



Monthly Digest of Case Laws (February 2010)

Compiled by: Ajay Singh, Paras Savla, Rahul Hakani, Sujeeth Karkal and Rangesh Banka, Advocates

Journals Referred: BCAJ, CTR, DTR, ITD, ITR, ITR (Trib), Income Tax Review, SOT, Taxman, Taxation, TLR, TTJ, BCAJ, ACAJ, www.itatonline.org

1. Advance Ruling- Maintainability of application- S 245N (a).

Advance Ruling sought by the applicant regarding the tax implications of its proposed amalgamation with another company cannot be declined on the ground of pendency of proceedings under the Companies Act.

Star Television Entertainment Ltd & Ors In Re (2010) 229 CTR (AAR) 7.

2. Appellate Tribunal- power- search and seizure- S 132, 254.

Tribunal can not examine validity of a search initiated under section 132(1).

Asst CIT v Chilka Vyankatesh Sidram (2010) 122 ITD 293 (Pune).

3. Appellate Tribunal- Additional grounds- S 254, Rule 11.

Appellant can raise an additional legal ground for first time before Tribunal by obtaining leave of Tribunal and also affected party must be given an opportunity of being heard.

ITO v M.M.Textiles (2010) 122 ITD 435 (Mum).

4. Appellate Tribunal – Additional grounds- S. 254 (I), Rule 11.

Assessee's prayer for admission, of additional ground cannot be rejected on the hyper technical ground that the specific space provided to mention the actual additional ground on page 2 of the petition was left blank by oversight.

Everwin Export Corporation v ITO (2010) 128 TTJ (Chennai) (TM) 19 (2010) 34 DTR (Chennai) (TM) (Trib) 256.

5. Appellate Tribunal- Rectification of Mistakes- S 254 (2).

When first miscellaneous application is rejected, second miscellaneous application is not maintainable.

Hexa Securities & Finance Co Ltd v ITO (2010) 127 TTJ (Del) 510.

6. Appellate Tribunal – Powers- Direction to give credit of tax paid in subsequent year - S 254 (1).



Capital gains being assessable in asst year 2002-03 direction is given to the AO to give credit for the tax already paid by the assessee on this very income in the later years as such direction is necessary for disposal of the appeal.

Dy CIT v Standard Fire Works (P) Ltd (2010) 34 DTR (Chennai) (TM) 270.

7. Appellate Tribunal – Rectification of Mistakes – S. 254(2).

ITAT has no power u/s 254 (2) to re-evaluate correctness on merits of earlier decision.

CIT vs. Earnest Exports (Bombay High Court) Source: www.itatonline.org.

8. Appellate Tribunal – Power- Stay- Proceedings before AO.S 254 (2)

Tribunal can stay the proceedings before the AO in exercise of its incidental powers as well as in view of the proviso to section 254 (2A) . The tribunal disposed the stay application by directing the AO to pass the assessment order by 31-12-2009 in accordance with the law but not to serve on the assessee , and thus not to give effect to the same for a period of a six months from the date of passing of its order or till date of passing of the appellate order, which ever is earlier.

Pancard Clubs Ltd v DCIT Stay NO 235 /2009 dt 18-12-2009 Bench C (BCAJ march2010 14. 642 (2010) 41 –BCAJ.)

9. Appeal- High Court- Power of Review- S 260A., Civil Procedure ,1908, S, 96, 100 114 & order 47.

Power of review has not been conferred on the High Court under the Income Tax Act, the review petition is not maintainable .

CIT v West Coast Paper Mills Ltd (2010) 229 CTR 239 (Bom).

10. Assessment - Search and Seizure – S. 153A.

S.153A does not authorize de novo assessment. Non-pending assessments do not abate. Additions must be confined to search material.

Anil Kumar Bhatia v. ACIT (ITAT Delhi) Source: www.itatonline.org

11. Assessment- Special audit- S. 142 (2A).

Directing special audit without affording reasonable opportunity of being heard to assessee is merely an irregularity and not illegality.

Asstt CIT v Sushila Milk Specialities (P) ltd (2010) 122 ITD 48 (Delhi) (SB). (2010) I ITR (Trib) 639 (Delhi) (SB).

12. Assessment- Notice – S 143 (2).292 B.

In the absence of service of notice the AO had no jurisdiction to make assessment.



CIT v Cebon India Ltd (2010) 34 DTR 119., 229 CTR 188 (P&H).

Editorial- Cebon India Ltd v Add CIT (2008) 12 DTR (Del) (Trib) 402 .affirmed.

13. Agricultural income- S 2 (1A) 10 (1).

Seeds or crops produced at first level by assessee would constitute agricultural income as per rule 7 (1) (a).

Pioneer Overseas Corporation v Dy CIT (2010) 35 SOT. 467 (Delhi).

14. Bad Debts – Mere write-off sufficient – S. 36(1)(vii)

After 1st April, 1989, it is not necessary for the assessee to establish that the debt in fact has become irrecoverable. It is sufficient if they are written off as irrecoverable in the accounts of the assessee..

T.R.F. Limited v. CIT (2010) 35 DTR 156 (SC),: www.itatonline.org

15. Book Profit- Deduction- Export- S. 80 HHC, 115JB.

Deduction under section 80 HHC is to be computed by taking into consideration “book profit” and can not be restricted to the profits of the business as computed under normal provisions of the ACT..

DY CIT v Glenmark Laboratories Ltd (2010) 127 TTJ (Mumbai) 719.

Editorial- Asstt CIT v Ajanta Pharma Ltd (2009) 318 ITR 252 (Bombay), distinguished.

16. Book Profit - Deduction- Export- S. 80HHC, 80 IB, 115JB.

Explanation to section 115JB , does not permit any adjustment with reference to deduction under section 80 IB, and therefore deduction under section 80 IB, can not be reduced from the book profit of the assessee while computing the deduction under section 80HHC in **the context of a MAT assessment.**

Cello Pens & Stationery (P) Ltd v Asstt CIT (2010) 127 TTJ (Ahd) 723.

17. Book Profit- Adjustment for advance against Depreciation – S 115JB.

Advance against Depreciation is timing difference ,it is not a reserve ,it is not carried through P&loss account , and it is “income received in advance” subject to adjustment in future and therefore clause (b) of Explanation 1 to section 115 JB is not applicable.

National Hydroelectric Power Corpn Ltd v CIT (2010) 34 DTR (SC) 65.

18. Book Profit-Depreciation- Companies Act- S 115J, Income Tax Rules, 5.



Question whether the AO was right in directing the assessee to provide for depreciation at the rate specified in Sch XIV to the Companies Act and not in terms of rule 5 of the Income tax Rules for computing book profit is referred to larger Bench.

Dynamic Orthopedics (P) Ltd v CIT (2010) 35 DTR 81 , 229 CTR 317.(SC).

19. Block Assessment-Undisclosed income-Noting on seized paper- S.158BC.

Noting on the seized paper representing payment schedule of agreement yet to be executed. Assessee establishing that noting on the seized paper was from regular books of account .Deletion was justified.

CIT v Tips Industries P.Ltd (2010)321 ITR 154 (Bom)(2010) 35 DTR (Bom) 10..

20. Block Assessment- Statement of third party- S 132 (4), 158BD.

Statements recorded of from third parties which have been relied upon by the AO for the purpose of assessment not having been provided to the assessee ,order of AO is bad in law to that extent ,impugned order is set a side and the AO is directed to re do the assessment according to law by providing the said statement to the assessee as well as recorded satisfaction u/s 158BD.

Hamish Engineering Industries (P) Ltd v Dy CIT (2010) 34 DTR (Mumbai) (Trib) 490.

21. Block Assessment- Undisclosed Income- Computerised accounts-Bank accounts of third party- Gifts- S. 158BB.

Computerised books of account not found at the time of search, but produced at the time of assessment cannot be ignored.

Amount credited in the bank accounts of wife and son cannot be treated as undisclosed income of the assessee.

Whisky bottles received by the assessee in appreciation of good work as gifts cannot be assessed as income from undisclosed source.

G.G.Dhir (Dr) v Asst CIT (2010) 35 DTR 81 (TM) (Trib) (Agra).

22. Business Expenditure – Exchange of currency – Roll over charges –Forward contracts- S.36 (1) (iii) 37(I), 43A.

Roll-over charges paid on foreign exchange forward contracts in respect of liabilities relating to the acquisition of fixed assets are to be capitalized in terms of Expln 3 to section 43A as it stood prior to the amendment made by the Finance Act, 2002 and same are not allowable as business expenditure.

ACIT vs. Elecon Engineering Co (2010) 35 DTR 209 (SC). www.itatonline.org



23. Business Expenditure – Employees Contribution – PF – S. 43B.

Delayed payment of employees' PF contribution allowable u/s 43B

Pik Pen Pvt. Ltd vs. ITO (ITAT Mumbai) **Source: www.itatonline.org.**

24. Business Expenditure - Disallowance - Charter hire payments - S 9, 40(a) (i).

Charter hire charges paid to foreign Ship did not constitute royalty payments section 9 is not attracted nor is there any liability for TDS and consequently section 40 (a) (i) cannot be invoked.

Asst CIT v Kin Ship Services (India) (P) Ltd (2010) 128 TTJ (Coch) 108.

25. Business Expenditure- Fluctuation in exchange rate- S.37.

Claim for depreciation on account of enhanced cost of depreciation due to fluctuation in foreign exchange rate was admissible for deduction under section 37.

CIT v Maruti Udyog Ltd (2010) 229 CTR 5, 186 Taxman 49. (SC).

26. Business Expenditure- Provision for NPA in terms of RBI Directions- S . 36 (I) (VII).

RBI directions 1988 , are merely disclosure norms or norms regarding presentation of NPA provisions in the balance sheet of an NBFC and therefore ,provision for NPA in terms of RBI directions does not constitute expenses on the basis of which deduction can be claimed but has to be added back to the total income even by applying the theory of real income.

Southern Technologies Ltd v JCIT (2010) 34 DTR 11/187 Taxman 346 (SC).

27. Business Expenditure –Contribution as per direction of State Government- Commercial Expediency- S.37.

Payment made by assessee on the direction of the State Government to suppliers who supplied fodder to various cattle camps in the wake of drought conditions , for maintaining smooth relations with the Government , satisfies the test of commercial expediency and therefore allowable under section 37.

Surat Electricity Co Ltd v Asst CIT (2010) 35 DTR 272 (Ahd.) (Trib)

28. Business Income- Computation- Stamp duty valuation- S 28 (I) 50C.

Provisions of section 50C can be applied only to find out the true value of a capital asset and not for computing business income hence the same cannot be applied when sale of stock in trade.

CIT v Thiruvengadam Investments (P) Ltd (2010) 34 DTR 81/ 320 ITR--- / 229 CTR 284 (Mad).



29. Business Income- Disclosure in the course of survey- S . 40 (b), 133A.

If the assets disclosed during the survey are identified with the business of the assessee then the same have to be treated as part of business income while computing total income, and the consequential deduction under section 40 (b) has to be allowed.

Fashion World v Asstt ITA no 1634 Bench B dt 12-2-2010 (Feb 2010 , 598 Ahmedabad Chartered Accountants Journal)

30. Business Loss- Forex loss on advance repayment- S 28 (I).

Foreign exchange loss incurred on refund of trading advance in view of order cancellation due to change in the Government policy is allowable as business loss.

Loksons (P) Ltd v Asstt CIT (2010) 187 Taxman 55 (Bom).

31. Business Loss – Capital Loss – S. 37(1).

Advance payment made for purchase of machinery written off as business loss. Hon'ble Tribunal allowed the Appeal by Relying on the Hon'ble High Court of Rajasthan in the case of CIT Vs. Anjani Kumar co. Ltd. 259 ITR 114 (Raj.).

Pik Pen Pvt Ltd vs. ITO (ITAT Mumbai) Source: www.itatonline.org.

32. Business Loss- Non realisability of balance-S 28

Non realisability of balance lying with a bank in FD and current accounts held to be allowable as business loss.

Mehul H. Mehta v ITO ITA no 8531 /2004 Bench B dt 15-6-2009 . March BCAJ p 17 645 (2010) 41-B BCAJ .

33. Capital Gains- Accrual- Sale of land converted in to stock in trade- S 2 (47), 45 (I) 45 (2).

Assessee having converted land in to stock in trade in an earlier year and sold the same in the relevant year by executing a general power of attorney, showing it as sale of stock in trade and crediting the sale proceeds land stood "otherwise transferred" and hence , capital gain is taxable under section 45 (2) in the relevant assessment year though no conveyance deed was registered.

Wipro Ltd v Dy CIT (2010) 34 DTR (Bang) (Trib) 493.

34. Capital Gains- Agricultural Land. – s. 2 (14) (iii), 54 B.

Report of the Tehsildar having certified that the assessee's land was 8 kms , away from the municipal limits the land constituted agricultural land hence the assessee is entitled to exemption under section 54B.



CIT v Lal Singh & Ors (2010) 228 CTR 575 (P& H).

35. Capital Gains-Agricultural Land- Measurement of distance- S. 2 (14) (III) (b), 45.

Distance of the agricultural land belong to the assessee within meaning of section 2 (14) (iii) (b) has to be measured in terms of the approach by road and not by a straight line distance on horizontal plane or as per crow's flight.

CIT v Satinder Pal Singh (2010) 229 CTR 82 / 188 Taxman 54(P& H).

36. Capital gains- Development agreement- Transfer- S. 2 (47) (V), 54, 53A, transfer of property Act.

When possession was handed over and total consideration was also agreed upon by parties and vendee was allowed to enjoy and entertain property for purpose for which it was taken over ,then the transaction had fulfilled conditions required under section 53A, of Transfer of Property Act, 1982 , and therefore ,it was covered under definition of 'Transfer' under section 2 (47) (v) .

R. Kalanidhi v ITO (2010) 122 ITD 388 (Chennai)

37. Capital Gains- Conversion of Proprietary concern in to Firm- S 45 (3).

Conversion of proprietary concern in to firm in 1994.Valuation of assets and credit in same year. Transaction gave rise to capital gains.

Dharamshibhai B.Shah v ITO (2010) I ITR (Trib) 536 (Ahmedabad)

38. Capital Gains- Contribution of personal asset towards capital of firm- Stock in trade-S . 2 (47) 28 (I), 45 (2) 45 (3).

Where the land held by assessee company as stock in trade was contributed as capital in a partnership firm after revaluing the same ,the surplus was assessable as capital gains by application of section 45 (3). Even other wise ,transaction of such conversion was device or ruse to convert the land in to money substantially for the benefit of the assessee and therefore same was assessable as business income.

DLF Universal Ltd v Dy CIT (2010) 34 DTR 105,/ 36 SOT 1 / 128 TTJ 121 (SB) (Delhi).

39. Capital Gains- Reconstitution of firm- S 2 (47), 45 (4).

When there were only four partners , first change in June 1994 when two partners retired and two new partners inducted. Second change in 2004 when remaining two partners also retired and two more partners, who have brought the capital. The court held that the provisions of section 45 (4) is applicable as it amounts to transfer Hence capital gain is applicable.

CIT v Gurnath Talkies (2010) 214 Taxation 729 (Kar).



40. Capital Gains-Capital Asset- lease from Municipal Corporation -S. 2 (14), (47), 45.

Assessee's right as lessee is capital asset. Receipt of one time fee for foregoing right to use property assessable as capital gains.

Asstt CIT v United Motors (I) Ltd (2010) 1 ITR (Trib) 578 (Mumbai), (2010) 34 DTR (Mumbai) (Trib) 399.

41. Capital Gains- Sale of stock in trade- Deeming provisions- S – 45,50 C.

Sale of stock in trade. Officer making addition in sale price based on fair market value arrived at rent capitulation method. Addition made not justified.

Asstt CIT v Excellent Land Developers P .Ltd (2010) 1 ITR (Trib) 563 (Delhi).

Editorial- Refer(2010)CIT v Thiruvengadam Investments (P) LTD (2010) 34 DTR (Mad) 81 320 ITR (Mad). Inderlok Horels P Ltd v ITO (200) 318 ITR (At) 234 (Mum).

42. Capital Gains- depreciable assets- Stamp valuation – s 50 , 50C.

Stamp duty valuation is not applicable in respect of sale of assets where depreciation has been allowed.

Panchiram Nahata v Jt CIT (2010) 127 TTJ (Kol) (UO) 128.

43. Capital Gains – Loss- Exemption - S. 10 (38) , 70(3), 74 (1)

Non-exempt capital loss cannot be set off against exempt capital gains

G.K. Ramamurthy vs. JCIT (2010) 2 ITR (Trib)139 (Mumbai) www.itatonline.org

44. Capital Gains- Short term or Long Term-Renouncement of right to receive right shares-S. (2) 29A), 2 (42A), 45 (1) 48 (2).

Right to subscribe for additional offer of shares /debentures on rights basis comes in to existence when the company decides to come out with the rights offer and ,therefore ,in order to determine the nature of the capital gains/loss on renunciation of right to subscribe for additional shares /debentures ,the crucial date is the date on which such right to subscribe for additional shares /debentures comes in to existence and the date of transfer ie. renunciation of such right.

Navin Jindal & Ors v Asstt CIT (2010) 320 ITR 708/34 DTR 1(SC.)

45. Capital Gains –Computation-Sale of property in consideration of flats.- S 45, 48.

Assessee having sold land also while executing lease deed in favour of purchaser /developer who had agreed to give 11 flats to the assessee in the building to be constructed ,the AO was justified in taking in to consideration value of land also apart from the value of flats and thus value of



Rs332.335 per sq .ft taken by the AO as against Rs 200 per sq.ft adopted by the assessee was sustainable.

CIT v N. Srirama Reddy (Decd) (2010) 228 CTR 541 (Kar).

46. Capital Gains-Amalgamation- Foreign Companies- Transaction not regarded as transfer- S 47 (vi), 47 (Vii).

Applicant companies having resolved to amalgamate in order to achieve synergies or operation , enhanced operational flexibility and to create a stronger base for future growth of the amalgamated entity , the amalgamation can not be characterized as a mere device for avoidance of tax within the meaning of cl (iii) of the proviso to section 245 R (2).Applicants would therefore be entitled to benefits of sections 47 (vi) and (vi) and consequently no tax liability would arise in respect of transfer of assets/shares pursuant to and as a part of the terms of amalgamation.

Star Television Entertainment Ltd & Ors, (2010) 229 CTR (AAR)7.

47. Capital or revenue Expenditure- Upgrading computers- s 37 (1).

Expenditure on upgrading computers is revenue expenditure.

CIT v Sundarm Clayton Ltd (2010) 321 ITR 69 (Mad).

48. Capital or Revenue Expenditure- Consultancy fees-S. 37.

Consultancy fee paid by assessee for carrying out detailed operational efficiency and profitability study of the assessee was allowable as revenue expenditure even though the said assignment was terminated before conclusion of the study ,though there was no written agreement.

Indo Rama Synthetics (I) Ltd v CIT (2010) 228 CTR 278 (Del)

49. Capital or Revenue Receipts- Non Compete fee- Income- S 4.

Non –compete fee received by assessee for refraining from manufacturing and selling timepieces for a period of ten years after the sale of one units while it was continuing with its other business activities constituted revenue receipt.

CIT v Tata Coffee Ltd (2010) 229 CTR 38 (Kar).

Editorial – refer CITv Shyam Sunder Chhaparia- amount received after retirement held taxable.

50. Capital or Revenue Receipt- Capital subsidy- S.4.



The purpose of the grant or the subsidy being for the construction of the capital assets viz. The tube wells and lift irrigation schemes, which constitute the permanent apparatus from which the assessee derives income by way of water charges, the subsidy has to be held to constitute capital receipt by applying the “purpose test”.

Gujarat Water Resources Development Corporation Ltd v JCIT . ITA no 167/168/ Bench A dt 16-10-2009 (Feb 2010 p 594 Vol 33 part 11. Ahmedabad Chartered Accounts journal),

51. Cash Credits- Gift- S 68.

There is no legal basis to assume that to recognize the gift to be genuine, there should be any blood relationship, or any close relationship, between the donor and the donee. When assessee produced the affidavit, gift deed in the absence of anything to show that the gift was by way of money laundering addition under section 68 as cash credit not justified.

CIT v Padama Singh Chauhan (2010) 214 Taxation 792 (Raj).

52. Cessation – remission of liability- Profits chargeable to tax- Old outstanding-S. 41 (1).

The fact that the liability was old would not make any ground for addition. So long as there was no cessation of liability by writing back same no addition could be made under section 41 (1).

CIT v Sita Devi Juneja (Smt) (2010) 187 Taxman 96 (Punj & Har).

CIT v Jaipur Jewellers (Exports) (2010) 187 Taxman 169(Delhi).

53. Cessation –Remission of liability-Business Income- Profits chargeable to tax-S 41 (I).

Assessee having shown the amount payable by it to another company as an existing liability in its books and not written back the same, it cannot be said that the aforesaid liability has ceased to exist and therefore it can not be assessed as income by invoking the provisions of section 41 (I).

CIT v GP International Ltd (2010) 229 CTR 86 (P & H)

54. Cessation of liability- Remission- Waiver of loan- S. 41 (1).

Waiver of loan to discharge the liabilities of business to recoup losses over period of time were consequential to contractual agreement, can not be assessed under section 41 (1).

Mindteck (India) Ltd v ITO (2010) 122 ITD 486 (Mum)

55. Deduction – Set -off of losses - S. 10A

Deduction has to be made at the stage of computing the income under head “Profits & gains” and not at the stage of computing the gross total income. The deduction u/s 10A attaches to the



undertaking and not to the assessee. The losses of a non-eligible unit cannot be set off against the profits of an eligible unit and are eligible to be set-off against other income or to be carried forward.

Scientific Atlanta v. ACIT (ITAT Chennai Special Bench) Source: www.itatonline.org

56. Deduction –Computation-set off of loss of other Unit- S.80 (B) (5), 80-IA

While computing deduction under section 80 IA, loss of one eligible unit is not to be set off or adjusted against profit of another eligible unit..

CIT v. Sona Koya Steering Systems Ltd (2010)35 DTR 273 (Delhi) www.itatonline.org

57. Deduction of tax at source- Fess for professional or technical services- VSAT- S. 194 J.

Payment made to Stock exchange for providing infrastructure to their members is not in the nature of technical services to attract provisions of section 194 J.

Dy CIT v Angel Broking Ltd (2010)35 SOT 457. (MUM)

Editorial – see-Kotak Securities Ltd v Addl CIT (2009) 24 DTR 214 (Mumbai) (Trib).

58. Deduction of Tax at source- Non Resident- Royalty- DTAA- India-USA-UK S – 5, (2), 9 (1) (vi) , 40 (a) (I),195, art, 26 (3), art 26 (4).

Payments to non resident for hire of transponders is royalty ,tax has to be deducted at source.

Asianet Communications Ltd v Dy CIT (2010) 1 ITR (Trib) 683 (Chennai).

59. Deduction – Export- Claim under Reassessment proceedings-S 80 HHC.147.

Assessee having not claimed deduction under section 80 HHC in its return because it had only income from other sources and no business income ,it was well with in its right to claim the said deduction by filing the audit report when the business income turned positive as a result of disallowance of local cess under section 43B ,in the reassessment proceedings and therefore ,the order of the CIT (A) directing the AO to consider assessee's claim for deduction under section 80 HHC is up held.

ITO v Tamil Nadu Minerals Ltd (2010 0 35 DTR (Chennai) (TM) (Trib)

60. Deduction- Manufacture- Production-S 33B, 80IAB(I) , 80 (IA) (12).

Duplicating process carried out to prepare a recorded CD from the master media changes the basic character of a blank CD , dedicating it to a specific use and therefore ,the process by which a blank CD is transformed in to software loaded disc constitutes “manufacture” or processing of goods” .in terms of section 80IA (12) (b) r/w s. 33B.



CIT v Oracle Software India Ltd .(2010), 320 ITR 546/ 187 Taxman 275 . (SC).

61. Deduction-Industrial Undertaking- Export Incentives- Duty draw back- DEPB license- Exchange rate difference- S 80IB.

Deduction under section 80IB is not allowable in respect of duty draw back, export entitlement and DEPB license.

Exchange rate difference arises out of and is directly related to sale involving export of the industrial undertaking ,hence entitled to deduction under section 80 IB.

CIT v Rachana Udhyog (2010) 35 DTR 65 (Bom).

Editorial- Liberty India (2009) 317 ITR 218 (SC), considered.

62. Deduction-Actual payment- Employees gratuity fund- S 43B.

Contribution towards employees gratuity fund was allowable if paid before filing of the return of income.

CIT v Popular Vehicle & Services Ltd (2010) 228 CTR 346 (Ker).

63. Deduction- Computer soft ware- S. 80HHE.

Receipts incidental to the activities of the assessee “involving the writing of computer software’ ie. Set of instructions ,were the eligible receipts , so long as the software was exported outside India or technical services were provided outside India ,the provisions do not bar the assessee from claiming deduction on the basis of the actual use or utilization of the said exported software in India.

Orbitech Ltd v JCIT .(2010) 35 SOT 46. (MUM) (URO).

64. Deduction – Computer software- S 80HHE.

Sending information which was sought by companies situated abroad , said activity amount to export of customized electronic data hence the assessee is eligible deduction under section 80HHE .

Asst CIT v Malhar Information Services (2010) 122 ITD 421 (Mum).

65. Deduction- Manufacture- Poultry farming- S 80HHA, 80I.

Poultry farming cannot be treated as manufacturing activity for purposes of deduction under sections 80HHA, 80 I.

CIT v J.D.Farms (2010) 187 Taxman 151 (Delhi).



66. Deduction – Dividend- Gross or Net. S 80 M.

Assessee company being a development organization having made investment in shares of companies promoted by it and other upcoming companies in its role as development organization and not as an investor to earn dividend income, various activities carried out by the assessee constitute one single indivisible business and therefore no expenditure is to be apportioned to the dividend income of the assessee which is assessable as business income and deduction under section 80 M is allowable on gross amount of dividend.

Dy CIT v Tamilnadu Industrial Development Corporation Ltd (2010) 127 TTJ (Chennai) (TM) 625 (2010) 34 DTR (Chennai) (TM) (Trib) 233.

67. Deduction- Co-operative Societies. S.56, 80 P.(2) (a) (i).

Interest earned by a co- operative society by investing surplus funds in short term deposits and Government Securities assessable as “income from other sources” and it can not be said to be attributable to the activities of the society hence interest income will not qualify deduction under section 80 P (2) (a) (I).

The Totgars Co-operative Sales Society Ltd v ITO (2010) 35 DTR 25/ 229 CTR 209 (SC)

68. Deduction- Co-Operative Society- Interest Income- S 80 P (2) (a) (I).

Where the surplus funds not immediately required for day to day banking were kept voluntarily reserves and invested in KVP/VP, the interest income received from KVP/VP would be income from banking business eligible for deduction under section 80 P (2) (a) (I).

CIT v Solapur Nagari Audyogic Sahakari Bank Ltd (2010) 229 CTR 73 (Bom)

69. Depreciation- Plant- Flyover ,roads, bridges-S 32.

Assessee being engaged in building flyover ,roads bridges express highways ROB, etc and carrying on its activities of developing and maintaining infrastructure, facilities by permitting vehicles to ply over these structures ,they are tools of the trade and essential adjuncts to the business and therefore , constitute plant entitled to depreciation at 25 percent.

Maharastra State Road Development Corporation Ltd v Astt CIT (2010) 128 TTJ (Mumbai) 32.(2010) 34 DTR (Mumbai) (Trib) 389.

70. Depreciation- Earth moving equipment- S 32.

Earth moving equipment namely JCB is eligible depreciation at 40 % which rate is provided for “Motor Buses, Motor Lorries, Motor Taxis ,which is used in the business of running them on hire.

CIT v Gaylord Constructions, Kachappilly House ,Angamaly (2010) TAX .L.R.85 (Ker).

71. Depreciation- Motor Vehicles on hire- S 32.

Assessee is entitled to higher rate of depreciation as per Appendix I, Income Tax Rules, 1961 Entry III (3)(ii) in respect of motor cars used in the business of running them on hire.

Magma Fincorp Ltd v Asstt CIT (2010) 35 DTR 76 (Trib) (Kol).

72. Exemption- Export of Customized electronic data - S. 10A.

Assessee having provided the services of recruitment and training of software professionals to its parent company in USA by storing the relevant data in an electronic device and transmitting the same to USA for the use of the parent company , it is a customized electronic data with in the meaning of clause (I) of the assessee is entitled to deduction in India under section 10 A in respect of the income earned by it from its parent company for providing the said services.

ITO v Accurum India (P) Ltd (2010) 34 DTR (Chennai) (TM) 301./ 128 TTJ 249 (TM).

73. Exemption – Export incentive- S 10A.

Export incentive which are includible in the profits of the business of the undertaking are entitled to exemption under section 10A.

Wipro Ltd v Dy CIT (2010) 34 DTR (Bang) (Trib) 493.

74. Exemption- Free Trade Zone- Manufacture- S 10A.

Blending and repacking of tea is manufacture. Since the purpose of exemption under section 10A is to give effect to the EXIM Policy of the Government ,the definition of “Manufacture” contained in the EXIM police is applicable.

Girnar Industries v CIT (2010) 187 Taxman 136 (Ker).

75. Income from house property- Business income- S. 22, 28 (i), 22.

When income has been earned by mere exploitation of ownership of property ,the same is assessable as income from house property. If immoveable property has been temporarily let out with primary object to exploit same by way of complex commercial activity , then income is assessable as business income.

Hiranandani Developers (P) Ltd v JT CIT.(2010) 35 SOT 430 (Mum)

76. Income from undisclosed sources- Addition - On money- S. 69.

In the absence of any material on record to show that the assessee has in fact paid on money for the purchase of flat , addition could not be made in the hands of the assessee merely on the basis



of the statement of a partner of the vendor firm or the notings on a document which was seized from the business premises of the said firm.

Jawaharlalbhair Atmaram Hatthiwala v ITO (2010) 128 TTJ (Ahd) (UO)36.

77. Income- Prizes won on in entertainment programmes on television- 2 (24).

Prizes won in entertainment programmes on television included by amendment in section 2 (24) w.e.f. from 1-4-2002, said amendment is prospective.

Miss Lopamudra Misra v Asstt CIT (2010) Tax LR. 49 (Orissa).

78. Interest – Advance Tax – Tax Deducted at Source - S. 195, 234B.

Income subject to tax deduction at source ,interest cannot be charged.

Joint DIT v Krup Uhde GmbH(2010) 1 ITR (Trib) 614 (Mumbai).

79. International Taxation – Transfer pricing- arm,' length price- S. 92C.

Price on which a particular product is available in one country may largely vary from price prevailing in other countries due to host of factors such as climatic conditions and demand and supply factors etc. In such a situation a valid comparison could not be made between price charged by assessee from other countries with that from USA ,particularly when quantity exported to USA was on whole sale basics, where as it was on in smaller lots on retail basis to other countries. In such a situation CUP method adopted by the authorities were set a side. AO was directed to get the ALP afresh.

Gharda Chemicals Ltd v DY CIT (2010)35 SOT 406 (Mum).

80. International Taxation –Reimbursement of expenses- Permanent establishment- India – German- DTAA- Art 5, (2) (I), 12 ., S 195.

Reimbursement of expenses incurred on travel not involving element of income not taxable-

Various sites cannot be considered together when contract are not interconnected .Period to be computed separately in respect of each activity. Activity once commenced continues till completion of contract. Intervening period cannot be excluded .Period of six months to be counted irrespective of years involved .

Joint DIT v Krupp Uhde GmbH.(2010)1 ITR (Trib) 614 (Mumbai).

81. International Taxation – Permanent Establishment- DTAA-India- South Korea- S .90, art 5, 7.



Income derived from Korean company from overseas operations cannot be subjected to tax in India in view of art 5 of DTAA between India and South Korea and since the assessee did not have PE in India its project office cannot be treated as PE.

Dy CIT v Hyundai Heavy Industries Co Ltd (2010) 128 TTJ (Del) (UO) 4.

82. International Taxation- Sale of Software- DTAA- India- Japan.- S. 9 (I) (vi), 90, art 7, 12.

Payment received by the applicant from VARs on account of supplies of software products to the end customers (from whom the licence fee is not in the nature of royalty to the applicant). As the VAR cannot be said to be the agents or dependent agents hence the applicant cannot be deemed to have a PE in India therefore the payment received by the applicant from VARs cannot be taxed as business profits in India under art 7 of Indo Japan DTAA.

Dassault Systems K.K. In Re. (2010) 229 CTR (AAR) 105.

83. International Taxation- Fees for technical services- DTAA- S 9 (I) (vii), art 12.

Applicant a Germany company having undertaken a contract as consultant for supply of architectural designs and drawings for constructing complex of Tamil Nadu legislative assembly whereby it is preparing complete working drawings and details for proper execution works during construction and offering technical advice to the sub contractor by deploying its expertise and is required to be associated with conceptual design stage and ending with the “completion” the transaction cannot be described as a pure sale of drawings and designs and therefore the consideration received by the applicant can be legitimately treated as fees for technical services.

GMP International GmbH In Re. (2010) 229 CTR (AAR) 139.

84. Non Resident- Status- S 2 (30), 6 (1).

Applicant who left India for USA for employment and was in India for 123 days in the relevant previous year neither satisfies cl (a) nor cl (c) of section 6(1) and therefore, he was a non resident during the relevant period and the income that accrued to him outside India by reason of his employment in USA can not form part of taxable income in India.

Anurag Chaudhry In Re. (2010) 35 DTR (AAR) 77.

85. Reassessment- reasons to believe – S. 143, 147.

Even if there is no assessment u/s 143 (3), reopening u/s 147 is bad if there are no proper “reasons to believe”. AO cannot go beyond the recorded reasons.

Prashant S. Joshi vs. ITO (Bombay High Court) Source: www.itatonline.org.

86. Reassessment – Retrospective Amendment – S. 147, 148.



Validity of s. 147 reopening has to be determined on the basis of law prevailing on date of issue of s. 148 notice and not on retrospectively amended law.

Rallis India vs. ACIT (Bombay High Court) Source: www.itatonline.org

87. Reassessment- After four Years- S , 147,148.

AO having reopened assessee's assessment after expiry of four years from the relevant assessment year by placing reliance on a commencement certificate of housing projects undertaken by the assessee which was furnished to the AO in the course of assessment proceedings under section 143 (3) it self and was already on record , it can not be said that the assessee had failed to disclose relevant documents or material facts and therefore recourse to the provisions of .section 147 can not be sustained.

Mistry Lalji Narsi Development Corporation v Asst CIT (2010) 34 DTR (Bom) 273. /229 CTR 359 (Bom)

88. Revision – Two views. S 263.

The condition precedent to the exercise of jurisdiction under section 263 , was that the order sought to be revised must be erroneous in so far as it was prejudicial to the interest of revenue. When two views were possible and the assessment could not be revised.

Grasim Industries Ltd v CIT (2010) 321 ITR 92 (Bom)./ 229 CTR 347(Bom)/35 DTR 142 (Bom).

89. Revision- Erroneous and Prejudicial Order- S 263.

AO having accepted the annual value of the property on the basis of the actual rent received by the assessee for the property from a group concern which was admittedly less than the annual value fixed by the Corporation , CIT was justified in setting a side the assessment order on this issue and giving appropriate direction to the AO to examine the issue from all angles.

Sical Logistics Ltd v Add CIT (2010) 34 DTR (Chennai) (TM) (T rib)350.

90. Salary- Capital receipt- S 4, 15, 56.

Where amount received by assessee was not in her capacity as employee ,but was only compensation for injury caused to her by denying her employment , after having been declared employable by following a discriminatory general practice prohibited by law in USA ,it amounted to capital receipt not liable to tax, so far as pre-judgment interest on amount of compensation was concerned ,if it was a part of settlement , amount ,its character would be same as that of principal amount of compensation ie. Capital receipt , not liable to tax.

Asstt CIT v Rani Shanker Mishra (smt) (2010) 122 ITD 360 (Delhi).



91. Speculation Loss – Set off against delivery based profit – S. 43(5), 73.

Speculation loss can be set off against delivery based profits

CIT vs. Lokmat Newspapers (Bombay High Court) Source: www.itatonline.org.

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