D.Tax case laws

1. Power subsidy received from State Govt year after year on actual power consumption is capital receipt?

    - No. Its revenue receipt as incentive scheme is linked with production & based on actual power consumption
    - **CIT v/s Rassi Cement Ltd (2013) (A.P)**

2. Amt collected adhoc based from customers as sales tax liability treated as income?

    - Yes. NBFC has collected 36.47 lakh but not kept separate in bank A/c.
    - S.C applied substance over form
        - ☐ Form part of assesse's turn over
        - ☐ Was collected from customers
        - ☐ And was collected towards sales tax liability
        - **Sundaram Finance Ltd v/s ACIT (2012) (SC)**

3. Share capital repatriated to India in foreign currency, time to time for approved use. Gain of F/E fluctuation is capital or revenue receipt?

    - Capital receipt. H.C held capital whether in India or outside India, can be used to acquire F.A or meet other exp. Like i.e working capital. To determine nature of receipt, due consideration should be given to source of fund & not the ultimate use of fund
    - **CIT v/s Jagatjit Industries Ltd (2011) (Delhi)**

4. Subsidy from West Bengal Govt for industrial promotion, expansion of its capacity, modernization & improving marketing capabilities is capital receipt?

    - Yes, financial assistance in period of crisis for promotion of industrial subsidy was 1 time receipt and equivalent to 90% of sales tax paid. Object is to enable assessee to set up new unit or expand existing hence capital.
    - **CIT v/s Rasoi Ltd (2011) (Calcutta)**

5. Incentive for recoupment of capital employed/ payment of loan taken up for sugar factory capital or revenue in nature?

    - Capital. Apex court held that loan was taken for set up for new unit or substantial expansion of existing unit. Hence capital in nature.
    - **CIT v/s Kisan Sahkari Chini Mills Ltd (2010) (All)**

6. Sec 14A applicable for deduction which is permissible & allowed under chap.VI-A?

    - Yes. Section 14A is applicable only if income is not included in total income as per provision of Ch. III of I.T Act 1961. Deduction of ch. VI –A are different from exemption of Ch. III. It says no deduction shall be allowed on exp related to income which not form part of total income. Thus no disallowance can be made u/s 14A for sec 80c to 80u.

- **CIT v/s Kribhco (2012) (Delhi)**

7. Can charitable institutions claim depreciation u/s 32 for cost which already treated as application of income u/s 11(1)(a) ?

   - No. already asset acquired from application of income u/s 11(1)(a). if depreciation allowed then it will amout to double benefit & violate provision of sec.11(1)
   - **Lissie Medical Institution v/s CIT (2012) (Delhi)**

8. Can explanation to sec.11(2) applied for accumulated fund upto 15% to sec.11(!)(a) & treat donation made to another charitable trust from permissible accumulation upto 15%?

   - Yes. If donation made to another charitable trust upto 15% out of past accumulated profit then same wont be liable to include again in total income.
   - **DIT (Exemption) v/s Bagri Foundation (2012) (Delhi)**

9. Can notional interest on security deposit be included in perquisite for rent free accomodation given to employee?

   - No. Rule 3 for RFA don't require such notional interest.
   - **CIT v/s Shankar Krishnan (2012) (Bombay)**

10. Service charge received along with rent treated as H.P income?

    - Yes, amount received of rent along with service charge like drainage facilities, air condition facilites etc is to be considered as part of rent received.
    - **CIT v/s J.K Investors (2012) (Bombay)**

11. HUF can get benefit of self occupation u/s 23(2)?

    - Yes, HUF cant be said artificial person/fictional entity. Its family comprising of group of natural persons.
    - **CIT v/s Hariprasad Bhojnagarwala (2012) (Guj)**

12. Income from unsold flat of builder treated as rent income or business income?

    - Rental income from unsold flat is income of house property & 30% flat deduction allowable.
    - **Azimganj Estate P.Ltd v/s CIT (2012) (Cal)**

13. Assessee let out rooms as lodging house, treating income from renting building to bank on lease as business income possible?

    - It was decided in this case, renting for lodge is business income however letting out bldg to bank on long term lease couldn't be treated as business. Thus income of H.P
    - **Joseph George & Co. v/s ITO (2010) (Kerala)**

14. Notional interest on deposit received for let out shop to be taxed as business income or H.P?

    - Interest free deposit for shop let out was charged @ 18% interest by assessing officer. And charged to tax u/s 28(iv). H.C held notional interest is neither assessable as business income or house property income.
    - **CIT v/s Asian Hotels Ltd (2010) (Delhi)**

15. Asset sold on next day of period 12/36 month can be treated as L.T asset for holding period?

    - Purchase date 29-09-2004
    - Sale date 29-09-2005. here 12m end one day before date of transfer. H.C held that cut off point was date of transfer was immediately preceeding date of transfer during which asset was held. Hence long term asset.
    - **Bharti Gupta Ramola v/s CIT (2012) (Delhi)**

16. Holding period of asset by partner on dissolution of firm, to be counted from firm's holding or assessee's holding?

    - Period counted from date when asset transfer to assessee, not from holding of firm to be included. HC held that benefit of period holding of previous owner u/s 2(42A) r.w.s 49(i)(iii)(b) can be available if dissolution before 1-04-1987.
    - **P.P Menon v/s CIT (2010) (Kerala)**

17. In case of gifted asset, CII from asset held by assessee or first acquired previous owner?

    - CII from asset acquired by previous owner. Deemed holding fiction is created by statute.
    - **CIT v/s Manjula J. Shah (Bombay)**

18. Can non cumulative pref. share denied indexation benefit by applying 3rd proviso to sec48?

    - H.C held that since share, debenture & bond not defined in I.T Act 1961, they have to be understood with meaning given in Co.Act. Debenture is certificate of loan while preference share is part of capital structure hence 4% non cum.pref.share cant be said bond or debenture and therefore index benefit to be given.
    - **CIT v/s Enam Securities P.Ltd (2012) (Bombay)**

19. Assessee can be allowed exemption u/s 54 if 2 flats adjecent with common meeting point?
    - Yes, its constituted as residential house for purpose of sec 54.
    - **CIT v/s Syad Ali Adil (2013) (A.P)**

20. Exemption u/s 54B be denied on ground that new agricultural land not wholly owned but co-owner as per sales deed?
    - H.C held that mere assessee's son shown as co-owner it doesn't make difference. Assessee is entitled to deduction u/s 54B
    - **CIT v/s Gurnam Singh (2010) (P&H)**

Kindly refer case laws once before going through this summary.

If any suggestion or feedback let me know to make it better.

Thank you

Ruhi ..