

NOTE: I am IPCC student and I am providing here CA-Final's Direct Tax Cases' IMP Question which I got from my mentor.

SIGNIFICANT LEGAL DECISIONS – INCOME-TAX		
Section	Case	Decision
35D	CIT v. Tamil Nadu Road Development Co. Ltd. (2009) 316 ITR 380 (Mad.)	Expenditure on techno-economic feasibility report for the manufacture of a new product incurred to find out new ideas by conducting test studies and pilot studies for improving the existing business NOT CAPITAL and eligible for deduction U/s 35D
36 (1)	CIT v. Mihir Textiles Ltd. (2009) 316 ITR 403 (Guj.) Deputy CIT v. Core Health Care Ltd. [2008] 298 ITR 194.[SC]	Commitment charges for issuing debenture for meeting the working capital needs of the existing business held REVENUE and deductible as debentures is in the nature of a loan and cannot assume the characteristic of investment.
2 (31)	CIT v. Laxmi Pd. and Sons (2009) 316 ITR 330 (All.)	Forced AOP Cannot be constituted by inheritance under will as AOP can only be formed as a voluntary unit for a particular purpose Author's Note: In view of CIT Vs. Shunmugham, such holding of joint property/business may constitute BoI. Also note that between BoI and AoP has the missing link of intention to form the entity.
	CIT v. T. George and M. Syed Alavi (2009) 316 ITR 333 (Ker.)	If two or more persons carry on a business jointly, it is AoP. No written agreement between persons necessary to prove AoP in view of seizure of accounts was enough to prove joint investments and sharing of profits in business. Author's Note: This is case of implied agreement
80-IB	Liberty India v. CIT (2009) 317 ITR 218 (SC)	DEPB benefits and Duty Drawback ARE NOT profits "derived" from the business of the industrial undertaking to be eligible for deduction as these are ancillary profits of such undertaking. Author's Note: Contrast this with interest
80-IA	CIT v. Jagdishprasad M. Joshi (2009) 318 ITR 420 (Bom.)	Interest on fixed deposits with the bank and other interest income were in the nature of business income and should be considered as part of eligible business profit u/s 80-IA. Author's Note: Contrast this with DEPB
	CIT v. Kiran Enterprises (2010) 327 ITR 520 (HP)	Freight subsidy provided to industries set up in remote areas where rail facilities were not available and some percentage of the transport expenses incurred to transport raw under a Central Government scheme NOT ATTRIBUTABLE to "profit derived from the eligible

		business" u/s-80-IA since it was not an operational profit.
44BB	Director of Income Tax (International Taxation) v. Schlumberger Asia Services Ltd. (2009) 317 ITR 156 (Uttarakhand)	Reimbursement of expenses towards customs duty being statutory in nature for import of equipment required for rendering services to ONGC does not form part of the taxable profits computed le U/s 44BB – Custom Duty has no element of profit , unlike the other amounts received towards reimbursement. .
131	Subha and Prabha Builders P Ltd. vs. ITO (2009) 318 ITR 29 (Karn).	Extension of the maximum period of retention of 15 days of books of accounts and documents impounded/s 131 can only be a one time exercise and supplementing the outer limit of 15 days for few more days depending on the circumstances. Since the outer limit is specified in days, the period can be extended only in days and not in months or years or indefinitely
2(22)(e)	CIT v. Ambassador Travels (P) Ltd. (2009) 318 ITR 376 (Del.)	Advances granted to/by the assessee, a travel agency the two concerns dealing with holiday resorts and tourism industry in regular course of business S 2(22)(e) NOT attracted.
194J	CIT v. Bharti Cellular Ltd. (2009) 319 ITR 139 (Del.)	Payments made by the assessee to MTNL/BSNL etc. the services rendered relating to interconnection, port access through their network their licensed careless under the DoT Licences did not involve any human interface and, therefore, the services ARE NOT "technical services" u/s 194J as it was only a facility to use the gateway and the network of MTNL/ BSNL , who did not provide any assistance to the assessee in managing, operating, setting up their infrastructure and networks although service per se is "technical" as it involved sophisticated technology, but <u>"technical service" is not to be construed in the abstract and general sense but in the narrower sense as circumscribed by the expressions "managerial service" and "consultancy service" under Explanation 2 to section 9(1)(vii). The expression "technical service" would have reference to only technical service rendered by a human and does not include any service provided by machines or robots.</u>
32(1)(iia)	CIT v. VTM Limited (2009) 319 ITR 336 (Mad.)	Assessee company manufacturing textile goods ENTITLED TO claim additional depreciation u/s32(1)(iia) on setting up of a windmill for generation of power as the provision does not state that the setting up of a new machinery or plant should have any operational connectivity to the article or thing that is already being manufactured by the assessee. .

28	CIT v. Udupi Builders P. Ltd. (2009) 319 ITR 440 (Kar.)	The subsidy granted by the State Government to encourage the hotel industry and tourism CAPITAL not REVENUE. The Court noted that the State Government had released the subsidy amount even after ten years of the commencement of the project.
234A/B/C	CIT v. Assam Mineral Development Corporation Ltd. (2010) 320 ITR 149 (Gau) CIT v. Anjum M. H. Ghaswala (2001) 252 ITR 1,[SC] Followed	Interest u/s 234B and 234C, is mandatory in nature and is integral part of the assessment order, No specific order levying interest though the direction to charge such interest necessary.
154(7)	CIT v. Tony Electronics Limited (2010) 320 ITR 378 (Del.) Hind Wire Industries v. CIT (1995) 212 ITR 639[SC] followed.	If an appeal against the order passed by an authority is preferred and is decided by the appellate authority, the order of the A.O ceases to exist as it merges with the order of the appellate authority. Hence the period of 4 years u/s n 154(7) will be counted from the date of the appeal order NOT from the date of original assessment order
115J	N. J. Jose and Co. (P.) Ltd. v. ACIT (2010) 321 ITR 0132 (Ker.)	Long-term capital gain exempted u/s 54E TO be included in the book profit computed u/s 115J ,which does not provide for any deduction in terms of section 54E if long-term capital gains are part of the profits included in the P/L Account Author's Note- Decision will be applicable on MAT U/s 115JB, New 115JB includes even LTCG. Possibly exemption availed say under 54EC will likewise be included in book profits
40(b)(v)	CIT v. Anil Hardware Store (2010) 323 ITR 0368 (HP)	The partnership deed provided for aggregate remuneration to profits as per the limits given in S 40(b) – Book Profit was accordingly defined. Remuneration was to be credited to the partners' accounts and partners were entitled to equal remuneration. In case of loss in any year, remuneration was not payable. However, the partners were free to invest certain amounts of the profits into other venture and receive less remuneration than permissible amount but there is nothing to debar them from claiming the maximum amount of remuneration payable. The method of remuneration having been laid down, the assessee-firm <u>entitled</u> to deduct the remuneration paid to the

		partners u/s 40(b)(v) The CBDT Circular No. 739 dated 25-3-1996, clarified that no deduction under section 40(b)(v) will be admissible unless the partnership deed either specifies the amount of remuneration payable to each individual working partner or lays down the manner of quantifying such remuneration. In this case, since the partnership deed <u>lays down the manner of quantifying such remuneration</u>, the same would be allowed as deduction subject to the limits specified in section 40(b) (v).
119(2)(b)	Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) 323 ITR 0441 (Del.)	(CBDT) has power u/s 119(2) (b) to condone the delay in filing return of income or any other relief claimed. Note : The case has peculiar sequence of events to precede the ruling as the assessee could not file a loss return on the due date because he was shuttle from one room to another and by the time the return filing counter was closed !! These circumstances were recorded in a letter filed with Dy. CIT along with the return of income on the very next day. CBDT, by a non-speaking order, rejected the request of the assessee for condonation of delay.
23/28	CIT v. Asian Hotels Ltd. (2010) 323 ITR 0490 (Del.)	Notional interest of 18%- on interest free deposit received by the assessee from the tenant in respect of a shop let out on rent CAN NOT be brought to tax as "Income from house property" as u/s 23(1)(a) the annual letting value is the possible rent that the property might fetch and not certainly the interest on deposit placed by the tenant with the landlord . It cannot be taxed as "Business income" as S 28(iv) can be invoked only where the benefit or amenity or perquisite <u>is other than cash</u>. Since A.O. has determined the monetary value of the benefit stated to have accrued to the assessee by adding a sum that constituted 18 per cent simple interest on the deposits 28(iv) is not also applicable.
50C	CIT v. Chandni Buchar (2010) 323 ITR 0510 (Pun. & Har.)	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 is not binding unless the A.O. has evidence that the enhanced consideration has passed between the parties. Author's note: The view of P&H High Court seemingly on the lines of an old Supreme Court decision in KP Varghese's is directly in contrast with the Decision of Bombay High Court in Bhatia CHS , which held that passing of actual consideration is not at all necessary as S 50C deals with

		only with the method of determination of CG and is binding.
147	Aventis Pharma Ltd. v. ACIT (2010) 323 ITR 0570 (Bom.)	A.O. <u>can not</u> reopen an assessment on the basis of merely a change of opinion unless there was tangible material to hold that income had escaped assessment within the meaning of S 147 and the reasons recorded for reopening the assessment constituted a mere change of opinion.
271(1)(c)	CIT v. Vijay Kumar Jain (2010) 325 ITR 0378 (Chhattisgarh) CIT v. Reliance Petro products P. Ltd. (2010) 322 ITR 158[SC] followed	Penalty under section 271(1)(c) be imposed where the assessment is made by estimating the net profit at a higher percentage u/s 145, consequent to rejection of book results. Since particulars of receipts furnished by the assessee had not been found inaccurate, it was also not a case that assessee concealed any income in his return and penalty could not be imposed.
49(1)(iii)(b) and 2(42A)	P. P. Menon v. CIT (2010) 325 ITR 122 (Ker.)	Assessee took over capital assets i.e. a hospital building and land on dissolution of firm on 15/04/2001 where he was a partner and sole the same within three days of dissolution, he could not take the benefit of the period of holding and cost of acquisition of assets by the previous owner viz the firm and the gains would be short term capital gain. N.B: the benefit was available under old law applicable on dissolution of the firm prior to April 1, 1987
37	CIT v. Sagar Talkies (2010) 325 ITR 133 (Karn.)	Amount spent on replacing the old mono sound system in its cinema theatre with a new Dolby stereo system REVENUE as it has not increase income in anyway but only results in better provision of amenities to customers.
45	CIT v. Sri Hariram Hotels P. LTD (2010) 325 ITR 136 (Karn.)	Liability for interest begins to accrue on taking of the loan and not on the date of the resolution of Bod to pay interest on loan to directors. Hence, interest payable on loan taken from directors and utilised for purchase of an asset be <u>added</u> to the cost of acquisition of asset for computation of capital gains even if resolution to pay interest has been passed after the date of sale
195[1]	GE India technology Centre P. Ltd. v. CIT and Another (2010) 327 ITR 456 (SC)	The term "chargeable" implies that TDS is applicable ONLY on a trading receipt, wholly or partly liable to tax in India. If the tax is not so assessable, there will be no liability for TDS. The court remitted the case to determine whether or not the amount paid to foreign software suppliers constituted "royalty" deemed to accrue or arise in India and to finally decide liability for TDS but interest paid to a Non Resident which was not chargeable to tax NOT liable for TDS
260A(7),	Deepak Kumar Garg	High Court has NO inherent power to review under I.T. Act,

	v. CIT (2010) 327 ITR 448 (MP)	1961 to review an earlier order passed on merits as there is no express or implied provision conferring such power unlike the extraordinary powers under Art 226. Restoration of appeal does not mean reconsideration of an old order passed .
54B	CIT v. Gurnam Singh (2010) 327 ITR 278 (P&H)	Exemption u/s 54 ALLOWED when new agricultural land purchased <u>along with the son</u> of the assessee out of the sale proceeds of old land transferred by the <u>father</u> held as substantial compliance of 54B even if the land is not wholly owned by the assessee and registration was done in son's name Note : The Court recognised that the land BELONGED to assessee .

Note the following rules in case you do not remember citations:

- No reopening allowed for change of opinion
- ITAT/ High courts also not allowed to change their orders
- 14A greatly diluted if allocation is bonafide. once allocation is challenged , rule 8d mandatory
- In most cases 80-IA/B etc. courts have allowed only pure operational profits- ignored DEPB/subsidy etc.
- Similarly error prejudicial to the revenue also does not include change of opinion
- House property income notional interest not taken.