SHRI GURU KRIPA LEARNING CENTRE
No.27, Akbarabad Second Street, Kodambakkam, Chennai – 600 024.
E–mail: padhuka@shrigurukripa.com

SELECTED CASES FROM RTP

S.No.	Section	Case Gist	Citation
Income under the head Salaries			
1.	17	**Reimbursement of medical expenses whether perquisite?** The reimbursement of medical expenditure incurred outside India could not be considered as an amenity or benefit granted by the employer and therefore, it was not a "perquisite" within the meaning of section 17(2)(iii)(a). It was also held that the expenditure was actuated by motive of commercial expediency.	**CIT Vs D.P.Kanodia (2008) 296 ITR 616**
Income under the head House Property			
2.	22	**Income from property held as stock in trade:** Income derived from property would always be termed as 'Income from house property', but if the property is used as "stock-in-trade", then the said property would become or partake the character of stock, and any income derived from the stock, would be "Income from business", and not income from house property. The income was therefore assessable as business income.	**CIT Vs Neha Builders (P) Ltd (2008) 296 ITR 661**
3.	23&24	**Allowability of stamp duty expenses:** The amount spent by the assessee towards stamp duty for drawing up the lease deed for the registration could not be allowed to be deducted in determining the annual value.	**CIT Vs Premnath Motors (Raj) (P) Ltd 297 ITR 083(Raj.)**
Income under the head Profits and Gains from Business or Profession			
4.	32	**Additional Customs duty:** Machinery imported during the Previous Year. Additional Customs Duty paid in period subsequent to the year of acquisition. Depreciation shall be claimed on the whole value including additional customs duty from the previous year in which the machinery was imported and put to use.	**CIT vs Funskool (India) Ltd. 294 ITR 642 (Mad.)**
5.	32	Gas cylinders are entitled to depreciation at the rate of 100%.	**CIT Vs Goyal Mg Gases Ltd 296 ITR 2 (Del.)**
6.	37	**Expenses to set up new unit – part of existing business:** The expenditure incurred by the assessee to set up the new unit which was a part of the existing business was allowable as revenue expenditure.	**CIT vs Relaxo Footwears Ltd. 293 ITR 231 (Delhi)**
7.	37	The assessee incurred expenditure during the previous year in which there were no receipts from business. Therefore, there was no question of such expenditure being set–off against any income. Hence, such expenditure had to be carried forward to the next year when the firm got receipts from the contract, and allowed as deduction in that year.	**CIT vs Guru Nanak Construction Co. 294 ITR 294 (P&H)**

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8.	37	**Survival at stake no test of enduring nature:** The High Court held that the assessee did not have any option but to shift the due to opposition by the public against letting out of the sewage water. If the very survival of the assessee-factory in the existing place itself was a stake, the question of applying the test of enduring advantage did not arise. Therefore, the expenditure incurred by the assessee on shifting the factory was revenue expenditure.	**CIT vs Loyal Super Fabrics (2008) 304 ITR 078 (Mad.)**
9.	37	**Can advertisement expenditure incurred on products of a sister concern be allowed as business expenditure?** The marketing of the products of its sister concerns, by itself, was a trade undertaken by the assessee and the expenses claimed by the assessee were the expenses incurred during the course of such marketing. The assessee incurred expenses not in its personal capacity as an agent for the products manufactured by its sister concerns but in its capacity as a businessman in marketing the product by itself.	**CIT vs Sabena Detergents P. Ltd. (2008) 303 ITR 320 (Mad)**
10.	40(b)	**Remuneration for specific services to a Partner:** The payments made to the partner, by the assessee-firm for the specific services rendered cannot be disallowed u/s 40(b) of the Act.	**CIT vs Rajam Ramaswamy & Sons 298 ITR 325 (Mad.)**
Income under the head Capital Gains			
11.	45	**Family arrangement:** The rearrangement of shareholding in the company to avoid possible litigation among family members does not attract capital gains tax under the Income Tax Act, 1961.	**CIT vs ARR Enterprises (2008) 299 ITR 348 (Mad.)**
Deductions under Chapter VI–A			
12.	80-IB	**Manufacture – Process:** Conversion of marble blocks into slabs and tiles amounts to manufacture of article or thing and hence eligible for deduction under section 80-IB.	**Arihant Tiles & Marbles P. Ltd vs ITO (2007) 295 ITR 148 (Raj.)**
Assessment of Charitable Trusts			
13.	11	The assessee used to let the Kalyana Mandapam for social and charitable activities collecting nominal rent. The failure to use the accumulated funds for any other charitable purpose, by itself, would not divest the assessee of the right to claim exemption u/ss 11 and 12AA. The assessee was entitled to exemption u/s 11	**CIT vs Sengunthar Thirumana Mandapam (2008) 298 ITR 330(Mad.)**
Income Tax Authorities and Assessment Procedure			
14.	140	**Adjustment of SAT:** While determining interest u/s 244(1A), the self-assessment tax paid u/s 140A should also be taken into consideration as the tax paid by way of self-assessment u/s 140A would get adjusted against the assessed tax and partake the character of tax paid in pursuance of the assessment order.	**CIT vs SIV Industries Ltd. (In liquidation) (2007) 295 ITR 114 (Mad)**
15.	142 (2A)	**U/s 142(2A) only power to direct audit not to make fresh books of accounts:** U/s 142(2A), no authority has been conferred on the Assessing Officer for directing the assessee to prepare fresh books by referring the matter to an Auditor under special audit. Audit is for the purpose of satisfying one about the authenticity and credibility of accounts prepared by the assessee but not for preparing account books as per direction of the Assessing Officer.	**CIT vs Bajrang Textiles (2007) 294 ITR 561 (Raj)**

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16.	143(1)	**Only obvious and non-debatable considered u/s 143(1):** It is an admitted proposition of law that the exercise of power u/s 143(1)(a) is limited not only to the obvious but also to what is deductible from the return without any doubt or debate. A debatable issue can never be a subject-matter for consideration while passing an order u/s 143(1)(a).	**CIT vs Smt. A.E. Sarojini (2007) ITR 270 (Mad.)**
17.	144	**Lower profits not valid reason for best judgement:** Lower profits in particular year cannot be considered as sufficient reason to invoke best judgment assessment u/s 144, without pointing out any error in the profit and loss account and the audited report, the powers of best judgment could not be invoked	**Madnani Construction Corp. P. Ltd vs CIT 296 ITR 45 (Gau.)**
18.	148 & 283	**Parallel application of sections 148 and 263:** There is no bar under the provision of the Income-tax Act, 1961, for parallel proceedings in consequence of notice u/s 148 and notice u/s 263. After issuance of notice u/s 148, the Assessing Officer himself can pass a fresh assessment order and u/s 263, if the original assessment order of the Assessing Officer is erroneous and prejudicial to the interests of the Revenue, the CIT can revise that order. Both the authorities are empowered under different provisions of the Act, though both have to see that the income escaped in the original assessment should be taxed.	**Inductotherm (India) P. Ltd vs James Kurian, ACIT 294 ITR 341 (Guj)**
19.	260A	**Meaning of question of fact:** The explanation offered by the assessee in relation to a particular credit or debit entry in the profit and loss account was acceptable or not is a question of fact.	**CIT v. Ashok Kumar and Party (2008) 299 ITR 35 (MP)**
TDS and TCS			
20.	194H	**TDS on commission:** The assessee was liable to deduct tax at source on milk and milk products sold by it through “concessionaires” appointed by it as the relationship was principal to agenct and not principal to principal.	**Delhi Milk Scheme vs CIT (2008) 301 ITR 373 (Del)**
Penalties and Prosecutions			
21.	271(1)(c)	**Mens rea for imposition of penalty:** For imposition of penalty u/s 271(1)(c), there should be a deliberate concealment of particulars or furnishing of inaccurate particulars by the assessee. For finding out whether there was a deliberate attempt to conceal particulars or furnish inaccurate particulars, the conduct of the assessee from the beginning till the end of the assessment proceedings in totally should be taken into consideration. If a revised return is filed by the assessee after the Assessing Officer has discovered, in the course of assessment proceedings, an omission or wrong statement in the original return, then the assessee cannot escape the liability for imposition of penalty u/s 271(1)(c). However, if the assessee voluntarily files a revised return suo motu before the assessment order is passed, after he himself discovered an omission or wrong statement in the original return, then in such a case, penalty cannot be imposed u/s 271(1)(c).	**CIT vs Manibhai and Bros. (2007) 294 ITR 501 (Guj.)**