DT Nov 17 Case law SUMMARY	
How to read this short note on Case Law?	
1	ICAI generally doesn't **ask the case law which are asked in earlier exams**, hence the case law which are cross marked shall be focused less.
2	All the case law are **in sequence of case law supplementary book** issued by ICAI for Nov 17 CA Final Exam.
3	It is **recommended to read case law supplementary book** issued by ICAI **along with these notes.** These notes should be reffered for revison purpose in exam days.
4	Case law which are **most important**, as per my estimate, **are highlighted in the notes** and it is recommended to focus more on them.
5	Case Law which are from RTP Nov 17 are marked as *
6	Case Law to be avoided as per Corrigendum for Nov 2017 is also being covered in this notes

Summary of ALL Case Laws including RTP Case Law on DT for Nov 2017 CA Final Attempt

No.	Matter	Parties & Court	Decision
	CH 01: BASIC CONCEPTS		
1.	Nature of liquidated damages received by a company from the supplier of plant for failure to supply machinery to the company within the stipulated time – a capital receipt or a revenue receipt?	CIT v. Saurashtra Cement Ltd. (2010 SC)	The SC affirmed the decision of the HC. Held that: "damages were directly and 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 the course of profit earning process. Therefore, the amount received by the assessee towards compensation for sterilization of the profit earning source, is not in the ordinary course of business, hence it is a capital receipt in the hands of the assessee.
2.	Can capital contribution of the individual partners credited to their accounts in the books of the firm be taxed as cash credit in the hands of the firm, where the partners have admitted their capital contribution but failed to explain satisfactorily the source of receipt in their individual hands?	CIT v. M. Venkateswara Rao (2015 T & AP) (May 2017 Exam)	The HC held that the view taken by the AO that the partnership firm has to explain the source of income of the partners as regards the amount contributed by them towards capital of the firm, in the absence of which the same would be treated as the income of the firm, was not tenable.
	CH 02: RESIDENTIAL STATUS & SCOPE OF INCOME		
1.	Can consideration for supply of software embedded in hardware tantamount to 'royalty' under section 9(1)(vi)?	CIT v. Alcatel Lucent Canada (2015 Delhi HC) (May 2017 Exam)	The HC concurred with the decision of the Tribunal holding that where payment is made for hardware in which the software is embedded and the software does not have independent functional existence, no amount could be attributed as 'royalty' for software in terms of section 9(1)(vi).
	CH 03: INCOMES NOT FORMING PART OF TOTAL INCOME		
1.	Where an institution engaged in imparting education incidentally makes profit, would it lead to an inference that it ceases to exist solely for educational purposes?	Queen's Educational Society v. CIT (2015 SC)	Based on the principles* and tests, the Apex Court upheld the Tribunal's view that the assessee was engaged in imparting education and the profit was only incidental to the main object of spreading education. Hence, it satisfies the conditions laid down in section 10(23C)(iiiad) for claim of exemption thereunder. * The SC, after analyzing the legal provisions and precedents, summed up the law common to section 10(23C)(iiiad)/(vi): (a) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit; (b) The predominant object test must be applied – the purpose of education should not be submerged by a profit making motive; (c) A distinction must be drawn between the making of surplus and an institution being carried on "for profit". Merely because imparting of education results in making a profit, it cannot be inferred that it becomes an activity for profit (d) If after meeting expenditure, surplus arises incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes; and (e) The ultimate test is whether on an overall view of the matter in the concerned assessment year, the object is to make profit as opposed to educating persons.
2	Whether section 14A is applicable in respect of deductions, which are permissible and allowed under Chapter VI-A?	CIT v. Kribhco (2012) (Delhi)	The Delhi High Court held that no disallowance can be made under section 14A in respect of income included in total income in respect of which deduction is allowable under section 80C to 80U.
3*.	**In a case where the charitable trust is deemed to be registered under section 12A due to non- disposal of application within the period of 6 months, as stipulated under section 12AA(2), from when would such deemed registration take effect?**	**CIT v. Society for the Promotion of Education (2016 - SC)** **(RTP Nov 17)**	**The Apex Court clarified that deemed registration would commence only after 6 months from the date of application. Therefore, the registration of the application under section 12AA of the Income-tax Act, in the case of the assessee trust shall take effect from August 24, 2003.** **In Society for the Promotion of Education's case, the Supreme Court has decided that the deemed registration would be effective only after six months from the date of application, in the sense, that it would not have retrospective application. The Supreme Court ruling assumes significance in the current context, since it affirms that nonconsideration of application within the time period of six months from the end of the month in which application is received would tantamount to deemed registration.** **However, in the light of the current provisions of section 12A(2), the exemption provisions of sections 11 and 12 would apply in relation to the income of the trust from the assessment year immediately following the financial year in which such application is made, even though the effective date of deemed registration would be after expiry of the six month period as per the above Supreme Court ruling. Consequent to the above Supreme Court judgement affirming the Allahabad High Court ruling in Society for the Promotion of Education's case.**

Summary of ALL Case Laws including RTP Case Law on DT for Nov 2017 CA Final Attempt			
No.	**Matter**	**Parties & Court**	**Decision**
4.	Where a charitable trust applied for issuance of registration under section 12A 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?	DIT v. Meenakshi Amma Endowment Trust (2013) (Kar.)	The High Court observed that, with the money available with the trust, it cannot be expected to carry out activity of charity immediately. Consequently, in such a case, it cannot be concluded that the trust has not intended to do any activity of charity. In such a situation, the objects of the trust as mentioned in the trust deed have to be taken into consideration by the authorities for satisfying themselves about the genuineness of the trust and not the activities carried on by it. 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 withdraw the registration granted or cancel the registration as per the provisions of section 12AA(3).
5.	In a case where properties bequeathed to a trust could not be transferred to it due to ongoing court litigation and pendency of probate proceedings, can violation of the provisions of section 11(5) be attracted?	DIT (Exemption) v. Khetri Trust (2014) (Delhi HC)	Based on the factual findings, elucidated and affirmed by the CIT (Appeals) and the Tribunal, the HC held that there was no violation of section 11(5) in this case.
6.	Is the approval of Civil Court mandatory for amendment of trust deed, even in a case where the settler has given power to the trustees to alter the trust deed?	DIT (Exemptions) v. Ramoji Foundation (2014 AP)	In this case, the HC held that the Tribunal has correctly dealt with the matter and the trust deed amended by the trustees can be relied upon by the Revenue authorities for the purpose of granting registration under section 12AA.
*	**Word imparting education/training in specialized field like communication, advertising etc. and awarding diplomas/certificates constitute an "educational purpose" for grant of exemption under section 10(23C)(vi)?**	**CIT v. St. Peter's Educational Society (2016) (SC)**	**Applying the rationale of the Supreme Court ruling in Queen's Educational Society's case, the Apex Court, in this case, held that the institution is established for the sole purpose of imparting education in a specialized field. The Supreme Court, thus, allowed the petition and set aside the order of the Chief Commissioner of Income-tax refusing exemption under section 10(23C)(vi).**
CH 04: INCOME FROM SALARY			
1.	Can notional interest on security deposit given to the landlord in respect of residential premises taken on rent by the employer and provided to the employee, be included in the perquisite value of rent-free accommodation given to the employee?	CIT v. Shankar Krishnan (2012) (Bom.)	On appeal by the Revenue, the Bombay High Court held that the Assessing Officer is not right in adding the notional interest on the security deposit given by the employer to the landlord in valuing the perquisite of rent-free accomodation, since the perquisite value has to be computed as per Rule 3 and Rule 3 does not require addition of such notional interest. Thus, the perquisite value of the residential accommodation provided by the employer would be the actual amount of lease rental paid or payable by the employer, since the same was lower than 10% (now 15%) of salary.
2.	Can the limit of INR 1,000 per month per child be allowed as standard deduction, while computing the perquisite value of free or concessional education facility provided to the employee by the employer?	CIT (TDS) v. Director, Delhi Public School (2011) (Punj. & Har.)	The Punjab and Haryana High Court held that on a plain reading of Rule 3(5), it flows that, in case the value of perquisite for free/concessional educational facility arising to an employee exceeds ` 1,000 per month per child, the whole perquisite shall be taxable in the hands of the employee and no standard deduction of INR 1,000 per month per child can be provided from the same. It is only in case the perquisite value is less than INR 1,000 per month per child, the perquisite value shall be nil. Therefore, INR 1,000 per month per child is not a standard deduction to be provided while calculating such a perquisite.
CH 05: INCOME FROM HP			
1.	Would income from letting out of properties by a company, whose main object as per its memorandum of association is to acquire and let out properties, be taxable as its business income, or as income from house property, considering the fact that the entire income of the company as per its return of income was only from letting out of properties?	Chennai Properties and Investments Ltd. v. CIT (2015) (SC)	The Supreme Court opined that the judgment in Karanpura Development Co. Ltd.'s case squarely applied to the facts of the present case, where letting of the properties is in fact the business of the assessee. The main objective of the company as per its memorandum of association is to acquire and hold properties in Chennai and let out these properties. Therefore, holding of the properties and earning income by letting out these properties is the main objective of the company. Further, in the return of income filed by the company and accepted by the AO, the entire income of the company comprised of income from letting out of such properties. The Supreme Court, accordingly, held that the assessee had rightly disclosed the income derived from letting out of such properties under the head "Profits and gains of business or profession".
2.	Whether the rental income derived from the unsold flats which are shown as stockin- 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?	New Delhi Hotels Ltd. v. ACIT (2014 Delhi HC]	In this case, the Delhi HC 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". Note – In effect, irrespective of whether it is the deemed rent or actual rent which forms the basis of computing income from unsold flats held as stock-in-trade, the head under which the income is taxable would be "Income from house property".
3.	Under what head of income should income from letting out of godowns and provision of warehousing services be subject to tax - "Income from house property" or "profits and gains of business or profession"?	CIT v. NDR Warehousing P Ltd (2015 Madras HC)	The HC observed that the CIT (Appeals) as well as the Tribunal had not only gone into the objects clause of the memorandum of the assessee but also individual aspects of the business to come to the conclusion that it was a case of warehousing business, and, therefore, the income would fall under the head "Profits and gains of business or profession". Accordingly, the High Court held that the income earned by the assessee from letting out of godowns and provision of warehousing services is chargeable to tax under the head "Profits and gains of business or profession" and not under the head "Income from house property".

No.	Matter	Parties & Court	Decision
	Summary of ALL Case Laws including RTP Case Law on DT for Nov 2017 CA Final Attempt		
4.	Can benefit of self-occupation of house property under section 23(2) be denied to a HUF on the ground that it, being a fictional entity, cannot occupy a house property?	CIT v. Hariprasad Bhojnagarwala (2012) (Guj.)	The Gujarat High Court observed that a firm, which is a fictional entity, cannot physically reside in a house property and therefore a firm cannot claim the benefit of this provision, which is available to an individual owner who can actually occupy the house. However, the HUF is a group of individuals related to each other i.e., a family comprising of a group of natural persons. The said family can reside in the house, which belongs to the HUF. Since a HUF cannot consist of artificial persons, it cannot be said to be a fictional entity. Also, it was observed that since singular includes plural, the word "owner" would include "owners" and the words "his own" used in section 23(2) would include "their own". Therefore, the Court held that the HUF is entitled to claim benefit of self-occupation of house property under section 23(2).
5.	Can notional interest on interest-free deposit received by an assessee in respect of a shop let out on rent be brought to tax as business income or income from house property?	CIT v. Asian Hotels Ltd. (2010) (Del.)	The High Court observed that section 28(iv) is concerned with business income and brings to tax the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession. Section 28(iv) can be invoked only where the benefit or amenity or perquisite is otherwise than by way of cash. In the instant case, the Assessing Officer has determined the monetary value of the benefit stated to have accrued to the assessee by adding a sum that constituted 18% simple interest on the deposit. Hence, section 28(iv) is not applicable. Section 23(1) deals with the determination of the expected rent of a let out property for computing the income from house property. It provides that the expected rent is deemed to be the sum for which the property might reasonably be expected to be let out from year to year. This contemplates the possible rent that the property might fetch and certainly not the interest on fixed deposit that may be placed by the tenant with the landlord in connection with the letting out of such property. Thus, the notional interest is neither assessable as business income nor as income from house property.
	CH 06: PROFIT AND GAINS OF BUSINESS & PROFESSION		
1.	Under which head of income is franchise fee received by an assessee in tourism business, against special rights given to franchisees to undertake hotel business in assessee's property, taxable?	Tamil Nadu Tourism Dev Corpn Ltd v. Dy. CIT (2014 Madras HC)	The HC held that the income earned by the assessee by way of franchisee fee is in the nature of business income and not income from house property
2.	When would the interest income earned on share application money deposited with a bank for a specified period in accordance with the statutory requirement become taxable?	CIT v. Henkel Spic India Ltd (2015 - SC)	The HC noted that the company is required to keep the money in a bank account which yields interest. The interest so earned cannot be regarded as amount which is fully available to the assessee for its own use, since it has accrued on a fund which was held in trust until the allotment of shares gets completed and/or money is returned. The HC also observed that no part of this fund (principal & interest), can be utilized by the company until the allotment process is completed. When the amount is repaid in cases of non-allotment of shares, it has to be repaid with such interest as may be prescribed. It is only after the allotment process is completed and all moneys which are refundable are refunded with interest, wherever interest becomes payable, the balance remaining application money can be regarded as belonging to the company. The SC, upheld the decision of the HC holding that the interest income accrues to the company only in the assessment year in which the allotment is completed.
3.	Is interest income on margin money deposited with bank for obtaining bank guarantee to carry on business, taxable as business income?	CIT v. K and Co. (2014) (Del)	The High Court held that the interest income received on funds kept as margin money for obtaining the bank guarantee would be taxable under the head "Profits and gains of business or profession".
4.	Is the expenditure on replacement of dies and moulds, being parts of plant and machinery, deductible as current repairs?	CIT v. TVS Motors Ltd (2014) (Mad)	The High Court held that "moulds & dies" are not independent of plant and machinery but are parts of plant and machinery. Once the dies are worn out, they had to be replaced so that the machine can produce the product according to business specifications. Thus, the expenditure incurred by the assessee towards replacement of parts of machinery to ensure its performance without bringing any new asset or advantage, is eligible for deduction as 'current repairs' under section 31.
5.	Can depreciation on leased vehicles be denied to the lessor on the ground that the vehicles are registered in the name of the lessee and that the lessor is not the actual user of the vehicles?	I.C.D.S. Ltd. v. CIT (2013) (SC)	The Supreme Court held that assessee was entitled to claim depreciation in respect of vehicles leased out since it has satisfied both the requirements of section 32, namely, ownership of the vehicles and its usage in the course of business.
6.	What is the eligible rate of depreciation in respect of computer accessories and peripherals under the Income-tax Act, 1961?	CIT v. BSES Yamuna Powers Ltd (2013) (Delhi) (Nov 16 Exam)	The High Court observed that computer accessories and peripherals such as printers, scanners and server etc. form an integral part of the computer system and they cannot be used without the computer. Consequently, 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.
7	Can business contracts, business information, etc., acquired by the assessee as part of the slump sale and described as 'goodwill', be classified as an intangible asset to be entitled for depreciation under section 32(1)(ii)?	Areva T and D India Ltd. v. DCIT (2012) (Delhi)	The High Court held that the specified intangible assets acquired under the slump sale agreement by the assessee are in the nature of intangible asset under the category "other business or commercial rights of similar nature" specified in section 32(1)(ii) and are accordingly eligible for depreciation under section 32(1)(ii).

Summary of ALL Case Laws including RTP Case Law on DT for Nov 2017 CA Final Attempt			
No.	**Matter**	**Parties & Court**	**Decision**
8	Is the assessee entitled to depreciation on the value of goodwill considering it as an asset within the meaning of Explanation 3(b) to Section 32(1)?	CIT v. Smifs Securities Ltd. (2012) (SC)	A reading of the words 'any other business or commercial rights of similar nature' in Explanation 3(b) indicates that goodwill would fall under the said expression. In the process of amalgamation, the amalgamated company had acquired a capital right in the form of goodwill because of which the market worth of the amalgamated company stood increased. Therefore, it was held that 'Goodwill' is an asset under Explanation 3(b) to section 32(1) and depreciation thereon is allowable under the said section.
9	Can EPABX and mobile phones be treated as computers to be entitled to higher depreciation at 60%?	Federal Bank Ltd. v. ACIT (2011) (Kerala) (Nov 16 Exam)	The High Court held that the rate of depreciation of 60% is available to computers and there is no ground to treat the communication equipment as computers. Hence, EPABX and mobile phones are not computers and therefore, are not entitled to higher depreciation at 60%.
10	Would beneficial ownership of assets suffice for claim of depreciation on such assets?	CIT v. Smt. A. Sivakami and Another (2010) (Mad.)	Since the assessee has made available all the documents relating to the business and also established before the authorities that she is the beneficial owner, the High Court held that she was entitled to claim depreciation even though she was not the legal owner of the buses.
11	Can employees contribution to Provident Fund and Employee's State Insurance be allowed as deduction where the assessee-employer had not remitted the same on or before the "due date" under the relevant Act but remitted the same on or before the due date for filing of return of income under section 139(1)?	CIT v. Gujarat State Road Transport Corp. (2014 Gujarat HC) (May 2016 Exam)	The High Court held that the delayed remittance of employees' contribution beyond the 'due date' prescribed in section 36(1)(va), is not deductible while computing the business income, even though such remittance has been made before the due date of filing of return of income under section 139(1). **Note:** A contrary view was expressed by Uttrakhand High Court in the case of CIT v. Kichha Sugar Co. Ltd. (2013) 356 ITR 351 holding 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 relevant previous year.
12.	Can compensation paid by the assessee-company to its tenants for vacating the premises in order to earn higher rent by re-letting out the same, be allowed as revenue expenditure incurred for the business, if the main object of the assessee-company as per its Memorandum of Association is to acquire and develop properties and to deal with the same by way of sale, lease, letting out etc.?	Shyam Burlap Co Ltd v. CIT (2016 - Calcutta HC)	The High Court held that when income from letting out of premises is treated as income from business based on the facts and circumstances of the case and the rationale of the Supreme Court ruling in Chennai Properties' case, the compensation paid to tenants for vacating the premises to facilitate the assessee to derive higher rent by re-letting out the premises, is deductible as revenue expenditure.
13.	Can interest paid upfront to the debenture holders be allowed as deduction in the first year itself or should the same be spread over the life of the debentures, being five years in this case, when such interest is shown as deferred revenue expenditure in the books of account?	Taparia Tools Ltd v. Joint CIT (2015 - SC) (May 2016 Exam)	The SC observed that while examining the allowability of deduction, the Assessing Officer has to consider the genuineness of borrowing. Under section 36(1)(iii), any amount paid on account of interest is an admissible deduction, if the capital was borrowed by the assessee and the borrowing was for the purpose of business or profession. The SC opined that once the genuineness was proved and the conditions of section 36(1)(iii) read with section 43(2) were satisfied, the benefit of deduction in the year in which the amount of interest was actually paid or incurred cannot be denied.The SC also noted that there is no concept of deferred revenue expenditure in the Income-tax Act, 1961 except under specified sections such as section 35D meant for amortization over a period of time. The SC, accordingly, held that the assessee would be entitled to deduction of the entire upfront interest paid in the same year in which the amount was actually paid.
14.	Is expenditure incurred for construction of transmission lines by the assessee for supply of power to UPPCL by the assessee deductible as revenue expenditure?	Addtl. CIT v. Dharmpur Sugar Mill (P) Ltd (2015 Allahabad HC)	Following the principle of law laid down by the Supreme Court in Empire Jute Mills' case, the Allahabad High Court, in this case, held that the expenditure which was incurred by the assessee in the laying of transmission lines was clearly on the revenue account. The transmission lines, upon erection, vested absolutely in UPPCL. The expenditure which was incurred by the assessee was for aiding efficient conduct of its business since the assessee had to supply electricity to its sole consumer UPPCL. This was not an advantage of a capital nature.
15.	Where the assessee-company came into existence on bifurcation of a Joint Venture Company (JVC), can the amount paid by it to the JVC for use of customer database and transfer of trained personnel be claimed as revenue expenditure?	CIT v. IBM Global Services India P Ltd (2014 Karnataka HC)	The HC observed that the expenditure incurred for use of customer database did not result in acquisition of any capital asset. The assessee got the right to use the database and the company which provided the database was not precluded from using such database. Therefore, the expenditure incurred was for use of data base and not for acquisition of such data base and, hence, is deductible as revenue expenditure. As regards payment for obtaining trained and skilled employees, it was held that the joint venture company spent a lot of money to give training to employees who were transferred to the assessee-company. They were trained in the field of software. They have opted for employment with the assessee, and for their past services with the joint venture company, expenditure has been incurred. In effect, the payment made by the assessee-company was towards expenditure incurred for their training and recruitment. Such expenditure was in the revenue field, and therefore, the payment made by the assessee-company as per agreement to save such expenditure was also revenue in nature. Therefore, the expenditure incurred for obtaining trained and skilled employees cannot be termed as capital expenditure though the benefit may be of enduring nature. The HC, thus, held that both the expenditures claimed were allowable as revenue expenditure.

Summary of ALL Case Laws including RTP Case Law on DT for Nov 2017 CA Final Attempt			
No.	**Matter**	**Parties & Court**	**Decision**
16.	What is the nature of expenditure incurred on glow-sign boards displayed at dealer outlets - capital or revenue?	CIT v. Orient Ceramics and Industries Ltd. (2013) (Delhi)	The Delhi High Court held that such expenditure on glow sign boards displayed at dealer outlets was revenue in nature.
17	Would the expenditure incurred on issue and collection of convertible debentures be treated as revenue expenditure or capital expenditure?	CIT v. ITC Hotels Ltd. (2011) (Kar.)	The Karnataka High Court held that the expenditure incurred on the issue and collection of debentures shall be treated as revenue expenditure even in case of convertible debentures, i.e., the debentures which had to be converted into shares at a later date.
18	Would expenditure incurred on feasibility study conducted for examining proposals for technological advancement relating to the existing business be classified as a revenue expenditure, where the project was abandoned without creating a new asset?	CIT v. Priya Village Roadshows Ltd. (2011) (Delhi) (May 2017 Exam)	The High Court held that, since the feasibility studies were conducted by the assessee for the existing business with a common administration and common fund and the studies were abandoned without creating a new asset, the expenses were of revenue nature.
19	Can expenditure incurred on alteration of a dam to ensure adequate supply of water for the smelter plant owned by the assessee be allowed as revenue expenditure?	CIT v. Hindustan Zinc Ltd. (2010) (Raj.)	The High Court observed that the expenditure incurred by the assessee for commercial expediency relates to carrying on of business. The expenditure is of such nature which a prudent businessman may incur for the purpose of his business. The operational expenses incurred by the assessee solely intended for the furtherance of the enterprise can by no means be treated as expenditure of capital nature.
20	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?	Confederation of Indian Pharmaceutical Industry (SSI) v. CBDT (2013) (H.P.)	The High Court opined that the contention of the assessee that the above mentioned Circular goes beyond section 37(1) was not acceptable. As per Explanation to section 37(1), it is clear that any expenditure incurred by an assessee for any purpose which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession. The sum and substance of the circular is also the same. Therefore, the circular is totally in line with the Explanation to section 37(1). However, 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 that the expense is not in violation of the Medical Council Regulations.
21	Can the commission paid to doctors by a diagnostic centre for referring patients for diagnosis be allowed as a business expenditure under section 37 or would it be treated as illegal and against public policy to attract disallowance?	CIT v. Kap Scan and Diagnostic Centre P. Ltd. (2012) (P&H)	The demanding as well as paying of such commission is bad in law. It is not a fair practice and is opposed to public policy and should be discouraged. Thus, the High Court held that commission paid to doctors for referring patients for diagnosis is not allowable as a business expenditure.
22	Can expenditure incurred by a company on higher studies of the director's son abroad be claimed as business expenditure under section 37 on the contention that he was appointed as a trainee in the company under "apprentice training scheme", where there was no proof of existence of such scheme?	Echjay Forgings Ltd. v. ACIT (2010) (Bom.) (May 2016 Exam)	The High Court held that there was no nexus between the education expenditure incurred abroad for the director's son and the business of the assessee company. Therefore, the aforesaid expenditure was not deductible.
23	Can the expenditure incurred on heart surgery of an assessee, being a lawyer by profession, be allowed as business expenditure under section 31, by treating it as current repairs considering heart as plant and machinery, or under section 37, by treating it as expenditure incurred wholly and exclusively for the purpose of business or profession?	Shanti Bhushan v. CIT (2011) (Delhi)	There is no direct nexus between the expenses incurred by the assessee on the heart surgery and his efficiency in the professional field. Therefore, the claim for allowing the said expenditure under section 37 is also not tenable. Hence, the heart surgery expenses shall not be allowed as a business expenditure of the assessee under the Income-tax Act, 1961.
24	Can payment to police personnel and gundas to keep away from the cinema theatres run by the assessee be allowed as deduction?	CIT v. Neelavathi & Others (2010) (Karn)	If the assessee had incurred expenditure for the purpose of security, the same would have been allowed as deduction. However, in the instant case, since the payment has been made to the police and gundas to keep them away from the business premises, such a payment is illegal and hence, not allowable as deduction.
25	Is the amount paid by a construction company as regularization fee for violating building bye-laws allowable as deduction?	Millennia Developers (P) Ltd. v. DCIT (2010) (Karn.)	The High Court observed that as per the provisions of the Karnataka Municipal Corporations Act, 1976, the amount paid to compound an offence is obviously a penalty and hence, does not qualify for deduction under section 37. Merely describing the payment as a compounding fee would not alter the character of the payment.
26	Can remuneration paid to working partners as per the partnership deed be considered as unreasonable and excessive for attracting disallowance under section 40A(2)(a) even though the same is within the statutory limit prescribed under section 40(b)(v)?	CIT v. Great City Manufacturing Co. (2013) (All) (Nov 15 Exam)	The Allahabad High Court, therefore, held that the question of disallowance of remuneration under section 40A(2)(a) does not arise in this case, since the Tribunal has found that all the three conditions mentioned above have been satisfied. Hence, the remuneration paid to working partners within the limits specified under section 40(b)(v) cannot be disallowed by invoking the provisions of section 40A(2)(a).

Summary of ALL Case Laws including RTP Case Law on DT for Nov 2017 CA Final Attempt			
No.	**Matter**	**Parties & Court**	**Decision**
27.	Where the lump sum amount paid as One Time Settlement (OTS), without bifurcation of interest and principal, has been offered to tax under section 41(1), can the assesseee claim benefit of deduction of interest (interest paid plus interest waived) under section 43B?	CIT v. KLN Agrotechs (P) Ltd (2015 Kar. HC)	The High Court concurred with the Tribunal's view that if out of the total sum of INR 256.54 lakhs which has been offered and subjected to tax by the assessee in its return, the amount of unpaid interest of INR 193.96 lakhs is deducted then the waived principal sum would come to 62.58 lakhs (i.e., INR 441.30 lakhs minus 378.72 lakhs), which is the amount which ought to have been taxed under section 41(1). Based on the above reasoning, the HC held that either the interest amount has to be allowed as deduction under section 43B or the sum offered for tax (as waived by the bank) has to be reduced by the amount of interest. In either case, the effective amount which is subjected to tax, would come to the same.
28	Can unpaid electricity charges be treated as "fees" to attract disallowance under section 43B?	CIT v. Andhra Ferro Alloys P. Ltd. (2012) (A.P)	The Andhra Pradesh High Court observed that the provisions of section 43B do not incorporate electricity charges. Therefore, nonpayment of electricity charges would not attract disallowance under section 43B since such charges cannot be termed as "fees".
*	**Would rental income from the business of leasing out properties be taxable under the head "Income from house property" or "Profits and gains from business or profession"?**	**Rayala Corporation (P) Ltd. v. Asstt. CIT (2016) (SC)** **(RTP Nov 17)**	**The Apex Court held that since the business of the company is to lease out its property and earn rent therefrom, the rental income earned by the company is chargeable to tax as its business income and not income from house property.**
*	**In a case where payment of bonus due to employees is paid to a trust and such amount is subsequently paid to the employees before the stipulated due date, would the same be allowable under section 36(1)(ii) while computing business income?**	**Shasun Chemicals & Drugs Ltd v. CIT (2016 - SC)** **(RTP Nov 2017)**	**The Apex Court held that section 36(1) contains various kinds of expenses which are allowable as deduction while computing the business income. The amount paid by way of bonus is one such expenditure which is allowable as deduction under section 36(1)(ii).** **It also held that the embargo contained in section 43B(b) or section 40A(9) does not come in the way of the assessee's claim, since the bonus was ultimately paid to the employees before the due date as per the statutory requirement. Therefore, the payment in respect of bonus is allowable as deduction, as there is no dispute that the amount was paid by the assessee to its employees before the due date by which such payment is supposed to be made in order to claim deduction under section 36(1)(ii).** **Note: In this case, the Supreme Court has held that the bonus was allowable as deduction under section 36(1)(ii), even though it was initially remitted to the trust created for this purpose, from which the payment was ultimately made to the employees before the due date.** **The Supreme Court has applied the concept of "substance over form" in allowing the deduction of bonus paid under section 36(1)(ii) by considering that the payment of bonus was ultimately made to employees before the stipulated due date. Applying the same concept, the intermittent process of creation of trust for remittance of bonus and subsequent payment therefrom to the employees, which formed the basis of disallowance of bonus by the Assessing Officer on the basis of the provisions of section 40A(9) has been ignored. However, had the payment to employees not been made before the stipulated due date, deduction under section 36(1)(ii) would not be allowable merely because the amount was remitted to the trust before the stipulated due date. It may be noted that as date of filing of return of income under section 139(1) is a pre-requisite for claiming deduction under section 36(1)(ii).**
CH 07. CAPITAL GAINS			
1.	Whether, for the purpose of computing the period of holding of the property, the date of allotment letter issued by the builder of the flat or the date of registration of the property has to be considered for determining the nature of capital asset – long-term or short-term?	CIT v. S.R. Jeyashankar (2015 Madras HC)	In effect, the P&H HC (in a similar case) held that the allottee gets the title to the property on issuance of allotment letter and payment in installments is only a consequential act upon which delivery of possession to the property flows. The Madras HC also noted that the Punjab & Haryana HC had taken a similar view in Vinod Kumar Jain's case Accordingly, the Madras HC held that the assessee had rightly claimed the benefit of long-term capital gain, since the holding period exceeded 36 months (i.e., from 22.02.2005, being the date of agreement, to 10.04.2008, being the date of sale of property).
2	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?	CIT v. Smt. Rama Rani Kalia (2013) (All.)	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.
3	In determining the period of holding of a capital asset received by a partner on dissolution of firm, can the period of holding of the capital asset by the firm be taken into account?	P. P. Menon v. CIT (2010) (Ker.)	The High Court held that the benefit of including the period of holding of the previous owner under section 2(42A) read with section 49(1)(iii)(b) can be availed only if the dissolution of the firm had taken place at any time before April 1, 1987. In this case, the firm was dissolved on April 15, 2001 and therefore the benefit of these sections would not be available to the assessee. Therefore, in this case, the period of holding of the asset received by the assesseepartner on dissolution of the firm has to be reckoned only from the date of dissolution of the firm. Since the assessee-partner has sold the property within three days of acquiring the same, the gains have to be treated as short-term capital gain.

Summary of ALL Case Laws including RTP Case Law on DT for Nov 2017 CA Final Attempt			
No.	**Matter**	**Parties & Court**	**Decision**
4	What would be the period of holding to determine whether the capital gains on renunciation of right to subscribe for additional shares is short-term or long-term?	Navin Jindal v. ACIT (2010) (SC)	For determining whether the capital gains on renunciation of right to subscribe for additional shares is short-term or long-term, the period of holding would be from the date on which such right to subscribe for additional shares comes into existence upto the date of renunciation of such right.
5	Whether indexation benefit in respect of the gifted asset shall apply from the year in which the asset was first held by the assessee or from the year in which the same was first acquired by the previous owner?	CIT v. Manjula J. Shah (2013) (Bom.)	The indexed cost of acquisition in case of gifted asset has to be computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee became the owner of the asset.
6	Where a building, comprising of several floors, has been developed and reconstructed, 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)?	CIT v. Gita Duggal (2013) (Delhi)	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
7	Would an assessee be entitled to exemption under section 54 in respect of purchase of two flats, adjacent to each other and having a common meeting point?	CIT v. Syed Ali Adil (2013) (A.P.)	The Andhra Pradesh High Court, on the basis of the above rulings of the Karnataka High Court, held that in this case, the assessee was entitled to investment in both the flats purchased by him, since they were adjacent to each other and had a common meeting point, thus, making it a single residential unit.
8	Can exemption under section 54B be denied solely on the ground that the new agricultural land purchased is not wholly owned by the assessee, as the assessee's son is a co-owner as per the sale deed?	CIT v. Gurnam Singh (2010) (P&H)	In this case, the High Court concurred with the Tribunal's view that merely because the assessee's son was shown in the sale deed as co-owner, it did not make any difference. It was not the case of the Revenue that the land in question was exclusively used by the son. Therefore, the assessee was entitled to deduction under section 54B.
9	Can exemption under section 54F be denied solely on the ground that the new residential house is purchased by the assessee exclusively in the name of his wife?	CIT v. Kamal Wahal (2013) (Delhi) (Nov 16 Exam)	The Delhi High Court, having regard to the rule of purposive construction and the object of enactment of section 54F, held that the assessee is entitled to claim exemption under section 54F in respect of utilization of sale proceeds of capital asset for investment in residential house property in the name of his wife.
10	In case of a house property registered in joint names, whether the exemption under section 54F can be allowed fully to the co-owner who has paid whole of the purchase consideration of the house property or will it be restricted to his share in the house property?	CIT v. Ravinder Kumar Arora (2012) (Delhi)	The Delhi High Court held that the assessee was the real owner of the residential house in question and mere inclusion of his wife's name in the sale deed would not make any difference. The High Court also observed that section 54F mandates that the house should be purchased by the assessee but it does not stipulate that the house should be purchased only in the name of the assessee. In this case, the house was purchased by the assessee in his name and his wife's name was also included additionally. Therefore, the conditions stipulated in section 54F stand fulfilled and the entire exemption claimed in respect of the purchase price of the house property shall be allowed to the assessee.
11	Can exemption under section 54F be denied to an assessee in respect of investment made in construction of a residential house, on the ground that the construction was not completed within three years after the date on which transfer took place, on account of pendency of certain finishing work like flooring, electrical fittings, fittings of door shutter, etc?	CIT v. Sambandam Udaykumar (2012) (Kar.)	The Court held that in this case the assessee would be entitled to exemption under section 54F in respect of the amount invested in construction within the prescribed period.
12	Can the assessee claim exemption under section 54F, on account of capital gain arising on transfer of depreciable assets held for more than 36 months i.e., a longterm capital asset, though the same is deemed as capital gain arising on transfer of short-term capital asset by virtue of section 50?	CIT v. Rajiv Shukla (2011) (Delhi)	The Delhi High Court, in the present case, relying on the decision of the Bombay High Court in the case of CIT v. Ace Builders P. Ltd. (2006) 281 ITR 210 and the decision pronounced by Gauhati High Court in CIT v. Assam Petroleum Industries P. Ltd. [2003] 262 ITR 587, in relation to erstwhile section 54E, held that the deeming fiction created by section 50 that the capital gain arising on transfer of a depreciable asset shall be treated as capital gain arising on transfer of short-term capital asset is only for the purpose of sections 48 and 49 and not for the purpose of any other section. Section 54F being an independent section will not be bound by the provisions of section 50. The depreciable asset if held for more than 36 months shall be a long-term capital asset as per the provisions of section 2(29A). Therefore, the exemption under section 54F on transfer of depreciable asset held for more than 36 months cannot be denied on account of fiction created by section 50.

Email: sagar.d0508@gmail.com
Mb No. 8087700476
CA Sagar Doshi
CA Manish Kundnani

Summary of ALL Case Laws including RTP Case Law on DT for Nov 2017 CA Final Attempt			
No.	**Matter**	**Parties & Court**	**Decision**
13	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?	Gouli Mahadevappa v. ITO (2013) (Kar.)	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 INR 36 lakhs under section 50C has been adopted as the full value of consideration, the entire amount of INR 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.
14	Can exemption under section 54EC be denied on account of the bonds being issued after six months of the date of transfer even though the payment for the bonds was made by the assessee within the six month period?	Hindustan Unilever Ltd. v. DCIT (2010) (Bom.)	For the purpose of the provisions of section 54EC, the date of investment by the assessee must be regarded as the date on which payment is made. The High Court, therefore, held that if such payment is within a period of six months from the date of transfer, the assessee would be eligible to claim exemption under section 54EC.
15.	Can advance given for purchase of land, building, plant and machinery tantamount to utilization of capital gain for purchase and acquisition of new machinery or plant and building or land, for claim of exemption under section 54G?	Fibre Boards (P) Ltd v. CIT (2015 SC)	To avail exemption under section 54G in respect of capital gain arising from transfer of capital assets in the case of shifting of industrial undertaking from urban area to non-urban area, the requirement is satisfied if the capital gain is given as advance for acquisition of capital assets such as land, building and / or plant and machinery. **Note** – In this case, two issues have been touched upon, namely, whether notification of an area as an urban area under a repealed provision would hold good under the reenacted provision and whether advance given for purchase of an eligible asset would tantamount to utilisation of capital gains for purchase of the said asset for availing exemption under section 54G. The former issue was decided taking support from section 24 of the General Clauses Act, 1897, which provides for uninterrupted subordinate legislation in case of repeal and re-enactment, with or without modification. The latter issue was also decided in favour of the assessee by holding that payment of advance for purchase of eligible asset would tantamount to utilisation of capital gains for purchase of the said asset.
16	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?	CIT v. Yatish Trading Co. Pvt. Ltd. (2013) (Bom.)	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".
*	**In a case where a depreciable asset held for more than 36 months is transferred, can benefit of exemption under section 54EC be claimed, if the capital gains on sale of such asset are reinvested in long-term specified assets within the specified time?**	**CIT v. V.S. Dempo Company Ltd (2016 - SC)** **(RTP Nov 2017)**	**The Apex Court, concurred with the view of the High Court holding that since the depreciable asset is held for more than 36 months and the capital gains are re-invested in long-term specified assets within the specified period, exemption under section 54EC cannot be denied.** **Note: The case in respect of which decision is rendered pertained to the assessment year 1989-90, and the above decision was in relation to exemption contained in section 54E. The rationale of the above decision can also be applied in the current context in relation to the exemption allowable under section 54EC on re-investment of capital gains in long-term specified assets being bonds issued by NHAI/RECL within six months from the date of transfer.**
CH 08. INCOME FROM OTHER SOURCES			
1	The High Court concurred with the Tribunal's ruling that the gains arising on sale of those shares held as investments by the dealer-ssessee (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. Parle Plastics Ltd. (2011) (Bom.)	Since lending of money was a substantial part of the business of the lending company, the money given by it by way of advance or loan to the assessee could not be regarded as a dividend, as it had to be excluded from the definition of "dividend" by virtue of the specific exclusion in section 2(22).
2.	Can repair and renovation expenses incurred by a company in respect of premises leased out by a shareholder having substantial interest in the company, be treated as deemed dividend?	CIT v. Vir Vikram Vaid (2014 Bombay HC)	The HC held that the repair and renovation expenses in respect of premises occupied by the company cannot be treated as deemed dividend in the hands of shareholder being the owner of the building.
3.	Can the loan or advance given to a shareholder by the company, in return for an advantage conferred on the company by the shareholder, be deemed as dividend under section 2(22)(e) in the hands of the shareholder?	Pradip Kumar Malhotra v. CIT (2011) (Cal.) (Nov 15 Exam)	In the present case, the advance given to the assessee by the company was not in the nature of a gratuitous advance; instead it was given to protect the interest of the company. Therefore, the said advance cannot be treated as deemed dividend in the hands of the shareholder under section 2(22)(e).

Summary of ALL Case Laws including RTP Case Law on DT for Nov 2017 CA Final Attempt			
No.	**Matter**	**Parties & Court**	**Decision**
4.	Would the provisions of deemed dividend under section 2(22)(e) be attracted in respect of financial transactions entered into in the normal course of business?	CIT v. Ambassador Travels (P) Ltd. (2009) (Del.)	The High Court observed that the assessee was involved in booking of resorts for the customers of these companies and entered into normal business transactions as a part of its day-to-day business activities. The High Court, therefore, held that such financial transactions cannot under any circumstances be treated as loans or advances received by the assessee from these concerns for the purpose of application of section 2(22)(e).
5.	Can winnings of prize money on unsold lottery tickets held by the distributor of lottery tickets be assessed as business income and be subject to normal rates of tax instead of the rates prescribed under section 115BB?	CIT v. Manjoo and Co. (2011) (Kerala)	The High Court held that the rate of 30% prescribed under section 115BB is applicable in respect of winnings from lottery received by the distributor.
CH 10. SET-OFF AND CARRY FORWARD OF LOSSES			
1	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?	~~Pramod Mittal v. CIT (2013) (Delhi)~~ ~~(Nov 16 Exam)~~	the 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. Note : It must be noted that Madhukant M. Mehta's case,, the sole proprietor had expired and after his death the heirs succeeded the business as a partnership concern. Therefore, the losses suffered by the deceased proprietor was allowed to be set-off by the partnership firm since the case falls within the exception mentioned under section 78(2), i.e., a case of succession by inheritance.
CH 11. DEDUCTIONS FROM GROSS TOTAL INCOME			
1	Can the CIT reject an application for grant of approval under section 80G(5) on the ground that the trust has failed to apply 85% of its income for charitable purposes?	CIT v. Shree Govindbhai Jethalal Nathavani Charitable Trust 2015 Guj-HC	Referring to another case law whereIn that case, the Division Bench observed that, while considering the application for the purpose of section 80G, the authority cannot act as an assessing authority and the enquiry should be confined to finding out if the institution satisfies the prescribed conditions. The HC, thus, concurred with the decision of the Tribunal setting aside the order passed by the CIT refusing to grant registration under section 80G(5) to the assessee-trust due to the reason that it has not applied 85% of its income for charitable purposes.
2	Can unabsorbed depreciation of a business of an industrial undertaking eligible for deduction under section 80-IA be set off against income of another non-eligible business of the assessee?	CIT v. Swarnagiri Wire Insulations Pvt. Ltd. (2012) (Kar.)	The High Court observed that it is a generally accepted principle that deeming provision of a particular section cannot be breathed into another section. Therefore, the deeming provision contained in section 80-IA(5) cannot override the provisions of section 70(1). The assessee had incurred loss in eligible business after claiming depreciation. Hence, section 80-IA becomes insignificant, since there is no profit from which this deduction can be claimed. It is thereafter that section 70(1) comes into play, whereby the assessee is entitled to set off the losses from one source against income from another source under the same head of income. The Court, therefore, held that the assessee was entitled to the benefit of set off of loss of eligible business against the profits of non-eligible business. However, once set-off is allowed under section 70(1) against income from another source under the same head, a deduction to such extent is not possible in any subsequent assessment year i.e., the loss (arising on account of balance depreciation of eligible business) so set-off under section 70(1) has to be first deducted while computing profits eligible for deduction under section 80-IA in the subsequent year.
3	Can transport subsidy, interest subsidy and power subsidy received from the Government be treated as profits "derived from" business or undertaking to qualify for deduction under section 80-IB?	CIT v. Meghalaya Steels Ltd (2016) (SC)	The Supreme Court held that transport subsidy, interest subsidy and power subsidy from Government were revenue receipts which were reimbursed to he assessee for elements of cost relating to manufacture or sale of their products. Therefore, there is a direct nexus between profits and gains of the undertaking or business, and reimbursement of such subsidies. The subsidies were only in order to reimburse, wholly or partially, costs actually incurred by the assessee in the manufacturing and selling of its products. Accordingly, these subsidies qualify for deduction under section 80-IB.
4	Can Duty Drawback be treated as profit derived from the business of the industrial undertaking to be eligible for deduction under section 80-IB?	CIT v. Orchev Pharma P. Ltd. (2013) (SC)	The Supreme Court 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.
5	Does income derived from sale of export incentive qualify for deduction under section 80-IB?	CIT v. Jaswand Sons (2010) (P&H)	The High Court held that income derived from sale of export incentive cannot be said to be income "derived from" the industrial undertaking and therefore, such income is not eligible for deduction under section 80-IB.
6	Does the period of exemption under section 80-IB commence from the year of trial production or year of commercial production? Would it make a difference if sale was effected from out of the trial production?	CIT v. Nestor Pharmaceuticals Ltd. / Sidwal Refrigerations Ind Ltd. v. DCIT (2010) (Delhi)	The High Court observed that with mere trial production, the manufacture for the purpose of marketing the goods had not started which starts only with commercial production, namely, when the final product to the satisfaction of the manufacturer has been brought into existence and is fit for marketing. However, in this case, since the assessee had effected sale in March 1998, it had crossed the stage of trial production and the final saleable product had been anufactured and sold. The quantum of commercial sale and the purpose of sale (namely, to obtain registration of excise / sales-tax) is not material. With the sale of those articles, marketable quality was established. Therefore, the conditions sipulated in section 80-IB were fulfilled with the commercial sale of the two items in that assessment year, and hence the five year period has to be reckoned from A.Y.1998-99.

Summary of ALL Case Laws including RTP Case Law on DT for Nov 2017 CA Final Attempt			
No.	**Matter**	**Parties & Court**	**Decision**
7	Can an assessee who has not claimed deduction under section 80-IB in the initial years, start claiming deduction thereunder for the remaining years during the period of eligibility, if the conditions are satisfied?	Praveen Soni v. CIT (2011) (Delhi)	The Delhi High Court held that the provisions of section 80-IB nowhere stipulated a condition that the claim for deduction under this section had to be made from the first year of qualification of deduction failing which the claim will not be allowed in the remaining years of eligibility. Therefore, the deduction under section 80-IB should be allowed to the assessee for the remaining years up to the period for which his entitlement would accrue, provided the conditions mentioned under section 80-IB are fulfilled.
*	**Can transport subsidy, interest subsidy and power subsidy received from the Government be treated as profits "derived from" business or undertaking to qualify for deduction under section 80-IB?**	**CIT v. Meghalaya Steels Ltd (2016) (SC)** **(RTP Nov 17)**	**The Supreme Court held that transport subsidy, interest subsidy and power subsidy from Government were revenue receipts which were reimbursed to the assessee for elements of cost relating to manufacture or sale of their products. Therefore, there is a direct nexus between profits and gains of the undertaking or business, and reimbursement of such subsidies. The subsidies were only in order to reimburse, wholly or partially, costs actually incurred by the assessee in the manufacturing and selling of its products. Accordingly, these subsidies qualify for deduction under section 80-IB.**
CH 13. ASSESSMENT OF VARIOUS ENTITIES:			
1.	Where land inherited by three brothers is compulsorily acquired by the State Government, whether the resultant capital gain would be assessed in the status of "Association of Persons" (AOP) or in their individual status?	~~CIT v. Govindbhai Mamaiya (2014 SC)~~ ~~(Nov 15 Exam)~~	In this case, the property in question came to the assessees' possession through inheritance i.e., by operation of law. It is not a case where any 'association of persons" was formed by volition of the parties. Further, even the income earned in the form of interest is not because of any business venture of the three assessees, but is the result of the act of the Government in compulsorily acquiring the said land. Thus, the basic test to be satisfied for making an assessment in the status of AOP is absent in this case. The Apex Court, accordingly, held that the income from asset inherited by the legal heirs is taxable in their individual hands and not in the status of AOP.
2.	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?	CIT v. D. L. Nandagopala Reddy (Individual) (2014 Karnataka HC)	The HC held that 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.
3.	Under which head of income is rental income from plinths inherited by individual co-owners from their ancestors taxable - "Income from house property" or "Income from other sources"? Further, would such income be assessable in the hands of the individual co-owners or in the hands of the Association of Persons?	Sudhir Nagpal v. Income-tax Officer (2012) (P & H)	**First Issue:** The first issue relates to the head of income under which rental income from plinths, inherited by individual co-owners from their ancestors, is taxable – whether "Income from house property" or "Income from other sources"?. Therefore, the Court held that the income from letting out the plinths is assessable under section 56 as "Income from other sources" and not under the head "Income from house property". **Second Issue:** The second issue relates to whether such rental income is assessable in the hands of the individual co-owners or in the hands of the Association of Persons. To appreciate this issue, it is necessary to understand the complete facts of the case. In this case, the co-owners had inherited the property from their ancestors and there was nothing to show that they had acted as an association of persons. Thus, the High Court held that the rental income from the plinths has to be assessed in the status of individual and not association of persons and consequently, section 167B would not be attracted in this case.
4.	Would the interest earned on surplus funds of a club deposited with institutional members satisfy the principle of mutuality to escape taxability?	Madras Gymkhana Club v. DCIT (2010) (Mad.)	The High Court held that interest earned from investment of surplus funds in the form of fixed deposits with institutional members does not satisfy the principle of mutuality and hence cannot be claimed as exempt on this ground. The interest earned is, therefore, taxable.
5.	Can transfer fees received by a co-operative housing society from its incoming and outgoing members be exempt on the ground of principle of mutuality?	~~Sind Co-operative Housing Society v. ITO (2009) (Bom)~~ ~~(Nov 16 Exam)~~	The High Court held that transfer fees received by a co-operative housing society, whether from outgoing or from incoming members, is not liable to tax on the ground of principle of mutuality since the predominant activity of such co-operative society is maintenance of property of the society and there is no taint of commerciality, trade or business. Further, section 28(iii), which provides that income derived by a trade, professional or similar association from specific services performed for its members shall be treated as business income, can have no application since the co-operative housing society is not a trade or professional association.
6.	Would non-resident match referees and umpires in the games played in India fall within the meaning of "sportsmen" to attract taxability under the provisions of section 115BBA, and consequently attract the TDS provisions under section 194E in the hands of the payer?	Indcom v. Commissioner of Income-tax (TDS) (2011) (Cal.)	Therefore, although the payments made to non-resident umpires and the match referees are income" which has accrued and arisen in India, the same are not taxable under the provisions of section 115BBA and thus, the assessee is not liable to deduct tax under section 194E.

Summary of ALL Case Laws including RTP Case Law on DT for Nov 2017 CA Final Attempt

No.	Matter	Parties & Court	Decision
7.	In a case where the partnership deed does not specify the remuneration payable to ach individual working partner but lays down the manner of fixing the remuneration, would the assessee-firm be entitled to deduction in respect of remuneration paid to partners?	CIT v. Anil Hardware Store (2010) (HP)	The High Court held that the manner of fixing the remuneration of the partners has been specified in the partnership deed. In a given year, the partners may decide to invest certain amounts of the profits into other ventures and receive less remuneration than that which is permissible under the partnership deed, but there is nothing which debars them from claiming the maximum amount of remuneration payable in terms of the partnership deed. The method of remuneration having been laid own, the assessee-firm is entitled to deduct the remuneration paid to the partners under section 40(b)(v).
8.	Can interest under sections 234B and 234C be levied where a company is assessed on the basis of book profits under section 115JB?	Joint CIT v. Rolta India Ltd. (2011) (SC)	The Supreme Court held that interest under sections 234B and 234C shall be payable on failure of the company to pay advance tax in respect of tax payable under section 115JB.
9.	Can long-term capital gain exempted by virtue of section 54EC be included in the book profit computed under section 115JB?	N. J. Jose and Co. (P.) Ltd. v. ACIT (2010) (Ker.) (May 2016 Exam)	The High Court held that once the Assessing Officer found that total income as computed under the provisions of the Act was less than 30 per cent of the book profit, he had to make the assessment under section 115J which does not provide for any deduction in terms of section 54E. As long as long-term capital gains are part of the profits included in the profit and loss account prepared in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956 (now, Statement of Profit and Loss prepared in accordance with Part II of Schedule III to the Companies Act, 2013), capital gains cannot be excluded unless provided under the Explanation to section 115J(1A).
*	**Can income derived by an Indian shipping company from slot charter arrangement in other ships be computed applying the special provisions under Chapter XII-G of the Income-tax Act, 1961, relating to Tonnage Tax Scheme, inspite of nonfulfillment of the condition of holding a valid certificate in respect of such ships indicating its net tonnage in force?**	**CIT v. Trans Asian Shipping Services (P) Ltd (2016 - SC)** **(RTP Nov 2017)**	**The Apex Court held that the requirement of producing a certificate would not apply when entire ship is not chartered and the arrangement pertains only to purchase of slots, slot charter etc. It held that the contention of the assessee is valid and the legal fiction created by section 115VG(4) is to be given proper meaning. Accordingly, income from slot charter arrangement in other ships can be computed applying the special provisions under Chapter XII-G.**
		CH 20: INCOME TAX AUTHORITIES:	
1	Can the assessee's application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, be entertained where assessment has not been completed?	Hemant Kumar Sindhi & Another v. CIT (2014) (All)	The High Court held that the Assessing Officer was justified in his conclusion that it is only when the liability is determined on the completion of assessment that it would stand crystallized and in pursuance of which a demand can be raised and recovery can be initiated. Therefore, in the present case, the first proviso to section 132B(1)(i) would not be attracted. The High Court, thus, dismissed the writ petition.
2.	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?	Kathiroor Service Co-operative Bank Ltd. v. CIT (CIB) (2014 - SC) (Nov 15 Exam)	The Supreme Court held that information of general nature could be called for from banks. In this case, since notices have been issued after obtaining approval of the Commissioner, the assessing authority had not erred in issuing the notices to assessees requiring them to furnish information regarding account holders with cash transactions or deposits of more than ` 1 lakh. The Supreme Court, therefore, held that for such enquiry under section 133(6), the notices could be validly issued by the assessing authority
3	Is the requirement to grant a reasonable opportunity of being heard, stipulated under section 127(1), mandatory in nature?	Sahara Hospitality Ltd. v. CIT (2013) (Bom.)	The Bombay High Court held that the word "may" used in this section should be read as "shall" and such income-tax authority has to mandatorily give a reasonable opportunity of being heard to the assessee, wherever possible to do so, and thereafter, record the reasons for taking any action under the said section. "Reasonable opportunity" can only be dispensed with in a case where it is not possible to provide such opportunity. In such a case also, the authority should record its reasons for making the transfer, even though no opportunity was given to the assessee. The discretion of the authority is only to consider as to what is a reasonable opportunity in a given case and whether it is possible to give such an opportunity to the assessee or not. The authority cannot deny a reasonable opportunity of being heard to the assessee, wherever it is possible to do so.
4	Does the Central Board of Direct Taxes (CBDT) have the power under section 119(2)(b) to condone the delay in filing return of income?	Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) (Del.)	The High Court held that the Board has the power to condone the delay in case of a return which was filed late and where a claim for carry forward of losses was made. The delay was only one day and the assessee had shown sufficient reason for the delay of one day in filing the return of income. If the delay is not condoned, it would cause genuine hardship to the petitioner. Therefore, the Court held that the delay of one day in filing of the return has to be condoned.
		CH 21. ASSESSMENT PROCEDURE:	
5	Is it permissible under section 147 to reopen the assessment of the assessee on the ground that income has escaped assessment, after a change of opinion as to a loss being a speculative loss and not a normal business loss, consequent to a mere re-look of accounts which were earlier furnished by the assessee during assessment under section 143(3)?	ACIT v. ICICI Securities Primary Dealership Ltd. (2012) (SC)	The Supreme Court observed that the assessee had disclosed full details in the return of income in the matter of its dealing in stocks and shares. There was no failure on the part of assessee to disclose material facts as mentioned in proviso to section 147. Further, there is nothing new which has come to the notice of the Assessing Officer. The accounts had been furnished by the assessee when called upon. Therefore, re-opening of the assessment by the Assessing Officer is clearly a change of opinion and therefore, the order of re-opening the assessment is not valid.

Summary of ALL Case Laws including RTP Case Law on DT for Nov 2017 CA Final Attempt			
No.	**Matter**	**Parties & Court**	**Decision**
4	Can the Assessing Officer reopen an assessment on the basis of merely a change of opinion?	Aventis Pharma Ltd. v. ACIT (2010) (Bom.)	In this case, the High Court observed that there was no tangible material before the Assessing Officer to hold that income had escaped assessment within the meaning of section 147 and the reasons recorded for reopening the assessment constituted a mere change of opinion. Therefore, the reassessment was not valid.
3	Is a person having income below taxable limit, required to furnish his PAN to the deductor as per the provisions of section 206AA, even though he is not required to hold a PAN as per the provisions of section 139A?	Smt. A. Kowsalya Bai v. UOI (2012) (Kar.)	In order to avoid undue hardship caused to such persons, the Karnataka High Court, in the present case, held that it may not be necessary for such persons whose income is below the maximum amount not chargeable to income-tax to obtain PAN and in view of the specific provision of section 139A, section 206AA is not applicable to such persons. Therefore, the banking and financial institutions shall not insist upon such persons to furnish PAN while filing declaration under section 197A. However, section 206AA would continue to be applicable to persons whose income is above the maximum amount not chargeable to income-tax.
2	Can an assessee revise the particulars filed in the original return of income by filing a revised statement of income?	Orissa Rural Housing Development Corpn. Ltd. v. ACIT (2012) (Orissa)	On this issue, the Orissa High Court held that the assessee can make a fresh claim before the Assessing Officer or make a change in the originally filed return of income only by filing revised return of income under section 139(5). There is no provision under the Income-tax Act, 1961 to enable an assessee to revise his income by filling a revised statement of income. Therefore, filling of revised statement of income is of no value and will not be considered by the Assessing Officer for assessment purposes. The High Court, relying on the judgement of the Supreme Court in Goetze (India) Ltd. v. CIT (2006) ITR 323, held that the Assessing Officer has no power to entertain a fresh claim made by the assessee after filing of the original return except by way of filing a revised return.
1	Can unabsorbed depreciation be allowed to be carried forward in case the return of income is not filed within the due date?	CIT v. Govind Nagar Sugar Ltd. (2011) (Delhi)	The High Court held that the unabsorbed depreciation will be allowed be carried forward to subsequent year even though the return of income of the current assessment year was not filed within the due date.
9.	Would the reassessment proceedings initiated under section 147 against the legal heirs of the deceased assessee be valid if notice of reassessment was sent to the legal heirs after the limitation period, though a notice addressed to the deceased assessee was sent prior to the limitation period?	Vipin Walia v. ITO (2016 Del HC)	The Assessing Officer initiated proceedings under section 147 against the deceased for the assessment year 2008-09. The time limit for issue of notice was 31.03.2015, since the income escaping assessment exceeded Rs. 1 lakh. On March 27, 2015 when the notice was issued, the assessee was already dead. If the Department intended to proceed under section 147, it could have done so prior to 31.03.2015 by issuing a notice to the legal representatives of the deceased. Beyond that date, it could not have proceeded in the matter even by issuing notice to the legal representatives of the assessee. The HC, accordingly, held that issue of notice on the legal representatives beyond the limitation time would render the reassessment proceedings invalid.
6.	Can a notice under section 148 for a particular assessment year be issued solely on the ground that survey under section 133A was carried on at the business premises of the assessee, where nothing had been found therein which would indicate escapement of income chargeable to tax for the said assessment year?	Hemant Traders v. ITO (2015 Bombay HC)	The HC held that since there is absolutely no material to indicate escapement of income for the relevant assessment year, the issue of notice to initiate reassessment proceedings under section 148 on the basis of survey which had taken place is not valid. Therefore, the proceedings initiated under section 148 are quashed at the threshold itself.
7.	Will the subsequent amendment of law with retrospective effect validate a reassessment notice issued on a different ground before the retrospective amendment was made?	Godrej Industries Ltd v. Dy.CIT (2015 Bom HC)	The position of law on the date of issue of notice under section 148 must be looked into and the retrospective amendment subsequent to issue of notice could not validate a notice issued earlier. It could only amount to change of opinion and the notice for reopening the assessment cannot get validated by the retrospective amendment of law.
14.	Can the Assessing Officer issue notice under section 154 to rectify a mistake apparent from record in the intimation under section 143(1), after issue of a valid notice under section 143(2)?	CIT v. Haryana State Handloom and Handicrafts Corporation Ltd. (2011) (P&H)	In the present case, the Punjab and Haryana High Court relying, inter alia, on the said decision held that the scope of proceedings under section 143(2) is wider than the power of rectification of mistake apparent from record under section 154. The notice under section 143(2) is issued to ensure that the assessee has not understated the income or has not computed excessive loss or underpaid the tax. It is only on consideration of the matter and on being satisfied that it is necessary or expedient to do so that the Assessing Officer issues the notice under section 143(2). Therefore, the Assessing Officer has to proceed under section 143(3) and issue an assessment order. If issue of notice under Section 154 is permitted to rectify the intimation issued under section 143(1), then it would lead to duplication of work and wastage of time. Therefore, it was concluded that proceedings under section 154 for rectification of intimation under section 143(1) cannot be initiated after issuance of notice under section 143(2) by the Assessing Officer to the assessee.
13	In case of change of incumbent of an office, can the successor Assessing Officer initiate reassessment proceedings on the ground of change of opinion in relation to an issue, which the predecessor Assessing Officer who framed the original assessment had already applied his mind and come to a conclusion?	H. K. Buildcon Ltd. v. Income-tax Officer (2011) (Guj.)	The Gujarat High Court, applying the rationale of the Apex Court ruling, observed that in the entire reasons recorded in this case, there was nothing on record to show that income had escaped assessment in respect of which the successor Assessing Officer received information subsequently, from an external source. The reasons recorded themselves indicated that the successor Assessing Officer had merely recorded a different opinion in relation to an issue to which the Assessing Officer, who had framed the original assessment, had already applied his mind and come to a conclusion. The notice of reassessment was, therefore, not valid.

Summary of ALL Case Laws including RTP Case Law on DT for Nov 2017 CA Final Attempt			
No.	**Matter**	**Parties & Court**	**Decision**
12.	Is recording of satisfaction and quantification of escaped income a pre-condition for issuing notice under section 148 after 4 years from the end of the relevant assessment year?	Amarnath Agrawal v. CIT (2015 Allahabad HC)	The HC observed that two distinct conditions must be satisfied for assuming jurisdiction to issue a notice under section 148 after a period of 4 years viz. (i) escapement of income; and (ii) omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. Accordingly, the HC held that, in this case, the issue of notice under section 148 after the four year time period was not valid.
10.	Does the finding or direction in an appellate order that income relates to a different assessment year empower reopening of assessment for that assessment year, irrespective of the expiry of the six year time limit?	CIT v. PP Engineering Work (2014 Delhi HC)	The HC observed that in view of the order of the Tribunal that the credit entries related to the earlier assessment year i.e., A.Y.2000-01, the AO initiated reassessment proceedings under section 147 by issue of notice under section 148 for the year and passed an order dated 29/12/2009 making an addition of Rs.32 lakhs. The HC held that by virtue of section 150 read with Explanation 2 to section 153, the said order was not barred by limitation.
11.	Is initiation of reassessment beyond a period of 4 years on the basis of subsequent Tribunal and HC ruling valid, if there is no failure on the part of the assessee to disclose fully and truly all materials facts?	Allanasons Ltd v. Dy. CIT (2014 Bombay HC)	The HC held that a subsequent decision of Tribunal or HC by itself is not adequate for reopening the assessment completed earlier under section 143(3) unless there is a failure on the part of the assessee to disclose complete facts.
15.	Would the doctrine of merger apply for calculating the period of limitation under section 154(7)?	CIT v. Tony Electronics Limited (2010) (Del.)	The High Court held that once an appeal against the order passed by an authority is preferred and is decided by the appellate authority, the order of the Assessing Officer merges with the order of the appellate authority. After merger, the order of the original authority ceases to exist and the order of the appellate authority prevails. Thus, the period of limitation of 4 years for the purpose of section 154(7) has to be counted from the date of the order of the Appellate Authority.
8.A	Can the Assessing Officer reassess issues other than the issues in respect of which proceedings were initiated under section 147 when the original "reason to believe" on the basis of which the notice was issued ceased to exist?	Delhi High Court ruling in Ranbaxy Laboratories Ltd. v. CIT (2011)	If the income, the escapement of which was the basis of the formation of the "reason to believe" is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If he intends to do so, a fresh notice under section 148 would be necessary.
8.B		Punjab & Haryana High Court ruling in CIT v. Mehak Finvest P Ltd (2014)	The High Court held that even though no addition is made on the original grounds which formed the basis of initiation of reassessment proceedings, the Assessing Officer is empowered to make additions on another ground for which reassessment notice might not have been issued but which came to his notice subsequently during the course of proceedings for reassessment.
8.C		Karnataka High Court ruling in N. Govindaraju v. ITO (2015)	The High Court held that, in effect, once satisfaction of reasons for the notice is found sufficient i.e. if the notice under section 148(2) is found to be valid, then, the Assessing Officer may do aeassessment in respect of any other item of income which may have escaped assessment, even though the original reason for issue of notice under section 148 does not survive. This decision has dissented from the decisions in the case of CIT v. Jet Airways (I) Ltd (2011) 331 ITR 236 (Bom); Ranbaxy Laboratories Ltd v. CIT (2011) 336 ITR 136 (Del).
CH 23. ADVANCE RULING			
1.	Can Authority for Advance Ruling (AAR) reject an application for advance ruling on the ground that proceedings are already pending before the Income-tax authority, where notice under section 143(2) in printed format has been served on the applicant-assessee before the date of filing the said application for advance ruling? What would be the position if notice under section 142(1) along with detailed questionnaire has also been issued to the applicant assessee before the date of filing of the said application for Advance Ruling?	~~Hyosung Corporation v. AAR (2016 Del HC)~~ ~~(May 2017 Exam)~~	The High Court held that rejection of application filed by the assessee for the assessment years 2008-09 and 2009-10 was not erroneous and did not call for any interference, since the notice under section 142(1) along with questionnaire were issued before the date of making an application for advance ruling. However, notice under section 142(1) issued for the assessment year 2010-11 after the date of filing of application will not result in the proceedings being 'already pending' before an Income-tax authority for the purpose of applying proviso to section 245R(2). Thus, the application for the assessment year 2010-11 cannot be rejected by the AAR. However, for the assessment years 2008-09 and 2009-10, the rejection of the application by AAR is tenable in law, since notice under section 142(1) along with detailed questionnaire was issued before the date of filing of such application.
CH 24. APPEALS & REVISION			
1.	Can mere non-mention or non- discussion of enquiry made by the AO in the assessment order justify invoking revisionary jurisdiction under section 263?	~~CIT v. Krishna Capbox (P) Ltd (2015 Allahabad HC)~~ ~~(May 2017 Exam)~~	The High Court concurred with the decision of the Tribunal and held that since the relevant enquiries and replies are available on 'record' (i.e., the paper book), the Commissioner cannot invoke revisionary jurisdiction merely because there was no mention of such enquiry and verification in the assessment order.
2.	Can the CIT invoke revisionary jurisdiction u/s 263, when the subject matter of revision (whether the manner of allocation of revenue amongst the members of AOP would affect the allowability and/or quantum of deduction under section 80-IB) has been decided by the CIT (A) and the same is pending before the Tribunal?	CIT v. Fortaleza Developers (2015 Bombay HC)	When the order of the first appellate authority is complete and the appeal is pending before the Tribunal, the CIT is precluded from invoking section 263 for revision of the very same matter decided by the first appellate authority since clause (c) of the Explanation 1 to section 263 debars the same. Accordingly, the HC held that the order passed by the AO got merged with the order of the first appellate authority. The very same issue cannot be revised by invoking revisionary jurisdiction under section 263.

Summary of ALL Case Laws including RTP Case Law on DT for Nov 2017 CA Final Attempt

No.	Matter	Parties & Court	Decision
3.	Can an assessee, objecting to the reassessment notice issued under section 148, directly approach the HC in the normal course contending that such reassessment proceedings are apparently unjustified and illegal?	Samsung India Electronics P. Ltd. v. DCIT (2014) (Del.)	HC observed the SC ruling in the case of GKN Driveshafts (India) Ltd. v. ITO, wherein, it was laid down that when a notice under section 148 is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuing notices. The AO is bound to furnish reasons within a reasonable time. On receipt of the reasons, the noticee is entitles to file objections to issuance of notice and the AO is bound to dispose of the objections by passing a speaking order. The HC, thus, 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 SC in GKN Driveshafts (India) Ltd. (supra), since the said procedure has been almost universally followed and has helped cut down litigation and crystallise the issues, if and when the question comes up before the Court.
4.	Should time limit under section 263 to be reckoned with reference to the date of assessment order or the date of reassessment order, where the revision is in relation to an item which was not the subject matter of reassessment?	~~CIT v. Lark Chemicals Ltd (2014 Bombay HC)~~ ~~(Nov 15 Exam)~~	The HC, thus, held that the jurisdiction under section 263 could not be assumed on issues which were not the subject matter of issues dealt with in the order of reassessment but were part of the original assessment, for which the period of limitation expired long ago.
5.	Can the original assessment order under section 143(3), which was subsequently modified to give effect to the revision order under section 264, be later on subjected to revision under section 263?	CIT v. New Mangalore Port Trust (2016 Karn HC)	The HC took note of the sequence of events and undisputed facts that the assessment order dated 27 December 2009 passed by the Assessing Officer was no longer in existence. The HC concluded that the Tribunal arrived at the conclusion only after considering the factual position that CIT had no jurisdiction to revise the order which was not in existence. The HC, accordingly, held that the order passed by the Commissioner under section 263, revising the non-existing order is void ab initio and is a nullity in the eyes of law.
6.	Can an assessee file a revision petition under section 264, if the revised return to correct an inadvertent error apparent from record in the original return, is filed after the time limit specified under section 139(5) on account of the error coming to the notice of the assessee after the specified time limit?	~~Sanchit Software and Solutions Pvt. Ltd. v. CIT (2012) (Bom.)~~ ~~(May 2016 Exam)~~	The High Court set aside the order of Commissioner and remanded the matter for fresh consideration. The High Court further directed the Assessing Officer to consider the rectification application filed by the assessee under section 154 as a fresh application received on the date of service of this order and dispose of the rectification application on its own merits, without awaiting the result of the revision proceedings before the Commissioner of Income-tax on remand, at the earliest.
7.	Can an assessee make an additional/new claim before an appellate authority, which was not claimed by the assessee in the return of income (though he was legally entitled to), otherwise than by way of filing a revised return of income?	CIT v. Pruthvi Brokers & Shareholders (2012) (Bom.)	The Bombay High Court held that additional grounds can be raised before the Appellate Authority even otherwise than by way of filing return of income. However, in case the claim has to be made before the Assessing Officer, the same can only be made by way of filing a revised return of income.
8.	Does the Appellate Tribunal have the power to review or re-appreciate the correctness of its earlier decision under section 254(2)?	CIT v. Earnest Exports Ltd. (2010) (Bom.)	In this case, the Tribunal, while dealing with the application under section 245(2), virtually reconsidered the entire matter and came to a different conclusion. This amounted to a reappreciation of the correctness of the earlier decision on merits, which is beyond the scope of the power conferred under section 254(2).
9.	Can the Tribunal exercise its power of rectification under section 254(2) to recall its order in entirety, where there is a mistake apparent from record?	Lachman Dass Bhatia Hingwala (P) Ltd. v. ACIT (2011) (Delhi)(FB)	Applying the above-mentioned decision of the Apex Court to this case, the Delhi High Court observed that the Tribunal, while exercising the power of rectification under section 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, error or omission and the error committed is apparent.
10.	Does the HC have the inherent power under the Income-tax Act, 1961 to review its own order on merits?	CIT v. Meghalaya Steels Ltd. (2015 SC)	The SC went ahead to further observe that it is clear on a cursory reading of section 260A(7), that it does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals under section 260A. That does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the HC's inherent jurisdiction is in any manner affected.
*****	**Can High Court exercise its inherent power to recall its order by exercising jurisdiction under section 260A(7) read with the relevant Rule of the Code of Civil Procedure, 1908 even if that order is not an ex-parte order?**	**CIT v. Subrata Roy (2016 - SC)** **(RTP Nov 2017)**	**The Apex Court noted that the assessee had participated in the hearing of the appeals before High Court which is apparent from the various parts of the order dated 27.08.2013. The Apex Court held that the order passed by the High Court is not an ex-parte order for invoking the provisions of the Code of Civil Procedure, 1908, since the order of the High Court contains the submissions of the counsel of the assessee (though not that of the senior counsel for whose presence a short adjournment was prayed). Therefore, the High Court did not have the jurisdiction to recall the order passed by it previously. The inherent power under the Code of Civil Procedure, 1908 is hedged by certain pre-conditions and unless the pre-conditions are satisfied the power there under cannot be exercised. Accordingly, the Supreme Court set aside the order dated 21.2.2014 of the High Court.**

Summary of ALL Case Laws including RTP Case Law on DT for Nov 2017 CA Final Attempt			
No.	**Matter**	**Parties & Court**	**Decision**
*****	**Can revision under section 263 be made on the ground that the order is passed without making inquiries or verification which should have been made?**	**CIT v. Amitabh Bachchan (2016 - SC)** **(RTP Nov 2017)**	**The Apex Court noted that to exercise jurisdiction under section 263 the requirement is that the order passed by the assessing authority is erroneous and prejudicial to the interests of the revenue. Section 263 does not require any specific show cause notice to be served on the assessee. What is required is granting of opportunity to the assessee of being heard before making the revision order. Failure to give such an opportunity would render the revisionary order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice. In the course of revision, the documents and books of accounts overlooked in the assessment proceedings were considered and at every stage of revisionary proceeding, the authorized representative of the assessee had appeared and had full opportunity to contest the basis on which the revisionary authority was proceeding in the matter. Where the Commissioner had come its conclusions on the basis of the record of the assessment proceedings which was open for scrutiny by the assessee and available to his authorized representative at all times, there is no breach of the requirement to give a reasonable opportunity of being heard as required under section 263.** **The Apex Court, accordingly, held that the order of the Tribunal setting aside the revisionary order on the ground that it went beyond the show cause notice was not sustainable. It further held that the High Court having failed to fully deal with the matter, its order was not tenable.**
CH 25: PENALTIES			
1.	Is penalty under section 271D imposable for cash loans/deposits received from partners?	CIT v. Muthoot Financiers (2015 Delhi HC) (May 2017 Exam)	The High Court further observed that, in this case, there was no dispute as regards the money brought in by the partners of the assessee-firm. The source of money was also not doubted. The transaction was bona fide and not aimed to avoid any tax liability. The credit worthiness of the partners and genuineness of the transactions coupled with relationship between the 'two persons' and two different legal interpretations put forward, could constitute a reasonable cause in a given case for not invoking sections 271D /271E read with section 273B. The High Court held that the issue being a debatable one, there was reasonable cause for not levying penalty.
2.	Can loan, exceeding the specified limit, advanced by a partnership firm to the soleproprietorship concern of its partner be viewed as a violation of section 269SS to attract levy of penalty?	CIT v. V. Sivakumar (2013) (Mad.)	High Court's Decision: 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.
CH 26. OFFENCES AND PROSECUTION			
1	Would prosecution proceedings under section 276CC be attracted where the failure to furnish return in time was not willful?	Union of India v. Bhavecha Machinery and Others (2010) (MP)	In this case, the High Court observed that for the provisions of section 276CC to get attracted, there should be a willful delay in filing return and not merely a failure to file return in time. There should be clear, cogent and reliable evidence that the failure to file return in time was 'willful' and there should be no possible doubt of its being 'wilful'. The failure must be intentional, deliberate, calculated and conscious with complete knowledge of legal consequences flowing from them. In this case, it was observed that there were sufficient grounds for delay in filing the return of income and such delay was not willful. Therefore, prosecution proceedings under section 276CC are not attracted in such a case.
CH 27. MISCELLANEOUS PROVISIONS			
1.	Can the Assessing Officer suo- moto assume jurisdiction to declare sale of property as void under section 281?	Dr. Manoj Kabra v. ITO (2014 - Allahabad HC)	The assessee placed reliance on the decision of Supreme Court in the case of TRO v. Gangadhar Vishwanath Ranade (Decd.) (1998) 234 ITR 188, where it was held that section 281 of the IT-Act 1961 is only a declaratory provision and not an adjudicatory provision entitling the income-tax authority to declare a document as a void document. The High Court observed that the issue in this case was squarely covered by above Apex Court decision.
CH 28. DEDUCTION, COLLECTION & RECOVERY OF TAX			
1*.	Whether "tips" received by the hotel-company from its customers (who made payment through credit card) and distributed to the employees would fall within the meaning of "Salaries" to attract tax deduction at source under section 192?	**ITC Ltd v. CIT (2016 - SC)** **(RTP Nov 2017)**	**The Apex Court observed that the person who paid the tip was the customer and not the employer. Even though the amounts were with the employer he had no title to the money and it was held in a fiduciary capacity as trustee for and on behalf of the employees.** **Thus, income from tips would be chargeable in the hands of employees as "Income from Other Sources". Since such tips are being received from customers and not from the employer, section 192 would not get attracted.** **The Supreme Court observed that contract of employment is not the proximate cause for the receipt of tips by the employee from a customer hence, it would be outside the dragnet of sections 15 and 17 of the Act. Therefore, it held that, in such a case, no liability to deduct tax at source under section 192 arises, and hence, the assessee company cannot be treated as an assessee in default for non-deduction of tax at source from the amount of tips collected and distributed to its employees.**

Summary of ALL Case Laws including RTP Case Law on DT for Nov 2017 CA Final Attempt			
No.	**Matter**	**Parties & Court**	**Decision**
2.	Is section 194A applicable in respect of interest on fixed deposits in the name of Registrar General of HC?	UCO Bank v. Dy. CIT (2014 Delhi HC)	The High Court observed that in the absence of a payee, the machinery provisions for deduction of tax to his credit are ineffective. The expression “payee” under section 194A would mean the recipient of income whose account is maintained by the person paying interest. The Registrar General is neither recipient of the amount credited to his account nor to interest accruing thereon. Therefore, he cannot be considered as a ‘payee’ for the purposes of section 194A. The credit by the bank in the name of the Registrar General would, thus, not attract the provisions of section 194A.
3.	Whether chit dividend paid to subscribers of chit fund is in the nature of ‘interest’ in terms of section 2(28A) to attract deduction of tax at source under section 194A?	CIT v. Avenue Super Chits (P) Ltd (2015 Kar HC)	The HC noted the decision of CIT v. Sahib Chits (Delhi) (P) Ltd (2010) 328 ITR 342 (Del) wherein section 2(28A) was referred to decide that chit dividend cannot be treated as interest. Further, section 194A has no application to such (chit) dividend and therefore there is no obligation on the part of the assessee to make any deduction under section 194A before such dividend is paid to the subscribers of the chit. The High Court held that the above judgment squarely applies to the facts of this case. Therefore, auction chit dividend paid to subscribers of the chit is not ‘interest’ as defined in section 2(28A) of the Income-tax Act, 1961 and therefore, tax deduction in terms of section 194A is not attracted.
4.	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?	CIT v. Hindustan Lever Ltd. (2014 Karnataka HC)	The HC 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 CIT 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 HC held that proceedings under section 201 cannot be initiated against the assessee.
5	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?	Ajmer Vidyut Vitran Nigam Ltd., In re (2013) (AAR)	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. As regards SLDC charges, the AAR opined that the main duty of the SLDC is to ensure integrated operation of the power system in the State for optimum scheduling and dispatch of electricity within the State. The SLDC charges paid appeared to be more of a supervisory charge with a duty to ensure just and proper generation and distribution in the State as a whole. Therefore, such services 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.
6	Can discount given to stamp vendors on purchase of stamp papers be treated as ‘commission or brokerage’ to attract the provisions for tax deduction under section 194H?	CIT v. Ahmedabad Stamp Vendors Association (2012) (SC)	The Supreme Court affirmed the above decision of the High Court holding that the given transaction is a sale and the discount given to stamp vendors for purchasing stamps in bulk quantity is in the nature of cash discount and consequently, section 194H has no application in this case.
7.	Can incentives given to stockists and distributors by a manufacturing company be treated as “commission” to attract – (i) the provisions for tax deduction at source under section 194H; and (ii) consequent disallowance under section 40(a)(ia) for failure to deduct tax at source?	CIT v. Intervet India P Ltd (2014 Bombay HC)	The HC held that the stockists and distributors were not acting on behalf of the assessee and most of the credit was by way of goods on meeting the sales target which could not be said to be a commission within the meaning of the Explanation (i) to section 194H. Accordingly, the HC affirmed the order of the Tribunal which held that such payment does not attract deduction of tax at source. Consequently, disallowance under section 40(a)(ia) would not be attracted.
8	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?	Bharti Cellular Ltd. v. ACIT (2013) 354 ITR 507 (Cal.)	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 tax at source on such commission as per the provisions of section 194H.
9	Can the difference between the published price and the minimum fixed commercial price be treated as additional special commission in the hands of the agents of an airline company to attract TDS provisions under section 194H, where the airline company has no information about the exact rate at which tickets are ultimately sold by the agents?	CIT v. Qatar Airways (2011) (Bom.)	It would be impracticable and unreasonable to expect the airline company to get a feedback from its numerous agents in respect of each ticket sold. Thus, tax at source was not deductible on the difference between the actual sale price and the minimum fixed commercial price, even though the amount earned by the agent over and above minimum fixed commercial price would be taxable as income in his hands.
10.	Are landing and parking charges paid by an airline company to Airports Authority of India in the nature of rent to attract tax deduction at source under section 194-I?	Japan Airlines Co. Ltd. v. CIT CIT v. Singapore Airlines Ltd. (2015 SC) (May 2016 Exam)	The SC opined that the substance behind such charges has to be considered and when the issue is viewed from this angle, keeping the full and larger picture in mind, it becomes very clear that the charges are not for use of the land per se and, therefore, it cannot be treated As "rent" within the meaning of section 194-I. The SC, thus, concurred with the view taken by the Madras HC in Singapore Airlines case and overruled the view taken by the Delhi HC in United Airlines/Japan Airlines case.

Summary of ALL Case Laws including RTP Case Law on DT for Nov 2017 CA Final Attempt			
No.	**Matter**	**Parties & Court**	**Decision**
11.	Is payment made for use of passive infrastructure facility such as mobile towers subject to tax deduction under section 194C or section 194-I?	Indus Towers Ltd v. CIT (2014 Delhi HC)	Under section 197, the assessee sought for lower tax deduction under section 194C for the financial year 2013-14 at 0.5% and whereas the Assessing Officer issued a certificate under section 197 for lower tax deduction at 2.5% under section 194-I. The HC held that the submission of the assessee that the transaction is not "renting" is incorrect. Also, the Revenue's contention that the transaction is primarily "renting of land" is also incorrect. The underlying object of the arrangement was the use of machinery, plant or equipment i.e., the passive infrastructure and it is incidental that it was necessary to house the equipment in some premises. It directed that tax deduction be made at 2% as per section 194-I(a), the rate applicable for payment made for use of plant and machinery.
12.	In respect of a co-owned property, would the threshold limit mentioned in section 94-I for non-deduction of tax at source apply for each co-owner separately or is it to be considered for the complete amount of rent paid to attract liability to deduct tax at source?	CIT v. Senior Manager, SBI (2012) 206 Taxman 607 (All.)	Considering the above mentioned facts, the Allahabad High Court held that, since the share of each co-owner is definite and ascertainable, they cannot be assessed as an association of persons as per section 26. The income from such property is to be assessed in the individual hands of the co-owners. Therefore, it is not necessary that there should be a physical division of the property by metes and bounds to attract the provisions of section 26. Therefore, in the present case, since the payment of rent is made to each co-owner by way of separate cheque and their share is definite, the threshold limit mentioned in section 194-I has to be seen separately for each co-owner. Hence, the assessee would not be liable to deduct tax on the same and no interest under section 201 is leviable.
13.	Can the payment made by an assessee engaged in transportation of building material and transportation of goods to contractors for hiring dumpers, be treated as rent for machinery or equipment to attract provisions of tax deduction at source under section 194-I?	CIT (TDS) v. Shree Mahalaxmi Transport Co. (2011) (Guj.)	Since the assessee had given sub-contracts for transportation of goods and not for the renting out of machinery or equipment, such payments could not be termed as rent paid for the use of machinery and the provisions of section 194-I would, therefore, not be applicable.
14.	Where remuneration paid to doctors is variable based on number of patients and treatment given to them, would the liability to deduct tax at source arise under section 192 or under section 194J?	CIT v. Manipal Health Systems (P) Ltd (2015 Karnataka)	Considering the totality of facts and terms of the agreement, the Court held that in this case, the consultancy charges paid to doctors rendering professional service would be subject to tax deduction under section 194J and not section 192.
15.	Would transaction charges paid by the members of the stock exchange for availing fully automated online trading facility, being a facility provided by the stock exchange to all its members, constitute fees for technical services to attract the provisions of tax deduction at source under section 194J?	CIT v. Kotak Securities Ltd (2016 SC)	The SC held that the service provided by the BSE for which transaction charges are paid failed to satisfy the test of specialized, exclusive and individual requirement of the user or the consumer who may approach the service provider for such assistance or service. Therefore the transaction charges paid to BSE by its members are not for technical services but are in the nature of payments made for facilities provided by the stock exchange. Such payments would, therefore, not attract the provisions of tax deduction at source under section 194J.
16.	Is tax is required to be deducted under section 195 on the demurrage charges paid to a foreign shipping company which is governed by section 172 for the purpose of levy and recovery of tax?	CIT v. V.S. Dempo & Co P Ltd (2016 Bom HC FB)	The HC held that since section 172 dealing with shipping business of non-residents contains a non-obstante clause and applies both for the purpose of the levy and recovery of tax in the case of any ship carrying passengers etc., belonging to or chartered by a non-resident and shipping at a port in India, there would be no obligation on the payer-assessee to deduct the tax at source under section 195 on payment of demurrage charges to the non-resident shipping company.
18.	Can items of finished products from ship breaking activity which are usable as such be treated as "Scrap" to attract provisions for tax collection at source under section 206C?	CIT v. Priya Blue Industries (P) Ltd (2016 Guj HC)	The Tribunal firstly recorded a list of items sold by the assessee from the ship breaking activity. It found that the assessee collected and paid tax, for seven items, but did not collect tax at source on certain items viz. old and used plates; non-excisable (exempted) goods like wood etc. It observed that the 'waste and scrap' must be from manufacture or mechanical working of material which is definitely not usable as such because of breakage, cutting up, wear and other reasons. Since the assessee is engaged in ship breaking activity, these items/products are finished products obtained from such activity which are usable as such and hence, are not 'waste and scrap' though commercially known as scrap. Accordingly, the Tribunal also decided the issue in favour of the assessee. High Court's Decision: The High Court concurred with the views of the Tribunal and held that any material which is usable as such would not fall within the ambit of the expression 'scrap' as defined in clause (b) of the Explanation to section 206C.
19.	Is levy of interest under section 234B attracted in a case where the assessment order does not contain any specific direction for payment of interest, but is accompanied by form ITNS 150 containing a calculation of interest payable on tax assessed?	~~CIT v. Bhagat Construction Co (P) Ltd (2016 SC)~~ ~~(May 2016 Exam)~~	The Apex held that the levy of interest under section 234B is automatic when the conditions specified therein are satisfied and the assessment order is accompanied by the prescribed form containing the calculation of interest payable.

All the best for your exams

No.	Matter	Parties & Court	Decision

For summary of IDT Case law please visit the below link
http://www.caclubindia.com/share_files/nov-17-ca-final-short-summary-idt-case-law-rtp-case-law-74070.asp

Please provide your suggestion on our mail box regarding any customise notes (like this summary) for any subjects which can be helpful for prepration, so we can prepare and provide to all

Never dream for success, but work for it

Never confuse a single defeat with a final defeat

Email: sagar.d0508@gmail.com
Mb No. 8087700476
CA Sagar Doshi
CA Manish Kundnani