A Summary of Case Laws given in RTP for May 2014

Old Principal	New Judgment	Principal in the new judgment
BUSINESS PROFESSION		
Depreciation of Computers is allowable @ 60%	CIT vs BSES Yamuna Powers Ltd. (2013)(Del.)	Rate of depreciation on computer accessories and peripherals [such as printer, scanners and server] was held to be 60% as they were integral part of computer. Similarly for UPS rate is 60%. ***CIT vs Orient Ceramics and Industries (2013)(Del.)***
Loss in illegal business was allowable. [Dr. T.A. Qureshi (SC)]	CIT vs T.C. Reddy (2013)(Andhra)	Assessee was a proprietor of a pharmaceutical company. Assessee made export of medico drugs, which was cleared from Indian customs authority. However, the goods were confiscated by the US customs authority for some statutory violation. It was held that the loss of the goods, which was stock-in-trade was a business loss.
Commission paid to doctors by diagnostic centre for referring patients is illegal expenditure. As per Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, no physician shall give, solicit, receive or offer to give, solicity or receive any gift, etc in consideration of a return for referring any patient for medical treatment. Therefore same is not allowable. [CIT vs Kap Scan and Diagnostic Centre P Ltd. (2012)(P & H);. Similar view given in Circular No. 5/ 2012 dated 01.08.2012]	Confideration of Indian Pharmaceutial Indian Pharmaceutical Industry (2013)(H.P.)	Same judgment followed.
Any expenditure which brings a capital asset into existence or a right of permanent nature is capital	CIT vs Orient Ceramics and Industries Ltd. (2013)(Del.)	Expenditure on glow-sign boards was revenue expenditure, as it did not bring into existence an asset or advantage for the enduring benefit of the business. Also the glow sign board was not an asset of permanent nature.
If loan is given from interest free funds, interest paid to the bank shall not be disallowed. [S.A. Builders (SC)]	A. Murali & Co P Ltd. (2013)(Mad.)	Loan given to Directors. Assessee contended that assessee had sufficient own funds [interest free] and therefore, interest expenditure cannot be disallowed. It was held by the High Court that assessee was unable to prove the nexus i.e. that the interest free funds were given to Directors. Rather interest bearing funds were given to Directors. Interest Expenditure shall be disallowed.
Although as per section 36(1)(va), deduction for employees' contribution is allowable, only if same is paid upto the due date as per the respective act, The courts have however, held that even the employees' contribution becomes an employer's contribution at the time when the employee remits the same to his employer. Therefore, section 43B applies even for employer's contribution. Thus, even if employees contribution is paid after due date under relevant Act, but before due date	CIT vs Kichha Sugar Co. Ltd. (2013)(Utt.)	Same judgment followed. ***Contrary CIT vs Gujarat State Road Transport Corporation (2013)(Guj)***

of filing of return u/s. 139(1), same is allowable. [***Aimil Ltd. (Del.)***]		
Waiver of principal loan by bank. In case the loan was on revenue account, the waiver of loan will be taxable u/s. 28. But if the loan was on capital account (like term loan for plant and machinery), the waiver will not be taxable, neither u/s. 41(1), nor u/s. 28. Latest decision giving similar view is ***Iskrameco Regent Ltd.(2011)(Mad.); Rollatainers Ltd.(2011)(Del.).***	CIT vs. Softworks Computers P Ltd. (2013)(Bom.)	Similarly, assessee took a loan for relocation of office. The waiver of such loan was treated as a capital receipt, as the loan was on capital account.
Conversion of sales-tax liability into sales-tax loan as per Sales-tax Law, is actual payment. Deduction shall be allowed on the date of such conversion of liability into loan. ***[CBDT Circular No. 624 dt. 29.12.1993]***	CIT vs Minda Wirelinks Pvt Ltd (2013)(Del.),	Sales-tax liability was converted to loan in the current F.Y. But the order for same was received in the next F.Y. It was held that still the assessee is eligible for deduction in the current F.Y.
CAPITAL GAINS		
-	Gouli Mahadevappa (2013)(Kar.)	The peculiar facts of the case were as under: - 1. Assessee sold a land at ₹ 20 lakhs. The Guideline value of same was ₹ 36 lakhs. Value u/s. 50C was adopted as ₹ 36 lakhs. 2. Assessee invested ₹ 20 lakhs in purchase of new house. Also, agricultural income of ₹ 4 lakhs was invested. 3. Assessee contended before the tribunal, that since the entire amount of capital gains was invested. Therefore, the deeming fiction of section 50C shall not be extended to section 54F. Entire capital gain shall be exempt. ITAT decided in favour of assessee. 4. However, assessee filed appeal to High Court to challenge the Stamp Value. Also, assessee contended that the agricultural income shall be eligible for investment u/s. 54F. The High Court held: 1. The challenge of assessee to the stamp value is improper and belated. Assessee cannot challenge the same at this stage. 2. The capital gains is at the sale consideration of ₹ 36 lakhs. However, of this ₹ 20 lakhs and also ₹ 4 lakhs (being the agricultural income) shall be eligible for investment u/s. 54F.
U/s. 54, investment can be made in more than one residential house-property; however, all the house-property shall together constitute a single unit. Like flats in same apartment may constitute a single unit. However, if they constitute a different unit, then investment in only one house property shall be exempted. *[Pawan Arya (2011)(P & H); CIT vs D. Ananda Basappa (2009)(Kar.); CIT vs Smt. K.G. Rukminiamma (2011) (Ker.); CIT vs Syed Ali Adil (2013)(A.P.)]*	CIT vs Gita Duggal (2013)(Del.)]	Same decision followed.

SET-OFF AND CARRY FORWARD OF LOSSES		
As per section 78(2), loss of one assessee cannot be carried forward, except in the case of inheritance.	Pramod Mittal (2013)(Del.)	Loss of partnership firm cannot be carried by a sole proprietor who carried on the business after dissolution. Same cannot be said to be a case of inheritance.
DEDUCTIONS U/C. VIA		
Profit on sale of DEPB balance, is not derived from industrial undertaking. ***[Liberty India(2010)(SC)]***	CIT vs Orchev Pharma(2013)(SC)]	Same decision followed.
ASSESSMENT PROCEDURE		
-	Smt. Shobha Govil (2013)(All.)	CIT points out defects in the order, and directs the AO to conduct inquiry and pass order. During set-aside proceedings, AO can conduct inquiry and make addition only on issues on which CIT has set-aside the order.
Assessee has made a claim in the return. Merely if the claim is not acceptable to department and a different view is possible, it cannot be said that there is a concealment or furnishing of inaccurate particulars. *[Reliance Petroproducts Ltd. (SC)]*	Splender Construcion (2013)(Del.)	Assessee converted the land, which was held as a stock-in-trade into capital asset, just prior to the date of transfer. This was done with the sole motive to avoid payment of tax at the higher rate on capital gains. The transaction was designed to avoid payment of tax. The issue was not debatable. The Assessment order of AO was sustained by all authorities. Therefore, assessee clearly furnished inaccurate particulars.
For non-compliance of section 269SS, if there is a reasonable cause, no penalty shall be levied. [Section 273B]	CIT vs V. Sivakumar (2013)(Mad.)	Firm had given a loan to proprietary concern of the partner exceeding the limits u/s. 269SS. Assessee contended that the firm and partners were same legal entity and also the partner was entitled to use the funds of the firm. Also, the assessee acted bonafide and there was a reasonable cause for non-compliance therefore. It was held that penalty cannot be levied.
ASSESSMENT OF TRUST		
If registration not granted within 6 months, registration shall be presumed as per decision in Society for the promotion of Education Adventure Sport & Conservation of environment (2008)(All.).	CIT vs Karimangalam Onriya Pengal Semipu Amaipu Ltd. (2013)(Mad.)	However, in present case, it was held that although the words "shall" are used, but the condition is directory and not mandatory. The order u/s. 12AA may be passed even beyond 6 months.
-	[DIT(E) vs Meenakshi Amma Endowment Trust (2013)(Kar.)]	A charitable trust applied for registration within 9 months after its formation. CIT held that since no charitable activities had started, as such, the application for registration was premature. However, the High Court held that since the assessee did not have sufficient funds to do charitable activities presently, it cannot be said that no activities were carried on. Also, at the time of registration, the CIT shall be concerned with the object of the trust and not the application of income.

TAX PLANNING, TAX AVOIDANCE, TAX EVASION		
Tax avoidance is permissible, but it should not be a colorable device to avoid tax payment	Bhoruka Engineering Indus(2013)(Kar.)	Assessee sold shares of a Listed company through stock exchange. Assessee claimed the capital gain as exempt u/s. 10(38). However, AO noted that the underlying asset with the company was a Land and therefore there was a transfer of Land. The transfer of shares was a colourable devise. However, the High Court, in the facts of the case noted that the shares were purchased as early as in 1984. Also, the companies were real companies and the transaction was in the ordinary course. Therefore, the same was to be treated only as a transaction of shares. Capital gains was therefore exempt.
INTERNATIONAL TAXATION		
A foreign agent of Indian exporter operates in his own country and no part of his income arises in India. *[CIT vs Toshuko Ltd.(1980)(SC)]*	CIT vs Model Exims (2013)(All.)]	Same judgment followed.
TAX COLLECTION AND RECOVERY		
-	Ajmer Vidyut Vitran Nigam Ltd. (2013)(AAR)	Assessee was a Power generation company. Assessee paid transmission, wheeling and SLDC charges. Whether it can be treated as fees for technical services. Held, so far as transmission and wheeling charges are concerned, they relate to personal services, and therefore they are fees for technical services. However, SLDC charges are paid to ensure integrated operation of the power system in the State for optimum scheduling and dispatch of electricity within the State. These charges are more of a supervisory charges and therefore it is not a payment of fees for technical services.
At the time SIM was available with the distributors, the ownership of the same was with the assessee (Vodafone). Thus, there was a principal and agent relationship between the assessee and distributors. Thus, in the facts of case, the margin of distributor was commission; and TDS was required to be deducted u/s. 194H. ***[Vodafone Essar Ltd. (2011)(Ker.)]***	Bharti Cellular Ltd. (2013)(Cal.)]	Same judgment followed.