Significant Legal Decisions: Direct Tax Laws

Sl.	Case	Issue	Decision
1	**Shree Balaji Alloys v. CIT (2011) 333 ITR 335 (J&K)**	Would **refund of excise duty** and grant of **interest subsidy** under the incentive scheme formulated by Central Government for **public interest** be treated as a **revenue receipt or a capital receipt?**	**Tribunal contended:** 1.Industry was already established. 2.Incentives were available only on commencement of commercial production. 3.Incentives were not given for acquisition of capital assets. Hence a revenue receipt. **High Court:** 1.The High Court observed that the above points were not the sole criteria for determining the nature of subsidy. 2.Such subsidy could not be construed as a production or operational incentive for the benefit of the assessee but for **public interest**. **Hence, the aforesaid incentives are capital receipts not liable to taxation**
2	**Joseph George and Co. v. ITO (2010) 328 ITR 161 (Kerala)**	Can an **assessee engaged** in letting out of rooms in a **lodging** house, treat the income from **renting of a building to bank**, on long term lease, as **business income?**	1.While lodging is a business, however, **letting** out of building to the bank on **long-term lease** could not be treated as business. **Hence, the rental income from bank has to be assessed as income from house property**
3	**CIT v. Yamaha Motor India Pvt. Ltd. (2010) 328 ITR 297 (Delhi)**	Whether, the phrase **"used for purpose of business"** in respect of **discarded machine** include use of such asset in the **earlier years** for claim of **depreciation.** **(i.e.** whether depreciation is allowable on the written down value of the entire block, even though the block includes some machinery which has already been discarded and hence not used during current year.)	**The Delhi High Court:** 1.The **condition** for claiming depreciation in respect of the **discarded machine** would be **satisfied if** it is **used in the earlier previous years** for the business. 2.The discarded machinery **may not be actually used in the relevant previous year** but depreciation can be **claimed** as long as it was used for the purposes of business in the earlier years provided the **block continues to exist** in the relevant previous year. **Hence, depreciation can be claimed in such case.**
4	**B. Raveendran Pillai v. CIT (2011) 332 ITR 531 (Kerala)**	Is the assessee **entitled to depreciation** on value of **goodwill** considering it as **"other business or commercial rights of similar nature"** within the meaning of an intangible asset?	**Facts:** 1.Assessee purchased a hospital which was run for several years in the same building. 2.Right to use the name of hospital was also transferred. **Assessee's Contention:** 1.By transferring the right to use the name of the hospital itself, the previous owner had transferred the goodwill to the assessee and the benefit derived by the assessee was retention of continued trust of the patients, who were patients of the previous owners. 2.Such intangible asset can be depreciated. **Decision:**When goodwill paid was for ensuring retention and continued business in the hospital, it was for acquiring a business and commercial right and it was comparable with trade mark, franchise, copyright etc., referred to in the first part of clause (ii) of section 32(1) and so, goodwill was covered by the above provision of the Act entitling the assessee for depreciation.
5	**Federal Bank Ltd. v. ACIT (2011) 332 ITR 319 (Kerala)**	Can **EPABX and mobile phones** be **treated as computers** to be entitled to higher **depreciation at 60%?**	**The Kerela High Court held:** Rate of depreciation of 60% is available to computers and there is no ground to treat the communication equipment as computers. **Hence, EPABX and mobile phones are not computers and therefore, are not entitled to higher depreciation at 60%.**
6	**CIT v. Priya Village Roadshows Ltd. (2011) 332 ITR 594 (Delhi)**	Would **expenditure** incurred on **feasibility study** conducted for examining proposals for technological advancement relating to the **existing business** be classified as a **revenue expenditure**, where the **project was abandoned without creating a new asset**?	**Facts:** 1.Assessee, engaged in the business of running cinemas, incurred expenditure towards architect fee for examining the technical viability of the proposal for takeover of cinema theatre for conversion into a multiplex. 2.The project was, however, dropped without creating a new asset. **The Delhi High Court:** 1.Whether or not a new business/asset comes into existence would become a relevant factor. 2.If there is no creation of a new asset, then the expenditure incurred would be of revenue nature. **The expenses were of revenue nature.**

7	**Echjay Forgings Ltd. v. ACIT (2010) 328 ITR 286 (Bom.)**	Can **expenditure incurred by a company** on higher studies of the **director's son** abroad be claimed as **business expenditure under section 37** on the contention that he was appointed as a **trainee** in the company under "**apprentice training scheme"**, where there was **no proof** of existence of such scheme?	**The Bombay High Court Observed:** 1.There was no evidence on record to show that any other person at any point of time was appointed as trainee or sent abroad for higher education. 2.Appointment letter to the director's son, neither had any reference number nor was it backed by any previous application by him. 3.Hence, there was no nexus between such expenditure and the business of the assessee company. **Therefore, the aforesaid expenditure was not deductible.**
8	**Iskraemeco Regent Ltd. v. CIT (2011) 331 ITR 317 (Mad.)**	Can the **waiver of principal amount** of **loan** taken **for purchase of capital asset** by the bank be **treated as "benefit arising out of business" or "a remission of trading liability"** for taxability as **business income** of the company?	1.The grant of bank loan for purchase of a capital asset is a capital receipt and not a trading receipt. 2.Section 41(1) are attracted only in case of remission of a trading liability. 3.Since the loan was taken for purchase of capital assets, it's waiver would not amount to remission of a trading liability. 4.Further, such waiver cannot be treated as a benefit arising out of business and consequently, section 28(iv) will not apply in respect of such loan. **Hence, it can not be taxed as business income.**
9	**Global Geophysical Services Ltd., In re (2011) 332 ITR 418 (AAR)**	**Would** the special provisions for computing profits under section **44BB be applicable to a non-resident** carrying on **business of seismic data acquisition** and processing under **contract with Indian concerns?**	**Authority of Advance Ruling (AAR):** 1.In an identical issue in **Geofizyka Torun SP. Z.O.O. (2010)** AAR had observed that without seismic data acquisition and interpretation, it is impractical to carry out the activity of prospecting of mineral oil and gas which is a step in aid to its exploration. **Accordingly, AAR ruled that the said activities clearly fell within 44BB, hence, income derived were to be computed under the provisions of section 44BB.**
10	**DIT v. DSD Noell GmbH (2011) 333 ITR 304 (Delhi)**	Can the AO bring to **tax the actual profits** as per books of accounts, **if the same is higher than 10% of receipts** which are deemed to be the profits under section 44BBB in case of a **foreign company** engaged in **turnkey projects?**	**Facts:** The assessee, a German company, eligible for presumptive taxation scheme under section 44BBB, filed its return declaring a sum equal to 10% of the amount paid or payable to the assessee as deemed profits. **AO's Contention:** Tax profits declared in books of account maintained by the assessee which could be more than 10%. **Delhi High Court:** 1.If an assessee fulfills all the conditions mentioned in section 44BBB(1), the provisions of sections 28 to 44AA of the Act would not be applicable, and 10% of amount paid or payable shall be deemed as Business Income. 2.Further, section 44BBB(2)gives benefit to the assessee to declare lower profits if actual profits are less than deemed profits of 10%. The Revenue cannot take recourse of this sub-section to claim that the profits earned by the assessee were more than 10%. **Hence, AO cannot tax profits as per books.**
11	**CIT v. Smt. K. G. Rukminiamma (2011) 331 ITR 211 (Kar.)**	Can **exemption u/s 54** be claimed in respect of **more than one residential flat** acquired by the assessee under a joint development agreement with a builder?	**Facts:** 1.Assessee, being the owner, entered into a joint development agreement with a builder. 2.The builder constructed eight residential flats and handed over four residential flats to the assessee. 3.Entire cost of construction and other expenses were borne by the builder. **AO's Contention:** The benefit of deduction u/s 54 could be availed only in respect of one residential flat, remaining three are not entitled to deduction u/s 54. **Karnataka High Court:** Applying th case of **Anand Basappa** High Court held that all the four flats are situated in the same residential building and hence, will constitute **"a residential house"** for the purpose of section 54. **Assessee would be entitled to deduction under section 54 in respect of all four flats.**
12	**CIT v. Parle Plastics Ltd. (2011) 332 ITR 63 (Bom.)** **(Important)**	Tests to determine **"substantial part of business"** of lending company for the purpose of application of **exclusion provision under section 2(22)?**	**Bombay High Court:** 1.42% of the total assets of the lending company were deployed by it by way of loans and advances. 2.Further, if the income earned by way of interest is excluded, the other business had resulted in a net loss. 3.Hence it was concluded that lending of money was a substantial part of the business of the company. **The money given by it by way of advance or loan to the assessee could not be regarded as a dividend, as it had to be excluded from the definition of "dividend"**

13	**CIT v. Chiranjjeevi Wind Energy Ltd. (2011) 333 ITR 192 (Mad.)**	Would the **procurements of parts and assembling** them to make windmill fall within the meaning of **"manufacture" and "production"** to be entitled for deduction under section **80-IB**?	**Madras High Court:** Madras High court considered the following two supreme court rulings: 1.**India Cine Agencies v. CIT(2009):**Test to determine whether a particular activity amounts to "manufacture" or not is whether new and different goods emerge having distinctive name, use and character. 2.**CIT v. Sesa Goa Ltd. (2004):**The word "production" or "produce" when used in comparison with the word "manufacture" means bringing into existence new goods by a process, which may or may not amount to manufacture. It also takes in all the by-products, intermediate products and residual products, which emerge in the course of manufacture of goods. Applying the above ruling Madras High Court observed that the different parts procured by the assessee could not be treated as a windmill individually. Those different parts had distinctive names and only when assembled together, they got transformed into an ultimate product which was commercially known as a "windmill". **Thus, such an activity carried on by the assessee would amount to "manufacture" as well as "production" of a thing or article to qualify for deduction under section 80-IB.**
14	**Praveen Soni v. CIT (2011) 333 ITR 324 (Delhi)**	Can an assessee **not claiming deduction** under section **80-IB** in the **initial years** ,**claim** the said deduction for the **remaining years** during the period of eligibility, if the conditions are satisfied?	**Delhi High Court:** 1.Provisions of section 80-IB nowhere stipulated a condition that the claim for deduction under this section had to be made from the first year of qualification of deduction failing which the claim will not be allowed in the remaining years of eligibility. **Therefore, the deduction under section 80-IB should be allowed.**
15	**CIT v. Jaswand Sons (2010) 328 ITR 442 (P&H)**	Does **income** derived from **sale of export** incentive **qualify** for deduction under section **80-IB**?	**Punjab and Haryana High Court:** **Held that income derived from sale of export incentive cannot be said to be income "derived from" the industrial undertaking and therefore, such income is not eligible for deduction under section 80-IB**
16	**CIT v. Meghalaya Steels Ltd. (2011) 332 ITR 91 (Gauhati)**	Would grant of **transport subsidy, interest subsidy** and **refund of excise** duty **qualify for deduction** under section **80-IB**?	**Gauhati High Court:** 1.High court considered the case **Liberty India v. CIT [2009]** in which **Supreme court** observed there should be a direct nexus between the generation of profits and gains and the source of profits and gains, the latter being directly relatable to the business of the assessee. 2. High court in this case observed: i) **Interest subsidies**: Revenue receipts which are granted after setting up of the new industries and after commencement of production has no direct nexus with profits of industrial activity. ii)**Transport subsidy:** Reduces the inward and outward transport costs for the purposes of determining the cost of production as well as for sales but has no direct nexus with profits of industrial activity. iii)**Refund of Central excise duty:** It has direct nexus with the mfg activity since payment and refund of the Central excise duty would not arise in the absence of any industrial activity. **Hence,Interest & Transport subsidies could not be taken into account for the purposes of deduction under section 80-IB. However, refund of excise duty has to be considered.**
17	**Joint CIT v. Rolta India Ltd. (2011) 330 ITR 470 (SC)**	Can **interest** under sections **234B** and **234C be levied** where a company is assessed on the basis of book profits under section **115JB**?	**Supreme Court:** There is a specific provision in section 115JB(5) providing that all other provisions of the Income-tax Act, 1961 shall apply to every assessee, being a company, mentioned in that section. **Therefore, if a company defaults in payment of advance tax in respect of tax payable under section 115JB, it would be liable to pay interest under sections 234B and 234C.**
18	**Madras Gymkhana Club v. DCIT (2010) 328 ITR 348 (Mad.)**	Would the **interest earned** on **surplus** funds of a **club** deposited with **institutional members** satisfy the principle of **mutuality** to escape **taxability?**	**Facts:** The assessee, club providing facilities like gym, library, etc, to its members earned interest from fixed deposits which it had made by investment of its surplus funds with its corporate members. **Madras High Court:** interest earned from investment of surplus funds in the form of fixed deposits with institutional members does not satisfy the principle of mutuality and hence cannot be claimed as exempt on this ground. **Interest earned is, therefore, taxable**

19	**CIT v. Bharti Cellular Ltd. & Hutchison Essar Telecom Ltd. (2011) 330 ITR 239 (SC)**	Would the payments made by a company to BSNL/ MTNL for the **services provided through interconnect / port / access / toll** be treated as **"fees for technical services"** to attract the provisions of tax deduction at source under section **194J**?	**Delhi High Court:** 1.Delhi High Court had held that the services rendered in relation to interconnection, port access **did not involve any human interface** and, therefore, could not be regarded as "technical services" as contemplated under section 194J. **Hence, TDS provisions under section 194J were not attracted.** (Apex Court remitted the matter to the Assessing Officer, directing him to examine the same with the assistance of a technical expert from the side of the Department and to decide the matter within a period of four months.)
20	**CIT v. Qatar Airways (2011) 332 ITR 253 (Bom.)** **(Important)**	Can **difference between published price and minimum fixed commercial price** be treated as additional **special commission** in the hands of the **agents of an airline company** to attract TDS provisions under section **194H**?	**Facts:** 1.The airline company sold tickets to the agents at a minimum fixed commercial price, the agents, however, agents were permitted to sell the tickets at a higher price, however, up to the maximum of published price. 2.Commission at the rate of 9% of published price was payable to the agents on which tax was deducted under section 194H. **Department's Contention:** The difference between the published price and the minimum fixed commercial price amounts to additional special commission in the hands of the agents to attract the provisions of section 194H. Accordingly tax is deductible. **Bombay High Court:** 1.In order to deduct tax at source, the exact income in the hands of the agents must necessarily be ascertainable by the airline company. 2.The airline company would have no information about the exact rate at which the tickets were ultimately sold. 3.It would be impracticable and unreasonable to expect the airline company to get a feedback from its numerous agents in respect of each ticket sold. **Thus, tax at source was not deductible**
21	**Vodafone Essar Cellular Ltd. v. ACIT (TDS) (2011) 332 ITR 255 (Kerala)** **(Important)**	Can **discount** given on **supply of SIM** cards and **recharge coupons** by a **telecom** company **to its distributors** under a **prepaid scheme** be treated as **commission** to attract the **TDS** provisions under section **194H**?	**Kerala High Court:** 1.There was no sale of any goods involved as claimed by the assessee. The entire charges collected by the assessee from the distributors at the time of delivery of SIM cards or recharge coupons were only for rendering services to ultimate subscribers. 2.Distributor only acted as a middleman on behalf of the assessee for procuring and retaining customers. Therefore, the discount given to him was within the meaning of commission. **Hence such discount will attract provisions of TDS.**
22	**CIT vs. Dynamic Vertical Software India P. Ltd. (2011) 332 ITR 0222 (Delhi)**	Is **disallowance** under section **40(a)(i)** for **non deduction of tax** at source attracted in respect of payment for **purchase of software** from a non-resident, by **treating** the same as **royalty** in case where the **purchase is for subsequent resale** in the Indian market?	**Delhi High Court:** 1.Assessee had purchased the software sold the same in the Indian market. 2.He had acted as a dealer. 3.Therefore the payment to the non-resident can not be termed as royalty. **Section 40(a)(i) would have no application in this case and the payment made to the non-resident cannot be disallowed under section 40(a)(i) on the ground that no tax was deducted at source.**
23	**CIT v. Indersons Leather P. Ltd. (2010) 328 ITR 167 (P&H)**	Can **penalty** under section **271(1)(c)** for **concealment** of income be imposed in a case where the assessee has raised a **debatable issue**?	**Facts:** Assessee company, after discontinuing its manufacturing business, leased out its shed along with fittings and disclosed the income as income from business. **Revenue's Contention:** The income is assessable as "Income from house property". Hence penalty for concealment be imposed. **Punjab and Haryana High Court:** Mere raising of a debatable issue would not amount to concealment of income or furnishing inaccurate particulars and therefore, penalty under section 271(1)(c) cannot be imposed.

24	**Lachman Dass Bhatia Hingwala (P) Ltd. v. ACIT (2011) 330 ITR 243 (Delhi)[FB]**	Can the **Tribunal** exercise its power of **rectification** under section **254(2)** to **recall its order in entirety**?	**Delhi High Court:** The Delhi High Court made a reference to the law laid down by the Apex Court in Honda Siel Power Products Ltd. v. CIT (2007), in which the apex court observed: 1.When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then it is the duty of the Tribunal to set it right. 2.It is a well settled provision of law that the Tribunal has no inherent power to review its own judgment or order on merits or reappreciate the correctness of its earlier decision on merits. 3.While the Tribunal does not have the inherent power to review its order on merits, it can recall its order for the purpose of correcting a mistake apparent from the record. **Applying the above-mentioned decision of the Apex Court to this case, the Delhi High Court observed that the Tribunal, while exercising the power of rectification under section 254(2), can recall its order in entirety if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake, error or omission and the error committed is apparent.**
25	**CIT v. Smt. Neena Jain (2011) 330 ITR 157 (P & H)**	Is **wealth-tax** leviable on the value of **house under construction,** where the construction was still **incomplete** on the relevant **valuation date**?	**Revenue's Contention:** Incomplete house was liable to wealth-tax. **Punjab and Haryana High Court:** 1.The words "**any building**" could not be read in isolation and had to be **harmoniously construed** with the remaining portion of section 2(ea) i.e., whether the building was used for residential or commercial purposes or for the purpose of maintaining a guest house. 2.**Incomplete building** could not possibly either be used for residential or commercial purposes or for the purposes of maintaining a guest house. **Hence it cannot be taxed as building** 3.Moreover, "**urban land**" for levy of wealth-tax, **specifically excludes** from its scope, the land occupied by any building which has been constructed with the **approval** of the appropriate authority. 4.Assessee was constructing the building after **obtaining sanctio**n from the appropriate authorities.**Hence it cannot be taxed as Urban Land.** **Consequently, the incomplete building is not an asset chargeable to wealth-tax.**
26	**CIT v. Cable Corporation of India Ltd. (2011) 336 ITR 56 (Bom.)**	Can "moneys payable" in respect of a building sold by the assessee (which has to be reduced from the opening written down value of the block of assets for calculating depreciation) be construed as the fair market value of the asset instead of the actual sale price?	**Bombay High Court:** Explanation below section 41(4) states that the "moneys payable" in relation to the sale of a building, machinery, plant or furniture would be the price for which it is sold. **Therefore WDV has to be adjusted by the amount for which the asset is actually sold and not by its fair market value.**
27	**CIT v. Haryana State Handloom and Handicrafts Corporation Ltd. [2011] 336 ITR 699 (P&H)**	Can the Assessing Officer issue notice under section 154 to rectify a mistake apparent from record in the intimation under section 143(1), after issue of a valid notice under section 143(2)?	**Punjab and Haryana High Court:** The Punjab and Haryana High Court referred to the Delhi High Court ruling in CIT v. Punjab National Bank (2001) and held that: 1.The scope of proceedings under section 143(2) is wider than the power of rectification of mistake apparent from record under section 154. 2.If issue of notice under section 154 is permitted to rectify the intimation issued under section 143(1), then it would lead to duplication of work and wastage of time. **Therefore, it was concluded that proceedings under section 154 for rectification of intimation under section 143(1) cannot be initiated after issuance of notice under section 143(2) by the Assessing Officer to the assessee.**
28	**Ranbaxy Laboratories Ltd. v. CIT (2011) 336 ITR 136 (Delhi)**	Can the Assessing Officer reassess issues other than the issues in respect of which proceedings were initiated under section 147 when the original "reason to believe" on basis of which the notice was issued ceased to exist?	If the income, the escapement of which was the basis of the formation of the "reason to believe" is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If he intends to do so, a fresh notice under section 148 would be necessary.

29	**Kanubhai M. Patel (HUF) v. Hiren Bhatt or his successors to Office (2011) 334 ITR 0025 (Guj.)**	Would the words "shall be issued" used in section 149 mean 'mere signing of notice by the Assessing Officer' or 'handing over of the said notice in the hands of the proper officer for serving it to the assessee' to constitute a valid notice issued within the prescribed time limit?	**The Gujarat High Court:** The Gujarat High Court observed the following:- 1.According to **Black's Law Dictionary**, the term 'issue' when used with reference to writs, process, and the like, would mean as importing delivery to the proper person, or to the proper officer for service etc 2.The date of issue would be the date on which the notice is handed over for service to the proper officer, which, in the facts of the present case, would be the date on which the said notice was actually handed over to the post office for the purpose of effecting service on the assessee. 3.Mere signing of notice by the Assessing Officer wont result in issue of notice.
30	**CIT v. Subhash Kumar Jain [2011] 335 ITR 364 (P&H)**	Can the Commissioner initiate revision proceedings under section 263 on the ground that the Assessing Officer's order not initiating penal proceedings was erroneous and prejudicial to the interest of the Revenue, in a case where non-initiation of penal proceedings was a pre-condition for surrender of income by the assessee?	**Facts of the case:** 1.Assessee made an offer to surrender his agricultural income (whose source he failed to explain) subject to a condition that no penal action under section 271(1)(c) would be initiated. 2.The Assessing Officer accepted the same as the department did not have any documentary evidence against the assessee and the assessment was made only on the basis of the report by the Inspector. 3.Accordingly, the assessment was framed by the Assessing Officer without initiating the penalty proceedings under section 271(1)(c). 4.The CIT u/s 263, directed the AO to frame a fresh assessment order after taking into account the facts attracting the penal action under section 271(1)(c), considering the original order erroneous and prejudicial to the interest of the Revenue. **Punjab and Haryana High Court:** Punjab and Haryana High Court relied on the decision of the Bombay High Court in **Jivatlal Purtapshi** and observed the following: 1.By obtaining office note issued by the Assessing Officer, it was clear that the assessee had made surrender of income with a clear condition that no penal action under section 271(1)(c) would be initiated. 2.The office note further depicts that the offer of the assessee was accepted by the Department. Once that was so, the Commissioner cannot take a different view and levy penalty. **An order based on an agreement cannot give rise to grievances and the same cannot be agitated**
31	**CIT v. Manjoo and Co. (2011) 335 ITR 527 (Kerala)**	Can winnings of prize money on unsold lottery tickets held by the distributor of lottery tickets be assessed as business income and be subject to normal rates of tax instead of the rates prescribed under section 115BB?	**The Kerela High Court:** 1.Receipt of winnings from lottery by the distributor was not on account of any physical or intellectual effort made by him and therefore cannot be said to be "income earned" by him in business. 2.Unsold lottery tickets cease to be stock-in-trade and become unsaleable and has no value except waste paper. 3.Further, winnings from lotteries are assessable under the special provisions of section 115BB, irrespective of the head under which such income falls. **Therefore, the High Court held that the rate of 30% prescribed under section 115BB is applicable in respect of winnings from lottery received by the istributor.**
32	**Indcom v. Commissioner of Income-tax (TDS) (2011) 335 ITR 485 (Calcutta)**		**The Calcutta High Court observed that:** 1.To attract the provisions of the section 194E, the person should be a non-resident sportsperson or non-resident sports association or institution. 2.The umpires and the match referees cannot be said to be any of the above. 3.Moreover, 194J is not attracted because it is applicable only in case of resident. 4.Therefore, although the payments made to non-resident umpires and the match referees are "income" which has accrued and arisen in India, the same are not taxable under the provisions of section 115BBA and thus, the assessee is **not liable to deduct tax under section 194E.** *Note - It may be noted that since income has accrued and arisen in India to the non-resident umpires and match referees, the TDS provisions under section 195 would be attracted and tax would be deductible at the rates in force.*