Direct Tax Case laws summary for May 2013 Exams

S.no	Issues Settled	Case laws
1	In case the share capital is raised in a foreign country and repatriated to India on need basis from time to time for approved uses, can the gain arising on the balance sheet date due to fluctuation in foreign exchange, in respect of that part of share capital which is to be used as working capital, be treated as a revenue receipt?	Jagatjit Industries Ltd.
2	In case there is no possibility of recovery of loan given by a NBFC, which is an NPA as per RBI guidelines, can the interest on such loan be treated as income of the NBFC, following mercantile sytem of accounting?	Brahamputra Capital Financial Services Ltd.
3	Would refund of excise duty and grant of interest subsidy under the incentive scheme formulated by Central Government for public interest, namely, to accelerate industrial development, generate employment and create opportunities for self-employment in state of Jammu and Kashmir be treated as a revenue receipt or a capital receipt?	Shree Balaji Alloys
4	What is the nature of incentive received under the scheme formulated by the Central Government for recoupment of capital employed and repayment of loans taken for setting up/expansion of a sugar factory - Capital or Revenue?	Kisan Sahkari Chini Mills Ltd.
5	What is the nature of liquidated damages received by a company from the supplier of plant for failure to supply machinery to the company within the stipulated time -a capital receipt or a revenue receipt?	Saurashtra Cement Ltd.
6	Where the hotel industry was established based on subsidy announced by the State Government, can such subsidy be treated as a revenue receipt solely due to the reason that the same was received by the assessee after completion of the hotel projects and commencement of the business?	Udupi Builders P. Ltd.
7	Whether section 14A is applicable in respect of deductions, which are permissible and allowed under Chapter VI-A?	Kribhco
8	Can Explanation to section 11(2) be applied in respect of the accumulation up to 15% referred to in section 11(1)(a), to treat the donation made to another charitable trust from the permissible accumulation upto 15% as income of the trust	Bagri Foundation
9	Is the limit of 1,000 per month per child to be mandatorily deducted, while computing the perquisite value of the free or concessional education facility provided to the employee by the employer?	Director, Delhi Public School
10	Can the rental income from the unsold flats of a builder be treated as its business income merely because the assessee has, in its wealth tax return, claimed that the unsold flats were stock-in-trade of its business?	Azimganj Estate (P.) Ltd
11	Can benefit of self-occupation of house property under section 23(2) be denied to a HUF on the ground that it cannot occupy a house property, being a fictional entity?	Hariprasad Bhojnagarwala
12	Can an assessee engaged in letting out of rooms in a lodging house also treat the income from renting of a building to bank on long term lease as business income?	Joseph George and Co.
13	Can notional interest on interest free deposit received by an assessee in respect of a shop let out on rent be brought to tax as "Business income" or "Income from house property"?	Asian Hotels Ltd.
14	Can business contracts, business information, etc., acquired by the assessee as part of the slump sale be described as 'goodwill', be classified as an intangible asset to be entitled for depreciation under section 32(1)00?	Areva T and D India Ltd.
15	What would be the nature of expenditure incurred by the assessee by way of severance cost paid to the employees in respect of suspension of one of the activities, in a case where he continues to carry on other business activities ?	KJS India P. Ltd.
16	Is the income or expense of an asset management company liable to be assessed on the basis of the maximum limit mentioned in the SEBI regulations or should the assessment be made on the basis of the actual income or expenses charged?	Templeton Asset Management
17	Can the expense incurred by the assessee on the education and travelling of an employee, for acquiring knowledge relating to assessee's business, be disallowed merely on the ground that the employee is the son of an ex-director of the assessee company?	Naidunia News and Networking (P.) Ltd
18	Can advance given to employees and security deposit paid to the landlord by the amalgamating company, which became irrecoverable, be allowed as a business loss in the hands of the amalgamated company?	Triveni Engg. & Industries Ltd.
19	Can an assessee, engaged in money lending business, claim interest paid on money borrowed as business expenditure?	Rajendra Kumar Dabriwala
20	Can subsidy received by the assessee from the Government of West Bengal under the scheme of industrial promotion for expansion of its capacities, modernization and improving its marketing capabilities be treated as a capital receipt?	Rasoi Ltd
21	Can the assessee, being a charitable institution claim depreciation under section 32 in respect of an asset, where the cost of such asset has been treated as application of income for charitable purposes under section 11(1)(a)?	Lissie Medical Institutions
22	Is the assessee entitled to depreciation on value of goodwill considering it as an asset within the meaning of Explanation 3(b) to Section 32(1)?	Smifs Securities Ltd.
23	Is abkari licence covered under section 32(1)(ii) and eligible for depreciation 25% of written down value?	S. Ambika
24	Is the commission paid to doctors by a diagnostic centre for referring patients for diagnosis be allowed as a business expenditure under section 37 or would it be treated as illegal and against public policy to attract disallowance?	Kap Scan and Diagnostic Centre P. Ltd
25	What would be the nature of the repair and reconditioning expenditure incurred on a machine which broke down years ago - Revenue or Capital?	Bharat Gears Ltd
26	Where the provision for bad and doubtful debts under section 36(1)(viia) relates to rural advances, can deduction for actual write off under section 36(1)(vii) in respect of urban advances be restricted to the amount in excess of the credit balance in the provision for bad and doubtful debts made under section 36(1)(viia)?	Catholic Syrian Bank Ltd.
27	What is the nature of expenditure incurred on demolition and re-erection of a cell room and expenditure incurred on purchase of pumping set, mono block pump and two transformers, which were parts of a bigger plant - revenue or capital?	Modi Industries Ltd.
28	Can the provisions of section 41(1) be invoked both in respect of waiver of working capital loan utilized for day-to-day business operations and in respect of waiver of term loan taken for purchasing a capital asset?	Rollatainers Ltd
29	Can a company engaged in the business of owning, running and managing hotels claim interest on borrowed funds, used by it for investing in the equity share capital of a wholly owned subsidiary company, as deduction where the subsidiary company was formed for exercising effective control of new hotels acquired by the parent company under its management?	Tulip Star Hotels Ltd.

30	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?	Cable Corporation of India Ltd
31	Can the expenditure incurred on the assessee-lawyer's heart surgery be allowed as business expenditure under section 31 by treating it as current repairs considering heart as plant and machinery or under section 37 by treating it as expenditure incurred wholly and exclusively for purposes of business or profession?	Shanti Bhushan
32	Would the expenditure incurred for issue and collection of convertible debentures be treated as revenue expenditure or capital expenditure?	ITC Hotels Ltd
33	Can the Assessing Officer 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 project?	DSD Noell GmbH
34	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 project was abandoned without creating new asset?	Priya Village Roadshows Ltd
35	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?	B. Raveendran Pillai
36	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?	Global Geophysical Services Ltd
37	Can EPABX and mobile phones be treated as computers to be entitled to higher depreciation at 60%?	Federal Bank Ltd
38	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?	Iskraemeco Regent Ltd.
39	Would 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 under section 32?	Yamaha Motor India Pvt. Ltd
40	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?	Echjay Forgings Ltd
41	Can the expenditure incurred for purchase of second hand medical equipment for use as spare parts for existing equipment be claimed as revenue expenditure?	Dr. Aswath N. Rao
42	Can the amount incurred by the assessee for replacing the old mono sound system in its cinema theatre with a new Dolby stereo system be treated as revenue expenditure?	Sagar Talkies
43	For claiming deduction of bad debts, is it necessary for the assessee to establish that the debt had become irrecoverable?	T.R.F. Ltd
44	Can payment to police personnel and gundas to keep away from the cinema theatres run by the assessee be allowed as deduction?	Neelavathi & Others
45	Can expenditure incurred on alteration of a dam to ensure adequate supply of water for the smelter plant owned by the assessee be allowed as revenue expenditure?	Hindustan Zinc Ltd.
46	Is the amount paid by a construction company as regularization fee for violating building bye-laws allowable as deduction?	Millennia Developers (P) Ltd
47	Would beneficial ownership of assets suffice for claim of depreciation on such assets?	SW. A. Sivakami
48	Is the expenditure incurred on payment of retrenchment compensation and interest on money borrowed for payment of retrenchment compensation on closure of one of the textile manufacturing units of the assessee-company revenue in nature?	DCM Ltd
49	Can non-cumulative preference shares carrying a fixed rate of dividend with a fixed holding period be said to be equated with bonds or debentures so as to deny the indexation benefit while computing capital gain on its transfer, applying the third proviso to section 48?	Enam Securities P. Ltd.
50	In case of a house property registered in joint names, whether the exemption under section 54F can be allowed fully to the co-owner who has paid whole of the purchase consideration of the house property or will it be restricted to his share in the house property?	Ravinder Kumar Arora
51	Can the scheme of arrangement approved under section 391 to 394 of Companies Act, 1956 be treated as slump sale to attract capital gains provisions?	SREI Infrastructure Finance Ltd
52	Will an agricultural land be treated as capital asset, in case it is located within 8 kilometers from the local limits of a City Municipal Corporation, even though the same is not notified by the Central Government under section 2(14)(iii)(b)?	Madhukumar N. (HUF)
53	What are the factors determining the nature of income arising on sale of shares i.e. whether the income is taxable as capital gains or business income?	PVS Raju
54	Can an assessee be deprived of claiming exemption under section 54EC, if bonds of assessee's choice are not available or are available only for a broken period within the period of six months after the date of transfer of capital asset and the bonds are purchased shortly after it became available next time after the expiry of the said six months?	Cello Plast
55	Would sale of a plot of land held as stock-in-trade by an assessee engaged in the business of real estate and construction of plots, be treated as sale of capital assets, to attract the provisions of section 50C?	Kan Construction and Colonizers (P) Ltd
56	Can exemption under section 54F be denied to an assessee in respect of investment made in construction of a residential house, on the ground that the construction was not completed within three years after the date on which transfer took place, on account of pendency of certain finishing work like flooring, electrical fittings, fittings of door shutter, etc?	Sambandam Udaykumar
57	Whether indexation benefit in respect of the gifted asset shall apply from the year in which the asset was first held by the assessee or from the year the same was first acquired by the previous owner?	Manjula J. Shah
58	Would an asset which is sold the very next day after the period of 12136 months is over, be treated as long-term capital asset by including both the date on which the asset is acquired and the date on which the asset is transferred for computing period of holding?	Bharti Gupta Ramola
59	Can the assessee claim exemption under section 54F, on account of capital gain arising on transfer of depreciable assets held for more than 36 months i.e. a longterm capital asset, though the same is deemed as capital gain arising on transfer of short-term capital asset by virtue of section 50?	Rajiv Shukla

60	Can exemption under section 54 be claimed in respect of more than one residential flat acquired by the assessee under a joint development agreement with a builder, wherein the property owned by the assessee was developed by the builder who constructed eight residential flats in the said property, four of which were given to the assessee?	Smt. K. G. Rukminiamma
61	Can exemption under section 54B be denied solely on the ground that the new agricultural land purchased is not wholly owned by the assessee, as the assessee's son is a co-owner as per the sale deed?	Gurnam Singh
62	In determining the period of holding of a capital asset received by a partner on dissolution of firm, can the period of holding of the capital asset by the firm be taken into account?	P. P. Menon
63	Can exemption under section 54EC be denied on account of the bonds being issued after six months of the date of transfer even though the payment for the bonds was made by the assessee within the six month period?	Hindustan Unilever Ltd
64	What would be the period of holding to determine whether the capital gains on renunciation of right to subscribe for additional shares is short-term or long-term?	Navin Jindal
65	Can the loan or advance given to a shareholder by the company, in return of an advantage conferred on the company by the shareholder, be deemed as dividend under section 2(22)(e) in the hands of the shareholder?	Pradip Kumar Malhotra
66	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 11566?	Manjoo and Co.
67	What can be the tests to determine "substantial part of business" of lending company for the purpose of application of exclusion provision under section 2(22)?	Parle Plastics Ltd
68	Would the provisions of deemed dividend under section 2(22)(e) be attracted in respect of financial transactions entered into in the normal course of business?	Ambassador Travels (P) Ltd.
69	In order to determine whether Explanation to section 73 is applicable in a particular case, is it necessary to first determine the gross total income of the assessee computed as per normal provisions of the Act?	Darshan Securities (P) Ltd
70	Can an assessee, engaged in the business of developing a housing project, be denied deduction under section 80-16(10) on the ground that the ownership of land has not yet been transferred to the assessee and the approval to build the housing project has been taken in the name of the land owner, though the assessee assumes the entire risks and rewards of the project?	Radhe Developers
71	Does standing charges paid by the client for failure to purchase the minimum agreed quantity, qualify for deduction under section 80-IC?	Pine Packaging (P.) Ltd
72	Where an additional building was constructed on a plot of land and approval for the same is obtained in the year 2002, can deduction under section 8016(10) be denied in respect of the said building on the contention that it was an extension of an earlier project for construction of four buildings, in respect of which approval was obtained before 1.10.98?	Vandana Properties
73	Can an industrial undertaking engaged in manufacturing or producing articles or things treat the persons employed by it through agency (including contractors) as "workers" to qualify for claim of deduction under section 80-IB?	Jyoti Plastic Works Private Limited
74	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?	Praveen Soni v. CIT
75	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 8016?	Chiranjjeevi Wind Energy Ltd
76	Would grant of transport subsidy, interest subsidy and refund of excise duty qualify for deduction under section 80-16?	Meghalaya Steels Ltd.
77	Does income derived from sale of export incentive qualify for deduction under section 80-113?	Jaswand Sons
78	Can freight subsidy arising out of the scheme of Central Government be treated as a "profit derived from the business" for the purposes of section 80-IA?	Kiran Enterprises
79	Does the period of exemption under section 80-16 commence from the year of trial production or year of commercial production? Would it make a difference if sale was effected from out of the trial production?	Nestor Pharmaceuticals Ltd. I Sidwal Refrigerations Ind Ltd
80	Can the Duty Entitlement Passbook Scheme (DEPB) benefits and Duty Drawback be treated as profit derived from the business of the industrial undertaking to be eligible for deduction under section 80-IB?	Liberty India
81	Would interest earned on fixed deposits made by a social club with its corporate members satisfy the principle of mutuality to escape taxability?	Secunderabad Club Picket
82	Would non-resident match referees and umpires in the games played in India fall within the meaning of sportsmen to attract taxability under the provisions of section 115BBA, and consequently attract the TDS provisions under section 194E in the hands of the payer?	Indcom
83	Can interest under sections 234B and 234C be levied where a company is assessed on the basis of book profits u/s 115JB?	Rolta India Ltd
84	Would the interest earned on surplus funds of a club deposited with institutional members satisfy the principle of mutuality to escape taxability?	Madras Gymkhana Club
85	In a case where the partnership deed does not specify the remuneration payable to each individual working partner but lays down the manner of fixing the remuneration, would the assessee-firm be entitled to deduction in respect of remuneration paid to partners?	Anil Hardware Store
86	Can long-term capital gain exempted by virtue of erstwhile section 54E be included in the book profit computed under erstwhile section 115J?	N. J. Jose and Co. Ltd.
87	Can transfer fees received by a co-operative housing society from its incoming and outgoing members be exempt on the ground of principle of mutuality?	Sind Co-operative Housing Society
88	Does the Central Board of Direct Taxes (CBDT) have the power under section 119(2)(b) to condone the delay in filing return of income?	Lodhi Property Company Ltd
89	Is a person having income below taxable limit, required to furnish his PAN to the deductor as per the provisions of section 206AA, even though he is not required to hold a PAN as per the provisions of section 139A?	Smt. A. Kowsalya Bai
90	Can an assessee revise the particulars filed in the original return of income by filing a revised statement of income?	Orissa Rural Housing Development Corpn. Ltd.

91	Is it permissible under section 147 to reopen the assessment of the assessee on the ground that income has escaped assessment, after a change of opinion as to a loss being a speculative loss and not a normal business loss, consequent to a mere re-look of accounts which were earlier furnished by the assessee during assessment under section 143(3)?	ICICI Securities Primary Dealership Ltd
92	In case of change of incumbent of an office, can the successor Assessing Officer initiate reassessment proceedings on the ground of change of opinion in relation to an issue which the predecessor Assessing Officer, who had framed the original assessment, had already applied his mind and come to a conclusion?	H. K. Buildcon Ltd
93	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)?	Haryana State Handloom&Handicrafts Corporation Ltd.
94	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?	Ranbaxy Laboratories Ltd
95	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?	Kanubhai M. Patel (HUF) v. Hiren Bhatt or his successors)
96	Can the unabsorbed depreciation be allowed to be carried forward where the return is not filed within due date?	Govind Nagar Sugar Ltd.
97	Can the Assessing Officer reopen an assessment on the basis of merely a change of opinion?	Aventis Pharma Ltd
98	Would the doctrine of merger apply for calculating the period of limitation under section 154(7)?	Tony Electronics LTd
99	Would the period of limitation for an order passed under section 263 be reckoned from the original order passed by the Assessing Officer under section 143(3) or from the order of reassessment passed under section 147, where the subject matter of revision is different from the subject matter of reassessment under section 147?	ICICI Bank Ltd.
100	Can an assessee make an additional/new claim before an appellate authority, which was not claimed by the assessee in the return of income (though he was legally entitled to), otherwise than by way of filing a revised return of income?	Pruthvi Brokers & Shareholders
101	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?	Subhash Kumar Jain
102	Does the Appellate Tribunal have the power to review or re-appreciate the correctness of its earlier decision u/s 254(2)?	Earnest Exports Ltd.
103	Can the Tribunal exercise its power of rectification under section 254(2) to recall its order in entirety, where there is a mistake apparent from record?	Lachman bass Bhatia tfingwala (P) Ltd.
104	Does the High Court have an inherent power under the Income-tax Act, 1961 to review an earlier order passed on merits?	Deepak Kumar Garg
105	Can the repayment of loan by passing mere adjusting book entries by the asseessee be taken to be in contravention of provisions of section 269T to attract penalty under section 271E?	Triumph International Finance (I.) Ltd
106	Can penalty under section 271(1)(c) for concealment of income be imposed in a case where the assessee has raised a debatable issue?	Indersons Leather P. Ltd
107	Can the penalty under section 271(1)(c) be imposed where the assessment is made by estimating the net profit at a higher percentage applying the provisions of section 145?	Vijay Kumar Jain
108	Would making an incorrect claim in the return of income per se amount to concealment of particulars or furnishing inaccurate particulars for attracting the penal provisions under section 271(1)(c), when no information given in the return is found to be incorrect?	Reliance Petro Products Pvt. Ltd
109	Would prosecution proceedings under section 276CC be attracted where failure to furnish return in time was not willful?	Bhavecha Machinery
110	In respect of a co-owned property, would the threshold limit mentioned in section 194-I for non-deduction of tax at source apply for each co-owner separately or is it to be considered for the complete amount of rent paid to attract TDS liability?	Senior Manager, SBI
111	Can the payment made to contractors for hiring dumpers, by an assessee engaged in transportation of building material, be treated as rent for machinery or equipment to attract provisions of tax deduction at source under section 194-I?	Shree Mahalaxtni Transport Co
112	Do the tips collected by hotel and disbursed to employees constitute salary to attract the provisions for tax deduction at source under section 192?	ITC Ltd
113	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?	Vodafone Essar Cellular Ltd
114	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, where the airline company has no information about the exact rate at which tickets are ultimately sold by the agents?	Qatar Airways
115	What is the nature of landing and parking charges paid by an airline company to the Airports Authority of India and is tax required to be deducted at source in respect thereof?	Japan Airlines Co. Ltd
116	Whether retention of a percentage of advertising charges collected from customers by the advertising agencies for payment to Doordarshan for telecasting advertisements would attract the provisions of tax deduction at source u/s 194H?	Director, Prasar Bharti
117	Can services rendered by a hotel to its customers in providing hotel room with various facilities I amenities (like house keeping, bank counter, beauty saloon, car rental, health club etc.) amount to "carrying out any work" to attract the provisions of section 194C?	East India Hotels Ltd
118	Can the interest under sections 234B and 234C, be levied on the basis of interest calculation given in the computation sheet annexed to the assessment order, though the direction to charge such interest is not mentioned in the assessment order?	Assam Mineral Development Corp Ltd
119	Whether the best judgment assessment order passed without giving the assessee an opportunity of being heard is valid in a case where the notice under section 16(4) has already been given?	Motor and General Finance Limited
120	Is wealth-tax leviable on the value of house under construction, where the construction was still incomplete on the relevant valuation date?	Smt. Neena Jain

Do read the case law (ICAI booklet) before reading it. Use this only for last minute revision. Do compare with Booklet and scribble the decision of the court.
It will be helpful to you as you will need to learn only 4 pages for the case laws
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