DIRECT TAXES CASE STUDY

FOR

CA FINAL NOV 2012

COMPILED BY

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MUMBAI (INDIA)

Source / Journals Referred:

- ≈ **Itatonline.org**
- ≈ **Income tax Review: Monthly journal of The Chamber of Tax Consultants.**
- ≈ **BCAJ (Bombay Chartered Accountant Society) Monthly journal**
- ≈ **AIFTP : All India federation of Tax Practioner Journal**
- ≈ **ICAI : CA Journal**
- ≈ **Taxmann.com**
- ≈ **Taxman : The tax law weekly**
- ≈ **Itat.nic.in**
- ≈ **SOT : Selected Orders of ITAT**
- ≈ **ITD : Income Tax tribunal decisions.**
- ≈ **DTR : Direct Tax Reporter.**
- ≈ **ITR : Income Tax Reporter**
- ≈ **CTR Encyclopedia of Income Tax Law.**

All the case decisions compiled below are selected on the basis of their practical applications in the Income Tax proceedings. These cases are pronounced between the periods Nov 2011 to June 2012 specifically applicable for CA FINAL NOV 2012 term.

❖ Section 5/ 195/163 : Transfer of Foreign company shares by non-resident to non-resident [Vodafone International Holdings B.V. vs. UOI - SC]

Supreme Court in this landmark judgement held, transfer of shares of foreign company by non-resident to non-resident does not attract Indian tax even if object is to acquire Indian assets held by the foreign company. Share holding in companies incorporated outside India. Where such shares became subject matter of offshore transfer between two non-residents, there is no liability for capital gains tax. On the facts of case the transaction of outright sale between two non-residents of a capital asset (share) outside India. Further, the transaction was entered in to on principal to principal basis. Therefore, no liability to deduct tax at source. In the absence of permanent establishment, profits were not attributable to Indian operations. Moreover, tax presence has to be viewed in the context of the transaction that is subjected to tax and not with reference to an entirely unrelated matter. Tax presence must be construed in the context and in a manner that brings the non-resident assessee under the jurisdiction of the Indian tax authorities. On the facts the revenue failed to establish any connection with section 9(1)(i). Under the circumstances, section 195 is not applicable. Sections 163(1)(c) and 9(1)(i) have to be read together. Section 163(1)(c) is not attracted as there was no transfer of capital asset situated in India, consequently Vodafone International Holdings cannot be proceeded against even under section 163 of the Act as representative assessee.

❖ Section 6: Subsidiary cannot be treated as deemed resident [Vodafone International Holdings B.V. vs. UOI - SC]

Supreme Court in this landmark judgement held "*Mere fact that a parent company exercise shareholder's influence on its subsidiaries does not generally imply that subsidiaries are to be deemed residents of State in which parent company resides*."

❖ Section 9: Income Deemed to accrue or arises in India, Tax authorities in India has no jurisdiction to split the payment [Vodafone International Holdings B.V. vs. UOI - SC]

A Cayman Island company called "CGP" Investments held 52% of the share capital of Hutchison Essar Ltd, an Indian company engaged in the mobile telecom business in India. The shares of CGP Investments were in turn held by another Cayman Island company called Hutchison Telecommunications (HTIL). The assessee, Vodafone International Holdings BV (VIH) a Netherlands based company, acquired from the second Cayman Islands Company, the shares in CGP Investments for a total consideration of US $ 11.08 billion.

A sale purchase agreement (SPA) was entered between appellant and HTIL under which HTIL agreed to transfer to appellant its entire issued share capital in CGP and thereby entire interest of HTIL in HEL was transferred to appellant. High Court held that VIH on purchase of CGP got indirect interest in HEL, acquired controlling right in certain indirect holding companies in HEL, controlling rights through shareholder agreements which included right to appoint directors in certain indirect holding companies in HEL, rights to use 'Hutch' brand in India, etc., which all constituted capital asset as per section 2(14). High Court further held that VIH by virtue of its diverse agreements had nexus with Indian Jurisdiction and hence proceedings initiated under section 201 for failure to withhold tax by VIH on payments made to HTIL could not be held lack of jurisdiction.

On facts it was noted that investment into India by a holding company (Parent company), HTIL through a maze of subsidiaries. It was also apparent that transaction involved 'outright sale' between two non-resident companies of a capital asset (Shares) outside India. Since the parties to transaction had not agreed upon a separate price for CGP share and High Court called as 'other rights and entitlements' (Including options, right to non-compete, control premium, customer base, etc.) it was not open to Revenue to split payment and consider a part of such payments for each of above items. Even otherwise, since there was an off shore transaction between two non–resident companies namely, HTIL and VIH and subject–matter of transaction was transfer of CGP (another non-resident company), Indian tax authorities had no territorial jurisdiction under section 9(1)(i) to tax said off shore transaction. Accordingly the Supreme Court set aside the order of High Court.

❖ Section 10A – 10B : Manufacture [CIT vs. Lovelesh Jain – Delhi HC]

Converting Gold bricks, biscuits or bars into ornaments amounts to manufacture and hence eligible for deduction u/s 10A/ 10B.

❖ Section 14A : Partners Share of Profit [Vishnu Anant Mahajan vs. ACIT (ITAT Ahmadabad Special Bench)

The question before the ITAT SB was that though a firm pays tax on its profit, whether the share of profit received by a partner from the firm, which is exempt in the hands of partner u/s 10(2A), can be considered for disallowance u/s 14A. Special Bench decided that the share of profit shall be considered for calculating disallowance u/s 14A.

❖ Section 28 : Foreign Currency Assets loss is assessable as Business loss [DCIT vs. Cosmo Films – Delhi ITAT]

The assessee converted the foreign currency assets and liabilities in to rupee terms at the exchange rate prevalent at the last date of financial year i.e. the date on which the balance sheet of the assessee was drawn and this was reflected in the profit and loss account regularly from year to year. In the current year it was loss while in the immediate preceding year there was gain. The loss is allowable as business loss.

❖ Section 30 (a)(i) : Repairs and renovation of Rented Premises [DCIT vs. Brijesh Thakker – Mumbai ITAT]

The assessee, a leading solicitor, had taken office premises on rental basis from one K [lessor] and carried out renovation work in the office premises, which included tiling, plastering, POP, fixing of marbles, replacement of existing windows frames, replacing of existing hardware and electrification work. He incurred extensive expenses on renovation work and claimed the same as revenue expenditure. AO treated the renovation expenses as capital expenditure and disallowed the same. On appeal, the assessee contended (i) that since the office premises did not belong to him and advantage of work carried could be shared for a limited period, renovation expenses incurred by him were that of revenue in nature, and (ii) that without prejudice the above the renovation expenses were covered by section 30(a)(i). CIT (A) held that the expenses had been incurred by the assessee on improving the premises taken on rent and hence revenue in nature, which was affirmed by ITAT.

❖ Section 32 : Depreciation on Computer Accessories [DCIT vs. Cosmo Films - ITAT Mum]

Computer accessories are integral part of computer system and hence depreciation @ 60% should be allowed to the assessee.

❖ Section 32 : Depreciation on Civil Component of wind mill [ACIT v. Parry Engineering & Electronics Ltd.- Ahd ITAT]

Device of Wind Mill and foundation, civil works, electrical installation, development expenses, is to be treated as wind mill and entitled to depreciation at the rate of plant and machinery as well as additional depreciation on entire device.

❖ Section 32 : Depreciation on Website Expenditure [Make Mytrip (India) (p) Ltd vs. DCIT - Delhi ITAT]

The assessee was engaged in the business of tour and travel and for the purpose of its business, had developed a website on which information about the assessee was available. The assessee claimed depreciation on website development expenses under the block of intangible assets. On a query to justify the claim, it was submitted that website was an intangible asset similar in nature to know-how, patents, copyrights, trade mark, licence and franchise. The website was owned by the assessee and was used for the purpose of business or profession. Therefore, depreciation at the rate of software was applicable. AO had disallowed the depreciation claim of the assessee by treating it as capital in nature. CIT (A) held that depreciation @ 25% is permissible, which was affirmed by ITAT.

❖ Section 37(1) : No disallowance for penalty / violation of procedural law [CIT vs. The stock and bond trading company – Bombay HC]

The assessee paid penalty/fine to BSE/NSE for infringement of procedural rules such as failure to maintain margins, trading beyond exposure limits, late submission of margin certificates, delay in making payment & deliveries etc. The AO disallowed the claim for deduction on the ground that there was an infringement of statutory law laid down by SEBI and the Explanation to s. 37(1) was attracted. High Court held as the payments made by the assessee to the Stock Exchange for violation of their regulation was not an account of an offence or which is prohibited by law, the invocation of the Explanation to s. 37 of the Act was not justified.

❖ Section 37(1) : Foreign Tour expenditure of Chairman's Wife [CIT vs. S & S Power Ltd. Mad HC]

The assessee company had claimed the foreign tour expenditure of chairman's wife as expenditure, which was disallowed by AO, but allowed by CIT (A). ITAT held that Foreign Tour expenditure of the chairman's wife, who accompanied him in foreign tour, is not an allowable expenditure, when she is not holding any official position in the company.

❖ Section 37 : Education Expenses of Director [Natco Exports (p) Ltd vs. CIT – 206 Taxman 491 Delhi HC]

Assessee-company incurred a certain expenditure on education of one of its directors, namely, Ruchika, who had undergone a course at United Kingdom from university of Nottingham, and claimed deduction of same as business expenditure. Ruchika had not executed any bond that she would work for assessee after completing her studies at abroad and on failure shall return money spent. Ruchika had completed her graduation course in year 2005 and even prior to completing her graduation course she applied for further studies in university of Nottingham in United Kingdom. HC held that education expenses of director cannot be treated as wholly & exclusively incurred for the purpose of business and hence is not allowable.

❖ Section 37(1) : Loss on account of Advance Rent [Seven Seas Petroleum vs. ACIT - Chennai ITAT]

Assessee entered in to a contract for purpose of storage of Kerosene oil and paid advance rent. But the Government prohibited the import of Kerosene oil. The assessee claimed the payment of advance rent as business loss. AO disallowed the loss on the ground that the assessee actually not used the storage facility. The Tribunal held that loss was incurred in the course of business and same is allowable as business loss under section 37.

- Section 40A(2)(ia) : Commission to Director [CIT vs. India Thermit Corporation – Delhi HC]

When commission paid to the Managing Director/Director was in accordance with the provisions of the Companies Act, 1956, then AO cannot make any disallowance on this account, merely when GP ratio of the company had been brought down in comparison to preceding years.

- Section 40(b)(v): Quantification of Remuneration in partnership deed [CIT vs. Asian Marketing – Rajasthan HC)

The assessee's partnership deed provided that the partners would be paid remuneration / salary "according to the standards and norms fixed by the relevant provisions of the Income Tax Act, 1961". The AO disallowed the claim for deduction of the salary paid to the partners u/s 40(b)(v) on the ground that as the deed did not quantify the amount of remuneration. High Court held that there is no need to mention the quantification of partner's remuneration in the partnership deed.

- Section 40(a)(ia) : No Disallowance for short deduction of TDS [DCIT vs. S K Tekriwal - ITAT Kolkata)

Assessee paid Rs. 3.37 crores as "machine hire charges" on which it deducted TDS u/s 194C at 1%. The AO held that the payment was "rent" and TDS ought to have been deducted at 10% u/s 194-I. He disallowed the expenditure u/s 40(a)(ia). This was reversed by the CIT (A). On appeal by the department, ITAT dismissed the appeal by stating that 40(a)(ia) disallowance does not apply to a case of short-deduction of tax at source. As the assessee had deducted u/s 194C, it was not a case of "non-deduction" of TDS.

- Section 49: Indexed cost / holding period of previous owner [Arun Shungloo Trust vs. CIT Delhi HC)

The settlor acquired property before 1.4.1981 and he settled in on trust on 5.1.1996. The assessee-trust sold the property and computed the indexed cost of acquisition on the basis that it "held" the property from the time the settlor had held it. The AO accepted that the settlor's cost of acquisition had to be treated as the assessee's cost of acquisition but held that the settlor's period of holding could not be treated as the assessee's period of holding. This was upheld by the Tribunal.

High Court allowed the appeal and held there is no reason why the legislature would want to deny or deprive an assessee the benefit of the previous holding for computing "indexed cost of acquisition" while allowing the said benefit for computing "indexed cost of improvement". The term "held by the assessee" should be interpreted to include the period during which the property was held by the previous owner.

- Section 50C : Not Applicable when Land / building held as stock in trade [CIT vs. Kan Constructions and colonizers – Allahabad HC)

The assessee sold a plot of land for Rs. 79 lakhs. The AO held that the said plot was a capital asset and that the gains had to be computed in accordance with s. 50C. The CIT (A) & Tribunal upheld the assessee's claim that as the said plot was held as stock-in-trade by the assessee, s. 50C did not apply by stating that for applicability of s. 50C, it is essential that an asset should be a “capital asset”.

❖ Section 54 : Exchange of old flat with new one [Jatinder Kumar Mohan vs. ITO - Mum ITAT]

Assessee had exchanged old flat with new flat to be constructed by builder under development agreement. It claimed exemption under section 54 in respect of capital gain on account of transfer of old flat. AO disallowed assessee's claim holding that assessee had neither purchased nor constructed house property within period prescribed under section 54. The question rose before ITAT was (i) whether acquisition of new flat under a development agreement in exchange of old flat amounts to construction of new flat for purpose of claiming deduction under section 54. (ii) Whether, therefore, assessee would be entitled to exemption if new flat had been constructed within a period of 3 years from date of transfer. ITAT had decided both issues in favour of the assessee.

❖ Section 54EC: Limit of 54EC applies to per transaction and not per financial year [ACIT vs. Raj Kumar Jain & sons -ITAT Jaipur]

In AY 2008-08, the assessee sold property for Rs. 2.47 crores and disclosed capital gain of Rs. 1.14 crores. To overcome the restriction of Rs. 50 lakh in the Proviso to s. 54EC, the assessee, within the prescribed period of 6 months, invested Rs. 50 lakhs on 31.03.2008 (FY 2007-08) & 10.06.2008 (FY 2008-09) and claimed a deduction of Rs. 1 crore. The AO rejected the claim though the CIT (A) allowed it. On appeal by the department, HELD reversing the CIT (A) by stating that the investment has to be linked to the financial year in which transfer has taken place and the claim for deduction cannot exceed Rs. 50 lakhs.

❖ Section 54F : Construction of House within specified period is not necessary [CIT vs. Sambandam Udaykumar – Karnataka HC]

The assessee sold shares for Rs. 4.18 crores and, within 12 months, invested Rs. 2.16 crores thereof to construct a house property and claimed exemption u/s 54F. However, as even after the expiry of 3 years of the date of transfer, the construction of the house was not complete and sale deed not executed, the AO & CIT (A) denied relief u/s 54F though the Tribunal granted it. High Court dismissed the appeal of the department and held the intention of the Legislature was to **encourage investments** in the acquisition of a residential house and **completion of construction or occupation is not the requirement of law**. The words used in the section are ‘purchased’ or ‘constructed’. Merely because the sale deed had not been executed or that **construction is not complete** and it is not in a fit condition to be occupied does not disentitle the assessee to claim s. 54F relief.

❖ Section 54F : Under Construction building [ACIT vs. Sudhakar Ram – Mum ITAT]

The assessee earned long term capital gain on sale of shares and a flat. It claimed deduction of said capital gain under section 54F being investment in a new house. The Assessing Officer noted that the assessee had shown investment in two new flats. The Assessing Officer further found that the building was under construction stage and the assessee had chosen to pay the entire advance and, therefore, deduction under section 54F could not be given. On appeal, the Commissioner (Appeals) took a view that where both the flats which were adjacent to each other and having been renovated for use of one house for the purpose of residence and since the premises were actually being used as one house, the same was to be considered as single unit for the purpose of section 54F. He accordingly, allowed the claim of deduction under section 54F. The same was confirmed by ITAT by stating that " *exemption u/s 54F will be available to the assessee if the building in which investment was made was under construction and assessee had paid entire amount as advance."*

- **Section 56 : Gift Received on Marriage – [Rajinder Mohan Lal vs. DCIT – Chandigarh ITAT]**

Assessee received various gifts from his NRI friends, at the occasion of his daughter's marriage. As gift cheques are **in the name of assessee**, exemption u/s 56 for gift received on account of marriages cannot be allowed to the assessee and accordingly gifts received was treated as income from other sources of the assessee.

- **Section 80-IA : Forfeiture of Advances [CIT vs. Jackson Engineers Ltd. - Delhi HC]**

Forfeiture of Advances received from customers is not derived from any goods or services produced and hence deduction u/s 80-IA is not allowable.

- **Section 80-IB : Production of Perfumed hair Oil [CIT vs. Beta Cosmetics - Bombay HC]**

Production of perfumed hair oil by using coconut oil and mineral oil is manufacture and hence eligible for deduction u/s 80-IB.

- **Section 80IC : Assembling of TV sets amounts to manufacture [CIT vs. I Tech Electronics – Gauhati HC]**

Assessee which is in the business of producing of TV sets by purchasing and assembling items like cabinet, chassis, IC, Picture tube, etc., could be held to be manufacturing activity and entitled to deduction under section 80IC.

- **Section 139(5) : Original Return vs. Revised Return [Ramesh R Shah vs. ACIT – ITAT Mumbai]**

When original return filed u/s 139(1) declaring positive income , claim for carry forward of long term capital loss made in revised return u/s 139 (5) is allowable.

- **Section 143(3) : Assessment order without the signature of AO is void [M/s Vijay Corporation vs. ITO – ITAT Mumbai)**

AO passed an assessment order u/s 143(3) and issued the Income-tax Computation Form (ITNS 150), Demand Notice u/s 156 and Penalty Notice u/s 271(1)(c). While all the other documents were signed by the AO, the assessment order was not signed. In reply to the assessee's contention that the assessment order was invalid, ITAT held that if the assessment order is not signed, then the fact that he has signed the tax computation form and the notice of demand is irrelevant. The omission to sign the assessment order cannot be explained by relying on s. 292B.

❖ Section 144 : Books of accounts- Rejection [ACIT vs. Roopchand Tharani – Chhattisgarh HC]

During the course of assessment proceedings, AO came to a conclusion that although assessee maintained books of accounts/documents on day-to-day basis but the same was not fully verifiable. He, therefore, rejected books of account invoking the provisions of section 145(3) and thereafter, estimated net profit rate and made addition. On appeal, CIT(A) held that AO did not point out specific mistake warranting application of provisions of section 145(3), therefore, the addition was not reasonable and, hence deleted it. Tribunal confirmed the order of CIT (A). On appeal, HC confirmed the view of ITAT by stating that AO cannot reject the audited books of accounts without pointing out specific defects.

❖ Section 145 : Rejection of Books of accounts [Bhavani Constructions vs. DCIT – AHD ITAT]

The Assessee is a Government Contractor. During the assessment proceedings no defect for rejection of books of account could be pointed out by the Assessing Officer. Before the ITAT assessee submitted that the main reason for rejection of accounts was the fall in Gross Profit during the relevant year, which could not be a valid ground for rejection of the accounts of the assessee. ITAT held that the AO cannot reject the audited books of accounts merely because there is a fall in the net profit rate.

❖ Section 147 : Sanction of CIT [Ghanshyam K Khabrani vs. ACIT – Bombay HC)

The AO issued a notice u/s 148 to reopen the assessment. As no assessment had been made u/s 143(3) or s. 147 for that year and four years had expired, the AO was required to obtain the sanction of the JCIT (which included an Addl. CIT) u/s 151(2). The AO submitted a proposal to the CIT through the Addl. CIT. The Addl. CIT forwarded the proposal to the CIT and requested the CIT to grant sanction, which the CIT did. The assessee filed a writ petition challenging the reopening on the ground that as s. 151(2) required the JCIT/Addl. CIT to grant approval, the approval of the CIT was not valid. High Court had allowed the same.

❖ Section 147 : Reopening on the basis of retrospective amendment is invalid [Ganesh Housing Corporation Ltd. vs. DCIT – Gujarat HC]

For AY 2006-07, the assessee claimed s. 80-IB (10) deduction of Rs. 11.38 crores which was accepted by the AO in s. 143(3) assessment. Subsequently, within 4 years from the end of the AY, the AO reopened the assessment u/s 148 on the ground that the assessee had not complied with s. 80-IB(10) including that after the insertion of the Explanation to s. 80-IB(10) by the FA (No. 2) Act 2009 w.r.e.f. 1.4.2000, a contractor was not eligible for deduction u/s 80-IB(10). The assessee challenged the s.148 notice by a Writ Petition. High Court by allowing the WP held As regards the retrospective amendment, if an Explanation is added to a section for the removal of doubts, the implication is that the law was the same from the very beginning and the same is further explained by way of addition of the Explanation. <u>It is not a case of introduction of a new provision of law by retrospective operation</u>. As regards the formation of opinion, the assessee had disclosed all the material relevant for claiming s. 80-IB(10) deduction and there was no suppression of material.

❖ Section 147 : Reassessment of other incomes is not permissible, if no addition on original issue mentioned in 148 Notice [ACIT vs. Major Deepak Mehta – Chhattisgarh HC]

The AO reopened the assessment u/s 148 on the ground that certain income had escaped assessment. However, in the reassessment order, the AO did not assess the income which was referred to in the reasons but instead assessed other income which had escaped assessment. The Tribunal quashed the reassessment order, which was confirmed by HC. High Court held if the AO does not assess the income in respect of which the s. 148 notice was issued, it means there was no 'reason to believe' that income had escaped assessment. If so, the AO has no jurisdiction to assess any other escaped income that comes to his notice during the reassessment proceedings.

❖ Section 147 : Reasons for reopening [CIT vs. Videsh Sanchar Nigam Limited – Bombay HC]

Inspite of request made by the assessee, the reason for reopening had not been provided to the assessee. HC held that as reasons for reopening were not furnished to the assessee before completion of assessment and hence reassessment is bad in law.

❖ Section 153C : Failure to obtain JCIT's Approval will render assessment void ab initio [Akil Gulamali Somji vs. ITO (ITAT Pune)

A search & seizure action u/s 132 on the premises of assessee, thereafter a notice u/s 153C was issued to the assessee and assessment u/s 153C were framed. In passing the assessment orders, the AO omitted to obtain the consent of the JCIT as mandated by s. 153D. Before the Tribunal, the assessee argued that the failure to obtain the JCIT's consent rendered the assessment a nullity. Tribunal upheld the contention of ITAT.

❖ Section 206AA : Not applicable to assessee having no taxable income [A Kowsalya Bai vs. UOI – WP 12780/2010 -Kar HC]

The assessee, whose income was below taxable limit, filed Form 15G and requested that no TDS be deducted on the interest on fixed deposit. However, she was informed that in view of s. 206AA inserted by FA 2009, TDS would have to be deducted in the absence of PAN. The assessee filed a writ petition to challenge s. 206AA as being arbitrary and unconstitutional to the extent that it compelled persons with no taxable income to obtain a PAN.

High Court held - "*U/s 139A, only persons whose income is chargeable to tax are required to obtain a PAN. However, s. 206AA compels even persons without a taxable income to obtain a PAN to avoid TDS. This creates difficulty for poor and illiterate persons who make small investments and discourages them to invest money. S. 206AA runs counter to s. 139A and is discriminatory. Accordingly, s.206AA is read down as being inapplicable to persons whose income is less than the taxable limit.*"

❖ Section 234A, 234B & 234C: Not payable if AO does direct it to charge in the assessment order [CIT vs. Awadh Hotels (p) Ltd – Allahabad HC)

The AO passed a s. 143(3) assessment order in which he omitted to direct that interest u/s 234A, 234B & 234C should be levied. ITAT, held that in the absence of a specific direction, interest was not leviable. Before the High Court, the department argued that as interest u/s 234A, 234B & 234C was mandatory; there was no need for the assessment order to specifically direct that interest should be charged. High Court, by dismissing the appeal, held that the **mandatory nature** of charging of interest and the **actual charging** of interest by application of mind and the mention of the proviso of law under which such interest is charged are two different things.

❖ Section 40(a)(ia) : TDS u/s 194A – Disputed Interest [Akbar Abdul Ali vs. ACIT - ITAT Mumbai]

No disallowance u/s 40(a)(ia) can be made when assessee has made payment of disputed interest as per the Court order without deducting Tax at source.

❖ Section 194J : Transaction charges paid to BSE [CIT vs. Kotak Securities Ltd – Bombay HC]

The assessee paid Rs.5.17 crores to the Bombay Stock Exchange towards "transaction charges" for getting access to the "BOLT" trading system. The AO held that the payment constituted 'fees for technical services' u/s 194J and that as there was a failure to deduct TDS u/s 194-J, the amount was disallowable u/s 40(a)(i). This was confirmed by HC by stating that A stock exchange manages the entire trading activity carried on by its members and accordingly renders "managerial services". Consequently, the transaction charges constituted "fees for technical services" u/s 194-J and the assessee ought to have deducted TDS**.**

❖ Section 234A / 132 : Cash Seized from third party to be adjusted against advance tax liability of assessee [Ram S Sarda vs. DCIT – Rajkot ITAT]

A search and seizure was carried out at the premises of the assessee and cash was seized. Assessee requested that the seized cash be treated as advance tax paid and adjust it against cash liability. However the Assessing Officer has not adjusted the cash seized. The Tribunal held that the cash seized from third party was found to be the cash of the assessee and this fact was not disputed. Therefore the cash seized from the third party or the cash seized from the assessee would retain the same character and did not affect processing of such seized cash. Accordingly the Tribunal directed the Assessing Officer to adjust the seized cash against advance tax liability from the date of seizure itself.

❖ Section 253 : Direct Stay petition at ITAT maintainable [Honeywell Automation Ltd. vs. DCIT – Pune ITAT]

Direct Stay application before ITAT is maintainable and it is not a requirement of law that assessee should necessarily approach commissioner before approaching ITAT for grant of stay.

- Section 271(1)(c) : No penalty u/s 271(1)(c) if tax payable under MAT [CIT vs. Nalwa Sons Investment Ltd – Supreme Court) Very Important

For AY 2001-02, the assessee filed a ROI declaring loss of Rs. 43.47 crores under the normal provisions of the Act and book profits of Rs. 3.86 crores u/s 115JB. The AO assessed a loss at Rs. 36.95 crores as per normal provisions and book profits at Rs.4.01 crores. As there was a reduction in the loss under the normal provisions owing to various additions and disallowances, the AO levied penalty u/s 271(1)(c)

Before the High Court, the assessee argued that even if there was a concealment u/s 271(1)(c) with respect to the normal assessment, the same was not relevant because the assessee's income was assessed u/s 115JB. HC accepted the plea and held that as the s. 115JB "book profits" were by a legal fiction deemed to be the "total income", the furnishing of wrong particulars had no effect on "the amount of tax sought to be evaded" as defined in Explanation 4 to s. 271(1)(c). On appeal by the department to the Supreme Court dismissed the departmental appeal.

- Section 271(1)(c): Penalty Should not be imposed for breach of section 50C [Chimanlal Manilal Patel vs. ACIT (ITAT Ahmadabad)

The assessee sold land for Rs. 36 lakhs and offered capital gains on the same. The AO reopened the assessment u/s 147 on the ground that the assessee ought to have taken the consideration at the market value of the land as per s. 50C. The assessee accepted and offered capital gains as per s. 50C. The AO levied penalty u/s 271(1)(c) which was confirmed by the CIT (A) on the ground that the assessee's action of offering capital gains u/s 50C was after the s. 148 notice and not voluntary. On appeal by the assessee tribunal HELD that the fact that the assessee agreed to the additions because of the deeming provisions of s. 50C does not mean that he filed inaccurate particulars of his income. The assessee's acceptance of the addition on the basis of the valuation made by the stamp valuation authority is not conclusive proof that the sale consideration as per the sale agreement was incorrect and wrong and so s. 271(1)(c) penalty cannot be levied.

- Section 271(1)(c) : CA's opinion will not make the claim genuine [Chadha Sugars (p) Ltd vs. ACIT – ITAT Delhi)

Assessee obtained the opinion of a Chartered Accountant on whether expenditure on fees to the Registrar of Companies for increasing authorized capital can be claimed as revenue expenditure. The CA relied on judicial precedents and opined that the issue was debatable and a claim could be made on the basis that if two views were possible, the view in favour of the assessee should be taken. The assessee claimed deduction and even the tax auditor did not qualify the same. The claim of the assessee was rejected by AO and levied penalty u/s 271(1)(c), which was confirmed by CIT (A). ITAT had confirmed the penalty u/s 271(1)(c) by stating that opinion of CA's does not make claim bonafide one.

- Section 271(1)(c) : No Penalty for disallowance u/s 40(a)(ia) [ACIT vs. Mazda Ltd Ahmadabad ITAT]

AO had made certain disallowance u/s 40(a)(ia) for non deduction of Tax at source. Further, penalty u/s 271(1)(c) had been imposed. ITAT held Penalty u/s 271(1)(c) cannot be imposed on additions made by making a disallowance u/s 40(a)(ia) for non deduction of TDS.

- Section 271AAA: Waiver of Penalty [CIT vs. Pioneer Marbles & Interiors (p) Ltd – ITAT Kolkata]

Pursuant to a search u/s 132 the assessee disclosed additional income u/s 132(4) and offered the same to tax. However, the taxes due on the same were paid only after the passing of the assessment order. The AO held that as the taxes were not paid at the time of filing the ROI, the immunity from penalty u/s 271AAA was not available. This was reversed by the CIT (A). On appeal by the department, HELD dismissing the appeal by stating that While payment of taxes & interest is a condition precedent for availing immunity u/s 271AAA(2), there is no time limit for such payment. As there is no such requirement in s. 271 AAA, there is no outer limit for payment of the due tax & interest.

- Tax Rate in DTAA : Inclusive of Surcharge / Education cess - [DIC Asia Pacific vs. ADIT – Kolkata ITAT]

The assessee, a Singapore company, offered interest and royalty income to tax at the rate of 15% & 10% as specified in Articles 11 & 12 of the India-Singapore DTAA respectively. The AO held that the assessee was also liable to pay surcharge and education cess in addition to the tax. The CIT (A) upheld the assessee's claim that surcharge was not leviable though he rejected the claim with regard to cess. ITAT held that tax rates provided in DTAA is final and should not be increased by surcharge & education cess.

Note: Citation of the Case decisions as well as full text of the decision will be provided as per requirement of the readers. Feel free to mail your queries to " bikashbogi@yahoo.co.in". or contact me at +91-9930934403 .

Post your valuable suggestions / comments regarding the above compilations for further improvements in below link:

http://www.caclubindia.com/community/case-study-ca-final-direct-indirect-taxes-3701.asp

Disclaimer: Please go through the full text of the cases before applying in practical situations.

Success is not the matter of being the BEST & WINNING the race: Success is a matter of HANDLING the WORST & FINISHING the Race.