Super summary of selected case laws (Direct tax) For May n Nov 2011 (Final)

ISSUE DISCUSSED	CASE LAW	DECISION
What is the nature of liquidated damages received by a company from the supplier of plant for failure to supply machinery to the company within the stipulated time – a capital receipt or a revenue receipt?	***CIT v. Saurashtra Cement Ltd. (2010) 325 ITR 422 (SC)***	Capital receipt- not taxable
What is the nature of incentive received under the scheme formulated by the Central Government for recoupment of capital employed and repayment of loans taken for setting up/expansion of a sugar factory – Capital or Revenue?	***CIT v. Kisan Sahkari Chini Mills Ltd. (2010) 328 ITR 27 (All.)***	Capital, since not in course of trade
Where the hotel industry was established based on subsidy announced by the State Government, can such subsidy be treated as a revenue receipt solely due to the reason that the same was received by the assessee after completion of the hotel projects and commencement of the business?	***CIT v. Udupi Builders P. Ltd. (2009) 319 ITR 440 (Kar.)***	No, Capital receipt.
Would the provisions of deemed dividend under section 2(22)(e) be attracted in respect of financial transactions entered into in the normal course of business?	***CIT v. Ambassador Travels (P) Ltd. (2009) 318 ITR 376 (Del.)***	No, if in normal course of business. Relevant section:2(22)(e)
Can exemption under section 10(10C) be availed by a retiring employee of Reserve Bank of India opting for the Optional Early Retirement Scheme?	***Chandra Ranganathan v. CIT (2010) 326 ITR 49 (SC)***	Yes. Relevant section : 10(10C)
Would the provisions of section 14A get attracted to disallow set-off of loss on sale of units of a mutual fund (short-term capital loss), income from which is exempt under section 10(35)? Can such loss be disallowed by treating the said transaction as a sham since the assessee was getting tax-free dividend and at the same time claiming loss on sale of the units?	***CIT v. Walfort Share and Stock Brokers (P) Ltd. (2010) 326 ITR 1***	No, Genuine transaction. Relevant sections : 10(35), 14A & 94(7)
Can notional interest on interest free deposit received by an assessee in respect of a shop let out on rent be brought to tax as "Business income" or "Income from house property"?	***CIT v. Asian Hotels Ltd. (2010) 323 ITR 0490 (Del.)***	No.
Would beneficial ownership of assets suffice for claim of depreciation on such assets?	***CIT v. Smt. A. Sivakami and Another (2010) 322 ITR 64***	Yes. Relevant section: 32(1)
Can an assessee manufacturing textile goods claim additional depreciation under section 32(1)(iia) on setting up of a windmill?	***CIT v. VTM Limited (2009) 319 ITR 336 (Mad.)***	Yes, since it is used for manufacturing. Relevant section: 32(1)(iia)
Are expenses incurred on purchase of software components in the nature of capital expenditure or revenue expenditure?	***CIT v. Sundaram Clayton Ltd. (2010) 321 ITR 69 (Mad.)***	Revenue, As no structural changes. Relevant section: 37(1)
Can the expenditure incurred for purchase of second hand medical equipment for use as spare parts for existing equipment be claimed as revenue expenditure?	***Dr. Aswath N. Rao v. ACIT (2010) 326 ITR 188 (Karn)***	Yes. Relevant section: 37(1)
Is the amount paid by a construction company as regularization fee for violating building bye-laws allowable as deduction?	***Millennia Developers (P) Ltd. v. DCIT (2010) 322 ITR 401 (Karn.)***	No, since it is penalty. Relevant section: 37(1)
Can expenditure incurred on alteration of a dam to ensure adequate supply of water for the smelter plant owned by the assessee be allowed as revenue expenditure	***CIT v. Hindustan Zinc Ltd. (2010) 322 ITR 478 (Raj.)***	Yes, It was done in Commercial expediency, so revenue. Relevant section: 37(1)

Is admission fee paid by a company towards corporate membership of a club allowable as revenue expenditure?	***CIT v. Samtel Color Ltd. (2010) 326 ITR 425 (Delhi)***	Yes, business purpose was involved. Relevant section: 37(1)
Can payment to police personnel and gundas to keep away from the cinema theatres run by the assessee be allowed as deduction?	***CIT v. Neelavathi & Others (2010) 322 ITR 643 (Karn)***	No, Illegal expense. Relevant section: 37(1)
Can the amount incurred by the assessee for replacing the old mono sound system in its cinema theatre with a new Dolby stereo system be treated as revenue expenditure?	***CIT v. Sagar Talkies (2010) 325 ITR 133 (Karn.)***	Yes, Since no increase in capacity
For claiming deduction of bad debts, is it necessary for the assessee to establish that the debt had, in fact, become irrecoverable	***T.R.F. Ltd. v. CIT (2010) 323 ITR 397 (SC)***	No. Relevant section : 36(1)(vii)
Is the expenditure incurred on payment of retrenchment compensation and interest on money borrowed for payment of retrenchment compensation on closure of one of the textile manufacturing units of the assessee-company revenue in nature?	***CIT v. DCM Ltd. (2010) 320 ITR 307 (Delhi)***	Yes.
Can the expenditure incurred by the assessee on techno-economic feasibility report for the manufacture of a new product be eligible for deduction under section 35D?	***CIT v. Tamil Nadu Road Development Co. Ltd. (2009) 316 ITR 380 (Mad.)***	Yes. Relevant section: 35D
Is the expenditure incurred by the assessee towards commitment charges for issuing debentures deductible as business expenditure, where the borrowing is for the purposes of meeting the working capital needs of the existing business?	***CIT v. Mihir Textiles Ltd. (2009) 316 ITR 403 (Guj.)***	Yes. Relevant section: 36(1)
Can the reimbursement of expenses towards customs duty be included for computing profits under section 44BB?	***Director of Income Tax (International Taxation) v. Schlumberger Asia Services Ltd. (2009) 317 ITR 156 (Uttrakhand)***	No. statutory in nature. Relevant section: 44BB
What is the cost of acquisition of additional share of property obtained on partition of HUF?	***Lalitaben Hariprasad v. CIT (2010) 320 ITR 698 (Guj)***	The payment made for property.
What would be the period of holding to determine whether the capital gains on renunciation of right to subscribe for additional shares is short-term or long-term?	***Navin Jindal v. ACIT (2010) 320 ITR 708 (SC)***	Date of right to subscribe to renunciation.
Can exemption under section 54EC be denied on account of the bonds being issued after six months of the date of transfer even though the payment for the bonds was made by the assessee within the six month period?	***Hindustan Unilever Ltd. v. DCIT (2010) 325 ITR 102 (Bom.)***	No. Relevant section: 54EC
In determining the period of holding of a capital asset received by a partner on dissolution of firm, can the period of holding of the capital asset by the firm be taken into account?	***P. P. Menon v. CIT (2010) 325 ITR 122 (Ker.)***	No. Relevant sections : 2(42A) & 49(1)(iii)(b)
Can the interest payable by company on loan availed from its director for the purchase of an asset be added to cost of acquisition of the asset while computing long term capital gain, where the resolution to pay interest has been passed after the date of sale?	***CIT v. Sri Hariram Hotels P. LTD (2010) 325 ITR 136 (Karn.)***	Yes.
Can the valuation done by any authority of the State Government for the purpose of payment of stamp duty in respect of land or building be taken as actual sale consideration received by the purchaser?	***CIT v. Chandni Buchar (2010) 323 ITR 0510 (Pun.& Har.)***	No, unless evidenced.
Can exemption under section 54B be denied solely on the ground that the new agricultural land purchased is not wholly owned by the assessee, as the assessee's son is a co-owner as per the sale deed?	***CIT v. Gurnam Singh (2010) 327 ITR 278 (P&H)***	No. Relevant section : 54B
Can the Duty Entitlement Passbook Scheme (DEPB) benefits & Duty Drawback be treated as profit derived from the business of the industrial undertaking to be eligible for deduction under section 80-IB?	***Liberty India v. CIT (2009) 317 ITR 218 (SC***	No.

Does the period of exemption under section 80-IB commence from the year of trial production or year of commercial production? Would it make a difference if sale was effected from out of the trial production?	***CIT v. Nestor Pharmaceuticals Ltd. / Sidwal Refrigerations Ind Ltd. v. DCIT (2010) 322 ITR 631 (Delhi)***	Commercial production. Yes since marketability was established.
Can freight subsidy arising out of the scheme of Central Government be treated as a "profit derived from the business" for the purposes of section 80-IA?	***CIT v. Kiran Enterprises (2010) 327 ITR 520 (HP)***	No. Relevant section: 80-IA
Whether interest on fixed deposits with a bank and other interest income qualify as income for deduction under section 80-IA	***CIT v. Jagdishprasad M. Joshi (2009) 318 ITR 420 (Bom.)***	Yes. Relevant section: 80-IA
Can transfer fees received by a co-operative housing society from its incoming and outgoing members be exempt on the ground of principle of mutuality?	***Sind Co-operative Housing Society v. ITO (2009) 317 ITR 47 (Bom)***	Yes.
Can an AOP be constituted by inheritance under will?	***CIT v. Laxmi Pd. and Sons (2009) 316 ITR 330 (All.)***	No.
Is it necessary that there be a written agreement between persons to prove the status of association of persons, in a case where the accounts seized from the persons prove joint investments and sharing of profits in business?	***CIT v. T. George and M. Syed Alavi (2009) 316 ITR 333 (Ker.)***	No.
Can long-term capital gain exempted by virtue of erstwhile section 54E be included in the book profit computed under erstwhile section 115J?	***N. J. Jose and Co. (P.) Ltd. v. ACIT (2010) 321 ITR 0132 (Ker.)***	No.
In a case where the partnership deed does not specify the remuneration payable to each individual working partner but lays down the manner of fixing the remuneration, would the assessee-firm be entitled to deduction in respect of remuneration paid to partners?	***CIT v. Anil Hardware Store (2010) 323 ITR 0368 (HP)***	Yes.
Can extension of the maximum period of retention of 15 days of books of accounts and documents impounded be granted indefinitely?	***Subha and Prabha Builders P Ltd. vs. ITO (2009) 318 ITR 29 (Karn).***	No. Relevant section: 131
Does the Central Board of Direct Taxes (CBDT) have the power under section 119(2)(b) to condone the delay in filing return of income?	***Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) 323 ITR 0441 (Del.)***	Yes. Relevant section: 119(2)(b)
Would the doctrine of merger apply for calculating the period of limitation under section 154(7)?	***CIT v. Tony Electronics Limited (2010) 320 ITR 378 (Del.)***	Yes, Relevant section: 154(7)
Can the Assessing Officer reopen an assessment on the basis of merely a change of opinion	***Aventis Pharma Ltd. v. ACIT (2010) 323 ITR 0570 (Bom.)***	No. Relevant section: 147
Does the Appellate Tribunal have the power to recall its own order under section 254(2)?	***CIT v. Earnest Exports Ltd. (2010) 323 ITR 577 (Bom.)***	No. Relevant section: 254(2)
Does the High Court have an inherent power under the Income-tax Act, 1961 to review an earlier order passed on merits?	***Deepak Kumar Garg v. CIT (2010) 327 ITR 448 (MP)***	No. Relevant section:260A(7)
Would making an incorrect claim in the return of income *per se* amount to concealment of particulars or furnishing inaccurate particulars for attracting the penal provisions under section 271(1)(c), when no information given in the return is found to be incorrect?	***CIT v. Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158 (SC)***	No. Relevant section: 271(1)(c) .
Can the penalty under section 271(1)(c) be imposed where the assessment is made by estimating the net profit at a higher percentage applying the provisions of section 145?	***CIT v. Vijay Kumar Jain (2010) 325 ITR 0378 (Chhattisgarh)*** **Relevant section: 271(1)(c)**	No.
Would prosecution proceedings under section 276CC be attracted where the failure to furnish return in time was not willful?	***Union of India v. Bhavecha Machinery and Others (2010) 320 ITR 263 (MP)***	No.

	Relevant section: 276CC	
Would the payments made by the assessee company to MTNL / other companies for the services provided through interconnect / port / access / toll attract TDS provisions under section 194J?	***CIT v. Bharti Cellular Ltd. (2009) 319 ITR 139 (Del.)***	No. Relevant sections: 194J & 9(1)(vii)
Does payment of charter fee to a non-resident (for chartering fishing vessels), by way of percentage of fish catch done outside the territorial waters of India but brought to an Indian port for verification and valuation before dispatch of the same to the non-resident, attract the provisions of tax deduction at source under section 195?	***Kanchanganga Sea Foods Ltd. v. CIT & ITO (2010) 325 ITR 540 (SC)***	Yes. Relevant sections: 5(2) & 195
What is the nature of landing and parking charges paid by an airline company to the Airports Authority of India and is tax required to be deducted at source in respect thereof?	***CIT v. Japan Airlines Co. Ltd. (2010) 325 ITR 298 (Del.)***	Yes. TDS on rent. Relevant section: 194-I .
Whether retention of a percentage of advertising charges collected from customers by the advertising agencies for payment to Doordarshan for telecasting advertisements would attract the provisions of tax deduction at source under section 194H?	***CIT v. Director, Prasar Bharti (2010) 325 ITR 205 (Ker)***	Yes. Relevant section: 194H
Can services rendered by a hotel to its customers in providing hotel room with various facilities / amenities (like house keeping, bank counter, beauty saloon, car rental, health club etc.) amount to "carrying out any work" to attract the provisions of section 194C?	***East India Hotels Ltd. v. CBDT (2010) 320 ITR 0526 (Bom.)***	No. Relevant section: 194C
Would there be an obligation to deduct tax at source under section 195 in respect of payments to non-residents if such payments do not give rise to income chargeable under the provisions of the Income-tax Act, 1961?	***GE India technology Centre P. Ltd. v. CIT and Another (2010) 327 ITR 456 (SC***	No. Relevant section: 195
Can the interest under sections 234B and 234C, be levied on the basis of interest calculation given in the computation sheet annexed to the assessment order, though the direction to charge such interest is not mentioned in the assessment order?	***CIT v. Assam Mineral Development Corporation Ltd. (2010) 320 ITR 149 (Gau.)***	Yes.
Is an employee liable to pay interest under sections 234A, 234B and 234C, where the employer has failed to deduct tax at source, but has later paid such tax with interest under section 201(1A)?	***CIT v. Emilio Ruiz Berdejo (2010) 320 ITR 190 (Bom.)***	Yes.

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Source: Icai's Select cases

Kindly ignore unintentional errors n omissions.