INCOME TAX

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

"Current Repairs" u/s 31 and the explanation thereof, refers to expenditure affected to preserve and maintain an already existing asset and the object of expenditure must not be to bring a new asset into existence or to obtain a new advantage.

Expenditure incurred on demolition and re-erection of a cell room : It was a Capital Expenditure because it is clear that after completely demolishing the old cell room, an entire new cell room was erected. The money spent was not merely on repairs of the cell room, but for constructing a new cell room.

Expenditure incurred on purchase of pumping set, mono block pump and two transformers, which were parts of a bigger plant : They were not stand alone equipment, but were part of the bigger plant. Therefore, it would be treated as replacement of those parts and the expenditure would be eligible for deduction under section 37(1).

2. CIT v. Jagatjit Industries Ltd. (2011) 337 ITR 21 (Delhi)

For determining the nature of receipts, due consideration should be given to THE SOURCE OF FUNDS and NOT to the utilization of funds.

Therefore, the gain arising on foreign currency fluctuation in respect of share capital raised in outside country will be treated as capital receipt. Utilization of such gains whether for acquiring the fixed assets or as working capital is irrelevant.

3. DIT v. Brahamputra Capital Financial Services Ltd. (2011) 335 ITR 182 (Delhi)

Fact : NBFC gave interest bearing loans to group concern. It has not recognised the interest/discount etc. as per the NBFC Prudential Norms (RBI) Directions, 1998 because those group concern became NPA as per the said norms and even the recovery of principal amount was doubtful.

Decision : The interest on the NPA, whose recovery was doubtful, was not accounted for in the books and the assessee is bound by the RBI Guidelines for such treatment. THERE WAS NO REAL ACCRUAL OF INTEREST INCOME IN THE HANDS OF THE ASSESSEE and, hence, it would not be chargeable to tax under Section 5.

4. Shree Balaji Alloys v. CIT (2011) 333 ITR 335 (J&K)

Assessee received Excise Duty refund & interest subsidy in pursuance of the New Industrial Policy in J&K. These were not granted for creation of new assets and the incentives would be available only on commencement of commercial production. HC observed that these were NOT THE SOLE CRITERIA for determining the nature of

subsidy. The fact that such incentives were PROVIDED TO ACHIEVE A PUBLIC PURPOSE should also be considered & hence, such subsidy could not be construed as operational incentive for the assessee. Hence, such incentives are capital receipts not liable to tax.

5. CIT v. Sahkari Chini Mills Ltd. (2010) 328 ITR 27 (All.)

The incentive received under Scheme of Central Government for recoupment of Capital Employed and **repayment of Loan from FI for setting up / expansion of** new sugar **factory** IS NOT IN COURSE OF TRADE because the main eligibility condition for the scheme was utilization of incentive for repayment of specified loans. Therefore, it is a **CAPITAL RECEIPT** NOT CHARGEABLE to TAX.

*Allahabad High Court followed the ruling of the Apex Court in **CIT vs. Ponni Sugar & Chemicals Ltd. (2008)** 306 ITR 392.*

6. CIT v. Saurashtra Cement Ltd. (2010) 325 ITR 422 (SC)

If Supplier fails to supply the machinery to the company within stipulated time, the agreement provides for Liquidated damages of 5% of the price of that machinery, without proof of actual loss. Such liquidated damages, received by assessee, will be CAPITAL RECEIPT because the damages were directly linked with the procurement of a capital asset and the liquidated damages were not received in course of profit earning process (not in the ordinary course of business).

7. CIT v. Udupi Builders P. Ltd. (2009) 319 ITR 440 (Kar.)

Company established Hotel industry based on subsidy **ANNOUNCED** by State Govt to encourage tourism. but Subsidy was **RECEIVED AFTER COMPLETION OF HOTEL PROJECT** & commencement of business. The purpose of subsidy is important & not the time of receipt (may be received even after 10yrs). Hence it is **CAPITAL RECEIPT not chargeable to tax.**

8. Joseph George and Co. v. ITO (2010) 328 ITR 161 (Kerala)

Receipts from lodging business will be chargeable to tax under the head Profit & Gain from Business or Professional. However, letting out of its building to the bank on long-term lease will be RENTAL INCOME to be assessed as Income from House Property.

9. CIT v. Asian Hotels Ltd. (2010) 323 ITR 490 (Del.)

Notional Interest on interest free deposit given by tenant to landlord is NOT assessable either as business income or income from house property.

10. Rollatainers Ltd. v. CIT (2011) 339 ITR 54 (Del.)

The Corporate Debt Restructuring Cell approved the waiver of working capital loans in form of Cash Credit Limit and also the Term Loan taken by the assessee (a sick company) from banks & FIs.

High Court Decision

- The provision of Sec 41(1) are attracted in respect of **Waiver Of The Working Capital Loan** utilized for day-to-day business operations, since it **AMOUNTED TO REMISSION OF TRADING LIABILITY.**
- In the case of **Waiver Of Term Loan** for purchasing capital assets, the provision of Sec 41(1) are not attracted since it **CANNOT** be treated as remission or cessation of a trading liability.

11. CIT v. Tulip Star Hotels Ltd. (2011) 338 ITR 482 (Del.)

The assessee company had borrowed certain funds which it had utilized to subscribe to the equity capital of subsidiary company.

Under Sec. 36(1)(iii), the amount of the interest paid in respect of capital borrowed for the purposes of the business or profession is allowable as deduction. In this case, it has been held that interest paid on capital borrowed for investment in a subsidiary company is allowable as deduction since the subsidiary company was formed to carry on the business of the parent company in a more effective manner.

12. CIT v. Cable Corporation of India Ltd. (2011) 336 ITR 56 (Bom.)

As per explanation to Sec 41(4), "moneys payable" in respect to sale of a building, machinery, plant or furniture would be the price for which it is sold. Therefore, as per Sec 43(6), the opening WDV of block of assets has to be adjusted by the amount for which the asset is actually sold and not by its market value.

However, in case of scrap, the amount of scrap value (i.e. FMV) has to be reduced as per Sec43(6) to arrive at the closing WDV.

13. Shanti Bhushan v. CIT (2011) 336 ITR 26 (Delhi)

Fact : The assessee was a lawyer by profession. He contended that the heart should be treated as plant as it is used for the purpose of his professional work and expenditure on heart surgery should be allowed as business expenditure either u/s 31 as current repairs to plant or u/s 37 as an expense incurred wholly and exclusively for the purpose of profession.

Decision : The High Court held that:-

I. The expenditure on heart surgery is not allowable as repairs to plant u/s 31 because;
   - To allow the heart surgery expenditure as repair expenses to plant, the heart should have been shown as an asset in PY and in earlier years.

   - The assessee would face difficulty in arriving at the cost of acquisition of such an asset for showing in his books of account.
   - Under sec 43(3), Plant has inclusive definition but the plant must have been used as a business tool which is not true in case of heart. Therefore, the heart cannot be said to be plant for the business or profession of the assessee.

II. The claim for allowing the said expenditure u/s 37 is also not tenable because;
   - As per Sec 37, the said expenditure must be incurred wholly and exclusively for the purpose of assessee's profession. Healthy heart will increase the efficiency of human being IN EVERY FIELD including professional work. Therefore, there is NO DIRECT NEXUS between said expenditure and his efficiency in the professional field.

14. CIT v. ITC Hotels Ltd. (2011) 334 ITR 109 (Kar.)

Karnataka HC held that the expenditure incurred on the issue and collection of debenture shall be treated as revenue expenditure even in case of convertible debenture.

However, it may be noted that Ahmedabad HC, in case of Banco Products (India) Ltd. v. CIT (1999), held that since the convertible debenture have characteristics of equity shares, such debentures cannot be termed as debt and therefore proportionate issue expenses of such debentures that relates to the equity base of the company has to be treated as capital expenditure.

15. DIT v. DSD Noell GmbH (2011) 333 ITR 304 (Delhi)

The assessee is a German Company providing engineering and technical services for various turnkey projects eligible for PRESUMPTIVE TAXATION SCHEME u/s 44BBB. Assessee fulfils all the conditions of Sec.44BBB(1) & thus, the provision of Sec 28 to 44AA would not be applicable for computation of business income and a sum equal to 10% of the amount paid or payable to the assessee would be deemed as its business income.

The assessing officer CANNOT bring to tax the actual profit as per books of accounts, even if the same is higher than 10% of receipts which are deemed to be the profit u/s 44BBB in case of foreign company engaged in turnkey project.

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

Assessee, engaged in running cinemas, incurred expenditure towards architect's fee for examining the technical viability of proposal for takeover of cinema theatre & converts it into multiplex theatre (for existing business with a common administration and common fund). This project was dropped due to lack of financial & technical viability. The expenditure was of REVENUE NATURE as there in no creation of new asset.

HC says that the relevant factor is whether or not a new business / asset comes into existence.

17. B. Raveendran Pillai v. CIT (2011) 332 ITR 531 (Kerala)

Assessee purchased a Hospital which was running in the same building, in the same town, in the same name for several years. Previous owners transferred the right TO USE THE NAME & the goodwill to the assessee. Assessee derived benefit of retention of continued trust of the patients of previous owners. Thus, it was paid for ACQUIRING BUSINESS AND COMMERCIAL RIGHT and comparable with trade mark, franchise, copyright etc. referred to in Sec 32(1)(ii). Hence, depreciation is allowable on such goodwill being a commercial right.

18. Global Geophysical Services Ltd., In re (2011) 332 ITR 418 (AAR)

The Seismic Data (in processed form) is used to create highly accurate images of the earth's sub-surface which in turn are used by the exploration and production companies (like ONGC, Cairn Energy) for locating potential oil and gas reserves based upon the geology observed. The said **activities and services of the applicant clearly fall within the description of Sec44BB**.

19. Federal Bank Ltd. v. ACIT (2011) 332 ITR 319 (Kerala)

There is no ground to treat the communication devices (e.g. EPBAX & Mobile Phones) as Computers. Hence, Communication devices are not entitled to higher depre at 60%.

20. Iskraemeco Regent Ltd. v. CIT (2011) 331 ITR 317 (Mad.)

The Company took loan for purchase of Capital Asset. The waiver of a portion of principal of the loan would not amount to remission of trading liability to attract the provisions of Section 41(1). Such waiver will also not be treated as benefit ARISING OUT OF BUSINESS for the purpose Sec 28 (iv).

21. CIT v. Yamaha Motor India Pvt. Ltd. (2010) 328 ITR 297 (Delhi)

Issue – Whether depreciation is allowable on WDV of ENTIRE Block which includes some discarded machines & hence, cannot be put to use during the relevant PY.

Decision – "Used for the purpose of the business" in Sec 32 in respect of discarded machineries would mean the use in business in earlier financial years. Hence, the depreciation can be claimed provided the block continues to exist in the relevant PY.

22. Echjay Forgings Ltd. v. ACIT (2010) 328 ITR 286 (Bom.)

The company incurred expenditure on higher education of the director's son abroad be claimed as business expenditure u/s 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. There was no nexus between the education expenditure incurred abroad for the director's son and the business of the assessee company. Therefore, the aforesaid expenditure was not deductible.

23. Dr. Aswath N. Rao v. ACIT (2010) 326 ITR 188 (Karn.)

Expenditure incurred for purchase of 2nd hand medical equipment which was going to be dismantled and to be used as spare parts for existing equipment is REVENUE expenditure allowable in the year of purchase.

However, if the intention was to use such machinery on a standalone basis, then the expenditure would be treated as a capital expenditure and the depreciation would be allowable on the basis of date on which it was put to use.

24. CIT v. Sagar Talkies (2010) 325 ITR 133 (Karn.)

Assessee replaced the old sound system with a new Dolby stereo system. This had not benefited the assessee in any way with regard to the total income since there was no change in seating capacity of the theatre or increase in the tariff rate of the ticket. In such case, the expenditure on such change of sound system could not be considered as capital in nature.

25. T.R.F. Ltd. v. CIT (2010) 323 ITR 397 (SC)

After 1.4.1989, it is not necessary for assessee to establish that the debt, in fact, has become irrecoverable. It is enough if bad debt is written off as irrecoverable in the accounts of assessee for the previous year. Therefore, there is presently no requirement to prove that the debt has actually become irrecoverable.

26. CIT v. Neelavathi & Others (2010) 322 ITR 643 (Karn)

Payment to Police & Gundas to keep away from Cinema Theatre run by assessee amounts to bribe / illegal payment. Hence deduction is NOT ALLOWABLE.

27. CIT v. Hindustan Zinc Ltd. (2010) 322 ITR 478 (Raj.)

Assessee company required large quantity of water for its day-to-day operation. It incurred expenditure for alteration of dam (constructed by State Govt) to ensure sharing of water with State Govt. without having any right or ownership in dam or water. It is an OPERATIONAL expense & REVENUE in nature.

28. Millennia Developers (P) Ltd. v. DCIT (2010) 322 ITR 401 (Karn.)

Regularization fee / compounding fee paid to Karnataka Municipal Corporation for deviations in constructing structure and violating the plan sanctioned.

HC held that the amount paid to compound an offence is obviously a penalty and hence, does not qualify for deduction u/s 37. The principle of substance over form has

been applied in disallowing an expenditure in the nature of penalty, though the same has been described as regularization fee / compounding fee.

29. CIT v. Smt. A. Sivakami and Another (2010) 322 ITR 64

Assessee is eligible to claim depreciation even on those buses which are not registered in her name as she is beneficial owner and she has made available all the documents relating to loan taken for the purchase of buses & its repayment.

To tax the income, the owner is a person who is entitled to receive income from property in his own right. Owner need not necessarily be lawful owner entitled to pass on the title of property to another.

30. CIT v. DCM Ltd. (2010) 320 ITR 307 (Delhi)

Assessee had four units of textile business. One of the UNIT (not whole business) had to be closed down and the assessee borrowed money to pay retrenchment compensation to employees. Such retrenchment compensation & interest on borrowed money will be treated as REVENUE expenditure since after closure of the unit, the remaining business continued and there was inter-connection in the functioning of different units. Therefore, if it closes the ENTIRE BUSINESS, then it would be a CAPITAL expenditure.

31. CIT v. VTM Limited (2009) 319 ITR 336 (Mad.)

Assessee company, a manufacturer of Textile Goods, purchased windmill. ADDITIONAL DEPRECIATION u/s 32(1)(iia) IS ALLOWABLE because the provision does not state that the setting up of a new machinery or plant should have any operational connectivity to the article or thing that is already being manufactured by the assessee.

32. DIT (International Taxation) v. Schlumberger Asia Services Ltd. (2009) (Uttrakhand)

The reimbursement of expenses towards the CUSTOMS DUTY paid by the assessee, being statutory in nature, COULD NOT FORM PART OF AMOUNT for the purpose of deemed profits u/s 44BB, unlike the other amounts received towards reimbursement.

It was observed that for import of machinery, the liability to pay the customs duty was on ONGC, who had hired the services of assessee company in contract and there could not be any profit element in reimbursement of customs duty paid by the assessee.

33. CIT v. Mihir Textiles Ltd. (2009) 316 ITR 403 (Guj.)

Money borrowed by issue of debentures is in nature of LOAN & cannot assume as investment. So, expenditure in the nature of commitment charges at the time of issuing such debenture would be on REVENUE account only. Hence such charges are allowable as deduction u/s 36(1).

Gujrat HC has followed decision of Supreme Court in in DCIT v. Core Health Care Ltd 2008.

34. CIT v. Rajiv Shukla (2011) 334 ITR 138 (Delhi)

The capital gain arising on transfer of a depreciable asset shall be treated as capital gain arising on transfer of short-term capital asset in only for the purpose of Sec 48 & 49 and NOT FOR THE PURPOSE OF ANY OTHER SECTION.

Section 54F being an independent section will not be bound by the provision of sec 50. Hence, the depreciable asset if held for more than 36 months shall be a LONG TERM CAPITAL ASSET as per the provision of sec 2(29A).

Therefore, the exemption u/s 54F on transfer of depreciable asset held for more than 36 months cannot be denied on account of fiction created by section 50.

35. CIT v. Smt. K. G. Rukminiammma (2011) 331 ITR 211 (Kar.)

Builder, on his own expenses, constructed eight flats on the land of the assessee & handed over four flats to the assessee. The assessee will be entitled to get exemption u/s 54 in respect of ALL FOUR FLATS as all these flats are situated in the same residential building & hence, will constitute A SINGLE RESIDENTIAL HOUSE for the purpose of Sec 54. *[Same Judgement was given in **Anand Basappa 2009 (Kar.)**]*

36. CIT v. Manjula J. Shah 16 Taxman 42 (Bom.)

Bombay HC held that by way of "deeming holding period fiction" (in case of gifted asset) as per Explanation 1 to Sec 2(42A), the assessee is deemed to have held the capital asset from the year the asset was held by the previous owner. Therefore, for determining the indexed cost of acquisition u/s 48, THE ASSESSEE MUST BE TREATED TO HAVE HELD THE ASSET FROM THE YEAR THE ASSET WAS **FIRST HELD BY THE PREVIOUS OWNER** (accordingly, the CII for the year the asset was first held by the PRIVIOUS OWNER would be considered.)

Hence, in case of Gifted asset, the **indexed cost of acquisition** u/s 48 has to be computed with reference to the **YEAR IN WHICH THE PREVIOUS OWNER FIRST HELD THE ASSET** and not the year in which the assessee became the owner of the asset.

37. CIT v. Gurnam Singh (2010) 327 ITR 278 (P&H)

Fact : Assessee claimed exemption u/s 54B of Agricultural Land purchased by him out of sale proceeds of agricultural land. His son was co-owner of that agricultural land as per sale deed. The Revenue raised objection that the land was registered in his son's name.

Decision : It is not the case that the sale proceeds were used for other purpose or beyond the stipulated period & thus, it is no contrary to provisions of law. Merely because the assessee's son was shown in sale deed as co-owner, it did not make any difference and hence the assessee is entitled to exemption u/s 54B.

38. P. P. Menon v. CIT (2010) 325 ITR 122 (Ker.)

One Partner takes over land & building of firm on its dissolution. He sold that Land & Building in just 3days. The benefit of "including the period of holding of previous owner u/s 2(42A) read with Sec49(1)(iii)(b)" can be availed ONLY IF DISSOLUTION WAS TAKEN PLACE BEFORE 1.4.1987. Thus, in this case there will be only STCG / STCL as period of holding was 3 days and not LTCG / LTCL.

39. Hindustan Unilever Ltd. v. DCIT (2010) 325 ITR 102 (Bom.)

For exemption u/s 54EC, the capital gain should be INVESTED in long term specified asset within 6months from date of transfer. If, assessee made payment within 6 months, then the exemption cannot be denied merely because the bond was issued (or date of allotment) after expiry of 6months.

40. Navin Jindal v. ACIT (2010) 320 ITR 708 (SC)

For determining whether capital gain on renunciation of right to subscribe for additional shares is short-term or long-term, the period of holding would be from the date on which such right to subscribe for additional shares comes into existence(i.e. when company passes resolution).

41. CIT v. Manjoo and Co. (2011) 335 ITR 527 (Kerala)

Winning of prize money on unsold lottery tickets held by the distributor of lottery tickets will be subject to SPECIAL RATE OF TAX u/s 115BB i.e. 30% would apply because winning from lotteries are assessable under special sec 115BB, IRRESPECTIVE OF THE HEAD UNDER WHICH SUCH INCOME FALLS.

42. CIT v. Parle Plastics Ltd. (2011) 332 ITR 63 (Bom.)

The factors to be considered for determining "substantial part of the business", for the purpose of Sec 2(22), are –

*Major Part that constitutes majority of the whole *Substantial Part of Turnover *More than 50% of Total Profit *Percentage of Manpower used *Capital Employed for specific division *Substantial part of total assets

In this case, 42% of the total asset of the lending company, were deployed by it by way of loans and advances to the assessee which could not be regarded as dividend u/s 2(22).

43. CIT v. Ambassador Travels (P) Ltd. (2009) 318 ITR 376 (Del.)

The assessee, a travel agency, was involved in booking of resorts for the customers of two companies as specified u/s 2(22)(e) and entered into NORMAL BUSINESS TRANSACTIONS AS A PART OF ITS DAY-TO-DAY BUSINESS ACTIVITIES.

HC held that such financial transactions CANNOT be treated as loans or advances received by the assessee from those concerns for the purpose of application of Sec 2(22)(e)

44. CIT v. Jyoti Plastic Works Private Limited (2011) 339 ITR 491 (Bom.)

For claiming deduction u/s 80-IB, the assessee should employ -

Ten or more workers in a manufacturing process carried on with the aid of power OR Twenty or more workers in a manufacturing process carried on without the aid of power.

For counting of number of "worker" in sec 80-IB, the persons employed by the assessee DIRECTLY AND BY/THROUGH ANY AGENCY (INCLUDING A CONTRACTOR) WILL BE CONSIDERED. The employment of ten or more worker is relevant and not the mode and manner in which the workers are employed.

45. Praveen Soni v. CIT (2011) 333 ITR 324 (Delhi)

An Assessee, not claiming deduction u/s 80-IB in initial years, CAN CLAIM SAID DEDUCTION FOR THE REMAINING YEARS DURING THE PERIOD OF ELIGIBILITY, if the conditions are satisfied. (Because there is no such condition in Sec 80-IB.)

46. CIT v. Chiranjjeevi Wind Energy Ltd. (2011) 333 ITR 192 (Mad.)

Different parts procured, could not be treated as a windmill individually. After ASSEMBLY of these different parts, they got TRANSFORMED into an ultimate product, known as Windmill. Thus, such an activity would amount to MANUFACTURE as well as PRODUCTION of a thing or article to qualify for deduction u/s 80-IB.

India Cine Agencies v. CIT 2009 (SC) : Test of activity of 'Manufacture' = NEW and DIFFERENT goods should emerge having DISTINCTIVE NAME, USE AND CHARACTER.

CIT v. Sesa Goa Ltd. 2004 (SC) : The word 'Production / Produce' means bringing into existence new goods by a process, which MAY or MAY NOT AMOUNT TO MANUFACTURE. It also covers all the by-product, intermediate products and residual products, which emerge in course of manufcr of goods.

47. CIT v. Meghalaya Steels Ltd. (2011) 332 ITR 91 (Gauhati)

Transport Subsidy and Interest Subsidy were REVENUE RECEIPTS which were granted after setting up of the new industries and after commencement of production, as these had no direct nexus with profit or gain derived from industrial activity. Hence, these subsidies were not eligible for deduction u/s 80-IB. However the payment of excise duty & refund of excise duty had a direct nexus with manufacturing activity, being a profit-linked incentive. Since, payment of excise duty would not arise in absence of any

industrial activity, therefore the refund of excise duty had to be taken into account for the purpose of Sec 80-IB.

Similar ruling in case of CIT v. Gheria Oil Gramudyog Workers Welfare Association 2011 (HP) – Interest Subsidy.

48. CIT v. Jaswand Sons (2010) 328 ITR 442 (P&H)

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.

49. CIT v. Kiran Enterprises (2010) 327 ITR 520 (HP)

Freight Subsidy received under Central Govt. Scheme is NOT A PROFIT DERIVED FROM BUSINESS & not operational profit. So, it cannot BE TREATED AS PROFIT DERIVED FROM BUSINESS FOR PURPOSE OF 80-IA.

50. CIT v. Nestor Pharmaceuticals Ltd. / Sidwal Refrigerations Ind Ltd. v. DCIT (2010) (Del.)

Fact:

- Trial Run production in March 1998
- Commercial Production started in April 1998
- Sale of 1unit water cooler & A.C. in March 98 to get registration under Excise Act & Sales Tax Act

Case : Period of exemption from & upto which AY?

Decision:

Since company had sold 1 unit in March98, so it had crossed the stage of trial production & final saleable product had been manufactured & sold. With this sale, marketable quality was established. Thus, the condition of 80-IB were fulfilled in March98 & hence 5yrs of exemption will be from AY 98-99.

51. Liberty India v. CIT (2009) 317 ITR 218 (SC)

DEPB Scheme benefit & Duty Drawback are not profit derived from eligible business / industrial undertaking u/s 80-IB. So, it cannot be treated as profit derived from business undertaking for purpose of 80-IB.

52. Indcom v. CIT (TDS) (2011) 335 ITR 485 (Calcutta)

Issue – Would NR match referees and umpires in game played in India fall within the meaning of sportsmen to attract taxability under the provision of Sec115BBA and consequently, liable for TDS u/s 194E ?

Decision – The umpires and the match referees cannot be said to be either non-resident sportsmen (including an athlete) or non-resident sports association or institution to attract provision of Sec 115BBA & Sec 194E. Further, Sec 194J also doesn't cover NR match referees and umpires (as professionals) because Sec 194J are attracted only in case where the deductee is a resident individual.

However, income has accrued and arisen in India to NR match referees and umpires, the TDS provision of Sec 195 would be attracted and tax would be deductible at the rates in force.

53. Joint CIT v. Rolta India Ltd. (2011) 330 ITR 470 (SC)

In case of failure in payment of advance tax u/s 207 during the FY, on the total income chargeable to tax for the AY immediately following that FY, the assessee will liable to pay interest u/s 234B & 234C.

U/s 115JB(1), the Book-Profit would be deemed to be total income.

Hence, the interest u/s 234B & 234C can be levied where a company assessee is assessed on the basis of book profit u/s 115JB.

54. Madras Gymkhana Club v. DCIT (2010) 328 ITR 348 (Mad.)

Interest earned from investment of surplus funds in the form of fixed deposits with INSTITUTIONAL MEMBERS (CORPORATE MEMBERS OF THE CLUB) does not satisfy the principle of mutuality and hence cannot be claimed as exempt on this ground. Therefore, the interest earned in taxable.

55. CIT v. Anil Hardware Store (2010) 323 ITR 368 (HP)

The manner of fixing the remuneration of the partners has been specified in the partnership deed. The partners may, in any year, decide to invest certain amounts of profit in any other venture & can receive less remuneration, but nothing can debars them from receiving the maximum amount of remuneration payable as per partnership deed. The method of remuneration having been laid down, the firm will be entitled to deduct remuneration paid to the partner u/s 40(b)(v).

Vide Circular No. 739 dated 25th March 1996, the CBDT had clarified that no deduction u/s 40(b)(v) will be admissible unless the partnership deed EITHER SPECIFIES THE AMOUNT OF REMUNERATION payable to each individual working partner OR LAYS DOWN THE MANNER OF QUANTIFYING such remuneration.

56. N. J. Jose and Co. (P.) Ltd. v. ACIT (2010) 321 ITR 132 (Ker.)

Assessee claimed exemption u/s 54E /54EC. Computation of Book Profit u/s115J / 115JB doesn't provide for any deduction of 54E /54EC. So, CAPITAL GAIN SHOULD BE INCLUDED IN BOOK PROFIT FOR LEVY OF MAT. It should be noted that LTCG exempt u/s 10(38) is included for Book Profit u/s115JB.

57. Sind Co-operative Housing Society v. ITO (2009) 317 ITR 47 (Bom.)

Transfer fees received by a co-operative housing society from outgoing / incoming members is NOT LIABLE TO TAX ON THE GROUND OF PRICIPLE OF MUTUALITY since the predominant activity of such co-operative society is maintenance of property of the society and there is no taint of commerciality, trade or business.

58. CIT v. T. George and M. Syed Alavi (2009) 316 ITR 333 (Ker.)

The accounts, seized from persons, were mutually complementary & were proof of their joint investments in slaughter tapping & sharing of profit on sale of Latex & Timber. It is JUSTIFIED TO TAX IN THE HANDS OF AOP because the status of AOP need not to be proved through written agreement.

59. CIT v. Laxmi Pd. and Sons (2009) 316 ITR 330 (All.)

AOP cannot be constituted by inheritance under will because it is forced association. Voluntary Association is necessary for AOP as defined in Sec 2(31).

60. Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) (Del.)

Fact : Assessee, to file Return of Loss, reached at the room of Central Revenue Building at 6:00PM where his return was to be accepted because he was sent from one room to another. So, Income Tax Return was not accepted. The very next day, the ITR along with letter of circumstances was delivered by the assessee to the office of DCIT. CBDT, by non-speaking order rejected the request of assessee to condone delay u/s119.

HC Decision : It is genuine hardship on assessee. So one day delay has to be condoned by CBDT u/s119(2)(b) as ANY OTHER RELIEF UNDER THE ACT.

61. Subha and Prabha Builders P Ltd. v. ITO (2009) 318 ITR 29 (Karn.)

Income Tax Authorities have the power u/s131 to impound & retain books etc. for a maximum period of 15days. The extension can be granted by prior approval of higher authorities but not for indefinite period. EXTENSION can only be ONE TIME & can be in DAYS, & not in months or years. The above decision is reaffirmed in CIT v. Subha and Prabha Builders Ltd. (2012) (Kar.)

62. H. K. Buildcon Ltd. v. ITO (2011) 339 ITR 535 (Guj.)

Successor AO, on the basis of information received from an external source, initiated proceedings of re-assessment for the income escaped assessment. The reason recorded themselves indicated that the successor AO had merely recorded a different opinion in relation to an issue to which the AO, who had framed the original assessment, had already applied his mind and come to a conclusion. Mere "change of opinion" is not sufficient to initiate the proceeding of reassessment. "Reason to believe that specific income has escaped assessment" is pre-condition of re-assessment proceedings.

63. CIT v. Haryana State Handloom and Handicrafts Corporation Ltd. (2011) (P&H)

Proceedings u/s 154 for rectification of intimation u/s 143(1) cannot be initiated after issuance of notice u/s 143(2) by A.O. to the assessee because the scope of proceedings u/s 143(2) is wider than the power of rectification of mistake apparent from record u/s 154 & thus, if notice has been issued u/s 143(2), then the rectification apparent from record can be done under the proceedings u/s 143(3) itself.

(P&H High Court followed the ruling of Delhi High Court given in case of CIT v. Punjab National Bank 2001)

64. Ranbaxy Laboratories Ltd. v. CIT (2011) 336 ITR 136 (Delhi)

A.O. initiated the re-assessment proceedings u/s 147 with "reason to believe" that income has escaped assessment due to claim & allowance of expenses. However, after sufficient enquiries during proceedings, the A.O. conclude that no additions are required on the basis of ORIGINAL "reason to believe" (i.e. original ground), but some other income escaped assessment were found which was not the part of Original "reason to believe".

The A.O. CANNOT reassess the issues INDEPENDENTLY which comes to his notice subsequently during proceedings if the original "reason to believe" on the basis of which the notice was issued ceases to exists.

65. Kanubhai M. Patel (HUF) v. Hiren Bhatt or his successors to Office (2011) (Guj.)

The word "shall be **issued**" used in sec 149 would NOT MEAN 'mere signing of notice by A.O.' but IT IS NECESSARY to 'hand 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. ***(i.e. DATE OF DISPATCH WILL BE THE DATE OF ISSUE.)***

e.g. - Notice u/s 148 in relation to the AY 2003-04 was signed on 31st March 2010, whereas the same were sent to the speed post centre for booking on 7th April 2010. Hence, it beyond the period of 6 years from the end of the relevant AY and clearly barred by limitation.

66. CIT v. Govind Nagar Sugar Ltd. (2011) 334 ITR 13 (Delhi)

The provisions of Sec80 and Sec 139(3), requiring the return of income claiming loss to be filed within due date, applies to carry forward of business loss and not for the carrying forward of unabsorbed depreciation. As per Sec.32(2), the unabsorbed depreciation becomes part of the next year's depreciation allowance and is allowed to be set-off as per Income Tax Act, irrespective of whether the return of earlier year was filed within due date or not.

67. Aventis Pharma Ltd. v. ACIT (2010) 323 ITR 570 (Bom.)

Power u/s147 to re-open an assessment is conditional on formation of REASON TO BELIEVE that taxable income has escaped assessment. Existence of TANGIBLE MATERIAL is ESSENTIAL to safeguard against arbitrary exercise of this power.

Mere change of opinion is not sufficient.

68. CIT v. Tony Electronics Limited (2010) 320 ITR 378 (Del.)

Once appeal against order passed by AO is preferred & is decided by appellate authority (AA), the order of AO, MERGES with order of AA. After merger, ORIGINAL ORDER CEASES to EXIST & ORDER of AA PREVAILS. Thus, the period of limitation of 4 yrs for Sec. 154(7) has to be counted FROM THE DATE OF ORDER OF APPELLATE AUTHORITY.

HC has followed the decision of SC in case of Hind Wire Industries v. CIT (1995).

69. CIT v. Subhash Kunar Jain (2011) 335 ITR 364 (P&H)

Assessee filed return of income and the department initiated proceedings of assessment u/s 143(3). Inspector submitted a report pointing out the defects in the documents furnished by the assessee. As a result, the assessee made an offer to surrender Rs. 9,91,090 subject to condition that "No penal action u/s 271(1)(c) would be initiated." The A.O. accepted the same as they did not have any documentary evidence against the assessee and the assessment was made only on the basis of the report by the inspector. An addition of Rs. 9,91,090 was made in the assessment of the assessee under section 143(3) on account of agricultural income, since the assess failed to explain the source of agricultural income as declared by him in the return of income.

Commissioner of Income-tax CANNOT TAKE A DIFFERENT VIEW and levy penalty because office note issued by the A.O. clearly depicts that the assessee had made surrender of income (with above mentioned condition) and this offer of the assessee was accepted by the department. *(i.e. once accepted by the department, the CIT cannot take different view)*

Thus, **CIT CANNOT EXERCISE HIS POWER U/S 263** to direct the A.O. for framing a fresh assessment order after taking into account the facts attracting the penal action u/s 271(1)(c), considering the original order erroneous and prejudicial to the interest of the Revenue.

*[P&H High Court relied on the decision of **Jivatlal Purtapshi v. CIT 1967 (Bombay HC)** : An order based in an agreement cannot give rise to grievances and the same cannot be agitated.]*

70. CIT v. Earnest Export Ltd. (2010) 323 ITR 577 (Bom.)

Tribunal's power u/s254(2) is limited to rectification of a mistake apparent on record. Tribunal cannot change its own view by substituting a view which it believes should have been taken in first instance. In this case, Tribunal u/s 254(2) virtually reconsidered the entire matter and come to a different conclusion. This amounted to re-appreciation of correctness of earlier decision which is beyond the scope of power u/s254(2).

71. Lachman Dass Bhatia Hingwala (P) Ltd. v. ACIT (2011) 330 ITR 243 (Delhi) [FB]

In deciding whether the power of RECTIFICATION of mistakes apparent from record, u/s 254(2) by Tribunal can be exercised to RECALL an order IN ENTIRETY, it is necessary to understand the true principle laid down in the decision of Honda Siel Power Products Ltd. V. CIT 2007 (SC).

If any prejudice results to the party on account of **Tribunal's mistake, error or omission apparent from record,** the tribunal **can RECALL** its order IN ENIRETY for correcting mistake apparent from the record.

(This recall procedure will not be equated to Review procedure as it's because of Tribunal's mistake apparent from records.)

72. Deepak Kumar Garg v. CIT (2010) 327 ITR 448 (MP)

Power to review is not an inherent power & must be conferred by law specifically. Under the provision of Sec260A(7), the power of re-admission / restoration of appeal is always with High Court. However, such power to restore appeal cannot be treated to be power to review the earlier order passed on merits.

73. CIT v. Indersons Leather P. Ltd. (2010) 328 ITR 167 (P&H)

Issue – Company discontinued its business & leased out its shed along with fitting and disclosed the income from such lease as income from business, whereas Revenue contended that the same be assessed as Income from House Property. Whether penalty u/s 271(1)(c) can be imposed in such case?

Decision – Mere raising of a debatable issue would not amount to concealment of income or furnishing inaccurate particulars and therefore, penalty u/s 271(1)(c) cannot be imposed.

74. Vijay Kumar Jain (2010) 325 ITR 378 (Chhattisgarh)

Penalty u/s 271(1)(c) can be levied only when there is CONCEALMENT of particulars of income / furnishing INACCURATE or FALSE particulars of income. For example :-

1. Making an incorrect claim (i.e. which has been disallowed) would not, by itself, tantamount to furnishing inaccurate particulars.
2. Levy of penalty u/s 271(1)(c)on the basis of additions made on account of application of higher rate of Net Profit by applying Sec.145, consequent to rejection of books.

HC placed the ruling of Apex Court given in case of **CIT v. Reliance Petro Product Pvt Ltd 2010.**

75. UOI v. Bhavecha Machinery and Others (2010) 320 ITR 263 (MP)

Prosecution Proceedings u/s 276CC can be attracted only where there is clear, cogent & reliable evidence that failure to file return in time was WILLFUL & there should be no possible doubt of its being WILLFUL. The failure must be INTENTIONAL, DELIBERATE, CALCULATED & CONSCIOUS with COMPLETE KNOWLEDGE of LEGAL CONSEQUENCES.

76. CIT (TDS) v. Shree Mahalaxmi Transport Co. (2011) 339 ITR 484 (Guj.)

Fact : The assessee was engaged in the business of TRANSPORTATION of building material, salt, black trap, iron, etc. It had sub-contracted the services and paid for hiring of dumpers after deducting tax at source at the rate mentioned in Sec.194C applicable for sub-contracts. According to AO, it was not correct as the assessee has taken dumpers on hire and TDS should be made as per Sec194-I.

Decision : The transaction being in the nature of contract for shifting of goods from one place to another would be covered as work contracts, hence, attracting the provision of Sec.194C. The Assessee has given sub-contracts for TRANSPORTATION of goods and not for renting out the use of machinery or equipment, such payment could not be termed as rent paid for use of machinery and hence, the provision of Sec.194-I would not be applicable. Same decision was given by Gujrat HC in the case of **CIT (TDS) v. Swayam Shipping Services P. Ltd. (2011) 339 ITR 647.**

77. CIT (TDS) v. ITC Ltd. (2011) 338 ITR 598 (Del.)

The assessee company was engaged in the business of owning, operating and managing Hotels.

- The employer company allowed the employees to receive TIPS from Customers. When the tips were received by the employees directly in cash, the employer hardly had any role and not even know the amounts of tips collected by employees. Hence, the employer has no responsibility under Sec192.
- However, If the employer himself collected tips (e.g. By way of certain percentage of bill amount, or an specified amount, or indicated on bill as tip by the customer etc.), then those were also disbursed by the employer to the employees. On the receipt of such money from the customers, the obligation arises on employer to pay it to the employee & similarly, a right accrues to the employee to claim the tips. This is by virtue of the employer-employee relationship. Hence, the tips, in the hands of employee, would constitute income within Sec. 2(24) and taxable u/s 15. Employer is liable to deduct tax at source from such payment u/s 192.
- In this case, the assessee company had not made TDS on tips under a bonafide belief that tax was not deductible and the Revenue has accepted the practice of the assessee in past year's assessment. There is no dishonest intention of the assessee and hence, could not be liable for penalty u/s201. However, payment of interest u/s 201(1A) is mandatory because payment of interest under that provision is not penal in nature.

78. Vodafone Essar Cellular Ltd. v. ACIT (TDS) (2011) 332 ITR 255 (Kerala)

SIM Card links the subscribers to the assessee company for rendering services & Re-charge coupons were only air time charges collected from subscribers in advance under prepaid scheme. The distributors acted only as a middleman on behalf of the assessee for procuring and retaining customers and therefore, the DISCOUNT GIVEN TO HIM WAS WITHIN THE MEANING OF COMMISION u/s 194H on which TAX WAS DEDUCTED.

79. CIT v. Qatar Airways (2011) 332 ITR 253 (Bom.)

Issue - Airline company solds tickets to agents at a fixed minimum commercial price & permits them to sell these tickets at a higher price , however, upto *maximum* of published price. Commission @9% of *actual* published price was payable to the agents. Whether the difference between published price and fixed minimum commercial price amounts to additional special commission in the hands of agents to attract the provision of Sec 194H.

Decision - Company would have no information about exact price at which the tickets were sold by its agents & it is also impracticable & unreasonable to expect the assessee to get feedback from its numerous agents in respect of each tickets sold. Thus, NO TDS on difference, even though it is taxable in the hands' of agents.

80. CIT v. Japan Airlines Co. Ltd. (2010) 325 ITR 298 (Del.)

TDS u/s194-I will attract on payment of Landing & Parking Charges to Airport Authority of India because Rent defined u/s194-I has wider meaning & includes use of land.

Court says : when the wheels of aircraft touches the surface of airfield, USE OF LAND immediately begins. Parking the aircraft is also use of Land.

81. CIT v. Director, Prasar Bharti (2010) 325 ITR 205 (Ker)

TDS Provision of Sec194H would get attracted on retention of a percentage (e.g. 15% commission) of advertising charges collected from customers by advertising agencies for payment to Doordarshan for telecasting the advertisements. As and when the agent pays 85% of advertisement charges, he is free to appropriate as his income.

82. East India Hotels Ltd. v. CBDT (2010) 320 ITR 526 (Bom.)

Services rendered by Hotel to its customer e.g. House Keeping, Bank Counter, Beauty Saloon, Car Rental, Health Club etc. WOULD NOT AMOUNTS TO CARRY OUT ANY "WORK" to attract 194C. Work in this sec has to be understood in LIMITED SENSE & would extend only to service contracts specially included in clause (iv) of Explanation to Sec.194C(7).

83. Assam Mineral Development Corporation Ltd. (2010) 320 ITR 149 (Gau.)

Interest u/s 234B & 234C is mandatory in nature. So, it can be levied on the basis of interest calculation given in Computation Sheet (in Form Prescribed, Signed, initialled) annexed to Assessment Order, even though the direction to charge such interest is not mentioned in the Assessment Order.

WEALTH TAX

1. CWT v. Motor and General Finance Limited (2011) 332 ITR 1 (Delhi)

Fact : The assessee did not file the WT Return u/s 14(1). AO issued notice to the assessee u/s 16(4), calling upon it to furnish the return. On failure of the assessee to comply with the notice issued, the AO proceeded to make Best Judgement Assessment without issue of any further notice u/s 16(5).

Question : Whether, in the above case, the notice u/s 16(5), giving opportunity of being heard to the assessee, is mandatory for making Best Judgement Assessment?

Decision : According to **2nd Proviso** to Sec. 16(5), NO NOTICE or opportunity of hearing is required where a notice u/s 16(4) has been issued PRIOR TO THE MAKING OF BEST JUDGEMENT ASSESSMENT.

2. CIT v. Smt. Neena Jain 2011 (P&H)

Assessee was constructing the building after obtaining sanction from the appropriate authorities.

Such incomplete building as on valuation date would neither fall within the meaning of "any building" u/s 2(ea); nor within "urban land" as Explanation 1(b) to Sec 2(ea) specifically excludes those land occupied by the building constructed with the approval of appropriate authority.

Thus, the incomplete building is not as asset chargeable to wealth-tax.

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