WEALTH TAX

CWT v. Motor and General Finance Limited (2011) 332 ITR 1 (Delhi)

Issue:

Whether the best judgment assessment order passed without giving the assessee an opportunity of being heard is valid in a case where the notice under section 16(4) has already been given?

Decision:

Held that, though the assessee has not filed the return under section 14(1), it was not necessary for the Assessing Officer to issue the notice under section 16(5), for assessing the wealth of the assessee to the best of his judgment, since he has already issued notice under section 16(4) requiring the assessee to furnish the wealth-tax return.

Therefore in this case, the second proviso to section 16(5) comes into operation and **no further notice or opportunity to be heard is required** to be given to the assessee.

CIT v. Smt. Neena Jain (2011) 330 ITR 157 (P & H*)*

Issue:

Is wealth-tax leviable on the value of house under construction, where the construction was still incomplete on the relevant valuation date?

Decision:

Held that, the incomplete building of the assessee neither fell within the meaning of a building nor within the purview of "urban land" under section 2(ea). Consequently, the **incomplete building is not an asset** chargeable to wealth-tax.

CIRCULAR NO. 5/2012 DATED 1-8-2012

The Central Board of Direct Taxes has, through this circular, clarified by considering the fact that the claim of **any expense incurred in providing freebees** to **medical practitioner** is in **violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002**, the expenditure so incurred shall be inadmissible under section 37(1) of the Income-tax Act, 1961, being an expense prohibited by the law. The disallowance shall be made in the hands of such pharmaceutical or allied health sector industry or other assessee which has provided aforesaid freebees and claimed it as a deductible expense in its accounts against income.

PGBP

Depreciation and Actual Cost

Amendment in Section 32(1)(iia):

Additional depreciation will also be allowed to an assessee engaged in business of generation or generation and distribution of power.

Legal Decision

CIT Vs. Oswal Agro Mills Ltd. (2012) 341 ITR 467 (Delhi)

Where a unit of the assessee remains closed for 6 years, the same cannot be said to be temporary closure. Therefore the assessee shall not be entitled to claim depreciation.

CIT vs. Smifs Securities Ltd (2012) (Supreme Court)

*Pursuant to an **amalgamation** of another company with the assessee, the **difference** between the consideration paid by the assessee and the net value of assets of the amalgamating* *company was treated by the assessee as "**goodwill"** and **depreciation of Rs. 54 lakhs was claimed thereon u/s 32(1)(ii)**.*

The AO rejected the claim on the ground that (i) "goodwill" was not an "intangible asset" as defined in Explanation 3 to s. 32(1) and (ii) the assessee had not paid anything for the same.

The Tribunal and High Court upheld the assessee's claim**. **On appeal by the department to the Supreme Court, HELD dismissing the appeal

Karan Raghav Export (P.) Ltd. v. Commissioner of Income-tax [2011] 196 Taxman 504 (Delhi)

An assessee is not entitled to depreciation on factory building owned by it but used in business of firm in which assessee was partner.

I.C.D.S. Ltd. v. CIT (2013) 350 ITR 527 (SC)

FACTS

- The assessee is non-banking finance company
- It purchased vehicles, leased out these vehicles to its customers, after which the physical possession of the vehicles was with the lessee.
- Further, the lessees were registered as the owners of the vehicles in the certificate of registration issued under the Motor Vehicles Act, 1988.
- The assessee-lessor claimed depreciation on such vehicles

ISSUES:

Can depreciation on leased vehicles be denied to the lessor on the grounds that the vehicles are registered in the name of the lessee and that the lessor is not the actual user of the vehicles?

Assessing Officer:

The Assessing Officer **disallowed** the depreciation on the ground that the assessee's use of these vehicles was only by way of leasing out the vehicles to others and **not as actual user** of the vehicles in the business of running them on hire **and** secondly, the **vehicles were registered** in the name of the **lessee** and not the assessee-lessor.

High Court:

The assessee could not be treated as the owner of the vehicles, since the vehicles were not registered in the name of the assessee.

High Court held that the assessee was not entitled to claim depreciation.

Supreme Court:

The Supreme Court observed following factors:-

❖ For claiming depreciation, Section 32 imposes a twin requirement of "ownership" and "usage for business".

❖ It does not mandate actual usage by the assessee itself.

❖ section 2(30) of the Motor Vehicle Act, 1988, is a deeming provision which creates a legal fiction of ownership in favour of the lessee only for that Act, not for the purpose of law in general.

❖ Assessee-lessor would be the owner of the asset in the eyes of law on the following grouds

✓ The assessee is the exclusive owner of the vehicle at all points of time;

✓ The assessee is empowered to repossess the vehicle, in case the lessee committed a default;

✓ At the end of the lease period, the lessee was obliged to return the vehicle to the assessee;

✓ The assessee had a right of inspection of the vehicle at all times.

The Supreme Court, therefore, **held** that assessee was **entitled to claim depreciation** in respect of vehicles leased out since it has satisfied both the requirements of section 32, namely, ownership of the vehicles and its usage in the course of business.

Steel Authority of India Ltd. v. CIT (2012) 348 ITR 150 (Delhi)

FACTS:

❑ The Government of India sanctioned huge loans to the assessee (SAIL) from the SDF to meet its requirements.

❑ On account of glut in the international steel market due to heavy production of steel in South East Asia and the meltdown in the USA, the price of steel fell rapidly and the assessee started incurring heavy losses.

❑ The assessee, therefore, approached the Government of India for waiver of loans

⇒ The Government of India, waived repayment of loans.

❑ The assessee reduced the cost of the assets by the amount of the loans waived and accordingly calculated depreciation.

❑ However, in ITR, the assessee took a contrary stand and claimed depreciation on the assets without reducing the loans waived since Explanation 10 to section 43(1) does not consider the waiver of a loan as a subsidy or a grant or reimbursement of the cost.

ISSUE:

Can waiver of loan given to the assessee by the Government of India from Steel Development Fund (SDF) to meet the capital cost of asset be reduced to arrive at the actual cost as per section 43(1) for computing depreciation under section 32?

HIGH COURT:

The waiver of the loan, was granted specifically to the assessee, who had reduced the amount waived from the cost of the assets in its books of account.

This accounting treatment reflects the similar understanding by the assessee regarding the purpose of the grant of loan.

The High Court, therefore, held that, by applying the main provision of section 43(1), the amount of loan waived by the Government **is to be reduced** from the **cost of assets** to arrive at the "actual cost" for computing depreciation.

M.M. Forgings Ltd. v. ACIT (2012) 349 ITR 0673 (Mad.)

ISSUE:

Can the second proviso to section 32(1) be applied to restrict the additional depreciation under section 32(1)(iia) to 50%, if the new plant and machinery was put to use for less than 180 days during the previous year?

DECISION:

The Madras High Court held that the concept of put to use of 180 days in the year of acquisition will also be applied to Additional Depreciation

CIT Vs. Prasad & Co. (2012)(341 ITR 480 (Delhi)

Section 37(1): *Where the* ***payment*** *is made by a broker* ***for trading beyond exposure limit, late submission of margin certificate and delay in making delivery*** *of shares due to deficiencies,* ***all these*** *expenditures are* ***not a penalty*** *for infringement of any law,* ***and the same is allowed*** *u/s 37(1).*

Global Geophysical Services Ltd., Cayman Islands (2011) 332 ITR 418 (AAR)
Section 44BB:
Facts:
Applicant has entered into a contract with ONGC and Cairn Energy to conduct seismic survey and data acquisition activities. It has specialization for identifying the surface of the ocean for tapping gas and oil reserves.
Decision:
AAR observed that unless a seismic survey is taken, it is difficult to locate the ocean surface with oil and gas reserves. Drilling and other examinations are ancillary for this purpose and hence activities of the applicant fit into description of section 44BB, demanding computation of its income in accordance with this provision.

Rollatainers Ltd. v. CIT (2012) 250 CTR 25 / 69 DTR 128 (Delhi)(High Court)
Facts:
During the assessment proceedings the assessee realized that it had wrongly credited the total waiver of loan received from banks /financial institutions to the P& Loss account under the head miscellaneous income. In the course of assessment proceedings the assessee revised the claim by filing revised computation. . The Assessing Officer rejected the claim on the ground that the assesesse has not filed the revised return as per the provisions of section 139(5).
Decision
On appeal the Commissioner (Appeals) accepted the claim of assessee and decided in favour of assessee.
On appeal to the Tribunal by the revenue the appeal was partly allowed by the Tribunal.
On appeal by the assessee to ***High Court the Court held that*** *loan taken by assessee on cash credit account used towards day to day business waived by bank is chargeable to tax under* ***section 28(iv) as also under section 41(1).***
Logitronics Pvt. Ltd. v. CIT (2011) 333 ITR 386 (Delhi)(High Court)
It was held that income from waiver of loan depends on the purpose for which loan is taken. In case the loan was taken for acquiring a capital asset, the waiver thereof would not amount to any income eligible to tax under ***section 28(iv) or 41(1).*** *Whereas, if the loan was taken for a trading purpose and was treated as such from the very beginning in the books of account, its waiver would result in income more so when it was transferred to the P&L A/c in view of CIT v. Sundaram Iyengar and Sons Ltd. (1996) 222 ITR 344 (SC).*
CIT v. Rajiv Shukla (2011) 334 ITR 138 (Delhi)
It was held that if an ***asset is held for more than 36 months****, whether depreciable or non-depreciable, the capital gain (short term in case of depreciable and long term in case of non-depreciable) arise on the sale/transfer of the asset can be used to buy new asset i.e. residential house to* ***enjoy benefit of exemption under section 54F.***
Sundaram Finance Ltd. v. Assistant Commissioner of Income-tax (2012) 349 ITR 0356 (SC)
FACTS:
The assessee is a non-banking financial company (NBFC) engaged in the business of hire purchase financing, equipment leasing.

It collected ₹ 36.47 lakhs on an adhoc basis as “contingent deposit” from its leasing and hire purchase customers to protect itself from sales tax liability, which is under dispute.
Assessee contended that the sum of ₹ 36.47 lakhs collected by it, is an imprest with a liability to refund. The amount is in the nature of “deposits”, and hence, the same would not be taxable in the year of receipt but only in the year in which the liability to refund the sales tax ceases.

DECISION:

The Supreme Court, held that the sum of ₹ 36.47 lakhs constituted the income of the assessee, since it –

(i) formed part of the assessee’s turnover.
(ii) was collected from customers; and
(iii) was collected towards sales tax liability.

CIT v. Groz Beckert Asia Ltd. (2013) 351 ITR 196 (P&H)(FB)

ISSUE:

What would be the nature of corporate membership fee paid to the golf club, considering that the membership was for a limited period of six years – Revenue or Capital expenditure?

DECISION:

The High Court, held that by subscribing to the membership of a club for a limited period, no capital asset is created or comes into existence and consequently, the corporate membership fees cannot be treated as capital in nature.

CIT v. Rassi Cement Ltd. (2013) 351 ITR 169 (A.P.)

ISSUE:

Can power subsidy received by the assessee from the State Government, year after year, on the basis of actual power consumption be treated as a capital receipt?

The HIGH COURT held that the power subsidy received by the assessee from the State Government on the basis of actual power consumption has to be treated as a trading receipt and not as a capital receipt.

REASON:

The power subsidy was given as a part of an incentive scheme after commencement of production, which is linked to production and therefore, has to be treated as a revenue receipt, since such assistance is given for the purpose of carrying on of the business of the assessee.

CIT v. Regalia Apparels Pvt. Ltd. (2013) 352 ITR 71 (Bom.)

FACTS:

- The assessee is engaged in the business of manufacturing of garments
- Export Promotion Council granted to the assessee entitlement for export of garments
- In consideration for export entitlements, the assessee furnished a bank guarantee
- The failure to fulfill the obligation to export would render the bank guarantee liable to forfeiture
- The assessee started incurring losses and hence decided not to utilize the export entitlements
- Consequently the Export Promotion Council forfeited bank guarantee.
- The assessee recorded the payment as penalty in its books. It, however, claimed deduction under section 37(1) on the ground that such expenditure was compensatory and not penal in nature.

DECISION of HIGH COURT:

Held that there is no contravention of any provision of law and the forfeiture of the **bank guarantee was compensatory in nature** and therefore, **allowable** as deduction under **section 37(1).**

CIT v. Great City Manufacturing Co. (2013) 351 ITR 156 (All)

ISSUE:

Can remuneration paid to working partners as per the partnership deed be considered as unreasonable and excessive for attracting disallowance under section 40A(2)(a) even though the same is within the statutory limit prescribed under section 40(b)(v)?

DECISION:

The High Court held that the question of disallowance of remuneration under section 40A(2)(a) does not arise in this case, since all conditions mentioned under section 40(b) have been satisfied.

Hence, the remuneration paid to working partners within the limits specified under section 40(b)(v) **cannot be disallowed** by invoking the provisions of **section 40A(2)(a).**

CIT v. Andhra Ferro Alloys P. Ltd. (2012) 349 ITR 255 (A.P)

ISSUE:

Can unpaid electricity charges be treated as "fees" to attract disallowance under section 43B?

DECISION:

The Andhra Pradesh High Court observed that the provisions of section 43B do not incorporate electricity charges. Therefore, non-payment of electricity charges would not attract disallowance under section 43B since such charges cannot be termed as "fees".

HIGH COURT, therefore, **held** that **deduction is allowable** in respect of such **electricity charges**.

CAPITAL GAIN

CIT v. Kamal Wahal (2013) 351 ITR 4 (Delhi)

ISSUE:

Can exemption under section 54F be denied solely on the ground that the new residential house is purchased by the assessee exclusively in the name of his wife?

DECISION:

The Delhi High Court, having regard to the rule of purposive construction and the object of enactment of section 54F, held that the assessee is entitled to claim exemption under section 54F in respect of utilization of sale proceeds of capital asset for investment in residential house property in the name of his wife.

CIT v. Syed Ali Adil (2013) 352 ITR 0418 (A.P.)

ISSUE:

Would an assessee be entitled to exemption under section 54 in respect of purchase of two flats, adjacent to each other and having a common meeting point?

DECISION:

The Andhra Pradesh High Court, on the basis of rulings of the Karnataka High Court in CIT v. K.G. Rukminiamma (2011) 331 ITR 211, held that in this case, the assessee was entitled to investment in both the flats purchased by him, since they were adjacent to each other and had a common meeting point.

CIT Vs. H.P. Housing Board (2012) 340 ITR 388 (HP)
Facts :
Assessee a builder paid compensation by way of interest to the purchasers of flats on account of delay in completion and handling over of flats.
Is he required to deduct tax at source u/s 194A
Decision :
The amount paid by the assessee was not interest within the meaning of section 2(28A) buy actually compensation for the delay in construction of the house and handing over possession of the flats to the allottees and that the interest was merely a convenient method to calculate the amount of compensation in order to standardize it. Therefore TDS is not required to be deducted on such payment.

CIT v. Hardarshan Singh (2013) 350 ITR 0427 (Delhi)
FACTS:
- The assessee has four trucks and is in the business of own transporting goods.
- He also carries on the business of a commission agent by arranging for transportation of goods through other transporters as "lorry booking business".
- In respect of his own business, the payments received by the assessee were after deduction of tax.

ISSUE:
The issue under consideration is whether the assessee can be treated as the "person responsible for making the payment" under section 194C in respect of amount collected from clients and paid to the lorry owners/transporters, and consequently, be made liable to deduct tax at source.
The assessee contended that, his income from lorry booking business is only the booking commission, which he retains out of the amount collected from the clients. The remaining amount is passed on entirely to the lorry owners/transporters.
The Tribunal, noting that the assessee has not done the work of actual transportation of goods and earned only commission.
DECISION:
The High Court, held that, the assessee mainly acted as an intermediary or facilitator for which he received commission, and hence, he was not the "person responsible for making the payment" in terms of section 194C.

CIT v. Swarnagiri Wire Insulations Pvt. Ltd. (2012) 349 ITR 245 (Kar.)
ISSUE:
Can unabsorbed depreciation or Losses of a business of an industrial undertaking eligible for deduction under section 80-IA be set off against income of another non-eligible business of the assessee?
DECISION:
The High Court held that,

Unabsorbed depreciation or losses of business eligible for deduction u/s 80-IA and similar section will be allowed to set-off from profit of non-eligible business.
However in subsequent year while calculating deduction u/s 80-IA, profit shall be reduced by such amount of set-off on the assumption that there is single source of business.

Sahara Hospitality Ltd. v. CIT (2012) 211 Taxman 15 (Bom.)
FACTS:
Section 127(1) provides that the income tax authority mentioned therein **may** give an opportunity of being heard to the assessee, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him to any other Assessing Officer or officers subordinate to him.
ISSUE:
Is the requirement to grant a reasonable opportunity of being heard, stipulated under section 127(1), mandatory in nature?
Decision:
The Bombay High Court held that the word **"may"** used in this section should be **read as "shall"** and such income-tax authority has to mandatorily give a reasonable opportunity of being heard to the assessee, wherever possible to do so, and thereafter, record the reasons for taking any action under the said section.
The discretion of the authority is only to consider as whether it is possible to give such an opportunity to the assessee or not.
The authority **cannot deny a reasonable opportunity** of being heard to the assessee, **wherever it is possible to do so**.

SANCHIT SOFTWARE AND SOLUTIONS PVT. LTD. V. CIT (2012) 349 ITR 404 (BOM.)
FACTS:
- The assessee-company had electronically filed its return of income.

- It committed a mistake by including dividend income [which is exempt u/s 10(34)] and long term capital gains on sale of shares [which is exempt u/s 10(38)] in its return of income, though the same was correctly disclosed in the Schedule containing details of exempt income.

- The return was processed under section 143(1) denying the exemptions under section 10(38) and 10(34) and therefore, intimation under section 143(1) was served on the assessee raising a demand of tax.

- The assessee, on receiving the intimation, noticed the error committed and filed a revised return rectifying the error.

- However, the revised return was not sustainable as the same was filed beyond time limit provided under section 139(5).

- Later, the assessee filed an application for rectification under section 154 and also a revision petition under section 264.

❑ The CIT rejected revision petition u/s 264 on the ground that the intimation under section 143(1) was based on the return of the assessee, in which the claims under section 10(34) and under section 10(38) were not made by the assessee. Hence, it cannot be said that the intimation under section 143(1) was erroneous.

ISSUE:

Can an assessee file a revision petition under section 264, if the revised return to correct an inadvertent error apparent from record in the original return, is filed after the time limit specified under section 139(5) on account of the error coming to the notice of the assessee after the specified time limit?

DECISION:

The High Court observed that the entire object of administration of tax is to secure the revenue for the development of the country and not to charge the assessee more tax than which is due and payable by the assessee.

In this context, the High Court referred to the **CBDT Circular issued as far back as 11th April, 1955** directing the Assessing Officer **not to take advantage of the assessee's mistake**.

The High Court pronounced that the said Circular should always be borne in mind by the officers of the Revenue while administering the Act.

High Court set aside the order of Commissioner and remanded the matter for fresh consideration.

The High Court further directed the Assessing Officer to consider the rectification application filed by the assessee under section 154 as a fresh application received on the date of service of this order and dispose of the rectification application on its own merits, without awaiting the result of the revision proceedings before the Commissioner of Income-tax on remand, at the earliest.

RTP

An order of assessment was passed under section 143(3) in respect of X Ltd. for A.Y.2006-07 on 21.5.2008, allowing the deduction under section 36(1)(vii) and 36(1)(iii). Thereafter, a notice of reassessment issued under section 148 on 28.3.2011 and an order of reassessment was passed under section 147 on 30.12.2011, which did not deal with the above deductions.

On 21.3.2013, the Commissioner passed an order under section 263 disallowing the deductions under section 36(1)(vii) and section 36(1)(iii).

X Ltd. contended that the order passed by the Commissioner under section 263 is barred by limitation since the period of 2 years from the end of the financial year in which the order sought to be revised was passed, had lapsed. However, the Commissioner contended that the period of limitation shall be reckoned from the date of order under section 147 and not from the date of the original assessment order under section 143(3), applying the doctrine of merger. Discuss the correctness of contention of the Commissioner.

Answer:

Bombay High Court in *CIT v. ICICI Bank Ltd. (2012) 343 ITR 74 (Bom.),* observed that the order of assessment under section 143(3) allowed deduction under section 36(1)(vii), 36(1)(viia) and in respect of foreign exchange rate difference. The order of reassessment, however, had not dealt with these issues.

Therefore, the Court held that the doctrine of merger cannot be applied in such a case. The order under section 143(3) cannot stand merged with the order of reassessment in respect of those issues which did not form the subject matter of the reassessment. Therefore, the period of limitation in respect of the order of Commissioner under section 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 under section 143(3) and not from the date of the reassessment order under section 147. In this case also, the order of the Commissioner under section 263 was in respect of matters relating to deduction under section 36(1)(vii) and section 36(1)(iii), which did not form the subject matter of reassessment.

Therefore, applying the rationale of the Bombay High Court ruling to the facts of this case, the contention of the Commissioner is not correct, since the two year period has to be reckoned from the end of the financial year in which the original assessment order was passed, i.e., from 31.3.2009. Since the two-year period expires on 31.3.2011, the order passed by the Commissioner on 21.3.2013 is barred by limitation

Price Waterhouse Coopers Pvt. Ltd. v. CIT (2012) 348 ITR 306 (S.C.)

FACTS:

- The assessee is engaged in multi disciplinary management consultancy services.
- It had claimed deduction of provision made for payment of gratuity, though the annexure to the tax audit report in Form No. 3CD indicated that the provision towards payment of gratuity was not allowable under section 40A(7).
- The **Assessing Officer** issued a **notice** to the assessee under **section 148** for **reopening the assessment**. Thereafter, upon request, he furnished the reasons for reopening the assessment.
- It was then that the **assessee realised** its **mistake** and **informed** the **Assessing Officer**, by way of a **letter**, that there was **no willful suppression** of facts but a genuine mistake had been committed.
- Accordingly, the **assessee** filed a **revised return** on the same day and **paid the tax** due with **interest.**
- The **Assessing Officer**, thereafter, initiated penalty proceedings under section 271(1)(c) and levied **penalty at 300%,** on the ground that the assessee has furnished inaccurate particulars of its income.
- The **Tribunal reduced** the **penalty to 100%** and
- The **High Court confirmed** the order of the **Tribunal.**

ISSUE:

Can penalty under section 271(1)(c) be imposed if an assessee had wrongly claimed deduction of provision made for payment of gratuity in its return of income, though the same was shown as disallowed under section 40A(7) in the statement of particulars filed along with tax audit report under section 44AB?

DECISION:

The Supreme Court observed followings:

❖ The tax audit report was filed along with the return and it clearly stated that the provision for gratuity was not allowable under section 40A(7).

❖ This fact indicates that the assessee made a computation error in its return of income.

Therefore, the Apex Court held that the assessee had committed an **unintentional and bona fide error** and **had not intended to or attempted to either conceal its income or furnish inaccurate particulars.**

Therefore, the Apex Court held that imposition of penalty on the assessee was not justified and it **reversed the decision of the High Court**.

CIT v. Amit Jain (2013) 351 ITR 74 (Delhi)

FACTS:

❑ The assessee declared a particular income as short-term capital gains in his return.

❑ The Assessing Officer, on an interpretation of the relevant provisions, assessed such income as income from business.

❑ He further levied penalty under section 271(1)(c) on the ground that the assessee had furnished inaccurate particulars of his income.

The Commissioner (Appeals), however, cancelled the penalty.

❑ The Tribunal upheld the order of the Commissioner (Appeals), observing that the record reveals that the amount in question, which formed the basis of levy of penalty by the Assessing Officer, was honestly reported in the return. Therefore, merely because the Assessing Officer was of the opinion that the income fell under some other head cannot be reason enough to treat the particulars reported in the return as "inaccurate particulars" or as suppression of facts.

ISSUE:

Can reporting of income under a different head be considered as tantamount to furnishing of inaccurate particulars or suppression of facts to attract penalty under section 271(1)(c)?

DECISION:

The High Court, after considering the above observations of the Tribunal and the decision of the Supreme Court in CIT v. Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158, held that mere reporting of income under a **different head would not characterize** the particulars reported as **"inaccurate"** to attract levy of penalty under section 271(1)(c).

CIT v. Celetronix Power India P. Ltd. (2013) 352 ITR 70 (Bom.)

FACTS:

❑ The **assessee** had **claimed** a particular **deduction** under Chapter VI-A in ITR **relying** on a judgment of the **Bombay High Court**.

❑ **Subsequent** to filing of its return, the above **judgment was reversed** by the Supreme Court and accordingly, the **deduction** was **not allowed** at the time of assessment.

❑ Consequent to additions made **on account of such disallowance**, **penalty was also** imposed by **Assessing Officer.**

❑ The Tribunal **observed** that for imposing penalty under section 271(1)(c), there should be concealment of income or furnishing of inaccurate particulars of income, which were missing in this case. The **assessee** had **disclosed all material** facts relevant for assessment and there was **no concealment**.

ISSUE:

Can penalty under section 271(1)(c) be imposed on the ground of disallowance of a certain deduction under Chapter VI-A owing to the subsequent decision of the Supreme Court?

DECISION:

The Bombay High Court affirmed the decision of Appellate Tribunal deleting the penalty under section 271(1)(c).

CIT v. Amtek Auto Ltd. (2013) 352 ITR 394 (P&H)
FACTS:
 The Assessing Officer levied penalty under section 271(1)(c), in respect of additions made on account of loss on sale of fixed asset, loss on sale of shares and expenses paid towards placement of preference shares.

 The Tribunal observed that the additions were based on a difference of opinion as to whether such expenses and losses were revenue or capital in nature, and not on account of any false claim made by the assessee.
 Further, even after such additions, the tax on total income was lower than the minimum alternate tax on book profit, consequent to which there was no change in the tax payable.

ISSUE:
In the case of an assessee liable to pay minimum alternate tax under section 115JB, can penalty under section 271(1)(c) be imposed on account of additions made in respect of certain capital expenditure, treated by the assessee as revenue expenditure, if, even after such additions to total income, the assessee is still assessable under section 115JB?
DECISION:
The High Court, held that merely for the reason that the assessee-company had claimed the expenditure to be revenue will not render it liable to penal proceedings, when there has been no concealment of income.

CIT v. Shankar Krishnan (2012) 349 ITR 0685 (Bom.)
ISSUE:
Can notional interest on security deposit given by company to the landlord, be included in the perquisite value of rent-free accommodation given to the employee?
DECISION:
The Bombay High Court held that the Assessing Officer is not right in adding the notional interest on the security deposit given by the employer to the landlord in valuing the perquisite of rent-free accommodation, since the perquisite value has to be computed as per Rule 3 and Rule 3 does not require addition of such notional interest.
Thus, the perquisite value of the residential accommodation provided by the employer would be the actual amount of lease rental paid or payable by the employer, since the same was lower than 15% of salary.

Income from House Property

CIT v. J.K. Investors (Bom.) Ltd. (2012) 211 Taxman 383 (Bom.)
Facts: Assessee has let-out his property. He receives rental income from such property. In addition to rental income service charges has also been received for facilities provided to tenant.
ISSUE:
Can service charges received along with rent in respect of a property, be brought to tax under the head ‘Income from house property’, if the service agreement is dependent upon the rental agreement?
Assessing Officer’s View:
The Assessing Officer claimed that since the service charges were in respect of ancillary services, the same has to be assessed under the head ‘Income from other sources’ and not as ‘Income from house property’.
HIGH COURT:

The Bombay High Court observed that the **first step** is to determine **whether** the **service agreement could** stand **independently from the rental agreement**.
In the **present case**, the service agreement is **dependent** upon the rental agreement **and in the absence** of the **rental agreement** there could be **no service agreement**.

The services being provided under the service agreement are in the nature of lift, common entrance, main road leading to the building through the compound, drainage facilities, air conditioning facility, open space in/around the building etc. which are not separately provided but go alongwith the occupation of the property.
Therefore **HC held** that the amount received as service charges have to be considered as a part of the rent received and subjected to **tax under** the head "**Income from house property**".

Assessment of Various Entities:

Sudhir Nagpal v. Income-tax Officer (2012) 349 ITR 0636 (P & H)

FACTS:

- Five persons of the Nagpal family were co-owners of the agricultural land "Nagpal farms" inherited from their forefathers.

- The co-owners executed a power of attorney in favour of Mr. Sudhir Nagpal, one of the co-owners, appointing him to construct plinths on the agricultural land and to further lease out such open plinths to any party.

- They were owners not in their joint capacity but in their individual capacity with a definite/defined proportion of share.
- The co-owners filed their individual returns of income disclosing their rental income and also paid tax on such income.

- The Assessing Officer, however, issued notice under section 148 to all the co-owners of the property in the name of Mr. Sudhir Nagpal on the ground that there is an association of persons formed by the co-owners and therefore, income had escaped assessment in the hands of association of persons.

ISSUE 1:

Under which head of income is rental income from plinths inherited by individual co-owners from their ancestors taxable - "Income from house property" or "Income from other sources"?

DECISION:

The High Court held that the income from letting out the plinths is assessable under section 56 as "Income from other sources" and not under the head "Income from house property".

Issue 2:

Would such income be assessable in the hands of the individual co-owners or in the hands of the Association of Persons?

DECISION:

In this case, the co-owners had inherited the property from their ancestors and there was nothing to show that they had acted as an association of persons.
Thus, the High Court held that the rental income from the plinths has to be **assessed** in the status of **individual** and **not association of persons** and consequently, section 167B would not be attracted in this case.