

CASE LAWS (INDIRECT TAX)

SECTION A: EXCISE

1) Does printing on jumbo rolls of GI paper as per design and specification of customers with logo and name of product in colourful form, amount to manufacture?

❖ Relevant Case –

- CCE v. Fitrite Packers (2015) (SC)

❖ Supreme Court's Decision –

- Supreme Court in **Servo-Med Industries Pvt. Ltd. v. CCEx. (2015)** had culled out four categories of cases to ascertain whether a particular process would amount to manufacture or not:
 - i). Where the goods remain exactly the same even after a particular process.
 - ii). Where the goods remain essentially the same after the particular process.
 - iii). Where the goods are transformed into something different and / or new after a particular process but the said goods are not marketable.
 - iv). Where the goods are transformed into goods which are different and / or new after a particular process and such goods are marketable as such.
- The Supreme Court held that –
 - ✦ As GI paper was meant for wrapping and its use did not undergo any change even after printing - the end use thereof was still the same namely wrapping / packaging.
 - ✦ However, whereas the blank paper could be used as wrapper for any kind of product, after the printing of logo and name of the specific product thereupon, its end use got confined to only that particular and specific product of the particular company / customer.
 - ✦ Therefore, the printing was not merely a value addition but had transformed the general wrapping paper to special wrapping paper.
 - ✦ Hence, the process of aforesaid particular kind of printing resulted into a product i.e., paper with distinct character and use of its own which it did not bear earlier. So, the process amounted to manufacture.

2) Is the assessee entitled to avail CENVAT credit of service tax paid on outward transportation of goods cleared from factory?

❖ Relevant Case –

- CCE v. Haryana Sheet Glass Ltd. (2015) (P&H)

❖ High Court's Decision –

- The High Court relied upon one of its earlier decision in the case of **Ambuja Cements Ltd. v. Union of India (2009) (P&H)** and held that –
 - ✦ The outward transportation up to the place of removal falls within the expression "input service". If a manufacturer is to deliver the goods to the purchaser, the place of removal would not be a factory gate of the manufacturer but that of the purchaser.
 - ✦ In the given case, there is no evidence that the property in goods stood transferred to the purchaser at the factory door of the assessee. Therefore, the assessee is entitled to avail CENVAT credit of service tax paid on outward transportation of goods cleared from factory.

❖ **Note:**

- ✦ Circular No. 988/12/2014 CX dated 20.10.2014 issued by the Board clarifies that the place of removal needs to be ascertained in term of provisions of Central Excise Act, 1944 read with provisions of the Sale of Goods Act, 1930.
- ✦ Payment of transport, inclusion of transport charges in value, payment of insurance or who bears the risk are not the relevant considerations to ascertain the place of removal.
- ✦ The place where sale has taken place or when the property in goods passes from the seller to the buyer is the relevant consideration to determine the place of removal.

3) Can a commercial training and coaching institute claim CENVAT credit in respect of the input services of catering, photography and tent services used to encourage the coaching class students, maintenance and repair of its motor vehicle and travelling expenses?

❖ **Relevant Case –**

- Bansal Classes v. CCE & ST (2015) (Raj.)

❖ **High Court's observations –**

- The High Court held that –
 - ✦ Once the students pass their coaching classes, the activities of catering, photography and tent services cannot be said to have been used to provide the output service of commercial training or coaching. Further, the travelling expenses incurred by assessee for the business tours cannot be related to provision of commercial training or coaching.
 - ✦ Similarly, the assessee maintains and repairs its motor vehicle and there is no material to show that maintenance and repairs have any nexus to commercial training or coaching.
 - ✦ Thus, the assessee is not eligible for CENVAT credit of the service tax paid on catering, photography & tent service, maintenance & repair of its motor vehicle and travelling expense.

4) Whether assessee is entitled to claim CENVAT credit of service tax paid on house-keeping & landscaping services availed to maintain their factory premise in an eco-friendly manner?

❖ **Relevant Case –**

- Commr. of C. Ex., & S.T., LTU v. Rane TRW Steering Systems Ltd. (2015) (Mad.)

❖ **High Court's Decision –**

- The High Court referring to the case of **CCE v. Millipore India Pvt. Ltd. (2012) (Kar.)** held that –
 - ✦ The landscaping of factory or garden certainly would fall within the concept of modernization, renovation, repair, etc., of the office premises. At any rate, the credit rating of an industry is depended upon how the factory is maintained inside and outside the premises.
 - ✦ The environmental law expects the employer to keep the factory without contravening any of those laws. The concept of corporate social responsibility is also relevant.
 - ✦ It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly manner. Thus, the tax paid on such services would form part of the costs of the final products.
 - ✦ Therefore, housekeeping and gardening services would fall within the ambit of input services and the assessee is entitled to claim the benefit of CENVAT credit on the same.

5) Whether rule 18 of Central Excise Rules, 2002 (CER) allows export rebate of excise duty paid on both inputs as well as the final product manufactured from such inputs?

❖ **Relevant Case –**

- Spentex Industries Ltd v. CCE (2015) (SC)

❖ **Supreme Court's Decision –**

- The Apex Court made the following significant observations:
 - i). Rules 18 and 19 of CER provide two alternatives to an exporter for getting the benefit of exemption from paying excise duty.
 - ii). Under rule 19 of CER, the exporter is not required to pay any excise duty at all.
 - iii). Giving restrictive meaning to rule 18 would not only be anomalous but would lead to absurdity as well and would defeat the very purpose of grant of remission from payment of excise duty in respect of export goods. It may also lead to invidious discrimination and arbitrary results.
 - iv). The Central Government has issued necessary notifications under rule 18 for rebate in respect of both the duties, i.e., on intermediate product as well as on the final product.
 - v). If the Central Government itself is of the opinion that the rebate is to be allowed on both the forms of excise duties, the rule in question has to be interpreted in accordance with this understanding of the rule maker.
- The Apex Court held that –
 - ✦ Normally the two words 'or' and 'and' are to be given their literal meaning. However, wherever use of such a word, viz., 'and'/'or' produces unintelligible or absurd results, the Court has power to read the word 'or' as 'and' and vice versa to give effect to the intention of the Legislature which is otherwise quite clear.
 - ✦ Therefore, the exporters/appellants are entitled to both the rebates under rule 18 and not one kind of rebate.

❖ **Note –**

- This case overrules the Rajasthan High Court's decision in the case of **Rajasthan Textile Mills v. UOI 2013** in Select Cases in Direct and Indirect Tax Laws.

6) Whether an assessee using a foreign brand name, assigned to it by the brand owner with right to use the same in India exclusively, is eligible for SSI exemption?

❖ **Relevant Case –**

- CCE v. Otto Bilz (India) Pvt. Ltd (2015) (SC)

❖ **Supreme Court's Decision –**

- The Supreme Court held that –
 - ✦ The foreign company had assigned the said brand name in favour of the assessee under an agreement with right to use the said trade mark in India exclusively.
 - ✦ So, the assessee was using the trade mark in its own right as its own trade mark and therefore, it could not be said that it was using the trade mark of another person.
 - ✦ Hence, the assessee was entitled to SSI exemption.

7) Can the benefit of exemption notification be granted to assessee where one of the conditions to avail the exemption is not strictly followed?

❖ **Relevant Case –**

- CCE v. Honda Sael Power Products Ltd. (2015) (S.C.)

❖ **Supreme Court's Decision –**

- The Apex Court held that –
 - ✦ The assessee was required to fulfill the condition in stricto sensu viz. to pay the duty either in cash or through account current if it wanted to avail the benefit of exemption notification and not through adjustment of CENVAT credit which was not the mode prescribed in the aforesaid condition.
 - ✦ It is trite that exemption notifications are to be construed strictly and even if there is any doubt same is to be given in favour of the Department.
 - ✦ Therefore, once it is found that the conditions had not been fulfilled the obvious consequence would be that the assessee was not entitled to the benefit of said notification.

SECTION B: SERVICE TAX

8) Can service tax be demanded by a speaking order without issuing a show cause notice but after issuing a letter and giving the assessee an opportunity to represent his case along with personal hearing?

❖ **Relevant Case –**

- CCE v. Vijaya Consultants, Engineers and Consultants (2015) (AP)

❖ **High Court's Decision –**

- The High Court held that –
 - ✦ A perusal of section 73 of the Finance Act, 1994 leaves no doubt that there is a requirement of issuance of notice stating whether the noticee falls within the category of section 73(1) and proviso to section 73(1) and further specify the amount of service tax that is payable.
 - ✦ The letter did not satisfy the requirements of notice as there was no allegation that a specified amount was required to be paid as service tax and even no period was mentioned therein.
 - ✦ Therefore, no stretch of imagination, the said letter could be treated as a show cause notice satisfying the requirement of section 73 of the Act.
 - ✦ The procedural requirement of issuance of notice and calling for explanation cannot be dispensed with as otherwise the demand of money in the name of tax would be in violation of the very procedure prescribed under the Act.
 - ✦ Thus, the appeal was dismissed.

9) Based on the contractual arrangement, can the assessee ask the Department to recover the tax dues from a third party or wait till the assessee recovers the same?

❖ **Relevant Case –**

- Delhi Transport Corporation v. Commissioner Service Tax (2015) (Del.)

❖ High Court's Decision –

- The High Court held that –
 - ✦ Undoubtedly, the service tax burden can be transferred by contractual arrangement to the other party.
 - ✦ However, on account of such contractual arrangement, the assessee cannot ask the Revenue to recover the tax dues from a third party (the other party) or wait for discharge of the liability by the assessee till it has recovered the amount from its contractors (the other party).
 - ✦ For purposes of the taxing statute, the appellant was an assessee, and statutorily bound to not only get itself registered but also submit the requisite returns as per the prescription of law and rules framed thereunder.

SECTION C: CUSTOMS

10) In case of import of crude oil, whether customs duty is payable on the basis of the quantity of oil shown in the bill of lading or on the actual quantity received into shore tanks in India?

❖ Relevant Case –

- Mangalore Refinery & Petrochemicals Ltd v. CCus. (2015) (SC)

❖ Supreme Court's Decisions –

- The Apex Court observed that –
 - i). The levy of customs duty u/s 12 of the Act is only on goods imported into India. Unless such goods are brought into India, the act of importation which trigger the levy does not take place.
 - ii). If the goods are pilfered after they are unloaded or lost or destroyed at any time before clearance for home consumption or deposit in a warehouse, the importer is not liable to pay the duty leviable on such goods. This is for the reason that the import of goods does not take place until they become part of the land mass of India.
 - iii). Under section 23(2), the owner of the imported goods may also at any time before such orders have been made relinquish his title to the good and shall not be liable to pay any duty thereon.
 - iv). Further, as per section 47 of the Customs Act, the importer has to pay import duty only on goods that are entered for home consumption.
- The Supreme Court held that –
 - ✦ The quantity of crude oil actually received into a shore tank in a port in India should be the basis for payment of customs duty.

CASE LAWS (INCOME TAX)

1) Can consideration for supply of software embedded in hardware tantamount to 'royalty' under section 9(1)(vi)?

❖ Relevant Case –

- CIT v. Alcatel Lucent Canada (2015) (Del)

❖ High Court's Decision –

- The High Court held that –
 - ✦ The software that was loaded on the hardware did not have any independent existence;
 - ✦ The software supply is an integral part of GSM mobile telephone system and is used by the cellular operators for providing cellular services to its customers;
 - ✦ The software is embedded in the system and there could not be any independent use of such software;
 - ✦ This software merely facilitates the functioning of the equipment and is an integral part of the hardware.
 - ✦ Therefore, where payment is made for hardware in which the software is embedded and the software does not have independent functional existence, no amount could be attributed as 'royalty' for software in terms of section 9(1)(vi).

2) Where an institution engaged in imparting education incidentally makes profit, would it lead to an inference that it ceases to exist solely for educational purposes?

❖ Relevant Case –

- Queen's Educational Society v. CIT (2015) (SC)

❖ Supreme Court's Decision –

- The Supreme Court observed that –
 - ✦ The provisions of section 10(23C)(iiiad) provide for three requirements, namely,
 - i). The education institution must exist solely for educational purposes;
 - ii). It should not be for purposes of profit; and
 - iii). The aggregate annual receipts of such institution should not exceed the amount as may be prescribed. Such monetary limit is Rs. 1 crore as per Rule 2BC.
 - ✦ After analyzing the legal provisions, the law common to section 10(23C)(iiiad) / (vi) are summed up as follows :
 - a) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purpose and becomes an institution for purpose of making profit;
 - b) The predominant object test must be applied – the purpose of education should not be submerged by a profit making motive;
 - c) A distinction must be drawn between the making of surplus and an institution being carried on "for profit". Merely because imparting of education results in making a profit, it cannot be inferred that it becomes an activity for profit;

- d) If after meeting expenditure, surplus arises incidentally from activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes;
- e) The ultimate test is whether on an overall view of the matter in the concerned assessment year, the object is to make profit as opposed to educating persons.

- The Apex Court held that –

- ✦ Based on the above principles and tests, the assessee was engaged in imparting education and the profit was only incidental to the main object of spreading education. Hence, it satisfies the conditions laid down in section 10(23C)(iiiad) for claim of exemption thereunder.

3) Under what head of income should income from letting out of godowns and provision of warehousing services be subject to tax - “Income from house property” or “profits and gains of business or profession”?

❖ **Relevant Case –**

- CIT v. NDR Warehousing P Ltd (2015) (Mad)

❖ **High Court’s Decision –**

- The High Court held that –
 - ✦ The objects clause of the memorandum of association of the company shows that assessee company was incorporated with the object of carrying on business of warehousing and letting /renting of godowns and providing facilities for storage of articles or things and descriptions.
 - ✦ The profit and loss account of the assessee-company shows that its main source of income is storage charges and maintenance or user charges. .
 - ✦ Therefore, the income earned by the assessee from letting out of godowns and provision of warehousing services is chargeable to tax under the head “Profits and gains of business or profession” and not under the head “Income from house property”.

4) Can section 41(1) be invoked in respect of long standing credit balances of sundry creditors admitted as liability in the Balance Sheet?

❖ **Relevant Case –**

- Principal CIT v. Matruprasad C.Pandey (2015) (Guj)

❖ **High Court’s Decision –**

- The High Court referring to the case of **CIT v. Nitin S Garg (2012)** held that –
 - ✦ Addition on the ground that the amounts were outstanding for several years cannot be made under section 41(1) unless and until it is found that there was remission or cessation of liability that too during the previous year, relevant to the assessment year in question.
 - ✦ Even if the credit balances are outstanding for long time, such balances cannot be subjected to tax by invoking section 41(1), unless there is a remission/cessation of liability in the year under question.

5) Where the lump sum amount paid as One Time Settlement (OTS), without bifurcation of interest and principal, has been offered to tax under section 41(1), can the assessee claim benefit of deduction of interest (interest paid plus interest waived) under section 43B?

❖ **Relevant Case –**

- CIT v. KLN Agrotechs (P) Ltd (2015) (Kar.)

❖ High Court's Observations & Decision –

- The High Court held that –
 - ✦ Either the interest amount has to be allowed as deduction under section 43B or the sum offered for tax (as waived by the bank) has to be reduced by the amount of interest.
 - ✦ In either case, the effective amount which is subjected to tax, would come to the same.

6) Can advance given for purchase of land, building, plant and machinery tantamount to utilization of capital gain for purchase and acquisition of new machinery or plant and building or land, for claim of exemption under section 54G?

❖ Relevant Case –

- Fibre Boards (P) Ltd v. CIT (2015) (SC)

❖ Supreme Court's Decision –

- The Apex Court held that –
 - ✦ Section 54G gives a time limit of 3 years after the date of transfer of capital asset in the case of shifting of industrial undertaking from urban area to any area other than urban area.
 - ✦ The expression used in section 54G (2) is that the amount “which is not utilized by him for all or any of the purposes aforesaid has to be deposited in the capital gain account scheme”.
 - ✦ To availing exemption, all that was required for the assessee is to “utilise” the amount of capital gain for purchase and acquisition of new machinery or plant and building or land.
 - ✦ Therefore, to avail exemption under section 54G in respect of capital gain arising from transfer of capital assets in the case of shifting of industrial undertaking from urban area to non-urban area, the requirement is satisfied if the capital gain is given as advance for acquisition of capital assets such as land, building and / or plant and machinery.

7) Whether, for the purpose of computing the period of holding of the property, the date of allotment letter issued by the builder of the flat or the date of registration of the property has to be considered for determining the nature of capital asset – long-term or short-term?

❖ Relevant Case –

- CIT v. S.R.Jeyashankar (2015) (Mad)

❖ High Court's Decision –

- The Madras High Court held that –
 - ✦ The Punjab and Haryana High Court, in the cases of **Mrs. Madhu Kaul v. CIT (2014)** and **Vinod Kumar Jain v. CIT (2012)**, held that –
 - The date of allotment of the flat has to be adopted as date of acquisition of the immovable property when it comes to acquiring a flat from the promoter of the flat by way of executing construction agreement and not the date of the sale deed for purchase of the undivided share in land.
 - ✦ In this case, the right to the property flows from the date of agreement with the builder i.e., from February, 2005. Over a period of time, payments were made and the transaction was concluded in accordance with the terms of the agreement by registering the undivided share in land and handing over of the flat subsequently.

- ✦ Therefore, the assessee had rightly claimed the benefit of long-term capital gain, since the holding period exceeded 36 months (i.e., from 22.02.2005, being the date of agreement, to 10.04.2008, being the date of sale of property).

8) Can the Commissioner reject an application for grant of approval under section 80G(5) on the ground that the trust has failed to apply 85% of its income for charitable purposes?

❖ **Relevant Case –**

- CIT v. Shree Govindbhai Jethalal Nathavani Charitable Trust (2015) (Guj)

❖ **High Court's Decision –**

- The High Court held that –
 - ✦ The Punjab and Haryana High Court in **CIT v. O.P. Jindal Global University (2013)** held that –
 - At the time of granting approval of exemption under section 80G, only the objects of the trust are required to be examined and the aspect of application of funds can be examined by the Assessing Officer at the time of framing the assessment.
 - ✦ Section 80G does not relate to assessment of the trust or the institution whose income is not liable to be included in the computation of taxable income under various provisions of the Act.
 - ✦ Primarily, section 80G is related to giving deduction in respect of donations made by a person to such trusts and institutions.
 - ✦ Therefore, the commissioner has erred in refusing to grant recognition to the trust under section 80G(5).

9) Can a notice under section 148 for a particular assessment year be issued solely on the ground that survey under section 133A was carried on at the business premises of the assessee, where nothing had been found therein which would indicate escapement of income chargeable to tax for the said assessment year?

❖ **Relevant Case –**

- Hemant Traders v. ITO (2015) (Bom)

❖ **High Court Decision –**

- The High Court held that –
 - ✦ Merely because survey had taken place cannot be a ground for reopening the assessment without valid material or evidence at the time of issue of notice. Something more was required in law for the Assessing Officer to exercise his powers.
 - ✦ Since there is absolutely no material to indicate escapement of income for the relevant assessment year, the issue of notice to initiate reassessment proceedings under section 148 on the basis of survey which had taken place is not valid.
 - ✦ Therefore, the proceedings initiated under section 148 are quashed at the threshold itself.

10) Will the subsequent amendment of law with retrospective effect validate a reassessment notice issued on a different ground before the retrospective amendment was made?

❖ **Relevant Case –**

- Godrej Industries Ltd v. B.S.Singh Dy.CIT (2015) (Bom)

❖ **High Court's Decision –**

- The High Court held that –
 - ✦ The position of law on the date of issue of notice under section 148 must be looked into and the retrospective amendment subsequent to issue of notice could not validate a notice issued earlier. It could only amount to change of opinion and the notice for reopening of assessment would become unsustainable.
 - ✦ Therefore, the reason for reopening the assessment cannot get validated by the retrospective amendment of law.

11) Can the Assessing Officer make a reassessment on fresh grounds when the original reasons recorded for reopening the assessment does not survive?

❖ **Relevant Case –**

- N. Govindaraju v. ITO (2015) (Kar)

❖ **High Court's Decision –**

- The High Court held that –
 - ✦ Para 47.3 reads as under:

“Therefore, to articulate the legislative intention clearly Explanation 3 has been inserted in section 147 to provide that the Assessing Officer may examine, assess or reassess any issue relevant to income which comes to his notice subsequently in the course of proceedings under this section, notwithstanding that the reason for such issue has not been included in the reasons recorded under section 148(2)”.
 - ✦ It is true that if the foundation goes, then, the structure cannot remain. Meaning thereby, if notice has no sufficient reason or is invalid, no proceedings can be initiated. However, this can be verified at the initial stage by challenging the notice. If the notice is challenged and found to be valid, or where the notice is not at all challenged, then, in either case, it cannot be said that notice is invalid. As such, if the notice is valid, then the foundation remains and the proceedings on the basis of such notice can continue.
 - ✦ In effect, once satisfaction of reasons for the notice is found sufficient i.e. if the notice under section 148(2) is found to be valid, then, the Assessing Officer may do reassessment in respect of any other item of income which may have escaped assessment, even though the original reason for issue of notice under section 148 does not survive.

❖ **Note –**

- ✦ This decision has dissented from the decisions in the case of **CIT v. Jet Airways (I) Ltd (2011) (Bom); Ranbaxy Laboratories Ltd v. CIT (2011) (Del)**.

12) Can mere non-mention or non-discussion of enquiry made by the Assessing Officer in the assessment order justify invoking revisionary jurisdiction under section 263?

❖ **Relevant Case –**

- CIT v. Krishna Capbox (P) Ltd (2015) (All)

❖ **High Court's Decision –**

- The High Court held that –
 - ✦ The Bombay's High Court in **Cellular Ltd. v. DCIT (2008)** held that –
 - If a query is raised during the assessment proceedings and responded to by the assessee, the mere fact that it is not dealt with in the assessment order would not lead to a conclusion that no mind had been applied to it.
 - ✦ Therefore, since the relevant enquiries and replies are available on 'record' (i.e., the paper book), the Commissioner cannot invoke revisionary jurisdiction merely because there was no mention of such enquiry and verification in the assessment order.

13) Can the Commissioner invoke revisionary jurisdiction u/s 263, when the subject matter of revision (i.e., whether the manner of allocation of revenue amongst the members of AOP would affect the allowability and/or quantum of deduction under section 80-IB) has been decided by the Commissioner (Appeals) and the same is pending before the Tribunal?

❖ **Relevant Case –**

- CIT v. Fortaleza Developers (2015) (Bom)

❖ **High Court's Decision –**

- The High Court held that –
 - ✦ The contract between the two parties was self-explanatory and the interpretation placed by the assessee on clause (7) and claiming deduction under section 80-IB(10) is in order.
 - ✦ When the order of the first appellate authority is complete and the appeal is pending before the Tribunal, the Commissioner is precluded from invoking section 263 for revision of the very same matter decided by the first appellate authority since clause (c) of the Explanation 1 to section 263 debars the same.
 - ✦ Accordingly, the order passed by the Assessing Officer got merged with the order of the first appellate authority. The very same issue cannot be revised by invoking revisionary jurisdiction under section 263.

14) Whether chit dividend paid to subscribers of chit fund is in the nature of 'interest' in terms of section 2(28A) to attract deduction of tax at source under section 194A?

❖ **Relevant Case –**

- CIT v. Avenue Super Chits (P) Ltd (2015) (Kar)

❖ **High Court's Decision –**

- The High Court held that –
 - ✦ The Delhi High Court in **CIT v. Sahib Chits (Delhi) (P) Ltd (2010)** held that –
 - Section 2(28A) was referred to decide that chit dividend cannot be treated as interest. Further, section 194A has no application to such (chit) dividend and therefore, there is no obligation on the part of the assessee to make any deduction under section 194A before such dividend is paid to the subscribers of the chit.
 - ✦ Therefore, auction chit dividend paid to subscribers of the chit is not 'interest' as defined in section 2(28A) of the Income-tax Act, 1961 and thus, tax deduction in terms of section 194A is not attracted.

❖ **Notes:**

Term	Section	Meaning
Dividend	2(h) of Chit Fund Act, 1982	The share of the subscriber in the amount of discount available under the chit agreement for rate able distribution among the subscribers at each instalment of the chit.
Discount	2(g) of the Chit Fund Act, 1982	The sum of money or the quantity of grain which a prized subscriber is, under the terms of the chit agreement, required to forego and which is set apart under the said agreement to meet the expenses of running the chit or for distribution among the subscriber or for both.
Interest	2(28A) of the Income-tax Act, 1961	Interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilized.

15) Where remuneration paid to doctors is variable based on number of patients and treatment given to them, would the liability to deduct tax at source arise u/s 192 or 194J?

❖ **Relevant Case –**

- CIT v. Manipal Health Systems (P) Ltd (2015) (Kar)

❖ **High Court's Decision –**

- The High Court held that –
 - ✦ To decide whether the relationship of employer-employee existed or not, the contract entered into between the parties has to be seen - whether the same is a **“contract for service”** or a **“contract of service”**. In order to ascertain the nature of contract, multiple-factor tests have to be applied. The independence test, control test, intention test are some of the tests adopted.
 - ✦ Also, the doctors have filed their returns of income for the relevant assessment years showing the income received from the assessee-company as professional income and the same is said to have been accepted by the Department.
 - ✦ The Gujarat High Court in **CIT (TDS) v. Apollo Hospitals International Ltd. (2013)** held that –
 - Consultant doctors were not getting salary but payment to them was in the nature of professional fees liable to tax deduction at source under section 194J.
 - ✦ Therefore, considering the totality of facts and terms of the agreement, the consultancy charges paid to doctors rendering professional service would be subject to tax deduction under section 194J and not section 192.