SUMMARY OF CASE LAWS OF DIRECT TAXES FOR CA FINAL'S MAY & NOV., 13 EXAMS

S. NO.	ISSUES	DECISION	CASE LAW
		(A) Basic Concepts	
1	In case the s/capital is raised in a foreign country & repatriated to India as Need basis from time to time for approved uses, can the gain arising on the b/sheet date due to fluctuation in foreign exchange, in respect of that part of s/capital which is to be used as working capital, be treated as a revenue receipt?	The High court held that for determining the nature of receipt, due consideration shud be given to the source of fund & NOT to the ultimate use of the funds. Therefore, the **entire gain has to be treated as c/receipt** as the source of fund in this case is capital in nature.	CIT V. **Jagatjit Industries Ltd** (2011) 337 ITR 21 (Del.)
2	In case thr is no possibility of recovery of loan given by a NBFC, which is an NPA as per RBI guidelines, can the intt. On such loan be treated as income of the NBFC, following mercantile system of accounting?	Therefore in this case, the High court held that thr was NO real accrual of intt. Income in the hands of assesses & hence, it would **NOT be chargeable to Tax u/s 5**. **(Already asked in CA Final's Nov.,2012attempt)**	DIT V. **Brahamputra Capital Financial Services Ltd** (2011) 535 ITR 182 (Del.)
3	Would the refund of excise duty & grant of interest subsidy under the incentive scheme formulated by CG for public interest, namely, to accelerate industrial development, generate employment & create opportunity for self-employment in state of J&K be treated as a revenue or a capital receipt?	The Tribunal contended that excise duty refund & grant of interest subsidy received were revenue receipt on basis of various grounds but High court overruling it observed that incentives were provided to achieve a public purpose shud also be considered to determine the nature of subsidy & Hence the aforesaid incentives are **Capital receipt NOT liable to taxation.**	**Shree Balaji Alloys** V. CIT (2011) 333 ITR 335 (J&K)
4	What is the nature of incentives received under the scheme formulated by the C/G for recoupment of capital employed & repayment of loan taken for setting up/expansion of a sugar factory – capital or revenue?	The High court held that the main eligibility condt. For the scheme was that the incentive had to be utilized for the repayment of loans taken by the assesses to setup a new units or substantial expansion of a existing unit. The subsidy receipt by the assesses was, therefore NOT in the course of a trade & hence, **was of capital nature**.	CIT V. **Kisan Sahkari Chini Mills Ltd.** (2010) 328 ITR 27 (All.)
5	What is the nature of liquidated damages received by a co. from the supplier of plant for failure to supply M/C to the co. within the stipulated time - a capital receipt or a revenue receipt?	The Apex court affirmed the decision of High court holding that the damages were directly & intimately linked with the procurement of a capital asset. i.e the cement plant which lead to delay in coming into existence of the profit making apparatus. It was NOT a receipt in course of profit earning process. Therefore, the amt. received, NOT in the ordinary course of biz, **is a capital receipt** in the hands of the assesses. **(Already asked in CA Final's Nov.,2011 attempt)**	CIT V. **Saurashtra Cement Ltd** (2010) 325 ITR 422 (SC)
6	Where the hotel industry was established based on subsidy announced by the SG, can such subsidy be treated as a revenue receipt solely due to the reasons that the same was received by the assesses after completion of the hotel project & commencement of the biz?	The High court held that the hotel industry was established based on the subsidy announced by the SG to encourage tourism & the SG was in the habit of releasing the subsidy amt. depending upon the budgetary allocation in each yr. Therefore, the **subsidy** received has to be **treated as a capital receipt** & would NOT be liable to tax.	CIT V. **Udupi Builders (P) Ltd** (2009) 319 ITR 440 (Karn.)
		(B) Income which do not form part of Total Income	
7	Whether sec. 14A is applicable in respect of deduction, which are permissible & allowed u/chapter VI A?	Therefore, the delhi high court held that NO disallowance can be made u/s 14A in respect of income included in total income in respect of which deduction is allowable u/s 80C to 80U.	CIT V. **Kribhco** (2012) 209 Taxman 52 (Delhi)
8	Can explanation to sec. 11(2) be applied in respect of the accumulation up to 15% referred to in sec. 11(1)(a), to treat the donation made to another charitable trust from the permissible accumulation up to 15% as income of the trust?	The court held that even if the donation by the assesses to another charitable trust were out of part accumulation u/s 11(1) (a) i.e. up to 15%, the same would NOT be liable to be included in the total income as assessed by the AO.	DIT (exemption) V. **Bagri foundation** (2012) 344 ITR 193 (Delhi)
		(C) Salary	
9	Is the limit of ` 1000/month per child to be mandatorily deducted, while computing the perquisite value of the free or concessional education facility provided to the employee by the employer?	The P&H high court held that only in case of the perquisite value is less than ` 1000/month per child, the perquisite value shall be NIL. Therefore, **` 1000/month per child is NOT a std deduction** to be provided while calculating such a perquisite.	CIT (TDS) V. Director, **Delhi Public School** (2011) 202 Taxmann 318 (P&H)

		(D) House Property	
10	Can the rental income from the unsold flat of a builder be treated as its B/Income merely bcoz the assesses has, in its w/tax return, claimed that the unsold flats were SIT of its Biz?	The Calcutta high court held that rental income from the unsold flats of a builder **shall be taxable as "I/H/P"** as provided u/s 22 & since it specially falls under this head, it CANNOT be treated under the "PGBP".	**Azimgnaj estate (P) Ltd.** V. CIT (2012) 206 Taxman 308 (cal.)
11	Can the benefit of self occupation of H/P u/s 23(2) be denied to a HUF on the ground that it cannot occupy a H/P, being a fictional entity?	The court held that the **HUF is entitled** to claim benefit of self occupation of H/P u/s 23(2).	CIT V. **Hariprased Bhojnagarwala** (2012) 342 ITR 69 (Guj.) (full bench)
12	Can an assesses engaged in letting out of rooms in a lodging house also treat the income from renting of a business to bank on long term lease as business income?	On the issue, it was decided that while lodging is a business, however, letting out the building to the bank on long term lease could NOT be treated as business income. Therefore, the **rental income** from bank has to **assessed as Income of house property.**	**Joseph George & Co.** V. ITO (2010) 328 ITR 161 (Kerala)
13	Can Notional intt. On interest free deposit received by an assesses in respect of a shop let out on rent be brought to tax as "Business Income" or "I/H/P"?	The High court held that the Notional intt. Is **NOT assessable** either as **"Business Income" or "I/H/P"**	CIT V. **Asian Hotels Ltd.** (2010) 323 ITR 490 (Del.)
		(E) Profit and Gains of Business or Profession	
14	Can biz. Contracts, biz. Info. etc, acquired by the assesses as part of slump sale be described as G/W, be classified as an intangible asset to be entitled for dep. 32(1)(ii)?	The high court held that the specified intangible asset under the slump sale agreement by the assesses are in the nature of intangible asset under the category "other biz. Or commercial right of similar nature" specified in sec. 32(1)(ii) & are accordingly **eligible for dep.** u/s 32(1)(ii).	**Areva T & D India Ltd** V. DCIT (2012) 345 ITR 421 (Delhi)
15	What would be the nature of exp. incurred by the assesses by way of severance cost paid to the employee in respect of suspension of one of the activities, in a case whr he continues to carry on other biz. Activities – capital or revenue?	The court held that said exp. will be **allowed as revenue exp.** thought it was related to manufacturing activity which was suspended.	CIT V. **KJS India Pvt. Ltd.** (2012) 340 ITR 380 (Delhi)
16	Is the income or exp. of an AMC liable to be assessed on the basis of the maximum limit mentioned in the SEBI regulation or shud the assessment be made on the basis of the actual income or exp. charged?	The court held that, the **disallowance made** by the AO in the present case is **NOT justified** since the tranx was genuine in nature.	CIT V. **Templeton Asset Mgmt (I) Pvt. Ltd.** (2012) 340 ITR 279 (Bom.)
17	Can the exp. incurred by the assesses on the education & traveling of an employee, for acquiring knowledge relating to assesses biz., be disallowed merely on the ground that the employee is the son of an ex-director of the assesses co.?	The MP high court held that **exp. CANNOT be disallowed** merely bcoz it was incurred in respect of an employee, who was son of ex-director of the assesses co.	CIT V. **Naidunia news & networking (P) Ltd** (2012) 210 taxman 73 (MP)
18	Can adv. given to employees and security deposit paid to the landlord by the amalgamating co., which becomes irrecoverable, be allowed as a biz loss in the hand of the amalgamated co.?	The court held that such adv. Given to person who had been employed by the assesses co. which have become irrecoverable would be treated as biz loss & as regards the allow ability of non-recoverable security deposit given to the landlord for obtaining lease of premises for purpose of biz, the high court observed that the security deposit were refundable & therefore, were not in the form of rent. Therefore, it is **NOT allowable as B/loss**.	CIT V. **Triveni Engg. & Industries Ltd.** (2012) 343 ITR 245 (Delhi)
19	Can an assesses, engaged in money lending biz, claim interest paid on money borrowed as biz exp.?	The Calcutta high court held that AO is NOT right in his contention, the **assesses** is law fully **entitled** to **deduct** interest paid on the funds borrowed **as biz exp.**	**Rajendra kr. Dabriwala** V. CIT (2012) 347 ITR 353 (Cal.)
20	Can subsidy received by the assesses from GoWB under the scheme of industrial promotion for expansion of its capacities modernization & improving its marketing capabilities be treated as a capital receipt?	The high court held that, in the present case, the subsidy received has to be **treated as a capital receipt** & NOT as a revenue receipt.	CIT V. **Rasoi Ltd** (2011) 335 ITR 438 (Cal.)
21	Can the assesses, being a charitable inst. Claim dep. u/s 32 in respect of an asset, whr the cost of such asset has been treated as application of income for charitable purpose u/s 11(1)(a)?	The court held that once the exp. on acquisition of asset has been treated as application of income, the full value of asset stand w/off. Therefore the trust is **NOT eligible to claim dep.** on such capital exp.	**Lissie Medical Inst.** V. CIT (2012) 348 ITR 344 (Ker.)

22	Is the assesses entitled to dep. on the value of G/w considering it as an asset within the meaning of explanation 3(b) to sec. 32(1)?	Therefore, it was held that **"G/W"** is an **asset under** explanation 3(b) to **sec. 32(1)** & **Dep.** thr on is **allowable** under the said section.	CIT V. **Smifs Securities Ltd.** (2012) 348 ITR 302 (SC)
23	Is abkari license covered u/s 32(1) (ii) & eligible for dep. @ 25% of WDV?	The court held that the abkari license squarely falls u/s 32(1) (ii); on which the **assesses is entitled** to **dep. @ 25% of WDV** as provided u/s 32(1).	**S. Ambika** V. DCIT (2011) 203 Taxman 2 (Ker.)
24	Is the commission paid to doctor's by a diagnostic centre for referring patients for diagnosis be allowed as a biz exp. u/s 37 or would it be treated as illegal & against public policy to attract disallowance?	The demanding as well as paying of such comm. is bad in law. It is NOT a fair practice. Thus, the high court held that **comm. paid to doctor** for referring patient for diagnosis is **NOT allowable as a biz exp**.	CIT V. **Kap scan & Diagnosis centre P. Ltd.** (2012) 344 ITR 476 (P&H)
25	What would be the nature of the repair & reconditioning exp. incurred on a machine which broke down years ago – revenue or capital?	The delhi high court observed that it is in nature of **capital exp.**; on which **dep. can be claimed**.	**Bharat Gears Ltd** V. CIT (2011) 337 ITR 370 (Delhi)
26	Whr the prov. for bad & doubtful debts u/s 36 (1) (Viia) relates to rural advances, can deduction for actual w/off u/s 36 (1) (Vii) in respect of urban adv. be restricted to the amt. in excess of the credit balance in the prov. for bad & doubtful debt made u/s 36 (1) (Viia)?	The supreme court held that in such a case, the benefit of deduction u/s 36 (1) (Vii) in respect of urban adv. would be available to the bank, subject to provision of sec. 36(2).	**Catholic Syrian Bank Ltd** V. CIT (2012) 343 ITR 270 (SC)
27	What is the nature of exp. incurred on demolition & re-erection of a cell room & exp. incurred on purchase of pumping set, mono block pump & two transformers, which were parts of a bigger plant – revenue or capital?	It was held that purchase of pumping set, mono block pump with HP motors & two transformers were concerned, they were NOT standalone equipment, but were part of the bigger plant. Therefore, it would be treated as replacement of those parts & exp. would be **eligible for deduction u/s 37(1)-Revenue**.	CIT V. **Modi Industries Ltd** (2011) 339 ITR 467 (Del.)
28	Would the phrase "used for the purpose of business" in respect of discarded M/c include use of such asset in the earlier years for claim of depreciation u/s 32?	On the issue, it was held that the discarded M/c may NOT be actually used in the Relevant P/Y but depreciation **can be Claimed** as long as it was used for the purpose of business in the earlier years provided the block continues to exist in the Relevant P/Y. **(Already asked in CA Final's May,2012 attempt)**	**Yamaha Motors India Pvt. Ltd.** V. CIT (2010) 328 ITR 297 (Delhi)
29	Is the assesses entitled to depreciation on the value of Goodwill considering it as "other business or commercial right or similar nature" within the meaning of an intangible asset?	It was held that G/w paid was for ensuring retention & continued business in the hospital, it was for acquiring a business & commercial right and it was comparable with trade mark, franchise etc referred to in the first part of clause (ii) of sec. 32(1) and so, **G/w** was covered by the above provision of the Act **entitling** the assesses **for depreciation.**	**B. Raveendran Pillai** V. CIT (2011) 332 ITR 531 (Kerala)
30	Can EPABX & Mobile phones be treated as computers to be entitled to higher depreciation at 60%?	On the issue, the High court held that the rate of depreciation of 60% is available to computers & there is no ground to treat the communication equipment as computers. Hence **EPABX & Mobile phones are NOT computers** and therefore, are NOT entitled to higher depreciation of 60%. **(Already asked in CA Final's May,2012 attempt)**	**Federal Bank Ltd.** V. ACIT (2011) 332 ITR 319 (Kerala)
31	Would expenditure incurred on feasibility study conducted for examining proposals for technological advancement related to the existing business be classified as revenue expenditure, where the project was abandoned without creating a new asset?	The High court observed that, in such cases, whether or not a new business/asset comes into existence would be a relevant factor. If there is no creation of a new asset, then the **expenditure** incurred would be a **revenue nature.** **(Already asked in CA Final's May,2012 attempt)**	**Priya Village Roadshow Ltd.** V. CIT (2011) 332 ITR 594 (Delhi)
32	Can expenditure incurred by a Co. on higher studies of the director's son abroad be claimed as business exp. u/s 37 on the contention that he was appointed as a trainee in the co. under "apprentice training scheme", where there was no proof of existence of such scheme?	On this issue, it was observed that there was no evidence on records to show that any other person at any time was appointed as trainee or sent abroad for higher education. Further, there was No nexus betw. the education exp. incurred in abroad for director's son & business of assesses. Therefore, the aforesaid exp. was **NOT deductible.** **(Already asked in CA Final's May,2012 attempt)**	**Echjay forging Ltd.** V. ACIT (2010) 328 ITR 286 (Bom.)

33	Can the waiver of principal amount of loan taken for purchase of capital asset by the bank be treated as "benefit arises out of business" or "a remission of trading liability" for taxability as business income of the Co.?	Since the loan was taken for purchase of capital asset, waiver of a portion of principal would **NOT amount to remission** of trading liability to attract the provision of sec. 41(1). Further, such waiver **CANNOT be treated** as a **benefit arising out of business** & consqt. Sec. 28(iv) will NOT apply in respect of such loan tranx.	**Iskraemees Regent Ltd.** V. CIT (2011) 331 ITR 317 (Mad.)
34	Can "Money payable" in respect of a building sold by the assesses (which has to be reduced from the opening WDV of the block of asset for calculating depreciation) be construed as the FMV of asset instead of actual sale price?	On the issue, the High court held that WDV of asset falling within that block of asset at the begn. of P/Y has to be adjusted by the amount for which the asset is actually sold & **NOT by its FMV.**	**Cable Corporation of India Ltd.** V. CIT (2011) 336 ITR 56 (Bom.)
35	Can the prov. Of sec. 41(1) be invoked both in respect of waiver of working capital loan utilized for day to day biz. Operation & in respect of waiver of term loan taken for purchase a capital asset?	The high courts held that loan were for circulating capital & not for fixed capital. Therefore, the W/off of these loans on the cash credit account which was received for carrying out the day to day operation amts. to remission of a trading liability & hence, has to be **treated as income** in the hands of the assesses by **virtue of sec. 41(1)**.	**Rollatainers Ltd.** V. CIT (2011) 339 ITR 54 (Del.)
36	Can a co. engaged in the biz. Of owing, running & managing hotels claim intt. On borrowed funds, used by it for investing in the equity s/capital of a wholly owned Subsi. co., as deduction where the subsi. Co. was formed for exercising effective control of new hotels acquired by the parent co. under its mgmt.?	The High court held that Exp. incurred was for Biz. Purpose & was thus **allowable u/s 36(1)(iii)**.	CIT V. **Tulip Star Hotels Ltd.** (2011) 338 ITR 482 (Del.)
37	Can the exp. incurred on the assesses lawyer's heart surgery be allowed as biz. exp. u/s 31 by treating it as current repairs considering heart as P&M or u/s 37 by treating it as exp. incurred wholly & exclusively for the purpose of biz. Or profession?	The High court held that the heart CANNOT be said to be P&M for the biz. Or Prof. of the assesses. There fore, the exp. on heart surgery is NOT allowable as repair to plant u/s 31. Accordingly to the prov. Of sec. 37 the claim for allowing the said exp. u/s 37 is also NOT tenable. Hence, **heart surgery exp. shall NOT be allowed** as biz. Exp. **(Already asked in CA Final's Nov.,2012 attempt)**	**Shanti Bhushan** V. CIT (2011) 336 ITR 26 (Del.)
38	Would the exp. incurred for issue & collection of convertible debenture be treated as revenue or capital Exp.?	The Karnataka High court held that the exp. incurred on the issue & collection of deb. Shall be **treated as revenue exp.** even in case of convertible debenture.	CIT V. **ITC Hotels Ltd.** (2011) 334 ITR 109 (Kar.)
39	Can the AO bring to tax the actual profit as per books of accounts, if the same is higher than 10% of receipt which are deemed to be the profit u/s 44BBB in case of a foreign co. engaged in turnkey project?	The Delhi High court held that if an assesses fulfills all the condt. Mentioned in sec. 44BBB(1); then a sum equal to 10% of amount paid or payable to such foreign co. would be deemed as its business income. Further u/s 44BBB (2) **revenue CANNOT** take recourse of this sub-section to **claim** that the profit earned by the assesses were more than 10%.	**DSD Noel Gmbh** V. DIT (2011) 333 ITR 304 (Delhi)
40	Would the special provision for computing profit u/s 44BB be applicable to a Non-resident carrying on business of seismic data acquisition & processing under contract with Indian concern?	In this case, **AAR ruled** that the said activities & services of applicant clearly fell within the description of sec. 44BB and the **income derived** by the applicant under the contract with Indian concern for seismic data acquisition & processing were to be **computed under the provision of sec. 44BB.**	**Global Geophysical Service Ltd.**, In re (2011) 332 ITR 418 (AAR)
41	Can the exp. incurred for purchase of second hand Medical equipment for the use as spare parts for existing equipment be claimed as revenue expenditure?	The High Court held that since the second hand Medical equipment was purchased for the use as spare parts for existing equipment. Therefore the assesses was **eligible to claim deduction** of exp. in the relevant p/y ended 31st March.	**DR. Aswath N Rao** V. ACIT (2010) 326 ITR 188 (karn.)
42	Can the amt. incurred by the assesses for replacing the old mono sound system in its cinema theatre with a new dolby stereo system be treated as revenue exp.?	In such a case, High court held that exp. on such change of sound system could **NOT be considered capital in nature**.	CIT V. **Sagar talkies** (2010) 325 ITR 133 (karn.)

43	For claiming deduction of bad debt, is it necessary for the assesses to establish that the debt had, in fact, become irrecoverable?	On this issue, the Apex court held that it is NOT necessary for the assesses to establish that the debt, in fact, has become irrecoverable. It is **enough if the bad debt is w/off** as irrecoverable in the account of the assesses for the relevant p/y. **(Already asked in CA Final's Nov.,2011 attempt)**	**T.R.F. Ltd.** V. CIT (2010) 323 ITR 397 (SC)
44	Can the payment to police personnel & gundas to keep away from the cinema theatres run by the assesses be allowed as deduction?	Any payment made to police illegally amts. to bribe & illegal payment for which **NO deduction is allowable** under the Act.	CIT V. **Neelavathi & others** (2010) 322 ITR 643 (karn.)
45	Can exp. incurred on alteration of a dam to ensure adequate supply of water for the smelter plant owned by the assesses be allowed as revenue exp.?	The High court observed that the exp. incurred by the assesses for commercial expediency relates to carrying on of biz. The operational exp. incurred by the assesses solely intended for the enterprise can by **NO means be treated** as exp. of **capital nature**.	CIT V. **Hindustan Zinc. Ltd** (2010) 322 ITR 478 (Raj.)
46	Is the amt. paid by a construction co. as regularization fee for violating building bye laws allowable as deduction?	The High court held that amt. paid to compound an offence is obviously a penalty & hence, does **NOT qualify for deduction u/s 37**.	**Millennia Developers (P) Ltd.** V. DCIT (2010) 322 ITR 401 (karn.)
47	Would beneficial ownership of asset suffice for claim of deprecation on such asset?	The High court observed that she is the beneficial owner, she is **entitled to claim deprecation** even though she is NOT the legal owner of the asset.	CIT V. **Smt. A Sivakami & Another** (2010) 322 ITR 64
48	Is the exp. incurred on payment of retrenchment compensation & intt. On money borrowed for the payment of retrenchment compensation on closure of one of the textile manufacturing units of the assesses co. revenue in nature?	The High court concurred with these finding of the tribunal & accordingly, held that **deduction was allowable** in respect of exp. on payment of retrenchment compensation & intt. On money borrowed for payment of retrenchment compensation.	CIT V. **DCM Ltd** (2010) 320 ITR 307 (Del.)
(F) Capital Gain			
49	Can non-cumulative P/shares carrying a fixed rate of dividend with a fixed holding period be said to be equated with bonds or debenture so as to deny the indexation benefit while computing c/gain on its t/f, applying the third proviso to sec. 48?	Therefore the court held that the **indexation benefit** on the t/f of LTCA, being 4% non-cumulative p/shares **CANNOT be denied** applying the prov. Of the third prov. to sec. 48.	CIT V. **Eman securities P. Ltd** (2012) 345 ITR 64 (Bom)
50	In case of a house property registered in joint names, whether the exemption u/s 54F can be allowed fully to the co-owner who has paid whole of the purchase consideration of the H/property or will it be restricted to his share in the h/property?	The court held that the condt. Stipulated in **sec. 54F** stand fulfilled & the entire **exemption claimed** in respect of the purchase price of the house property **shall be allowed** to the assesses.	CIT V. **Ravindra kr. Arora** (2012) 342 ITR 38 (Del.)
51	Can the scheme of arrangement approved u/s 391 to 394 of co. act, 1956 be treated as slump sale to attract c/gain provision?	The court held that scheme approved by the court shall be **treated as slump sale** & **c/gain provision** would be **attracted**.	**SREI Infrastructure finance Ltd.** V. IT Settlement Comm. (2012) 207 ITR taxman 74 (Del.)
52	Will an agriculture land be treated as c/asset in case it is located within 8 KM from the local limits of a city municipal corp., even though the same is not notified by the CG u/s 2(14) (iii) (b)?	The court held that if the agriculture land satisfy the two condt. to be recalled as agriculture land but the same is NOT notified by CG, then **land** would **NOT** be **a c/asset** & **NO c/gain tax** would be attracted on its sale.	CIT V. **Madhukumar N. (HUF)** (2012) 208 taxman 394 (ker.)
53	What are the factors determining the nature of income arising on sale of shares i.e. whether the income is taxable as c/gain or b/income?	The high court held that the facts that may be considered while determining the same are the magnitude & freq. of buying & selling of shares by the assesses, the POH of shares, ratio of sales tp purchase & the total holding, etc.	**PVS Raju** V. ACIT (2012) 340 ITR 75 (AP)
54	Can an assesses be deprived of claiming exemption u/s 54EC, if bonds of assesses choice are not available or available only for a broken period within the period of 6 month after the date of t/f of c/asset & the bonds are purchased shortly after it becomes available next time after the expiry of the said 6 month?	The high court held that since the assesses invested in the bonds on 31.01.2007 i.e. within 9 days of their being available once again from 22.01.2007, he **CANNOT be deprived of exemption u/s 54EC**. the time to invest in the bonds get automatically extended till the bonds are available in the mkt.	CIT V. **Cello Plast** (2012) 209 Taxman 617 (Bom.)
55	Would sale of a plot of land held as SIT by an assesses engaged in the biz of real estate & construction of plots, be treated as sale of c/asset, to attract the prov. of sec. 50C?	The court held that assesses has held the land as SIT & NOT as a c/asset. Hence, **sec. 50C will NOT apply** in this case & the profit on sale of land will be treated as biz income.	CIT V. **Kan construction & colonizers (P) Ltd** (2012) 208 Taxman 478 (All.)

56	Can the exemption u/s 54F be denied to an assesses in respect of investment made in construction of a residential house, on the ground that the construction was not completed within three years after the date on which t/f took place, an account of pendency of certain finishing work like flooring, electrical fitting, fitting of door shutter?	The court held that in this case the assesses would be **entitled to exemption u/s 54F** in respect of the amount invested in construction within the prescribed period.	CIT V. **Sambandam udaykumar** (2012) 345 ITR 389 (Ker.)
57	Would an asset which is sold the very next day after the period of 12/36 month is over, be treated as LTCA by incl. both the date on which the asset is acquired & the date on which the asset is t/f for computing POH?	The court held that if an asset is sold the very next day & **proviso to sec. 2(42A) applies**; it would be **treated as a LTCG**.	**Bharti Gupta Ramola** V. CIT (2012) 207 Taxman 178 (Delhi)
58	Can exemption u/s 54 be claimed in respect of more than 1 residential flat acquired by the assesses under a joint development agreement with a builder, where in the property owned by the assesses was developed by the builder who constructed 8 residential flat in the said Property, 4 of which were given to the assesses?	The Karnataka High court, applying the decision of Anand Basappa (2009) 309 ITR 329 (Kar.) to the present case, held that all the 4 flats are situated in the same residential building & hence, will constitute "a residential house" for the purpose of sec. 54. Therefore, the assesses would be **entitled to deduction u/s 54** in respect of all 4 flats.	**Smt. K G. Rukminiamma** V. CIT (2011) 331 ITR 211 (Kar.)
59	Can the assesses claim exemption u/s 54F, on account of c/gain arising on t/f of depreciable asset held for more than 36 months i.e a long term capital asset, though the same is deemed as capital gain arising on t/f of short term capital gain by virtue of sec. 50?	The High court held that sec. 54F being an independent section will NOT be bounded by the prov. Of sec. 50. Therefore, the **exemption u/s 54F** on t/f of depreciable asset held for more than 36 month **CANNOT be denied** on account of fiction created by sec. 50.	CIT V. **Rajiv Shukla** (2011) 334 ITR 138 (Del.)
60	Whether indexation benefit in respect of the gifted asset shall apply from the year in which the asset was first held by the assesses or from the year the same was first acquired by the previous owner?	The High court held that indexed COA in case of gifted asset has to be **computed with reference** to the year in which the **previous owner first held** the asset & NOT from the year in which the assesses become the owner of the asset.	CIT V. **Manjula J. Shah** 16 Taxmann 42 (Bom.)
61	Can exemption u/s 54B be denied solely on the grounds that the new agricultural land purchased is not wholly owned by the assesses, as the assesses's son is a co-owner as per sale deed?	The High court concurred with the tribunal's view that merely bcoz the assesses's son was shown in the sale deed as co-owner, it did NOT make any difference. Therefore, the assesses was **entitled to deduction u/s 54B**.	CIT V. **Gurnam Singh** (2010) 327 ITR 278 (P&H)
62	In determining the POH of c/asset received by a partner on dissolution of firm, can the POH of the c/asset by the firm be taken into account?	The High court held that **POH** of the asset by the assesses in this case has to be **reckoned from** the **date of dissolution** of the firm. Since the assesses sold the property within 3 days of acquiring the same, the gain have to be treated as STCG.	**P. P. Menon** V. CIT (2010) 325 ITR 122 (Ker.)
63	Can exemption u/s 54EC be denied on account of the bonds being issued after 6 month of the date of t/f even though the payment for the bond was made by the assesses within the 6 month period?	The High court, therefore, held that if such payment is within a period of 6 month from the date of t/f, the assesses would be **eligible to claim exemption u/s 54EC**.	**Hindustan Unilever Ltd** V. DCIT (2010) 325 ITR 102 (Bom.)
64	What would be the POH to determine whether the c/gain on renunciation of right to subscribe for additional shares is short term (ST) or long term (LT)?	On this issue, the Apex court held that for determining whether the c/gain on renunciation of right to subscribe for additional shares is ST or LT, the **POH would be from** the date on which **such right** to subscribe for additional shares **come into existence** up **to** the **date of renunciation** of such right.	**Navin Jindal** V. ACIT (2010) 320 ITR 708 (SC)
	(G) Other Source		
65	Can the loan or adv. given to a shareholder by the co., in return of an advantage conferred on the co. by the shareholder, be deemed as dividend u/s 2(22)(e) in the hands of the shareholder?	In present case, the adv. given to the assesses by the co. was NOT in the nature of a gratuitous advance given, instead it was given to protect the interest of the co. therefore, the said adv. **CANNOT be treated as deemed dividend** in the hands of the shareholder u/s 2(22) (e).	**Pradip kr. Malhotra** V. CIT (2011) 338 ITR 538 (Cal.)

66	What can be the tests to determine "substantial part of business" of lending Co. for the purpose of application of exclusion provision under sec. 2(22)?	In this case, 42% of the assets of lending Co. were deployed by it by way of loan & advance. Further if interest income is excluded, the other business had resulted in a Net loss. These factors were considered in concluding that lending of money was a substantial part of business of the co. hence money given by way of loan & advance to the assesses could **NOT** be **regarded as a divided**, as it had to be excluded from the definition of "dividend" by virtue of the specific exclusion in sec. 2(22).	**Parle Plastics Ltd.** V. CIT (2011) 332 ITR 63 (Bom.)
67	Can winning of prize money on unsold lottery ticket held by the distributor of lottery be assessed as business income & be subj. to normal rates of tax instead of the rates prescribed u/s 115BB?	The receipt of the prize Money is NOT in his capacity as a lottery ticket distributor but as a holder of the lottery ticket which won the prize. Therefore, the High court held that the rate of **30% prescribed u/s 115BB is applicable** in respect of winnings from lottery received by the distributor.	**Manjoo & Co.** V. CIT (2011) 335 ITR 527 (Kerala)
68	Would the prov. Of deemed dividend u/s 2(22)(e) be attracted in respect of financial tranx entered into in the normal course of biz?	The High court held that such financial tranx **CANNOT** under any circumstances be treated as loans or advances received by the assesses from ths concerns for the purpose of **appl. Of sec. 2(22) (e)**. **(Already asked in CA Final's May,2012 attempt)**	CIT V. **Ambassador Travels (P) Ltd** (2010) 318 ITR 376 (Del.)
	(H) Set-off & carry forward of losses		
69	In order to determine whether explanation to sec. 73 is applicable in a particular case, is it necessary to first determine the gross total income of the assesses computed as per normal prov. of the act?	On this issue, the Bombay high court observed that, **in order to apply the exemption**, the gross total income **(GTI) of a co. is to be first computed** as per the normal prov. of the act.	CIT V. **Darshan securities (P) Ltd** (2012) 341 ITR 556 (Bom.)
	(I) Chapter VI A (Deductions)		
70	Can an assesses, engaged in the biz of developing a housing project, be denied deduction u/s 80-IB (10) on the ground that the ownership of land has NOT yet been t/f to the assesses & the approval to build the project has been taken in the name of the land owner, though the assesses assumes the entire risks & rewards of the project?	In the present case, as per prov. of **sec. 80-IB (10), deduction shall be provided** to the assesses engaged in the biz of developing & building housing project even though the ownership of the land has NOT yet been transferred to the assesses & the approval for such project is obtained in the name of the original land owner.	CIT V. **Radhe Developers** (2012) 341 ITR 403 (Guj.)
71	Does standing charges paid by the client for failure to purchase the minimum agreed Qty, Qualify for deduction u/s 80-IC?	The delhi high court held that charges were paid to compensate the assesses for failure to produce & mkt its product. There fore, such **standing charges are NOT eligible for deduction u/s 80-IC**.	**Pine Packaging (P) Ltd.** V. CIT (2012) 209 Taxman 74 (Del.)
72	In a case whr an additional building was constructed on a plot of land & approval for the same is obtained in the year 2002, can deduction u/s 80-IB (10) be denied in respect of the said building on the contention that it was an extension of an earlier project for construction of our building, in respect of which approval was obtained before 01.10.98?	The high court observing the facts of case held that the assesses was **entitled to deduction u/s 80-IB** (10) in respect of that building.	CIT V. **Vandana Properties** (2012) 206 Taxman 584 (Bom.)
73	Would the procurements of parts & assembling them to make wind Mill falls within the meaning of "Manufacturing" & "Production" to be entitled for deduction u/s 80-IB?	The Madras High court held that different parts procured by assesses could NOT be treated as a "wind mill" individually, but when assembled & got transformed into an ultimate product which was commercially known as "wind mill". Thus, such activity amounts to "Manufacture" as well as "Production" to **qualify for deduction u/s 80-IB**.	**Chiranjjeevi Wind Energy Ltd.** V. CIT (2011) 333 ITR 192 (Mad.)
74	Can an assesses NOT claiming deduction u/s 80-IB in the initial years claim the said deduction for the remaining years during the period of eligibility, if the condt. are satisfied?	The Delhi High court held that the provision of sec. 80-IB does NOT stipulate any condt. For claiming the deduction. Therefore, **the deduction u/s 80-IB** shud. Be **allowed** to the assesses **for** the **remaining years** during the period of eligibility, provided condt. u/s 80-IB are fulfilled.	**Praveen Soni** V. CIT (2011) 333 ITR 324 (Delhi)

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75	Does income derived from sale of export incentives qualify for deduction u/s 80-IB?	The High court held that income derived from sale of export incentives CANNOT be said to be income "derived from" the industrial undertaking & therefore, such income is **NOT eligible for deduction** u/s 80-IB.	**Jaswand Sons** V. CIT (2010) 328 ITR 442 (P&H)
76	Would grant of transport subsidy, interest subsidy & refund of excise duty qualify for deduction under sec. 80-IB?	The High court held that there shud. be a direct nexus betw. The generation of profits & gains AND source of profit & gains, the latter being directly relatable to the business of the assesses. In this case, **subsidy had NO direct nexus** with profit derived by assesses from its industrial activity, so the subsides could NOT be taken into account for purpose of deduction u/s 80-IB. But **refund of the excise** had a **direct nexus** with manufacturing activity, being a profit linked incentives. Therefore, the refund of excise duty had to be **taken** into account **for** purpose of **deduction u/s 80-IB.**	**Meghalaya Steels Ltd.** V. CIT (2011) 332 ITR 91 (Gauhati)
77	Can an industrial undertaking engaged in manufacturing or producing articles or thing treat the persons employed by it through agency (incl. contractors) as "workers" to qualify for claim of deduction u/s 80IB?	The employment of 10 or more workers is what is relevant & NOT the mode and the manner in which the workers are employed by the assesses. The High court, therefore, held that the tribunal was justified in holding that the condt. Of sec. 80IB(2)(iv) had been fulfilled & therefore **deduction u/s 80IB is allowed**.	CIT V. **Jyoti Plastics Works (P) Ltd** (2011) 339 ITR 491 (Bom.)
78	Can freight subsidy arising out of the scheme of CG be treated as a "Profit derived from the biz" for the purpose of sec. 80IA?	The High court held that the freight **subsidy CANNOT be treated as Profit** derived from the biz for the purpose of sec. 80IA.	CIT V. **Kiran Enterprise** (2010) 327 ITR 520 (HP)
79	Does the period of exemption u/s 80IB commence from the year of trial production or year of commercial production? Would it make a diff. if sale was effected from out of trial production?	Therefore, the condt. Stipulated in sec. 80IB were fulfilled with the commercial sale of the two items in that A/Y, & hence **period of exemption u/s 80IB** has to be **reckoned** from period **when sale took place**.	CIT V. **Nestor pharmaceuticals Ltd/ Sidwal Refrigeration Ind. Ltd** V. DCIT (2010) 322 ITR 631 (Del.)
80	Can the Duty entitlement passbook scheme (DEPB) benefit & Duty Drawback be treated as profit derived from the biz. Of industrial undertaking to be eligible for deduction under sec. 80IB?	The Apex court held that Duty Drawback receipt & DEPB benefit do **NOT form part of the profit** derived from the eligible biz for the purpose of the deduction u/s 80-IB.	**Liberty India** V. CIT (2009) 317 ITR 218 (SC)
	(J) Assessment of Various Entities		
81	Would interest earned on fixed deposit made by a social club with its corporate members satisfy the principal of mutuality to escape taxability?	The court held that social relationship & activities of the club have nothing to do with its deposit with corporate members. Therefore, the said **interest income is NOT exempt** on the principal of mutuality.	CIT V. **Secunderabad Club Picket** (2012) 340 ITR 121 (A.P.)
82	Can interest u/s 234B & 234C be levied where a co. is assessed on the basis of book profits u/s 115JB **(MAT)**?	The Apex court observed that there is a specific provision in sec.115JB (5) providing that all other provision of the IT Act, 1961 shall apply to every assesses, being a Co. Therefore, **interest u/s 234B & 234C shall be payable** on failure to pay advance tax in respect of tax payable u/s 115JB.	**Rolta India Ltd.** V. JCIT (2011) 330 ITR 470 (SC)
83	Would interest earned on surplus fund of a **Club** deposited with institutional members satisfy the Principle of Mutuality to escape taxability?	The High court held that **interest earned** from investment of surplus funds does NOT satisfy the Principle of Mutuality & Hence CANNOT be claimed as exempt. Therefore **taxable**.	**Madras Gymkhana Club** V. DCIT (2010) 328 ITR 348 (Mad.)
84	Would non resident match referees & umpires in the games played in India fall within the meaning of sportsmen to attract taxability u/s 115BBA, and consequently attract the TDS u/s 194E in the hands of the payer?	The High court held that the payment made to non resident match referees & umpires are "income" which has accrued & arises in India, the same are NOT taxable u/s 115BBA and thus, the assesses is NOT liable to deduct TDS u/s 194E. Further they render professional services but sec. 194J CANNOT be imposed as on a non resident. **<u>Note</u>:-** It may be noted that since income has accrued & arisen in India to the non resident match referees & umpires, the **TDS provisions u/s 195 would be attracted** and tax would be deductible at the rate in force. **(Already asked in CA Final's Nov.,2012 attempt)**	**Indcom** V. CIT (TDS) (2011) 335 ITR 485 (Calcutta)

85	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 assesses firm be entitled to deduction in respect of remuneration paid to partner?	The High court held that method of remuneration having been laid down, the assesses firm is **entitled to deduct the remuneration** paid to the partner u/s 40(b)(v) of Income tax Act.	CIT V. **Anil Hardware Store** (2010) 323 ITR 368 (HP)
86	Can LTCG exempted by virtue of erstwhile sec. 54E be included in the book profit computed under erstwhile sc. 115J?	The High court held that LTCG are part of the profit incl. in the P&L a/c prepared in accordance with the prov. Of Part II & III of schedule VI to co. Act, 1956, **capital gain CANNOT be excluded** unless provided under the explanation to sec. 115J (IA). **(Already asked in CA Final's Nov.,2011 attempt)**	**N. J. Jose & Co. (P) Ltd** V. ACIT (2010) 321 ITR 132 (Ker.)
87	Can t/f fees received by a co-operative housing society from its incoming & outgoing members be exempt on the ground of principal of mutuality?	The High court held that t/f fee received is **NOT liable to tax** on the ground of principal of mutuality.	**Sind co-operative Housing Society** V. ITO (2009) 317 ITR 47 (Bom.)
		(K) Income Tax Authority	
88	Does the CBDT have the power u/s 119(2)(b) to condone the delay in filing ROI?	The High court held that the **board has the power to condone** the delay in case of a return which was filed late & whr a claim for c/f of losses was made. **(Already asked in CA Final's Nov.,2011 attempt)**	**Lodhi Property Co. Ltd** V. Under Secretary (ITA-II), DOR (2010) 323 ITR 441 (Del.)
		(L) Assessment Procedure	
89	Is a person having income below taxable limit, required to furnish his PAN to the deductor as per prov. of sec. 206AA even though he is not acquired to hold PAN as per prov. of sec. 139A?	In order to avoid undue hardship caused to such person, Karnataka high court , held that it is **NOT necessary for such person to obtain PAN** & in view of specific prov. of sec. 139A, sec. 206AA is NOT applicable to such person.	**Smt. A. Kowsalya Bai** V. UOI (2012) 346 ITR 156 (Kar.)
90	Can an assesses revise the particular filled in the original ROI by filling a revised statement of income?	The high court relying on the judgment of Goetze (I) Pvt. Ltd., held that the **AO has NO power to entertain a fresh claim** made by the assesses after filling of the original return except by way of filling a revised return.	**Orissa Rural Housing Development Corp. Ltd.** V. ACIT (2012) 343 ITR 316 (Orissa)
91	Is it permissible u/s 147 to reopen the assessment of the assesses on the ground that income has escaped assessment, after a change of opinion as to a loss being a speculation loss & not a normal biz loss, consequent to mere re-look of a/c which were earlier furnished by the assesses during assessment u/s 143(3)?	The supreme court observed that re-opening of the assessment by the AO is clearly a change of opinion & therefore, the order of **re-opening the assessment is NOT valid**.	ACIT V. **ICICI securities Primary Dealership Ltd.** (2012) 348 ITR 299 (SC)
92	Can the AO issue notice u/s 154 to rectify a mistake apparent from records in the intimation u/s 143(1), after issue of a valid notice u/s 143(2)?	On the issue, the P & H High court concluded that proceeding **u/s 154** for **rectification** of intimation u/s 143(1) **CANNOT be initiated** after issuance of notice u/s 143(2) by the AO to the assesses.	**Haryana State Handloom & Handicraft Corpn. Ltd.** V. CIT (2011) 336 ITR 694 (P&H)
93	Can the AO reassess issue other than issues in respect of which proceeding were initiated u/s 147 when the original “reasons to believe” on basis of which the notice was issued ceased to exit?	The High court held that if the income, the escapement of which was the basis of the “reasons to believe” is NOT assessed or reassessed, it would **NOT** be **open to the AO to independently assess only that income** which comes to his notice subsq. if he intends to do so a fresh notice u/s 148 would be necessary.	**Ranbaxy Lab. Ltd.** V. CIT (2011) 336 ITR 136 (Delhi)
94	Would the word “shall be issued” used in sec. 149 means “mere signing of notice by the AO” or “handing over of the said notice in hands of the proper officer for serving it to the assesses” to constitute a valid notice issued within the prescribed time limit?	The Guj. High court observed that the expression **“shall be issued” means** the date of issue on which the same were **handed over** for service **to the proper officer/post officer**, NOT the date on which such notice was signed by the AO.	**Kanubhai M. Patel (HUF) V. Hiren Bhatt** or his Successors to office (2011) 334 ITR 0025 (Guj.)
95	In case of change of incumbent of an office, can the successor AO initiate reassessment proceeding on the grounds of change of opinion in relation to an issue which the predecessor AO, who had framed the original assessment, had already applied his mind & came to a conclusion?	The Guj. High court observed that thr was nothing on records to show that income had escaped assessment in respect of which the successor AO received info. Therefore, **notice of re-assessment** was, therefore **NOT Valid**.	**H. K. Buildcon Ltd** V. ITO (2011) 339 ITR 535 (Guj.)

96	Can the unabsorbed depreciation be allowed to be c/f in case the ROI is not filed within the due date?	The High court held that the **unabsorbed depreciation will be allowed to be c/f** to subsequent year even though the ROI of current A/Y was NOT filled within the due date.	CIT V. **Govind Nagar Sugar Ltd** (2011) 334 ITR 13 (Del.)
97	Can the AO reopen an assessment on the basis of merely a change of opinion?	The High court observed that the reason recorded for reopening the assessment constituted a mere change of opinion. Therefore, the **reassessment was NOT Valid**.	**Aventis Pharma Ltd** V. ACIT (2010) 323 ITR 570 (Bom.)
98	Would the doctrine of merger apply for calculating the period of limitation u/s 154(7)?	After merge, the order of the original authority ceases to exist & the order of the appellate authority prevails. Thus, the **period of limitation** of 4 years for the purpose of sec. 154(7) has to be **counted from the date of** the **order of the Appellate Authority**.	CIT V. **Tony Electronics Ltd** (2010) 320 ITR 378 (Del.)
(M) Appeal & Revision			
99	Would the period of limitation for an order passed u/s 263 be reckoned from the original order passed by the AO u/s 143(3) or from the order of re-assessment passed u/s 147, whr the subject matter of revision is different from the subject matter of reassessment u/s 147?	The court held that, period of limitation in respect of the order of comm. u/s 263 in respect of a matter which does NOT form the subject matter of reassessment shall be **reckoned from the date of the original order u/s 143 (3)** & NOT from the date of reassessment order u/s 147.	CIT V. **ICICI Bank Ltd.** (2012) 343 ITR 74 (Bom.)
100	Can an assesses make an additional/new claim before an appellate authority which was not claimed by the assesses in the ROI (though he was legally entitled to), otherwise then by way of filing a revised ROI?	The Bombay high court held that **additional/new grounds can be raised before the appellate authority** even otherwise than by way of filing ROI.	CIT V. **Pruthvi Brokers & Shareholders** (2012) 208 Taxman 498 (Bom.)
101	Can the CIT initiate revision proceeding u/s 263 on the grounds that the AO's order NOT initiating penal proceeding was erroneous and prejudicial to the interest of the revenue, in a case where non initiation of penal proceeding was a pre-condt. for surrender of income by the assesses?	The High court observed that, as perusal of the office note issued by the AO, it was clear that the assesses had made surrender of income with a clear condt. that no penal action u/s 271(1) (c) would be initiated. Once that was so, the **CIT CANNOT** take a different view & levy penalty.	**Subhash Kr. Jain** V. CIT (2011) 335 ITR 364 (P&H)
102	Can the Tribunal exercise its power of rectification u/s 254(2) to recall its order in entirety?	The Tribunal does NOT have inherent power to review its order on merit; it can recall its order for the purpose of correcting a mistake apparent from the records. While applying the decision of Apex court in case of Honda Siel Power Products Ltd. in this case the high court held that the **tribunal**, while exercising the power of rectification u/s 254(2), **can recall its order in entirety** if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake or error and error committed is apparent.	**Lachman Dass Bhatia Hing Wala (P) Ltd.** V. ACIT (2011) 330 ITR 243 (Delhi) [FB]
103	Does the Appellate Tribunal have the power to review or re-appreciate the correctness of its earlier decision u/s 254(2)?	The High Court held that **re-appreciation** of the correctness of its earlier decision on merit, which **is beyond the scope** of the power conferred **u/s 254(2)**.	CIT V. **Earnest Export Ltd** (2010) 323 ITR 577 (Bom.)
104	Does the High court have on inherent power under the Income Tax act, 1961 to review an earlier order passed on merit?	The Power of re-admission/restoration of the appeal is always enjoyed by the High court. However, such power to restore the appeal **CANNOT** be treated to be a power to **review** the earlier order passed on Merit. **(Already asked in CA Final's Nov.,2011 attempt)**	**Deepak Kumar Garg** V. CIT (2010) 327 ITR 448 (MP)
(N) Penalties			
105	Can the repayment of loan by passing mere adjusting book entries by the assesses be taken to be in contravention of prov. of sec. 269T to attract penalty u/s 271E?	Since the tranx is bonafide in nature being a normal biz. Tranx & has NOT been made with a view to avoid tax, it was held that assesses has shown reasonable cause for the failure u/s 269T, & therefore, as per the prov. of sec. 273B, **NO penalty u/s 271E could be imposed** on the assesses for contravening the prov. of sec. 29T.	CIT V. **Triumph International Finance (I) Ltd.** (2012) 345 ITR 270 (Bom.)
106	Can penalty u/s 271(1) (c) for concealment of income be imposed in a case where the assesses has raised a debatable issue?	On the issue, the high court observed that, mere raising of a debatable issue would NOT amount to concealment of income or furnishing inaccurate particulars and therefore, **penalty u/s 271(1) (c) CANNOT be imposed**.	**Indersons Leather (P) Ltd.** V. CIT (2010) 328 ITR 167 (P&H)

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107	Can the penalty u/s 271(1)(c) be imposed whr the assessment is made by estimating the net profit at a higher % applying the prov. Of sec. 145?	The High court held that in order to impose penalty thr has to be concealment of particular of income of assesses or the assesses must have furnished inaccurate particulars of his income. Here assesses **CANNOT be held guilty** of furnishing particulars.	CIT V. **Vijay Kumar Jain** (2010) 325 ITR 378 (Chhattisgarh)
108	Would making an incorrect claim in the ROI per se amt. to concealment of particular of income or furnished inaccurate particulars for attracting the penal prov. u/s 271(1)(c), when no info. Given in ROI is found to be incorrect?	The Apex court held that a **mere making of a claim**, which is NOT sustainable in law, by itself, **will NOT amt.** to **furnishing inaccurate particulars** reg. the income of assesses.	CIT V. **Reliance Petro Product (P) Ltd** (2010) 322 ITR 158 (SC)
	(O) Offence & Prosecution		
109	Would prosecution proceeding u/s 276CC be attracted whr the failure to furnish return in time was not willful?	In this case, it was observed that thr were sufficient grounds for delay in filling the ROI & such delay was NOT willful. Therefore, prosecution proceeding **u/s 276CC are NOT attracted** in such a case.	UOI V. **Bhavecha Machinery & others** (2010) 320 ITR 263 (MP)
	(P) TDS		
110	In respect of a co-owned property, would the threshold limit mentioned in sec. 194I for non-deduction of tax at source apply for each co-owner separately or it is to be considered for the complete amt. of rent paid to attract liability to deduct TDS?	Since payment of rent is made to each co-owner by way of separate cheque & their share is definite, the **threshold limit** mentioned, **in sec. 194I has to be seen separately for each co-owner**. Hence, the assesses would NOT be liable to deduct tax on the same & NO interest u/s 201 is leviable.	CIT V. **Senior Manager, SBI** (2012) 206 Taxman 607 (All.)
111	Can the payment made to contractors for hiring dumpers by an assesses engaged in ssstransportation of building material, be treated as Rent for M/C or equipment to attract TDS u/s 194I?	The High court observed that the assesses had given contract to the parties for the transportation of goods & had NOT taken M/C & equipment on rent. Such payment could NOT be termed as rent paid for the use of M/C & Prov. Of **sec. 194I** would, therefore, **NOT be applicable**.	CIT (TDS) V. **Shree Mahalaxmi Transport Co.** (2011) 339 ITR 484 (Guj.)
112	Do the tips collected by hotel & disbursed to employee constitute salary to attract TDS u/s 192?	The High court held that when tips were charged to the bill & was subseq. Disbursed to the employees, then tips would constitute income within the meaning of sec. 2(24) & it was obligatory upon the **co. to deduct TDS** from such payments **u/s 192**. **(Already asked in CA Final’s Nov.,2012 attempt)**	CIT (TDS) V. **ITC Ltd** (2011) 338 ITR 598 (Del.)
113	What is the nature of landing & parking charges paid by an airline co. to AAI & is TDS required thereof?	The landing & parking charges were definitely “Rent” within the meaning of the prov. Of **sec. 194I**, as they were payment for the use of the airport & **TDS was req. to deducted**. **(Already asked in CA Final’s Nov.,2011 attempt)**	CIT V. **Japan Airlines Co.** Ltd (2010) 325 ITR 298 (Del.)
114	Whether retention of a % of advertising charges by the advertising agencies for the payment to Doordarshan for telecasting advertisement, would attract TDS u/s 194H?	It was held when Agent pays 85% of advertising charges collected by them from customer, & agent simultaneously get paid comm. Of 15%, which he is free to appropriate as his income. So **TDS on comm.. charges** of 15% has **to be paid** to income tax Dept.	CIT V. **Director, Prasar Bharti** (2010) 325 ITR 205 (Ker.)
115	Can services rendered by a hotel to its customer in providing hotel room with various facilities/amenities (Like house keeping, bank counter, beauty salon, car rental, etc) amt. to “carrying out any work” to attract TDS u/s 194C?	However, facilities or amenities made available by a hotel to its customer do NOT fall within the meaning of work u/s 194C & therefore **TDS u/s 194C are NOT attracted**.	**East India Hotels Ltd** V. CBDT (2010) 320 ITR 526 (Bom.)
116	Can the Intt. u/s 234B & C, be levied on the basis of intt. Calculation given in the computation sheet annexed to the assessment order, though the direction to charge such intt. is not mentioned in the assessment order?	The Court held that the **levy of intt. & basis** for arriving at the quantum thereof have been **explicitly indicated** in the **computation sheet** & therefore, **such intt. has to be paid**.	CIT V. **Assam Mineral Development Corporation Ltd** (2010) 320 ITR 149 (Gau.)
117	Can difference betw. Published Price & Minimum fixed commercial price be treated as additional special commission in the hands of the agents of an airline co. to attract TDS provision u/s 194H?	The High court held that **TDS was NOT deductible on the difference** betw. the actual sale price & the minimum fixed commercial price, even though the amount earned by the agent over & above minimum fixed commercial price would be taxable as income in his hand. **(Already asked in CA Final’s May,2012 attempt)**	**Qatar Airways** V. CIT (2011) 332 ITR 253 (Bom.)

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118	Can discount given on supply of SIM cards & recharge coupons by a telecom co. to its distributors under a prepaid scheme be treated as commission to attract TDS provision u/s 194H?	The High court held that the distributor only acted as a middleman on behalf of the assesses for procuring & retaining customer. Therefore, the discount given to him was within the meaning of commission u/s 194H on which **TDS was deductible**.	**Vodafone Essar cellular Ltd.** V. ACIT (TDS) (2011) 332 ITR 255 (Kerala)
	(Q) Wealth Tax		
119	Whether the Best judgment assessment order passed without giving the assesses an opportunity of being heard is valid in a case whr the notice u/s 16(4) has already been given?	It was held that second prov. to sec. 16(5) comes into operation & **NO further notice or opportunity** to be heard **is req**. to be given to the assesses.	CWT V. **Motor General Finance Ltd** (2011) 332 ITR 1 (Del.)
120	Is wealth tax leviable on the value of house under construction where the construction was still incomplete on the relevant valuation date?	Incomplete building neither falls within the definition of a "building", as contemplated u/s 2(ea) of WT Act nor within the purview of "urban land" as excluded by explanation 1(b). Hence, in such a case, the value of house under construction incl. investment on construction is NOT liable to wealth tax. Therefore, **land & incomplete building thereon is NOT an asset**. **(Already asked in CA Final's Nov.,2011 attempt)**	**Smt. Neena Jain** V. CIT (2011) 330 ITR 157 (P&H)

Note: - Refer to Module of ICAI for more clarity, it's only meant for quick revision.
Once counter check each case law's decision at your end too.

Tips 4 Exams:-

- In DT & IDT focus more on amendments & recent case laws to grab good marks.
- Focus more in understanding the requirement of Q; then on keeping yourself busy in writing.
- In numerical subjects, practice is the only key to success.
- Try to remain calm in examination hall; will give space to your mind to work/think properly.
- Try to attempt each & every Q in papers.

"IF YOU CAN DREAM IT, YOU CAN DO IT

All d Best & Good Luck 4 ur Xams…"

Message:-

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