eShiksha # 2

Important cases for understanding tax provisions

S.no	Section	Subject	Link(Source)	Conclusion
1	**Penalties u/s 76, 77, 78 of Finance Act 1994**	No waiver of penalty u/s 80, if service tax collected is not deposited.	Indsur Global Ltd. Versus Additional Commissioner of service Tax, Vadodara (2015) 59 taxmann.com 15(Gujarat)	In this case, assessee collected service tax from service recipient and did not deposit the same with the Government and also showed nil service tax liability in service tax returns. As a result of which, deptt issued summons to the assessee after which he paid service tax to the Government. So in this case, assessee cannot claim the penalties u/s 76, 77, 78 to be waived off u/s 80 because of bonafide error.
2	**Sec 32 of Income Tax Act 1961**	Disallowance of depreciation	(2015) 59 TAXMANN.COM 1(	IF DIRECTORS OF ASSESSEE-COMPANY TOOK HOME HOME LOAN FROM A BANK AND PURCHASED A PROPERTY IN THEIR INDIVIDUAL NAMES THEN MERELY THAT THE SAID LOAN LIABILITY WAS SUBSEQUENTLY TRANSFERRED TO ASSESSEE-COMPANY BY WAY OF BOOK ENTRY, ASSESSEE COULD NOT BE REGARDED AS OWNER OF SAID PROPERTY AND THUS CANNOT CLAIM DEPRECIATION ON IT.
3	**Sec 11 and sec 32 of Income Tax Act, 1961**	Depreciation	Mool Chand Khairati Ram Trust vs. DIT(E), Delhi High Court	Claim for depreciation on assets purchased is allowed if expenditure incurred on purchase of the assets has been exempted under Section 11 of the Act.
4	**Input Tax Credit**	Input Tax Credit	Gujrat High Court- Shree Bhairav Metal Corp. vs. State of Gujrat	Mere production of bills and other papers not sufficient to take input btax credit. Dealer must establish actual movement of goods and to prove genuineness of the transaction.
5	**Refund**	Refund	Honorable CESTAT, Delhi : P&P Overseas vs. CCE.	Refund cannot be denied merely on account of non-relisation of export proceeds.
6	**Vat**	Vat on intangible goods	Bombay High Court: Tata Sons Ltd	VAT to be levied on transfer of right to use of intangible goods-even if transferred to multiple users
7	**TDS**	TDS on provision	Dishnet Wireless Limited vs. DCIT , (Chennai ITAT), I.T.A .No.- 320 to 329/Mds/2014, Date of Decison-20-07-15	No liability of TDS will arise if the amount of expense or payee is not ascertainable though year-end provisions are made by the Appellant. ITAT further held that Roaming charges services are not technical services, not liable to TDS u/s 194J - See more at: http://taxguru.in/income-tax-case-laws/tds-provision-year-provisions-roaming-charges.html#sthash.7ngNMTru.dpuf
8	**SECTION 68**	CASH CREDIT	[2015] 59 taxmann.com 427 (Delhi - Trib.)	Where assessee produced depositors before Assessing Officer who confirmed deposits with assessee and also explained source of their deposits which had not been doubted, deposits being genuine, addition under section 68 could not be sustained
9	**SECTION 37(1)**	BUSINESS EXPENDITURE - ALLOWABILITY OF	[2015] 59 taxmann.com 427 (Delhi - Trib.)	Where assessee had maintained separate books of account for its tanker, disallowance made by Commissioner (Appeals) out of tanker expenses merely on basis of estimated consumption of diesel ignoring other expenses, could not be sustained

10	**SECTION 80-I**	DEDUCTIONS FROM PROFITS AND GAINS FROM INDUSTRIAL UNDERTAKINGS ETC	[2015] 59 taxmann.com 367 (Bombay)	Where assessee takes an industrial undertaking on hire and uses it for purpose of its manufacturing activity, it is still eligible to claim deduction under section 80-I
11	**SECTION 194J**	DEDUCTION OF TAX AT SOURCE - FEES FOR PROFESSIONAL OR TECHNICAL SERVICES	2015] 59 taxmann.com 451 (Mumbai - Trib.)	There is no requirement to deduct tax at source from payments made to NSE/BSE towards VSAT charges and lease line charges under section 194J
12	**SECTION 234E**	DEDUCTION OF TAX AT SOURCE - FEE FOR DEFAULTS IN FURNISHING STATEMENTS	[2015] 60 taxmann.com 144 (Karnataka)	Section 234E does not suffer from any vices for being declared to be ultra vires of the Constitution. Section i.e., 234E is intra vires of the Constitution
13	**SECTION 2(ea)**	Asset- Urban Land	[2015] 59 taxmann.com 298 (Hyderabad - Trib.)	Structure standing over land during relevant period being a half/semi-finished one cannot come within the exclusionary clause so as to take it out from ambit of urban land under section 2(ea); and assessee was not entitle to claim exemption under Wealth Tax Act
14	**SECTION 65(25aa)**	TAXABLE SERVICES - CLUB OR ASSOCIATION'S SERVICES	[2015] 59 taxmann.com 446 (Mumbai - CESTAT) (TM)	Promotion of cricket is neither 'public service' nor 'charitable purpose' for purposes of service tax law; hence, cricket associations engaged in promotion of cricket are liable to service tax on membership/subscription fees under 'Club or Association Service'