus
COMMISSIONER OF INCOME-TAX IV and ANOTHER**

Dated: 03-11-2008

Sections - 143, 148, 147,

Re-opening of assessment - AO had examined and verified the information

INCOME TAX ACT 1961

CASE LAWS

before finalizing the assessment u/s 143(3) - petitioner submitted various details including bank statements, particulars of cheques received towards share application money and confirmation relating to the share application money received during the year - petitioner had not failed to disclose fully and truly all material facts necessary - Impugned notice issued u/s 148 & proceedings pursuant to this are set aside

442 2008 TMI - 31354 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX DELHI (CENTRAL)-II Versus V.L.S. FINANCE LIMITED

Dated: 16-10-2008

Sections - 254,

Tribunal recalled its earlier order by noting that that it was well-settled that non-consideration by the tribunal of a judgment of the Supreme Court relevant to the point in issue would give rise to a mistake apparent from the record which can be rectified under Section 254(2) - tribunal has correctly appreciated the law with regard to its power to rectify u/s 254 (2) - Impugned order passed by the tribunal cannot be faulted – revenue appeal dismissed

443 2008 TMI - 31347 - AUTHORITY FOR ADVANCE RULINGS

LMN INDIA LIMITED, In re.

Dated: 10-10-2008

Sections - 002(28A), 010(34), 037, 195,

Applicant borrow money from LMCC, USA by issuing fully convertible Bonds - non-resident's liability - interest paid to LMCC upto the date of conversion of bonds into equity shares has to be treated as interest as per Section 2(28A) and Article 11 of the India-USA DTAA and accordingly, liable to be taxed as 'income' of LMCC under the Act and under Art.11.2 - interest payments cannot be construed as dividend income of LMCC - Under Section 195(1), the applicant is liable to deduct tax at source

444 2008 TMI - 31310 - SUPREME COURT

Krishak Bharati Cooperative Ltd. versus Joint Commissioner of Income Tax

Dated: 21-10-2008

Sections - 80I,

Assessee's claim for deduction u/s 80I was rejected by CIT & ITAT on ground that service charges received by the assessee from activity of producing Heavy Water can't be considered as the profit derived from its industrial undertaking as service charges were not directly linked with the manufacturing activity - process of manufacture of Heavy Water is required to be examined in detail before deciding issue - appellant failed to place relevant contracts and other data before ITAT - Case remanded

445 2008 TMI - 31308 - HIGH COURT DELHI

CIT, NEW DELHI versus BHARTESH JAIN

INCOME TAX ACT 1961

CASE LAWS

Dated: 23-10-2008

Sections - -

Whether assessee should be permitted to set off brought forward losses in respect of, sale & purchase of shares, pertaining to A.Y. 1994-95 against income of A.Y 1995-96 - no material on record to suggest that activity of the assessee, that is, earning income from sale/purchase of shares was in any way different from the activity carried on in A.Y 1994-95 -tribunal rightly hold that the facts of A.Y. 1994-95 were similar to the year under consideration i.e., 1995-96 – revenue appeal dismissed

446 2008 TMI - 31307 - HIGH COURT DELHI

[CIT, CENTRAL REVENUE BUILDING, NEW DELHI versus JAGSON INTERNATIONAL LTD.](#)

Dated: 16-10-2008

Sections - 147, 143,

Re-assessment proceedings under Section 147/143(3) – validity- no new material had come before the Assessing Officer which could have enabled him to have reasons to believe that any income had escaped assessment - re-consideration of the material already available on record at the time of completion of the original assessments, is not justified - Consequently, the re-assessment completed by the Assessing Officer under Section 147/143(3) are quashed – revenue's appeal dismissed

447 2008 TMI - 31306 - AUTHORITY FOR ADVANCE RULINGS

[ISRO Satellite Centre \[ISAC\], In re.](#)

Dated: 22-10-2008

Sections - 195, 009,

Applicant, a part of the Department of Space, Govt. of India had contract with M/s. Inmarsat Global Ltd. (IGL U.K.) – applicant pay amount to IGL for getting lease of space segment capacity - IGL has no PE in india - business of IGL is not liable to tax in India in respect of lease amount - income arising out of payments received by IGL from the applicant pursuant to the Agreement, is not in the nature of royalty either under IT Act or the Treaty, hence applicant is not liable to TDS u/s 195

448 2008 TMI - 31276 - MADRAS HIGH COURT

[STERLITE INDUSTRIES \(INDIA\) LTD. Versus ASSISTANT CIT AND ANOTHER](#)

Dated: 28-08-2008

Sections - 147, 148,

Notice u/s 148 issued after expiry of 5 years – AO had not formed any belief that the income of assessee had escaped assessment – hence AO has no jurisdiction to issue the notice u/s 148 for reassessment – notice is set aside holding it as invalid

449 2008 TMI - 31275 - MADRAS HIGH COURT

INCOME TAX ACT 1961

CASE LAWS

DEPUTY COMMISSIONER OF INCOME-TAX Versus OFFICIAL LIQUIDATOR

Dated: 11-06-2008

Sections - 032A, 043,

Import of machinery – agreement entered into by the assessee with foreign manufacturer made provision for escalation of the cost – addition amount was paid in accordance with that clause – such additional amount was part of actual cost of the assessee in the relevant A.Y. - For the purposes of section 32A, the actual cost of the assessee has to be computed in each A.Y. – hence assessee was entitled to investment allowance on such cost – sections 32A & 43(1) should be interpreted liberally

450 2008 TMI - 31274 - GUJARAT HIGH COURT

GUJARAT JHM HOTELS LTD. Versus DIRECTOR GENERAL OF INCOME TAX (EXEMPTION)

Dated: 30-06-2008

Sections - 080IA, R18BBC,

Hotel - benefit u/s 80IA(4)(iii) – hotel in a place of pilgrimage - Once the prescribed authorities grant certificates, if the respondent authority wants to reject the same, then valid and justifiable reasons must be given for the same - since petitioner hotel is approved by the respondent under provisions of Rule 18BBC of ITR, then the petitioner will get relief at the specified rate in respect of the profit earned from hotel - benefit can't be refused to the petitioner on any flimsy ground

451 2008 TMI - 31273 - GUJARAT HIGH COURT

SHARDABEN RASIKLAL ACHARYA (DECD.) Versus COMMISSIONER OF INCOME-TAX

Dated: 10-03-2008

Sections - -

Assessee claiming loss and depreciation on basis of a Dissolution Deed - Tribunal was right in law in holding that the business of Hotel Surat belonged to the partnership firm and not to the assessee as proprietor - Tribunal was right in law in holding that the dissolution deed dated 19.1.1990 was not a lawful, valid and bonafide dissolution deed and assessee concocted the evidence by allegedly executing the deed of dissolution with an ulterior motive to defraud the Revenue

452 2008 TMI - 31272 - AUTHORITY FOR ADVANCE RULINGS

BURMAH CASTROL PLC. In re

Dated: 08-09-2008

Sections - 197, 245R,

Jurisdiction of AAR - Applicant, non-resident acquired shares of an Indian company – sale of those shares by applicant to another foreign company - appellant sought advance ruling in respect of capital gain arising therefrom – question raised in application for advance ruling not pending before any income

INCOME TAX ACT 1961

CASE LAWS

tax authority, tribunal or the court - since application was made after expiry of AO's order, admission of application by AAR is proper – Remedial provisions should be liberally construed

453 2008 TMI - 31271 - KERALA HIGH COURT

WILLIAM GOODACRE AND SONS INDIA LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 03-03-2008

Sections - 80HHC,

Computation of export profit for deduction u/s 80HHC – manufacture, export and job works for others – authorities below failed to consider the claim of assessee that it purchased raw materials in its own account and used them in manufacture of final product leading to value addition at the assessee's cost – matter remanded to AO to find out whether the transaction really represented investment by assessee in raw material, labour etc. and the eligible profit in terms of direction

454 2008 TMI - 31270 - MADHYA PRADESH HIGH COURT

COMMISSIONER OF INCOME-TAX Versus S. KUMAR TYRES MANUFACTURING CO.

Dated: 03-04-2008

Sections - 254,

Tribunals' order while deciding the question of carry forward of business losses, caused prejudice to assessee – in tribunal's order mistake as apparent on record - hence Tribunal was justified in entertaining the application made by the assessee under section 254(2) seeking rectification of mistake – tribunal was justified in acknowledging and rectifying the mistake by invoking its powers u/s 254

455 2008 TMI - 31266 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus LATE N. KASI VISWANATHAN

Dated: 16-07-2008

Sections - 54EA,

Exemption claimed by assessee u/s 54EA on enhanced compensation was denied by AO on the ground that compensation amount was received on July 21, 1999, but the investment was made on June 1, 1999 i.e. prior to receipt of compensation – held that section 54 EA doesn't prevent the assessee from making the investment out of the available compensation amount even before enhanced compensation is received – investment made was in accordance with statutory provision so exemption is entitled

456 2008 TMI - 31201 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income-tax, (Central) Ludhiana Versus M/s Thakur Devi Investment (P) Ltd., Ludhiana

Dated: 26-05-2008

Sections - 002(8),

INCOME TAX ACT 1961

CASE LAWS

Whether Tribunal was right in law in holding that the assessee be treated as an "Industrial Company" u/s 2(8)(C) and that the tax be charged at low rate applicable to an Industrial Company – AO was not justified in rejecting the assessee's claim and charging tax at a higher rate of 65% - in view of decision of this court in case of Bhagyoday Investment Pvt. Ltd., impugned order of tribunal require no interference - revenue appeal dismissed

457 2008 TMI - 31200 - PUNJAB & HARYANA HIGH COURT

Commissioner of Income Tax, Ludhiana-II Versus Shri N.S. Bakshi

Dated: 01-04-2008

Sections - 143, 142A,

During assessment AO while computing the valuation of house property referred the case to the Distt. Valuation Officer for its valuation – additions made by AO when found huge difference in value of property on valuation - report of the Valuation Officer is not reliable and the addition made on the basis of Valuation were rightly deleted – hence Tribunal was correct in holding that Assessing Officer was not empowered to refer the case to the District Valuation Officer

458 2008 TMI - 31199 - PUNJAB AND HARYANA HIGH COURT

CIT, Haryana, Rohtak Versus Sh. Raj Pal Singh Karta and Sh. Amrik Singh HUF

Dated: 23-04-2008

Sections - 045, 256,

Capital gains - assessability - incidence of the transfer of assets - date of award i.e. 29.9.1970 was the actual date of taking possession of the land - award having been made on 29.9.1970 and the same date being the date of transfer of actual physical possession, the capital gains were rightly assessable for the year under consideration - Tribunal was not right in holding that the capital gains are not assessable in the year under consideration – revenue's appeal allowed

459 2008 TMI - 31198 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income-Tax-Faridabad Versus Sukh Ram Dagar

Dated: 12-05-2008

Sections - -

Whether ITAT is right in holding that assessment of interest cannot be made until the matter is finally settled by the High Court - Impugned question is squarely covered against the revenue by the opinion recorded by this court in the judgment of case of Commissioner of Income Tax, Faridabad v. Shri Hardwari Lal – hence revenue appeal is dismissed – order of tribunal is justified

460 2008 TMI - 31197 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income tax, Faridabad Versus Shri Tek Ram, HUF

Dated: 20-02-2008

Sections - 271, 045, 143, 148,

INCOME TAX ACT 1961

CASE LAWS

Acquisition on land by the State Government – allegation that assessee has concealed the particulars of his income regarding enhanced compensation and interest on enhanced compensation – AO made addition u/s 45(5) on account of enhanced compensation received & levied penalty u/s 271(1)(C) - view of assessee regarding non taxability of enhanced compensation was bona fide – hence ITAT was right in conforming additions but deleting penalty – revenue appeal dismissed

461 2008 TMI - 31196 - PUNJAB AND HARYANA HIGH COURT

The Commissioner of Income-tax, (Central) Ludhiana Versus Bahadur Chand Investment (P). Ltd.

Dated: 29-05-2008

Sections - 002(8),

Whether on the facts and in the circumstances of the case, the Income-Tax Appellate Tribunal was right in law in holding that the assessee be treated as an “Industrial Company” u/s 2(8)(C) and that the tax be charged at low rate applicable to an Industrial Company – Held, yes – AO was not justified in rejecting the assessee’s claim and charging tax at a higher rate of 65% - question of law as referred by the Tribunal is answered against the revenue

462 2008 TMI - 31195 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-tax Versus Ravinder Pal

Dated: 18-02-2008

Sections - 271, 260A,

Penalty proceedings under Section 271(1)(C) - penalty proceedings were kept in abeyance as the assessee had filed an appeal before the Commissioner of Income Tax (Appeals) - Whether on the facts and in the circumstances of the case, the ITAT was right in deleting the penalty levied, when the quantum of income assessed, which forms the basis for levy of the penalty, has not attained its finality – Held, yes – revenue’s appeal dismissed

463 2008 TMI - 31194 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax Rohtak Versus Haryana Minerals Limited

Dated: 29-02-2008

Sections - 260A,

Question that “Whether tribunal was right in holding that addition is required to be made in hands of M.D. of company, not in hands of Company”?, is a question of fact, hence not answered - addition made by AO on account of unutilized contract receipts on ground that assessee had collected the amount fraudulently in the shape of labour welfare fund – amount in question which remained unspent at the end of the year was not assessee’s own money but a liability – hence additions are deleted

464 2008 TMI - 31193 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax, Ludhiana-II Versus Greatways Private Limited

INCOME TAX ACT 1961

CASE LAWS

Dated: 01-02-2008

Sections - 080HHC, 028, 143,

Whether ITAT was correct in upholding that the Central Sales Tax and Sales Tax be not formed the part of total turnover while computing of deduction u/s 80 HHC – Held, yes - Whether ITAT was right to upholding that the premium on sale of export quota, as incentive, which is not covered u/s 28(iia), 28(iib) & 28(iic), be treated as 'Business Income' instead of 'income from other sources' in computation of deduction u/s 80 HHC – Held, No – revenue's appeal partly allowed

465 2008 TMI - 31192 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax Jalandhar-1 Versus Cheema Filling Station, Dasuya

Dated: 15-02-2008

Sections - 271B, 044AB, 148, 143,

Assessee's failure to get its books of account audited before the specified date and to furnish the same by the specified date as per section 44AB - penalty u/s 271B - finding of fact has been recorded by the Tribunal that the assessee has sent a certified copy of the Tax Audit Report to the Department well in time under postal certificate (UPC) & the authenticity of the UPC has not been doubted by the department - Revenue was unable to challenge the said finding of fact – penalty not justified

466 2008 TMI - 31191 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax , Jalandhar-II Versus Avinash Chander Sharma

Dated: 10-04-2008

Sections - 132, 158, 158BC,

Addition on account of foreign remittances & on account of investment and profit in benami firms – allegation that daughters of the assessee are Benamidars - undisputedly, the four daughters of the assessee are independent assesseees having their own separate bank accounts - In the assessment of daughters, all bank accounts were explained & the return of income was accepted – no evidence shown by revenue to controvert the affidavits filed by daughters - additions were rightly deleted by tribunal

467 2008 TMI - 31190 - PUNJAB AND HARYANA HIGH COURT

CIT (Central), Ludhiana Versus M/s Liberty Group Marketing Division, Karnal

Dated: 22-04-2008

Sections - 080I, 037,

Claim for deduction u/s 80-I denied as assessee not fulfilled conditions of Sec. 80-I regarding no. of workers employed etc. – ITAT uphold the finding of CIT of reversing the order of AO, holding that number of persons employed were more than 20 & in the earlier assessment year, on the same facts, the case was decided in favour of assessee - Revenue couldn't controvert the above

INCOME TAX ACT 1961

CASE LAWS

finding – revenue appeal dismissed – held that expenses incurred on Glow Sign Boards were of revenue nature

468 2008 TMI - 31189 - PUNJAB & HARYANA HIGH COURT

Commissioner of Income Tax, Karnal Versus Smt. Raj Rani

Dated: 28-04-2008

Sections - 271, 10(36),

Concealment of income – penalty u/s 271(1)(c) – CIT(A) deleted penalty - revenue filed an appeal before the Tribunal on the ground that the assessee had wrongly claimed exemption under Section 10 (36) of the I.T. Act as the said provisions were not applicable to the facts of the assessee's case – held that tribunal is justified in upholding the decision of CIT(A) while relying upon its own decision in the case of ACIT v. Amar Nath - no question of law is arising in this appeal

469 2008 TMI - 31188 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax, Haryana, Rohtak Versus Satinder Kumar Jain

Dated: 28-04-2008

Sections - 147,

Whether Tribunal is right in law in holding that there is no justification for assessing interest amounts in various years in the hands of the assessee especially when the payment of enhanced compensation or quantification of enhanced compensation was in dispute - In view of the law laid down in Hindustan Housing Board's case and when decision of the co-assessee has attained finality, we are not inclined to ask the Tribunal to refer the aforesaid question of law to this HC

470 2008 TMI - 31187 - Punjab and Haryana High Court

Pusham Bansal Versus Commissioner of Income Tax-II

Dated: 25-03-2008

Sections - 144, 143,

Addition on account of investment in FDRs - undisclosed income – CIT (A) upheld the additions as assessee not appeared despite many adjournments – Tribunal dismissed the appeal of the appellant as infructuous and remanded matter to AO to frame the assessment de novo – appellant's contention that order of the Tribunal is in divergence to the rules of judicial consistency as proceedings have already become time barred, is not acceptable - no prejudice has been caused to the appellant

471 2008 TMI - 31186 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-Tax, Hisar Versus Pawan Kumar

Dated: 19-02-2008

Sections - 145,

Business of manufacturing and sale of bricks – allegation of non-disclosure of

INCOME TAX ACT 1961

CASE LAWS

sale of bricks in return of income-tax - Assessing Officer applied gross profit rate of 14% on the estimated sale - Tribunal held that the gross rate of 14% as applied by AO was highly excessive and without any basis - Tribunal applied the gross profit rate of 10% after considering the past history and the gross profit rate in subsequent years – no infirmity in the impugned order of the Tribunal

472 2008 TMI - 31185 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-Tax, Faridabad Versus Nepal Singh

Dated: 11-04-2008

Sections - -

Whether ITAT is right in holding that if the litigation was pending before a Court and had not attained finality, interest would not accrue and could be subjected to tax only when it was finally determined - appeals of the revenue raising the similar question of law have already been dismissed by this Court in connected matters - In the light of the above fact, no substantial question of law survives for our consideration in this appeal

473 2008 TMI - 31184 - PUNJAB AND HARYANA HIGH COURT

Shri Sajiv Vohra (HUF) Versus Commissioner of Income Tax, Aayakar Bhawan, Amritsar

Dated: 29-04-2008

Sections - 148,

Since the very beginning the assessee is running the business in the name of proprietorship firm in the individual status – It is only when the notices were issued u/s 148 for re-opening of the assessments made in the individual status, then the assessee filed the return of the HUF with an object to regularize the undisclosed investments - assessee failed to establish that the business carried on by him was in the name of HUF - legal status as HUF not acceptable

474 2008 TMI - 31183 - PUNJAB & HARYANA HIGH COURT

Punjab State Coop. Supply & Marketing Federation Ltd., Chandigarh Versus Deputy CIT

Dated: 31-03-2008

Sections - 154, 084, 143,

Omission of the assessee to claim deduction on account of payment of the salary to its employees in the income tax return or during the assessment - appellant filed application u/s 154 claiming that omission to claim the expenditure was a mistake apparent from record- assessee failed to show that all the material required for satisfying the conditions requisite for the grant of relief u/s 84, was completed - therefore, it cannot be said that Officer committed a mistake apparent from the record

475 2008 TMI - 31182 - PUNJAB AND HARYANA HIGH COURT

Income Tax Officer, Jind Versus M/s Garg Construction Company

Dated: 05-02-2008

INCOME TAX ACT 1961

CASE LAWS

Sections - 194C, 276, 278B,

Non-deduction of tax at source on the payments made to the subcontractors – violation of section 194(C)(2) - A perusal of assessment order proves that TDS had been deducted and income of sub-contractors had been counted as income of the Partnership Firm - averment made in the complaint by revenue is falsified - there is not even an allegation in the evidence that TDS had not been deposited in time without any reasonable cause or excuse - revision petition of revenue is dismissed

476 2008 TMI - 31181 - PUNJAB AND HARYANA HIGH COURT

Shri R.S. Pabla and another Versus Income Tax Officer, Patiala and another

Dated: 13-05-2008

Sections - -

Notices issued proposing to bring within the ambit of tax, the amount of interest that has accrued to the petitioners on the credit balance maintained by the employees of the Board in their provident fund account after their retirement - petitioners pray for quashing notices - controversy herein is squarely covered in favour of the petitioners pursuant to a Division Bench judgment of this HC in case of Sh. Subhash Bansal and others - notices for initiating reassessment proceedings are quashed

477 2008 TMI - 31180 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax, Panchkula Versus Haryana Warehousing

Dated: 28-04-2008

Sections - 234B, 215, 217,

Whether ITAT was justified in deleting interest under Section 215/217 when it is mandatory in nature - in case of the assessee itself, this Court has decided an identical question in favour of the assessee, by dismissing two appeals filed by the revenue – revenue contend that in those two cases interest was charged u/s 234B - Since the provisions of Sections 215/217 and 234B are pari materia, therefore authoritative pronouncements of this Court in those appeals are applicable to this case

478 2008 TMI - 31179 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax, Faridabad Versus Darshan Kumar

Dated: 22-04-2008

Sections - 143, 147, 148,

Whether ITAT is right in deleting addition by quashing the assessment made under Section 143 (3) read with Section 147 - impugned order dated 19.1.2006, passed by the ITAT is set aside and the matter is remanded to the Tribunal to consider the matter afresh in the light of the amendment inserted in section 148 of the Income Tax Act by the Finance Act, 2006 with retrospective effect from 1.10.1991, as well as on merits, in accordance with law

479 2008 TMI - 31178 - PUNJAB AND HARYANA HIGH COURT

INCOME TAX ACT 1961

CASE LAWS

Commissioner of Income-tax, Ludhiana-II Versus M/s. Happy Forgings Ltd., Kanganwal Road, Ludhiana

Dated: 11-02-2008

Sections - -

Whether on the facts and circumstances of the case Hon'ble ITAT was correct on holding that assessee's claim for the Excise Duty paid in advance, which has not actually become payable, is correct – similar question of law raised by revenue against the decision in the case of Raj & Sen Deeps Ltd., Ludhiana vs. A. C.I.T. has been answered against the revenue by the HC – hence revenue appeal is dismissed in instant case

480 2008 TMI - 31177 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-tax, Jalandhar Versus Shri Subhash Sobti

Dated: 04-02-2008

Sections - 143,

Search - Purchase of equity shares of M/s. Angoora Wool Combers Pvt. Ltd. @ Rs.8/- as against the market value of Rs.149.36 - addition made by the A.O. as income from other sources while taking the value of the purchased shares @ Rs.149.36 per share - once the value of the shares of M/s. Angoora Wool Combers Pvt. Ltd. was held to be @ Rs.8/- per share in the connected case, addition made by AO in instant case were rightly deleted by CIT

481 2008 TMI - 31176 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-tax (TDS) Chandigarh Versus M/s United Rice Land Limited

Dated: 12-05-2008

Sections - 201, 194C,

Payment made to C/F agent & some transporters - demand created by AO u/s 201(1) & 201(1A), as the assessee failed to deduct tax at source as per Section 194C - certificate furnished by the transporters makes it clear that, there was neither any agreement between the assessee or transporters for carriage of goods nor any freight charges was paid - ITAT was right in deleting demand – moreover, no such deduction at source is required, if the sum paid don't exceed Rs.20,000

482 2008 TMI - 31175 - SUPREME COURT

The Commissioner of Income-Tax-Kolhapur Versus The Ratnakar Bank Ltd.

Dated: 13-10-2008

Sections - 260A, 024,

Whether interest earned by the assessee bank on government securities was liable to be assessed u/s 2(7) of the Interest Act – revenue contend that ITAT & HC were not justified in holding that loans & advances don't include interest on securities, bonds, debentures & therefore not liable to tax - there is a difference between loans and advances & investments/securities - matter remanded to ITAT to examine the factual position as to whether the interest involved is on

INCOME TAX ACT 1961

CASE LAWS

government securities only

483 2008 TMI - 31174 - SUPREME COURT

Commissioner of Income Tax, Ahmedabad Versus Sarabhai Holdings Pvt. Ltd.

Dated: 21-10-2008

Sections - 273, 210, 215, 271, 274, 004,

Modification in terms of payment - interest charged on deferred sale consideration from 1.7.1979 instead of 1.3.1977 – held that under the changed mode of payment adopted under the Resolution dt. 30.6.1978, no interest was to accrue during the Accounting period from 1.7.1978 up to 30.6.1979 - HC hold that the Resolution could not be given any retrospective effect so as to facilitate evasion of tax liability that had already arisen for A.Y. 1979-80 - penalty u/s 273(2)(a) rightly set aside by HC

484 2008 TMI - 31173 - SUPREME COURT

Commissioner of Income Tax, Rajkot Versus M/s Gujarat Siddhi Cement Ltd.

Dated: 17-10-2008

Sections - 043A, 032A, 041, 033, 035A, 035, 043, 036, 048,

Effect of fluctuation of foreign exchange rate resulting in increase of cost of plant & machinery - assessee claimed increased amount as deduction as investment allowance - AO disallowed the claim on the ground that plant & machinery were installed in the earlier years - no arguments advanced and no factual details were furnished regarding the fluctuation by assessee - Section 43A substituted w.e.f. 1.4.03 - matter remitted to the Tribunal to consider the issue in the background of Sec. 43A(1)

485 2008 TMI - 31172 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX DELHI-IV, NEW DELHI Versus DAWN VIEW FARMS PVT. LTD.

Dated: 16-10-2008

Sections - 158BD, 158BC, 132, 132A,

Jurisdiction u/s 158BD - Section 158BD specify that it is the Assessing Officer who is to be satisfied that there is any undisclosed income – In the present case there is no such satisfaction recorded - submission of revenue that satisfaction of the Additional Director of Income Tax was sufficient, is not acceptable - proceedings u/s 158BD/BC in respect of the assessee were without jurisdiction - No substantial question of law arises – revenue's appeal dismissed

486 2008 TMI - 31171 - AUTHORITY FOR ADVANCE RULINGS

Singapore Tourism Board., In re

Dated: 17-10-2008

Sections - 115WA, 115WB,

INCOME TAX ACT 1961

CASE LAWS

Applicant has liaison offices in India - expenses relating to the Indian offices are reimbursed from Singapore office - held that even though the liaison offices of the applicant do not carry on any business in India and do not earn any income here, still the applicant is liable to pay tax on fringe benefits extended to its employees - Held that Singapore Tourism Board is liable to pay FBT in terms of Chapter XII-H of I.T. Act in respect of impugned fringe benefits

487 2008 TMI - 31170 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX DELHI (CENTRAL) II Versus USHA MARKETING (PVT.) LTD.

Dated: 17-10-2008

Sections - 271,

Sale and transfer of shares – tribunal hold that the transfer of shares could not be booked as a business loss as this was not necessitated by any business necessity but were the exigencies of the group companies - tribunal hold that transactions in respect of the shares on the basis of which business loss was caused were genuine as they were at market value - order of tribunal require no interference - no allegation of furnishing inaccurate particulars of income - penalty not imposable

488 2008 TMI - 31168 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-tax Ludhiana-II Versus Smt. Sudarshan Gupta

Dated: 20-05-2008

Sections - 143, 131,

Addition made on account of fictitious sale bills & cash paid out of undisclosed sources.— out of addition of Rs.14,95,000, sum of Rs.10 lacs was offered for taxation by son of the assessee to purchase peace of mind or escape from litigation – held that addition on the basis of surrender made by deceased-assessee's son is not justified – If the Department does not allow the assessee to buy peace of mind, why should the assessee be bound by the offer to pay tax – revenue's appeal dismissed

489 2008 TMI - 31167 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-tax Versus Bhagyoday Investment Pvt. Ltd.

Dated: 21-05-2008

Sections - 002(8), 002(7),

AO rejected assessee's claim for status of industrial company u/s 2(8)(C) on the ground that the assessee got only share income from the aforesaid firm & the said firm was involved in the manufacturing process and not the assessee - AO rejected that claim and charged tax at a higher rate of 65%. – in view of HC decision in Bharat Ram Charat Ram P. Ltd. , held that assessee was an industrial company and chargeable to tax at a lower rate applicable to an industrial company

490 2008 TMI - 31165 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax -II, Chandigarh Versus Dua & Associates

INCOME TAX ACT 1961

CASE LAWS

(P) Ltd.

Dated: 12-03-2008

Sections - -

Whether the order of the ITAT is perverse as the ITAT has failed to appreciate the fact that the CIT(A) restricted the food cost ratio to 55 % only on conjectures and surmises and without any evidence, whereas the Assessing Officer had based its order on the basis of results of 16 hotels/restaurants – similar question of law on similar facts was raised by the Revenue has been dismissed by this Court in similar matter – hence no question of law arises in this appeal for our determination

491 2008 TMI - 31164 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax, Ludhiana-II Versus Ludhiana Industrial Corporation Dhandari Kalan, Ludhiana

Dated: 11-03-2008

Sections - 132,

Whether ITAT is right in reducing the G.P. rate from 16.16% to 12.94% ignoring the Section 132(4A) - while taking into consideration the goods returned by the assessee and it was observed that if the said amount is reduced then the GP rate would come to 12.94% - CIT (A) was justified in holding the deposits in the bank accounts as sale proceeds - CIT (A) was justified in applying GP @ 12.94% in respect of unrecorded sales – order of ITAT is justified - revenue appeal dismissed

492 2008 TMI - 31163 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-tax Faridabad Versus Shri Mool Chand, HUF

Dated: 28-03-2008

Sections - -

Whether on the facts and circumstances of the case, ITAT is right in holding that if the litigation was pending before a Court and had not attained finality, interest would not accrue and could be subjected to tax only when it was finally determined - appeals of the revenue raising the similar question of law as raised in this appeal have already been dismissed by this Court in similar judgment - In the light of the above fact, no substantial question of law survives

493 2008 TMI - 31162 - PUNJAB AND HARYANA HIGH COURT

Blowell Auto P. Ltd. Versus Assistant Commissioner of Income Tax Circle I, Faridabad

Dated: 27-03-2008

Sections - 143, 260A,

AO framed the assessment u/s 143 (3) by making an addition on the ground that the appellant has failed to prove the credit worthiness of the creditors & the genuineness of the transactions of loan & investments – assessee has though established the identity of creditors by producing their affidavits but not proved capacity of the creditor to advance the money & also the genuineness of the transaction - Since the authorities have recorded a pure finding of fact,

INCOME TAX ACT 1961

CASE LAWS

assessee's appeal is dismissed

494 2008 TMI - 31161 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax, Ludhiana Versus Rhodoen Silk Mills Pvt. Ltd. Ludhiana

Dated: 19-02-2008

Sections - 041, 032, 050, 050A, 002(11),

Block of assets - additions made by treating the difference between the S.P. of entire machinery installed at unit no.1 of the factory of the respondent company & the W.D.V. of the said machinery by invoking Sec. 41(2) - there was addition as well as sale but the Plant and Machinery as a whole remained in existence – Sec. 32(1) were rightly made applicable and the depreciation had been correctly claimed on the W.D.V. merged after making the adjustment of addition & sale in the block of assets

495 2008 TMI - 31160 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-tax, Faridabad Versus Shri Munim

Dated: 11-02-2008

Sections - 271, 147, 148,

Interest income on the enhanced compensation was not declared by the assessee – non-furnishing the particulars of income - penalty u/s 271 - ITAT was right upholding the decision of CIT of cancellation of assessment made by the Assessing Officer and in deleting the penalty on ground that proving contumacious intent is an essential ingredient in levy of penalty – revenue appeal dismissed

496 2008 TMI - 31159 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-tax Faridabad Versus M/s SSP (P) Ltd.

Dated: 07-02-2008

Sections - 271, 143, 154,

Penalty can't be levied on the amount paid to the Registrar of Companies - In regard to amount not shown in the closing stock, held that this amount has to be included in the closing stock and simultaneously has to be considered in the opening stock in subsequent year and the net result to the addition of the income is zero - unless the filing of an inaccurate return is accompanied by a guilty mind, penalty can't be imposed – held that return can't be said "false" unless there is deliberateness

497 2008 TMI - 31158 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-tax Faridabad Versus Escorts Auto Components Ltd.

Dated: 28-03-2008

Sections - -

Whether ITAT was right in deleting the disallowance made on account of bad debts written off, though assessee failed to furnish evidences of debts

INCOME TAX ACT 1961

CASE LAWS

becoming bad - aforesaid identical questions have already been decided by this Court against the revenue in case of M/s Septu India (P) Ltd. & M/s Escorts Auto Components Ltd. - no substantial question of law survives - this revenue's appeal is without any merit and the same is dismissed

498 2008 TMI - 31157 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax (Central), Ludhiana Versus Nahar Exports Limited

Dated: 26-03-2008

Sections - 263, 080HHC, 143,

CIT passed order u/s 263(1) directing AO not to ignore loss on export of trading goods while computing deduction u/s 80HHC - two views were possible - since the view expressed by AO was a possible view, CIT was not justified in exercising powers u/s 263 - where two views are possible or the IT Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue - ITAT was justified in rejecting CIT order

499 2008 TMI - 31156 - PUNJAB AND HARYANA HIGH COURT

Director Civil Aviation Punjab, Chandigarh Versus Commissioner of Income Tax, Chandigarh

Dated: 13-02-2008

Sections - -

Appeal dismissed without considering the appeal on merits, but only on the ground that appellant failed to show the permission from Committee of Disputes - appellant is directed to first move an application for revival of appeals before the Tribunal itself by stating all these facts after placing on record the resolution of the Government as well as other material showing that as far as the present dispute is concerned, no approval from Committee of Disputes is required

500 2008 TMI - 31155 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax-III, Ludhiana Versus Oswal Woollen Mills Ltd.

Dated: 24-01-2008

Sections - 080HHC,

Whether ITAT was right in law in directing not to reduce 10% of the interest income from the profit of business - Whether ITAT was right in law in holding that Central Sales Tax, and Sales Tax be excluded from the total turnover of the assessee while computing deduction u/s 80 HHC - same question has been decided in favour of the assessee in similar cases - In view of the said decision of the Supreme Court, this appeal is hereby dismissed

501 2008 TMI - 31154 - PUNJAB AND HARYANA HIGH COURT

Shri Mahavir Prasad Versus Income Tax Officer

Dated: 01-02-2008

INCOME TAX ACT 1961

CASE LAWS

Sections - 068, 069, 069A, 271, 263, 147, 143,

Credits – income from undisclosed sources - stand of assessee that amount was received from four persons, was not merely not satisfactory but was also false - it was observed that the alleged credits in the hand of the assessee were received to the extent of Rs. 3.08 lakh from Sarvshri Surinder Sharma and Dinesh Kumar - no substantial question of law is arising – assessee's appeal dismissed

502 2008 TMI - 31153 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income Tax, Patiala Versus Metal Products of India, Chandigarh

Dated: 30-01-2008

Sections - -

Whether Tribunal was right in law in recalling its original order and on a review setting aside the assessment to be made afresh from the stage of filing of the return - revenue states that record of the case is not traceable, therefore, he is unable to inform the status of proceedings after the remand – hence instant reference is returned un-answered

503 2008 TMI - 31152 - PUNJAB AND HARYANA HIGH COURT

Commissioner of Income-tax-III, Ludhiana Versus Nahar Spinning Mills Ltd.

Dated: 25-02-2008

Sections - 145A, 145,

Adjusting the unutilized MODVAT credit in the revaluation of opening stock - revenue contend that Section 145-A provides for valuation of the Closing Stock and it has not provided any adjustment to be made in the valuation of the opening stock – revenue contend that assessee has got undue benefit by revaluation - held that it is not open to AO to treat outgoings as income u/s 145 - held that AO is bound to adopt the method of computation of income regularly employed by the assessee

504 2008 TMI - 31151 - HIGH COURT PUNJAB AND HARYANA

Commissioner of Income Tax Haryana, Rohtak Versus Smt. Kulwant Sethi

Dated: 22-01-2008

Sections - -

Reference - record of connected reference has been burnt in the fire accident – in such case it is not possible to find out whether the notice of the reference had been served on the assessee – department has not furnished any address of the assessee and other records for re-constructing the paper book because of unavailability of record in their office - Hence reference is returned un-answered

505 2008 TMI - 31149 - HIGH COURT PUNJAB AND HARYANA

Commissioner of Income Tax, Karnal Versus Rajound Co-op.Credit & Service Society Ltd.

INCOME TAX ACT 1961

CASE LAWS

Dated: 05-02-2008

Sections - 044AB, 273B, 271B,

Co-operative Credit & Service Society - As the total sale/gross receipts of the Society were more than 40 lacs, the Society was required to get its accounts audited by C.A. - penalty imposed u/s 271B for violation of the provisions of Section 44AB - ITAT has rightly deleted the penalty while recording a pure finding of fact to the effect that the assessee was under the bona fide belief that it was not required to get its accounts audited and such belief constituted reasonable cause u/s 273B

506 2008 TMI - 31147 - HIGH COURT PUNJAB AND HARYANA

The Commissioner of Income-tax Faridabad Versus Sh. Nathi Ram Dagar

Dated: 24-04-2008

Sections - -

Whether ITAT is right in holding that assessment of interest cannot be made until the matter is finally settled by the High Court, is in contradiction with the SC judgment in the case of CIT v. Rama Bai (181 ITR 400) whereby it was held that interest on enhanced compensation is to be taxed on accrual basis irrespective of the pendency of appeal in HC - appeals of the revenue raising the similar question of law have already been dismissed in similar case - hence revenue appeal is dismissed

507 2008 TMI - 31146 - HIGH COURT PUNJAB AND HARYANA

Commissioner of Income-tax-III, Ludhiana Versus Vanaik Spinning Mills Ltd.

Dated: 10-04-2008

Sections - 143, 145A,

Adjusting the unutilized MODVAT credit in the revaluation of opening stock - revenue had contended that Section 145-A provides for valuation of the Closing Stock and it has not provided any adjustment to be made in the valuation of the opening stock. According to revenue, assessee has got undue benefit by revaluation of opening stock - same issue is settled in favor of assessee in various judgments in which revenue appeal is dismissed - hence revenue appeal is also dismissed in instant matter

508 2008 TMI - 31145 - HIGH COURT PUNJAB & HARYANA

Commissioner of Income Tax, Hisar Versus Balwant Rai Prop. M/s S.N. Cotton & Mills, Fatehabad

Dated: 11-04-2008

Sections - 131, 069, 271, 142,

Addition made on account of unexplained investment in excess stock - penalty also imposed - AO not verified the contention of respondent assessee that the stock is verifiable from the books of account - respondent has discharged his liability by placing on record affidavits filed by the agriculturists, to show the genuineness of the transaction - revenue failed to adduce evidence to contradict the claim of the assessee - assessee's explanation is not proved

INCOME TAX ACT 1961

CASE LAWS

false – penalty not imposable

509 2008 TMI - 31143 - HIGH COURT PUNJAB AND HARYANA

Hans Raj Raj Kumar, Jalandhar Versus Commissioner of Income-tax, Jalandhar

Dated: 23-01-2008

Sections - 139, 144, 146, 256,

Question referred by tribunal – assessee filed appeal before ITAT and, raised a ground that CIT(A) having found that the assessment orders were passed without affording the proper opportunity, he should not have merely set aside the orders of the assessment but should have annulled the assessments - since the matter was remanded by ITAT to make a fresh assessment and in fact the fresh assessment has been made as per the order and therefore this reference has become infructuous

510 2008 TMI - 31142 - HIGH COURT PUNJAB AND HARYANA

Commissioner of Income-tax, Karnal Versus Carpet India

Dated: 07-07-2008

Sections - 80HHC,

Assessee, a supporting manufacturer - Income from the manufacturing & sale of textile goods to Export House - assessee is claiming deduction under Section 80HHC claiming itself as a supporting manufacturer at par with the direct exporter - in the case of the assessee itself, similar question of law raised by the revenue for the earlier assessment year has been answered against the revenue and the appeal filed by the revenue has been dismissed –revenue appeal dismissed – assessee's claim allowed

511 2008 TMI - 31141 - HIGH COURT PUNJAB AND HARYANA

The Commissioner of Income-tax, Karnal Versus Hardayal Singh (HUF)

Dated: 01-07-2008

Sections - 143, 147, 148, 271, 274,

Assessee has received interest on FDRs, which was not included in the original return filed in response to notice u/s 148 – AO initiating the penalty proceedings u/s 271(1)(c) - Tribunal has found that penalty proceedings were initiated by the AO without recording the satisfaction that the assessee has concealed the income - Tribunal has also found that penalty is not imposable if there is no conscious breach of law - questions of law as raised by the revenue do not arise

512 2008 TMI - 31140 - HIGH COURT PUNJAB AND HARYANA

Commissioner of Income-tax, Karnal Versus Rakesh Kumar, and Mukesh Kumar, Panipat

Dated: 01-07-2008

Sections - 158BC, 144, 132,

Issuance of search warrant & Panchnama in name of dead person - Thus, it is

INCOME TAX ACT 1961

CASE LAWS

crystal clear that not only the search was invalid but the authorization for conducting search itself was invalid and void ab initio – assessment framed by AO u/s 158BC in the name of a dead person in consequence to such search warrant, is illegal - Such search warrant is against the law of natural justice. No valid assessment could have been made on the strength of such an invalid search warrant

513 2008 TMI - 31137 - SUPREME COURT

Vijay Ship Breaking Corpn. & Ors. Versus Commr. of Income Tax, Ahmedabad

Dated: 01-10-2008

Sections - 80HH, 80I, 195, 80A, 80(15),

Usance interest paid for purchase of the vessel for ship breaking – contention of the assessee that such interest partook of the character of the purchase price and, therefore, TDS was not deductible u/s 195(1), is acceptable - Since tax was not assessable in India, there was no question of TDS being deducted by the assessee - Tribunal was right in allowing the deduction u/s 80HH & 80I holding that the ship breaking activity gave rise to the production of a distinct & different article

514 2008 TMI - 31114 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME-TAX Versus EMPTEE POLY-YARN P. LTD.

Dated: 27-02-2008

Sections - 80IA,

AO passed an order of assessment disallowing claim under Section 80HH and 80-I and 80-IA on the ground that the activity of processing is not an industrial activity – tribunal allowed assessee's appeal holding that texturing and twisting of partially oriented yarn (POY) amounts to manufacture – order of tribunal is justified because in impugned process original commodity loses its identity – assessee is entitled to special deduction u/s 80-IA

515 2008 TMI - 31113 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus DURGA SHANKAR KANSARA

Dated: 28-01-2008

Sections - 158BE, 132A, 158BG, 80P, 80A,

Explanation 2 to Section 158BE inserted w.e.f. July 1, 1995 – Block assessment – since the assets had been received by the concerned officer on June 5, 1997, the period of one year had to be computed from that date – assessment order had been passed on November 13, 1997, which was clearly within the period of one year – likewise, at that time Dt. CIT was the competent authority to grant previous consent for the assessment u/s 158BG, as it then existed – assessment order was valid

516 2008 TMI - 31112 - DELHI HIGH COURT

DIRECTOR OF INCOME TAX (EXEMPTIONS) Versus DALMIA SHIKSHA PRATHISHTHAN

INCOME TAX ACT 1961

CASE LAWS

Dated: 19-02-2008

Sections - 010(22), 012A, 011,

Trust - exemption u/s 10(22) – mere for the reason that assessee earned Rs. 9603 through sale of books, it cannot be construed that assessee didn't exist solely for educational purposes but for the profit motive – if there is no change in activities, mode of investment/functioning, then exemption cannot be denied for any subsequent year – moreover in CBDT circular no. 712 there is no obligation that an education institution must invest its funds in the modes specified in section 11(5)

517 2008 TMI - 31109 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus VIVEK DOUGALL

Dated: 19-02-2008

Sections - 158B, 158BC,

After the search and seizure, the Assessing Officer sought to treat the non-compete fee as undisclosed income of the Assessee during the block assessment proceedings - contention of the Assessee was that the amount of non-compete fee was not undisclosed income within the meaning of Section 158B (b) – held that since the assessee had disclosed the amount received by him towards non-compete fee in his regular returns, it could not be taxed u/s 158B (b)

518 2008 TMI - 31106 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX DELHI-VI versus UNITED HOTELS LTD.

Dated: 03-10-2008

Sections - 037, 040A,

Assessee, hotel - assessee made agreement with Megapode Airlines Ltd. in order to provide facilities of charter flights to its customers - assessee could not utilize the flying hours - assessee was liable to pay annual fixed charges irrespective of the hours actually utilized by it - agreement was entered into by the assessee for its business purposes - commercial expediency – Sec. 40 A (2) not invocable for disallowing the said expenditure – revenue appeal dismissed

519 2008 TMI - 31100 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus MRUNALINIDEVI PUAR OF DHAR

Dated: 06-02-2008

Sections - 168, 159,

AO held that Income arising from the estate of the deceased husband of the assessee had to be taxed in the hands of assessee as an individual – assessee's contention is that she was assessable as an executor – widow of the deceased, is only legal heir - held that Tribunal was justified in directing deletion, from assessee's income – revenue is bound by the judgment rendered by the jurisdictional High Court between same parties

INCOME TAX ACT 1961

CASE LAWS

520 2008 TMI - 31099 - BOMBAY HIGH COURT

HINDUSTAN DORR OLIVER LTD. Versus P. K. KEDIA, DEPUTY CIT AND OTHERS

Dated: 26-02-2008

Sections - 147, 148, 143,

Assessee procuring steel from SAIL & storing the same till it was necessary for dispatch to the destination – on basis of statement of third party, notice of reassessment was issued to petitioners on ground that raw material procured from SAIL for actual use was sold for cash in the open market in unaccounted terms – not proved that petitioners had allowed the two bogus firms – statement of that third party not proved by any evidence – notice u/s 147 is invalid

521 2008 TMI - 31097 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus PANKAJ DHIRAJLAL DHURVE

Dated: 19-02-2008

Sections - 263,

Two different CITs having jurisdiction over the same range recorded different views in relation to CBDT circulars dt. 22-9-65 & 6-1-84 (about the limit of expenses to be allowed as deduction regarding commission received by LIC Agent) – order dealing with commission on basis of circulars can't be held erroneous – so Tribunal was justified in concluding that assessment order can't be treated to be erroneous & prejudicial to the interests of revenue as the AO had adopted one view of the matter

522 2008 TMI - 31091 - BOMBAY HIGH COURT

DIRECTOR OF INCOME-TAX (EXEMPTIONS) Versus NATIONAL SAFETY COUNCIL

Dated: 22-01-2008

Sections - 10(22),

Assessee, National Safety Council, a society registered under the Societies Registration Act & Bombay Public Trust Act – main objects of the assessee is to educate the public in regard to safety, protection - it would be unreal to hold that the assessee society was only a financing body & would not come within the scope of "other educational institution" as specified in Section 10(22) - almost entire income has been utilised for the purpose of its objects – exemption u/s 10(22) cannot be denied

523 2008 TMI - 31090 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus WESTERN AGENCIES MADRAS P. LTD.

Dated: 03-03-2008

Sections - 189, 144, 147, 159,

Assessee is a company incorporated on March 31, 1994, with the main object of acquiring business of a firm with all its assets and liabilities - said firm was dissolved on April 5, 1995, w.e.f. March 31, 1994, and the partners were

INCOME TAX ACT 1961

CASE LAWS

allotted equity shares in the company - assessment order for the A.Y 1990-91 to 1994-95 in respect of the partnership firm has been passed on the appellant-company – assessment orders are not valid because company was not at all in existence during those years

524 2008 TMI - 31089 - MADRAS HIGH COURT

A. RAMAMURTHY Versus INCOME-TAX OFFICER

Dated: 11-02-2008

Sections - 155, 143,

Assessee availed the "Kar Vivad Samadhan Scheme" - If assessee has been issued certificate under the Kar Vivad Samadhan Scheme, there is no justification for the Assessing Officer to reopen the assessment by a notice under section 143 - it is not the case of the Revenue that any material particular furnished by the appellant-assessee in the declaration was found to be false. Consequently, the Assessing Officer could not have reopened the assessment by a notice under section 143

525 2008 TMI - 31087 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SEPTU INDIA P. LTD.

Dated: 06-02-2008

Sections - -

Assessee paid commission on sale of machinery & service charges in execution of sale of plant - AO disallowed both the expenses on the ground that the assessee failed to furnish appointment letters of commission agents, details of commission/service charges paid - ITAT on the basis of evidence has recorded a pure finding of fact while concluding that payment of the aforesaid two amounts has been proved by assessee - authorities below were not justified in disallowing the deduction claimed

526 2008 TMI - 31086 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus DIGVIJAY CEMENT CO. LTD.

Dated: 13-02-2008

Sections - 043, 154,

AO made application u/s 154 for excluding the interest on deferred payment on purchase of machinery for the purposes of calculating the actual cost for computing allowable depreciation and investment allowable - Explanation 8 to Section 43(1) was inserted with retrospective effect to withdraw the depreciation and investment allowance – ITAT is right in holding the decision of CIT that issue was debatable in nature, so rectification was not permissible u/s 154

527 2008 TMI - 31069 - AUTHORITY FOR ADVANCE RULINGS

Golf In Dubai, L.L.C., In re

Dated: 13-10-2008

Sections - -

INCOME TAX ACT 1961

CASE LAWS

Applicant, Golf In Dubai, (GID), registered in United Arab Emirates(UAE), organized Golf tournaments in India - Whether GID could be deemed to have a Permanent Establishment in India in terms of Article 5 of DTAA – Held, no - hence, in the absence of a PE, applicant's business income i.e. (1) sponsorship income (2) income from sale of merchandise at the venue & over the internet (3) nominal management fee from sponsors would not be liable to tax in India, in terms of Article 7 of India-UAE DTAA

528 2008 TMI - 30973 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus CAPITAL TYRES MFG. UNIT

Dated: 09-04-2008

Sections - -

Valuation of stock was inflated in the statement furnished to the bank for obtaining the maximum cash credit limit - Assessing Officer rejected this explanation of the assessee and made addition on account of the difference between the value of stock - Held that both authorities had taken into account the opening and closing stock of the last year and had rightly excluded the inflated stocks pertaining to the immediately preceding year – approach of tribunal could not be said to be erroneous

529 2008 TMI - 30972 - MADHYA PRADESH HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SHYAM SUNDAR CHHAPARIA

Dated: 22-04-2008

Sections - 017,

Assessee after retirement received amount as a special compensation – assessee claimed it was a non-taxable receipt being the compensation for not taking up any competitive employment under a restrictive covenant – no material to suggest that there existed a service contract as contended by AO – so it cannot be termed as profit in lieu of salary – compensation received was in lieu of loss of future work and was a capital receipt - therefore, it is exempt u/s 17(3)(i)

530 2008 TMI - 30970 - HIMACHAL PRADESH HIGH COURT

HIMACHAL GRAMIN BANK Versus DEPUTY COMMISSIONER OF INCOME-TAX AND ANOTHER

Dated: 19-06-2008

Sections - 80P, 143, 143B, 154,

CIT allowed deduction u/s 80P to the assessee, co-operative society – Tribunal is not right in holding that commissioner had exceeded his jurisdiction in entertaining a new claim not raised earlier – none of the authorities below had gone into whether the assessee had fulfilled the conditions stipulated in section 80P or not – AO was duty bound to have considered this which admittedly had not been done at all – matter remanded to AO to decide the matter afresh

531 2008 TMI - 30951 - KERALA HIGH COURT

IDEAL PUBLICATIONS TRUST Versus COMMISSIONER OF INCOME-TAX

INCOME TAX ACT 1961

CASE LAWS

Dated: 27-02-2008

Sections - 011, 002(15),

Appellant, a trust engaged in the publication of a newspaper - exemption claimed by the appellant as a charitable trust u/s 11 - Since the appellant has no other activity other than the business of printing and publication of newspaper on commercial lines, we are of the view that the business itself cannot be said to be an object of general public utility entitling the appellant for the exemption as a charitable institution – exemption not entitled

532 2008 TMI - 30950 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus NHK JAPAN BROADCASTING CORPORATION

Dated: 23-04-2008

Sections - 153, 201, 191, 271C, 221, 147, 148,

Failure to deduct tax at source – but assessee paid the required interest without disputing its liability – AO passed an order u/s 201(1) & 201(1A) treating the assessee as being in default – held that acceptance of liability will not by itself extend period of limitation - Held that action must be initiated within period of 4 years, where no limitation is prescribed as in section 201 - initiation of proceedings in 1999 in respect of the A.Y. 1990-91, is barred by limitation

533 2008 TMI - 30930 - HIMACHAL PRADESH HIGH COURT

COMMISSIONER OF INCOME-TAX Versus H. P. MINERAL AND INDUSTRIAL DEVELOPMENT CORPORATION LTD.

Dated: 30-04-2008

Sections - 256,

Assessee had shares in subsidiary company – subsidiary company was ordered to be wound up – held that once a company had been ordered to be wound up, there is no question of any party dealing in the shares of that company – mere fact that shares were not sold was of no significance – in fact the shares could no have been sold – tribunal was right in holding that shares were stock-in-trade and had therefore allowed the loss – loss had to be treated as trading loss – deduction allowed

534 2008 TMI - 30905 - SUPREME COURT

B.M. MALANI Versus COMMR. OF INCOME TAX & ANR.

Dated: 01-10-2008

Sections - 220, 132, 245C, 148, 245E, 245C,

Shares and demand draft seized – levy of interest for non-payment of tax - application for waiver of interest rejected by CIT - submission of assessee is that it will cause genuine hardship to them - whether the default in payment of the amount was due to circumstances beyond the control of the assessee has not been considered by CIT or HC - Whether a presumption that draft belongs to the person from whose possession it was seized can be drawn is a subject matter of AO - matter remitted to CIT

INCOME TAX ACT 1961

CASE LAWS

535 2008 TMI - 30883 - MADHYA PRADESH HIGH COURT

GRAMIN VIDYUT SAHKARI SAMITI MARYADIT Versus ASSISTANT COMMISSIONER OF INCOME-TAX AND OTHERS

Dated: 04-02-2008

Sections - 044AB, 271B,

Penalty imposed as assessee did not get its accounts audited as required u/s 44AB – Tribunal apart from stating that there was no denial by the assessee that the provisions of section 44AB were not applicable to it and there was delay in getting the account audited, had really not applied its mind as per the requisite parameters of law – tribunal ought to have recorded a finding whether assessee had acted deliberately in defiance of the provisions of section 44AB – case remanded

536 2008 TMI - 30880 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX DELHI-XI, NEW DELHI versus M/S SOCIETEX & vice-a-versa

Dated: 22-09-2008

Sections - 271,

Assessee plea is that they claimed deduction wrongly so it is a bona fide mistake– tribunal accepted revenue's submission understanding that the assessee had not paid any advance tax on the said amount – since assessee has paid the advance tax, decision of the Tribunal on merits requires re-consideration - insofar as the plea of validity of proceedings u/s 271 (1)(c) are concerned, the revenue's appeal is allowed inasmuch as sub-section (1B) is introduced with retrospective effect from 1.4.89

537 2008 TMI - 30879 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX DELHI (CENTRAL) - II versus TOSHA INTERNATIONAL LTD.

Dated: 23-09-2008

Sections - 041, 028, 002(24),

Assessee was declared sick unit by BIFR – assessee was granted waiver of the principal amount of loan which the assessee had directly credited to the Capital Reserve Account – AO contend that since the loans ceased to exist, this amounted to cessation of liability hence AO made addition – held that remission of the principal amount of loan didn't amount to income - remission would become income u/s 41(1) only if assessee has claimed deduction in respect of expenditure or trading liability

538 2008 TMI - 30878 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX, DELHI-IV versus ENCON INTERNATIONAL (P) LTD.

Dated: 24-09-2008

Sections - 80HHC,

Export - in respect of sale to Jordan Co. benefit u/s 80HHC was denied by AO on ground that sale didn't constitute part of the assessee's trading activity – in

INCOME TAX ACT 1961

CASE LAWS

respect of sales to non-Jordan Co. benefit was denied holding that sales were ultimately for the benefit of Jordan Co. - Tribunal rightly hold that impugned exports was as a result of fresh purchase orders & were not in connection with earlier contracts – sale proceeds is in convertible foreign exchange - hence benefit can't be denied

539 2008 TMI - 30877 - HIGH COURT DELHI

THE COMMISSIONER OF INCOME TAX versus M/S C. J. INTERNATIONAL HOTELS LTD.

Dated: 10-09-2008

Sections - 115JA, 263, 115JB, 032, 115J,

Re-computation of income u/s 115JA - Tribunal was right in holding that AO can compute depreciation u/s 32 on the rates provided in appendix-I to I.T. Rules for computing total income, but he cannot disturb the book profit, which has been certified to be drawn as per the companies act - Therefore order passed by AO was not erroneous - Since it was not erroneous, it could not have been termed to be prejudicial to the interest of revenue – re computation not required – revenue appeal dismissed

540 2008 TMI - 30876 - HIGH COURT DELHI

THE COMMISSIONER OF INCOME TAX DELHI (CENTRAL)-II versus D.K. GUPTA

Dated: 26-09-2008

Sections - 132,

Addition on basis of notings in diaries seized from the assessee's premises - tribunal noted that all the evidence, materials, explanations were furnished by assessee before the AO - tribunal returned a finding of fact that there is no corroborative/direct evidence to presume that the notings had materialised into transactions giving rise to income not disclosed in the regular books of accounts - additions not justified – there is no perversity in tribunal's findings - no question of law arise

541 2008 TMI - 30869 - UTTARAKHAND HIGH COURT

COMMISSIONER OF INCOME-TAX AND ANOTHER Versus ENRON OIL AND GAS INDIA LTD.

Dated: 17-01-2008

Sections - 042, 260A, 032, 037,

Non-resident company engaged in production of crude oil – production sharing contract – expenditure incurred in foreign exchange by the co-venturer converted into Indian Rupee at the end of month - when the Revenue is accepting the tax on the profits/gains arisen out of the change in foreign exchange rates, it cannot deny depreciation on account of loss - hence deduction claimed by the assessee-NRC on account of foreign exchange loss was admissible to it u/s 42

542 2008 TMI - 30867 - AUTHORITY FOR ADVANCE RULINGS

INCOME TAX ACT 1961

CASE LAWS

Anapharm Inc., In re

Dated: 11-09-2008

Sections - 009, 044BB,

Applicant provides clinical & bioanalytical services to various pharmaceutical companies including some Indian companies – held that consideration received by applicant would be its business income - In view of Article 7 read with Article 5 of DTAA, such income can be taxed only if the applicant has a Permanent Establishment in India - fee received by applicant is in the nature of 'business profits' under Article 7 & the same is not taxable in India as the applicant does not have a PE in India

543 2008 TMI - 30866 - AUTHORITY FOR ADVANCE RULINGS

Small Business Corporation., In re

Dated: 29-08-2008

Sections - -

Applicant, an undertaking of the Korean Government have liaison office in India to assist Korean businesses in India - exigibility of income-tax on the remuneration received by the officer incharge - benefit of article 20(1) of DTAA - applicant has not stated any details in the application about the source of funds - Subject to above observation, the ruling is given against the applicant – none of the entities specified in article 20(4) would be entitled to invoke Article 20(1)

544 2008 TMI - 30865 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX, DELHI-II versus MOSER BAER INDIA LTD.

Dated: 22-09-2008

Sections - 010A, 010B,

Export – AO denied exemptions u/s 10A/10B on ground that assessee's direct exports were less than 75% of the total sales - AO did not accept the assessee's explanation that the stock transfers to his Rotterdam unit were actually export sales - Tribunal hold that stock which had been transferred had actually been sold by the unit and therefore, would have to be construed as actual exports by the said units of the assessee - pure finding of fact – exemption allowed – revenue appeal dismissed

545 2008 TMI - 30864 - HIGH COURT DELHI

THE COMMISSIONER OF INCOME TAX, DELHI-IV. Versus M/S HI LINE PENS PVT. LTD.

Dated: 15-09-2008

Sections - 030, 032, 031, 010(2),

Expenditure on renovation of rented premises – decisions cited by revenue relate to "current repairs" – but there is a clear distinction between the expression "repairs" & "current repairs" - "current repairs" is restricted than "repairs" – no any new capital asset was brought out – expenses were made to make the premises more conducive to its business activity – hence cost of

INCOME TAX ACT 1961

CASE LAWS

repairs incurred are allowable u/s 30(a)(i) - no question of considering the question of applicability of Section 32

546 2008 TMI - 30826 - HIGH COURT DELHI

CENTRAL GOVERNMENT EMPLOYEES CONSUMER COOPERATIVE SOCIETY LTD. versus THE COMMISSIONER OF INCOME TAX

Dated: 19-09-2008

Sections - 145,

Assessee provided a sum under the head 'salaries & wages', pending revision – AO made additions on ground that liability on account of wage revision had not been ascertained & accrued during the year which ended on 31.3.1998 – Tribunal observed that Accounting Standard 4 issued by ICAI is not applicable & there was no indication of any revision for the year 1.7.97 to 31.3.98 – tribunal rightly hold that liability itself had been incurred only during the F.Y. 1998-99 – assessee appeal dismissed

547 2008 TMI - 30825 - HIGH COURT DELHI

AFT TRUST SUB 1 and OTHERS versus CHAIRMAN, CENTRAL BOARD OF DIRECT TAXES AND OTHERS

Dated: 05-09-2008

Sections - 010(15A),

Petitioner seek approval to the lease agreements u/s 10 (15A) in respect of aircrafts leased to Jet airways – aircrafts had been taken out of India and then brought back to India pursuant to the termination and execution of the fresh lease agreements - department contention that new agreement was only for taking benefit u/s 10(15A) as benefit was not available to earlier agreements, is not acceptable –new agreements were necessitated because of the change in the ownership – approval granted

548 2008 TMI - 30808 - SUPREME COURT

Commissioner of Income Tax-IV, Delhi Versus M/s HCL Comnet Systems & Services Ltd.

Dated: 23-09-2008

Sections - 115JA, 115J,

AO added back the provision for doubtful debts to net profit - provision made to cover up the probable diminution in the value of asset, can't be said to be a provision for liability, because even if a debt is not recoverable no liability could be fastened upon the assessee - provision made towards irrecoverability of the debt can't be said to be a provision for liability- AO was not justified in adding back the provision for doubtful debts under clause (c) of the Explanation to Section 115JA

549 2008 TMI - 30807 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX versus EASTMAN INDUSTRIES LIMITED

Dated: 16-09-2008

INCOME TAX ACT 1961

CASE LAWS

Sections - 050, 032, 002(11), 260A, 002(42A), 048, 049, 002(34), 032, 032A, 034, 035, 038, 041, 043, 055, 057, 059, 155,

AO disallowed 50% of the depreciation allowance on the ground that the assets had been entered in accounts after 30.09.1997 – as per challan & confirmation certificates, assets were transferred to the assessee on 1.4.1997 - fact of the entry of the transaction in accounts is not relevant – hence 100% depreciation is allowable – if assets were available in the “block of assets” at the end of the previous year, Section 50 (2) will not be applicable – no capital gains - revenue appeal dismissed

550 2008 TMI - 30800 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus MAHAVIR SPINNING MILLS LTD.

Dated: 07-02-2008

Sections - 010B, 260A, 143, 036, 037,

Deduction to profit derived from export - Unit during the F.Y 1994-95 got converted into a 100 % EOU with the permission of the Department of Industrial Development – Revenue plea that exemption is not available to a unit formed by splitting up or the reconstruction of the business already in existence, not acceptable - exemption u/s 10B will be given from & after the date of approval of the unit as 100% EOU - Circular 1/05 dated 6-1-05, is clarificatory so same is binding on Department also

551 2008 TMI - 30748 - MADRAS HIGH COURT

SCM CREATIONS Versus ASSISTANT COMMISSIONER OF INCOME-TAX

Dated: 06-03-2008

Sections - 080IA, 080HH, 080I,

Whether the relief u/s 80-IA should be deducted from profits and gains of business before computing relief u/s 80HHC - view has been followed repeatedly by different High Courts in a number of cases against which no special leave petitions were filed, meaning thereby that the Department has accepted the view taken in these judgment - both the sections are independent therefore, the deductions could be claimed under both sections on the gross total income

552 2008 TMI - 30746 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus NATVARLAL PURSHOTTAMDAS PAREKH

Dated: 25-02-2008

Sections - 256, 271D, 271E, 269SS, 269T

Deposits and loans in cash in excess of prescribed limit - AO noticed that the assessee, has accepted various loans/deposits from different parties and repaid such loans/deposits to different parties in contravention of sections 269SS & 269T – explanation of assessee that all the amounts received by the assessee was from family members and those amounts were on account of maturity of NSCs, etc., is acceptable – penalty imposed for violation of sections

INCOME TAX ACT 1961

CASE LAWS

269SS and 269T is not justified

553 2008 TMI - 30743 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus ORIENTAL POWER CABLE LTD.

Dated: 27-02-2008

Sections - 271, 037, 040A, 154, R006D,

Penalty for concealment of income - Tribunal specifically recorded that there is no finding of the income-tax authorities that the assessee deliberately made false claims for claiming deduction - case of the assessee that it did not include the particular item in the taxable items in a bona fide belief was accepted - Tribunal, is justified in cancelling the penalty levied by the Assessing Officer

554 2008 TMI - 30742 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SANGRUR VANASPATI MILLS LTD.

Dated: 19-02-2008

Sections - 260A, 271,

Assessing Officer had made the additions on the basis of estimate – held that that the estimate would not ipso facto lead to penalty - held that in order to attract clause (c) of section 271(1) of the Act, it is necessary that there must be concealment by the assessee of the particulars of his income or furnishing of inaccurate particulars of such income – hence tribunal is justified in upholding the order of CIT of deleting penalty

555 2008 TMI - 30741 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SHREE SHANTINATH SILK MILLS

Dated: 26-02-2008

Sections - 256, 032A, 155,

Amount credited to the investment allowance reserve account utilized for purchase of plant and machinery – amount in reserve credited to capital accounts of partners is not relevant - ITAT was right in holding that by crediting the partners, capital account by the amount standing to the credit of the investment allowance reserve account does not result in distribution by way of profit of such reserve - no violation of section 32A(5) - investment allowance cannot be withdrawn

556 2008 TMI - 30736 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SUPREME BUILDERS

Dated: 25-03-2008

Sections - 260A, 143,

Expenses on interest and salary to partners - Since the assessee is maintaining its books of account under the cash system of accounting, deduction on account of salary and interest to be paid to the partners was

INCOME TAX ACT 1961

CASE LAWS

allowable as per the partnership deed - regular books of account not having been maintained and a flat rate applied, the extra payment receipt by the assessee deserved the same treatment as other payments – revenue appeal is dismissed

557 2008 TMI - 30731 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus CHENNAI PROPERTIES AND INVESTMENTS LTD.

Dated: 04-03-2008

Sections - 022, 056,

Assessee treated the amenity charges received from the properties owned by the assessee as income from business. The Assessing Officer treated the entire amount as income from house property - Tribunal upheld the order of the Commissioner (Appeals) & Tribunal was right in holding that the amenity charges received in respect of let out property should be treated as "income from other sources", not as "income from business" or as "income from house property"

558 2008 TMI - 30719 - SUPREME COURT

Commissioner of Income Tax, Madras versus Ponni Sugars & Chemicals Ltd.

Dated: 16-09-2008

Sections - 080P,

Co-operative Sugar Mill – amount received by the assessee under Incentive Subsidy Scheme could be utilized only in repayment of term loans so it was not in the course of a trade but was of capital nature, hence not includible in total income – for allowing exemption u/s 80 P(2)(a)(i) in respect of interest received from the members, matter is remanded to examine the Memorandum & Articles of Association, Return of Income & decide whether banking/credit facilities are provided to members or not

559 2008 TMI - 30710 - MADRAS HIGH COURT

DYNAVISON LIMITED Versus INCOME-TAX APPELLATE TRIBUNAL AND OTHERS

Dated: 09-04-2008

Sections - 255, 226, 115J, 143, 043B, 131,

President or the third member has no right to go beyond the scope of reference and has to consider only the difference of opinion stated by the members of the Division Bench – Section 255(4) does not vest such power with the President or the third member – they have no right to enlarge, restrict and modify or formulate any question of law on their own on the difference of opinion referred by the Members of the Tribunal - order of the Third Member is set aside

560 2008 TMI - 30706 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus LAKHANPAL NATIONAL LTD.

Dated: 26-02-2008

INCOME TAX ACT 1961

CASE LAWS

Sections - 80I, 256,

Industrial undertaking – tribunals uphold the order of CIT by recording that it cannot be said that the new industrial undertaking has been brought into existence by reconstruction or by splitting up the old business or transferring the old plant & machineries – revenue contention that assessee had only installed two assembly lines, is not acceptable - hence Tribunal was justified in holding that there was negligible use of existing machinery so assessee was entitled for the deduction u/s 80I

561 2008 TMI - 30705 - ALLAHABAD HIGH COURT

SMT. GOVINDA DEVI Versus COMMISSIONER OF INCOME-TAX AND ANOTHER

Dated: 09-04-2008

Sections - 271, 264, 154, 149, 148, 276CC, 277,

Petitioner won a lottery - prize money was paid to the petitioner in February, 1992 - petitioner in her return for the A.Y. 1992-93 disclosed the receipt of the prize money and also paid the tax due on it - Assessing Officer, on some misconception thought that as the petitioner has won the lottery in January, 1992, the receipt of the prize money would form part of the A.Y. 1991-92 – AO is not justified in passing ex parte assessment order for year 1991-92 and raising demand & imposing penalty

562 2008 TMI - 30703 - HIGH COURT DELHI

Commissioner of Income Tax Delhi-IV versus Goyal M.G. Gases Pvt. Ltd.

Dated: 10-09-2008

Sections - 263, 143,

CIT invoking Section 263 set aside the assessment framed u/s 143(3) and directed the AO to calculate taxable income according to the merchantile system & directed the AO to pass the consequential orders “within a period of 3 months approximately” – revenue’s appeal against that order was dismissed by tribunal concluding that the time for passing the consequential order had expired – since no orders passed within 3 months, decision of tribunal was right – no substantial question of law arise

563 2008 TMI - 30694 - DELHI HIGH COURT

SCHNEIDER ELECTRIC INDIA LTD. Versus COMMISSIONER OF INCOME-TAX AND ANOTHER

Dated: 19-02-2008

Sections - 037, 260A,

Sales commission - no material to suggest that M/s. Ram had procured any sale orders for the assessee - production of a few bills or account payee cheques, are not satisfactory proof - no evidence of any personal meetings to suggest that there was any relationship on the basis of which M/s. Ram procured some orders for the assessee for which it was entitled to receive commission – transaction was based mere on oral understanding - tribunal is justified in disallowing the commission

INCOME TAX ACT 1961

CASE LAWS

564 2008 TMI - 30691 - PUNJAB AND HARYANA HIGH COURT

MAHAVIR SPINNING MILLS LIMITED Versus COMMISSIONER OF INCOME-TAX

Dated: 16-01-2008

Sections - 040A, 080HH, 080AB, 256, 040, 032A,

Commission paid to the director cannot be held to be a perquisite for the purpose of limits prescribed u/s 40A (5) - in case of directors, both Sections 40A (5) & 40 (c) are attracted and the higher of the two ceilings has to be applied –held that payment on account of rent, electricity, water and fuel bills shall not be considered as perquisite for the purpose of Section 40A (5) - Tribunal was not right in law in allowing deduction u/s 80 HH before deducting investment allowance

565 2008 TMI - 30690 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus AVTAR SINGH

Dated: 14-02-2008

Sections - 147, 148, 142, 149,

CIT (A) as well as the Tribunal have recorded a pure finding of fact, after considering the material available on record to the effect that notice under Section 148 was actually not served upon the assessee, which was a condition precedent for making reassessment or recomputation u/s 147 - We do not find any ground to interfere in the said finding of fact, and in our view no substantial question of law is arising from the order of the Tribunal.

566 2008 TMI - 30682 - SUPREME COURT

ASSISTANT COMMISSIONER, INCOME TAX, RAJKOT VERSUS SAURASHTRA KUTCH STOCK EXCHANGE LTD

Dated: 15-09-2008

Sections - 254, 011, 012, 012A, 143, 154, 252, 253, 255, 256,

Stock Exchange - HC uphold the order of Tribunal that there was a 'mistake apparent from the record' in its order of denying exemption to assessee u/s 11 as charitable trust - Tribunal directed the Registry to fix the matter for re-hearing & as such the appeal will be heard on merits - As and when the Tribunal will hear the matter, it will decide the case on its own merit without being influenced by any observations made by it in the impugned order or in the order of the HC or in this judgment

567 2008 TMI - 30681 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus VENUS ELECTRICALS

Dated: 10-03-2008

Sections - 080HH, 080I,

Deduction u/s 80HH and 80I on gross total income - Tribunal is right in law in holding that the assessee is entitled to relief u/s. 80-I of the rate of 20% of the profit without allowing deduction u/s. 80HH

INCOME TAX ACT 1961

CASE LAWS

568 2008 TMI - 30679 - MADHYA PRADESH HIGH COURT

UNION OF INDIA Versus NALINIDEVI AND ANOTHER

Dated: 12-02-2008

Sections - 276C, 277,

Offences and prosecution - Partner's liability is restricted only to civil liability, not to criminal liability – burden is upon prosecution to prove that accused persons had an active role in business of firm – on basis of evidence led by prosecution, trial court acquitted the partners, on ground that burden was not discharged by prosecution to prove activeness of partners – no illegality with the order of trial court of acquittal of the accused members of the firm

569 2008 TMI - 30678 - MADHYA PRADESH HIGH COURT

UNION OF INDIA Versus DINESH

Dated: 11-01-2008

Sections - 276CC, 277, 139,

Appellant-Union of India being aggrieved by the judgment passed by the learned Additional Chief Judicial Magistrate acquitting the present respondent for offences punishable u/s 276CC & 277 – appellant has submission that the learned court below committed factual error in acquitting the accused – held that no case was made out by appellant to show that there was willful default (in filing return) & HC would not interfere with an order of acquittal merely because yet another view was possible

570 2008 TMI - 30663 - DELHI HIGH COURT

DABUR INDIA LIMITED Versus COMMISSIONER OF INCOME TAX

Dated: 01-09-2008

Sections - 260A, 143, 80HHC, 80IB, 80B, 80A, 80C, 80U, 80AB, 80H, 80HH, 80E, 003, 002(45), 004, 005, 006, 009, 014, 059, 028, 029, 030, 043A, 043D, 032, 031, 034, 035, 071, 072, 073, 036, 037, 011, 011A, 041,

Deduction under Section 80 HHC & 80IB claimed without deducting depreciation while arriving at eligible profits and gains - Profits and gains of a newly established undertaking have to be computed as per the provisions of section 29 to section 43A and if the assessee claims relief under Chapter VI-A of the Act, then it is not open to the assessee to disclaim depreciation allowance - claim for allowance of deduction without taking into consideration the current depreciation, is rejected

571 2008 TMI - 30662 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus SHRI ANAND SWARUP KHANDELWAL

Dated: 08-09-2008

Sections - 260A, 40A, 158BC,

Addition made by AO by taking resort to Section 40A(3) on the ground that the Assessee had made cash purchases to the tune of Rs. 108,08,36,839/- is untenable – section 40A(3) is set into motion only if an Assessee incurs an

INCOME TAX ACT 1961

CASE LAWS

'expenditure' in cash of a sum exceeding Rs.20,000 - Assessing Officer could not place any material on record to show that the documents so seized represented purchases made by the Assessee in cash - provisions of Section 40A(3) will not come into play

572 2008 TMI - 30661 - DELHI HIGH COURT

COMMISSIONER OF INCOME TAX Versus INDIAN VISIT. COM PVT. LTD

Dated: 05-09-2008

Sections - 037,

Whether expenses on development of website was capital expenditure – assessee, in travel business, indicates the various destinations and places for which it can arrange travel, hotel booking etc. for his clients - assessee's clients can use the assessee's website for the purposes of availing of the services provided by the assessee - just because a particular expenditure may result in an enduring benefit wouldn't make such an expenditure of a capital nature – held these are revenue expenditure

573 2008 TMI - 30660 - SUPREME COURT

M/S. MYSODET (P) LTD. Versus COMMISSIONER OF INCOME TAX, BANGALORE

Dated: 03-09-2008

Sections - 080HHC, 263, 256, 080A, 080C, 080U, 028, 043D,

Formula to compute Export Profits – assessee is doing export business exclusively hence "export turnover & total turnover" would be identical, if the entire sale proceeds are brought into India in convertible foreign exchange within the prescribed time limit - HC had erred in relying upon the judgment of SC in IPCA Laboratory Ltd. – because Section 80HHC(3) has undergone amendments many times – further formula has undergone a change by several amendments – assessee's appeal allowed

574 2008 TMI - 30641 - ALLAHABAD HIGH COURT

BANARSI PRASAD Versus COMMISSIONER OF INCOME-TAX

Dated: 29-02-2008

Sections - 068,

Cash credits – explanation – assessee is required to disclose the source of the depositor for establishing the "capacity" of the creditor – mere explanation regarding the source of the receipt or credits in the account books of the assessee that he received the money from his wife and minor son who were not earning is not "satisfactory" – burden not discharged by assessee to prove genuineness of transaction – assessee's appeal dismissed

575 2008 TMI - 30637 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus KAILASH RICE MILLS

Dated: 03-07-2008

Sections - 256,

INCOME TAX ACT 1961

CASE LAWS

Whether the Tribunal is right in deleting the addition of Rs.10,000/- from the income of the assessment year 1979-80 on the ground that this deposit did not fall in the previous year for this year - questions referred by the Tribunal do not require consideration by this Court because the amount involved is too small i.e. only Rs. 2500

576 2008 TMI - 30629 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME-TAX Versus JANNHAVI INVESTMENTS P. LTD.

Dated: 08-01-2008

Sections - 048, 055,

Cost of acquisition could only be the cost on the date of actual acquisition, not on the date of conversion from stock-in-trade to capital asset – hence option of adopting “Fair Market Value” as “cost of acquisition” is available to assessee - whether the coupons received alongwith non convertible debentures were liable for capital gains – no proof that coupons were security as per Securities Contracts Regulation Act – section 55(2) will not apply – coupons not liable to capital gain

577 2008 TMI - 30628 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus T.E.I. TECHNOLOGIES P. LTD.

Dated: 19-02-2008

Sections - 037,

Technical support fee - assessee was supplied with technical support to enable it to manufacture the products - There was no transfer of technical knowhow in the setting up of the plant and machinery but the payment was only to enable the assessee to manufacture the products - technical support was in the form of technical advice rather than sharing of any technical knowhow, designs, drawings etc. – allowable for deduction as revenue expenditure

578 2008 TMI - 30624 - HIGH COURT DELHI

K.C. PALANISWAMY and ANR. versus INCOME TAX OFFICER

Dated: 05-09-2008

Sections - 279, 279B, 201, 276B, 278B,

TDS collected but not deposited – prosecution - demand raised by treating the Company as the assessee in default – Company plea is that prosecution proceeding can be initiated only against those persons who were managing the affairs of company during the default – plea of petitioner is accepted – offence of a failure to deduct or remit the TDS is a one-time offence and not a continuing one - liability cannot be fastened on directors who joined company subsequent to commission of offence

579 2008 TMI - 30623 - KERALA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus CO-OPERATIVE SUGARS LTD.

Dated: 31-01-2008

Sections - 037, 260A,

INCOME TAX ACT 1961

CASE LAWS

Amount paid by the assessee to the State Irrigation Department being part of the cost incurred for cement lining of an irrigation canal serving sugarcane cultivators – expenditure lead to increase in production of sugarcane - assessee derived benefit out of this expenditure, but did not create any asset for itself – hence, tribunal is right in holding that the deduction claimed by the assessee was allowable as revenue expenditure under section 37(1)

580 2008 TMI - 30601 - High Court of Madras

K.R.Palanisamy and others Versus Union of India

Dated: 05-08-2008

Sections - 50C,

Constitutional Validity of Section 50C - Provisions have been inserted with the object of plucking the leakage of income from the capital asset - marginal note of the Section and title of the Chapter cannot take away the effect of the provisions of the Act and they cannot render those provisions legislatively incompetent if they are otherwise within the legislative incompetence. - Constitutional validity upheld

581 2008 TMI - 30581 - SUPREME COURT

Commissioner of Income Tax, Dehradun & Anr. versus Enron Oil & Gas India Ltd.

Dated: 02-09-2008

Sections - 293A, 042,

Foreign exchange losses on account of foreign currency translation - whether translation losses are illusory or real losses – however Interest costs incurred by the assessee on loans is not allowable under PSC (Production Sharing Contract), but "Cash Call" is not a loan - Cash Call is a investment/contribution made into the Account of the Operator by each co-venturer – so loss arising on account of foreign currency translation is allowable as deduction – held that impugned loss are real loss

582 2008 TMI - 30580 - SUPREME COURT

Commissioner of Income Tax, Chennai Versus M/s Modern Engineers Construction Cooperative Society Ltd.

Dated: 04-09-2008

Sections - 260A, 080P,

Claim of deduction under Section 80P (2)(a)(i) – AO rejected the claim on the ground that the income reflected by the assessee, cooperative society can neither be attributed to actual labour of the members nor can be treated as arising out of collective disposal of its labour - High Court failed to notice that the profit earned by the Society in executing the work was retained by the members themselves – decision of HC is raising confusion – matter remanded to HC

583 2008 TMI - 30571 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus (1) SOHAN KHAN (2) MOHAN

INCOME TAX ACT 1961

CASE LAWS

KHAN

Dated: 24-04-2008

Sections - 028, 045, 002(4),

AO holding transaction of disposal of large extent of land under site plan, in nature of trade - nothing to show, that the land was purchased with intention to sale it at a profit, or with requisite intention, to bring it within the parameters of "stock in trade" - not shown, that assessee is a regular dealer in real estate – transaction was of capital asset only and not a transaction of any stock-in-trade - therefore, it is liable to be taxed only, as the capital gain – revenue appeal dismissed

584 2008 TMI - 30570 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME TAX Versus CROWN PRODUCTS

Dated: 12-05-2008

Sections - 003, 256, R005, 032,

Change in previous year - Tribunal allowed the assessee's claim for depreciation and investment allowance at the higher rate on proportionate basis for the period 3.11.86 to 31.3.88 – previous year longer than 12 months - Revenue pointed out that the Proviso u/r 5(1) has been deleted w.e.f. 2.4.87, so claim can't be allowed for the full period of 17 months – depreciation should be given for the full period - issue is required to be decided by the Tribunal afresh

585 2008 TMI - 30568 - GUJARAT HIGH COURT

AMICHAND INVESTMENT PVT. LTD. Versus DEPUTY COMMISSIONER OF INCOME-TAX (ASSTT.)

Dated: 22-04-2008

Sections - 256, 115J, 002(24), 008, 198,

Book Profit - AO contend that T.D.S. on dividend had wrongly been excluded while showing the income from dividend - Accounting Standard come w.e.f. 1.4.95 - Therefore, the said Accounting Standard cannot have any role to play in interpreting the provisions of the Act of the F.Y. ended on 31.3.88 - in view of non-obstante clause of sec. 115J, reference can't be taken to other provisions also - book profit u/s 115J is not required to be increased by T.D.S. – assessee's appeal allowed

586 2008 TMI - 30555 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX DELHI-IV versus GETIT INFOMEDIARY LIMITED

Dated: 25-08-2008

Sections - 036,

Deduction of bad debt written off - AO disallowed bad debts to the extent of 25% relating to the government telephone department and 15% relating to the other private parties - the logic applied by the AO is curious and not acceptable - assessee is not required to establish that the debt has become bad in the relevant previous year and it is sufficient for the purposes of claiming deduction

INCOME TAX ACT 1961

CASE LAWS

on account of bad debts that the concerned debt had been written off as irrecoverable in the books.

587 2008 TMI - 30546 - MADHYA PRADESH HIGH COURT

BABULAL PATODI Versus COMMISSIONER OF INCOME-TAX

Dated: 20-03-2008

Sections - 254, 260A,

Whether the Income-tax Appellate Tribunal is justified in expressing the opinion that the three grounds raised in appeal are general in nature and do not require any finding - Tribunal has decided the appeal in a cryptic manner and in fact not decided the legal issues which go to the root of jurisdiction - hence matter is remitted to the Tribunal for deciding the issue afresh regard being had to the merits and ascribing the cogent and germane reasons

588 2008 TMI - 30481 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus KHALSA RURAL HOSPITAL AND NURSING TRAINING INSTITUTE

Dated: 04-02-2008

Sections - 010(22), 260A, 011, 012, 143,

Educational institution - Nothing on record to show that the assessee's trust was charging any capitation fee - verbal admission during the course of assessment proceedings by the managing director of the trust cannot be relied upon - moreover there is no irregularity in the accounts of the trust - no document to show that the trust is being run for any purpose of profit - exemption allowable u/s 10(22)

589 2008 TMI - 30480 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus DEPUTY CHIEF ACCOUNTS OFFICER, MARKFED, KHANNA

Dated: 28-02-2008

Sections - 194C, 260A, 201, 131,

Allegation that Assessee not deducted TDS u/s 194C on payments made for purchase of printed packing material - main purpose of the assessee to buy packing material is to obtain goods for the purpose of packing of its finished products - Admittedly, the raw material for the manufacturing of such packing material was not supplied by the respondent - Thus, it was a case of sale and not a works contract hence it is outside the purview of section 194C - revenue appeal dismissed

590 2008 TMI - 30460 - HIGH COURT DELHI

THE CIT DELHI-II versus DEEPAK AGGARWAL AND MANGLA MARBLES and GRANITE PVT. LTD.

Dated: 12-08-2008

Sections - 132, 158BE, 158BC,

Revocation order did not amount to execution of a search as no asset was

INCOME TAX ACT 1961

CASE LAWS

seized under that order – it could not be said that there was an execution of a search on 23.12.2000 so as to enable the reckoning of the period of limitation from the end of December 2000 – assessment could, therefore, not be passed on any date beyond 31.10.2002 - since the assessment order was passed on 27.12.2002, it was beyond time and consequently, the assessee's appeal was allowed

591 2008 TMI - 30445 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX versus DART MANUFACTURING INDIA PVT. LTD.

Dated: 12-08-2008

Sections - 037,

Assessee paid sum of Rs 10,64,930/- to the State Electricity Board for installing the transformer and LT Lines for supply of electricity to its factory - though the assessee had spent some amount towards transformer and LT Lines ownership of the same did not belong to the assessee, but belonged to the State Electricity Board and, therefore, the benefit that the assessee got was of a commercial nature and was in the nature of a business advantage- hence these expenses are revenue expenditure

592 2008 TMI - 30444 - HIGH COURT DELHI

WEL INTERTRADE PRIVATE LIMITED (FORMERLY WEL INTERTRADE LIMITED) & ANOTHER versus INCOME TAX OFFICER, WARD 18(3)

Dated: 11-08-2008

Sections - 148, 143, 147, 149, 139, 142,

Re-assessment proceedings - Validity of notice issued u/s 148 - In absence of the finding that escapement in income had occurred by reason of failure on the part of the assessee, action taken by the Assessing Officer is wholly without jurisdiction - invocation of Section 147, the issuance of the notice under Section 148 and the subsequent order on the objections are all without jurisdiction - impugned notice u/s 148 as well as the reassessment proceedings pursuant thereto are quashed

593 2008 TMI - 30443 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX versus SHRI AWANINDRA SINGH

Dated: 05-08-2008

Sections - 260A,

Additions made by AO on account of the unexplained investment made by the assessee through Certificate of Deposit - Tribunal uphold the decision of Commissioner of deletion of additions - revenue could not seek to add the amount to the income of the assessee without any substantial material and merely on the basis of surmises – in similar issue revenue appeal against deletion of addition by tribunal was dismissed by HC – in view of the same, impugned appeal of revenue is liable to be dismissed

594 2008 TMI - 30442 - HIGH COURT DELHI

INCOME TAX ACT 1961

CASE LAWS

COMMISSIONER OF INCOME TAX, DELHI-XI versus SHRIMATI RAM DEVI

Dated: 06-08-2008

Sections - 158BB,

Whether tribunal was correct in accepting the additional agricultural income of the assessee by relying on post search facts, and ignoring the fact that the additional agricultural income already formed part of the undisclosed income u/s 158 BB – some important aspects not examined by tribunal – hence matter is remanded to tribunal to consider the entire issue with regard to additional agricultural income declared as part of undisclosed income afresh and return a finding in accordance with law

595 2008 TMI - 30441 - HIGH COURT DELHI

THE COMMISSIONER OF INCOME TAX-XVI versus SHRI S. DHANABAL

Dated: 07-08-2008

Sections - 271, 80HHE, 143,

Penalty u/s 271 - Inadvertently, the assessee had claimed 100% deduction under Section 80 HHE, when he was actually entitled to only an 80% deduction – assessee did this on the basis of expert advice which had been certified by his Chartered Accountant – explanation offered by the assessee was bona fide and that all facts which were material to the computation of his income had been disclosed by the assessee – penalty not imposable

596 2008 TMI - 30440 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX, DELHI-XI versus BATRA BHATTA COMPANY

Dated: 08-08-2008

Sections - 002(14), 143, 147, 148, 139,

Exemption u/s 2(14) - assessee claim is that the agricultural land sold by it was not a capital asset & consequently, no capital gains accrued at the hands of the assessee and he was not required to pay any tax thereon – there was no material before the AO on the basis of which he could have maintained a belief that it was a capital asset within the meaning of Section 2(14) - AO was embarking on mere exploration without any belief – revenue's appeal is dismissed

597 2008 TMI - 30427 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX versus MICROSOFT CORPORATION OF INDIA PVT. LTD.

Dated: 21-08-2008

Sections - 260A, 037, 143,

Settlement expenses towards settlement of a foreseeable liability in respect of premature termination of an agreement for use of premises – impugned expenses paid for an early exit from PBC's premises meets the test of commercial expediency – there is no substance in revenue contention that there was no obligation under the contract on the assessee to pay these expenses, so they can't be treated as incurred for business purpose –

INCOME TAX ACT 1961

CASE LAWS

expenses allowable u/s 37(1) – revenue appeal dismissed

598 2008 TMI - 30426 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX, (DELHI CENTRAL-I) versus M/S DALMIA DAIRY INDUSTRIES LTD. & vice-a-versa

Dated: 30-07-2008

Sections - 256, 217, R040, 215, 254, 246A, 251,

A new ground may be allowed to be raised only when it arises from the facts which are on record – ITAT is correct in law and on facts in declining the departments request in the form of additional ground of appeal - so questions are decided in favour of the assessee – held that sales-tax liability is an allowable deduction – held that litigation expenses were not of a capital nature and so they are allowable as an expenditure

599 2008 TMI - 30401 - HIGH COURT UTTARAKHAND

CIT, Dehradun. Dy. CIT, Circle -1, Dehradun. Versus Arthusa Offshore Company

Dated: 31-03-2008

Sections - 260A, 143, 112,

Assessee a foreign company, NRC, resident of USA – rate of tax – revenue submitted that ‘surcharge’ is includible within the meaning of ‘tax’ as ‘surcharge’ is nothing but ‘additional tax’ - Tribunal has erred in law in holding that word ‘tax’ does not include ‘surcharge’ for the purposes of Clause (2) of Article 14 of the DTAA with United States of America - Assessing Officer is justified in holding that the respondent assessee is liable to pay tax at the rate of 65 %, instead of 60%

600 2008 TMI - 30344 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus MEHTA ENGINEERS LTD.

Dated: 07-02-2008

Sections - 271,

Penalty - Assessee claimed a certain amount as business expenditure incurred on education of one Varun on basis of a written agreement - there is any material to this effect available on the record that the said agreement was false - assessee had not claimed the expenditure intentionally and deliberately in order to evade the tax liability - therefore, in view of above fact, CIT (Appeals) has rightly deleted the penalty - No substantial question of law is involved – revenue appeal dismissed

601 2008 TMI - 30341 - HIGH COURT DELHI

Commissioner of Income Tax, Delhi-II, New Delhi versus M/s L.G. Electronics India Pvt. Ltd.

Dated: 19-08-2008

Sections - 037,

Money deposited with the Bank towards margin money for issuance of letters

INCOME TAX ACT 1961

CASE LAWS

of credit for import of capital goods – interest earned on this amount should not be treated as income from other sources – impugned deposited are not investment so interest earned is required to be credited against pre-operative expenses(pending capitalization) incurred by the Assessee - loss on account of foreign exchange rate fluctuation cannot be disallowed – revenue appeal dismissed

602 2008 TMI - 30330 - SUPREME COURT

Agricultural Produce Market Committee, Narela, Delhi versus Commissioner of Income Tax & Anr.

Dated: 21-08-2008

Sections - 010(20), 002, 260A, 005, 022, 065, 010,

Appellant, Committee claimed exemption on the ground that it was a "local authority" - Agricultural Market Committee (AMC) is neither a Municipal Committee nor a District Board under the Explanation to Section 10(20) which was inserted w.e.f. 1.4.03, therefore, not entitled to exemption u/s 10(20) – it is not a sound rule of interpretation to seek the meaning of words used in an Income Tax Act, in the definition clause of other statutes – assessee's appeal dismissed

603 2008 TMI - 30329 - HIGH COURT DELHI

THE CIT, DELHI-VIII, NEW DELHI versus M/S. ATAM PRAKASH and SONS, NEW DELHI

Dated: 08-08-2008

Sections - 002(47), 002(14), 256, 045, 054, 054B, 054D, 054E, 054EA, 054EB, 054F, 054G, 054H, 016,

HUF - agreement for sale dated 24.06.77 was substituted by the collaboration agreement dated 6.10.81 & the agreement to sell dated 6.10.81- There was no interest, much less, any right transferred in the property in favour of SSPL by the assesseees - and hence, there was no transfer of a right in property as contemplated u/s 2 (47) - Tribunal was right in holding that there was no transfer of a capital asset within the meaning of Section 2(47) and hence no capital gain has arisen to the assessee

604 2008 TMI - 30269 - BOMBAY HIGH COURT

NIBA INDIA AND ANOTHER versus SMT. ARTI HANDA, ASSISTANT COMMISSIONER OF INCOME-TAX AND OTHERS

Dated: 09-01-2008

Sections - 143, 148, 132,

Reopening of assessment on ground that assessee not disclosed profits from scrap –all material facts disclosed truly– tribunal has accepted the manner in which the scrap generated was disposed of & accepted the material of accounts when the scrap was finally sold – when AO made assessment u/s 143(3), it was already in knowledge of him that stock register of scrap was not maintained – hence there is no reason warranting the reopening of concluded assessment

INCOME TAX ACT 1961

CASE LAWS

605 2008 TMI - 30267 - HIGH COURT DELHI

**COMMISSIONER OF INCOME TAX, DELHI-IV, NEW DELHI versus
HOTLINE TELETUBE and COMPONENTS LTD.**

Dated: 11-08-2008

Sections - 260A, 143, 115JB,

Provision for diminution in value of stock - assessee submit that sum debited to P/L account was on account of obsolete stock which he was unable to sell – AO rejected the contention on ground that such a provision can be allowed only when the material is actually sold – held that, on obsolete stock burden of excise would be higher than the value it would realize on sale – tribunal was justified in allowing the loss claimed by the assessee on account of diminution in the value of obsolete stock

606 2008 TMI - 30245 - SUPREME COURT

**Commnr. of Income Tax-I, Ahmedabad Versus Gold Coin Health Food Pvt.
Ltd.**

Dated: 18-08-2008

Sections - 271,

Whether the penalty under Section 271 (1) (c) of the Income Tax Act, 1961 (in short the 'Act') can be levied if the returned income is a loss – held that Explanation 4 to Section 271(1)(c) is clarificatory and not substantive – though penalty can be levied even if returned income is a loss the same can not be levied with retrospective effect - Decision of division bench of apex court Virtual Soft Systems Ltd. V. CIT overruled

607 2008 TMI - 30209 - MADRAS HIGH COURT

**P. G. FOILS LIMITED Versus INCOME TAX SETTLEMENT COMMISSION
AND ANOTHER**

Dated: 11-02-2008

Sections - 147, 148,

Challenge to order of settlement commission – reopening of assessment of assessee on basis of observation of settlement commission (in settlement proceedings relating to party with whom assessee had transactions) – observations by settlement commission were adverse to assessee in those proceedings – assessee is not allowed to challenge those settlement proceedings – but those observations would not automatically bind the assessee because those observations are not conclusive proof

608 2008 TMI - 30187 - MADRAS HIGH COURT

**COMMISSIONER OF INCOME TAX Versus SARDARMAL KOTHARI AND
ANOTHER**

Dated: 17-06-2008

Sections - 54F,

Benefit u/s 54F - assessee established that the assessee had invested the entire capital gain in purchase of land within the stipulated period

INCOME TAX ACT 1961

CASE LAWS

purchase/construction is to be completed within stipulated time is not mandatory for claiming exemption - Tribunal was right in law in holding that the assessee is entitled for exemption under Section 54F – revenue appeals fail and the same are dismissed

609 2008 TMI - 30175 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME-TAX Versus WILLINGDON SPORTS CLUB

Dated: 18-03-2008

Sections - 263, 200(24),

Assessee is a club not having object of earning - even if there be temporary or honorary members who are not entitled to vote, the assessee would not cease to be governed by the principles of mutuality - Once the assessee is governed by the principles of mutuality, its income earned would not be assessable - Tribunal was right in holding that the entrance fees received by assessee & subscription for the life members is capital receipt not chargeable to tax as the principle of mutuality applies

610 2008 TMI - 30174 - MADRAS HIGH COURT

STERLITE INDUSTRIES (INDIA) LTD. Versus ASSISTANT COMMISSIONER OF INCOME-TAX AND ANOTHER

Dated: 12-03-2008

Sections - 147, 148, 149, 151,

Order of reopening of assessment – Dept. stated that information received from Enforcement Directorate related to A.Y. 2000-01 & provisions sanction of commissioner was also obtained - Enforcement Directorate shows possible inflation of purchases on certain items - court is only required to see whether there was any prima facie material available to reopen the file - In view of the counter affidavit and the impugned notice, this Court cannot reject reassessment notice

611 2008 TMI - 30157 - UTTARAKHAND HIGH COURT

COMMISSIONER OF INCOME-TAX Versus McDERMOTT INTERNATIONAL INC.

Dated: 05-05-2008

Sections - 260A, 263, 143,

Order passed under revisional jurisdiction of commissioner u/s 263 could not be said to be without jurisdiction mere for the fact that Commissioner accepted application under Kar Vivad Samadhan Scheme (KVSS)

612 2008 TMI - 30156 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SOHAN PAL, HUF

Dated: 05-02-2008

Sections - 271, 145, 143, 54B, 54F,

Assessee was awarded compensation in lieu of his acquired land - Whether the amount of enhanced compensation and interest was assessable on receipt

INCOME TAX ACT 1961

CASE LAWS

basis, was a highly debatable issue - making of such claim that it was not assessable was bona fide on the basis of a possible view therefore it could not be treated as concealment of its income – it can't be treated as furnishing of inaccurate particulars of such income so penalty could not be levied

613 2008 TMI - 30148 - AUTHORITY FOR ADVANCE RULINGS

[Geoconsult ZT GmbH](#)

Dated: 05-08-2008

Sections - 245Q, 245R, 002(31),

Applicant a foreign company has entered into a JV with two Indian companies. Applicant is providing consulting services in Himachal Pradesh from Austria and for the purpose of coordinate, an engineer was deputed to visit sites in HP - held that the income of applicant is taxable in the capacity of Association of Persons (AOP)

614 2008 TMI - 30147 - GAUHATI HIGH COURT

[RAJENDRA PRASAD BORAH Versus INCOME-TAX APPELLATE TRIBUNAL AND OTHERS](#)

Dated: 03-04-2008

Sections - 253, R019, 254, R024,

Tribunal by the impugned order dismissed the appeals solely on the ground that the appellant-assessee had failed to appear before it on the date fixed for hearing – even if the appellant-assessee was absent before the Tribunal, the only course open to it was to dispose of the appeal on the merits - impugned order of the learned Tribunal is interfered with and is quashed

615 2008 TMI - 30146 - KERALA HIGH COURT

[COMMISSIONER OF INCOME-TAX Versus GURUVIJAYA KURI CO. LTD.](#)

Dated: 21-01-2008

Sections - 260A, 271,

Penalty u/s 271 - assessee derived income from chitty business & showed credit balance in balance-sheet in respect of kuries terminated during 1977 to 1983 – AO opined that amount of auction discounts forgone by defaulter subscribers was income of assessee – assessee failed to offer any explanation – assessee was aware that impugned amount didn't represent liability – burden is not on department to prove concealment - penalty is justified for concealment of income

616 2008 TMI - 30145 - RAJASTHAN HIGH COURT

[COMMISSIONER OF INCOME-TAX Versus RAVINDRA PLATINUM P. LTD.](#)

Dated: 13-05-2008

Sections - 143, 043B,

Business expenditure – assessee was not required to pay to Govt. the sales tax collected by it under Tax Deferment Scheme – during this interregnum the amount of sales tax collected was deemed to have been actually collected by

INCOME TAX ACT 1961

CASE LAWS

Govt and disbursed as loan to assessee – assessee had certificate issued, showing that certain amount of tax collected had been converted into loan, hence assessee is entitled to deduction, as the sum was to be treated as paid for purpose of section 43B

617 2008 TMI - 30129 - HIGH COURT DELHI

SHRI P.N.SEHGAL THRU & SHRI VIKRAM SEHGAL versus CIT

Dated: 31-07-2008

Sections - -

Appellant made payments by way of commission for services rendered by parties - written confirmations from parties produced by appellant - assessee's case has not been considered by the Tribunal and a finding has been returned adverse to the assessee by ignoring such material placed by assessee on record - matter is remanded to the Tribunal for considering the entire material on record including the confirmation letters and returning a finding in respect thereof

618 2008 TMI - 30127 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX versus JYOTI APPARELS

Dated: 31-07-2008

Sections - 80HHC, 80G,

Interest earned by the assessee on FDRs - AO while computing profits of the export business will have to remove from the debit side of the profit and loss account the corresponding interest expenditure that has been "laid out" to earn such income from other sources - Tribunal was correct in law holding that the interest earned by the assessee on FDRs was a business income and would qualify for relief u/s 80HHC - appeal is allowed and the question is answered in favour of the revenue

619 2008 TMI - 30114 - MADRAS HIGH COURT

UDAYAM CONSTRUCTIONS Versus COMMISSIONER OF INCOME-TAX AND ANOTHER

Dated: 31-03-2008

Sections - 271B,

Penalty u/s 271B for delay in furnishing audit report – assessee states that even though he has failed to enclose the audit report at the time of submitting his return before the first respondent, he submitted the audit report subsequently before the second respondent - instead of considering the audit report, authorities imposed the penalty – penalty is not justified – reopening of assessment by AO u/s 147 is also unjustified

620 2008 TMI - 30113 - PUNJAB AND HARYANA HIGH COURT

SMT. SUSHILA AND OTHERS Versus UNION OF INDIA AND OTHERS

Dated: 24-01-2008

Sections - 281, 80A, 230, 230A, 148,

INCOME TAX ACT 1961

CASE LAWS

Proceedings u/s 281(1) & issuance of attachment certificate of land - petitioners are bona fide purchasers of land in dispute – Dept. not proved that the sale/transfer of land was not for adequate consideration - Income Tax Clearance Certificate clears that no tax liability was pending against the seller – moreover, sale deed was executed with the permission of AO - enquiry about the clear title of the vendor was also made – impugned transaction is not void so attachment of land is not proper

621 2008 TMI - 30097 - GUJARAT HIGH COURT

FAIRDEAL FILAMENTS LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 12-02-2008

Sections - 256, R046A, R029, 080I,

Whether Tribunal was right in upholding the decision of the successor CIT(A) not to consider the evidence produced by the assessee as directed by the predecessor CIT(A) and in itself not considering it – assessee not produced additional evidence before AO even after granting sufficient opportunities – whether sufficient opportunities were granted or not is basically a question of fact and HC cannot go behind the finding of fact recorded by the Tribunal – order of tribunal is justified

622 2008 TMI - 30095 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME TAX Versus DINESH MILLS LIMITED

Dated: 19-02-2008

Sections - 256, 263, 043B,

Assessee was required to pay interest to the Excise Department (in relation to refund of Excise Duty) if necessary - the liability to pay interest was a contractual liability and hence, it should not be considered to be a statutory liability hence it can't be said that it would be allowable only on fulfillment of requirements under Section 43B – no question of the said amount having the characteristic of duty, so, section 43B not applicable – interest is deductible

623 2008 TMI - 30093 - ALLAHABAD HIGH COURT

(1) DR. VINOD KUMAR RAI, (2) SUBHASH CHANDRA KESARWANI Versus INCOME-TAX APPELLATE TRIBUNAL AND OTHERS

Dated: 14-03-2008

Sections - 260A, 253, 251,

Transfer of Commissioner (Appeals) – transferred commissioner could not hear the appeal because he lacks lawful authority after transfer - even if order of Commissioner (A), has been acted upon, authorities can't be deprived of his right of appeal u/s 253(2) to file appeal, because right of appeal is one thing & compliance with the order against which appeal is filed is another thing – appeal filed (by revenue) within 2 months of receipt of order is not barred – assessee appeal dismissed

624 2008 TMI - 30084 - KERALA HIGH COURT

VEDICATTU ENGINEERING Co. Versus COMMISSIONER OF INCOME-TAX

INCOME TAX ACT 1961

CASE LAWS

Dated: 21-01-2008

Sections - 263,

Validity of suo motu revisional proceedings completed by the Commissioner u/s. 263 - If 90 per cent. of the expenses was allowed in the computation of income from contract, then the further claim of assessee of 90 per cent. against the arbitration award amount is not tenable - If the Commissioner has not exercised the suo motu revisional power, then the consequence would have been loss of revenue – revision is valid

625 2008 TMI - 30071 - GUJARAT HIGH COURT

SAHELI SYNTHETICS P. LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 18-02-2008

Sections - 263, 264, 256, 043B, 139, 217, 143, 147, 154, 251, 004, 014, 031, R006,

Tribunal upheld the jurisdiction of AO to make addition of unpaid excise duty u/s. 43B - if Appellate Authority could not have processed the item relating to unpaid excise duty, the order of set aside in relation to six items of additions could not have been read by AO to expand jurisdiction - even if the order of Appellate Authority has to be read as a total set aside it is not open to Assessing Officer to process a new source of income which the Appellate Authority itself couldn't have done

626 2008 TMI - 30070 - HIMACHAL PRADESH HIGH COURT

H. P. MINERAL AND IND. DEVELOPMENT CORPORATION Versus COMMISSIONER OF INCOME-TAX

Dated: 10-01-2008

Sections - 256, 036, 004,

Interest on temporary loans to subsidiary companies – assessability - taxability is attracted not only when income was actually received but also when it accrued - decision to waive off loan or interest should be taken on the basis of commercial expediency and should be taken before the end of the accounting year - In this case the decision to waive off the loan was taken at a much later stage i.e. after the income had already accrued - hence interest are assessable on accrual basis

627 2008 TMI - 30056 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME-TAX Versus AATUR HOLDINGS P.LTD.

Dated: 12-03-2008

Sections - 114,

Taxability of the dividend - even though the amounts were paid for acquiring the shares, shares have not been delivered to the assessee company - change in ownership of the shares haven't been registered & notified & therefore the assessee's name did not appear in the share registers of the respective companies on the record date - therefore, it could not have received the dividend at all - such dividend income could not form part of the total income of the assessee – revenue appeal dismissed

INCOME TAX ACT 1961

CASE LAWS

628 2008 TMI - 30054 - GAUHATI HIGH COURT

SMT. NANDITA ACHARJEE Versus UNION OF INDIA AND OTHERS

Dated: 03-04-2008

Sections - 132, 153B,

Appeal by assessee against assessment – search during pendency of appeal - article found in possession of petitioner during search - respondents were wholly justified in raising the presumption u/s 132(4A)(i) & in treating the KVPs and NSCs, in question, recovered from the possession & control of the petitioner, as the undisclosed assets of the petitioner – dept. is entitled to retain the same to complete assessment of tax, which the petitioner may be held liable to pay – petition is dismissed

629 2008 TMI - 30049 - HIGH COURT DELHI

THE COMMISSIONER OF INCOME TAX-V versus RELIANCE ELECTRONICS INDUSTRIES INDIA LIMITED

Dated: 16-07-2008

Sections - ---

Addition on account of obsolete stock - assessee was in the business of mfg. television sets which required electronic components in respect of which technical obsolescence was a well-known fact - tribunal is justified in concluding that the assessee had valued its closing stock at the approximate market value as estimated by a qualified Chartered Engineer and AO could not point out any defect in the valuation report - no substantial question of law arises – revenue appeal dismissed

630 2008 TMI - 30048 - HIGH COURT DELHI

THE COMMISSIONER OF INCOME TAX DELHI (CENTRAL)-III versus M/S D. D. SALES CORPORATION

Dated: 22-07-2008

Sections - 158BE, 132, 158BC, 132A,

Question was with regard to the bar of limitation in making an assessment order u/s 158 BC - search having been conducted on 29.08.96 /30.08.96, the assessment made on 31.10.1997, is barred by limitation in view of the provisions contained in Section 158 BE - impugned order having been passed beyond the period of one year from the end of the month in which the last authorization for search had been executed - no substantial question of law arises – revenue's appeal is dismissed

631 2008 TMI - 30047 - HIGH COURT DELHI

M/S KESHAV SHARES and STOCKS LIMITED versus INCOME TAX OFFICER AND OTHERS

Dated: 02-07-2008

Sections - 143, 147, 148, 234B,

Assessment u/s 143 - demand on account of income tax & interest raised - prior to the making of assessment order, no speaking order was passed by AO

INCOME TAX ACT 1961

CASE LAWS

in respect of the objections taken by the assessee in its letter dated 17.09.07 – in view of decision in Smt Kamlesh Sharma v. B.L. Meena, Income-Tax Officer case & inasmuch as the directives of the Supreme Court in GKN Driveshafts we set aside the assessment order – AO is directed to pass a speaking order and then proceed with assessment

632 2008 TMI - 30045 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX, DELHI-V. versus RBG INVESTMENT and FINANCE LTD.

Dated: 21-07-2008

Sections - 037,

Arrangement made between assessee & certain mutual funds with regard to subscription of fully convertible debentures, offered as a rights issue by the assessee's sister concern - mutual funds were assured fixed rates of returns & assessee was able to obtain the fully convertible debentures of sale debentures only to make profits – so these can't be treated as non business transaction - service charges were allowable expenses u/s 37 as they were wholly and exclusively expended for the business

633 2008 TMI - 30044 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX DELHI (CENTRAL)-III versus J.P.M FARMS (PVT.) LTD.

Dated: 18-07-2008

Sections - 113,

Levy of surcharge - proviso to Section 113 of the Income Tax Act, 1961 was inserted w.e.f 1.6.2002 whereby surcharge was sought to be levied by revenue on tax payable on undisclosed income determined in a block assessment year (1.4.1990 to 19.3.2001) - ITAT was correct in law in holding that the surcharge U/S 113 of the Income Tax Act, 1961 was not leviable in the present case - issue does not require any further investigation

634 2008 TMI - 30043 - HIGH COURT DELHI

COMMISSIONER OF INCOME TAX, DELHI-X versus M/S PRIMA INDIA PRODUCTS

Dated: 11-07-2008

Sections - 263, 256, 143,

Commissioner's order u/s 263 requiring further investigation as Income-tax Officer had failed to enquire into the source of deposits/investments – Commissioner's order merely raise doubts & suspicion - Tribunal is justified in concluding that the investments made by the assessee and its partners had a direct nexus with the sum disclosed by the assessee before the Settlement Commission - no further examination was required by the Income-tax Officer – revenue appeal dismissed

635 2008 TMI - 30041 - KERALA HIGH COURT

MALABAR AND PIONEER HOSIERY P. LTD. Versus COMMISSIONER OF

INCOME TAX ACT 1961

CASE LAWS

INCOME-TAX

Dated: 16-01-2008

Sections - 154, 260A,

Preliminary expenditure incurred for construction of a shopping complex cannot be anything other than a capital expenditure as it goes to add to the capital of the project - Obviously, impugned expenditure is capital in nature & cannot be treated as revenue expenditure - rectification carried out u/s 154 of the Income-tax Act is perfectly justified - Tribunal rightly dismissed the assessee's appeal on the validity of rectification as well as against disentitlement for the claim

636 2008 TMI - 30040 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus KARTAR SINGH AND CO.

Dated: 29-01-2008

Sections - 144, 260A, 154, 184, 040,

Issue whether deduction of interest & salary paid to partners could be disallowed or not in a case where the assessment was completed u/s 144(on status of registered firm), is highly debatable – AO rectified the assessment order on ground that since assessment was completed u/s 144, the status of firm was required to be taken as association of persons & hence disallowed deduction claim of assessee – impugned mistake is not apparent from record, hence rectification order is not valid

637 2008 TMI - 30035 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME TAX Versus GURUBACHHAN SINGH J.JUNEJA

Dated: 12-02-2008

Sections - 256, 132,

During search some loose sheets disclosed unaccounted cash sales – additions made - Revenue had not proved by bringing any material on record that the assessee had made any investment to made the alleged unaccounted sales - Tribunal held that the assessee could not be taxed on the entire amount of Rs.10,85,003/-, but, was liable to be taxed only on the gross profit earned on the said sales – finding of tribunal did not call for any interference – revenue appeal dismissed

638 2008 TMI - 30030 - AUTHORITY FOR ADVANCE RULINGS

Airports Authority of India

Dated: 28-07-2008

Sections - 009, 044BB, 115A,

Amount received by a non-residents towards software and provision of services of installation, testing and training even if only part activity is being performed in India. It will be taxable as royalty and fee for technical services @10% U/s 115A. Obtaining software under license can not be held as purchase but should be treated as transaction of right to use

639 2008 TMI - 30022 - PUNJAB AND HARYANA HIGH COURT

INCOME TAX ACT 1961

CASE LAWS

COMMISSIONER OF INCOME-TAX Versus SSP P. LTD.

Dated: 07-02-2008

Sections - 143, 154, 271,

Penalty u/s 271(1)(c) – inaccurate particular of income – concealment of income - held that unless the filing of an inaccurate return is accompanied by a guilty mind, penalty cannot be imposed - held that return cannot be “false” unless there is an element of deliberateness in it – return can’t be treated as false if assessee does not include a particular item in the taxable turnover under bona fide belief that particular item is not taxable – penalty set aside - revenue appeal dismissed

640 2008 TMI - 13769 - PUNJAB AND HARYANA High Court

Commissioner of Income-Tax. Versus Vardhman Polytex Limited.

Dated: 21-01-2008

Sections - 260A,

Substantial Question Of Law

641 2008 TMI - 10229 - MADRAS High Court

Sree Akilandeswari Mills Private Limited Versus Deputy Commissioner Of Income-Tax.

Dated: 28-01-2008

Sections - 037,

Gratuity paid to the retiring employees - claim of the assessee for deduction of certain amounts of payments of gratuity to the workers whose services were taken over by the assessee for the period of service rendered by them to the transferor-company in a take over bid - whether the Tribunal was correct in holding that the liability to pay gratuity was part of the consideration - We, hold that the Tribunal was correct in law in holding that the gratuity paid to the retiring employees for the period of service rendered to the transferor-company is a capital expenditure and was right in upholding the disallowance.

642 2008 TMI - 9503 - GUJARAT High Court

Commissioner of Income-Tax Versus Daudayal Hotels P. Ltd.

Dated: 31-08-2008

Sections - 032,

Depreciation - "Whether, Tribunal was right in law in holding that initial depreciation allowed in the assessment year 1982-83 on new hotel building is not deductible for arriving at written down value in view of the amendments effected by the Finance Act, 1983?" - Initial depreciation granted under section 32(1)(v) of the Act during the assessment year 1982-83 cannot be deducted for the purposes of computing the written down value within the meaning of section 43(6)(b) of the Act for the purpose of the assessment year 1985-86, i.e., the year under consideration. The Tribunal was, therefore, right in law in holding that initial depreciation allowed in the assessment year 1982-83 on new hotel building is not deductible for arriving at the written down value in view of the amendment effected by the Finance Act, 1983

INCOME TAX ACT 1961

CASE LAWS

643 2008 TMI - 4747 - MADRAS HIGH COURT

M. PIRAI CHOODI Versus INCOME TAX OFFICER

Dated: 05-02-2008

Sections - 143,

Dept. overlooked the documentary evidence (furnished by assessee to substantiate the agricultural income) & refused to admit the said agricultural income merely based on statement of third party - opportunity to cross-examine that third party not given to assessee - violation of principles of natural justice on face of record – even if alternative remedy was available to assessee, writ petition against the order is maintainable

644 2008 TMI - 4731 - HIGH COURT DELHI

CIT DELHI (CENTRAL)-III versus J.P.M FARMS (PVT.) LTD.

Dated: 18-07-2008

Sections - 113,

Surcharge on tax payable on undisclosed income determined in a block assessment – Section 113 - proviso to Sec. 113 of IT Act, 1961 was inserted w.e.f 1.6.02 whereby surcharge was sought to be levied on tax payable on undisclosed income determined in a block assessment – but instant case pertains to the block A.Y. 1.4.1990 to 19.3.2001 – hence impugned provision are not applicable to instant case - ITAT was correct in holding that the surcharge U/S 113 was not leviable in the present case

645 2008 TMI - 4727 - MADHYA PRADESH HGH COURT

HARKAWAT AND CO. AND OTHERS Versus. UNION OF INDIA

Dated: 17-03-2008

Sections - 278B, 276C, 194A, R030, 245, 277, 201,

Penalty imposed for non-deduction of tax at source - admittedly the assessee had deducted the TDS of Rs. 34,552 from the amount of interest credited to the account of the party, even though late – tribunal has vacated the penalty imposed by dept. - penalty imposed by the Department has already been set aside and basis of prosecution has already gone, therefore, prosecution is not sustainable - prosecution of the petitioners is quashed

646 2008 TMI - 4698 - HIGH COURT OF DELHI

M/S DELHI INTER EXPORTS PVT LTD. versus THE COMMISSIONER OF INCOME TAX

Dated: 09-07-2008

Sections - 035B, 256, 080B, 080MM, 032A,

Tribunal is correct in law in holding that the assessee company, who is procuring export orders from the foreign buyers and passing on to the manufacturers or dealers is not entitled to weighted deductions u/s 35 B of Income Tax Act- in view of sub-section (1A) of 35B which is a non obstante provision, since the assessee is not engaged in the business of export of goods, the deductions cannot be allowed to the assessee – question is

INCOME TAX ACT 1961

CASE LAWS

answered in favour of the revenue

647 2008 TMI - 4697 - HIGH COURT OF DELHI

S.K.BAHADUR versus UNION OF INDIA and OTHERS

Dated: 10-07-2008

Sections - 254,

Appellant had raised the issue of jurisdiction in the writ petition and had made specific prayers with regard to the assessment proceedings - Tribunal disposed of the appellant's pending appeals without a reference to the pleas raised by the appellant with regard to jurisdiction pursuant to the liberty granted by this Court – assessee's submission that he may be permitted to withdraw the present appeals with liberty to approach the Tribunal for rectification u/s 254(2), is accepted

648 2008 TMI - 4695 - SUPREME COURT

Commissioner of Income Tax, Delhi-VI Versus M/s Oriental Insurance Co. Ltd.

Dated: 18-07-2008

Sections - 044, R005,

HC dismissed revenue appeal (against deletion of additions by tribunal) on ground that dept. can't file appeal without getting clearance from Committee of Disputes (COD) & held that same has to be done within a month - action of dept. can't be said illegal merely for delay in approaching to COD - order of HC is set aside & directed to consider the question of desirability to proceed in the matter before it on receipt of the report from COD - COD has to consider the matter on merits

649 2008 TMI - 4694 - SUPREME COURT

C.K. Gangadharan & Anr. Versus Commissioner of Income Tax, Cochin

Dated: 21-07-2008

Sections - 003, 008,

Assessee takes the stand that the revenue acted mala fide in not preferring appeal in one case and filing the appeal in other case – assessee not established malafides of revenue – revenue contention that because of the small amount of revenue involved & because of revenue neutrality, no appeal is filed, is acceptable – held that merely because in some cases the revenue has not preferred appeal that does not operate as a bar for the revenue to prefer an appeal in another case

650 2008 TMI - 4678 - AUTHORITY FOR ADVANCE RULINGS

Dell International Services India Pvt. Ltd.,

Dated: 18-07-2008

Sections - 009, 195, 044BB, 090, 002, 195A,

Taxability of payment made to BTA (non-resident company) who provides lease circuit service to the resident company - Since BTA does not have any

INCOME TAX ACT 1961

CASE LAWS

permanent establishment - the amount paid to BTA is not taxable and therefore no TDS is required to be deducted. Further the amount paid to BTA can not be treated as Royalty within the meaning of Article 12 of DTAA with Singapore.

651 2008 TMI - 4677 - AUTHORITY FOR ADVANCE RULINGS

M/s Cushman & Wakefield (S) Pte. Ltd.

Dated: 04-07-2008

Sections - 005, 195, 009, 245Q, 245R,

Indian subsidiary company of applicant (a Singapore company) refers certain international clients to its parent company in connection with acquisition, sales and dealings in real estate and other services such as advisory & research facilities management, project management etc. in the field of real estate in lieu of referral fees. Held that such referral fees is not taxable in India. Therefore no TDS is liable to be deducted in India. - no business connection in India.

652 2008 TMI - 4676 - AUTHORITY FOR ADVANCE RULINGS

Foster's Australia Limited

Dated: 09-05-2008

Sections - 009, 002(14), 055, 002(47),

The income arising from the transfer of its right, title and interest in and to the trade-marks is taxable in India under the Income-tax Act, 1961. 'Independent valuation report' obtained by the applicant may be accepted by the department if it is found true and correct on examination.

653 2008 TMI - 4654 - HIGH COURT DELHI

CIT versus DHIR GLOBAL INDUSTRIES PVT. LTD.

Dated: 04-07-2008

Sections - 272A, 203, 221, 201, R031,

Penalty u/s 272A (2) (g) for default in depositing the tax deducted at source – Once the explanation of delay in making the deposit has been accepted, there is no reason as to why the same cannot be used for the purposes of delay in the issuance of the TDS certificate - revenue plea that issuance of the TDS certificate is independent to the making of the TDS deposit, is rejected – revenue appeal dismissed – penalty not justified - No substantial question of law arises

654 2008 TMI - 4622 - SUPREME COURT

SREE AYYANAR SPINNING & WEAVING MILLS LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 01-05-2008

Sections - 254, 143, 115J, 260A,

Section 254(2) deals with the powers of Tribunal to rectify mistakes - second part of section 254(2), refers to rectification on an application being made by the AO or by assessee pointing out the mistake apparent from the record - Once the assessee has moved the application within 4 years from the date of

INCOME TAX ACT 1961

CASE LAWS

appeal, the Tribunal cannot reject that application on the ground that four years have lapsed , which includes the period of pendency of the application before the Tribunal

655 2008 TMI - 4617 - BOMBAY HIGH COURT

IDEA CELLULAR LTD. Versus DEPUTY COMMISSIONER OF INCOME-TAX

Dated: 13-02-2008

Sections - 147, 148, 142, 143, 139,

Reassessment – no suppression on part of assessee in providing necessary material to assessing officer - AO raised specific queries on several occasions & all queries were answered - Once all the material was before the AO and he chose not to deal with the several contentions raised by the petitioner in his final assessment order, it cannot be said that he had not applied his mind – Explanation to sec. 147 was not applicable – reassessment notice after 4 years not valid

656 2008 TMI - 4603 - HIGH COURT BOMBAY

The Commissioner of Income Tax Versus M/s. Dodsai Ltd.

Dated: 02-07-2008

Sections - 158BFA, 158BC,

Deletion of penalty levied u/s 158 BFA(2) - 1st proviso to Sec. 158 BFA(2) is directory or mandatory - Merely because the expression used is shall not be less than the amount of tax leviable or not exceeding three times the tax, doesn't result in reading the first part of the section as mandatory - C.I.T. & I.T.A.T. have recorded reasons for exercise of their discretion - uphold the decision of I.T.A.T. that the section is directory, not mandatory & that the word "may" cannot be read as "shall"

657 2008 TMI - 4566 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus USHA STUD AGRICULTURAL FARM LTD.

Dated: 14-03-2008

Sections - 68, 143, 147, 260A,

Assessee failed to confirm that advance received by him was received towards advance breeding charges – detailed not furnished by assessee – held that credit balance appearing in the accounts of the Assessee, does not pertain to the year under consideration, under these circumstances, the Assessing Officer was not justified in making the impugned addition under Section 68 - no fault can be found with the order of the Tribunal which has endorsed the decision of the CIT(A)

658 2008 TMI - 4565 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus M. GANI AND CO.

Dated: 04-02-2008

Sections - 80HHC,

INCOME TAX ACT 1961

CASE LAWS

Whether where the assessee has maintained the separate books of accounts in respect of domestic transaction as well as the export transaction, the clubbing of income was permissible – Held, no – AO is not justified in considering the composite turnover comprised of both export turnover & domestic turnover, for calculation of deduction u/s 80HHC - Tribunal is right in law in holding that the assessee is entitled for deduction under Section 80HHC fully on export profits

659 2008 TMI - 4564 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus ESPN SOFTWARE INDIA P. LTD.

Dated: 10-03-2008

Sections - 260A, 003,

Assessee has acquired the license on 15th August, 1995, and after getting the license, the Assessee was in a position to start the business, so, under these circumstances, we have no hesitation in holding that the Assessee has commenced his business on or after 15th August, 1995 – hence assessee is allowed to claim deduction as assessee obtained licence & commenced business in relevant previous year – deduction for depreciation allowance is also allowed – no question of law arise

660 2008 TMI - 4558 - HIGH COURT OF DELHI

Valvoline Cummins Limited versus Commissioner of Income Tax

Dated: 20-05-2008

Sections - 220,

Stay of demand u/s 220(6) – Putting the cart before the horse. - Against the returned income of Rs. 7.5 cr, assessed income was Rs. 58.68 cr. Assessee preferred an appeal before comm.(A) and filed stay application before AO. But department initiated the proceedings for recovery of demand along with interest and penalty. HC ordered to keep the recovery proceedings in abeyance and allowed part deposit as per earlier order of DCIT.

661 2008 TMI - 4557 - HIGH COURT PUNJAB AND HARYANA

Commissioner of Income Tax (Central), Ludhiana Versus M/s Liberty Shoes Ltd., Karnal

Dated: 10-07-2008

Sections - 260A, 250,

Expenditure on Glow Sign Boards - assessee is a limited company engaged in manufacturing of leather as well as non-leather shoes - Tribunal was correct in law in confirming the order of the CIT (A) that expenses incurred on glow signs were of revenue nature not of capital nature - substantial question of law has already been answered by this Court against the Revenue, therefore, the substantial question of law raised by the Revenue is answered against the Revenue and in favour of the assessee

662 2008 TMI - 4518 - GUJARAT HIGH COURT

INCOME TAX ACT 1961

CASE LAWS

COMMISSIONER OF INCOME TAX Versus BOMBAY CONDUCTORS AND ELECTRICALS LTD.

Dated: 11-02-2008

Sections - 269SS, 271D, 273B,

Balance due adjusted by book entries for purchase of assets – AO treated the outstanding amounts as acceptance of deposit in violation of provisions of Sec. 269SS - assessee proves that there was reasonable cause for such failure – penalty is not automatic u/s 271D on mere violation of provisions of sec. 269SS – deposited in cash more than specified limit – penalty not imposable if reasonable explanation for such deposits have been given as per sec. 273B by assessee – revenue appeal dismissed

663 2008 TMI - 4516 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus JINDAL DRILLING AND INDUSTRIES LTD.

Dated: 22-02-2008

Sections - 263, 143, 115J, 260A,

Assessee was not entitled to claim the expenditure in A.Y. 1990-91 but only in an earlier assessment year, and that claim was made by the Assessee for the A.Y. 1989-90, as a result of a direction given by the Commissioner u/s 263 to re-compute the income of the Assessee – no error was committed both by CIT (A) & Tribunal in concluding that AO ought to have taken these facts into consideration for the purposes of computing the correct income of the Assessee – revenue's appeal is dismissed

664 2008 TMI - 4515 - KERALA HIGH COURT

K. J. THOMAS Versus COMMISSIONER OF INCOME-TAX

Dated: 14-01-2008

Sections - 147, 143, 148, 153, 149,

Validity of reassessment u/s 147 – assessee got opportunity to file reply & detailed reply was in fact filed & reassessment notice & final order were also issued within the time limit prescribed – However, assessee has written that notice u/s 143(2) wasn't issued – normally a detailed reply in this nature is furnished only after issuing a notice u/s 143(2) – assessment can't be challenged on the ground that written notice was not issued to the assessee before completion of assessment u/s 143(2)

665 2008 TMI - 4513 - RAJASTHAN HIGH COURT

DR. SAHIB RAM GIRI Versus INCOME-TAX OFFICER AND OTHERS

Dated: 07-01-2008

Sections - 147, 148, 143,

Reassessment proceedings have been initiated by the Assessing Officer for the reasons recorded in writing – non-availability of a few documents demanded by the petitioner-assessee, would not make the reassessment proceedings initiated illegal – challenge of the assessee to reassessment proceedings on the grounds set out in the petition is absolutely misconceived –

INCOME TAX ACT 1961

CASE LAWS

Moreover, the interest of the petitioner-assessee stands sufficiently safeguarded by the learned Tribunal – reassessment is valid

666 2008 TMI - 4509 - HIMACHAL PRADESH HIGH COURT

COMMISSIONER OF INCOME-TAX Versus DALIP CHAND AND SONS

Dated: 02-01-2008

Sections - 040A, R006DD,

Purchase of stock by making payments in cash exceeding specified limit mentioned in sec. 40A (3) – AO has also found that many other dealers who were purchasing goods from same persons made payments by crossed drafts to the said stockist – story of the assessee that he was asked by the stockists to pay in cash cannot be accepted – two or more payments can't be split up in a single day – transaction appears to be fraudulent, so benefit of circular 220, dated May 31, 1977 – disallowance upheld

667 2008 TMI - 4493 - PATNA HIGH COURT

(1) KANDRA GLASS HOUSE (2) BABA GLASS AND CROCKERIES HOUSE Versus CIT

Dated: 01-02-2008

Sections - 043B, 009,

Assessee did not pay the amount of sales tax so realised in that accounting year but claim deduction of the amount of sales tax collected during the last quarter of the accounting year – held that, sales tax collected in the last quarter of the accounting year was paid before the due date applicable for furnishing the return, could not be disallowed – deduction allowed – Tribunal was not correct in confirming the addition of sales tax - Tribunal has not correctly applied section 43B

668 2008 TMI - 4489 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SOUTHERN PETROCHEMICAL INDUSTRIES

Dated: 04-02-2008

Sections - 035D, 037,

Tribunal has recorded a finding that the expenses relating to obtaining fixed deposits are closely linked with the business requirement of the assessee, such expenses are allowable expenses - Tribunal was right in holding the same as revenue expenditure – expenditure incurred for issue of debentures are revenue expenditure, not capital expenditure – Held that even in respect of standby assets, which are kept ready for use, during the relevant assessment year are entitled to depreciation

669 2008 TMI - 4477 - SUPREME COURT OF INDIA

AMERICAN HOTEL & LODGING ASSOCIATION EDUCATIONAL INSTITUTE Versus CBDT & OTHERS

Dated: 09-05-2008

Sections - 010(22), 012, 010(23C), 245Q, 011, R002CA, 010(20A), 010(22B),

INCOME TAX ACT 1961

CASE LAWS

012AA, 060, 063,

Appellant was a non-profit organization set up in USA. It had a branch office in India, to collect data and fees which was thereafter remitted to USA. It was allowed exemption u/s 10(22) upto 31.3.1998 before omission. Appellant made an application for exemption u/s 12(23C) but CBDT refused on the ground that the income is not being used in India. SC held that CBDT may put the condition as it may deem fit but can not reject the application on the ground that income is not applied in India.

670 2008 TMI - 4459 - KARNATAKA HIGH COURT

M. SHIVANNA AND ANOTHER Versus DEPUTY COMMISSIONER OF INCOME-TAX

Dated: 12-02-2008

Sections - 226,

Application, seeking stay of impugned demand notice was rejected – respondent being the statutory authority has to pass an order exercising the power, as envisaged under the statute & after affording reasonable opportunity to petitioners – held that quasi-judicial authorities has to proceed strictly in compliance with principles of natural justice & to pass a speaking order – impugned communications-cum-order can't be sustained – rejection of application without assigning reason was not valid

671 2008 TMI - 4457 - ALLAHABAD HIGH COURT

SHARDA CHITRA MANDIR Versus INCOME-TAX OFFICER

Dated: 22-01-2008

Sections -

Grant-in-aid received by the appellant to promote the construction of new and permanent cinema halls in backward areas as per the Government policy dated July 21, 1986 – revenue receipt or capital receipt– revenue plea that subsidy is post-construction, therefore, it should not be treated as capital receipt, is not acceptable – in view of decision in case of Kalpana Palace v. CIT [2005] 275 ITR 365, money received by the appellant will be treated to be capital receipt and not revenue receipt

672 2008 TMI - 4456 - MADRAS HIGH COURT

POWER PETRO PRODUCTS LTD. Versus ASSISTANT COMMISSIONER OF INCOME-TAX

Dated: 04-01-2008

Sections - 143, 068,

Cash credit – Assessing Officer was of the view that the assessee was not able to prove the genuineness of the deposit and brought the sum of Rs. 2,75,000 to tax – third party denied the payment made towards share capital – no material to prove the case has been placed by assessee – Tribunal has also confirmed the additionss – not find any question of law – appeal is dismissed

673 2008 TMI - 4455 - HIGH COURT PUNJAB AND HARYANA

INCOME TAX ACT 1961

CASE LAWS

Commissioner of Income Tax, Hisar Versus Pandit Shanti Sarup

Dated: 03-07-2008

Sections - 260A,

Interest on enhanced compensation would not accrue till the issue of enhanced compensation is finally decided - thereafter on attaining the finality of determination of enhanced compensation by the Court, the interest accrued to the assessee has to be spread over on an annual basis right from the date of delivery of possession till the date of the order of the court on the time basis – revenue's appeal dismissed - no substantial question of law survives for our consideration

674 2008 TMI - 4452 - KERALA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus FEDERAL BANK LTD.

Dated: 16-01-2008

Sections - 056, 145, 143, 144,

Assessee, banking Co. – interest on govt. securities - Merely because the assessee has declared it as amount receivable in the course of time, it does not mean that interest on income had in fact accrued to the assessee – only real income is assessable under the Act - Though interest due or receivable is assessable under the mercantile system, since the interest on securities involved in this case, was neither received nor receivable during the previous year, such interest cannot be assessed

675 2008 TMI - 4374 - KARNATAKA HIGH COURT

INDO NISSIN FOODS LIMITED Versus INCOME-TAX OFFICER

Dated: 30-01-2008

Sections - 201, 260A, 195, 154, 090,

Technical collaboration agreement with Singapore co. – assessee erroneously deducted tax @ 30 % instead of 15 % of royalty payable to the collaborator for period April 94 to March 98—AO levied interest u/s 201(1A) for short deduction of tax for period Oct. 98 to Jan. 2000 - assessee contended that interest should not be levied as dept. is available with excess fund paid erroneously – Cir. 333 deal with conflict between provisions of IT Act & DTAA should be considered - matter remanded to AO

676 2008 TMI - 4361 - MADHYA PRADESH HIGH COURT

PRAKASH CHAND NAHTA Versus COMMISSIONER OF INCOME-TAX

Dated: 20-02-2008

Sections - 131, 256, 132,

Order of assessment - witnesses was not summoned in spite of the request made by the assessee u/s 131 – validity of assessment order – reasonable opportunity of being heard not given - statement of third party can't be relied upon against assessee if assessee is not given the opportunity to cross-examine that witness (third party) – violation of principle of natural justice – hence addition in the order of assessment made on the basis of the statement of third party are not justified

INCOME TAX ACT 1961

CASE LAWS

677 2008 TMI - 4311 - JHARKHAND HIGH COURT

COMMISSIONER OF INCOME-TAX Versus MULTI TECH AUTO LTD.

Dated: 19-03-2008

Sections - 260A, 131,

AO made additions based on seized documents - CIT set aside the assessment order observing that specific directions given to AO were not followed - Whether tribunal is justified in upholding the order of commissioner without discussing all issues & without considering the reasons given by assessing authority – matter needs reconsideration by Tribunal, so that the Tribunal shall pass reasoned order in accordance with law - impugned order passed by ITAT cannot be sustained in law

678 2008 TMI - 4204 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus KHALSA DEWAN (REGD.)

Dated: 29-01-2008

Sections - 143, 011, 012A, 292B, 012AA, 154, 246, 264,

AO issued notice & changed the status of the assessee from trust to an AOP while processing the return u/s 143(1)(a) – change of status of the assessee from Trust to an AOP isn't covered in any of proviso u/s 143(1)(a) - It is immaterial that trust was not registered with CIT & was not eligible for exemptions u/s 11 – AO can't make any adjustment in returned income by disallowing any claim for deduction, unless he is satisfied on the basis of information available in the return – notice invalid

679 2008 TMI - 4192 - SUPREME COURT

Janatha Textiles & Others Versus Tax Recovery Officer & Another

Dated: 16-05-2008

Sections - 271, 220, R060, R061,

Auction of attached property by the Income Tax Department for recovery of debt - The appellant (the firm) and its partners were in arrears of tax demand for one AY was enforced but for another years was stayed - agricultural lands owned by the partners of the appellant firm at Bodametlapalem had been attached and sold in public auction on 5.8.1996 - appellant sought to be vitiated on ground that the land in the auction notice was mentioned as dry lands - appeal dismissed

680 2008 TMI - 4185 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus TEK RAM (HUF)

Dated: 04-02-2008

Sections - 271, 045, 143,

Amount of enhanced compensation and interest on such enhanced compensation received by the assessee - highly debatable issue – whether impugned amount taxable on receipt basis - bona fide belief on the part of the appellant that this income could not be subjected to tax – held that making of such claim bona fide could not be treated as concealment of its income by the

INCOME TAX ACT 1961

CASE LAWS

assessee or furnishing of inaccurate particulars of such income hence no penalty under section 271(1)(c) could be imposed

681 2008 TMI - 4184 - BOMBAY HIGH COURT

**INDIAN EXPRESS NEWSPAPERS (BOMBAY) P. LTD. AND ANOTHER
Versus UOI AND OTHERS**

Dated: 08-01-2008

Sections -

Reassessment notice based on the statement of third party that impugned entries were only hawala entries – documentary evidence indicates the existence of the loan and the payment of interest after deduction of TDS – third person expired after retracting the statement – assessment cannot be reopened on basis of statement of third person who has been expired - there is no sufficient reason for reopening the assessment, so notice is invalid

682 2008 TMI - 4183 - PUNJAB AND HARYANA HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SANJIV KUMAR

Dated: 04-02-2008

Sections - 271, 273, 256, 143, 148,

Delay returns – default in payment of advance tax - Additions made in reassessment on account of undervaluation - Tribunal was right in law in holding that since the entire addition made by AO in reassessment, has been deleted, there is no case for sustaining penalties u/s 271(1)(a), 273(2)(aa) & 271(1)(c) – even if reference application u/s 256(2) filed against the deletion of addition is pending before HC for adjudication, penalty were rightly set aside by tribunal – revenue appeal dismissed

683 2008 TMI - 4171 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX VERSUS BHAN TEXTILE P. LTD.

Dated: 22-02-2008

Sections - 143, 153, 144, 250, 254, 263, 264, 262,

Earlier in assessee's appeal (being aggrieved by assessment), CIT restored the matter to file of AO, so that one more opportunity could be given to assessee to file evidence – pursuant to this decision AO issued notice u/s 143(2) for fresh assessment – now assessee contend that this assessment notice is time barred u/s 153(2A) – assessment order to the extent that it didn't give opportunity to assessee was set aside by CIT so sec. 153(2A) is applicable not 153(3)(ii) – assessment is time barred

684 2008 TMI - 4170 - MADRAS HIGH COURT

**ASSISTANT COMMISSIONER OF INCOME-TAX Versus APOLLO
HOSPITALS ENTERPRISES LTD.**

Dated: 10-03-2008

Sections - 072A, 143, 246A, 147, 148, 142, 139, 149, 032A, 033,

Amalgamation of hospital DHCL with Apollo hospital(assessee) on April 18,

INCOME TAX ACT 1961

CASE LAWS

2000 - unabsorbed depreciation of DHCL got vested with assessee after Amalgamation – assessee claim benefit of set off of that depreciation in AY 2000-01 u/s 72A – held that as per amendment to sec. 72A w.e.f. 1.4.2000, hospitals are not allowed to take benefit u/s 72A, is applicable to this case – set off availed by assessee was illegal – reassessment notice is within limitation of 4 years, so reassessment is allowed

685 2008 TMI - 4138 - RAJASTHAN HIGH COURT

COMMISSIONER OF INCOME-TAX Versus MANTRA TANTRA YANTRA VIGYAN

Dated: 18-01-2008

Sections - 005, 004, 010(5A),

Business of selling yantras to customers, and also selling publication of a monthly journal - amounts received as subscription for life membership are in the nature of capital receipts liable to be returned to the subscriber, hence they are not assessable as income of assessee - assessee have not earned any income as interest from the security amount refundable but then it was passed on to partners of the firm free of interest – matter remanded to AO whether notional interest, is assessable

686 2008 TMI - 4123 - MADRAS HIGH COURT

DR. S. RAJAMONY Versus ASSISTANT COMMISSIONER OF INCOME-TAX

Dated: 21-01-2008

Sections - 158BC, 143, 260A,

Appellant, doctor – on basis of search, assessment was completed u/s 158-BC making additions - Tribunal found that no evidence was produced by assessee to support the claim that cash seized represents the gifts - other claims that 180 sovereign was entrusted by the brother-in-law of the assessee to be given to his daughter at the time of marriage also is not established with the relevant materials - addition of cash, gold jewels and fixed deposits as undisclosed income are justified

687 2008 TMI - 4100 - MADRAS HIGH COURT

KEYARAM HOTELS P. LTD. Versus ASSISTANT COMMISSIONER OF INCOME –TAX

Dated: 29-01-2008

Sections - 022,

Income derived from leasing of the 'commercial property' - it is clear that assessee was only exploiting the property as owner by leasing out the same & realised income by way of rent. Such rental income is liable to be assessed as “income from house property” not as “business income” - in computation of long term capital gains, fair market price of property fixed by Comm., which has been affirmed by appellate authority requires no re-consideration in this appeal, as it is factual in nature

688 2008 TMI - 4099 - MADRAS HIGH COURT

INCOME TAX ACT 1961

CASE LAWS

COMMISSIONER OF INCOME-TAX Versus SHRI SWASAN CHEMICALS (M) P. LTD.

Dated: 26-02-2008

Sections - 080IB,

Assessee, mfg. plastic powder out of plastic granules - company claimed deduction u/s 80IB, on the premise that the goods produced by Assessee company is a product of manufacturing activities – tribunal is justified in holding that process employed is a complex one and not merely limited to pulverisation or crushing, hence impugned finished goods are totally different from raw material – deduction available u/s 80-IB

689 2008 TMI - 4098 - MADRAS HIGH COURT

COMMISSIONER OF INCOME-TAX Versus SOUTHERN GROUP INDUSTRIES LTD.

Dated: 30-01-2008

Sections - 080IA,

Correctness of the order passed by Tribunal - when it is admitted that the appeal folder on the file of tribunal, did not contain the additional ground, necessarily this petition is required to be rejected and rightly the Tribunal has rejected the petition - If the revenue is entitled to file an appeal by raising the issue as to the allowability of Section 80IA under the statute, it is well open to the revenue to do so, if they so advised - appeal is dismissed as no question of law is involved

690 2008 TMI - 4082 - BOMBAY HIGH COURT

COMMISSIONER OF INCOME-TAX Versus DEODHAR ELECTRO DESIGN P. LTD.

Dated: 22-01-2008

Sections - 080HHC,

On basis of definition of export turnover & total turnover in sec. 80 HHC(4B) comm.(A) held that the receipts shown by way of development charges does not form part either of export turnover or total turnover - Tribunal erred in law in reversing the order of the Commissioner (Appeals) – hence held that income from development charges & service charges would not fall and the assessee would not be entitled to the benefit u/s 80 HHC(3) and it had to be computed based on 90 per cent. exclusion

691 2008 TMI - 4056 - AUTHORITY FOR ADVANCE RULLINGS

V. RAVI NARAYANAN, In re

Dated: 03-03-2008

Sections - 115C, 115E, 115D, 115O, 048, R029C, 197A,

Non-resident want to open a Non-resident Ordinary Deposit A/c with banks in India – Authority ruled that as per sec. 115C(a) account can be opened with convertible foreign exchange & only in a bank which wouldn't be a pvt. company – deposit would be regarded as specified asset as per sec. 115C(f) – repatriation of balance in NRO bank deposit isn't required – interest income

INCOME TAX ACT 1961

CASE LAWS

would be in nature of investment income & tax thereon will be 20% u/s 115E – bank had to deduct tax at source only at 20%

692 2008 TMI - 4031 - SUPREME COURT

DEPUTY CIT Versus TORQUOISE INVESTMENT AND FINANCE LTD.

Dated: 20-02-2008

Sections - 143, 005,

Assessee claimed refund on the basis of deemed TDS on dividend received from a Malaysian company - Double Taxation Avoidance Agreement entered into by the GOI with the Government of Malaysia would override the provisions of the IT Act –on basis of Article XI of the DTAA held that HC was justified in holding that dividend income derived by the assessee from a company in Malaysia is not liable to be taxed in the hands of the assessee in India under any of the provisions of the Act

693 2008 TMI - 3956 - SUPREME COURT

B. DESRAJ Versus C.I.T. SALEM

Dated: 01-05-2008

Sections - 80HHC, 029, 028,

Whether deduction under Section 80HHC in respect of Duty Drawback and Cash Compensatory Support is allowable even though no export was done by the assessee during the relevant assessment year – Insertion of clause (iiib) in section 29 – held that the words “business profits” in the above formula under Section 80HHC(3) would include Cash Compensatory Allowance and Duty Drawback and accordingly deduction is allowable.

694 2008 TMI - 3953 - SUPREME COURT

Commr. of Income Tax, Gujarat Versus Gupta Global Exim (P) Ltd.

Dated: 06-05-2008

Sections - -

Higher rate of depreciation on running of vehicle on hire - mere inclusion of Rs.12,50,639/- in the Total Business Income is not the determinative factor for deciding whether trucks were used by the assessee during the relevant year in a business of running them on hire – matter remitted back for de novo examination of the case in accordance with law.

695 2008 TMI - 3952 - SUPREME COURT

Commr. of Income Tax, New Delhi Versus M/s. Realest Builders & Services Ltd.

Dated: 07-05-2008

Sections - 145,

Whether income accrued to the assessee on registration of the sale deed in favour of the third party or whether it accrued at the time of execution of the tripartite agreement? –If the AO observes that there is under estimation of profits, he must give facts and figures in that regard that the impugned method

INCOME TAX ACT 1961

CASE LAWS

of accounting adopted by the assessee results in under estimation of profits and is therefore rejected. Otherwise, the presumption would be that the entire exercise is Revenue neutral

696 2008 TMI - 3950 - SUPREME COURT

[Union of India & Versus Belgachi Tea Co. Ltd. & Others](#)

Dated: 09-05-2008

Sections - R008, 010(30), 002(1),

Tax on Income from sale of green tea leaves without processing can not be subject to Income Tax Act, 1961. Income from sale of processed tea shall be subject to Income Tax Act, 1961, @40% and State Income Tax (Bengal Agricultural Income Tax) @ 60%. Under Constitution it clear that the State Legislature has exclusive jurisdiction to legislate in respect of taxes on agricultural income; and in respect of taxes on other income, it is Parliament alone which can legislate.

697 2008 TMI - 3880 - Supreme court

[M/s. Kvaverner John Brown Engg.\(India\)\(P\) Ltd Versus Assistant CIT, Bangalore](#)

Dated: 29-04-2008

Sections - 143, 080O,

Payment of additional tax on prima facie adjustments u/s 143(1)(a) read with sec. 143(1A) for the AY 1996-97 and 1997-98. When there were conflicting judgments on interpretation of Section 80-O, in our view, prima facie adjustments contemplated under Section 143(1)(a) was not applicable and, therefore, consequently appellant was not liable to pay additional tax under Section 143(1A) of the 1961 Act.

698 2008 TMI - 3879 - Supreme court

[Commissioner of Income Tax,Thiruvananthapuram Versus Joseph Valakuzhy](#)

Dated: 06-05-2008

Sections - 263, 080, R009A, 260, 139, 143, R009A, 074, 074A, 073, 072,

AO originally allowed the benefit of carry forward of Rs.39,43,830/- as amortization expenses relating to on production of feature films but withdrawn the benefit on fresh assessment after receiving direction from the commissioner under section 263 since the provisions of section 80 was not complied with. Carrying forward of the business loss, u/s 80, and carrying forward of the expenditure over the income u/r 9A(3) are different provisions and the deduction is allowed accordingly.

699 2008 TMI - 3878 - Supreme court

[R & B Falcon \(A\) Pty Ltd. Versus Commissioner of Income Tax](#)

Dated: 06-05-2008

Sections - 115WB, 245Q, 115W, 115WA, 115WC, 115JB, 009,

INCOME TAX ACT 1961

CASE LAWS

FBT - Whether transportation cost incurred by the petitioner in providing transportation facility for movement of offshore employees from their residence in home country to the place of work and back is liable to Fringe Benefit Tax - held that the company is liable to pay fringe benefit tax - the provisions of FBT are not restricted to the persons resident in India - Further the apex court has defined the relation between sub-sections (1), (2) and (3) of section 115WB

700 2008 TMI - 3825 - AUTHORITY FOR ADVANCE RULINGS

Kern-Liebers International GmbH

Dated: 30-04-2008

Sections - 055, 195, 139, 245R, 048, 049, 154,

The applicant is a foreign company acquired a 26 per cent stake in an Indian company - In course of time, bonus shares were allotted to the applicant and it also subscribed to right issues - The entirety of shares was sold to an Indian individual - Held that fair market value prevailing on 1st April, 1981 ought to be taken as the cost of acquisition in the case of bonus shares held by the applicant on 1-4-1981 - For TDS and refund, applicant asked to follow the normal procedure.

701 2008 TMI - 3824 - AUTHORITY FOR ADVANCE RULINGS

Worley Parsons Services Pty. Ltd.

Dated: 30-04-2008

Sections - 009,

The applicant is a company incorporated in Australia entered into a contract with Gas Authority of India Limited to monitor the project known as 'Dehej - Vijaipur Gas Pipeline Project' - held that - The receipts under the contract with GAIL are not in the nature of royalties as defined in Article 12 of the DTAA between India and Australia. - The income from such receipts are liable to be taxed as business profits in India only the profits attributable to the P/E are liable to be taxed.

702 2008 TMI - 3823 - AUTHORITY FOR ADVANCE RULINGS

KnoWerX Education (India) Private Limited

Dated: 30-04-2008

Sections - 195, 005, 009, 004, 190,

The applicant is conducting and offering three certification programmes, namely, CPIM, CIRM and CSCP and other activities like corporate training, open public training, management consultancy, publishing and trading in educational material, etc under an agreement with a foreign non-profit company - The question raised about applicability of TDS on examination fees remitted - Since the applicant can not be deemed permanent establishment (P/E), not required to deduct TDS on fees so remitted.

703 2008 TMI - 3801 - High Court Punjab and Haryana

The New Friends Cooperative House Building Society Ltd. Versus CIT

Dated: 10-04-2008

INCOME TAX ACT 1961

CASE LAWS

Sections - 260A, 143, 045, 148,

Enhanced compensation along with interest against compulsory acquisition of land - when the Government has appealed against the award the additional amount of compensation was deposited in the court, it was not taxable at that stage as the additional compensation would not accrue as income when it was specifically disputed by the Government in appeal – therefore enhanced compensation and interest thereon cannot be charged to tax until the same had attained finality from the highest court

704 2008 TMI - 3800 - HIGH COURT PUNJAB AND HARYANA

Smt. Anchi Devi, C/o M/s Vikas WSP Versus The Commissioner of Income tax,

Dated: 28-03-2008

Sections - 147, 148, 143, 142, 153,

Assessing Officer has initiated the re-assessment proceedings u/s 147 and 148 within the prescribed period of limitation but the same were initiated only to circumvent the earlier order of the Tribunal vide which the assessment dated 14.2.2003 was held to be time barred. Thus, the Assessing Officer cannot be allowed to initiate fresh proceedings on identical facts as the first assessment proceedings had failed to result in a valid assessment due to lapse on the part of the Income-Tax Authority.

705 2008 TMI - 3799 - High Court Punjab and Haryana

M/s Kurukshetra Darpans Pvt. Ltd. Versus The Commissioner of Income Tax

Dated: 03-03-2008

Sections - 194, 260A, 194C, 201, 194I,

TDS - where the payment is for a work involving broadcasting and telecasting, the same shall be subject to deduction of tax at source in terms of Section 194 of the Act - appellant can be treated as assessee in default for non deduction of tax at source on account of his bona fide belief that he is not liable to deduct tax at source and the payee has discharged his liability on the income so received from the payer

706 2008 TMI - 3792 - HIGH COURT PUNJAB AND HARYANA

The Commissioner of Income-tax Versus M/s P.K. Industries

Dated: 03-03-2008

Sections - 244, 210, 214,

The Act itself recognizes in principle the liability of the Department to pay interest when excess tax was retained and the same principle should be extended to cases where interest was retained – therefore assessee is entitled to interest u/s 244(1A) – Assessee is also eligible for interest u/s 214 on the amount of refund arisen due to excess amount of Advance Tax Paid u/s 210 of the Act.

707 2008 TMI - 3791 - HIGH COURT PUNJAB AND HARYANA

INCOME TAX ACT 1961

CASE LAWS

CIT Chandigarh Versus M/s Punjab State Co-operative Bank Ltd.

Dated: 03-03-2008

Sections - 80P, 260A, 143,

Interest income from the loans advanced to various loanees, the said income was related to the banking activities, therefore, is liable for exemption under Section 80P(2)(a)(i). In that situation, if the assessee received the interest income from the loan advanced to various loanees related to the banking activities, then whether a loanee was the member or not the member of the co-operative society, loses its significance – Therefore, interest earned from members can not be disallowed.

708 2008 TMI - 3790 - HIGH COURT PUNJAB AND HARYANA

The Commissioner of Income tax Versus Om Overseas, Shiv Nagar

Dated: 08-03-2008

Sections - 143, 145,

Since there is defect has been pointed in the books of account, books of account can not be rejected merely on the ground that the assessee failed to produce the quantitative details - Moreover, the appellant's income was 100% exempt and there could not have been any tax liability and higher income being declared. Thus, no purpose of the revenue has been served by making such additions. Keeping in view all these facts, additions as made by the AO deleted.

709 2008 TMI - 3789 - High Court Punjab and Haryana

Commissioner of Income Tax –II Versus M/s Dua & Associates (P) Ltd.

Dated: 12-03-2008

Sections - 271, 143,

Penalty @ 100 % for furnishing inaccurate particulars levied by AO u/s 271(1)(c) - assessee owns a hotel – AO adopted the food cost at 45% of the total sales when he found that assessee had inflated the expenses on account of food cost - ITAT uphold that in a case where additions have been made on the basis of estimate penalty cannot be imposed under Section 271(1)(c) - no ground to interfere in the well reasoned judgment of the ITAT, hence Revenue's appeals are dismissed

710 2008 TMI - 3780 - High Court Punjab and Haryana

The Commissioner of Income Tax -II, Chandigarh Versus M/s Dua & Associates (P) Ltd.

Dated: 12-03-2008

Sections - 260A, 145, 143,

The assessee, a hotel, filed a return showing cost of raw material at around 62% food cost ratio. Assessee was not able to maintain stock register therefore, AO on estimate basis the consumption ratio@45% and made the addition on account of suppressed sale – since the sale were fully vouched, no specific defects were found in the books of account therefore, Com(A) partially allowed the appeal and restricted the ratio @55%. ITAT's decision maintaining

INCOME TAX ACT 1961

CASE LAWS

the order of Com(A) not interfered with.

711 2008 TMI - 3779 - High Court Punjab and Haryana

The Commissioner of Income Tax-II Versus Shri Rajnish Nath Aggarwal

Dated: 24-03-2008

Sections - 260A, 271, 143,

AO framed the assessment after making addition on account of uncorroborated freight charges – assessee surrendered Rs.12,12,880/- subject to no penal action. He surrendered just to buy peace of mind to avoid further litigation - while making the assessment AO rejected the request of the surrender made by the respondent and initiated penalty proceedings on this account - held that penalty cannot be imposed merely on account of higher income having been subsequently declared.

712 2008 TMI - 3778 - High Court Punjab and Haryana

The CIT Patiala Versus Shri Jai Parkash c/o M/s Mangal Engineering Works

Dated: 25-03-2008

Sections - 139, 158BFA, 260A, 258BC, 158BB, 132, 143,

Block assessment - income shown in the belated return can not be held as undisclosed income since the assessee had deposited advance tax on such income prior to search and had sufficient time to file return u/s 139(4) – penalty under section 158BFA(2) is not leviable

713 2008 TMI - 3777 - High Court Punjab and Haryana

The Commissioner of Income Tax-II Versus M/s Rai Bahadur Kishore Chand & Sons

Dated: 13-02-2008

Sections - 143, 260A, 271,

Time limit for completion of assessment u/s 143(3) - Although the assessment order passed by the Assessing Officer is dated 26.3.2004, yet it was served on the assessee by affixture only on 1.4.2004 - It was also argued that in case the order was passed on 26.3.2004, why the same was not served by registered post on that date – department failed to produce evidence for dispatching the same on or before 31-3-2004 – assessment order was quashed being passed after the statutory time limit.

714 2008 TMI - 3772 - HIGH COURT PUNJAB AND HARYANA

The Commissioner of Income tax Versus Smt. Anchi Devi

Dated: 28-03-2008

Sections - 147, 153, 260A, 148, 143,

Time limit for completion of re-assessment proceedings u/s 147 read with sec. 153(2) – period of two years for completing the assessment has been prescribed only in those cases in which notices were issued between 1.4.1999 and 31.3.2000 – argument of the revenue that amended provisions of Section

INCOME TAX ACT 1961

CASE LAWS

153(2) of the Act which became operative w.e.f. 1.6.2001 are effective only in respect of the notices under Section 148 served on or after 1.6.2001 and are prospective in nature is not acceptable.

715 2008 TMI - 3771 - High Court Punjab and Haryana

The Commissioner of Income Tax ,Faridabad Versus M.P.Singh

Dated: 31-03-2008

Sections - 139, 142, 148, 147, 260A, 143,

Assessee did not furnish his return of income voluntarily u/s 139. AO issued notice under section 142(1) of the Act on 23.2.2000 calling upon him to furnish the return of the income. The assessee did not file any return up to 31.3.2001 but he filed his return of income on 18.10.2001. Treating the return invalid, AO issued notice u/s 148 of the Act on 21.11.2002 and assessment completed as on 26-3-2004, held that proceedings u/s 147 / 148 are not valid since earlier notice has already expired.

716 2008 TMI - 3770 - HIGH COURT DELHI

The Commissioner of Income Tax Versus Dr. Yogender Sharma

Dated: 11-04-2008

Sections - 032A,

Deduction u/s 32A - Investment Allowance - Assessee is a practicing Radiologist and he had installed an X-ray machine on which he claimed a deduction by way of an investment allowance under Section 32A - The expression industrial undertaking is to be used in the context in which it is used in the Income Tax Act and not in the context in which it is used in other laws such as the Industrial Disputes Act - The order of ITAT allowing deduction u/s 32A reversed.

717 2008 TMI - 3768 - Supreme court

K.P. Mohammed Salim Versus Commissioner of Income-tax, Cochin

Dated: 24-04-2008

Sections - 127, 158BC, 132, 132A, 158BD, 158BE, 158BH, 120, 158BG, 158B,

Block assessment - transfer of case to facilitate effective and coordinate investigation. An order was passed to that effect by the Chief Commissioner of Income Tax, Bangalore under Section 127(2) of the Act - petitioner's contention that the provisions of section 127 can not have any application in case of block assessment is not acceptance since by virtue of section 158BH, all the provisions of Income Tax Act are applicable to block assessment - appeal dismissed with cost.

718 2008 TMI - 3761 - High Court Punjab and Haryana

Commissioner of Income Tax ,Jalandhar-II Versus Rakesh Chander Goyal

Dated: 31-03-2008

Sections - 163, 009,

INCOME TAX ACT 1961

CASE LAWS

Treatment of assessee as an agent of his non-resident brother u/s 163(1) - neither there was any business connection of the assessee with the non-resident Indian, nor did any income come into existence as having been received by the nonresident Indian - Department has also failed to prove the assessee as a trustee of the Non-resident Indian – therefore the assessee can not be treated as an agent of his brother (a non-resident Indian).

719 2008 TMI - 3760 - HIGH COURT PUNJAB & HARYANA

CIT Ludhiana-I Versus The Budhewal Cooperative Sugar Mills Ltd. VPO Budhewal

Dated: 01-04-2008

Sections - 271, 260A, 143, 80P,

Penalty u/s 271(1)(c) due to inaccurate particulars of income by wrongly claiming the deduction u/s 80P(2)(a)(iii) of I.T.Act, as the co-operative society was engaged in manufacturing and not in marketing business - At the relevant time, there were several decisions to support the view that marketing includes processing to make the produce marketable – Since the assessee was having a bonafide belief it would not be right to condemn as a “false” return inviting imposition of penalty.

720 2008 TMI - 3759 - HIGH COURT PUNJAB AND HARYANA

Commissioner of Income Tax, Ludhiana-I Versus Shri Gurnam Singh

Dated: 01-04-2008

Sections - 54B, 260A, 158BD, 54F, 139,

Exemption / Deduction u/s 54B of capital gain arising from sale of agricultural land and investment in the name of son by the assessee - merely because in the sale deed his only son was also shown as co-owner, the ITAT has rightly come to the conclusion that it does not make any difference because the purchased land is being used by the assessee for agricultural purposes. It is not the case of the revenue that the said land is being used exclusively by his son – exemption allowed.

721 2008 TMI - 3758 - High Court Punjab and Haryana

CIT -I,Chandigarh Versus M/s Himachal Agro Foods Ltd.

Dated: 03-04-2008

Sections - 271, 260A, 143, 80IB,

Penalty under section 271(1)(C) for claiming excess deduction u/s 80IB (which was apparent on return) with allegation of furnishing inaccurate particulars and concealing particulars of income – even if it is presumed that the counsel for the assessee made a bonafide mistake in calculation of such assessment years, still it can be said that no penalty should be imposed upon the assessee for the mistake of his counsel

722 2008 TMI - 3757 - High Court Punjab and Haryana

The Commissioner of Income Tax Versus Anil Kumar Arya

Dated: 04-04-2008

INCOME TAX ACT 1961

CASE LAWS

Sections - 044AE, 044AB,

Transport business - the total number of tankers owned by the assessee does not exceed 10 at any point of time during the relevant period. The provisions of Section 44 AE of the Act are applicable in the case of the assessee and therefore, the provisions of Section 44 AE have been rightly applied to the case of the assessee

723 2008 TMI - 3752 - Supreme court

Dy. Commr. of Income Tax, Ahmedabad Versus N.K. Industries Ltd

Dated: 22-04-2008

Sections - 032, 043

Revenue contends that after the introduction of the concept of “block of assets”, actual use is the only requirement apart from ownership for allowance of depreciation u/s 32 – HC dismissed revenue’s appeal as no question of law arise - Tribunal after analysing the material on record held that there is nothing to show that the machinery, namely, expellers remained idle for the entire block period 1-4-88 to 24-2-99 - not necessary for us to go into the larger question of law- appeal dismissed

724 2008 TMI - 3705 - GUJARAT HIGH COURT

COMMISSIONER OF INCOME-TAX Versus MAHENDRA C. SHAH

Dated: 05-02-2008

Sections - 271, 256, 143, 132, 139,

Search on July 3, 1987 – A.Y. 1988-89 – penalty for concealment of diamond - benefit of immunity from levy of penalty provided in Explanation 5 to Section 271(1)(c) – If assessee made disclosure of concealed income and pay tax before completion of assessment then he can get immunity from penalty as provided in above explanation

725 2008 TMI - 3700 - AUTHORITY FOR ADVANCE RULINGS

AIRPORTS AUTHORITY OF INDIA, In re

Dated: 28-02-2008

Sections - 245N, 195, 245R, 147, 143, 245S, 245Q, 040, 271,

The payment, related to hardware repair, which is covered by the provisions of DTAA and not liable to be taxes in India as per DTAA, the person making payment is not liable to deduct TDS on such payment. Mere deputation of an engineer by foreign Company to India for the purpose of installation and testing of the repaired software can not constitute foreign company’s permanent establishment in India. TDS is to on software maintenance contract is liable to be deducted @10%

726 2008 TMI - 3696 - BOMBAY HIGH COURT

(1) HASSAN ALI KHAN (2) MRS RAHEEMA H. KHAN Versus SETTLEMENT COMMISSION AND OTHERS

Dated: 28-01-2008

INCOME TAX ACT 1961

CASE LAWS

Sections - 245, 245D, 245C, 245I, 245L, 245BA, 245J,

Settlement commission can treat the application as invalid if the applicant has not made a true and full disclosure and further must disclose how the income has been derived – Impugned matter shows evasion of tax and foreign exchange dealings but in application assessee offered amount as income from horse-racing – application was rightly dismissed holding it as invalid

727 2008 TMI - 3694 - HIGH COURT PUNJAB AND HARYANA

JAMNA AUTO INDUSTRIES Versus COMMISSIONER OF INCOME -TAX

Dated: 30-01-2008

Sections - 148, 037, 030, 036, 043,

Assessee had entered into an agreement with a German firm – payments made to German firm by assessee for failure to complete contract - the amount of Rs. 50,000/- paid by the assessee was on account of damages for breach of contract on its part and not a liability incurred for contravention of any law - amount claimed as deduction would thus be an expense incurred for the purposes of the business and could not have been disallowed.

728 2008 TMI - 3692 - MADRAS HIGH COURT

AREVA T & D INDIA LTD. Versus INCOME-TAX OFFICER-II (INTERNATIONAL TAXATION)

Dated: 11-02-2008

Sections - 201,

Payments to foreign company to access world wide net work – Revenue charged amount including tax to be deducted at source and interest for non-deduction of tax – as per DTAA between India & U.K. income would be in the nature of the business income in the hands of foreign company only - Tribunal failed to take into consideration the contract which had been placed before it for consideration - Tribunal is wrong in stating that contract was not before it – Matter remanded

729 2008 TMI - 3691 - PUNJAB AND HARYANA HIGH COURT

CIT Versus MATHANA MODEL CO-OP. CREDIT AND SERVICE SOCIETY LTD.

Dated: 01-02-2008

Sections - 271, 044AB, 260A, 080P, 271B, 273B, 288,

Assessee replied to the SCN stating that it being a co-operative society, was required to get its accounts audited by the auditor appointed by the Registrar, Co-operative Societies, under the provisions of the Societies Act - since the auditor was not appointed by the Registrar within the stipulated time - so the audit report could not be submitted in time – Above reason is reasonable so penalty not imposable u/s 271B or 44AB

730 2008 TMI - 3681 - PUNJAB AND HARYANA HIGH COURT

CIT Versus AMRIK SINGH

INCOME TAX ACT 1961

CASE LAWS

Dated: 06-02-2008

Sections - 143, 250, 256, 045, 053, 054, 048,

Capital gains tax - assessee had acquired the ownership rights in the land by operation of law and not by purchase or inheritance - the cost of the acquisition of the land to the assessee was nil - no record of any payment made for the acquisition of the land - Thus, in view of the authoritative pronouncements of the hon'ble SC in another case, the Tribunal was right while dismissing appeal of the Revenue - not liable to pay any capital gains tax

731 2008 TMI - 3674 - MADHYA PRADESH HIGH COURT

DEPUTY COMMISSIONER OF INCOME-TAX Versus SMT SUNITI SINGH

Dated: 21-01-2008

Sections - 260A, 045, 048, 002(13),

Assessee is running a dairy & sells cow milk - no material on record to show that selling of calves is a part of the business activity - sale of calves is not on account of realisation of stock-in-trade or as a business activity - gains from sale of calves couldn't be regarded as capital gains since the cost of acquisition was not ascertainable - quantum of addition involves Rs. 68,000 & tax effect is Rs. 15,984 which is much below the quantum fixed by the CBDT - Revenue's appeal dismissed

732 2008 TMI - 3612 - SUPREME COURT

Malayala Manorama Co. Ltd. Versus CIT, Trivandrum

Dated: 10-04-2008

Sections - 115J, 080VVA, 115JA, 080HHD, 033AC, 080HHC, 032A, 032, 072, 073, 074, 115, 074A, 080J, 035, 080VV,

In respect of a company consistently charging depreciation in its books of account at the rates prescribed in the Income-tax Rules, the Income Tax Officer has no jurisdiction under section 115J of the Income Tax Act, 1961 to rework net profits by substituting the rates prescribed in Schedule XIV of the Companies Act, 1956

733 2008 TMI - 3604 - SUPREME COURT

Asstt. Commissioner of Income Tax, Surat Versus Surat City Gymkhana

Dated: 03-04-2008

Sections - 010(23), 012A, 002(15),

Assessee claimed exemption under Section 10(23) on the basis that the objects of the respondent-assessee are exclusively charitable - AO rejected the claim - once trust is registered u/s 12A then AO can't make further probe into the objects of trust- since the department did not challenge the correctness of the judgment in the similar matter in another case - revenue appeal is dismissed

734 2008 TMI - 3603 - HIGH COURT OF DELHI

COMMISSIONER OF INCOME Versus SHRI TIRATH RAM AHUJA (HUF)

INCOME TAX ACT 1961

CASE LAWS

Dated: 02-04-2008

Sections - 147, 148, 143,

Re-opening of assessment proceedings u/s 147 / 148 on the basis of the order of Municipal Corporation of Delhi regarding ratable value was dated 31st March, 1994, which was not available at the time of original assessment, cannot be sustained since assessee has not escaped income deliberately

735 2008 TMI - 3600 - HIGH COURT OF DELHI

LI and FUNG INDIA P.LTD. Versus THE COMMISSIONER OF INCOME TAX

Dated: 02-04-2008

Sections - 80O, 809, 194J, 844AA,

Deduction u/s 80O - technical services rendered out of India - even if it was to be held that a portion of the said services were managerial services, the same would be regarded as technical services - further benefit is available when the services are rendered outside India but utilized in India.

736 2008 TMI - 3599 - HIGH COURT OF DELHI

DIRECTOR OF I.T. (EX.) Versus JAIPUR GOLDEN CHARITABLE CLINICAL LABORATORY TRUST

Dated: 03-04-2008

Sections - 111, 112, 112A, 102(24), 113,

Donation received from doctors subject to terms and conditions into the corpus of the fund - AO treated the same as forced contribution not entitled for exemption u/s 11 and 12 - tribunal did not consider the same as forced contribution and deleted the additions made by AO - order of ITAT upheld

737 2008 TMI - 3597 - HIGH COURT OF DELHI

MRS. KRISHNA GUPTA Versus THE ASST.COMMISSIONER OF INCOME TAX

Dated: 07-04-2008

Sections - 131,

Estimate of income - rejection of accounts - In routine assessee was receiving advance cash or selling on credit - but the assessee failed to produce the registered dealers and copies of their ledger accounts and quantitative details of the goods - AO assessed the income @ 10% GP rate as against 1.5% claimed - action of the AO upheld

738 2008 TMI - 3596 - HIGH COURT OF DELHI

THE COMMISSIONER OF INCOME TAX-V Versus REAL TIME MARKETING P. LTD.

Dated: 07-04-2008

Sections - 260A, 133, 1068,

Rs. 22.97 lakhs deposited in cash in the Bank account of FBSL - Rs. 25 lakhs each transferred from FBSL to BTL to ACL to Assessee on the same day - All the companies having same address - Since AO does not have any evidence

INCOME TAX ACT 1961

CASE LAWS

regarding geniuses or fictitious identity - addition is not possible

739 2008 TMI - 3594 - Supreme Court

Pradip J. Mehta Versus Commissioner of Income Tax, Ahmedabad

Dated: 11-04-2008

Sections - 006, 005, 256, 004B,

Residential Status - A person will become an ordinarily resident only if (a) he has been residing in nine out of ten preceding years; and (b) he has been in India for at least 730 days in the previous seven years - Original order denying the status of not-originary resident set aside.

740 2008 TMI - 3593 - Supreme Court

Sudarshan Silks & Sarees Versus Commissioner of Income Tax, Karnataka

Dated: 11-04-2008

Sections - 271, 132, 037,

Penalty u/s 271(1)(c) imposed by AO was cancelled by the CIT(A) and Tribunal. However high court has restored the AO while setting aside the order of tribunal - high court ignored the question of law referred to it - SC has resorted the order of tribunal and cancelled the penalty.

741 2008 TMI - 3592 - Supreme Court

M/S SAHARA INDIA (FIRM), LUCKNOW Versus CIT, CENTRAL-I & ANR

Dated: 11-04-2008

Sections - 142, 158BC, 288, 144, 269UD, 044AB, 136, 153,

Special audit u/s 142(2A) is more or less in the nature of an investigation and in some cases may even turn out to be stigmatic - when civil consequences ensue, no distinction between quasi judicial and administrative order survives - before ordering audit opportunity of being heard must be given.

742 2008 TMI - 3591 - HIGH COURT OF DELHI

Commissioner of Income Tax Versus M/s. Jai Parabolic Springs Ltd.

Dated: 07-04-2008

Sections - 254, 260A, 143,

Revenue expenditure shown as deferred revenue expenditure in the audited balance sheet. Tribunal on the basis of additional ground raised by the assessee allowed full deduction even if he failed to claim deduction in the original return (neither he filed revised return) - tribunal decision upheld

743 2008 TMI - 3582 - Supreme court

P. SOUNDARYA Versus INCOME TAX OFFICER, TAMIL NADU

Dated: 01-04-2008

Sections - 132, 230A, 276C, 277, 136,

Criminal proceedings in Income Tax – evasion of income tax by showing lower

INCOME TAX ACT 1961

CASE LAWS

purchase price than actual consideration – Appellant has already served 7 days in jail already – having the peculiarity sentenced n reduced to the period already undergone by the appellant from 3 months R.I.

744 2008 TMI - 3579 - HIGH COURT OF DELHI

M/S INDUS VALLEY PROMOTERS LTD. Versus COMMISSIONER OF INCOME TAX

Dated: 01-04-2008

Sections - 068, 260A, 143, 131,

Share application money treated as unsecured loan and the amount treated in the hands of assessee as unexplained investment - assessee failed to prove the source of deposit - in the absence of adequate proof, it was held that the contention of department is right in making addition

745 2008 TMI - 3578 - HIGH COURT OF DELHI

THE COMMISSIONER OF INCOME TAX Versus M/S MAHAAN FOODS LTD.

Dated: 31-03-2008

Sections - 80IA, 143,

Deduction u/s 80IA - modernization of existing unit - old plant and machinery was less than 20 - capacity of the assessee unit was increased with the introduction of new technology - deduction u/s 80IA is allowed.

746 2008 TMI - 3577 - HIGH COURT OF DELHI

Commissioner of Income Tax Versus M/s Hewlett Packard India (P) Ltd.

Dated: 31-03-2008

Sections - 115JB, R046A, 115JA, 037,

Addition to book profit u/s 115JB - Merely because the Assessee did not submit a reply at the appropriate stage cannot, on the facts of this case, lead to any adverse conclusion against the Assessee - further provision for warranties estimated by the assessee on certain formula are acceptable.

747 2008 TMI - 3561 - HIGH COURT OF DELHI

Vatika Farms Private Limited & Sh. Anil Bhalla Versus Union of India

Dated: 28-03-2008

Sections - 245D, 245HA, 245C, 245H, 116, 245F, 245I, 245B, 245E, 273AA, 278AB, 263, R044C, R044CA, 245L, 245G,

Constitutional validity of amendment with regard to settlement commission made by Finance Act, 2007 (sections 245D to 245HA) - While providing the interim relief HC has directed the central govt. and settlement commission to dispose of all pending application as soon as possible

748 2008 TMI - 3533 - Supreme court

L.N. Hota & Company Versus Commissioner of Income-Tax

INCOME TAX ACT 1961

CASE LAWS

Dated: 26-03-2008

Sections - 143, 148, 260A, 154, 254, 145, 142, 139,

Assessment made without issuance of notice u/s 143(2) of the Act within one year – HC held that assessment order is not by way of scrutiny, Sec. 143(2) is not applicable so matter not entertainable u/s 260-A - no finding based on the law has been recorded - matter remanded to HC for fresh decision

749 2008 TMI - 3532 - HIGH COURT OF DELHI

Commissioner of Income Tax Versus M/s. Madhvy Films Pvt. Ltd.

Dated: 25-03-2008

Sections - 142, 143, 144, 282,

Notice u/s 143(2) dated 23-10-02 dispatched on 25-10-02 by speed post was undelivered or received back - normally it is presumed that this notice has reached the Assessee within 2/3 days - this presumption has not been rebutted by the Assessee - no affidavit filed - notice held to be valid

750 2008 TMI - 3531 - HIGH COURT OF DELHI

Commissioner of Income Tax Versus M/s Mitsubishi Corporation

Dated: 25-03-2008

Sections - 201, 260A, 133A, 271C,

Appropriation of amount paid in excess - Assessee has paid Rs. 52.79 crores in 1998 towards TDS for the period 1988-89 to 1997-98. Later the final liability was determined lower than this amount - Appropriation of excess amount by the assessee can not be denied as it would be amount to enriching itself.

751 2008 TMI - 3512 - HIGH COURT OF DELHI

Rohitasava Chand Versus Commissioner of Income Tax

Dated: 20-03-2008

Sections - 010(3), 045,

Revenue Receipt versus Capital Receipt - taxability of non-compete fees - non-compete agreement incorporates a restrictive covenant on the right of the Assessee to carry on his activity of development of software - receipt in the hands of the Assessee was certainly a capital receipt.

752 2008 TMI - 3511 - HIGH COURT OF DELHI

Commissioner of Income Tax Versus M/s Eicher Limited

Dated: 20-03-2008

Sections - 260A, 037,

Assessee had non-compete agreement with VCPL – payment of Rs 4 crore for the same is to protect the Assessee's business interests, its market position & profitability - no new asset is created - not suffer any loss in capital assets - allowable as a business expenditure & not a capital expenditure

753 2008 TMI - 3486 - Supreme court

INCOME TAX ACT 1961

CASE LAWS

Kerala Road Lines Versus Commissioner of Income Tax

Dated: 12-03-2008

Sections - 037, 256,

Deduction of Interest as revenue expenditure u/s 37 – Interest was paid for delayed payment of purchase consideration of land with building – AO has disallowed the deduction treating as capital expenditure – tribunal order for allowing interest as revenue expenditure upheld.

754 2008 TMI - 3485 - Supreme court

M/s Synco Industries Ltd Versus Assessing Officer

Dated: 13-03-2008

Sections - 080HH, 080I, 080IA, 080IB, 080IC, 080ID, 080IE, 080J, 080JJ, 080B, 080A, 260A, 080A, 080C, 080U, 080G, 080GGA, 080GGC, 080HHA, 080HHB, 080HHC, 080HHD, 071, 032, 072, 060, 064, 080P, 080L, 080M, 080AB,

Determination of Gross Total Income - Gross total income of the assessee has first got to be determined after adjusting losses etc., and if the gross total income of the assessee is 'Nil' the assessee would not be entitled to deductions under Chapter VI-A of the Act.

755 2008 TMI - 3482 - DELHI HIGH COURT

COMMISSIONER OF INCOME-TAX Versus PAWAN KUMAR JAIN

Dated: 25-01-2008

Sections - 080HHC, 037,

Loan from bank pledging fixed assets – interest earned on assets was treated as business income, accepted by AO – held that interest earned from fixed deposits could be adjusted against the interest paid by assessee on the loan, as both have direct nexus with each other

756 2008 TMI - 3475 - MADHYA PRADESH HIGH COURT

BABULAL JAIN Versus INCOME..TAX OFFICER AND ANOTHER

Dated: 28-01-2008

Sections - 260A, R024,

Adjournment sought was rejected – assessee's counsel had to appear before other HC – no valid reason given by tribunal for non-adjournment – adjournment sought only for 12 days while order passed after 11 weeks – ex-parte order passed by tribunal is quashed as it is not accordance with law

757 2008 TMI - 3469 - AUTHORITY FOR ADVANCE RULINGS

M/s McLeod Russel Kolkata Ltd.,

Dated: 28-02-2008

Sections - 112, 245Q, 048, 245R, 245N,

Purchase of shares (including bonus shares) by Indian Company from a non-resident company - Indian company can apply for ruling regarding tax liability of non-resident co. on its capital gains - Taxability of Long Term Capital Gain –

INCOME TAX ACT 1961

CASE LAWS

tax rate u/s 112 is 10% non only for original shares but also applicable for bonus shares - purchase price paid in indian currency does not effect the position

758 2008 TMI - 3412 - HIGH COURT OF DELHI

J.K.Kashyap Versus. A.C.I.T

Dated: 11-03-2008

Sections - 045, 260A, 002(47), 002(14),

Long Term Capital Gain u/s 45(1) - it is immaterial - whether the agreement has been completed or not or possession has been given or not. What is relevant in the case of the Assessee is that he has relinquished his rights in the said property for a consideration and this transfer has taken place

759 2008 TMI - 3361 - SUPREME COURT

Commissioner of Income Tax, Chennai versus M/s Bilahari Investment (P) Ltd

Dated: 27-02-2008

Sections - 010(1),

Chit Fund business - allowance of Discount as deductible amount from in the P & L Account in the year in which it accrued or to be spread over the balance period of chit on proportionate basis – where the accounts are kept on mercantile basis, deduction is allowed on completion of contract basis

760 2008 TMI - 3360 - SUPREME COURT

COMMISSIONER OF INCOME TAX versus XPRO INDIA LTD.

Dated: 04-03-2008

Sections - 115JJ, 234B, 234C, 260A, 115JAA,

Allowance of Credit of MAT u/s 115JJ before charging interest u/s 234B and 234C – Question of Law – High Court has dismissed the appeal by holding that there is no question of law arouse – SC directed the HC to restore the appeal and decide the matter of merit since question of law is apparent.

761 2008 TMI - 3354 - HIGH COURT OF DELHI

New Delhi Auto Finance (P) Ltd. Versus Jt. Commissioner of Income-tax

Dated: 22-02-2008

Sections - 158BD, 158BC, 142, 132, 127, 260A,

Jurisdiction for Block Assessment u/s 158BD – Transfer of Case to the AO having jurisdiction – Original authority conducting search did not record satisfaction before transferring case before initiating proceedings u/s 158BC – Issue of notice u/s 142(1) by the AO is illegal and not sustainable.

762 2008 TMI - 3353 - HIGH COURT OF DELHI

Karun Dube Versus A.C.I.T.

Dated: 10-03-2008

INCOME TAX ACT 1961

CASE LAWS

Sections - 158BC, 260A,

Search – Sec. 158BC – discloser of undisclosed income wrongly of family income and other group concern as his income – Assessee has surrendered income earlier to buy peace and avoid litigation – there is no scope of retracting the statement latter – No question of law arise, appeal dismissed.

763 2008 TMI - 3352 - HIGH COURT OF DELHI

M/s L.P.Hospitality Pvt. Ltd. Versus Commissioner of Income Tax

Dated: 10-03-2008

Sections - 038, 260A, 260, 032, 030, 031,

Disallowance of depreciation u/s 38(2) where the asset is not exclusively used for the Assessee's business purposes - Assessee did not run the business of bar and restaurant during the year - it transferred 85% of its daily restaurant and bar sales to other person – Disallowance upheld

764 2008 TMI - 3351 - HIGH COURT OF DELHI

Delhi Milk Scheme Versus Commissioner of Income-tax

Dated: 04-03-2008

Sections - 194H, 133A, 260A,

TDS u/s 194H on milk and milk products sold by it through 'concessionaires appointed by the Assessee - ownership of the milk booth rests with the assessee - unsold milk is taken back - sale collections are on daily basis – held that there is principle to agent relationship – TDS applicable

765 2008 TMI - 3350 - HIGH COURT OF DELHI

COMMISSIONER OF INCOME TAX versus ANSAL BUILDWELL LTD.

Dated: 04-03-2008

Sections - 158B, 158BB,

Amount of commission paid by the Assessee was shown in the books of accounts maintained as well as in the return prior to the search. No corroborative evidence to show that commission paid was illegal. Allegation that a single bill raised for commission is sustainable. No question of law arises.

766 2008 TMI - 3349 - HIGH COURT OF DELHI

Commissioner of Income Tax Versus Rishab Ispat Ltd.

Dated: 25-02-2008

Sections - 154, 032, 260A,

Assessee was having certain unabsorbed depreciation and the claim is admissible whether the Assessee carry on the same business or not. The claim for unabsorbed depreciation is a matter of record for which no factual finding is necessary. Petition dismissed since no question of law arise.

767 2008 TMI - 3342 - ORISSA HIGH COURT

INCOME TAX ACT 1961

CASE LAWS

UTKAL GALVANIZERS P. LTD. Versus ASST. CIT

Dated: 10-01-2008

Sections - 234B, 154, 264, 143,

Order passed by comm.(A) for not to pay interest on non-payment of advanced tax u/s 234B – such order could not be a ‘mistake capable of rectification’ – A.O. can not review his own order by raising section 154 of correcting the mistake as those order have already been challenged in appeal.

768 2008 TMI - 3088 - Supreme Court

Munjal Sales Corporation Versus Commissioner of Income Tax

Dated: 19-02-2008

Sections - 040, 036, 030, 038, 028, 043C,

Interest u/s 40(b) to a partner - loans were advanced for business purposes and that interest paid thereon did not exceed 18/12% per annum, the assessee was entitled to deductions under Section 36(1)(iii) read with Section 40(b)(iv) of the 1961 Act - Section 40 is not a stand-alone section

769 2008 TMI - 3086 - DELHI HIGH COURT

The Commissioner of Income Tax Versus Eltek SGS (P) Ltd

Dated: 19-02-2008

Sections - 80IB, 80HH, 143, 148, 144,

Deduction u/s 80-IB - decision u/s 80HH are not applicable - source of the duty drawback is the business of the industrial undertaking which is to manufacture and export of goods out of raw material that is imported and on which customs duty is paid – Eligible for deduction u/s 80IB

770 2008 TMI - 3085 - Delhi High court

Commissioner of Income Tax Versus Sarvatra Roadrunners (Pvt.) Ltd.

Dated: 19-02-2008

Sections - 143, 148, 144,

Taxability of 50% of award (compensation) claimed under a provisional order of HC – since the final decision has not been delivered by the HC, the amount had not accrued to the Assessee as income in the relevant previous year. The addition made by the Assessing Officer was accordingly deleted

771 2008 TMI - 3084 - Delhi High court

Harish Dargan Versus Commissioner of Income Tax

Dated: 19-02-2008

Sections - 131, 132,

Assessee was intercepted by the Intelligence Wing and was found to be carrying Rs.18 lakhs in cash – he has given statement but retracted later on - employee of assessee stated that sales bills was prepared without actual sale – AO is justified to add the amount as income from undisclosed source

INCOME TAX ACT 1961

CASE LAWS

772 2008 TMI - 3083 - Delhi High court

Commissioner of Income Tax versus Ved Prakash Choudhary

Dated: 19-02-2008

Sections - 069, 132,

Unexplained expenditure u/s 69 – Appellant had to pay Rs. 25 lakhs in terms of an MOU signed by the appellant to purchase a land but in search proceedings denied that the payment was made. Owner of land denied the receipt– AO can not make presumption without any evidence – addition can not be made

773 2008 TMI - 3027 - SUPREME COURT OF INDIA

DEPUTY COMMISSIONER OF INCOME-TAX Versus GUJARAT ALKALIES AND CHEMICALS LTD.

Dated: 08-02-2008

Sections - 037, 036, 043,

Tribunal has allowed the deduction of "Commitment charges" u/s 37 and not only u/s 36(1)(iii), hence there is no infirmity therein - Once the Department equated the charges payable to COFACE with interest they are held to be revenue expenditure and deductible u/s 37 of the Income-tax Act, 1961

774 2008 TMI - 3026 - SUPREME COURT OF INDIA

JOINT COMMISSIONER OF INCOME-TAX Versus UNITED PHOSPHOROUS LTD.

Dated: 08-02-2008

Sections - 036, 034, 032, 260A,

In view of decision of HC, interest paid in respect of borrowings on capital assets not put to use in the concerned financial year are allowable deduction u/s 36(1)(iii) - "whether the assessee has an option in law to claim partial depreciation in respect of block of assets", Matter is remanded

775 2008 TMI - 3025 - SUPREME COURT OF INDIA

ASSISTANT COMMISSIONER OF INCOME-TAX Versus ARVIND POLYCOT LTD.

Dated: 08-02-2008

Sections - 036,

In view of decision of CIT v. M/s. Core Health Care Ltd. in Civil Appeal Nos.3952-55 of 2002, interest paid in respect of borrowings on capital assets not put to use in the concerned financial year can be permitted as allowable deduction u/s 36(1)(iii) - Revenue's appeal dismissed

776 2008 TMI - 3024 - SUPREME COURT OF INDIA

DEPUTY COMMISSIONER OF INCOME-TAX Versus CORE HEALTH CARE LTD.

Dated: 08-02-2008

Sections - 260A, 036, 043, 028, 041, 032, 032A, 033, 090, 035D, 080HH, 080I,

INCOME TAX ACT 1961

CASE LAWS

Interest on borrowings utilized for purchase of machines are allowed to be deducted because these machines have been used in business - During pendency of appeal, if civil application are moved by Dept. within limitation then HC can not dismiss the appeal - Matter remanded for fresh consideration

777 2008 TMI - 3020 - SUPREME COURT OF INDIA

COMMISSIONER OF INCOME-TAX Versus ISHWAR BHUVAN HOTELS LTD.

Dated: 08-02-2008

Sections - 036,

Interest paid in respect of borrowings on capital assets not put to use in the concerned financial year can be permitted as allowable deduction u/s 36(1)(iii) of the I.T. Act, 1961 - Revenue's appeal dismissed

778 2008 TMI - 3019 - HIGH COURT, PUNJAB AND HARYANA

JAMNA AUTO INDUSTRIES Versus COMMISSIONER OF INCOME-TAX

Dated: 30-01-2008

Sections - 037, 148, 030, 036, 043,

Deduction u/s 37 - Amount paid towards compensation (damage for breach of contract) for failure to execute the contract terms can not be said that such payment was made for infraction of law. The amount paid for breach of contract is related to business and can not be disallowed

779 2008 TMI - 3018 - HIGH COURT, PUNJAB AND HARYANA

LAKSHMI PRECISION SCREWS LTD. Versus COMMISSIONER OF INCOME-TAX

Dated: 15-01-2008

Sections - 115J, 263, 256,

Book Profit u/s 115J - In case of nil business loss and only unabsorbed depreciation, the view favouring the assessee had to be preferred and brought forward unabsorbed depreciation against the current income shall be allowed

780 2008 TMI - 3017 - HIGH COURT, PUNJAB AND HARYANA

COMMISSIONER OF INCOME TAX Versus VARDHMAN POLYTEX LIMITED

Dated: 21-01-2008

Sections - 043, 036, 143, 028, 041, 037, 260A, 010(2), 010(5), 033,

Deduction of interest and upfront fees paid loan taken for setting up a new unit u/s 36(1)(iii) read with Exp. 8 of Sec. 43(1) - there is distinction between modernization of existing plant and for setting up of a new plant. The expenditure should be treated as capital expenditure

781 2008 TMI - 3016 - HIGH COURT, DELHI

COMMISSIONER OF INCOME-TAX Versus SHRI ATUL MOHAN BINDAL

Dated: 25-01-2008

INCOME TAX ACT 1961

CASE LAWS

Sections - 271, 260A,

Penalty is not imposable where the AO has not recorded the satisfaction before initiating penalty proceeding u/s 271(1)(C) specific terms but is otherwise discernible from order passed by the authority - revenue is panelized with cost of Rs. 5000 for casual attitude

782 2008 TMI - 3015 - HIGH COURT, DELHI

COMMISSIONER OF INCOME-TAX Versus FRONTLINE SOLUTIONS (BARODA) LTD.

Dated: 23-01-2008

Sections - 260A, 271, 143, 234B, 234C,

Penalty is not imposable where the AO has not recorded the satisfaction before initiating penalty proceeding u/s 260A specific terms but is otherwise discernible from order passed by the authority - revenue is panelized with cost of Rs. 5000 for casual attitude

783 2008 TMI - 3014 - HIGH COURT, BOMBAY

COMMISSIONER OF INCOME-TAX Versus NICHOLAS PIRAMAL INDIA LTD.

Dated: 15-01-2008

Sections - 010(14), 192, 010(5), 201,

TDS - Tribunal has held that Deduction u/s 10(14) can be allowed by the employer on the basis of declaration filed by the employees without verifying actual expenditure incurred by the employee and maintaining records thereof - Since no question of law arise, revenue petition dismissed

784 2008 TMI - 3011 - HIGH COURT, BOMBAY

HASSAN ALI KHAN Versus SETTLEMENT COMMISSION

Dated: 28-01-2008

Sections - 245, 245D, 245C, 245I, 245BA, 245J,

Application before settlement commission - provisions under Wealth Tax Act are different from provisions of Income Tax - Once the Commission found that the application was not bona fide it was open to the said Commission under the Wealth Tax Act to treat the application as invalid

785 2008 TMI - 3010 - HIGH COURT, BOMBAY

SAMSON JOHN Versus THE TAX RECOVERY OFFICER

Dated: 29-01-2008

Sections - 222, 132, 158BC, R053, 131, 002(47),

Attachment and sale of property - Section 222(1) - Purchase of land in the name of minor and construction of house thereon much before a demand was made on his father - proposed attachment and sale of property is without authority of law

786 2008 TMI - 2973 - SUPREME COURT OF INDIA

INCOME TAX ACT 1961

CASE LAWS

COMMISSIONER OF INCOME-TAX Versus INFOSYS TECHNOLOGIES LTD.

Dated: 04-01-2008

Sections - 192, 017, 015, 016, R006, R011, 201,

Deduction of tax at source - Department consider the respondent-assessee as assessee in default for not deducting TDS at the rate of 30% on ESOP- The obligation to deduct TDS arises only when the employee exercise his option and realize money from shares, hence department contention was not valid

787 2008 TMI - 2898 - HIGH COURT, DELHI

Commissioner of Income Tax Versus Virgo Marketing (P) Limited

Dated: 23-01-2008

Sections - 271, 260A, 234B, 234C,

Penalty - For initiating the penalty u/s 271(1)(c) of the Act the AO is required to recorded his satisfaction, hence commissioner(A) rejected the penalty proceeding initiated by the AO without proper basis - Tribunal and HC also upheld the order of Commissioner(A)

788 2008 TMI - 2897 - HIGH COURT, DELHI

Director of Income Tax (Exemption) Versus M/s. National Dairy Development Board

Dated: 22-01-2008

Sections - 012AA, 002(15),

Charitable institution - Tribunal held that assessee is engaged in the activity of charitable purpose and entitled for registration as a charitable institution u/s 12AA of the ITA,1961 - HC upheld the decision of tribunal

789 2008 TMI - 2896 - BOMBAY HIGH COURT

The Commissioner of Income-tax Versus M/s.Saumya Finance & Leasing Co.(P) Ltd.

Dated: 23-01-2008

Sections - 080M, 139, 016,

Deduction - Revenue contended that assessee is not entitled for deduction u/s 80M in respect to the interim dividend related to next AY declared by the assessee before return filing of current AY - After bare reading of section 80M doesn't found revenue contention valid, hence deduction allowed to assessee

790 2008 TMI - 2895 - Supreme Court of India

K.C.C. Software Ltd. and Ors. Versus Director of Income Tax (Inv.) and Ors.

Dated: 29-01-2008

Sections - 132, 132B, 153A, 153B,

Seizure of bank account is not equivalent to seizure of cash amount, deposited in bank is money appropriation of certain amount for certain liability upheld - Even though bank account disclosed in the books of account but assessee fails

INCOME TAX ACT 1961

CASE LAWS

to disclose the source of seizure, seizure can be made

791 2008 TMI - 2802 - Supreme Court

M/s Anis Ahmad and Sons Versus Commissioner of Income Tax (Appeals), Kanpur & Anr.

Dated: 22-01-2008

Sections - 271, 143, 273, 131,

Trader versus commissioner agent - ITO made the assessment as the appellant-assessee as trader and not as a commission agent and also imposed penalty on him - Held that appellant-assessee is a commission agent and enhancement of total income and penalty set aside

792 2008 TMI - 2801 - HIGH COURT OF DELHI

Smt. Kavita Khandelwal (Nee Aggarwal) Vs. The Commissioner of Income-tax

Dated: 18-01-2008

Sections - 256,

Valuation of properties - registered valuer has valued the same properties twice, that is, first on 31st May, 1971 and subsequently on 30th March, 1979 - Earlier report can not be ignored without any specific reason - valuation on the basis of subsequent report is not valid

793 2008 TMI - 2800 - HIGH COURT OF DELHI

Commissioner of Income Tax-III versus Silver Streak Trading Pvt. Ltd.

Dated: 02-01-2008

Sections - 143,

Time barred notice - Assessee contented that they received the notice u/s 143(2) of the ITA, 1961 after the due date but revenue contented that they had issued a notice prior to the due date, hence burden on revenue to prove the same - Revenue unable to prove and notice held to be time barred

794 2008 TMI - 2799 - HIGH COURT OF DELHI

COMMISSIONER OF INCOME TAX DELHI -IV, NEW DELHI Vs. E. I. DUPONT INDIA LTD.

Dated: 11-01-2008

Sections - 115JA, 260A,

Addition u/s 115JA - Provision for Assets versus Provision for Liability - Addition - AO made addition in respect of provision of doubtful debt and provision for damaged stock as unascertained liability - Further these provisions are ascertained liability as against unascertained liability

795 2008 TMI - 2798 - HIGH COURT OF DELHI

DLF UNIVERSAL LTD versus COMMISSIONER OF INCOME TAX

Dated: 11-01-2008

INCOME TAX ACT 1961

CASE LAWS

Sections - 045,

Valuation of stock in trade - whether the ITAT was justified in differing with a view taken by a co-ordinate bench of the tribunal in respect of the same assessee for the earlier assessment year - Held answer in negative and remit the matter to tribunal for fresh consideration

796 2008 TMI - 2797 - HIGH COURT OF DELHI

COMMISSIONER OF INCOME TAX versus RAM NIWAS

Dated: 11-01-2008

Sections - 069D,

Addition of Rs. 7 lakh on the basis of the document purported to be hundi found during the search - Held that to constitute a hundi there must be three parties - a bilateral transaction can not be termed as hundi - mere imagination is not sufficient as hundi u/s 69D - Addition not permissible

797 2008 TMI - 2608 - HIGH COURT OF DELHI

The Commissioner of Income Tax (Central) Versus Saraya Industries Ltd.

Dated: 11-01-2008

Sections - 271, 032, 010(2),

Claim of depreciation is not dependent on the actual use or the asset put to use. It is sufficient if it is used for business. In case AO did not agree with the Assessee, it does not mean that the Assessee had furnished inaccurate particulars. Penalty u/s 271(1)(c) is not imposable.