SUMMARY OF CASE LAWS APPLICABLE FOR CA FINAL MAY 2014 EXAMINATIONS

S. No.	Case Law	Question Raised	Decision
1.	**CIT v. Softworks Computers P. Ltd. (2013) 354 ITR 16 (Bom.)**	Can waiver of loan or advance taken for the purpose of relocation of office premises be treated as a revenue receipt liable to tax?	The Bombay High Court held that since the advance taken by the assessee-company was utilized by it for the purpose of relocating its office premises i.e., for acquisition of a capital asset, namely, a new office, the waiver of the same cannot be said to be waiver or remission of trading liability to attract taxability under the Act. **Waiver of such advance, being capital in nature, is not taxable under the Act.**
2.	**CIT v. Karimangalam Onriya Pengal Semipu Amaipu Ltd. (2013) 354 ITR 483 (Mad)**	In a case where the application for registration of a charitable trust is not disposed of within the period of 6 months as required under section 12AA(2), can the trust be deemed to have been registered as per provisions of section 12AA?	The Madras High Court held that the **time frame mentioned in section 12AA(2) is only directory in nature** and non-disposal of the registration application within the said time frame of six months would not amount to "deemed registration". There is no automatic or deemed registration if the application filed under section 12AA was not disposed of within the stipulated period of six months.
3.	**DIT (Exemptions) v. Meenakshi Amma Endowment Trust (2013) 354 ITR 219 (Kar.)**	Where a charitable trust applied for issuance of registration under section 12AA within a short time span (nine months, in this case) after its formation, can registration be denied by the concerned authority on the ground that no charitable activity has been commenced by the trust?	The High Court observed that, with the moneys available with the trust, it cannot be expected to carry out activity of charity immediately after its formation. Consequently, in such a case, it cannot be concluded that the trust has not intended to do any activity of charity. In such a situation, the objects of the trust as mentioned in the trust deed have to be taken into consideration by the authorities for satisfying themselves about the genuineness of the trust and not the activities carried on by it. Later on, if it is found from the subsequent returns filed by the trust, that it is not carrying on any charitable activity, it would be open to the concerned authorities to withdraw the registration granted or cancel the registration as per the provisions of section 12AA(3). **The registration cannot be denied on the ground that the trust has not carried out any charitable activity so far in the short span of time after its formation.**

4.	**Confederation of Indian Pharmaceutical Industry (SSI) v. CBDT (2013) 353 ITR 388 (H.P.)**	Is Circular No. 5/2012 dated 01.08.2012 disallowing the expenditure incurred on freebies provided by pharmaceutical companies to medical practitioners, in line with Explanation to section 37(1), which disallows expenditure which is prohibited by law?	The High Court held that the contention of the assessee that the above mentioned Circular goes beyond section 37(1) was not acceptable. **As per Explanation to section 37(1), it is clear that any expenditure incurred by an assessee for any purpose which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession.** The sum and substance of the circular is also the same. Therefore, the circular is totally in line with the Explanation to section 37(1). However, if the assessee satisfies the assessing authority that the expenditure incurred is not in violation of the regulations framed by the Medical Council then it may legitimately claim a deduction, but it is for the assessee to satisfy the Assessing Officer that the expense is not in violation of the Medical Council Regulations.
5.	**CIT v. T. C. Reddy (2013) 356 ITR 516 (Andhra)** **Same as *Dr. T.A. Qureshi (SC)***	Where goods have been confiscated by custom authorities in a foreign country due to certain statutory violation, can the same be treated as a loss of stock-in-trade, and claimed as deduction?	The High Court held that the **loss arising on confiscation of pharmaceutical drugs is a business loss,** based on the Supreme Court's decision in Dr. T. A. Qureshi's case.
6.	**CIT v. Kichha Sugar Co. Ltd. (2013) 356 ITR 351 (Uttarakhand)** **Same as *AIMIL Ltd. (Del.)***	Can the amount of employees' contribution towards provident fund, deducted and credited to the employee's PF account by the employer-assessee after the "due date" under the EPF & Miscellaneous Provisions Act, 1952, but before the due date of filing return of income under the Income-tax Act, 1961, be allowed as deduction while computing business income of the employer-assessee?	The High Court observed that the "due date" referred to in section 36(1)(va) must be read in conjunction with the "due date" referred to in the first proviso to section 43B. A combined reading of both the sections would make it clear that the due date referred to in section 36(1)(va) is the due date as mentioned in section 43B i.e., the due date of filing of return of income. **Therefore, any amount of employees' contribution paid by the employer-assessee to the provident fund authorities after the due date under the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (EPF & MP Act) but before the due date of filing the return for the previous year, shall be allowable as deduction in the hands of the employer-assessee.**
7.	**CIT v. Minda Wirelinks Pvt. Ltd. (2013) 357 ITR 668 (Delhi)**	Whether conversion of sales tax liability into a loan pursuant to a Government order would entitle the assessee to	The High Court held that **sales tax liability shall be allowed in the year in which it was converted into a loan** on the basis of the Government order issued, irrespective of the fact that the Government order was not communicated to

		deduction in the year of conversion, being the year in which the Government order is issued, inspite of the fact that the said order was communicated to the assessee only in the next year?	assessee within the relevant assessment year. Sales tax liability converted into loan would be deemed as actual payment in the year of conversion. However, interest on loan or borrowing or advance converted into a loan / borrowing / advance, would be deemed as actual payment not in the year of conversion but only in the year in which the converted interest, by whatever name called, is actually paid.
8.	**A. Murali and Co. P. Ltd.v. ACIT (2013) 357 ITR 580 (Mad.)**	Can deduction for interest on borrowed funds be disallowed on the ground that such funds have been diverted as advances to directors, where there has been a consistent increase in the amount of advances given to directors, without corresponding return and without any increase in the performance of the company?	The High Court further observed that except for stating that the assessee had made borrowals in the immediate preceding accounting year, no materials were placed before the court or before any other authority to show that the borrowed funds were not diverted for any purpose other than business. The mere contention that the borrowed funds were utilised for the purchase of trading goods per se could not be taken as a good ground to accept the plea of the assessee, considering the fact that the advances given to the directors had consistently increased from Rs. 3.23 crores to Rs. 3.91 crores without corresponding return and with no better performance in the business of the assessee. **Hence, the High Court held that the amount of interest on borrowed capital was not deductible.**
9.	**CIT v. Orient Ceramics and Industries Ltd. (2013) 358 ITR 49 (Delhi)**	What is the nature of expenditure incurred on glow-sign boards displayed at dealer outlets - capital or revenue?	The Delhi High Court noted the following- (i) The expenditure incurred by the assessee on glow sign boards does not bring into existence an asset or advantage for the enduring benefit of the business. (ii) The glow sign board is not an asset of permanent nature. It has a short life. (iii) The materials used in the glow sign boards decay with the effect of weather. Therefore, it requires frequent replacement. Consequently, the assessee has to incur expenditure on glow sign boards regularly in almost each year. (iv) The assessee incurred expenditure on the glow sign boards with the object of facilitating the business operation and not with the object of acquiring asset of enduring nature. **The Delhi High Court held that such expenditure on glow sign boards displayed at dealer outlets was revenue in nature.**

10.	**CIT v. BSES Yamuna Powers Ltd (2013) 358 ITR 47 (Delhi)**	What is the eligible rate of depreciation in respect of computer accessories and peripherals under the Income-tax Act, 1961?	The High Court observed that computer accessories and peripherals such as printers, scanners, UPS and server etc. form an integral part of the computer system and they cannot be used without the computer. Consequently, the High Court held that **since they are part of the computer system, they would be eligible for depreciation at the higher rate of 60% applicable to computers including computer software.**
11.	**Gouli Mahadevappa v. ITO (2013) 356 ITR 90 (Kar.)**	Where the stamp duty value under section 50C has been adopted as the full value of consideration, can the reinvestment made in acquiring a residential property, which is in excess of the actual net sale consideration, be considered for the purpose of computation of exemption under section 54F, irrespective of the source of funds for such reinvestment?	In this case, actual sale price was Rs. 20 Lakhs and stamp duty value of Rs. 36 lakhs was deemed as sales price as per section 50C. Assessee invested Rs. 36 lakhs in new residential house property by taking a loan of Rs. 16 lakhs. On the issue of exemption under section 54F, the High Court held that when capital gain is assessed on notional basis as per the provisions of section 50C, and the higher value i.e., the stamp duty value of Rs.36 lakhs under section 50C has been adopted as the full value of consideration, the entire amount of Rs.36 lakhs reinvested in the residential house within the prescribed period should be considered for the purpose of exemption under section 54F, irrespective of the source of funds for such reinvestment.
12.	**CIT v. Gita Duggal (2013) 357 ITR 153 (Delhi)**	Where a building, comprising of several floors, has been developed and re-constructed, would exemption under section 54/54F be available in respect of the cost of construction of - (i) the new residential house (i.e., all independent floors handed over to the assessee); or (ii) a single residential unit (i.e., only one independent floor)?	In the present case, the assessee was the owner of property comprising the basement, ground floor, first floor and second floor. In the year 2006, she entered into a collaboration agreement with a builder for developing the property. According to the terms of the agreement, the builder was to demolish the existing structure on the plot of land and develop, construct, and/or put up a building consisting of basement, ground floor, first floor, second floor and third floor with terrace at its own costs and expenses. The assessee handed over to the builder, the physical possession of the entire property, along with 22.5% undivided interest over the land. The handing over of the entire property was, however, only for the limited purpose of development. The builder was to get the third floor plus the undivided interest in the land to the extent of 22.5% for his exclusive enjoyment. In addition to the cost of construction incurred by the builder on development of the property amounting to Rs. 3.44 crores, a further amount of Rs.4 crores was payable by the builder to the assessee as consideration against the rights of the assessee.

			The High Court held that sale consideration for the transfer should include not only the amount of Rs. 4 crores received by the assessee in cash, but also the cost of construction amounting to Rs. 3.44 crore incurred by the developer in respect of the other floors, which were handed over to the assessee. The cost of construction incurred by the builder is to be added to the sale price, then, the same should also correspondingly be considered as re-investment in the residential house for exemption under section 54. The High Court held that the fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under section 54 or section 54F. It is neither expressly nor by necessary implication prohibited. Therefore, the assessee is entitled to exemption of capital gains in respect of investment in the residential house, comprising of independent residential units handed over to the assessee.
13.	**Pramod Mittal v. CIT (2013) 356 ITR 456 (Delhi)**	Can the loss suffered by an erstwhile partnership firm, which was dissolved, be carried forward for set-off by the individual partner who took over the business of the firm as a sole proprietor, considering the succession as a succession by inheritance?	If a partnership firm was dissolved and the takeover of the running business of the firm by the erstwhile partner as a sole proprietor was not a case of succession by inheritance. Hence, **the carry forward of losses of the firm by the sole proprietor was not allowed in this case.** Note : In *Madhukant M. Mehta's* case, the sole proprietor had expired and after his death the heirs succeeded the business as a partnership concern. Therefore, the losses suffered by the deceased proprietor was allowed to be set-off by the partnership firm since the case falls within the exception mentioned under section 78(2), i.e., a case of succession by inheritance.
14.	**CIT v. Orchev Pharma P. Ltd. (2013) 354 ITR 227 (SC)** **Same as *Liberty India v. Commissioner of Income-tax(SC) (2009)***	Can Duty Drawback be treated as profit derived from the business of the industrial undertaking to be eligible for deduction under section 80-IB?	On this issue, the Supreme Court, following the decision in case of Liberty India v. CIT (2009) 317 ITR 218 (SC) held that Duty Drawback receipts cannot be said to be profits derived from the business of industrial undertaking for the purpose of computation of deduction under section 80-IB.

15.	**Smt. Shobha Govil v. Additional Commissioner, Income-tax (2013) 354 ITR 668 (Allahabad)**	Where the Commissioner sets aside the assessment order under section 263 on issues relating to a particular business (cattle feed and green vegetable business) of an assessee and the matter was restored to the Assessing Officer, can the Assessing Officer make enquiries relating to another business (mentha business) of the assessee, in respect of which the original order passed by the Assessing Officer had attained finality?	The High Court, held that since the objections raised by the Commissioner in his show-cause pertained only to the cattle feed and green vegetable business, the Assessing Officer's queries should also be confined to the said business and cannot extend to mentha business. The High Court, however, clarified that it is open to the Assessing Officer to raise all relevant queries to determine the income of the assessee with regard to the cattle feed and green vegetable business.
16.	**CIT v. Splender Construction (2013) 352 ITR 588 (Delhi)**	Can the conversion of land held as stock-in-trade into investment just before the sale of property, for the purpose of availing the benefit of concessional rate of tax as well as indexation benefit on long-term capital gains, be treated as furnishing of inaccurate particulars of income to attract levy of penalty?	The High Court, held that the issue was not a debatable one, considering that – • the order of the Assessing Officer rejecting assese's view was sustained by all appellate authorities; and • it had also dismissed the appeal at the admission stage itself, there and then, after hearing the arguments. Accordingly, the penalty order of the Assessing Officer was correct.
17.	**CIT v. V. Sivakumar (2013) 354 ITR 9 (Mad.)**	Can loan, exceeding the specified limit, advanced by a partnership firm to the sole-proprietorship concern of its partner be viewed as a violation of section 269SS to attract levy of penalty?	The High Court, relying upon the various court decisions, upheld the decision of the Tribunal holding that there is no separate identity for the partnership firm and that the partner is entitled to use the funds of the firm. In the present case, the assessee has acted bonafide and that there was a reasonable cause within the meaning of section 273B. **Therefore, the transaction cannot be said to be in violation of section 269SS and no penalty is attracted in this case.**
18.	**Ajmer Vidyut Vitran Nigam Ltd., In re (2013) 353 ITR 640 (AAR)**	Can the transmission, wheeling and SLDC charges paid by a company engaged in distribution and supply of electricity, under a service contract, to the transmission company be treated as fees for technical services so as to attract TDS provisions under section 194J or in the alternative, under 194C?	The AAR, considering the definition of fees for technical services under section 9(1)(vii) and the process involved in proper transmission of electrical energy, held that transmission and wheeling charges paid by the applicant to the transmission company are in the nature of fees for technical services, in respect of which the applicant has to withhold tax thereon under section 194J. As regards SLDC charges, the AAR opined that the main duty of the SLDC is to ensure integrated operation of the power system in the State for optimum

			scheduling and dispatch of electricity within the State. The SLDC charges paid appeared to be more of a supervisory charge with a duty to ensure just and proper generation and distribution in the State as a whole. Therefore, such services were not in the nature of technical service to the applicant; Resultantly, **it does not attract TDS provisions under section 194J or under section 194C.**
19.	**Bharti Cellular Ltd. v. ACIT (2013) 354 ITR 507 (Cal.)** **Same as *Vodafone Essar Cellular Ltd. v. ACIT (Ker.) (2011)***	Can discount given on supply of SIM cards and pre-paid cards by a telecom company to its franchisee be treated as commission to attract the TDS provisions under section 194H?	The High Court held that there is an indirect payment of commission, in the form of discount, by the assessee-telecom company to the franchisee. Therefore, **the assessee is liable to deduct tax at source on such commission as per the provisions of section 194H.** Note - Similar ruling was pronounced by the Kerala High Court in Vodafone Essar Cellular Ltd. v. ACIT (TDS) (2011) 332 ITR 255, wherein it was held that there was no sale of goods involved as claimed by the assessee-telecom company and the entire charges collected by the assessee from the distributors at the time of delivery of SIM cards or recharge coupons were only for rendering services to ultimate subscribers. The assessee was accountable to the subscribers for failure to render prompt services pursuant to connections given by the distributor. Therefore, the distributor only acted as a middleman on behalf of the assessee for procuring and retaining customers and consequently, the discount given to him was within the meaning of commission on which tax was deductible under section 194H.
20.	**CIT v. Model Exims (2013) 358 ITR 72 (Allahabad)**	Would commission payment remitted outside India to a non-resident (who is not liable to pay tax in India) for procuring export orders outside India attract disallowance under section 40(a)(i) for non-deduction of tax at source under section 195?	The High Court observed that there was no obligation to deduct tax at source under section 195 on commission paid to a non-resident, who was not liable to pay tax in India. The payment of commission to foreign agents also did not entitle such foreign agents to pay tax in India. Thus, there was no obligation to deduct tax at source under section 195 on the commission paid to a non-resident recipient, who was not liable to pay tax in India. Further, there was also nothing on record to demonstrate that the non-resident agents had been appointed as selling agents, designers or technical advisers.