

Direct Tax

Summary of recent case laws relevant for May & November, 2014 – CA Final Exams



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S. NO.	ISSUES	DECISION	CASE LAW
(A) Basic Concepts			
1	Can power subsidy recd. by the assessee from the state Govt., year after year, on the basis of actual power consumption be treated as a capital receipt?	The high court held that the power subsidy recd. by the assessee from the SG. On the basis of actual power consumption has to be treated as a trading receipt & not as a c/receipt .	CIT V. Rassi Cement Ltd. (2013) 351 ITR 169 (A.P.)
2	Can the amount collected by an NBFC from its customer on adhoc basis towards possible sales tax liability which is disputed by it, be treated as its income, if such sum is not kept in a separate interest bearing accounts?	The SC held that such amount collected is treated as income , after applying the "substance over form" test. As such income was formed part of the assessee turnover, & was collected from customer towards sales tax liability.	Sundaram finance Ltd. V. Asst. commission of I/tax (2012) 349 ITR 0356 (SC)
3	What is the nature of liquidated damages received by a co. from the supplier of plant for failure to supply M/C to the co. within the stipulated time - a capital receipt or a revenue receipt?	The Apex court affirmed the decision of High court holding that the damages were directly & intimately linked with the procurement of a capital asset. i.e. the cement plant which lead to delay in coming into existence of the profit making apparatus. It was NOT a receipt in course of profit earning process. Therefore, the amt. received, NOT in the ordinary course of biz, is a capital receipt in the hands of the assessee. (Already asked in CA Final's Nov., 2011 attempt)	CIT V. Saurashtra Cement Ltd (2010) 325 ITR 422 (SC)
4	In case the s/capital is raised in a foreign country & repatriated to India as Need basis from time to time for approved uses, can the gain arising on the b/sheet date due to fluctuation in foreign exchange, in respect of that part of s/capital which is to be used as working capital, be treated as a revenue receipt?	The High court held that for determining the nature of receipt, due consideration shud be given to the source of fund & NOT to the ultimate use of the funds. Therefore, the entire gain has to be treated as c/receipt as the source of fund in this case is capital in nature.	CIT V. Jagatjit Industries Ltd (2011) 337 ITR 21 (Del.)
5	Can subsidy received by the assessee from GoWB under the scheme of industrial promotion for expansion of its capacities modernization & improving its marketing capabilities be treated as a capital receipt?	The high court held that, in the present case, the subsidy received has to be treated as a capital receipt & NOT as a revenue receipt.	CIT V. Rasoi Ltd (2011) 335 ITR 438 (Cal.)
6	What is the nature of incentives received under the scheme formulated by the C/G for recoupment of capital employed & repayment of loan taken for setting up/expansion of a sugar factory - capital or revenue?	The High court held that the main eligibility condn. For the scheme was that the incentive had to be utilized for the repayment of loans taken by the assessee to setup a new units or substantial expansion of a existing unit. The subsidy receipt by the assessee was, therefore NOT in the course of a trade & hence, was of capital nature .	CIT V. Kisan Sahkari Chini Mills Ltd. (2010) 328 ITR 27 (All.)
(B) Income which do not form part of Total Income			
7	Whether sec. 14A is applicable in respect of deduction, which are permissible & allowed u/chapter VI A?	Therefore, the delhi high court held that NO disallowance can be made u/s 14A in respect of income included in total income in respect of which deduction is allowable u/s 80C to 80U.	CIT V. Kribhco (2012) 209 Taxman 52 (Delhi)
8	Can the assessee, being a charitable inst. Claim dep. u/s 32 in respect of an asset, whr the cost of such asset has been treated as application of income for charitable purpose u/s 11(1)(a)?	The court held that once the exp. on acquisition of asset has been treated as application of income, the full value of asset stand w/off. Therefore the trust is NOT eligible to claim dep. on such capital exp.	Lissie Medical Inst. V. CIT (2012) 348 ITR 344 (Ker.)
9	Can explanation to sec. 11(2) be applied in respect of the accumulation up to 15% referred to in sec. 11(1)(a), to treat the donation made to another charitable trust from the permissible accumulation up to 15% as income of the trust?	The court held that even if the donation by the assessee to another charitable trust were out of part accumulation u/s 11(1) (a) i.e. up to 15%, the same would NOT be liable to be included in the total income as assessed by the AO.	DIT (exemption) V. Bagri foundation (2012) 344 ITR 193 (Delhi)
(C) Salary			
10	Can notional intt. on security deposit given to the landlord in respect of residential premises taken on rent by the employer & provided to the employee, be included in the perquisites value of rent free accommodation given to the employee?	The Bombay high court held that the AO is not right in adding the notional intt. on the security deposit given by the employer to the landlord in valuing the perquisites of rent free accommodation, since the perquisite value has to be computed as per rule 3 of the IT rules, 1962 & there is no concept of determination of fair rental value for purpose of ascertaining the value of perk.	CIT V. Shankar Krishnan (2012) 349 ITR 0685 (Bom.)

11	Is the limit of ` 1000/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?	The P&H high court held that only in case of the perquisite value is less than ` 1000/month per child, the perquisite value shall be NIL. Therefore, <b>` 1000/month per child is NOT a std deduction to be provided while calculating such a perquisite.	CIT (TDS) V. Director, Delhi Public School (2011) 202 Taxmann 318 (P&H)
(D) House Property			
12	Can service charges recd. along with rent in respect of a property, be brought to tax under the head "I/H/P", if the service agreement is dependent upon the rental agreement?	The Bombay high court held the amount recd. as service charges have to be considered as a part of the rent recd. & subjected to tax under the head "I/H/P".	CIT V. J. K. Investor (Bom.) Ltd. (2012) 211 taxmann 383 (Bom.)
13	Can the benefit of self-occupation of H/P u/s 23(2) be denied to a HUF on the ground that it cannot occupy a H/P, being a fictional entity?	The court held that the HUF is entitled to claim benefit of self-occupation of H/P u/s 23(2).	CIT V. Hariprasad Bhojnagarwala (2012) 342 ITR 69 (Guj.) (full bench)
14	Can the rental income from the unsold flat of a builder be treated as its B/Income merely bcoz the assessee has, in its w/tax return, claimed that the unsold flats were SIT of its Biz?	The Calcutta high court held that rental income from the unsold flats of a builder shall be taxable as "I/H/P" as provided u/s 22 & since it specially falls under this head, it CANNOT be treated under the "PGBP".	Azimnag estate (P) Ltd. V. CIT (2012) 206 Taxman 308 (cal.)
15	Can an assessee engaged in letting out of rooms in a lodging house also treat the income from renting of a business to bank on long term lease as business income?	On the issue, it was decided that while lodging is a business, however, letting out the building to the bank on long term lease could NOT be treated as business income. Therefore, the rental income from bank has to assessed as Income of house property.	Joseph George & Co. V. ITO (2010) 328 ITR 161 (Kerala)
16	Can Notional intt. 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 "I/H/P"?	The High court held that the Notional intt. Is NOT assessable either as "Business Income" or "I/H/P"	CIT V. Asian Hotels Ltd. (2010) 323 ITR 490 (Del.)
(E) Profit and Gains of Business or Profession			
17	Can depreciation on leased vehicle be denied to the lessor on the ground that the vehicles are registered in the name of the lessee & that the lessor is not the actual user of the vehicle?	The SC therefore held that assessee was entitled to claim depreciation in respect of vehicle leased out since it has satisfied both the requirement of section 32, namely ownership of the vehicle & its usage in the course of biz.	I.C.D.S. Ltd. V. CIT (2013) 350 ITR 527 (SC)
18	Can waiver of loan given to the assessee by the GOI from steel development fund (SDF) to meet the capital cost of asset be reduced to arrive at the actual cost as per sec. 43(1) for computing depreciation u/s 32?	The high court; therefore held that by applying the main provision of sec. 43(1), the amount of loan waived by the govt. is to be reduced from the cost of asset to arrive at the "actual cost" for computing depreciation.	Steel Authority of India Ltd. (SAIL) V. CIT (2012) 348 ITR 150 (Delhi)
19	Can the second prov. to sec. 32(1) be applied to restrict the additional depreciation u/s 32(1) (iia) to 50%, if the new P&M was put to use for less than 180 days during the P/Y?	The Madras high court held that the claim of the assessee made u/s 32(1) (iia) had to be necessarily assessed by applying the second prov. to sec. 32(1). Therefore depreciation allowable has to be restricted to 50% of the amount computed u/s 32(1) (iia).	M. M. Forgings Ltd. V. ACIT (2012) 349 ITR 0673 (Mad.)
20	Can biz. Contracts, biz. Info. etc, acquired by the assessee as part of slump sale be described as G/W, be classified as an intangible asset to be entitled for dep. 32(1)(ii)?	The high court held that the specified intangible asset under the slump sale agreement by the assessee are in the nature of intangible asset under the category "other biz. Or commercial right of similar nature" specified in sec. 32(1)(ii) & are accordingly eligible for dep. u/s 32(1)(ii).	Areva T & D India Ltd V. DCIT (2012) 345 ITR 421 (Delhi)
21	Is the assessee entitled to dep. on the value of G/w considering it as an asset within the meaning of explanation 3(b) to sec. 32(1)?	Therefore, it was held that "G/W" is an asset under explanation 3(b) to sec. 32(1) & Dep. thr on is allowable under the said section.	CIT V. Smifs Securities Ltd. (2012) 348 ITR 302 (SC)
22	Is the assessee entitled to depreciation on the value of Goodwill considering it as "other business or commercial right or similar nature" within the meaning of an intangible asset?	It was held that G/w paid was for ensuring retention & continued business in the hospital, it was for acquiring a business & commercial right and it was comparable with trade mark, franchise etc referred to in the first part of clause (ii) of sec. 32(1) and so, G/w was covered by the above provision of the Act entitling the assessee for depreciation.	B. Raveendran Pillai V. CIT (2011) 332 ITR 531 (Kerala)

23	Would the phrase "used for the purpose of business" in respect of discarded M/c include use of such asset in the earlier years for claim of depreciation u/s 32?	On the issue, it was held that the discarded M/c may NOT be actually used in the Relevant P/Y but depreciation can be Claimed as long as it was used for the purpose of business in the earlier years provided the block continues to exist in the Relevant P/Y. (Already asked in CA Final's May, 2012 attempt)	Yamaha Motors India Pvt. Ltd. V. CIT (2010) 328 ITR 297 (Delhi)
24	Would beneficial ownership of asset suffice for claim of depreciation on such asset?	The High court observed that she is the beneficial owner; she is entitled to claim depreciation even though she is NOT the legal owner of the asset.	CIT V. Smt. A Sivakami & Another (2010) 322 ITR 64
25	Can EPABX & Mobile phones be treated as computers to be entitled to higher depreciation at 60%?	On the issue, the High court held that the rate of depreciation of 60% is available to computers & there is no ground to treat the communication equipment as computers. Hence EPABX & Mobile phones are NOT computers and therefore, are NOT entitled to higher depreciation of 60%. (Already asked in CA Final's May, 2012 attempt)	Federal Bank Ltd. V. ACIT (2011) 332 ITR 319 (Kerala)
26	Is abkari license covered u/s 32(1) (ii) & eligible for dep. @ 25% of WDV?	The court held that the abkari license squarely falls u/s 32(1) (ii); on which the assesses is entitled to dep. @ 25% of WDV as provided u/s 32(1).	S. Ambika V. DCIT (2011) 203 Taxman 2 (Ker.)
27	What is the nature of exp. incurred on demolition & re-erection of a cell room & exp. incurred on purchase of pumping set, mono block pump & two transformers, which were parts of a bigger plant – revenue or capital?	It was held that purchase of pumping set, mono block pump with HP motors & two transformers were concerned, they were NOT standalone equipment, but were part of the bigger plant. Therefore, it would be treated as replacement of those parts & exp. would be eligible for deduction u/s 37(1)-Revenue.	CIT V. Modi Industries Ltd (2011) 339 ITR 467 (Del.)
28	Can a co. engaged in the biz. Of owing, running & managing hotels claim intt. On borrowed funds, used by it for investing in the equity s/capital of a wholly owned Subsi. co., as deduction where the subsi. Co. was formed for exercising effective control of new hotels acquired by the parent co. under its mgmt.?	The High court held that Exp. incurred was for Biz. Purpose & was thus allowable u/s 36(1)(iii).	CIT V. Tulip Star Hotels Ltd. (2011) 338 ITR 482 (Del.)
29	For claiming deduction of bad debt, is it necessary for the assesses to establish that the debt had, in fact, become irrecoverable?	On this issue, the Apex court held that it is NOT necessary for the assesses to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is w/off as irrecoverable in the account of the assesses for the relevant p/y. (Already asked in CA Final's Nov., 2011 attempt)	T.R.F. Ltd. V. CIT (2010) 323 ITR 397 (SC)
30	What would be the nature of corporate membership fee paid to the golf club, considering that the membership was for a limited period of six year – Revenue or capital exp.?	The high court held that by subscribing to the membership of a club for a limited period, no capital asset is created or comes into existence & consequently, the corporate membership fee CANNOT be treated as capital in nature.	CIT v. Groz Beckett Asia Ltd. (2013) 351 ITR 196 (P&H) (FB)
31	What would be the nature of exp. incurred by the assesses by way of severance cost paid to the employee in respect of suspension of one of the activities, in a case whr he continues to carry on other biz. Activities – capital or revenue?	The court held that said exp. will be allowed as revenue exp. thought it was related to manufacturing activity which was suspended.	CIT V. KJS India Pvt. Ltd. (2012) 340 ITR 380 (Delhi)
32	Is the exp. incurred on payment of retrenchment compensation & intt. On money borrowed for the payment of retrenchment compensation on closure of one of the textile manufacturing units of the assesses co. revenue in nature?	The High court concurred with these finding of the tribunal & accordingly, held that deduction was allowable in respect of exp. on payment of retrenchment compensation & intt. On money borrowed for payment of retrenchment compensation.	CIT V. DCM Ltd (2010) 320 ITR 307 (Del.)
33	Can the exp. incurred by the assesses on the education & traveling of an employee, for acquiring knowledge relating to assesses biz., be disallowed merely on the ground that the employee is the son of an ex-director of the assesses co.?	The MP high court held that exp. CANNOT be disallowed merely bcoz it was incurred in respect of an employee, who was son of ex-director of the assesses co.	CIT V. Naidunia news & networking (P) Ltd (2012) 210 taxman 73 (MP)

34	Can expenditure incurred by a Co. on higher studies of the director's son abroad be claimed as business exp. u/s 37 on the contention that he was appointed as a trainee in the co. under "apprentice training scheme", where there was no proof of existence of such scheme?	On this issue, it was observed that there was no evidence on records to show that any other person at any time was appointed as trainee or sent abroad for higher education. Further, there was No nexus betw. the education exp. incurred in abroad for director's son & business of assesses. Therefore, the aforesaid exp. was NOT deductible. (Already asked in CA Final's May, 2012 attempt)	Echjay forging Ltd. V. ACIT (2010) 328 ITR 286 (Bom.)
35	Is the commission paid to doctor's by a diagnostic centre for referring patients for diagnosis be allowed as a biz exp. u/s 37 or would it be treated as illegal & against public policy to attract disallowance?	The demanding as well as paying of such comm. is bad in law. It is NOT a fair practice. Thus, the high court held that comm. paid to doctor for referring patient for diagnosis is NOT allowable as a biz exp.	CIT V. Kap scan & Diagnosis centre P. Ltd. (2012) 344 ITR 476 (P&H)
36	What would be the nature of the repair & reconditioning exp. incurred on a machine which broke down years ago – revenue or capital?	The Delhi high court observed that it is in nature of capital exp. ; on which dep. can be claimed.	Bharat Gears Ltd V. CIT (2011) 337 ITR 370 (Delhi)
37	Would the exp. incurred for issue & collection of convertible debenture be treated as revenue or capital Exp.?	The Karnataka High court held that the exp. incurred on the issue & collection of deb. Shall be treated as revenue exp. even in case of convertible debenture.	CIT V. ITC Hotels Ltd. (2011) 334 ITR 109 (Kar.)
38	Can the exp. incurred on the assesses lawyer's heart surgery be allowed as biz. exp. u/s 31 by treating it as current repairs considering heart as P&M or u/s 37 by treating it as exp. incurred wholly & exclusively for the purpose of biz. Or profession?	The High court held that the heart CANNOT be said to be P&M for the biz. Or Prof. of the assesses. Therefore, the exp. on heart surgery is NOT allowable as repair to plant u/s 31. Accordingly to the prov. Of sec. 37 the claim for allowing the said exp. u/s 37 is also NOT tenable. Hence, heart surgery exp. shall NOT be allowed as biz. Exp. (Already asked in CA Final's Nov., 2012 attempt)	Shanti Bhushan V. CIT (2011) 336 ITR 26 (Del.)
39	Would expenditure incurred on feasibility study conducted for examining proposals for technological advancement related to the existing business be classified as revenue expenditure, where the project was abandoned without creating a new asset?	The High court observed that, in such cases, whether or not a new business/asset comes into existence would be a relevant factor. If there is no creation of a new asset, then the expenditure incurred would be a revenue nature. (Already asked in CA Final's May, 2012 attempt)	Priya Village Roadshow Ltd. V. CIT (2011) 332 ITR 594 (Delhi)
40	Can the exp. incurred for purchase of second hand Medical equipment for the use as spare parts for existing equipment be claimed as revenue expenditure?	The High Court held that since the second hand Medical equipment was purchased for the use as spare parts for existing equipment. Therefore the assesses was eligible to claim deduction of exp. in the relevant p/y ended 31 st March.	DR. Aswath N Rao V. ACIT (2010) 326 ITR 188 (karn.)
41	Can exp. incurred on alteration of a dam to ensure adequate supply of water for the smelter plant owned by the assesses be allowed as revenue exp.?	The High court observed that the exp. incurred by the assesses for commercial expediency relates to carrying on of biz. The operational exp. incurred by the assesses solely intended for the enterprise can by NO means be treated as exp. of capital nature.	CIT V. Hindustan Zinc. Ltd (2010) 322 ITR 478 (Raj.)
42	Is the amt. paid by a construction co. as regularization fee for violating building bye laws allowable as deduction?	The High court held that amt. paid to compound an offence is obviously a penalty & hence, does NOT qualify for deduction u/s 37.	Millennia Developers (P) Ltd. V. DCIT (2010) 322 ITR 401 (karn.)
43	Can an assesses, engaged in money lending biz, claim interest paid on money borrowed as biz exp.?	The Calcutta high court held that AO is NOT right in his contention, the assesses is lawfully entitled to deduct interest paid on the funds borrowed as biz exp.	Rajendra Dabriwala V. kr. CIT (2012) 347 ITR 353 (Cal.)
44	Can adv. given to employees and security deposit paid to the landlord by the amalgamating co., which becomes irrecoverable, be allowed as a biz loss in the hand of the amalgamated co.?	The court held that such adv. Given to person who had been employed by the assesses co. which have become irrecoverable would be treated as biz loss & as regards the allow ability of non-recoverable security deposit given to the landlord for obtaining lease of premises for purpose of biz, the high court observed that the security deposit were refundable & therefore, were not in the form of rent. Therefore, it is NOT allowable as B/loss.	CIT V. Triveni Engg. & Industries Ltd. (2012) 343 ITR 245 (Delhi)

45	Can remuneration paid to working partner as per the partnership deed be considered as unreasonable & excessive for attracting disallowance u/s 40A (2) (a) even though the same is within the statutory limits prescribed u/s 40 (b) (v)?	The high court held that remuneration paid to w/partners within the limits specified u/s 40 (b) (v) CANNOT be disallowed by invoking the provision of sec. 40A (2) (a).	CIT v. Great city manufacturing co. (2013) 351 ITR 156 (All.)
46	Can the waiver of principal amount of loan taken for purchase of capital asset by the bank be treated as "benefit arises out of business" or "a remission of trading liability" for taxability as business income of the Co.?	Since the loan was taken for purchase of capital asset, waiver of a portion of principal would NOT amount to remission of trading liability to attract the provision of sec. 41(1). Further, such waiver CANNOT be treated as a benefit arising out of business & consqt. Sec. 28(iv) will NOT apply in respect of such loan tranx.	Iskraemees Regent Ltd. V. CIT (2011) 331 ITR 317 (Mad.)
47	Can the prov. Of sec. 41(1) be invoked both in respect of waiver of working capital loan utilized for day to day biz. Operation & in respect of waiver of term loan taken for purchase a capital asset?	The high court's held that loan were for circulating capital & not for fixed capital. Therefore, the W/off of these loans on the cash credit account which was received for carrying out the day to day operation amts. to remission of a trading liability & hence, has to be treated as income in the hands of the assesses by virtue of sec. 41(1) .	Rollatainers Ltd. V. CIT (2011) 339 ITR 54 (Del.)
48	Can "Money payable" in respect of a building sold by the assesses (which has to be reduced from the opening WDV of the block of asset for calculating depreciation) be construed as the FMV of asset instead of actual sale price?	On the issue, the High court held that WDV of asset falling within that block of asset at the begn. of P/Y has to be adjusted by the amount for which the asset is actually sold & NOT by its FMV .	Cable Corporation of India Ltd. V. CIT (2011) 336 ITR 56 (Bom.)
49	Can unpaid electricity charges be treated as "fees" to attract disallowance u/s 43B?	The AP high court observed that the prov. of sec. 43B do not incorporate electricity charges. Therefore, non-payment of electricity charges would not attract disallowance u/s 43B since such charges CANNOT be treated as "Fees". The court therefore held that deduction is allowable in respect of such electricity charges.	CIT v. Andhra ferro Alloys (P) Ltd. (2012) 349 ITR 255 (AP)
50	Would the special provision for computing profit u/s 44BB be applicable to a Non-resident carrying on business of seismic data acquisition & processing under contract with Indian concern?	In this case, AAR ruled that the said activities & services of applicant clearly fell within the description of sec. 44BB and the income derived by the applicant under the contract with Indian concern for seismic data acquisition & processing were to be computed under the provision of sec. 44BB .	Global Geophysical Service Ltd. , In re (2011) 332 ITR 418 (AAR)
51	Can the AO bring to tax the actual profit as per books of accounts, if the same is higher than 10% of receipt which are deemed to be the profit u/s 44BBB in case of a foreign co. engaged in turnkey project?	The Delhi High court held that if an assesses fulfills all the condn. Mentioned in sec. 44BBB(1); then a sum equal to 10% of amount paid or payable to such foreign co. would be deemed as its business income. Further u/s 44BBB (2) revenue CANNOT take recourse of this sub-section to claim that the profit earned by the assesses were more than 10%.	DSD Noel Gmbh V. CIT (2011) 333 ITR 304 (Delhi)
52	Is the income or exp. of an AMC liable to be assessed on the basis of the maximum limit mentioned in the SEBI regulation or shud the assessment be made on the basis of the actual income or exp. charged?	The court held that, the disallowance made by the AO in the present case is NOT justified since the tranx was genuine in nature.	CIT V. Templeton Asset Mgmt (I) Pvt. Ltd. (2012) 340 ITR 279 (Bom.)
(F) Capital Gain			
53	What are the factors determining the nature of income arising on sale of shares i.e. whether the income is taxable as c/gain or b/income?	The high court held that the facts that may be considered while determining the same are the magnitude & freq. of buying & selling of shares by the assesses, the POH of shares, ratio of sales to purchase & the total holding, etc.	PVS Raju V. ACIT (2012) 340 ITR 75 (AP)
54	Would an asset which is sold the very next day after the period of 12/36 month is over, be treated as LTCA by incl. both the date on which the asset is acquired & the date on which the asset is t/f for computing POH?	The court held that if an asset is sold the very next day & proviso to sec. 2(42A) applies ; it would be treated as a LTCG .	Bharti Gupta Ramola V. CIT (2012) 207 Taxman 178 (Delhi)
55	In determining the POH of c/asset received by a partner on dissolution of firm, can the POH of the c/asset by the firm be taken into account?	The High court held that POH of the asset by the assesses in this case has to be reckoned from the date of dissolution of the firm. Since the assesses sold the property within 3 days of acquiring the same, the gain have to be treated as	P. P. Menon V. CIT (2010) 325 ITR 122 (Ker.)

		STCG.	
56	What would be the POH to determine whether the c/gain on renunciation of right to subscribe for additional shares is short term (ST) or long term (LT)?	On this issue, the Apex court held that for determining whether the c/gain on renunciation of right to subscribe for additional shares is ST or LT, the POH would be from the date on which such right to subscribe for additional shares come into existence up to the date of renunciation of such right.	Navin Jindal V. ACIT (2010) 320 ITR 708 (SC)
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?	The High court held that indexed COA in case of gifted asset has to be computed with reference to the year in which the previous owner first held the asset & NOT from the year in which the assessee becomes the owner of the asset.	CIT V. Manjula J. Shah 16 Taxmann 42 (Bom.)
58	Can non-cumulative P/shares carrying a fixed rate of dividend with a fixed holding period be said to be equated with bonds or debenture so as to deny the indexation benefit while computing c/gain on its t/f, applying the third proviso to sec. 48?	Therefore the court held that the indexation benefit on the t/f of LTCA, being 4% non-cumulative p/shares CANNOT be denied applying the prov. Of the third prov. to sec. 48.	CIT V. Enam securities P. Ltd (2012) 345 ITR 64 (Bom)
59	Would an assessee be entitled to exemption u/s 54 in respect of purchase of two flats, adjacent to each other & having common meeting points?	The Andhra high court, on the basis of ruling of Karnataka high court in case of CIT v. Ananda Basappa (2009) 309 ITR 329, held that in this case, the assessee was entitled to investment in both the flats purchased by him, since they were adjacent to each other & had a common meeting point.	CIT v. Syed Ali Adil (2013) 352 ITR 0418 (AP)
60	Can exemption u/s 54 be claimed in respect of more than 1 residential flat acquired by the assessee under a joint development agreement with a builder, where in the property owned by the assessee was developed by the builder who constructed 8 residential flat in the said Property, 4 of which were given to the assessee?	The Karnataka High court, applying the decision of Anand Basappa (2009) 309 ITR 329 (Kar.) to the present case, held that all the 4 flats are situated in the same residential building & hence, will constitute "a residential house" for the purpose of sec. 54. Therefore, assessee would be entitled to deduction u/s 54 in respect of all 4 flats.	Smt. K G. Rukminiamma V. CIT (2011) 331 ITR 211 (Kar.)
61	Can exemption u/s 54B be denied solely on the grounds that the new agricultural land purchased is not wholly owned by the assessee, as the assessee's son is a co-owner as per sale deed?	The High court concurred with the tribunal's view that merely bcoz the assessee's son was shown in the sale deed as co-owner, it did NOT make any difference. Therefore, the assessee was entitled to deduction u/s 54B .	CIT V. Gurnam Singh (2010) 327 ITR 278 (P&H)
62	Can exemption u/s 54F be denied solely on the ground that the new residential house is purchased by the assessee exclusively in the name of his wife?	The Delhi high court, having regards to the rule of purposive construction & the object of enactment of sec. 54F, held that the assessee is entitled to claim exemption u/s 54F in respect of utilization of sale proceeds of c/asset for investment in residential H/property in the name of his wife.	CIT v. Kamal wahal (2013) 351 ITR 4 (Delhi)
63	In case of a house property registered in joint names, whether the exemption u/s 54F can be allowed fully to the co-owner who has paid whole of the purchase consideration of the H/property or will it be restricted to his share in the h/property?	The court held that the condn. Stipulated in sec. 54F stand fulfilled & the entire exemption claimed in respect of the purchase price of the house property shall be allowed to the assessee.	CIT V. Ravindra kr. Arora (2012) 342 ITR 38 (Del.)
64	Can the exemption u/s 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 t/f took place, an account of pendency of certain finishing work like flooring, electrical fitting, fitting of door shutter?	The court held that in this case the assessee would be entitled to exemption u/s 54F in respect of the amount invested in construction within the prescribed period.	CIT V. Sambandam udaykumar (2012) 345 ITR 389 (Ker.)
65	Can the assessee claim exemption u/s 54F, on account of c/gain arising on t/f of depreciable asset held for more than 36 months i.e a long term capital asset, though the same is deemed as capital gain arising on t/f of short term capital gain by virtue of sec. 50?	The High court held that sec. 54F being an independent section will NOT be bounded by the prov. Of sec. 50. Therefore, the exemption u/s 54F on t/f of depreciable asset held for more than 36 month CANNOT be denied on account of fiction created by sec. 50.	CIT V. Rajiv Shukla (2011) 334 ITR 138 (Del.)

66	Can an assessee be deprived of claiming exemption u/s 54EC, if bonds of assessee choice are not available or available only for a broken period within the period of 6 month after the date of t/f of c/asset & the bonds are purchased shortly after it becomes available next time after the expiry of the said 6 month?	The high court held that since the assessee invested in the bonds on 31.01.2007 i.e. within 9 days of their being available once again from 22.01.2007, he CANNOT be deprived of exemption u/s 54EC . the time to invest in the bonds get automatically extended till the bonds are available in the mkt.	CIT V. Cello Plast (2012) 209 Taxman 617 (Bom.)
67	Can exemption u/s 54EC be denied on account of the bonds being issued after 6 month of the date of t/f even though the payment for the bond was made by the assessee within the 6 month period?	The High court, therefore, held that if such payment is within a period of 6 month from the date of t/f, the assessee would be eligible to claim exemption u/s 54EC .	Hindustan Unilever Ltd V. DCIT (2010) 325 ITR 102 (Bom.)
(G) Other Source			
68	What can be the tests to determine "substantial part of business" of lending Co. for the purpose of application of exclusion provision under sec. 2(22)?	In this case, 42% of the assets of lending Co. were deployed by it by way of loan & advance. Further if interest income is excluded, the other business had resulted in a Net loss. These factors were considered in concluding that lending of money was a substantial part of business of the co. hence money given by way of loan & advance to the assessee could NOT be regarded as a dividend , as it had to be excluded from the definition of "dividend" by virtue of the specific exclusion in sec. 2(22).	Parle Plastics Ltd. V. CIT (2011) 332 ITR 63 (Bom.)
69	Can the loan or adv. given to a shareholder by the co., in return of an advantage conferred on the co. by the shareholder, be deemed as dividend u/s 2(22)(e) in the hands of the shareholder?	In present case, the adv. given to the assessee by the co. was NOT in the nature of a gratuitous advance given, instead it was given to protect the interest of the co. therefore, the said adv. CANNOT be treated as deemed dividend in the hands of the shareholder u/s 2(22) (e).	Pradip kr. Malhotra V. CIT (2011) 338 ITR 538 (Cal.)
70	Would the prov. Of deemed dividend u/s 2(22)(e) be attracted in respect of financial tranx entered into in the normal course of biz?	The High court held that such financial tranx CANNOT under any circumstances be treated as loans or advances received by the assessee from the concerns for the purpose of appl. Of sec. 2(22) (e) . (Already asked in CA Final's May, 2012 attempt)	CIT V. Ambassador Travels (P) Ltd (2010) 318 ITR 376 (Del.)
71	Can winning of prize money on unsold lottery ticket held by the distributor of lottery be assessed as business income & be subj. to normal rates of tax instead of the rates prescribed u/s 115BB?	The receipt of the prize Money is NOT in his capacity as a lottery ticket distributor but as a holder of the lottery ticket which won the prize. Therefore, the High court held that the rate of 30% prescribed u/s 115BB is applicable in respect of winnings from lottery received by the distributor.	Manjoo & Co. V. CIT (2011) 335 ITR 527 (Kerala)
(H) Set-off & carry forward of losses			
72	In order to determine whether explanation to sec. 73 is applicable in a particular case, is it necessary to first determine the gross total income of the assessee computed as per normal prov. of the act?	On this issue, the Bombay high court observed that, in order to apply the exemption , the gross total income (GTI) of a co. is to be first computed as per the normal prov. of the act.	CIT V. Darshan securities (P) Ltd (2012) 341 ITR 556 (Bom.)
(I) Chapter VI A (Deductions)			
73	Can unabsorbed depreciation of a biz. of an industrial undertaking eligible for deduction u/s 80IA be set off against income of another non eligible biz of the assessee?	The court therefore held that the assessee was entitled to the benefit of set off of loss of eligible biz against the profit of non-eligible biz. However, once set off is allowed u/s 70(1) against income from another source under the same head, a deduction to such extent is not possible in any subsequent A/Y.	CIT v. Swarnagiri wire insulation Pvt. Ltd. (2012) 349 ITR 245 (Kar.)
74	Can freight subsidy arising out of the scheme of CG be treated as a "Profit derived from the biz" for the purpose of sec. 80IA?	The High court held that the freight subsidy CANNOT be treated as Profit derived from the biz for the purpose of sec. 80IA.	CIT V. Kiran Enterprise (2010) 327 ITR 520 (HP)
75	Can an assessee, engaged in the biz of developing a housing project, be denied deduction u/s 80-IB (10) on the ground that the ownership of land has NOT yet been t/f to the assessee & the approval to build the project has been taken in the name of the land owner, though the assessee assumes the entire risks & rewards of the project?	In the present case, as per prov. of sec. 80-IB (10) , deduction shall be provided to the assessee engaged in the biz of developing & building housing project even though the ownership of the land has NOT yet been transferred to the assessee & the approval for such project is obtained in the name of the original land owner.	CIT V. Radhe Developers (2012) 341 ITR 403 (Guj.)

76	In a case whr an additional building was constructed on a plot of land & approval for the same is obtained in the year 2002, can deduction u/s 80-IB (10) be denied in respect of the said building on the contention that it was an extension of an earlier project for construction of our building, in respect of which approval was obtained before 01.10.98?	The high court observing the facts of case held that the assesses was entitled to deduction u/s 80-IB (10) in respect of that building.	CIT V. Vandana Properties (2012) 206 Taxman 584 (Bom.)
77	Can an industrial undertaking engaged in manufacturing or producing articles or thing treat the persons employed by it through agency (incl. contractors) as "workers" to qualify for claim of deduction u/s 80IB?	The employment of 10 or more workers is what is relevant & NOT the mode and the manner in which the workers are employed by the assesses. The High court, therefore, held that the tribunal was justified in holding that the condn. Of sec. 80IB(2)(iv) had been fulfilled & therefore deduction u/s 80IB is allowed.	CIT V. Jyoti Plastics Works (P) Ltd (2011) 339 ITR 491 (Bom.)
78	Can an assessee NOT claiming deduction u/s 80-IB in the initial years claim the said deduction for the remaining years during the period of eligibility, if the condn. are satisfied?	The Delhi High court held that the provision of sec. 80-IB does NOT stipulate any condn. For claiming the deduction. Therefore, the deduction u/s 80-IB shud. Be allowed to the assessee for the remaining years during the period of eligibility, provided condn. u/s 80-IB are fulfilled.	Praveen Soni V. CIT (2011) 333 ITR 324 (Delhi)
79	Would the procurements of parts & assembling them to make wind Mill falls within the meaning of "Manufacturing" & "Production" to be entitled for deduction u/s 80-IB?	The Madras High court held that different parts procured by assesses could NOT be treated as a "wind mill" individually, but when assembled & got transformed into an ultimate product which was commercially known as "wind mill". Thus, such activity amounts to "Manufacture" as well as "Production" to qualify for deduction u/s 80-IB.	Chiranjeevi Wind Energy Ltd. V. CIT (2011) 333 ITR 192 (Mad.)
80	Would grant of transport subsidy, interest subsidy & refund of excise duty qualify for deduction under sec. 80-IB?	The High court held that there shud. be a direct nexus betw. The generation of profits & gains AND source of profit & gains, the latter being directly relatable to the business of the assesses. In this case, subsidy had NO direct nexus with profit derived by assesses from its industrial activity, so the subsidies could NOT be taken into account for purpose of deduction u/s 80-IB. But refund of the excise had a direct nexus with manufacturing activity, being a profit linked incentives. Therefore, the refund of excise duty had to be taken into account for purpose of deduction u/s 80-IB.	Meghalaya Steels Ltd. V. CIT (2011) 332 ITR 91 (Gauhati)
81	Does income derived from sale of export incentives qualify for deduction u/s 80-IB?	The High court held that income derived from sale of export incentives CANNOT be said to be income "derived from" the industrial undertaking & therefore, such income is NOT eligible for deduction u/s 80-IB.	Jaswand Sons V. CIT (2010) 328 ITR 442 (P&H)
82	Does the period of exemption u/s 80IB commence from the year of trial production or year of commercial production? Would it make a diff. if sale was effected from out of trial production?	Therefore, the condn. Stipulated in sec. 80IB were fulfilled with the commercial sale of the two items in that A/Y, & hence period of exemption u/s 80IB has to be reckoned from period when sale took place.	CIT V. Nestor pharmaceuticals Ltd/ Sidwal Refrigeration Ind. Ltd V. DCIT (2010) 322 ITR 631 (Del.)
83	Can the Duty entitlement passbook scheme (DEPB) benefit & Duty Drawback be treated as profit derived from the biz. Of industrial undertaking to be eligible for deduction under sec. 80IB?	The Apex court held that Duty Drawback receipt & DEPB benefit do NOT form part of the profit derived from the eligible biz for the purpose of the deduction u/s 80-IB.	Liberty India V. CIT (2009) 317 ITR 218 (SC)
84	Does standing charges paid by the client for failure to purchase the minimum agreed Qty, Qualify for deduction u/s 80-IC?	The delhi high court held that charges were paid to compensate the assesses for failure to produce & mkt its product. Therefore, such standing charges are NOT eligible for deduction u/s 80-IC.	Pine Packaging (P) Ltd. V. CIT (2012) 209 Taxman 74 (Del.)
(J) Assessment of Various Entities			
85	Under which head of income is rental income from plinths inherited by individual co-owners from their ancestors taxable – "income from H/P" or "income from O/S"? Further, would such income be assessable in the hands of the individual co-owners or in	The court held that the co-owner had inherited the property from their ancestor & there was nothing to show that they had acted as an association of persons. Thus, the court held that the rental income from the plinths has to be assessed in the status of individual under the head of	Sudhir nagpal v. ITO (2012) 349 ITR 0636 (P&H)

	the hands of the association of persons?	"income from O/S" u/s 56.	
86	Would interest earned on fixed deposit made by a social club with its corporate members satisfy the principal of mutuality to escape taxability?	The court held that social relationship & activities of the club have nothing to do with its deposit with corporate members. Therefore, the said interest income is NOT exempt on the principal of mutuality.	CIT V. Secunderabad Club Picket (2012) 340 ITR 121 (A.P.)
87	Would interest earned on surplus fund of a Club deposited with institutional members satisfy the Principle of Mutuality to escape taxability?	The High court held that interest earned from investment of surplus funds does NOT satisfy the Principle of Mutuality & Hence CANNOT be claimed as exempt. Therefore taxable .	Madras Gymkhana Club V. DCIT (2010) 328 ITR 348 (Mad.)
88	Can t/f fees received by a co-operative housing society from its incoming & outgoing members be exempt on the ground of principal of mutuality?	The High court held that t/f fee received is NOT liable to tax on the ground of principal of mutuality.	Sind co-operative Housing Society V. ITO (2009) 317 ITR 47 (Bom.)
89	Would nonresident match referees & umpires in the games played in India fall within the meaning of sportsmen to attract taxability u/s 115BBA, and consequently attract the TDS u/s 194E in the hands of the payer?	The High court held that the payment made to non resident match referees & umpires are "income" which has accrued & arises in India, the same are NOT taxable u/s 115BBA and thus, the assessee is NOT liable to deduct TDS u/s 194E. Further they render professional services but sec. 194J CANNOT be imposed as on a non resident. Note:- It may be noted that since income has accrued & arisen in India to the non resident match referees & umpires, the TDS provisions u/s 195 would be attracted and tax would be deductible at the rate in force. (Already asked in CA Final's Nov.,2012 attempt)	Indcom V. CIT (TDS) (2011) 335 ITR 485 (Calcutta)
90	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 partner?	The High court held that method of remuneration having been laid down, the assessee firm is entitled to deduct the remuneration paid to the partner u/s 40(b)(v) of Income tax Act.	CIT V. Anil Hardware Store (2010) 323 ITR 368 (HP)
91	Can interest u/s 234B & 234C be levied where a co. is assessed on the basis of book profits u/s 115JB (MAT)?	The Apex court observed that there is a specific provision in sec.115JB (5) providing that all other provision of the IT Act, 1961 shall apply to every assessee, being a Co. Therefore, interest u/s 234B & 234C shall be payable on failure to pay advance tax in respect of tax payable u/s 115JB.	Rolta India Ltd. V. JCIT (2011) 330 ITR 470 (SC)
92	Can LTCG exempted by virtue of erstwhile sec. 54E be included in the book profit computed under erstwhile sc. 115J?	The High court held that LTCG are part of the profit incl. in the P&L a/c prepared in accordance with the prov. Of Part II & III of schedule VI to co. Act, 1956, capital gain CANNOT be excluded unless provided under the explanation to sec. 115J (IA). (Already asked in CA Final's Nov.,2011 attempt)	N. J. Jose & Co. (P) Ltd V. ACIT (2010) 321 ITR 132 (Ker.)
(K) Income Tax Authority			
93	Is the requirement to grant a reasonable opportunity of being heard, stipulated u/s 127(1), mandatory in nature?	The Bombay high court held that the word "May" used in this section should be read as "shall" & such I/tax authority has to mandatorily give a reasonable opportunity of being heard to the assessee, whenever possible to do so, & therefore record the reasons for taking any action under the said section.	Sahara Hospitality Ltd. v. CIT (2012) 211 taxmann 15 (Bom.)
94	Does the CBDT have the power u/s 119(2)(b) to condone the delay in filing ROI?	The High court held that the board has the power to condone the delay in case of a return which was filed late & whr a claim for c/f of losses was made. (Already asked in CA Final's Nov.,2011 attempt)	Lodhi Property Co. Ltd V. Under Secretary (ITA-II), DOR (2010) 323 ITR 441 (Del.)
(L) Assessment Procedure			
95	Can the unabsorbed depreciation be allowed to be c/f in case the ROI is not filed within the due date?	The High court held that the unabsorbed depreciation will be allowed to be c/f to subsequent year even though the ROI of current A/Y was NOT filled within the due date.	CIT V. Govind Nagar Sugar Ltd (2011) 334 ITR 13 (Del.)

96	Can an assessee revise the particular filled in the original ROI by filling a revised statement of income?	The high court relying on the judgment of Goetze (I) Pvt. Ltd., held that the AO has NO power to entertain a fresh claim made by the assessee after filling of the original return except by way of filling a revised return.	Orissa Rural Housing Development Corp. Ltd. V. ACIT (2012) 343 ITR 316 (Orissa)
97	Is a person having income below taxable limit, required to furnish his PAN to the detector as per prov. of sec. 206AA even though he is not acquired to hold PAN as per prov. of sec. 139A?	In order to avoid undue hardship caused to such person, Karnataka high court, held that it is NOT necessary for such person to obtain PAN & in view of specific prov. of sec. 139A, sec. 206AA is NOT applicable to such person.	Smt. A. Kowsalya Bai V. UOI (2012) 346 ITR 156 (Kar.)
98	Can the AO reopen an assessment on the basis of merely a change of opinion?	The High court observed that the reason recorded for reopening the assessment constituted a mere change of opinion. Therefore, the reassessment was NOT Valid.	Aventis Pharma Ltd V. ACIT (2010) 323 ITR 570 (Bom.)
99	Is it permissible u/s 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 speculation loss & not a normal biz loss, consequent to mere re-look of a/c which were earlier furnished by the assessee during assessment u/s 143(3)?	The supreme court observed that re-opening of the assessment by the AO is clearly a change of opinion & therefore, the order of re-opening the assessment is NOT valid.	ACIT V. ICICI securities Primary Dealership Ltd. (2012) 348 ITR 299 (SC)
100	Can the AO reassess issue other than issues in respect of which proceeding were initiated u/s 147 when the original "reasons to believe" on basis of which the notice was issued ceased to exist?	The High court held that if the income, the escapement of which was the basis of the "reasons to believe" is NOT assessed or reassessed, it would NOT be open to the AO to independently assess only that income which comes to his notice subsq. if he intends to do so a fresh notice u/s 148 would be necessary.	Ranbaxy Lab. Ltd. V. CIT (2011) 336 ITR 136 (Delhi)
101	In case of change of incumbent of an office, can the successor AO initiate reassessment proceeding on the grounds of change of opinion in relation to an issue which the predecessor AO, who had framed the original assessment, had already applied his mind & came to a conclusion?	The Guj. High court observed that there was nothing on records to show that income had escaped assessment in respect of which the successor AO received info. Therefore, notice of re-assessment was, therefore NOT Valid.	H. K. Buildcon Ltd V. ITO (2011) 339 ITR 535 (Guj.)
102	Would the word "shall be issued" used in sec. 149 means "mere signing of notice by the AO" or "handing over of the said notice in hands of the proper officer for serving it to the assessee" to constitute a valid notice issued within the prescribed time limit?	The Guj. High court observed that the expression "shall be issued" means the date of issue on which the same were handed over for service to the proper officer/post officer , NOT the date on which such notice was signed by the AO.	Kanubhai M. Patel (HUF) V. Hiren Bhatt or his Successors to office (2011) 334 ITR 0025 (Guj.)
103	Can the AO issue notice u/s 154 to rectify a mistake apparent from records in the intimation u/s 143(1), after issue of a valid notice u/s 143(2)?	On the issue, the P & H High court concluded that proceeding u/s 154 for rectification of intimation u/s 143(1) CANNOT be initiated after issuance of notice u/s 143(2) by the AO to the assessee.	Haryana State Handloom & Handicraft Corpn. Ltd. V. CIT (2011) 336 ITR 694 (P&H)
104	Would the doctrine of merger apply for calculating the period of limitation u/s 154(7)?	After merge, the order of the original authority ceases to exist & the order of the appellate authority prevails. Thus, the period of limitation of 4 years for the purpose of sec. 154(7) has to be counted from the date of the order of the Appellate Authority.	CIT V. Tony Electronics Ltd (2010) 320 ITR 378 (Del.)
(M) Appeal & Revision			
105	Can an assessee file a revision petition u/s 264, if the revised return to correct an inadvertent error apparent from record in the original return, is filed after the time limit specified u/s 139(5) on account of the error carrying to the notice of the assessee after the specified time limit?	The high court further directed the AO to consider the rectification application filed by the assessee u/s 154 as a fresh application recd. on the date of service of this order & dispose of the rectification appl. on its own merits, without awaiting the result of the revision proceeding before the comm. of I/tax on remand, at the earliest.	Sanchit Software & Solution Pvt. Ltd. v. CIT (2012) 349 ITR 404 (Bom.)
106	Would the period of limitation for an order passed u/s 263 be reckoned from the original order passed by the AO u/s 143(3) or from the order of re-assessment passed u/s 147, whr the subject matter of revision is different from the subject matter of reassessment u/s 147?	The court held that, period of limitation in respect of the order of comm. u/s 263 in respect of a matter which does NOT form the subject matter of reassessment shall be reckoned from the date of the original order u/s 143 (3) & NOT from the date of reassessment order u/s 147.	CIT V. ICICI Bank Ltd. (2012) 343 ITR 74 (Bom.)

107	Can the CIT initiate revision proceeding u/s 263 on the grounds that the AO's order NOT initiating penal proceeding was erroneous and prejudicial to the interest of the revenue, in a case where non initiation of penal proceeding was a pre-condt. for surrender of income by the assessee?	The High court observed that, as perusal of the office note issued by the AO, it was clear that the assessee had made surrender of income with a clear condn. that no penal action u/s 271(1) (c) would be initiated. Once that was so, the CIT CANNOT take a different view & levy penalty.	Subhash Kr. Jain V. CIT (2011) 335 ITR 364 (P&H)
108	Can an assessee make an additional/new claim before an appellate authority which was not claimed by the assessee in the ROI (though he was legally entitled to), otherwise then by way of filing a revised ROI?	The Bombay high court held that additional/new grounds can be raised before the appellate authority even otherwise than by way of filing ROI.	CIT V. Pruthvi Brokers & Shareholders (2012) 208 Taxman 498 (Bom.)
109	Does the Appellate Tribunal have the power to review or re-appreciate the correctness of its earlier decision u/s 254(2)?	The High Court held that re-appreciation of the correctness of its earlier decision on merit, which is beyond the scope of the power conferred u/s 254(2) .	CIT V. Earnest Export Ltd (2010) 323 ITR 577 (Bom.)
110	Can the Tribunal exercise its power of rectification u/s 254(2) to recall its order in entirety?	The Tribunal does NOT have inherent power to review its order on merit; it can recall its order for the purpose of correcting a mistake apparent from the records. While applying the decision of Apex court in case of Honda Sael Power Products Ltd. in this case the high court held that the tribunal , while exercising the power of rectification u/s 254(2), can recall its order in entirety if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake or error and error committed is apparent.	Lachman Dass Bhatia Hing Wala (P) Ltd. V. ACIT (2011) 330 ITR 243 (Delhi) [FB]
111	Does the High court have an inherent power under the Income Tax act, 1961 to review an earlier order passed on merit?	The Power of re-admission/restoration of the appeal is always enjoyed by the High court. However, such power to restore the appeal CANNOT be treated to be a power to review the earlier order passed on Merit. (Already asked in CA Final's Nov., 2011 attempt)	Deepak Kumar Garg V. CIT (2010) 327 ITR 448 (MP)
(N) Penalties			
112	Can the repayment of loan by passing mere adjusting book entries by the assessee be taken to be in contravention of prov. of sec. 269T to attract penalty u/s 271E?	Since the tranx is bonafide in nature being a normal biz. Tranx & has NOT been made with a view to avoid tax, it was held that assessee has shown reasonable cause for the failure u/s 269T, & therefore, as per the prov. of sec. 273B, NO penalty u/s 271E could be imposed on the assessee for contravening the prov. of sec. 29T.	CIT V. Triumph International Finance (I) Ltd. (2012) 345 ITR 270 (Bom.)
113	Can penalty u/s 271(1)© be imposed if an assessee had wrongly claimed deduction of prov. made for payment of gratuity in its ROI, though the same was shown as disallowed u/s 40A (7) in the statement of particulars filed along with tax audit report u/s 44AB?	The apex court held that the assessee had committed an inadvertent & bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars. Therefore, the apex court held that imposition of penalty on the assessee was not justified & it reversed the decision of the high court.	Price waterhouse cooper Pvt. Ltd. v. CIT (2012) 348 ITR 306 (SC)
114	Can reporting of income under a different head be considered as tantamount to furnishing of inaccurate particular or suppression of facts to attract penalty u/s 271(1) ©?	The high court in light of case of SC in CIT v. Reliance Petro Product Pvt. Ltd. (2010), held that mere reporting of income under a different head would not characterize the particular reported as "inaccurate" to attract levy of penalty u/s 271(1) ©.	CIT v. Amit Jain (2013) 351 ITR 74 (Delhi)
115	Can penalty u/s 271(1) © be imposed on the ground of disallowance of a certain deduction under chapter VI-A owing to the subsequent decision of the SC?	The Bombay high court affirmed the decision of appellate tribunal deleting the penalty u/s 271(1) © on the ground that the additions made on account of disallowance were neither due to the failure on the part of the assessee to furnish accurate particulars nor on account of furnishing inaccurate particulars.	CIT v. Celetronix Power India Pvt. Ltd. (2013) 352 ITR 70 (Bom.)
116	In the case of an assessee liable to pay minimum alternate tax u/s 115JB, can penalty u/s 271(1) © be imposed on account of addition made in respect of certain c/expenditure, treated by the assessee as r/expenditure, if, even after such addition to t/income, the assessee is still assessable u/s 115JB?	The high court held that merely for the reason that the assessee co. had claimed the exp. to be revenue will not render it liable to penal proceeding, when there has been no concealment of income.	CIT v. Amtek Auto Ltd. (2013) 352 ITR 394

117	Can penalty u/s 271(1) (c) for concealment of income be imposed in a case where the assesses has raised a debatable issue?	On the issue, the high court observed that, 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.	Indersons Leather (P) Ltd. V. CIT (2010) 328 ITR 167 (P&H)
118	Can the penalty u/s 271(1)(c) be imposed whr the assessment is made by estimating the net profit at a higher % applying the prov. Of sec. 145?	The High court held that in order to impose penalty thr has to be concealment of particular of income of assesses or the assesses must have furnished inaccurate particulars of his income. Here assesses CANNOT be held guilty of furnishing particulars.	CIT V. Vijay Kumar Jain (2010) 325 ITR 378 (Chhattisgarh)
119	Would making an incorrect claim in the ROI per se amt. to concealment of particular of income or furnished inaccurate particulars for attracting the penal prov. u/s 271(1)(c), when no info. Given in ROI is found to be incorrect?	The Apex court held that a mere making of a claim , which is NOT sustainable in law, by itself, will NOT amt. to furnishing inaccurate particulars reg. the income of assesses.	CIT V. Reliance Petro Product (P) Ltd (2010) 322 ITR 158 (SC)
(O) Offence & Prosecution			
120	Would prosecution proceeding u/s 276CC be attracted whr the failure to furnish return in time was not willful?	In this case, it was observed that thr were sufficient grounds for delay in filling the ROI & such delay was NOT willful. Therefore, prosecution proceeding u/s 276CC are NOT attracted in such a case.	UOI V. Bhavecha Machinery & others (2010) 320 ITR 263 (MP)
(P) TDS			
121	Do the tips collected by hotel & disbursed to employee constitute salary to attract TDS u/s 192?	The High court held that when tips were charged to the bill & was subseq. Disbursed to the employees, then tips would constitute income within the meaning of sec. 2(24) & it was obligatory upon the co. to deduct TDS from such payments u/s 192. (Already asked in CA Final's Nov.,2012 attempt)	CIT (TDS) V. ITC Ltd (2011) 338 ITR 598 (Del.)
122	Can an assessee carrying on commission agency biz. (i.e. biz. of arranging transportation of goods through lorries owned by other transporters) be made liable to deduct tax u/s 194C, in respect of amount recd. from clients & passed on to the lorry owner/transporter (after retaining his booking comm.)?	The high court, applying the rationale of the above ruling to the case on hand, held that, in this case also, the assessee mainly acted as an intermediary or facilitator for which he recd. commission, & hence, he was not the "person responsible for merely the payment" in terms of sec. 194C.	CIT v. Hardarshan Singh (2013) 350 ITR 0427 (Delhi)
123	Can services rendered by a hotel to its customer in providing hotel room with various facilities/amenities (Like housekeeping, bank counter, beauty salon, car rental, etc) amt. to "carrying out any work" to attract TDS u/s 194C?	However, facilities or amenities made available by a hotel to its customer do NOT fall within the meaning of work u/s 194C & therefore TDS u/s 194C are NOT attracted.	East India Hotels Ltd V. CBDT (2010) 320 ITR 526 (Bom.)
124	Can discount given to stamp vendor on purchase of stamp papers be treated as "commission or brokerage" to attract the prov. for TDS u/s 194H?	The SC affirmed the above decision of the high court holding that the given tranx is a sale & the discount given to stamp vendors for purchasing stamp in bulk qty is in the nature of cash discount & consequently sec. 194H has no application in this case.	CIT v. Ahmedabad stamp vendors association (2012) 348 ITR 378 (SC)
125	Can discount given on supply of SIM cards & recharge coupons by a telecom co. to its distributors under a prepaid scheme be treated as commission to attract TDS provision u/s 194H?	The High court held that the distributor only acted as a middleman on behalf of the assesses for procuring & retaining customer. Therefore, the discount given to him was within the meaning of commission u/s 194H on which TDS was deductible.	Vodafone Essar cellular Ltd. V. ACIT (TDS) (2011) 332 ITR 255 (Kerala)
126	Can difference betw. Published Price & Minimum fixed commercial price be treated as additional special commission in the hands of the agents of an airline co. to attract TDS provision u/s 194H?	The High court held that TDS was NOT deductible on the difference betw. the actual sale price & the minimum fixed commercial price, even though the amount earned by the agent over & above minimum fixed commercial price would be taxable as income in his hand. (Already asked in CA Final's May,2012 attempt)	Qatar Airways V. CIT (2011) 332 ITR 253 (Bom.)
127	Whether retention of a % of advertising charges by the advertising agencies for the payment to Doordarshan for telecasting advertisement, would attract TDS u/s 194H?	It was held when Agent pays 85% of advertising charges collected by them from customer, & agent simultaneously get paid comm. Of 15%, which he is free to appropriate as his income. So TDS on comm.. charges of 15% has to be paid to	CIT V. Director, Prasar Bharti (2010) 325 ITR 205 (Ker.)

		income tax Dept.	
128	In respect of a co-owned property, would the threshold limit mentioned in sec. 194I for non-deduction of tax at source apply for each co-owner separately or it is to be considered for the complete amt. of rent paid to attract liability to deduct TDS?	Since payment of rent is made to each co-owner by way of separate cheque & their share is definite, the threshold limit mentioned, in sec. 194I has to be seen separately for each co-owner . Hence, the assesses would NOT be liable to deduct tax on the same & NO interest u/s 201 is leviable.	CIT V. Senior Manager, SBI (2012) 206 Taxman 607 (All.)
129	What is the nature of landing & parking charges paid by an airline co. to AAI & is TDS required thereof?	The landing & parking charges were definitely "Rent" within the meaning of the prov. Of sec. 194I , as they were payment for the use of the airport & TDS was req. to deducted. (Already asked in CA Final's Nov., 2011 attempt)	CIT V. Japan Airlines Co. Ltd (2010) 325 ITR 298 (Del.)
130	Can the payment made to contractors for hiring dumpers by an assesses engaged in transportation of building material, be treated as Rent for M/C or equipment to attract TDS u/s 194I?	The High court observed that the assesses had given contract to the parties for the transportation of goods & had NOT taken M/C & equipment on rent. Such payment could NOT be termed as rent paid for the use of M/C & Prov. Of sec. 194I would, therefore, NOT be applicable.	CIT (TDS) V. Shree Mahalaxmi Transport Co. (2011) 339 ITR 484 (Guj.)
131	Can the Intt. u/s 234B & C, be levied on the basis of intt. Calculation given in the computation sheet annexed to the assessment order, though the direction to charge such intt. is not mentioned in the assessment order?	The Court held that the levy of intt. & basis for arriving at the quantum thereof have been explicitly indicated in the computation sheet & therefore, such intt. has to be paid.	CIT V. Assam Mineral Development Corporation Ltd (2010) 320 ITR 149 (Gau.)
(Q) Wealth Tax			
132	Whether the Best judgment assessment order passed without giving the assesses an opportunity of being heard is valid in a case whr the notice u/s 16(4) has already been given?	It was held that second prov. to sec. 16(5) comes into operation & NO further notice or opportunity to be heard is req. to be given to the assesses.	CWT V. Motor General Finance Ltd (2011) 332 ITR 1 (Del.)
133	Is wealth tax leviable on the value of house under construction where the construction was still incomplete on the relevant valuation date?	Incomplete building neither falls within the definition of a "building", as contemplated u/s 2(ea) of WT Act nor within the purview of "urban land" as excluded by explanation 1(b). Hence, in such a case, the value of house under construction incl. investment on construction is NOT liable to wealth tax. Therefore, land & incomplete building thereon is NOT an asset. (Already asked in CA Final's Nov., 2011 attempt)	Smt. Neena Jain V. CIT (2011) 330 ITR 157 (P&H)

Note: - Refer to Module of ICAI for more clarity, it's only meant for quick revision.
Once counter check each case law's decision at your end too.

Tips:-

- Section 54 & 80 are beneficial section permitting certain deduction to assessee tax payer, so such section should be construed liberally & any restriction placed should also be construed in a reasonable & purposive manner to advance the objective of the provision.
- To interpret a section in right sense/manner it's important to understand the intention of lawmaker behind its introduction.

Message:-

Feel free to share your feedback & suggestion regarding my work. If your feedback reaches my inbox; I shall be delighted & will be motivated to carry on such work in future.

All d Best & Gud-luck 4 ur xam...