# A Summary of Case Laws given in RTP for Nov. 2014

Please note that the cases given in RTP are in addition to the cases given in Selected Case Laws for May/ Nov. 2014. The cases are given on www.youtube.com/watch?v=9udH3S9ZXYA

| S. No. | Judgment | Principal in the judgment |
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| | | **Business/ Profession** |
| 1. | New Delhi Hotels Ltd. (2014)(Del.) | Assessee was a builder. He constructed a building and some flats of the building were unsold. Assessee gave them on rent. Assessee contended that the rental income is taxable under House Property. AO treated the same as business income holding that the flats were stock in trade. High Court held that the rental income was taxable under House Property head even though the property was a stock-in-trade.<br>Interestingly in ***CIT vs Ansal Housing Finance and Leasing Co. Ltd (2013) (Del.)***, it was held that even if the house is not let out the notional rental income is chargable under the head House Property.<br>This case is contrary to the earlier Supreme Court judgment in ***Karanpura Development co. Ltd. (1962)(SC)(FB)*** |
| 2. | CIT vs Handicrafts and Handlooms Export Corporation of India (2014)(Del.) | Assessee was subsidiary of State Trading Corporation of India (STC). Assessee was in losses. In order to protect the capital investment, STC provided a grant to the assessee company (Being subsidiary company). AO treated the grant as a revenue receipt. Held, the grant received was a Capital receipt, as the grant was not received during the course of trade or performance of trade. |
| 3. | 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.)*** |
| 4. | CIT vs Chennal Petroleum Corporation Ltd. (2013)(Mad.) | The asset was ready to use and trial run was done in the current year. The asset could not be actually used for business for the reason that sour gas, which a raw material of the assessee, was not available. AO denied the depreciation holding that asset was not "used for business". Held, the |

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| | | words "used for the business" have to be interpreted in a sense that if the asset was ready for use but could not be put to use due to certain extraneous circumstances, depreciation u/s. 32 was allowable. Since the asset was ready to use, but could not be used due to extraneous consideration, depreciation was allowable. |
| 5. | Confederation of Indian Pharmaceutical Indian Pharmaceutical Industry (2013)(H.P.) | 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. ***[Similar cases CIT vs Kap Scan and Diagnostic Centre P Ltd. (2012)(P & H); Similar view given in Circular No. 5/ 2012 dated 01.08.2012]*** |
| 6. | 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. [***CIT vs Liberty Group Marketing Division (2009)(P & H)*** followed] |
| 7. | Masoon Technical Services Ltd. (2013)(Mad.) | Assessee incurred public issue expenses for public issue. The public issue could not be effected, as clearance by SEBI was not given. The expenditure was claimed as revenue, as capital was to be raised for working capital. AO treated the claim as capital expenditure. Held, the fact remains that by public issue the assessee wanted to increase its capital base; thus the expenditure was capital in nature. Further, the nature would not be lost, merely, because the public issue could not materialize. The expenditure was a capital expenditure. |
| 8. | CIT vs Kichha Sugar Co. Ltd. (2013)(Utt.) | 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 of filing of return u/s. 139(1), same is allowable. ***Contrary CIT vs Gujarat State Road Transport Corporation (2013)(Guj)*** |
| 9. | CIT vs. Softworks Computers P Ltd. | Assessee took a loan for relocation of office. There was waiver of principal loan. AO treated the same as liable to tax u/s. 41(1) or alternatively u/s. |

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| | (2013)(Bom.) | 28. Following the judgment of ***Mahindra & Mahindra (Bom.)***, it was held that the waiver of such loan was to be treated as a capital receipt. Same cannot be made liable u/s. 41(1), as no deduction was claimed earlier. Also, it cannot be taxed u/s. 28, as it was not a revenue receipt. |
| | | **Capital Gains** |
| 10. | CIT vs Yatish Trading Co. Pvt. Ltd. (2013)(Bom.) | Assessee was a dealer in shares. He had two portfolios being stock-in-trade and capital gains. Assessee converted part of his shares, which were held as stock-in-trade into capital assets. The profit upto the date of conversion was offered as business income; and the profit thereafter was offered as capital gains. AO treated the entire income as business income. Held, in the earlier years also, the conversion of stock-in-trader to capital assets has been accepted. Merely if assessee is in the business of share trading, it cannot estop him from holding certain shares as investments. Therefore, the approach of assessee is proper. |
| 11. | CIT vs Smt. Rama Rani Kalia (2013)(All.) | Assessee purchased a leasehold property, and subsequently converted it into a freehold property. Subsequently, the property was sold. Whether holding period of only freehold property shall be taken or entire holding period shall be taken. Held, entire holding period shall be taken, as the conversion of leasehold property into freehold was nothing but only improvement of the title over the property. |
| 12. | Gouli Mahadevappa (2013)(Kar.) | The peculiar facts of the case were as under: -<br>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.<br>2. Assessee invested ₹ 20 lakhs in purchase of new house. Also, agricultural income of ₹ 4 lakhs was invested.<br>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.<br>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.<br>The High Court held:<br>1. The challenge of assessee to the stamp value is improper and belated. Assessee cannot challenge the same at this stage. |

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| | | 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. |
| 13. | CIT vs Gita Duggal (2013)(Del.) | Where the deduction was allowed, stating that deduction is allowed only for "one" house, however, since more than one house constituted a single unit, deduction was allowable. [Earlier judgments of ***CIT vs D. Ananda Basappa (2009)(Kar.); CIT vs Smt. K.G. Rukminiamma (2011) (Ker.); CIT vs Syed Ali Adil (2013)(A.P.)*** followed] |
| **Set-off and Carry Forward of Losses** | | |
| 14. | Pramod Mittal (2013)(Del.) | As per section 78(2), loss of one assessee cannot be carried forward, except in the case of inheritance.<br>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** | | |
| 15. | CIT vs Orchev Pharma(2013)(SC)] | Profit on sale of DEPB balance, is not derived from industrial undertaking. ***[Liberty India(2010)(SC)]*** |
| 16. | CIT vs Puttur Petro Products P Ltd (2014)(Kar.) | Bottling of gas into gas cylinders requires a very specialized process and independent plant and machinery. Therefore bottling of gas amounts to production and is eligible for deduction u/s. 80IB. |
| **Assessment of HUF** | | |
| 17. | CIT vs D. L. Nandagopala Reddy (Indl.) (2014)(Kar.) | <u>FACTS</u><br>Assessee was adopted son on "LR". "LR" was son of "V". A property belonged to "V", which was HUF property. On death of "V", "LR" executed a release deed, and took his share in the property. This share of "LR" was bequeathed in favour of assessee, who distributed the same between himself, wife and children. Assessee entered into an agreement with the builder for development of property. AO treated the income from same as individual income of assessee and wife, whereas the assessee contended that the income should be HUF income.<br><u>HELD</u><br>One of the members of the HUF ("LR") went out of the HUF, still the HUF continued. On the death of "LR", assessee became the sole surviving coparcener of HUF. Assessee transferred the property to his wife without a |

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| | | registered deed, which could have been possible, only if the property was HUF property. It was not a self-acquired property. Hence, the property belonged to HUF, and same had to be treated as income of HUF. |
| | **Assessment Procedure** | |
| 18. | Kathiroor Service Co-operative Bank Ltd (2014)(SC) | AO can call for information u/s. 133(6) even if no assessment is pending against any person. |
| 19. | Samsung India Electronics P Ltd. (2014)(Del.) | In case of reassessment, assessee can obtain reasons for reopening the assessment u/s. 148. Thereafter, after obtaining the reasons, assessee made, if so desire, object to reassessment by filing objections to the AO. In the present case, without filing objections to the AO, assessee directly approached to the High Court by way of a Writ challenging the reopening. The contention of the assessee was that Delhi High Court in ***Techspan India P Ltd. (2006)(Del.)***, it was held that in exceptional cases, where the exercise of the powers u/s. 148 was mala-fide or was so arbitrary, that the alternative remedy of filing objections becomes ineffective, the Court may entertain the Writ. Held, the assessee was required to file the objections before the AO before approaching the High Court. The judgment in Techspan India (supra), was an exception, but was not a general rule. In present case, no exception is made out. Therefore, the assessee may, if felt proper, approach the AO. |
| 20. | MAK Data P Ltd. (2013)(SC) | During survey at premises of sister concern, certain documents were found. During assessment of assessee u/s. 143(3), AO conducted inquiry on the share application money, which was found during survey. In reply to the notice u/s. 142(1) seeking information, assessee made a surrender by way of voluntary disclosure without admittitng any concealment, but subject to non-levy of penalty. AO made addition, but levied penalty. Assessee contended that the surrender during assessment was with a view to avoid litigation, to buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the Department. Held, such defenses are not recognised under the statute. Survey was conducted 10 months prior to the return. Had the intention been to offer full disclosure, the income would have been offered in the return. Since the assessee has not been able to give Explanation regarding |

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| | | the surrendered income, there is deemed concealment under Explanation 1 to section 271(1)(c). |
| 21. | CIT vs V. Sivakumar (2013)(Mad.) | For non-compliance of section 269SS, if there is a reasonable cause, no penalty shall be levied. [*Section 273B*]<br>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 *bona-fide* and there was a reasonable cause for non-compliance therefore. It was held that penalty cannot be levied. |
| 22. | CIT vs Karimangalam Onriya Pengal Semipu Amaipu Ltd. (2013)(Mad.) | In the 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. [Similar ***CIT vs Seela Christian Charitable Trust (2013)(Mad.)***]<br><br>Contrary, judgment is given in ***Society for the promotion of Education Adventure Sport & Conservation of environment (2008)(All.)***. In this case, it was held that if registration was not granted within 6 months, registration shall be presumed as per decision in. |
| 23. | 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** | | |
| 24. | 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. |

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| **INTERNATIONAL TAXATION** | | |
| 25. | CIT vs Model Exims (2013)(All.) | A foreign agent of Indian exporter operates in his own country and no part of his income arises in India. In other words, he has no business connection or permanent establishment in India. ***[CIT vs Toshuko Ltd.(1980)(SC)]*** Further, there was a *CBDT Circular No. 786/ 2000*, which said that on such payments TDS shall not be deducted. Although the Circular was subsequently withdrawn from 22.10.2009 (vide *Circular No. 7/2009*), yet, in the present case, the payment was made (A.Y. 2007-08), *Circular No. 786/ 2000* was operational. It may be noted that even after the withdrawal of the *Circular No. 786/ 2000*, the argument remains that since the agent has no business connection/ Permanent Establishment in India, his income cannot be taxed in India. |
| **TAX COLLECTION AND RECOVERY** | | |
| 26. | 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. |
| 27. | Bharti Cellular Ltd. (2013)(Cal.) | 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. [Similar ***Vodafone Essar Ltd. (2011)(Ker.)***] |
| 28. | CIT vs Mother Dairy India Ltd. (2013)(Del.) | Assessee sold milk to concessionaries at a certain price (price less than MRP); whereas the concessionaries further sold the milk to customers at MRP. AO held that the margin of the concessionaries was their margin and therefore TDS ought to be deducted. Held, the agreement between concessionaries and the assessee would show that the transaction was on principal to principal basis. The assessee sold the milk at a discount. Although the assessee could inspect the booth of the confessionaries, it was in the ordinary course of trade practice, as the assessee had given |

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| | | space, machinery and equipment. TDS was not required to be deducted. |
| 29. | CIT vs Hindustan Lever Ltd. (2014)(Kar.) | Assessee conducted sales promotion schemes. Certain coupons were given alongwith their products and on purchase of the packs containing the coupons, the persons would get prizes. Assessee did not deduct TDS on the said prices, which were in kind. AO treated the assessee as in default.<br>Held, prior to A.Y. 2002-03, the amount cannot be treated as lottery, as although there was an element of chance, but the participants did not contribute any amount for taking participation in the lottery.<br>However, from A.Y. 2002-03, by amendment in section 2(24), the definition of lottery etc was amended. From A.Y. 2002-03, said amount could be regarded as lottery.<br>In any case, however, u/s. 194B, no TDS could be deducted if the prize is in kind. The word "deduction" would postulate reduction of the amount from the gross amount and payment of net amount. Assessee cannot be treated as assessee is default. |
| 30. | DIT (International Taxation) vs Delta Airlines Inc. (2013)(Bom.) | AO made addition during assessment u/s. 143(3). CIT(A) deleted the addition and refund was granted. In appeal, ITAT restored the order of AO. AO gave appeal effect. While giving appeal effect, AO levied interest u/s. 234D on the amount refunded by CIT(A). Held, interest u/s. 234D could be levied only in respect of the refund arising out of the processing u/s. 143(1), which is subsequently reduced. |
| 31. | Jeans Knit P Ltd. (2013)(Kar.) | U/s. 245, a refund of one year can be adjusted with the demand of another year. However, before doing so, a prior intimation to the assessee was required. AO did the adjustment without giving prior intimation. It was held that such an action of the AO was illegal and the adjustment shall be treated as void-ab-initio. |

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# Circulars/ Notifications etc.

| S. No. | Circular Ref. | Relevant section | Contents |
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| 1. | Notification No. 38/ 2013 dt. 30.05.2013 (as amended by Notification No. 18/ 2014 dt. 21.03.2014) | 35CCC – Conditions for Agriculture Extension Project | Conditions for granting approval<br>(a) Assessee is engaged in training/ education/ guidance of farmers.<br>(b) Prior approval of Ministry of Agriculture is obtained<br>(c) Min. Expected Expenditure (except Land and Building) ₹ 25 lacs.<br><br>Subsequently following conditions shall be fulfilled: -<br>(a) Separate books for Agriculture Extension Project are maintained.<br>(b) Audit report shall report specifically on the activities of agriculture extension project<br>(c) Fees charged from beneficiary (participant) shall not exceed the amount specified in the approval.<br>(d) Assessee shall not get direct or indirect benefit from the Agriculture Extension Project except deduction u/s. 35CCC.<br>(e) All expenses (except Land and Building) shall be eligible for deduction u/s. 35CCC.<br>(f) Assessee shall furnish following documents to the CIT before due date of filing of return: -<br>- Audited accounts and Audit report alongwith quantum of deduction claimed<br>- a note on the agriculture extention project undertaken<br>- a certificate from Ministry of Agriculture, regarding genuineness of agriculture extention project during P.Y. |
| 2. | Notification No. 54/ 2013 dated 15.07.2013 | 35CCD – Conditions for Skill Development Fund | ***Eligible assessee***: Company<br>- Engaged in manufacture/ production of article or thing specified in Eleventh Schedule (except alcoholic spirits/ tobacco/ tobacco preparations);<br>- Engaged in providing specified services (31 services |

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| | | | notified)<br><br><u>Conditions of approval: -</u><br>(a) Assessee shall be do the project in separate facilities in a training institute set-up by Central Government/ State Government/ Local Authority/ Training institute affiliated to National Council for Vocational Training or State Council of Vocational Training.<br>(b) Approval of National Skill Development Agency (NSDA) shall be obtained.<br><br>Subsequently following conditions shall be fulfilled: -<br>(a) Separate books for Skill Development Project are maintained.<br>(b) Audit report shall report specifically on the activities of Skill Development Project.<br>(c) All expenses (except Land and Building) shall be eligible for deduction u/s. 35CCD.<br><br>Expenditure in respect of existing employees of Company shall not be eligible for notification u/s. 35CCD, where the training of such employees commences after six months of their recruitment. |
| 3. | Notification No. 39/ 2013 dated 31.05.2013 | 194IA – TDS for purchase of immovable property – Procedural compliances | (a) The deductor of TDS u/s. 194IA shall not be required to have TAN/ TDCAN.<br>(b) Amount deducted shall be deposited electronically within 7 days from the end of the month in which it is deducted. (Even for March)<br>(c) A challan-cum-statement in Form No. 26QB shall be electronically filed within seven days from the end of the month in which the deduction was made. (Even for March)<br>(d) TDS certificate shall be issued in ***Form No. 16B within*** 15 days from the due date of furnishing 26QB. |
| 4. | Notification No. 57/ 2013 dated | 90 - Tax Residency Certificate (TRC) | Non-residents (who have obtained TRC from foreign), shall furnish the prescribed particulars in Form No. 10F. |

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| | 01.08.2013 | | |
| 5. | Notification No. 64/ 2013 dated 19.08.2013 | 10(48) - Exemption for Foreign Company exporting oil/ specified goods to India. | National Iranian Oil Company notified. |
| 6. | Notification No. 67/ 2013 dated 02.09.2013 | 195 – Form No. 15CA/ 15CB and conditions thereof revised | For payment to non-residents, certain information is required to be furnished.<br>- Self declaration (Form 15CA) where single payment does not exceed ₹ 50,000 and aggregate payment does not exceed ₹ 2,50,000<br>- C.A. Certificate (Form 15CB) for other payments.<br>However, in respect of "Specified list" (like Indian Investment abroad in equity/ debt/ subsidiaries/ associates/ branches/ Wholly owned subsidiaries/ Real Estate/ Remittance towards business travel/ personal gifts/ donations/ charitable endowments etc.) no information is required. |
| 7. | Notification No. 73/ 2013 dated 18.09.2013 | 92CB – Safe Harbour Rules notified | These rules give exemption from the application of Transfer pricing. Please refer ***note 1*** below. |
| 8. | Notification No. 79/ 2013 dated 07.10.2013 | 10(43)/ 47 – Reverse Mortgage Scheme | Reverse mortgage would also cover Loan given by Banks to Annuity Sourcing Institution (i.e. LIC or other insurer), for periodic payment by way of annuity to the borrower. |
| 9. | Notification No. 94/ 2013 dated 18.12.2013 | 80CCG – Notified Equity Saving Scheme | Rajiv Gandhi Equity Saving Scheme – notified. |
| 10. | Notification No. 6/ 2014 dated 15.01.2014 | 80D – Contribution to Central Government or Notified Health scheme | Contributory Health Service Scheme of Department of Space – notified. |
| 11. | Notification No. 9/ 2014 dated 22.01.2014 | 115AD – Special rates of taxation for Notified FIIs | General exemption to Foreign Portfolio Investors (FPIs) given. |

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| 12. | Circular No. 10/ 2013 dated 16.12.2013 | 40(a)(ia) – Payment to resident – "paid" vs "payable" | Section 40(a)(ia), which deals with disallowance of expenditure, where no TDS is deducted, uses the words "payable".<br>There were divergent views about the allowability of expenditure. One of the views was that the disallowance would be made only if the expenditure was payable at the year end. CBDT clarified that disallowance would be done, even if the amount was payable at anytime during the P.Y.<br><br>One may note that this Circular was palpably brought to nullify the judgment of ***CIT vs Vector Shipping (All.)***. Although recently the judgment of Allahabad High Court has been confirmed by the Supreme Court. |
| 13. | Circular No. 1/ 2014 dated 13.01.2014 | TDS (payments other than 194I) – Whether TDS to be deducted on Service-tax Component? | If the service-tax is separately mentioned in the bill, TDS shall not be deducted on Service-tax component, but only the gross amount excluding service-tax.<br><br>One may note that this judgment was palpably brought to nullify the judgment of ***CIT (TDS) vs Rajasthan Urban Infrastructure (2013)(Raj.)*** |
| 14. | Circular No. 2/ 2014 dated 20.01.2014 | 10(37)/ 56(2)(vii) – Award by sportsmen who is not a professional | (a) Old Circular no. 447 stated that award received by sportsman who is not a professional shall be exempt as it is a gift.<br>(b) However, the gift is made taxable from 2005. Therefore, the amount received by such sportsman (who is not professional) would be taxable u/s. 56(2)(vii).<br>(c) Sportsman may claim exemption u/s. 10(17A). |
| 15. | Circular No. 5/ 2014 dated 11.02.2014 | 14A – Expenditure for earning exempt income | Whether disallowance u/s. 14A will be attracted, when there are exempt assets, but no exempt income is incurred during the year? Like a person has invested in shares of a company, but the company did not declare dividend (which is exempt income u/s. 10(34))<br>It was clarified in this circular that even if there is no exempt income the expenditure shall be disallowed. |

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| | | | It may be noted that this circular was given to nullify the judgment of ***CIT vs Delite Enterprises (Bom.); CIT vs Lakhani Marketing (P & H)*** and many similar judgments where it was held that if there is no exempt income, disallowance cannot be made. |
| 16. | Circular No. 6/ 2014 dated 11.02.2014 | 115R/ 10(35) – Income Distribution Tax (IDT) | Following does not amount to distribution of profit, and therefore no liable for IDT: -<br>(a) Redemption/ Repurchase of Mutual fund units<br>(b) Issue of bonus units<br>However, capital gain tax may arise to the unit holder at the time of redemption/ repurchase of units. |
| 17. | Circular No. 8/ 2014 dated 31.03.2014 | 10(2A) – Share of partner in firm | Share of the partner in the firm is exempt. Whether, if the firm is exempt u/c. III or u/c. VIA, still the exemption to the partner for his share in the firm would continue?<br>It was clarified that the partner cannot be made liable for tax on the profits of the firm. Therefore, even if the firm is exempt, the share of the partner in the profit of the firm would be exempt. |
| 18. | Circular No. 9/ 2014 dated 23.04.2014 | 32 – Depreciation in the case of Build Operate Transfer (BOT) Projects | Expenditure on development cost of the road shall be allowed to be distributed over the lifetime of the BOT project following the principles laid down in ***Madras Industrial Investment Corporation Ltd. (SC).***<br><br>It may be noted that this circular was palpably given to nullify the allowablity of depreciation on the cost of construction of the road as held in ***Ashoka Info P Ltd (Pune); Maharastra State Road Development Corpn. Ltd. (Mum.).*** |

**<u>Note 1</u>**

If the eligible assessee offers income at a particular rate, the same would be accepted by the Income-Tax Department. These are subject to the procedural compliances as given in the Rules: -

| S.No. | Eligible International Transaction | Circumstances |
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| 1. | Software development services/ Information Technology Enabled Services | Operating Profit margin (from Operating Expense) from IT is not less than: - |

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<table>
<tr><td></td><td>(ITeS)</td><td><table><tr><td>Aggregate Transaction during P.Y.</td><td>Min. Operating Profit</td></tr><tr><td><=500 crores</td><td>20%</td></tr><tr><td>> 500 crores</td><td>22%</td></tr></table></td></tr>
<tr><td>2.</td><td>Knowledge Process outsourcing services (KPO)</td><td>Operating Profit margin (from Operating Expense) from IT is not less than 25%</td></tr>
<tr><td>3.</td><td>Contract R &D services wholly or partly relating to Software development</td><td>Operating Profit margin (from Operating Expense) from IT is not less than 30%</td></tr>
<tr><td>4.</td><td>Contract R & D services wholly or partly relating to Pharmaceutical drugs</td><td>Operating Profit margin (from Operating Expense) from IT is not less than 29%</td></tr>
<tr><td>5.</td><td>Manufacture and export of core-auto components (like engine, piston, stearing, wheels etc.)</td><td>Operating Profit margin (from Operating Expense) from IT is not less than 12%</td></tr>
<tr><td>6.</td><td>Manufacture and export of non-core auto components</td><td>Operating Profit margin (from Operating Expense) from IT is not less than 8.50%</td></tr>
<tr><td>7.</td><td>Intra-group loans</td><td>Interest rate is not less than: -<table><tr><td>Loan does not exceed</td><td>Min. Interest rate</td></tr><tr><td><=50 crores</td><td>SBI rate + 1.5%</td></tr><tr><td>> 50 crores</td><td>SBI rate +3 %</td></tr></table>SBI Rate to be taken as on 30th June of P.Y.</td></tr>
<tr><td>8.</td><td>Corporate Guarantee</td><td>Commission is not less than:<table><tr><td>Amount Guaranteed does not exceed</td><td>Min. Commission Rate</td></tr><tr><td><=100 crores</td><td>2% p.a.</td></tr><tr><td>> 100 crores</td><td>1.75%</td></tr></table></td></tr>
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Safe harbour rules will not apply if the enterprise is located in Notified Jurisdictional Area (NJA).

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