

KALPESH CLASSES

NOV. 2008 CA FINAL

LAST MINUTE REVISION MATERIAL C.A. FINAL STUDENTS

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BATCH ADMISSION IN PROGRESS)

(Both old and new course syllabus will be taken care of.)

RECENT CASELAWS UP TO SEPTEMBER 2008 ALREADY INCLUDED IN LMR

WT	Thermax Ltd. (AT) (Pune) (Important)	Company purchasing vehicles for use of employees and ultimate purchase by them. Vehicle loan granted to employees. Initial amount deposited and balance in instalments. Ownership of vehicle remains with assessee till loan repaid. Tied-up loan is “debt owed” and deductible.
WT	Voltas Ltd. (AT) (Mumbai) (Important)	Ownership of property. Lessee deemed owner where rights in building acquired under lease for term of not less than twelve years. Specific exclusion of month to month tenancies and tenancies for period less than a year does not bring all other tenancies within scope of deeming fiction. Period of lease must be twelve years--leave and licence agreement for initial period of eleven months renewed and combined period exceeding one year. Lease for five year period extended for further five years then deeming fiction does not apply. Lessor continues to be owner for purposes of wealth-tax.
HUF	Amrit Lal (Allahabad High Court) (Important)	Members of HUF can divide themselves groupwise. Not necessary to define share of each member of each group. Income-tax officer treating groups as tenants-in-common and including 50 per cent. of income arising from partition in hands of assessee is not proper. Claim of partial partition between various groups upheld and allowed.

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80P	Udaipur Shahkari Upbhokta Thok Bhandar Ltd. (Rajasthan High Court) (Important)	Consumer co-operative society. Society authorised to be wholesale dealer of essential commodities. Society purchasing supplies from food corporation of India to be sold at fixed price. Commission earned not entitled to special deduction.
68	Rajeev Tandon (AT) (Delhi) (Important)	Assessee must establish identity of donor, his financial capacity to make such gift, as well as genuineness of gift transaction. Genuineness to be determined looking into aspect of human probabilities, relationship of donor and donee, occasion for making gift and existence of reciprocity. Gifts from abroad. Donor can produce certified/notarised copy of return accompanied by balance-sheet indicating his capital base and assets owned by him, bank statement furnished by assessee not even pertaining to name of donor. Certificate issued by tax consultant unaccompanied by any corroborative evidence. Bank statement not showing donor in position to advance huge money to assessee who was not related to him. Assessing officer justified in treating gifts as not genuine and adding gift amounts to income of assessee.
68	Mangilal Agarwal (late) (Rajasthan High Court) (Important)	Seizure of primary gold and gold ornaments by customs authority- -cegat finding assessee not owner of gold and released gold from confiscation. Assessing authority failing to establish ownership. Presumption of ownership cannot be drawn on possession. Value of gold not taxable in hands of assessee.
68	Prameshwar Bohra (Rajasthan High Court) (Important)	Sum carried forward from preceding year is not an investment or cash credit generated during relevant year. So not taxable as income of year in question.
68	Prakash Chand Nahta (Madhya Pradesh High Court) (Important)	Statement of third party relied on by revenue. Third party retracted statement subsequently. Assessee not allowed to cross-examine third party. Power of assessing officer to summon third party. Violation of principles of natural justice. Assessment order not valid.
56	Sandeep Kumar (HUF) (Delhi High Court) (Important)	Mere identification and showing movement through banking channels is not sufficient. Failure to establish that gift was genuine. Additions justified.

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55	Alcan Inc. (AT) (Mumbai) (Important)	Purchase of shares in foreign currency. Provision requiring gains to be computed in foreign currency and converted into Indian rupees. Shares purchased prior to 1-4-1981. Cost of acquisition assessee will be entitled to adopt fair market value as on 1-4-1981. Assessee entitled to concessional rate of 10 per cent, u/s 112. Bonus shares allotted prior to 1-4-1981 will have option to adopt fair market value as on 1-4-1981. Cost of bonus shares allotted after 1-4-1981 to be taken at nil.
54F	Usha Gupta (Rajasthan High Court) (Important)	Sale of residential house and construction of new residence. Deduction under section 54F denied in the absence of documents.
54F	Ipun Mehrotra (AT) (Bangalore) (Important)	Net consideration to be invested in specified asset before date of filing return under section 139. 139(4) not specified. Compliance before filing return under section 139(4). Exemption available. Controversial and not to follow.
54EC	Smt. Saraswati Ramanathan (AT) (Delhi) (Important)	Investment of gains in specified bonds. Investment in joint names. Object of insertion of section 54EC is development of infrastructure. Investment in name of assessee exclusively or joint names not relevant. Funds flowing from assessee so exemption allowable.
54	Ms. Sushila M. Jhaveri (AT) (Mumbai) (Important)	Meaning of "a" residential house. Exemption only to investment in single residential house.
50B	Zuari Industries Ltd. (AT) (Mumbai) (Important)	Net worth of assets can never be a negative figure.
48	Mahesh J. Patel (AT) (Mumbai) (Important)	Assessee purchasing entire business in order to obtain share in stock exchange. Sale of business after twelve months. Assessee had acquired share in stock exchange which was incorporated as a company and had sold it. Transaction covered by section 2(42A). Gains assessable as long-term capital gains.
48	Mrs. June Perrett (Karnataka High Court) (Important)	Expenditure incurred wholly and exclusively in connection with transfer. Sale of property received under will. Expenditure incurred on obtaining probate, travel expenses of executors and expenditure on evicting illegal tenant is deductible.

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48	Smt. Suniti Singh (Madhya Pradesh High Court) (Important)	In dairy business amount realised by sale of calves. No cost of acquisition. Amount not assessable as capital gains.
48	G. Saroja (Madras High Court) (Important)	No written agreement between assessee and builder. No sale agreement and no sale consideration received during relevant period. No proof that assessee put builder in possession of property. Tribunal holding property not transferred. Order of tribunal based on valid materials and facts not warranting interference.
44BB	Sedco Forex International Inc. (Uttarkhand High Court) (Important)	Non-resident and exploration of mineral oils. Mobilisation charges received. No nexus with actual amount incurred by non-resident for transportation of drilling units of rigs to specified drilling locations in India. Not reimbursement of expenditure so includible.
44BB	B. J. Services Co. (Uttarkhand High Court) (Important)	Presumptive tax--amount received on account of supply of spare parts. Covered under section 44BB.
44BB	Halliburton Offshore Services Inc. (Uttarkhand High Court) (Important)	Non-resident prospecting, extraction or production of mineral oils. Reimbursement of freight and transportation charges includible in income.
44AF	Sri Balaji Agencies (AT) (Chennai) (Important)	<i>44AF is specifically applicable to persons engaged in retail trade. However, in this case, the assessee-firm was a wholesale dealer. Section 44AF will be applicable only where assessee carries on retail business.</i>
44AD	Shivani Builders (AT) (Ahmedabad) (Important)	Assessee maintaining accounts and income higher than presumptive income of 44AD (civil construction). Held 44AD is not applicable.
43B	United Cardamom Auctioners (Kerala High Court) (Important)	Amount collected as sales tax, additional sales tax and handling charges but not paid to department is includible as assessee's income.

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43(5)	Bhikamchand Betala and Sons (Gauhati High Court) (Important)	Shares purchased from broker on principal to principal basis and resold without taking physical delivery of shares. Loss by paying difference between purchase and sale value of shares is speculation loss. Not deductible.
40A	Smt. Santosh jain (Punjab and Haryana High Court) (Important)	Where there is estimate of income and application of gross profit rate. Disallowance cannot be made under section 40A(3) on account of cash payments.
37	First Leasing Co. of India Ltd. (Madras High Court) (Important)	Premium payable on actual redemption of debentures in future years. Provision to be spread over and part of it deductible in relevant assessment year. Expenses incurred for issue of debentures in earlier years to be spread over and allowable in relevant assessment year.
37	Ucal Fuel Systems Ltd. (Madras High Court) (Important)	Assessee taking premises on lease for 20 years making lump sum payment. Is revenue expenditure.
37	Dr. S. N. Naik (Individual) (AT) (Pune) (Important)	Doctor running his own hospital. Expenditure on education and training of son in medical college is not laid out for purposes of business. It is personal expenditure and not deductible.
37	Kerala Road Lines (Supreme Court of India) (Important)	Purchase of land with buildings thereon. Assessee demolishing buildings and selling scrap materials. Income from sale of scrap material treated as business income. For delay in paying purchase consideration and interest paid by assessee. Is a revenue expenditure.
37	A. Builders P. Ltd. (Punjab and Haryana High Court) (Important)	Compensation on account of breach of contract does not fall in category of payment of penalty for breach of any law. Compensation for breach of contractual obligations are deductible.
37	G. E. Capital Services Ltd. (Delhi High Court) (Important)	Assessee using ms office which requires regular upgradation. Expenses incurred not capital expenditure.

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37	Saw Pipes Ltd. (Delhi High Court) (Important)	Service charges paid for laying service line to a new unit. New unit extension of existing business. Service line belonging to electricity board. Benefit derived of a commercial nature and a business advantage to be treated as revenue expenditure.
37	Pranav Vikas (India) Ltd. (AT) (Delhi) (Important)	Investment in debentures. Decision not to charge interest on debentures in particular year due to financial difficulties of creditor. No interest accrued to assessee.
37	Jagath Enterprises P. Ltd. (Madras High Court) (Important)	Diversion by overriding title. Promoters of company trustees advance by trust to company for purchase of property. Rental income arising to company not diverted to trust by overriding title.
36	Kwality Fun Foods and Restaurants P. Ltd. (AT) (Chennai) (Important)	Advance paid for construction of cold storage. Work not done and part of advance not recoverable. Such loss was on capital account and not deductible.
36	Sri Ram Gupta (Decd.) (Allahabad High Court) (Important)	Loan granted to company by assessee becoming irrecoverable. It was written off as bad debt. Mere failure to initiate legal proceeding would not make bad debt recoverable. It is for assessee to take or not to take legal proceedings to recover loan. deduction to be allowed on account of bad debts.
36	L. K. Trust (Karnataka High Court) (Important)	Asset purchased with borrowed capital must be put to use. borrowed capital used to purchase shares. Shares not issued. Interest not deductible.
35D	Berger Paints India Ltd (Delhi High Court) (Important)	Assessee collecting premium on issue of shares is neither a long-term borrowing nor a debenture. Not part of "capital employed in business of company" within meaning of section 35D.
32	Turner International India P. Ltd. (Delhi High Court) (Important)	Assessee engaged in providing satellite signals decoders owned by assessee and given on loan to cable operators. Loan transactions forming part of business of assessee in distributing satellite channels and signals relating to satellite channels. Assessee entitled to depreciation.

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32	Alankar Business Corporation Ltd. (AT) (Chennai) (Important)	Sale of business of manufacture and sale of soft drinks. Value of broken bottles and crates could not be reduced from written down value of assets. Sale of business of manufacture and sale of soft drinks. Sale of goodwill. Goodwill sold in a subsequent year so gains attributable to goodwill not assessable in relevant assessment year.
28	Neha Builders P. Ltd. (Gujarat High Court) (Important)	Assessee engaged in development, construction, sale and lease of immovable property. Properties treated as stock-in-trade. Income from property assessable as business income.
28	Chinna Nachimuthu Constructions (Karnataka High Court) (Important)	Investment of amount in FDR secure bank guarantee to acquire contract work. Interest accrued on deposit is business income and not assessable as income from other sources.
28	Konkan Barge Builders P. Ltd. (Bombay High Court) (Important)	Amount awarded on arbitration of business dispute. Interest on amount awarded by arbitrator. Assessable as income. Interest awarded on amount of compensation by arbitrator accrues from year to year. Entire amount not assessable in year of receipt.
28	Dai-ichi Karkaria Ltd. (AT) (Mumbai) (Important)	Foreign currency payment for drawings, designs and for services related to setting up a plant. Refund of money due to cancellation of agreement and surplus on account of fluctuation in exchange rate is capital receipt not chargeable to tax. Not a benefit arising out of business.
264	N. Seetharaman (Madras High Court) (Important)	Specific and precise direction by commissioner. Assessing officer cannot expand revisional order. Assessing officer bound by direction of commissioner.
263	Sohana Woollen Mills (Punjab and Haryana High Court) (Important)	Order should be erroneous and prejudicial to revenue. Commissioner cannot initiate revision proceedings on the basis of an audit objection. Tribunal finding no error in assessment order so order of revision not valid.
222	Samson John vs. Tax Recovery Officer (Bombay High Court) (Important)	Property purchased in minor's name in 1974 and house constructed in 1979-80. No transfer of property to minor within the meaning of explanation to section 222(1). Property could not be attached and sold in recovery proceedings against minor's father.

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22	Premudha Exports P. Ltd. (AT) (Mumbai) (Important)	Where property is let and is vacant for whole or part of year. Meaning of "property is let" does not mean that property should have been let in earlier year or should have been actually let in year in question. Property must held with intention to let. Property purchased by assessee in year and record showing steps taken by assessee to let it and property lying vacant despite efforts. Annual letting value to be taken at nil.
195	Mrs. Meena S. Patil (International Taxation) (AT) (Bangalore) (Important)	Payments to non-resident for purchase of property. Failure to deduct tax. Deed of sale clearly showing seller non-resident. Purchaser liable to deduct tax at source. Interest for failure to deduct is payable only up to date of payment by seller--sum deductible calculated at rates in force much higher than sum tax actually payable by seller according to assessment order. Interest payable only on sum not paid.
192	Eli Lilly and Co. I. P. Ltd. (Important)	Accrual of salary of expatriate-executives outside India. No obligation on Indian employer to deduct tax at source. Executives paying tax and also interest. Department not entitled to claim interest from deductor.
184	Ramakrishna Chit Fund Co. (AT) (Hyderabad) (Important)	<i>A deity cannot be sui juris so as to be taken in as a partner of a firm.</i> One of the partners a hindu deity. Deity not represented by shebait. Signature on behalf of deity. Firm not valid. Assessee constituted as association of persons.
168	Abdulgafur A. Mistry (Gujarat High Court) (Important)	Will by mother bequeathing certain assets for benefit of her minor grandchildren, will appointing assessee's wife and another as guardians and trustees. Profit income from firm to be divided in equal share and deposited in accounts of each minor. On facts no trust was created. Executor representing interest of minors and depositing business income in each minor's account is not in capacity of trustee but as executor of will. Clubbing of income to assessee by section 64(1)(iii) is not applicable.
167	Ganesh Chhababhai Family Trust (Gujarat High Court) (Important)	Settlor creating trust for benefit of her twelve grand children but naming forty-five trusts as beneficiaries instead of twelve grand children. Tribunal finding trust created for carrying on business and not a genuine trust. No infirmity. No finding that twelve grand children of settlor opted to join together for purpose of conducting business. Tribunal holding assessment to be in status of association of persons at maximum marginal rate is incorrect. Tribunal to determine as to who is correct person and in whose hands income to be taxed.

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163	R Lines Ltd. (AT) (Mumbai) (Important)	Who is an agent of non resident and under what circumstances. Person accepting status of agent of non-resident on his own or as a result of action initiated by assessing officer. Such person can only be an agent. Assessment confined to incomes which are deemed to accrue or arise in India under section 9(1) and not all incomes of non-resident. Reassessment against agent of Mauritian shipping company's global incomes in India is not possible under section 160(1)(i) Provision requiring notice not to be issued beyond two years from end of relevant assessment year is applicable to person who suo motu accepts status of agent of non-resident.
154	Mewat Zinc Ltd. (AT) (Delhi) (Important)	Rectification of intimation cannot be made after issuance of notice under section 143(2).
154	Rajiv Gupta (AT) (Chandigarh) (Important)	Carry forward and set off is permissible only if determined pursuant to return filed within time prescribed. Assessment permitting set off of long-term capital loss wrongly permitted to be carried forward. Mistake apparent from record and rectification permissible.
154	GTC Industries Ltd. (AT) (Mumbai) (Important)	Mistake can be rectified on application by assessee. Even after issue of notice under section 143(2). So long as intimation not cancelled by court or appellate authority.
14A	Tata Investment Corporation Ltd. (AT) (Mumbai) (Important)	Disallowance of expenditure incurred on earning income which is not includible in total income. Investment company whose sole object to earn income from investment in group concerns. Expenditure on salary of personnel utilised to carry out objectives of company to be disallowed. Assessee to furnish break up of salaries failing which assessing officer at liberty to estimate expenditure attributable to earning of dividend income. Such estimate to be limited to proportion of dividend income vis-a-vis total income.
148	Mavany Brothers (AT) (Panaji) (Important)	Transfer of theatre property to developer. Right given to developer to demolish existing structure and carry out development of construction of new commercial complex. Valid partnership constituted and property shown as its asset and outgoing partners paid amount on their retirement from firm. Cost of construction certified by developer not challenged. Cost of acquisition taken by authorities not challenged. Reassessment valid.

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148	Indian Express Newspapers (Bombay) P. Ltd. (Bombay High Court) (Important)	Statement of third party that loan to him from assessee was not genuine. Retractment of statement and subsequent death of third party. Notice based on such statement not valid.
147	Sanghvi Swiss Refills P. Ltd. (Bombay High Court) (Important)	Assessee engaging in manufacture of ball pens and refills as also ink. No new information available with assessing officer regarding income escaped assessment. Assessing officer not considering out of raw materials production of ink and waste in production of ink as also in filling of refills. No reasons to believe assumption of jurisdiction and issuing notice. Reassessment invalid.
145	Bajaj Ashok Chunnilal (AT) (Bangalore) (Important)	Income of minor to be computed in accordance with provisions of act. Minor entitled to follow own method of accounting. Interest shown as payable to minor in balance sheet of assessee's business and minor accounting for income on receipts basis. Income not paid by concern does not accrue to minor is not includible in assessee's hands.
145	B. Amrithalakshmi (Madras High Court) (Important)	Change in method of valuation of closing stock of shares from market price to cost price. Only a substitution of one method by another scientific method. No finding that assessee resorted to ad hoc change in valuation to secure temporary gain or advantage. Valuation of stock correct.
143(2)	Shanker Lal Ved Prakash (Delhi High Court) (Important)	Notice under section 143(2). Presumption that notice served within time. Burden on assessee to prove that there was no service within time.
143	Areva T and D India Ltd. (Madras High Court) (Important)	Difference between nullity and irregularity in order. Assessee participating in reassessment proceedings and failure to consider objections and failure to issue notice under section 143(2). Reassessment order not void but irregular.
115JB	Malayala Manorama Co. Ltd. (Supreme Court of India) (Important)	Jurisdiction of assessing officer is limited to matters specified . No power to rework net profit arrived at by company by consistently charging depreciation at the rates specified in income-tax rules.

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115JB	GE Capital Transportation Financial Services Ltd. (AT) (Delhi) (Important)	Accounting of leases. Lease equalisation charges not part of undistributed profits or capital. Addition in computation of book profit is not permissible.
115AB	BASF Aktiengesellschaft (International Taxation) (AT) (Mumbai) (Important)	Capital gains from transfer of shares in Indian company. Shares purchased in foreign exchange and capital gains computed in foreign currency. Rate of tax as provided in 115AB, 115AD will be applicable. Benefit of indexation and consequent rate of tax of 10 % not available. 48, 112, 115AB, 115AD

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