DIRECT TAX

SUMMARY OF RECENT CASE LAWS RELEVANT FOR NOVEMBER, 2015 – CA FINAL EXAMS

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S. No.	Issues	Decision	Case Law
		BASIC CONCEPTS	
1	What is the nature of liquidated damages received by a co. from the supplier of plant for failure to supply M/C to the co. within the stipulated time - a capital receipt or a revenue receipt?	The Apex court affirmed the decision of High court holding that the damages were directly & intimately linked with the procurement of a capital asset. i.e. the cement plant which lead to delay in coming into existence of the profit making apparatus. It was NOT a receipt in course of profit earning process. Therefore, the amt. received, NOT in the ordinary course of biz, **is a capital receipt** in the hands of the assesses.	CIT V. **Saurashtra Cement Ltd** (2010) 325 ITR 422 (SC)
2	Can waiver of loan or advance taken for the purpose of relocation of office premises be treated as a revenue receipt liable to tax?	Bombay High Court held that since the advance taken by the assessee-company was utilized by it for the purpose of relocating its office premises i.e., for acquisition of a capital asset, namely, a new office, the waiver of the same cannot be said to be waiver or remission of trading liability to attract taxability under the Act. **Waiver** of such advance, **being capital in nature**, is not taxable under the Act.	CIT v. **Softworks Computers P. Ltd.** (2013) 354 ITR 16 (Bom.)
3	What is the nature of grant received by a subsidiary company from its holding company to recoup the losses incurred year after year and to enable it to meet its liabilities - Capital or Revenue?	The High Court held that **grant given** by the holding company in this case is in the nature of **capital receipt** since its purpose is to secure and protect the capital investment made in the subsidiary company.	CIT v. **Handicrafts and Handlooms Export Corporation of India Ltd.** (2014) 360 ITR 0130 (Delhi)
4	Can power subsidy recd. by the assesse from the state Govt., year after year, on the basis of actual power consumption be treated as a capital receipt?	The high court held that the power subsidy recd. by the assesse from the SG. On the basis of actual power consumption has to be treated as a trading receipt & **not as a c/receipt**.	CIT V. **Rassi Cement Ltd.** (2013) 351 ITR 169 (A.P.)
5	In case the s/capital is raised in a foreign country & repatriated to India as Need basis from time to time for approved uses, can the gain arising on the b/sheet date due to fluctuation in foreign exchange, in respect of that part of s/capital which is to be used as working capital, be treated as a revenue receipt?	The High court held that for determining the nature of receipt, due consideration shud be given to the source of fund & NOT to the ultimate use of the funds. Therefore, the **entire gain has to be treated as c/receipt** as the source of fund in this case is capital in nature.	CIT V. **Jagatjit Industries Ltd** (2011) 337 ITR 21 (Del.)
6	Can subsidy received by the assesses from GoWB under the scheme of industrial promotion for expansion of its capacities modernization & improving its marketing capabilities be treated as a capital receipt?	The high court held that, in the present case, the subsidy received has to be **treated as a capital receipt** & NOT as a revenue receipt.	CIT V. **Rasoi Ltd** (2011) 335 ITR 438 (Cal.)
7	What is the nature of incentives received under the scheme formulated by the C/G for recoupment of capital employed & repayment of loan taken for setting up/expansion of a sugar factory – capital or revenue?	The High court held that the main eligibility condt. For the scheme was that the incentive had to be utilized for the repayment of loans taken by the assesses to setup a new units or substantial expansion of a existing unit. The subsidy receipt by the assesses was, therefore NOT in the course of a trade & hence, **was of capital nature**.	CIT V. **Kisan Sahkari Chini Mills Ltd.** (2010) 328 ITR 27 (All.)
		INCOME WHICH DO NOT FORM PART OF TOTAL INCOME	
8	Whether sec. 14A is applicable in respect of deduction, which are permissible & allowed u/chapter VI A?	The Delhi high court held that **NO disallowance can be made u/s 14A** in respect of income included in total income in respect of which deduction is allowable u/s 80C to 80U.	CIT V. **Kribhco** (2012) 209 Taxman 52 (Delhi)
9	In a case where the application for registration of a charitable trust is not disposed of within the period of 6 months as required under section 12AA(2), can the trust be deemed to have been registered as per provisions of section 12AA?	The Madras High Court held that the time frame mentioned in section 12 AA (2) is only directory in nature and non- consideration of the registration application within the said time frame of six months **would not amount to "deemed registration**".	CIT v. **Karimangalam Onriya Pengal Semipu Amaipu Ltd.** (2013) 354 ITR 483 (Mad)
10	Where a charitable trust applied for issuance of registration under section 12AA within a short time span (nine months, in this case) after its formation, can registration be denied by the concerned authority on the ground that no charitable activity has been commenced by the trust?	The high court held that later on, if it is found from the subsequent returns filed by the trust that it is not carrying on any charitable activity, it would be open to the concerned authorities to withdrawn the registration granted or cancel the registration as per the provision of section 12AA (3).	DIT (Exemptions) **v. Meenakshi Amma Endowment Trust** (2013) 354 ITR 219 (Kar.)

11	Can explanation to sec. 11(2) be applied in respect of the accumulation up to 15% referred to in sec. 11(1)(a), to treat the donation made to another charitable trust from the permissible accumulation up to 15% as income of the trust?	The court held that even if the donation by the assesses to another charitable trust were out of part accumulation u/s 11(1) (a) i.e. up to 15%, the same would NOT be liable to be included in the total income as assessed by the AO.	DIT (exemption) V. **Bagri foundation** (2012) 344 ITR 193 (Delhi)
INCOME FROM SALARIES			
12	Can notional intt. on security deposit given to the landlord in respect of residential premises taken on rent by the employer & provided to the employee, be included in the perquisites value of rent free accommodation given to the employee?	The Bombay high court held that the **AO is not right in adding the notional intt.** on the security deposit given by the employer to the landlord in valuing the perquisites of rent free accommodation, since the perquisite value has to be computed as per rule 3 of the IT rules, 1962 & there is no concept of determination of fair rental value **for purpose of ascertaining the value of perk**.	CIT V. **Shankar Krishnan** (2012) 349 ITR 0685 (Bom.)
13	Is the limit of Rs. 1000/month per child to be mandatorily deducted, while computing the perquisite value of the free or concessional education facility provided to the employee by the employer?	The P&H high court held that only in case of the perquisite value is less than Rs. 1000/month per child, the perquisite value shall be NIL. Therefore, **Rs. 1000/month per child is NOT a std deduction** to be provided while calculating such a perquisite.	CIT (TDS) V. Director, **Delhi Public School** (2011) 202 Taxmann 318 (P&H)
INCOME FROM HOUSE PROPERTY			
14	Whether the rental income derived from the unsold flats which are shown as stock- in-trade in the books of the assessee would be taxable under the head 'Profits and gains from business or profession' or under the head 'Income from house property', in a case where the actual rent receipts formed the basis of computation of income?	The Delhi High Court followed its own decision in the case of CIT vs. Discovery Estates Pvt. Ltd / CIT vs. Discovery Holding Pvt. Ltd., wherein it was held that rental income derived from unsold flats which were shown as stock-in-trade in the books of the assessee should be **assessed under** the head "**Income from house property**" and not under the head "Profits and gains from business or profession".	**New Delhi Hotels Ltd.** v. ACIT (2014) 360 ITR 0187 (Delhi]
15	Can the rental income from the unsold flat of a builder be treated as its B/Income merely bcoz the assesses has, in its w/tax return, claimed that the unsold flats were SIT of its Biz?	The Calcutta high court held that rental income from the unsold flats of a builder **shall be taxable as "I/H/P"** as provided u/s 22 & since it specially falls under this head, it CANNOT be treated under the "PGBP".	**Azimgnaj estate (P) Ltd.** V. CIT (2012) 206 Taxman 308 (cal.)
16	Can the benefit of self-occupation of H/P u/s 23(2) be denied to a HUF on the ground that it cannot occupy a H/P, being a fictional entity?	The Gujarat High Court observed that a firm, which is a fictional entity, cannot physically reside in a house property. The said family can reside in the house, which belongs to the HUF. Therefore court held that the **HUF is entitled** to claim benefit of self-occupation of H/P u/s 23(2).	CIT V. **Hariprased Bhojnagarwala** (2012) 342 ITR 69 (Guj.) (full bench)
17	Can an assesses engaged in letting out of rooms in a lodging house also treat the income from renting of a business to bank on long term lease as business income?	On the issue, it was decided that while lodging is a business, however, letting out the building to the bank on long term lease could NOT be treated as business income. Therefore, the **rental income** from bank has to **assessed as Income of house property.**	**Joseph George & Co.** V. ITO (2010) 328 ITR 161 (Kerala)
18	Can Notional intt. on interest free deposit received by an assesses in respect of a shop let out on rent be brought to tax as "Business Income" or "I/H/P"?	The High court held that the Notional intt. is **NOT assessable** either as **"Business Income" or "I/H/P"**	CIT V. **Asian Hotels Ltd.** (2010) 323 ITR 490 (Del.)
PROFIT AND GAINS OF BUSINESS OR PROFESSION			
19	Can depreciation on leased vehicle be denied to the lessor on the ground that the vehicles are registered in the name of the lessee & that the lessor is not the actual user of the vehicle?	The SC held that assesse was **entitled to claim depreciation** in respect of vehicle leased out since it has satisfied both the requirement of section 32, namely ownership of the vehicle & its usage in the course of biz.	**I.C.D.S. Ltd.** V. CIT (2013) 350 ITR 527 (SC)
20	What is the eligible rate of depreciation in respect of computer accessories and peripherals under the Income-tax Act, 1961?	The High Court held that since they are part of the computer system, they would be **eligible for depreciation** at the **higher rate** of 60% applicable to computers including computer software.	CIT v. **BSES Yamuna Powers Ltd** (2013) 358 ITR 47 (Delhi)
21	Can waiver of loan given to the assesse by the GOI from steel development fund (SDF) to meet the capital cost of asset be reduced to arrive at the actual cost as per sec. 43(1) for computing depreciation u/s 32?	The high court held that by applying the main provision of sec. 43(1), the **amount of loan waived by the govt. is to be reduced from the cost of asset** to arrive at the "actual cost" for computing depreciation.	**Steel Authority of India Ltd.** (SAIL) V. CIT (2012) 348 ITR 150 (Delhi)

22	Can the second prov. to sec. 32(1) be applied to restrict the additional depreciation u/s 32(1) (iia) to 50%, if the new P&M was put to use for less than 180 days during the P/Y?	The Madras high court held that the claim of the assesse made u/s 32(1) (iia) had to be necessarily assessed by applying the second prov. to sec. 32(1). Therefore **depreciation allowable has to be restricted to 50%** of the amount computed u/s 32(1) (iia).	**M. M. Forgings Ltd.** V. ACIT (2012) 349 ITR 0673 (Mad.)
23	Can biz. Contracts, biz. Info. etc, acquired by the assesses as part of slump sale be described as G/W, be classified as an intangible asset to be entitled for dep. 32(1)(ii)?	The high court held that the specified intangible asset under the slump sale agreement by the assesses are in the nature of intangible asset under the category "other biz. Or commercial right of similar nature" specified in sec. 32(1)(ii) & are accordingly **eligible for dep.** u/s 32(1)(ii).	**Areva T & D India Ltd** V. DCIT (2012) 345 ITR 421 (Delhi)
24	Is the assesses entitled to dep. on the value of G/w considering it as an asset within the meaning of explanation 3(b) to sec. 32(1)?	It was held that **"G/W"** is an **asset under** explanation 3(b) to **sec. 32(1)** & **Dep.** thr on is **allowable** under the said section.	CIT V. **Smifs Securities Ltd.** (2012) 348 ITR 302 (SC)
25	Is the assesses entitled to depreciation on the value of Goodwill considering it as "other business or commercial right or similar nature" within the meaning of an intangible asset?	It was held that G/w paid was for ensuring retention & continued business in the hospital, it was for acquiring a business & commercial right and it was comparable with trade mark, franchise etc referred to in the first part of clause (ii) of sec. 32(1) and so, **G/w** was covered by the above provision of the Act **entitling** the assesses **for depreciation.**	**B. Raveendran Pillai** V. CIT (2011) 332 ITR 531 (Kerala)
26	Would the phrase "used for the purpose of business" in respect of discarded M/c include use of such asset in the earlier years for claim of depreciation u/s 32?	On the issue, it was held that the discarded M/c may NOT be actually used in the Relevant P/Y but depreciation **can be Claimed** as long as it was used for the purpose of business in the earlier years provided the block continues to exist in the Relevant P/Y.	**Yamaha Motors India Pvt. Ltd.** V. CIT (2010) 328 ITR 297 (Delhi)
27	Can EPABX & Mobile phones be treated as computers to be entitled to higher depreciation at 60%?	On the issue, the High court held that the rate of depreciation of 60% is available to computers & there is no ground to treat the communication equipment as computers. Hence **EPABX & Mobile phones are NOT computers** and therefore, are NOT entitled to higher depreciation of 60%.	**Federal Bank Ltd.** V. ACIT (2011) 332 ITR 319 (Kerala)
28	Would beneficial ownership of asset suffice for claim of deprecation on such asset?	The High court observed that she is the beneficial owner; she is **entitled to claim deprecation** even though she is NOT the legal owner of the asset.	CIT V. **Smt. A Sivakami & Another** (2010) 322 ITR 64
29	What is the nature of expenditure incurred on glow-sign boards displayed at dealer outlets - capital or revenue?	The Delhi High Court concurred with the above observations of the P & H High Court and held that such expenditure on glow sign boards displayed at dealer outlets was **revenue in nature**.	CIT v. **Orient Ceramics and Industries Ltd.** (2013) 358 ITR 49 (Delhi)
30	What is the nature of exp. incurred on demolition & re-erection of a cell room & exp. incurred on purchase of pumping set, mono block pump & two transformers, which were parts of a bigger plant – revenue or capital?	It was held that purchase of pumping set, mono block pump with HP motors & two transformers were concerned, they were NOT standalone equipment, but were part of the bigger plant. Therefore, it would be treated as replacement of those parts & exp. would be **eligible for deduction u/s 37(1)-Revenue**.	CIT V. **Modi Industries Ltd** (2011) 339 ITR 467 (Del.)
31	Can share issue expenses incurred by a company be treated as capital in nature, if the public issue could not ultimately materialize on account of non-clearance by SEBI?	The High court held that the efforts were aborted, the fact remains that the expenditure incurred was only for the purpose of expansion of the capital base. The capital nature of the expenditure would not be lost on account of the abortive efforts. The expenditure, therefore, **constitutes** a **capital expenditure**.	**Mascon Technical Services Ltd.** v. CIT (2013) 358 ITR 545 (Mad.)
32	Is the exp. incurred on payment of retrenchment compensation & intt. On money borrowed for the payment of retrenchment compensation on closure of one of the textile manufacturing units of the assesses co. revenue in nature?	The High court concurred with these finding of the tribunal & accordingly, held that **deduction was allowable** in respect of exp. on payment of retrenchment compensation & intt. On money borrowed for payment of retrenchment compensation.	CIT V. **DCM Ltd** (2010) 320 ITR 307 (Del.)
33	What would be the nature of the repair & reconditioning exp. incurred on a machine which broke down years ago – revenue or capital?	The Delhi high court observed that it is in nature of **capital exp.**; on which **dep. can be claimed**.	**Bharat Gears Ltd** V. CIT (2011) 337 ITR 370 (Delhi)

34	Would the exp. incurred for issue & collection of convertible debenture be treated as revenue or capital Exp.?	The Karnataka High court held that the exp. incurred on the issue & collection of deb. Shall be **treated as revenue exp.** even in case of convertible debenture.	CIT V. **ITC Hotels Ltd.** (2011) 334 ITR 109 (Kar.)
35	Would expenditure incurred on feasibility study conducted for examining proposals for technological advancement related to the existing business be classified as revenue expenditure, where the project was abandoned without creating a new asset?	The High court observed that, in such cases, whether or not a new business/asset comes into existence would be a relevant factor. If there is no creation of a new asset, then the **expenditure** incurred would be a **revenue nature.**	**Priya Village Roadshow Ltd.** V. CIT (2011) 332 ITR 594 (Delhi)
36	Can the exp. incurred for purchase of second hand Medical equipment for the use as spare parts for existing equipment be claimed as revenue expenditure?	The High Court held that since the second hand Medical equipment was purchased for the use as spare parts for existing equipment. Therefore the assesses was **eligible to claim deduction** of exp. in the relevant p/y ended 31st March.	**DR. Aswath N Rao** V. ACIT (2010) 326 ITR 188 (karn.)
37	Can the amt. incurred by the assesses for replacing the old mono sound system in its cinema theatre with a new dolby stereo system be treated as revenue exp.?	In such a case, High court held that exp. on such change of sound system could **NOT be considered capital in nature**.	CIT V. **Sagar talkies** (2010) 325 ITR 133 (karn.)
38	Can exp. incurred on alteration of a dam to ensure adequate supply of water for the smelter plant owned by the assesses be allowed as revenue exp.?	The High court observed that the exp. incurred by the assesses for commercial expediency relates to carrying on of biz. The operational exp. incurred by the assesses solely intended for the enterprise can by **NO means be treated** as exp. of **capital nature**.	CIT V. **Hindustan Zinc. Ltd** (2010) 322 ITR 478 (Raj.)
39	Is Circular No. 5/2012 dated 01.08.2012 disallowing the expenditure incurred on freebies provided by pharmaceutical companies to medical practitioners, in line with Explanation to section 37(1), which disallows expenditure which is prohibited by law?	The high Court held that, if the assessee satisfies the assessing authority that the expenditure incurred is not in violation of the regulations framed by the Medical Council then it may legitimately claim a deduction, but it is for the assessee to satisfy the Assessing Officer.	**Confederation of Indian Pharmaceutical Industry (SSI)** v. CBDT (2013) 353 ITR 388 (H.P.)
40	Is the commission paid to doctor's by a diagnostic center for referring patients for diagnosis be allowed as a biz exp. u/s 37 or would it be treated as illegal & against public policy to attract disallowance?	The demanding as well as paying of such comm. is bad in law. It is NOT a fair practice. Thus, the high court held that **comm. paid to doctor** for referring patient for diagnosis is **NOT allowable as a biz exp**.	CIT V. **Kap scan & Diagnosis centre P. Ltd.** (2012) 344 ITR 476 (P&H)
41	Can expenditure incurred by a Co. on higher studies of the director's son abroad be claimed as business exp. u/s 37 on the contention that he was appointed as a trainee in the co. under "apprentice training scheme", where there was no proof of existence of such scheme?	On this issue, it was observed that there was no evidence on records to show that any other person at any time was appointed as trainee or sent abroad for higher education. Further, there was No nexus betw. the education exp. incurred in abroad for director's son & business of assesses. Therefore, the aforesaid exp. was **NOT deductible.**	**Echjay forging Ltd.** V. ACIT (2010) 328 ITR 286 (Bom.)
42	Can the exp. incurred on the assesses lawyer's heart surgery be allowed as biz. exp. u/s 31 by treating it as current repairs considering heart as P&M or u/s 37 by treating it as exp. incurred wholly & exclusively for the purpose of biz. Or profession?	The High court held that the heart CANNOT be said to be P&M for the biz. Or Prof. of the assesses. Therefore, the exp. on heart surgery is NOT allowable as repair to plant u/s 31. Accordingly to the prov. Of sec. 37 the claim for allowing the said exp. u/s 37 is also NOT tenable. Hence, **heart surgery exp. shall NOT be allowed** as biz. Exp.	**Shanti Bhushan** V. CIT (2011) 336 ITR 26 (Del.)
43	Can the payment to police personnel & gundas to keep away from the cinema theatres run by the assesses be allowed as deduction?	Any payment made to police illegally amts. to bribe & illegal payment for which **NO deduction is allowable** under the Act.	CIT V. **Neelavathi & others** (2010) 322 ITR 643 (karn.)
44	Is the amt. paid by a construction co. as regularization fee for violating building bye laws allowable as deduction?	The High court held that amt. paid to compound an offence is obviously a penalty & hence, does **NOT qualify for deduction u/s 37**.	**Millennia Developers (P) Ltd.** V. DCIT (2010) 322 ITR 401 (karn.)
45	Can remuneration paid to working partner as per the partnership deed be considered as unreasonable & excessive for attracting disallowance u/s 40A (2) (a) even though the same is within the statutory limits prescribed u/s 40 (b) (v)?	The high court held that remuneration paid to w/partners within the limits specified u/s 40 (b) (v) **CANNOT be disallowed** by invoking the provision of sec. 40A (2) (a).	CIT v. **Great city manufacturing co.** (2013) 351 ITR 156 (All.)
46	Can the waiver of principal amount of loan taken for purchase of capital asset by the bank be treated as "benefit arises out of business" or "a remission of trading liability" for taxability as business income of the Co.?	Since the loan was taken for purchase of capital asset, waiver of a portion of principal would **NOT amount to remission** of trading liability to attract the provision of sec. 41(1). Further, such waiver **CANNOT be treated** as a **benefit arising out of business** & consqt. Sec. 28(iv) will NOT apply in respect of such loan tranx.	**Iskraemees Regent Ltd.** V. CIT (2011) 331 ITR 317 (Mad.)

47	Can the prov. Of sec. 41(1) be invoked both in respect of waiver of working capital loan utilized for day to day biz. Operation & in respect of waiver of term loan taken for purchase a capital asset?	The high court's held that loan were for circulating capital & not for fixed capital. Therefore, the W/off of these loans on the cash credit account which was received for carrying out the day to day operation amts. to remission of a trading liability & hence, has to be **treated as income** in the hands of the assesses by **virtue of sec. 41(1)**.	**Rollatainers Ltd.** V. CIT (2011) 339 ITR 54 (Del.)
48	Can the amount of employees' contribution towards provident fund, deducted and credited to the employee's PF account by the employer-assessee after the "due date" under the EPF & Miscellaneous Provisions Act, 1952, but before the due date of filing return of income under the Income-tax Act, 1961, be allowed as deduction while computing business income of the employer-assessee?	It was held that the employees' contribution to provident fund, deducted from the salaries of the employees of the assessee, **shall be allowed** as deduction from the income of the employer-assessee, if the same is deposited by the employer-assessee with the provident fund authority on or before the due date of filing the return for the previous year.	CIT v. **Kichha Sugar Co. Ltd.** (2013) 356 ITR 351 (Uttarakhand)
49	Can unpaid electricity charges be treated as "fees" to attract disallowance u/s 43B?	The AP high court observed that the prov. of sec. 43B do not incorporate electricity charges. Therefore, non-payment of electricity charges would not attract disallowance u/s 43B since such charges CANNOT be treated as "Fees". The court therefore held that **deduction is allowable** in respect of such electricity charges.	CIT v. **Andhra ferro Alloys (P) Ltd.** (2012) 349 ITR 255 (AP)
		CAPITAL GAIN	
50	What are the factors determining the nature of income arising on sale of shares i.e. whether the income is taxable as c/gain or b/income?	The high court held that the facts that may be considered while determining the same are the magnitude & freq. of buying & selling of shares by the assesses, the POH of shares, ratio of sales to purchase & the total holding, etc.	**PVS Raju** V. ACIT (2012) 340 ITR 75 (AP)
51	Where a leasehold property is purchased and subsequently converted into freehold property and then sold, should the period of holding be reckoned from the date of purchase or from the date of conversion for determining whether the resultant capital gains is short-term or long-term?	The High Court concurred with the views of the Tribunal that conversion of the rights of the lessee from leasehold to freehold is only by way of improvement of her rights over the property, which she enjoyed. It would not have any effect on the taxability of gain from such property, which is related to the period over which the property is held. Since, in this case, the period of holding is more than 36 months; the resultant **capital gains** would be **long-term**.	CIT v. **Smt. Rama Rani Kalia** (2013) 358 ITR 0499 (All.)
52	In determining the POH of c/asset received by a partner on dissolution of firm, can the POH of the c/asset by the firm be taken into account?	The High court held that **POH** of the asset by the assesses in this case has to be **reckoned from** the **date of dissolution** of the firm. Since the assesses sold the property within 3 days of acquiring the same, the gain have to be treated as STCG.	**P. P. Menon** V. CIT (2010) 325 ITR 122 (Ker.)
53	What would be the POH to determine whether the c/gain on renunciation of right to subscribe for additional shares is short term (ST) or long term (LT)?	On this issue, the Apex court held that for determining whether the c/gain on renunciation of right to subscribe for additional shares is ST or LT, the **POH would be from** the date on which **such right** to subscribe for additional shares **come into existence** up **to** the **date of renunciation** of such right.	**Navin Jindal** V. ACIT (2010) 320 ITR 708 (SC)
54	Whether indexation benefit in respect of the gifted asset shall apply from the year in which the asset was first held by the assesses or from the year the same was first acquired by the previous owner?	The High court held that indexed COA in case of gifted asset has to be **computed with reference** to the year in which the **previous owner first held** the asset & NOT from the year in which the assesses become the owner of the asset.	CIT V. **Manjula J. Shah** 16 Taxmann 42 (Bom.)
55	Where a building, comprising of several floors, has been developed and re-constructed, would exemption under section 54/54F be available in respect of the cost of construction of - (i) the new residential house (i.e., all independent floors handed over to the assessee); or (ii) a single residential unit (i.e., only one independent floor)?	The High Court held that the fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under section 54 or section 54F. It is neither expressly nor by necessary implication prohibited. Therefore, the assessee is entitled to exemption of capital gains in respect of investment in the residential house, comprising of independent residential units handed over to the assessee.	CIT v. **Gita Duggal** (2013) 357 ITR 153 (Delhi)

56	Would an assessee be entitled to exemption u/s 54 in respect of purchase of two flats, adjacent to each other & having common meeting points?	The Andhra high court, on the basis of ruling of Karnataka high court in case of CIT v. Ananda Basappa (2009) 309 ITR 329, held that in this case, the **assesses was entitled** to investment in both the flats purchased by him, since they were adjacent to each other & had a common meeting point.	CIT v. **Syed Ali Adil** (2013) 352 ITR 0418 (AP)
57	Can exemption u/s 54B be denied solely on the grounds that the new agricultural land purchased is not wholly owned by the assesses, as the assesses's son is a co-owner as per sale deed?	The High court concurred with the tribunal's view that merely bcoz the assesses's son was shown in the sale deed as co-owner; it did NOT make any difference. Therefore, the assesses was **entitled to deduction u/s 54B**.	CIT V. **Gurnam Singh** (2010) 327 ITR 278 (P&H)
58	Can exemption u/s 54F be denied solely on the ground that the new residential house is purchased by the assese exclusively in the name of his wife?	The Delhi high court, having regards to the rule of purposive construction & the object of enactment of sec. 54F, held that the **assese is entitled to claim exemption u/s 54F** in respect of utilization of sale proceeds of c/asset for investment in residential H/property in the name of his wife.	CIT v. **Kamal wahal** (2013) 351 ITR 4 (Delhi)
59	In case of a house property registered in joint names, whether the exemption u/s 54F can be allowed fully to the co-owner who has paid whole of the purchase consideration of the H/property or will it be restricted to his share in the h/property?	The court held that the condt. Stipulated in **sec. 54F** stand fulfilled & the entire **exemption claimed** in respect of the purchase price of the house property **shall be allowed** to the assesses.	CIT V. **Ravindra kr. Arora** (2012) 342 ITR 38 (Del.)
60	Can the exemption u/s 54F be denied to an assesses in respect of investment made in construction of a residential house, on the ground that the construction was not completed within 3 yrs after the date on which t/f took place, an account of pendency of certain finishing work like flooring, electrical fitting, fitting of door shutter?	The court held that in this case the assesses would be **entitled to exemption u/s 54F** in respect of the amount invested in construction within the prescribed period.	CIT V. **Sambandam udaykumar** (2012) 345 ITR 389 (Ker.)
61	Can the assesses claim exemption u/s 54F, on account of c/gain arising on t/f of depreciable asset held for more than 36 months i.e a long term capital asset, though the same is deemed as capital gain arising on t/f of short term capital gain by virtue of sec. 50?	The High court held that sec. 54F being an independent section will NOT be bounded by the prov. Of sec. 50. Therefore, the **exemption u/s 54F** on t/f of depreciable asset held for more than 36 month **CANNOT be denied** on account of fiction created by sec. 50.	CIT V. **Rajiv Shukla** (2011) 334 ITR 138 (Del.)
62	Where the stamp duty value under section 50C has been adopted as the full value of consideration, can the reinvestment made in acquiring a residential property, which is in excess of the actual net sale consideration, be considered for the purpose of computation of exemption under section 54F, irrespective of the source of funds for such reinvestment?	On the issue of exemption under section 54F, the High Court held that when capital gain is assessed on notional basis as per the provisions of section 50C, and the higher value i.e., the stamp duty value of Rs 36 lakhs under section 50C has been adopted as the full value of consideration, the entire amount of Rs 24 lakhs reinvested in the residential house within the prescribed period should be considered for the purpose of exemption under section 54F, irrespective of the source of funds for such reinvestment.	**Gouli Mahadevappa** v. ITO (2013) 356 ITR 90 (Kar.)
63	Can exemption u/s 54EC be denied on account of the bonds being issued after 6 month of the date of t/f even though the payment for the bond was made by the assesses within the 6 month period?	The High court held that if such payment is within a period of 6 month from the date of t/f, the assesses would be **eligible to claim exemption u/s 54EC**.	**Hindustan Unilever Ltd** V. DCIT (2010) 325 ITR 102 (Bom.)
64	In the case of an assessee, being a dealer in shares and securities, whose portfolio comprises of shares held as stock-in-trade as well as shares held as investment, is it permissible under law to convert a portion of his stock-in-trade into investment and if so, what would be the tax treatment on subsequent sale of such investment?	The High Court concurred with the Tribunal's ruling that the gains arising on sale of those shares held as investments by the dealer-assessee (i.e., the difference between the sale price and the fair market value on the date of conversion) were to be **assessed under the head "Capital gains**" and not under the head "Profits and gains of business or profession".	CIT v. **Yatish Trading Co. Pvt. Ltd.** (2013) 359 ITR 320 (Bom.)
65	Where transfer of shares in a company has been effected, fulfilling all the requirements for claim of exemption under section 10(38), can such exemption be denied on the ground that the transaction is a colorable device, since the underlying asset transferred is, in effect, land, which is a short-term capital asset, on sale of which capital gains tax liability would have been attracted?	The High court held that the event of transfer of shares happened in ordinary course of business and is legal. The transaction is, therefore, real, valuable consideration is paid, all legal formalities are complied with, and what is transferred is shares and not immovable property. Hence, it is a valid legal transaction and cannot be termed as a colorable device or sham transaction or an unreal transaction.	**Bhoruka Engineering Inds. Ltd.** v. DCIT (2013) 356 ITR 25 (Kar.)

INCOME FROM OTHER SOURCES			
66	What can be the tests to determine "substantial part of business" of lending Co. for the purpose of application of exclusion provision under sec. 2(22)?	In this case, 42% of the assets of lending Co. were deployed by it by way of loan & advance. Further if interest income is excluded, the other business had resulted in a Net loss. These factors were considered in concluding that lending of money was a substantial part of business of the co. hence money given by way of loan & advance to the assesses could **NOT** be **regarded as a divided**, as it had to be excluded from the definition of "dividend" by virtue of the specific exclusion in sec. 2(22).	**Parle Plastics Ltd.** V. CIT (2011) 332 ITR 63 (Bom.)
67	Can the loan or adv. given to a shareholder by the co., in return of an advantage conferred on the co. by the shareholder, be deemed as dividend u/s 2(22)(e) in the hands of the shareholder?	In present case, the adv. given to the assesses by the co. was NOT in the nature of a gratuitous advance given, instead it was given to protect the interest of the co. therefore, the said adv. **CANNOT be treated as deemed dividend** in the hands of the shareholder u/s 2(22) (e).	**Pradip kr. Malhotra** V. CIT (2011) 338 ITR 538 (Cal.)
68	Would the prov. Of deemed dividend u/s 2(22)(e) be attracted in respect of financial tranx entered into in the normal course of biz?	The High court held that such financial tranx **CANNOT** under any circumstances be treated as loans or advances received by the assesses from the concerns for the purpose of **appl. Of sec. 2(22) (e)**.	CIT V. **Ambassador Travels (P) Ltd** (2010) 318 ITR 376 (Del.)
69	Can winning of prize money on unsold lottery ticket held by the distributor of lottery be assessed as business income & be subj. to normal rates of tax instead of the rates prescribed u/s 115BB?	The receipt of the prize Money is NOT in his capacity as a lottery ticket distributor but as a holder of the lottery ticket which won the prize. Therefore, the High court held that the rate of **30% prescribed u/s 115BB is applicable** in respect of winnings from lottery received by the distributor.	**Manjoo & Co.** V. CIT (2011) 335 ITR 527 (Kerala)
SET-OFF & CARRY FORWARD OF LOSSES			
70	Can the loss suffered by an erstwhile partnership firm, which was dissolved, be carried forward for set-off by the individual partner who took over the business of the firm as a sole proprietor, considering the succession as a succession by inheritance?	It was held that loss suffered by the erstwhile partnership firm before dissolution of the firm cannot be carried forward by the successor sole-proprietor, since it is not a case of succession by inheritance. The assessee sole-proprietor is, therefore, **not entitled to set-off** the loss of the erstwhile partnership firm against his income.	**Pramod Mittal** v. CIT (2013) 356 ITR 456 (Delhi)
CHAPTER VI A (DEDUCTIONS)			
71	Can unabsorbed depreciation of a biz. of an industrial undertaking eligible for deduction u/s 80IA be set off against income of another non eligible biz of the assesse?	The court held that the **assessee was entitled to the benefit of set off** of loss of eligible biz against the profit of non-eligible biz. However, once set of is allowed u/s 70(1) against income from another source under the same head, a deduction to such extent is not possible in any subsequent A/Y.	CIT v. **Swarnagiri wire insulation Pvt. Ltd.** (2012) 349 ITR 245 (Kar.)
72	Can freight subsidy arising out of the scheme of CG be treated as a "Profit derived from the biz" for the purpose of sec. 80IA?	The High court held that the freight **subsidy CANNOT be treated as Profit** derived from the biz for the purpose of sec. 80IA.	CIT V. **Kiran Enterprise** (2010) 327 ITR 520 (HP)
73	Can Duty Drawback be treated as profit derived from the business of the industrial undertaking to be eligible for deduction under section 80-IB?	The Supreme Court, following the decision in case of Liberty India v. CIT (2009) 317 ITR 218 (SC) held that **Duty Drawback receipts cannot** be said to be profits derived from the business of industrial undertaking for the purpose of computation of deduction under section 80-IB.	CIT v. **Orchev Pharma P. Ltd.** (2013) 354 ITR 227 (SC)
74	Would grant of transport subsidy, interest subsidy & refund of excise duty qualify for deduction under sec. 80-IB?	The High court held that there shud. be a direct nexus betw. The generation of profits & gains AND source of profit & gains, the latter being directly relatable to the business of the assesses. In this case, **subsidy had NO direct nexus** with profit derived by assesses from its industrial activity, so the subsides could NOT be taken into account for purpose of deduction u/s 80-IB. But **refund of the excise** had a **direct nexus** with manufacturing activity, being a profit linked incentives. Therefore, the refund of excise duty had to be **taken** into account **for** purpose of **deduction u/s 80-IB.**	**Meghalaya Steels Ltd.** V. CIT (2011) 332 ITR 91 (Gauhati)
75	Does income derived from sale of export incentives qualify for deduction u/s 80-IB?	The High court held that income derived from sale of export incentives CANNOT be said to be income "derived from" the industrial undertaking & therefore, such income is **NOT eligible for deduction** u/s 80-IB.	**Jaswand Sons** V. CIT (2010) 328 ITR 442 (P&H)

76	Whether the process of bottling of gas into gas cylinders amounts to production of gas cylinders for the purpose of deduction under section 80-IB?	Applying the rationale of the Apex Court decision in the case of CIT v. Vinbros and Co. [2012] 349 ITR 697, the High Court held that the process of bottling of gas into gas cylinders, which requires a very specialized process and independent plant and machinery, **amounts to production of "gas cylinders**" containing gas for the purpose of claiming deduction under section 80-IB.	**Puttur Petro Products P. Ltd.** v. ACIT [2014] 361 ITR 290 (Kar.)
77	Would the procurements of parts & assembling them to make wind Mill falls within the meaning of "Manufacturing" & "Production" to be entitled for deduction u/s 80-IB?	The Madras High court held that different parts procured by assesses could NOT be treated as a "wind mill" individually, but when assembled & got transformed into an ultimate product which was commercially known as "wind mill". Thus, such activity amounts to "Manufacture" as well as "Production" to **qualify for deduction u/s 80-IB**.	**Chiranjjeevi Wind Energy Ltd.** V. CIT (2011) 333 ITR 192 (Mad.)
78	Can an industrial undertaking engaged in manufacturing or producing articles or thing treat the persons employed by it through agency (incl. contractors) as "workers" to qualify for claim of deduction u/s 80IB?	The employment of 10 or more workers is that is relevant & NOT the mode and the manner in which the workers are employed by the assesses. The High court, therefore, held that the tribunal was justified in holding that the condt. Of sec. 80IB(2)(iv) had been fulfilled & therefore **deduction u/s 80IB is allowed**.	CIT V. **Jyoti Plastics Works (P) Ltd** (2011) 339 ITR 491 (Bom.)
79	Does the period of exemption u/s 80IB commence from the year of trial production or year of commercial production? Would it make a diff. if sale was effected from out of trial production?	It was held that the Contd. Stipulated in sec. 80IB were fulfilled with the commercial sale of the two items in that A/Y, & hence **period of exemption u/s 80IB** has to be **reckoned** from period **when sale took place**.	CIT V. **Nestor pharmaceuticals Ltd/ Sidwal Refrigeration Ind. Ltd** V. DCIT (2010) 322 ITR 631 (Del.)
80	Can an assessee NOT claiming deduction u/s 80-IB in the initial years claim the said deduction for the remaining years during the period of eligibility, if the condt. are satisfied?	The Delhi High court held that the provision of sec. 80-IB does NOT stipulate any condt. For claiming the deduction. Therefore, **the deduction u/s 80-IB** shud. Be **allowed** to the assessee **for** the **remaining years** during the period of eligibility, provided condt. u/s 80-IB are fulfilled.	**Praveen Soni** V. CIT (2011) 333 ITR 324 (Delhi)
ASSESSMENT OF VARIOUS ENTITIES			
81	Would the ancestral property received by the assessee after the death of his father, be considered as HUF property or as his individual property, where the assessee's father had received such property as his share when he went out of the joint family under a release deed?	The High Court held that when the property came to the hands of the assessee, it was not his self-acquired property; it was property belonging to his HUF. The assessee had given a portion of the property to his wife without a registered document, which is possible only if the property is a HUF property. If such property is treated as a self-acquired property, then assessee would have been able to give the portion of the property to his wife only by registered document.	Commissioner of Income-tax v. **D. L. Nandagopala Reddy (Individual)** (2014) 360 ITR 0377 (Kar)
82	Under which head of income is rental income from plinths inherited by individual co-owners from their ancestors taxable – "income from H/P" or "income from O/S"? Further, would such income be assessable in the hands of the individual co-owners or in the hands of the association of persons?	The court held that the co-owner had inherited the property from their ancestor & there was nothing to show that they had acted as an association of persons. Thus, the court held that the rental income from the plinths has to be **assessed in the status of individual under the head of "income from O/S" u/s 56**.	**Sudhir nagpal** v. ITO (2012) 349 ITR 0636 (P&H)
83	Would interest earned on surplus fund of a **Club** deposited with institutional members satisfy the Principle of Mutuality to escape taxability?	The High court held that **interest earned** from investment of surplus funds does NOT satisfy the Principle of Mutuality & Hence CANNOT be claimed as exempt. Therefore **taxable**.	**Madras Gymkhana Club** V. DCIT (2010) 328 ITR 348 (Mad.)
84	Can t/f fees received by a co-operative housing society from its incoming & outgoing members be exempt on the ground of principal of mutuality?	The High court held that t/f fee received is **NOT liable to tax** on the ground of principal of mutuality.	**Sind co-operative Housing Society** V. ITO (2009) 317 ITR 47 (Bom.)
85	Would nonresident match referees & umpires in the games played in India fall within the meaning of sportsmen to attract taxability u/s 115BBA, and consequently attract the TDS u/s 194E in the hands of the payer?	The High court held that the payment made to non resident match referees & umpires are "income" which has accrued & arises in India, the same are NOT taxable u/s 115BBA and thus, the assesses is NOT liable to deduct TDS u/s 194E. Further they render professional services but sec. 194J CANNOT be imposed as on a non-resident. **Note:-** It may be noted that since income has accrued & arisen in India to the non resident match referees & umpires, the **TDS provisions u/s 195 would be attracted** and tax would be deductible at the rate in force.	**Indcom** V. CIT (TDS) (2011) 335 ITR 485 (Calcutta)

86	In a case where the partnership deed does not specify the remuneration payable to each individual working partner but lays down the manner of fixing the remuneration, would the assesses firm be entitled to deduction in respect of remuneration paid to partner?	The High court held that method of remuneration having been laid down, the assesses firm is **entitled to deduct the remuneration** paid to the partner u/s 40(b)(v) of Income tax Act.	CIT V. **Anil Hardware Store** (2010) 323 ITR 368 (HP)
87	Can interest u/s 234B & 234C be levied where a co. is assessed on the basis of book profits u/s 115JB **(MAT)**?	The Apex court observed that there is a specific provision in sec.115JB (5) providing that all other provision of the IT Act, 1961 shall apply to every assessee, being a Co. Therefore, **interest u/s 234B & 234C shall be payable** on failure to pay advance tax in respect of tax payable u/s 115JB.	**Rolta India Ltd.** V. JCIT (2011) 330 ITR 470 (SC)
88	Can LTCG exempted by virtue of erstwhile sec. 54E be included in the book profit computed under erstwhile sc. 115J?	The High court held that LTCG are part of the profit incl. in the P&L a/c prepared in accordance with the prov. Of Part II & III of schedule VI to co. Act, 1956, **capital gain CANNOT be excluded** unless provided under the explanation to sec. 115J (IA).	**N. J. Jose & Co. (P) Ltd** V. ACIT (2010) 321 ITR 132 (Ker.)
	INCOME TAX AUTHORITY		
89	Where no proceeding is pending against a person, can the Assessing Officer call for information under section 133(6), which is useful or relevant to any enquiry, with the permission of Director or Commissioner?	The Supreme Court held that for such enquiry under section 133(6), the **notices** could be **validly issued** by the assessing authority.	**Kathiroor Service Co-operative Bank Ltd.** v. CIT (CIB) (2014) 360 ITR 0243 (SC)
90	Is the requirement to grant a reasonable opportunity of being heard, stipulated u/s 127(1), mandatory in nature?	The Bombay high court held that the word "May" used in this section should be read as "shall" & such I/tax authority has to mandatorily give a reasonable opportunity of being heard to the assesee, whenever possible to do so, & therefore record the reasons for taking any action under the said section.	**Sahara Hospitality Ltd.** v. CIT (2012) 211 taxmann 15 (Bom.)
91	Does the CBDT have the power u/s 119(2)(b) to condone the delay in filing ROI?	The High court held that the **board has the power to condone** the delay in case of a return which was filed late & whr a claim for c/f of losses was made.	**Lodhi Property Co. Ltd** V. Under Secretary (ITA-II), DOR (2010) 323 ITR 441 (Del.)
	ASSESSMENT PROCEDURE		
92	Can the unabsorbed depreciation be allowed to be c/f in case the ROI is not filed within the due date?	The High court held that the **unabsorbed depreciation will be allowed to be c/f** to subsequent year even though the ROI of current A/Y was NOT filled within the due date.	CIT V. **Govind Nagar Sugar Ltd** (2011) 334 ITR 13 (Del.)
93	Can an assessee revise the particular filled in the original ROI by filling a revised statement of income?	The high court relying on the judgment of Goetze (I) Pvt. Ltd., held that the **AO has NO power to entertain a fresh claim** made by the assesses after filling of the original return except by way of filling a revised return.	**Orissa Rural Housing Development Corp. Ltd.** V. ACIT (2012) 343 ITR 316 (Orissa)
94	Is a person having income below taxable limit, required to furnish his PAN to the detector as per prov. of sec. 206AA even though he is not acquired to hold PAN as per prov. of sec. 139A?	In order to avoid undue hardship caused to such person, Karnataka high court , held that it is **NOT necessary for such person to obtain PAN** & in view of specific prov. of sec. 139A, sec. 206AA is NOT applicable to such person.	**Smt. A. Kowsalya Bai** V. UOI (2012) 346 ITR 156 (Kar.)
95	Can the AO reopen an assessment on the basis of merely a change of opinion?	The High court observed that the reason recorded for reopening the assessment constituted a mere change of opinion. Therefore, the **reassessment was NOT Valid**.	**Aventis Pharma Ltd** V. ACIT (2010) 323 ITR 570 (Bom.)
96	Is it permissible u/s 147 to reopen the assessment of the assesses on the ground that income has escaped assessment, after a change of opinion as to a loss being a speculation loss & not a normal biz loss, consequent to mere re-look of a/c which were earlier furnished by the assesses during assessment u/s 143(3)?	The supreme court observed that re-opening of the assessment by the AO is clearly a change of opinion & therefore, the order of **re-opening the assessment is NOT valid**.	ACIT V. **ICICI securities Primary Dealership Ltd.** (2012) 348 ITR 299 (SC)
97	Can the AO reassess issue other than issues in respect of which proceeding were initiated u/s 147 when the original "reasons to believe" on basis of which the notice was issued ceased to exist?	The High court held that if the income, the escapement of which was the basis of the "reasons to believe" is NOT assessed or reassessed, it would **NOT** be **open to the AO to independently assess only that income** which comes to his notice subsq. if he intends to do so a fresh notice u/s 148 would be necessary.	**Ranbaxy Lab. Ltd.** V. CIT (2011) 336 ITR 136 (Delhi)

98	In case of change of incumbent of an office, can the successor AO initiate reassessment proceeding on the grounds of change of opinion in relation to an issue which the predecessor AO, who had framed the original assessment, had already applied his mind & came to a conclusion?	The Guj. High court observed that thr was nothing on records to show that income had escaped assessment in respect of which the successor AO received info. Therefore, **notice of re-assessment** was, therefore **NOT Valid**.	**H. K. Buildcon Ltd** V. ITO (2011) 339 ITR 535 (Guj.)
99	Can the AO issue notice u/s 154 to rectify a mistake apparent from records in the intimation u/s 143(1), after issue of a valid notice u/s 143(2)?	On the issue, the P & H High court concluded that proceeding **u/s 154** for **rectification** of intimation u/s 143(1) **CANNOT be initiated** after issuance of notice u/s 143(2) by the AO to the assesses.	**Haryana State Handloom & Handicraft Corpn. Ltd.** V. CIT (2011) 336 ITR 694 (P&H)
100	Would the doctrine of merger apply for calculating the period of limitation u/s 154(7)?	After merge, the order of the original authority ceases to exist & the order of the appellate authority prevails. Thus, the **period of limitation** of 4 years for the purpose of sec. 154(7) has to be **counted from the date of** the **order of the Appellate Authority**.	CIT V. **Tony Electronics Ltd** (2010) 320 ITR 378 (Del.)
APPEALS & REVISION			
101	Can an assessee, objecting to the reassessment notice issued under section 148, directly approach the High Court in the normal course contending that such reassessment proceedings are apparently unjustified and illegal?	The High Court held that it will not be appropriate and proper in the facts of the present case to permit and allow the petitioner to bypass and forgo the procedure laid down by the Supreme Court in GKN Driveshafts (India) Ltd. (supra), since the said procedure has been almost universally followed and has helped cut down litigation and crystallize the issues, if and when the question comes up before the Court.	**Samsung India Electronics P. Ltd.** v. DCIT (2014) 362 ITR 460 (Del.)
102	Would the period of limitation for an order passed u/s 263 be reckoned from the original order passed by the AO u/s 143(3) or from the order of re-assessment passed u/s 147, whr the subject matter of revision is different from the subject matter of reassessment u/s 147?	The court held that, period of limitation in respect of the order of comm. u/s 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 u/s 143 (3)** & NOT from the date of reassessment order u/s 147.	CIT V. **ICICI Bank Ltd.** (2012) 343 ITR 74 (Bom.)
103	Can an assessee file a revision petition u/s 264, if the revised return to correct an inadvertent error apparent from record in the original return, is filed after the time limit specified u/s 139(5) on account of the error carrying to the notice of the assese after the specified time limit?	The high court directed the AO to consider the rectification application filed by the assese u/s 154 as a fresh application recd. on the date of service of this order & dispose of the rectification appl. on its own merits, without awaiting the result of the revision proceeding before the comm. of I/tax on remand, at the earliest.	**Sanchit Software & Solution Pvt. Ltd.** v. CIT (2012) 349 ITR 404 (Bom.)
104	Can an assesses make an additional/new claim before an appellate authority which was not claimed by the assesses in the ROI (though he was legally entitled to), otherwise then by way of filing a revised ROI?	The Bombay high court held that **additional/new grounds can be raised before the appellate authority** even otherwise than by way of filing ROI.	CIT V. **Pruthvi Brokers & Shareholders** (2012) 208 Taxman 498 (Bom.)
105	Does the Appellate Tribunal have the power to review or re-appreciate the correctness of its earlier decision u/s 254(2)?	The High Court held that **re-appreciation** of the correctness of its earlier decision on merit, which **is beyond the scope** of the power conferred **u/s 254(2)**.	CIT V. **Earnest Export Ltd** (2010) 323 ITR 577 (Bom.)
106	Can the Tribunal exercise its power of rectification u/s 254(2) to recall its order in entirety?	The Tribunal does NOT have inherent power to review its order on merit; it can recall its order for the purpose of correcting a mistake apparent from the records. While applying the decision of Apex court in case of Honda Siel Power Products Ltd. in this case the high court held that the **tribunal**, while exercising the power of rectification u/s 254(2), **can recall its order in entirety** if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake or error and error committed is apparent.	**Lachman Dass Bhatia Hing Wala (P) Ltd.** V. ACIT (2011) 330 ITR 243 (Delhi) [FB]
107	Does the High court have an inherent power under the Income Tax act, 1961 to review an earlier order passed on merit?	The Power of re-admission/restoration of the appeal is always enjoyed by the High court. However, such power to restore the appeal **CANNOT** be treated to be a power to **review** the earlier order passed on Merit.	**Deepak Kumar Garg** V. CIT (2010) 327 ITR 448 (MP)

PENALTIES			
108	Can an assessee who has surrendered his income in response to the specific information sought by the Assessing Officer in the course of survey, be absolved from the penal provisions under section 271(1)(c) for concealment of income?	The Apex Court was of the view that surrender of income in this case is not voluntary, in the sense that the offer of surrender was made in view of detection made by the Assessing Officer in the survey conducted in the sister concern of the assessee. The Apex Court, therefore, concurred with the view of the High Court that levy of penalty is correct in law.	**MAK Data P. Ltd.** v. CIT (2013) 358 ITR 593 (SC)
109	Can the repayment of loan by passing mere adjusting book entries by the assessee be taken to be in contravention of prov. of sec. 269T to attract penalty u/s 271E?	Since the tranx is bonafide in nature being a normal biz. Tranx & has NOT been made with a view to avoid tax, it was held that assesses has shown reasonable cause for the failure u/s 269T, & therefore, as per the prov. of sec. 273B, **NO penalty u/s 271E could be imposed** on the assessee for contravening the prov. of sec. 29T.	CIT V. **Triumph International Finance (I) Ltd.** (2012) 345 ITR 270 (Bom.)
110	Would making an incorrect claim in the ROI per se amt. to concealment of particular of income or furnished inaccurate particulars for attracting the penal prov. u/s 271(1)(c), when no info. Given in ROI is found to be incorrect?	The Apex court held that a **mere making of a claim**, which is NOT sustainable in law, by itself, **will NOT amt.** to **furnishing inaccurate particulars** reg. the income of assesses.	CIT V. **Reliance Petro Product (P) Ltd** (2010) 322 ITR 158 (SC)
111	Can reporting of income under a different head be considered as tantamount to furnishing of inaccurate particular or suppression of facts to attract penalty u/s 271(1)(C)?	The high court in light of case of SC in CIT v. Reliance Petro Product Pvt. Ltd. (2010), held that mere reporting of income under a different head would not characterize the particular reported as "inaccurate" to attract levy of penalty u/s 271(1)(C).	CIT v. **Amit Jain** (2013) 351 ITR 74 (Delhi)
112	Can penalty u/s 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 SC?	The Bombay high court affirmed the decision of appellate tribunal deleting the penalty u/s 271(1)(C) on the ground that the additions made on account of disallowance were neither due to the failure on the part of the assesse to furnish accurate particulars nor on account of furnishing inaccurate particulars.	CIT **v. Celetronix Power India Pvt. Ltd.** (2013) 352 ITR 70 (Bom.)
113	Can penalty u/s 271(1) (c) for concealment of income be imposed in a case where the assesses has raised a debatable issue?	On the issue, the high court observed that, mere raising of a debatable issue would NOT amount to concealment of income or furnishing inaccurate particulars and therefore, **penalty u/s 271(1) (c) CANNOT be imposed**.	**Indersons Leather (P) Ltd.** V. CIT (2010) 328 ITR 167 (P&H)
114	Can the penalty u/s 271(1)(c) be imposed whr the assessment is made by estimating the net profit at a higher % applying the prov. Of sec. 145?	The High court held that in order to impose penalty thr has to be concealment of particular of income of assesses or the assesses must have furnished inaccurate particulars of his income. Here assesses **CANNOT be held guilty** of furnishing particulars.	CIT V. **Vijay Kumar Jain** (2010) 325 ITR 378 (Chhattisgarh)
OFFENCES & PROSECUTION			
115	Would prosecution proceeding u/s 276CC be attracted whr the failure to furnish return in time was not willful?	In this case, it was observed that thr were sufficient grounds for delay in filling the ROI & such delay was NOT willful. Therefore, prosecution proceeding **u/s 276CC are NOT attracted** in such a case.	UOI V. **Bhavecha Machinery & others** (2010) 320 ITR 263 (MP)
MISC. PROSECUTIONS			
116	Can loan, exceeding the specified limit, advanced by a partnership firm to the sole-proprietorship concern of its partner be viewed as a violation of section 269SS to attract levy of penalty?	The High Court, relying upon the various court decisions, upheld the decision of the Tribunal holding that there is no separate identity for the partnership firm and that the partner is entitled to use the funds of the firm. In the present case, the assessee has acted bona fide and that there was a reasonable cause within the meaning of section 273B. Therefore, the **transaction cannot** be said to be in **violation of section 269SS** and no penalty is attracted in this case.	CIT v. V. **Sivakumar** (2013) 354 ITR 9 (Mad.)
TDS			
117	Do the tips collected by hotel & disbursed to employee constitute salary to attract TDS u/s 192?	The High court held that when tips were charged to the bill & was subseq. Disbursed to the employees, then tips would constitute income within the meaning of sec. 2(24) & it was obligatory upon the **co. to deduct TDS** from such payments **u/s 192**.	CIT (TDS) V. **ITC Ltd** (2011) 338 ITR 598 (Del.)

118	Where the assessee fails to deduct tax at source under section 194B in respect of the winnings, which are wholly in kind, can he be deemed as an assessee-in- default under section 201?	The High Court observed that if the assessee fails to ensure that tax is paid before the winnings are released in favour of the winner, then, section 271C empowers the Joint Commissioner to levy penalty equivalent to the amount of tax not paid, and under section 276B, such non-payment of tax is an offence attracting rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine. However, the High Court held that **proceedings** under section 201 **cannot be initiated** against the assessee.	CIT v. **Hindustan Lever Ltd.** (2014) 361 ITR 0001 (Kar.)
119	Can the transmission, wheeling and SLDC charges paid by a company engaged in distribution and supply of electricity, under a service contract, to the transmission company be treated as fees for technical services so as to attract TDS provisions under section 194J or in the alternative, under 194C?	The AAR, considering the definition of fees for technical services under section 9(1)(vii) and the process involved in proper transmission of electrical energy, held that transmission and wheeling charges paid by the applicant to the transmission company are in the nature of fees for technical services, in respect of which the applicant has to withhold tax thereon under section 194J. And further SLDC charges were not in the nature of technical service to the applicant; Resultantly, it does not attract TDS provisions under section 194J or under section 194C.	**Ajmer Vidyut Vitran Nigam Ltd.**, In re (2013) 353 ITR 640 (AAR)
120	Can discount given to stamp vendor on purchase of stamp papers be treated as "commission or brokerage" to attract the prov. for TDS u/s 194H?	The SC that the given trnx is a sale & the discount given to stamp vendors for purchasing stamp in bulk Qty is in the nature of cash discount & consequently **sec. 194H has no application** in this case.	CIT v. **Ahmedabad stamp vendors association** (2012) 348 ITR 378 (SC)
121	Can discount given on supply of SIM cards and pre-paid cards by a telecom company to its franchisee be treated as commission to attract the TDS provisions under section 194H?	The High Court held that there is an indirect payment of commission, in the form of discount, by the assessee-telecom company to the franchisee. Therefore, the **assessee is liable to deduct TDS** on such commission as per the provisions of section 194H.	**Bharti Cellular Ltd.** v. ACIT (2013) 354 ITR 507 (Cal.)
122	Are TDS provisions under section 194H attracted in a case where an assessee, a dairy, makes an outright sale of milk to its concessionaires at a certain price (which is lower than the MRP fixed by the assessee-dairy) and the concessionaires make full payment for the purchases on delivery and bear all the risks of loss, damage, pilferage and wastage?	The High Court held that the difference between the purchase price (price paid to the Dairy) and the MRP is the concessionaire's income from business and **cannot be categorized as commission** to attract the provisions of section 194H.	CIT v. **Mother Dairy India Ltd.** (2013) 358 ITR 218 (Delhi)
123	Can difference betw. Published Price & Minimum fixed commercial price be treated as additional special commission in the hands of the agents of an airline co. to attract TDS provision u/s 194H?	The High court held that **TDS was NOT deductible on the difference** betw. the actual sale price & the minimum fixed commercial price, even though the amount earned by the agent over & above minimum fixed commercial price would be taxable as income in his hand.	**Qatar Airways** V. CIT (2011) 332 ITR 253 (Bom.)
124	In respect of a co-owned property, would the threshold limit mentioned in sec. 194I for non-deduction of tax at source apply for each co-owner separately or it is to be considered for the complete amt. of rent paid to attract liability to deduct TDS?	Since payment of rent is made to each co-owner by way of separate cheque & their share is definite, the **threshold limit** mentioned, **in sec. 194I has to be seen separately for each co-owner**. Hence, the assesses would NOT be liable to deduct tax on the same & NO interest u/s 201 is leviable.	CIT V. **Senior Manager, SBI** (2012) 206 Taxman 607 (All.)
125	What is the nature of landing & parking charges paid by an airline co. to AAI & is TDS required thereof?	The landing & parking charges were definitely "Rent" within the meaning of the prov. Of **sec. 194I**, as they were payment for the use of the airport & **TDS was req. to deducted**.	CIT V. **Japan Airlines Co.** Ltd (2010) 325 ITR 298 (Del.)
126	Can the payment made to contractors for hiring dumpers by an assesses engaged in transportation of building material, be treated as Rent for M/C or equipment to attract TDS u/s 194I?	The High court observed that the assesses had given contract to the parties for the transportation of goods & had NOT taken M/C & equipment on rent. Such payment could NOT be termed as rent paid for the use of M/C & Prov. Of **sec. 194I** would, therefore, **NOT be applicable**.	CIT (TDS) V. **Shree Mahalaxmi Transport Co.** (2011) 339 ITR 484 (Guj.)
127	Are the provisions of section 234D levying interest on excess refund attracted in a case where the refund granted to the assessee in pursuance of the order of Commissioner (Appeals) was reversed on account of setting aside of such order by the Tribunal?	The High Court observed that interest under section 234D is chargeable only where the refund has been granted to the assessee while processing the return of income under section 143(1) and thereafter, such refund is found to be excessive under the regular assessment.	DIT (International Taxation) v. **Delta Air Lines Inc.** (2013) 358 ITR 0367 (Bom.)

128	Can refund of tax due to the assessee for a particular assessment year be adjusted, against sums due from the assessee in respect of another assessment year, under section 245, without giving prior intimation to the assessee of the proposed adjustment?	The Karnataka High Court, in this case, held that the communication informing the adjustment of refund, without prior intimation to the assessee, is illegal and contrary to law. Therefore, the High Court set aside the order in so far as it relates to adjustment of refund against tax due.	**Jeans Knit P. Ltd.** v. DCIT (2013) 358 ITR 0505 (Kar.)
	WEALTH TAX		
129	Is wealth tax leviable on the value of house under construction where the construction was still incomplete on the relevant valuation date?	Incomplete building neither falls within the definition of a "building", as contemplated u/s 2(ea) of WT Act nor within the purview of "urban land" as excluded by explanation 1(b). Hence, in such a case, the value of house under construction incl. investment on construction is NOT liable to wealth tax. Therefore, **land & incomplete building thereon is NOT an asset**.	**Smt. Neena Jain** V. CIT (2011) 330 ITR 157 (P&H)
130	Whether the Best judgment assessment order passed without giving the assesses an opportunity of being heard is valid in a case whr the notice u/s 16(4) has already been given?	It was held that second prov. to sec. 16(5) comes into operation & **NO further notice or opportunity** to be heard **is req**. to be given to the assesses.	CWT V. **Motor General Finance Ltd** (2011) 332 ITR 1 (Del.)

<u>Note</u>:

- ✓ Refer to Module of ICAI for more clarity, it's only meant for quick revision.
- ✓ Once counter check each case law's decision at your end too.
- ✓ There has been some amendment's in past six months in bare law, due to which there is NO relevance of few case laws narrated above. But such case laws have been considered in case law module of ICAI, so it has been added in summary also.
- ✓ Similarly wealth tax has also been abolished vide Finance Act, 2015 and is irrelevant for coming November, 2015 attempt.

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All d Best & Good-Luck 4 your exams…

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