



Monthly Digest of Case Laws (August 2010)

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(JOURNALS REFERRED): DTR, ITR (Trib.), ITD, TTJ, ITR, TAXATION, CTR, SOT, TAXMAN, www.itatonline.org

S. 2(1A) : Agricultural income – Exemption - Sale of hybrid seeds.

Assessee is engaged in research, production, and sale of hybrid seeds by following method of contract farming and basic seeds sown in leasehold land. When basic as well as secondary agricultural operations carried on by assessee, entire is agricultural income.

Advanta India Ltd v DY CIT (2010) 5 ITR (Trib) 57 (Bang.)

S. 2 (14) : Capital asset - Agricultural land - Capital gains

Since assessee's land was situated beyond radius of 8 Kms from limits of municipality, the land in question was not capital asset with in meaning of section 2 (14) (iii) (b), hence not liable to capital gain.

Srinivas Pandit (HUF) v ITO (2010) 39 SOT 350 (Hyd.)

S. 2 (14) : Capital asset – Transfer - Capital gain - forfeiture of deposit (S. 2(47))

Assessee entered in to an agreement with power attorney holder of land owners and paid certain amount as advance. Sale deed was required to be executed within six months from the date of agreement. As the assessee could not manage fund within the prescribed period, agreement was cancelled and amount paid by assessee was forfeited. Assessee claimed that amount forfeited represented short term capital loss which could be set off against long term capital gains. The tribunal held that essential requirement for charging capital gains (or allowing capital loss) is that a transfer of capital asset should be effected in the relevant previous year. In the instant case, by paying advance money assessee did not get any right which could be termed as capital asset within meaning of section 2 (14), and which was transferred within the meaning of section 2 (47), therefore the assessee claim was not allowable.

Dinesh Babulal Thakkar v Asst CIT (2010) 39 SOT 332 (Ahd.)

S. 2 (22) (e) : Deemed dividend - advance or loan-other than share holder

Deemed dividend under section 2 (22) (e), can only be assessed in hands of person, who is share holder of lender company and not in hands of a person other than shareholder.

MTAR Technologies (P) Ltd v Asst CIT (2010) 39 SOT 465 (Hyd.)

S. 2 (47) : Capital gains - Transfer- shares - Broker



In case of shares, transfer by way of sale through a share broker in a stock exchange is complete only when delivery of share certificate together with instrument of transfer duly signed are delivered and consideration for transfer is paid and not when broker issues a contract note.

Suresh K. Jajoo v Asst CIT (2010) 39 SOT 514 (Mum.)

S. 4 : Income- Reimbursement of expenses-

No part of reimbursement of specific and actual expenses received by the assessee which do not involve any mark up can be treated as income of the assessee.

Linklaters LLP v ITO (2010) 132 TTJ 20 (Mumbai)

S. 4 : Income - Diversion by overriding title - creation of development fund

Matter remanded to the AO to find out whether the development fund is created by the assessee on his own or at the instance of the association pursuant to the agreement entered in to between the association and the assessee and whether the assessee is entitled to claim the development fund from the association as a matter of right and then to decide the taxability in assessee's hands.

CIT v Mahesh Bhupathi (2010) 43 DTR 159 (Kar.)

S. 4 : Income - excess cash received from customer

Excess cash received at the cash counters of the bank represents the liability to pay to the customers as and when they may demand payment, therefore such excess cash collection cannot be considered as the income of the assessee.

CIT v Bank of Rajasthan Ltd (2010) 233 CTR 530 (Bom.)

S. 5 : Income – Accrual - Interest on government securities

Interest on Government securities can be said to accrue only when it becomes due and, therefore, there cannot be a charge to such income until such time that it becomes due.

CIT v Bank of Rajathan Ltd (2010) 233 CTR 530 (Bom)

S. 6 : Residence in India - Non resident - Visit to India

Assessee already employed and deputed abroad, his status could not be taken as resident on the ground that he came on a visit to India and therefore, the period of 60 days as mentioned in section 6(1) (c), should be extended to 182 days, by ignoring his subsequent visit to India after completing the deputation, outside India. The first day in series of a day is to be excluded if the word "from" is used and since for computing of the period, one has to necessarily, import the word "from" the first day is to be excluded and so computed. Assessee's stay in India did not exceed sixty days and therefore his status had to be taken as non-resident during the relevant year.



Manoj Kumar Reddy v ITO (2010) 42 DTR (Bang) (Trib) 171.

S. 9(1)(i) : Income deemed to accrue or arise in India - Business connection - Permanent establishment - dependent agent – DTAA – India – Germany -International taxation. (S 90, Art 5)

Sale of raw materials /CKD units to DCIL. DCIL carried out further activity of assembling the same and selling the finished cars. There were no further activities carried out by the assessee in India in this connection. Mere sale of raw materials/components would not result in business connection and even if it did as per the terms and conditions of the contract between the assessee and DCIL no income occurred to the assessee on the basis of any activities carried out on behalf of the assessee in India. Mere existence of subsidiary does not by itself constitute the subsidiary company as a PE of the parent. The DCIL was merely rendering a very insignificant auxiliary/preparatory service in the sale of CBU cars by assessee to the Indian Clients. Therefore DCIL did not constitute a dependent agent of the assessee.

DY DIT v Daimler Chrysler A.G. (2010) 39 SOT 418 (Mum.)

S. 9(1) (vi) : Income deemed to accrue or arise in India- Royalty- supply of soft ware- DTAA- India- USA (art 12.)

Sale of off-the shelf shrink –wrapped software by foreign companies to a company in India is sale of copyrighted article and therefore, income therefrom is not royalty either under the IT Act or under the terms of the relevant DTAA's.

Velankani Marutius Ltd v dy DIT.(2010) 42 DTR (Bang) (Trib) 193/132 TTJ 124 (Bang) (Trib).

S. 9 (1) (vi) : Income deemed to accrue or arise in India- Fees for technical services- DTAA- India – UK (art. 7).

Services rendered by non resident lead managers to the assessee company for bringing out GDR issue , though in the nature of technical or managerial services , were not “made available ” to the assessee and therefore cannot be taxed in India. Underwriting commission was neither fees for technical services under section 9 (1) (vi) nor chargeable to tax as “business profits’ under art 7 of the DTAA in the absence of any PE of the non resident in India, payment towards reimbursement of expenses not being in the nature of income was not taxable.

DY DIT v Tata Iron & Steel Co Ltd (2010) 42 DTR (Mumbai) (Trib) 204.

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Permanent establishment- DTAA- India- Netherlands- International taxation-(Art 5, 7, 12)

Receipt of bare boat rentals i.e. rent for use of or payment for use of equipment cannot be brought to tax as royalty. As the assessee had no personnel located in India for purpose of execution of contract entered into by it with HAM, it could be said that it had no PE in India and lease in question was merely a dry lease of an equipment, hence receipt in question cannot be taxed in India.

DY CIT v Nederlandsche Overzee Baggermaatschappij bv (2010) 39 SOT 556 (Bom)



S.9(1)(vii) : Income deemed to accrue or arise in India- Fees for technical services-professional services rendered by foreign firm.

In view of Explanation to section 9 (1), as amended retrospectively by Finance Act, 2010, the fees for professional services earned by the assessee a UK based partnership firm, in connection with projects in India is taxable in India under the domestic law.

Linklaters LLP v ITO (2010) 132 TTJ (Mumbai) 20/42 DTR (Mumbai) (Trib) 233.

S. 10 (10C) : Exemption-Employee- Reserve Bank of India- Retirement scheme.

The amount received by retiring employees of the Reserve Bank of India opting for optional early retirement scheme are eligible for exemption from income tax under section 10(10C) of the income tax Act.

Chandra Ranganathan and others v CIT (2010) 326 ITR 49 (SC)

S. 10 (20) Exemption- Local authority-Gujarat Municipality Act

Provisions of Gujarat Municipalities Act are applicable to all notified areas created under section 16 of GIDA and such notified areas have same power under the Municipalities Act, therefore a notified area for industrial development under GIDA is municipality covered by cl. (ii) of section 10(20) and its income is exempt.

ITO vs. Sachin Notified Area (2010) 42 DTR (Ahd) (Trib) 478

S. 10 (23C) : Exempted income – Charitable - religious institutions

Assessee trust maintained a hospital for philanthropic purpose. Philanthropy is not restricted to giving free treatment only to extremely poor, but it would also be philanthropy to give treatment at a concessional rate to those who, though not extremely poor yet cannot afford to pay full and normal charges. There was profit in some years and cumulative losses in earlier years, as this aspect has not been considered the matter was set aside.

Breach Candy Hospital Trust v Chief CIT (2010) 192 Taxman 98 (Bom)

S. 10A : Exemption- Export oriented unit- Computation- brought forward loss and unabsorbed depreciation.

Brought forward loss and unabsorbed depreciation of earlier years to be set off before allowing deduction under section 10A.

Intellinet Technologies India P. Ltd v ITO (2010) 5 ITR (Trib) 96 (Bangalore).

S. 10A : Exemption- Computation - Freight and Insurance – Turnover - Foreign exchange fluctuation - Addition and disallowance.



Freight and insurance charges do not have an element of turnover and are to be excluded from the total turnover for the purpose of computing exemption under section 10A. Gain from foreign fluctuation realized within stipulated period forms part of the sale proceeds and is directly related with the export activities and as such gain should be considered as income derived from export activities eligible for exemption under section 10A, in the year in which export took place. Assessee is entitled to exemption, under section 10A with reference to addition of disallowance of PF/ESIC payments as the plain consequence of the disallowance and add back made by the AO is an increase in business profits of the assessee.

CIT v Gem Plus Jewellery India Ltd (2010) 233 CTR (Bom) 248

S. 10B : Exemption-Manufacture or Production- Blending of tea-processing.

Assessee engaged in blending and packing of tea for export which is recognized as a 100 percent export oriented unit is entitled to exemption under section 10B notwithstanding deletion of the definition of “manufacture” w.e.f. 1st April 2001, from section 10B under which “processing” was covered by “manufacture”.

Tata tea Ltd v Asstt. CIT (2010) 42 DTR (Ker) 251

S. 17 (2) – Perquisites - Salary from two employers - Fair rent - Rent control Act - Notional interest on deposit (S 15, Rule 3)

Where the assessee has received salary from two employers entire salary has to be considered while determining value of perquisite. As the paid up capital of employer was more than Rs 1 crore, accommodation in question was exempt from the provisions of Rent Control Act, and in such situation, fair rental value of accommodation could not be limited to standard rent, therefore in addition to monthly rent a sum equivalent to notional interest on deposits kept with land lord had to be taken in to account in computing fair rent in order to determine perquisite value of accommodation.

Pratim B. Mukerjea (2010) 39 SOT 268 (Mum).

S. 28 - Business income or property income- warehousing - (S. 22)

Income from warehousing would be business income if dominant purpose was commercial activity and it would be income from property if dominant object was to lease property.

Nutan warehousing P Ltd v Dy CIT (2010) 326 ITR 94 (Bom.)

S. 28(1) - Business income - Trading receipts - Trade advances (S. 4)

Assessee having admitted the liability in respect of outstanding trade advances received against exports which was enforceable under the law and eventually repaid the amount with RBI's permission, there was no cessation of liability and therefore the same cannot be treated as assessee's income, even though the assessee had utilized the said money for other purposes i.e. investment in real estate during lull period.



ITO v Eurostar Distilleries (P) Ltd (2010) 42 DTR (Coch)(TM) (Trib) 1

S. 28(i) : Business Income – Transaction in Shares – Stock in Trade – Investment (S. 45)

Assessee company having reflected its entire shareholding in various shares, including the shares in question, as stock-in-trade all along in the past and the revenue authorities having come to the finding of fact that the shares of the same company were purchased by the assessee by way of trading and not by way of investment, income derived from sale of shares is to be treated as business income and not as capital gains.

Ankita Deposits & Advances (P) Ltd. v. CIT (2010) 43 DTR 92 (HP)

S. 32 : Depreciation - Plant ready for use

Assessee company was entitled depreciation in respect of gas sweetening plant which was kept ready for use but could not be actually used due to lack of availability of raw material during relevant assessment years.

ACIT v Chennai Petroleum Corporation (2010) 125 ITD 396 (Chennai) (TM)

S.32 : Depreciation – BSE Membership Card – Intangible Asset – Eligibility.

BSE Card is an “intangible asset” and eligible for depreciation u/s 32(1) (ii).

Editorial : CIT v Techno Shares & Stocks Ltd (2010) 323 ITR 69 (Bom) reversed. CIT v Techno shares & Stocks Ltd (2006) 101 TTJ 349 (Mum) upheld.

S. 32 : Depreciation- Block of assets - Individual machinery

Once it is found that assets are used for business, it is not necessary that all the items falling within the block of assets have to be simultaneously used for being entitled to depreciation.

CIT v. Sonal Gum Industries (2010) 42 DTR (Guj) 159.

S. 32 : Depreciation – Plant - Office interiors - S. 43 (3)

Designs and interior decoration work carried out in its office by the assessee carrying on the business of interior designing for the purpose of demonstrating its work to the prospective clients and exhibition purpose cannot partake the character of “furniture and fittings” but is “Plant” and is entitled to depreciation applicable to plant.

Asst CIT v Eskay Agencies (2010) 42 DTR (Chennai) (Trib) 366.

S. 36(1) (vii) - Bad debts- provision for bad debts- Banks

Banks which are entitled to claim deduction of provision for bad debts in terms of clause (vii) of section 36(1), are covered by the proviso to clause (vii) irrespective of the nature of advances with respect to



which the bad debt written off is claimed as deduction . Bad debt is allowable as deduction under section 36 (1) (vii), and the excess provision is allowable under section 36 (1) (viii).

CIT v South Indian Bank Ltd (2010) 42 DTR (Ker) (FB) 109.

S. 36 (1) (viii).Business expenditure-interest-guarantee obligation.

Applicant is entitled to deduction under section 36 (1) (viii) in respect of interest income derived by it from the bonds issued by the State Government in discharge of the guarantee obligation undertaken by it in respect of loans given by the applicant to the State Electricity Board. Payment premium received by the applicant on repayment of loan before maturity is income from long term finance for the purpose of deduction under section 36 (1) (viii).

Rural Electrification Corporation Ltd In Re. (2010) 42 DTR (AAR) 219

S.37 (1): Capital or Revenue Expenditure – Exchange Fluctuation Loss.

Exchange Fluctuation loss on pending forward contracts is an “accrued” loss.

DCIT vs. Bank of Bahrain & Kuwait (ITAT Mumbai Special Bench) (www.itatonline.org)

S. 37 (1) - Business expenditure-capital or revenue- brand image-entry in the books.

Expenditure on advertisement to create brand image, partly debited in profit and loss account and balance deferred over a period of three years, expenditure allowable as revenue expenditure, entry or absence of entry does not determine allowability of expenditure.

Dy CIT v Godrej Tea Ltd (2010) 4 ITR (Trib) 649 (Mumbai).

S. 37 (1). Business expenditure- capital or revenue- commission on the basis of production/sales.

Commission payable to another company based on the quantity specified products sold by assessee , for various services rendered by that company to the assessee for various services rendered by that company to the assessee to enable it to upgrade its machineries and to use better methods of production is revenue expenditure.

CRYSTAL Chemie (P) Ltd v Asst CIT (2010) 42 DTR (Ahd) (Trib) 197.

S.37 (1) : Business expenditure- Commission-

Commission was paid by account payee cheques, independent evidence were also produced such as service tax challans, and details of parties in respect of services were rendered. Commission was held to be allowable.

Mobile Communication (India) (P) Ltd v DY CIT (2010) 125 ITD 309 (Delhi).

S. 37 (1). Capital or revenue expenditure- Corporate membership fee to club.



Corporate membership fee to club, allowable as revenue expenditure. Expenditure wholly and exclusively for purposes of business and not towards capital account.

CIT v Samtel Color Ltd (2010) 326 ITR 425 (Delhi).

S. 37 (1).Capital or revenue expenditure-take over of business.

Amount paid to transfer for deprivation of business is revenue expenditure.

CIT v Hindustan Zinc Ltd (2010) 326 ITR 474 (Raj).

S. 37 (1) : Business expenditure- reimbursement of expenditure to father

Agreement entered into between the father and son wherein the son has agreed to reimburse the amount spent by his father towards his maintenance and education is unheard of under the provisions of the Hindu law and therefore son cannot claim for such payments.

CIT v Mahesh Bhupathi (2010) 43 DTR (Kar) 163.

S. 37 (1). Business expenditure- Expenses relating to fans associations-

The tribunal was justified in granting deduction to the extent of 80 percentage of the expenses claimed to have been incurred by cine actor on Rasigar Manrams (fans club/association). It is well known fact that popular cine artists promote their Rasigar Manrams for the purpose of promoting their films among the public at large and for that purpose, when it is claimed that substantial amount was spent towards dress, food etc at the time of release of the new films as well as the regular maintenance of the Rasigar Manram activities, it cannot be said that it was not part of their professional activities namely acting in cine filed.

CIT v A.Vijaykant (2010) 43 DTR (Mad) 175.

S. 37 (1) Business expenditure- Retrenchment compensation-Closure of one unit.

When there was interdependence and a unity of control between the three units established by the existence of common management, a common business organization , administration and fund , closure of one unit did not involve the closure of the business and retrenchment compensation paid to workmen was therefore allowable deduction.

CIT v Pfizer Ltd (2010) 233 CTR (Bom) 521.

S. 41 (1) : Business income- Profit chargeable to tax- Remission or cessation of trading liability.

Sales tax Tribunal having upheld the decision of the assessing authority to grant credit of the payment made by the assessee to SICOM (Implementing agency) towards discharge of present value of the deferred sales tax liability and Dy CTO having issued a notice for the full amount, it cannot be said that there was a remission or cessation of liability and consequently section 41 (1) is not applicable.

SI Group India Ltd v Asst CIT (2010) 42 DTR 1 (Bom) / 192 Taxman 91 (Bom).



S. 43(5): Capital Loss – Speculative Loss – Purchase and Sale of Shares (S. 45)

Assessee having entered into transactions of purchase and sale of shares and settled the same by delivery of shares through demat account, same cannot be regarded as speculative transactions and therefore, loss arising therefrom is not speculative loss, and it is to be treated as capital loss.

Jahanganj Cold Storage v. Asst. CIT (2010) 43 DTR 238 (Agra) (TM) (Trib)

S. 45: Capital Gains – Genuineness of Share Transactions

Assessee having submitted copies of contract notes, bills, share certificates along with details of demand draft issued from the account of the broker to substantiate the sale of shares made by her, and the AO having failed to establish that the assessee had introduced her own unaccounted money in the shape of sale proceeds of shares, the transaction of sale of shares cannot be treated as non genuine for the reason that the broker made contradictory statements and the assessee was not allowed cross examination and therefore the sale consideration declared by the assessee is assessable as capital gain and not as income from undisclosed sources.

ITO v Bibi Rani Bansal (Smt.) (2010) 43 DTR 279 (Agra) (TM) (Trib)

S. 45 : Loss- long term and short term- sale of shares-consideration as Rs 1 per share as per memorandum of understanding.

Amount introduced by financial institution in terms of memorandum of understanding to discharge liability of company, amount received by promoter of company repayment of loan and not part of sale consideration on equity shares. Assessing officer directed to accept the long term and short term capital loss as computed by the assessee.

Voltas Ltd v Asst CIT (2010) 4 ITR (Trib) 721 (Bom).

S. 48: Capital Gains – Cost of Acquisition – Fair Market Value - S. 55(2)(b)

Market rate of agricultural land cannot be made the basis for ascertaining the fair market value of commercial land for computation of capital gains; fair market value of the land as on 1st April, 1981, estimated by the assessee by applying the cost inflation index to the sale value of land for stamp duty purposes in the reverse order was sustainable.

Jahanganj Cold Storage v. Asst. CIT (2010) 43 DTR 238 (Agra) (TM) (Trib)

S. 49 (1) (ii). Capital gains- Cost with reference to certain mode of acquisition- deemed gift.

The assessee contended that the expression “gift” in section 49 includes a deemed gift with in meaning of section 4 (1) (a) of Gift tax Act, 1958 and thus actual value of property, relinquished by her children should be taken as cost to her instead of taking in to consideration price paid by her under relinquishment deed. The Tribunal held that the definition in section 2 (xii) or section 4(1) of the 1958 Act, cannot be



imported for the purpose of construing the word “gift” occurring in section 47 (iii) , since the scope of the two Acts is different.

M. Suseela v ITO (2010) 125 ITD 253 (Visakhapatnam)

S. 50. Capital gains- Depreciable assets- S. 2 (11)

Where the CIT (A) and the Tribunal have drawn conclusion of the facts that the property sold by the assessee was not used as a Hotel and hence under section 50 (2), the set off of the sale proceeds of such property was available to the assessee against the purchase cost of new property falling under the same block of assets, no substantial question of law arises.

CIT v Scindia Investment (P) Ltd (2010) 233 CTR (Bom) 458.

S. 69A. Unexplained money-Gift from Donor residing USA- Creditworthiness not proved-No occasion or reason to gift.

As the explanation offered by the assessee was not satisfactory and as there was no direct confirmation from the Donor, credit worthiness of Donor was not proved through independent sources, particularly about his assets from record of US Revenue authorities, as there was no occasion or reason for giving gift , addition was confirmed as unexplained money.

Dinesh Babulal Thakkar v Asst CIT (2010) 39 SOT 332 (Ahd).

S. 80HHC: Deduction –Export earnings- Book Profits.-Company. (S 115JB).

Computing the book profits under S. 115JB have to be reduced by deduction “eligible” u/s. 80HHC & not “actual” deduction.

Ajanta Pharma Ltd. vs. CIT (Supreme Court) (www.itatonline.org)

Editorial: CIT v Ajanta Pharma Ltd (2009) 318 ITR 252 (Bom), reversed

View of special Bench **CIT v Syncome Formulations (I) Ltd** (2007) 292 ITR (AT) 144 (Mum) (SB) is upheld.

S. 80HHC : Deduction- profits of the business-receipt of insurance claim on account of stock in trade.

The insurance claim for loss of stock in trade must stand on the same footing as the income that would have been realized by the assessee on the sale of the stock in trade. Insurance claim on account of stock in trade does not constitute an independent income or a receipt of a nature similar to brokerage, commission, interest, rent or charges, hence such a receipt would not be subject to a deduction of ninety percent under clause (1) of Expln (baa).



CIT v Pfizer Ltd (2010) 233 CTR (Bom) 521.

S. 80IA: Deduction – Adjustment – Brought Forward Losses

Assessee has option to opt for the initial years and the deduction under s. 80IA shall have relevance to that initial year only and conditionality under s. 80IA(5) shall be applicable from such initial year and therefore losses pertaining to year prior to the year in which the assessee opted to claim deduction could not be adjusted against the eligible income.

Rangamma Steels & Malleables v Asst. CIT (2010) 43 DTR 137 (Chennai) (Trib)

S. 80IA: Deduction – Windmill Power Generation – separate undertaking.

Co-generation plant (windmill) installed in different years has to be considered as a separate undertaking and the profit/loss cannot be clubbed in order to compute the deduction under s. 80-IA.

Rangamma Steels & Malleables v Asst. CIT (2010) 43 DTR 137 (Chennai) (Trib)

S. 80IB. Deduction- Industrial undertaking- job work done by others.

Assessee deriving income from its own manufacturing and from job works done for others , the assessee entitled for deduction under section 80IB.

CIT v Impel Forge and allied Industries Ltd (2010) 326 ITR 27 (P&H)

S. 80 HHC. Deduction- Export- Profits of business- gross or net interest.

While computing deduction under section 80HHC, 90 percent of gross interest is to be reduced from the profits of the business in terms of cl (baa) of Explanation to section 80 HHC.

CIT v Gem Plus Jewellery India Ltd (2010) 233 CTR (Bom) 248.

S.90. Double Taxation Relief- Royalty –Permanent establishment.(S, 9,195, 201, art 12.)

Where payment of royalty is made by a tax resident of Singapore to another tax resident of Singapore, the same does not arise in India in terms of art. 12(7) of DTAA between India and Singapore; there being no economic link between the payment of royalty and PE in India, the royalty does not arise in India having regard to the provisions of art. 12(7) of the treaty.

Set Satellite (Singapore) PTE Ltd v Add. D IT (2010) 43 DTR 311 (Mum) (Trib)

S. 90. Double taxation relief- Permanent establishment- India- UK- International taxation- (art 5 (2), 7 (1)).

Items specified in clauses (j) and (k) of art 5 (2) of Indo –UK , DTAA belong to a different genus of PEs i.e. extension of the basic rule set out in art 5 (1) and thus, these clauses are applicable independent of art 5 (1) . Assessee UK based partnership firm , having rendered legal service to certain clients whose



operations extended to India, and fulfilled the 90 days duration test envisaged in art 5 (2) (k), it did have a PE in India under art 5 (2) (k), and accordingly profits attributable to the PE are taxable under art 7.

Inclusion of “Profits indirectly attributable to PE” in article 7 (1) of Indo UK DTAA clearly incorporates a force of attraction principle in the tax treaty and therefore in addition to taxability of income in respect of the services rendered to an Indian Project which is similar to the services rendered by the PE is also to be taxed in India, irrespective of the fact whether such services are rendered through the PE or directly by the general enterprise.

Linklaters LLP v ITO (2010) 132 TTJ (Mumbai) 20./42 DTR (Mumbai) (Trib) 233.

S.90. Double taxation relief-Capital gains- DTAA-India- Mauritius. (2 (14), 47 (iv), art 13.)

Shares held by the applicant as investment in the books of accounts are treated as capital asset. Applicant is not liable to be taxed in India on the proposed transfer of said shares to its wholly –owned subsidiary company in India in view of section 47 (iv) or under art 13 of India Mauritius treaties.

Praxair Pacific Ltd In RE (2010) 42 DTR (AAR) 177.

S. 92C. Transfer pricing- Computation- arm’s length price-International Taxation-applicability of proviso.

For the purpose of computing ALP, 5 percent variation from arithmetical mean is allowed and even after the amended provision, the CBDT circular no 12 of 2001 in this regard being not withdrawn is still applicable. AO was not justified in making addition by computing ALP without any material to suggest that price shown by the assessee is not justified.

Shanker Exporters v Addl CIT (2010) 132 TTJ (JP) 107/42 DTR (JP) (Trib) 441.

S. 115JB. Book Profits- Company- Deduction- Export- (S 80HHC).

While computing the book profit under section 115JB have to be reduced by deduction “eligible” under section 80HHC and not “actual” deduction.

Ajanta Pharma Ltd v CIT (Supreme court) www.itatonline.org

Editorial. CIT v Ajanta Pharma Ltd (2009/ 318 ITR 252 (Bom) reversed.

View of Special Bench in **CIT v Syncome Formulations (I) Ltd** (2007) 292 ITR (AT) 144 (Mum) (SB) is up held.

S. 115JB.Book profit-Company- Deduction- Export- (S. 80HHC.).

For the purposes of cl(iv) of Explan 1 to section 115JB (2), the extent of the reduction admissible towards profit exempt under section 80HHC has to be computed strictly in accordance with the provisions of section 80HHC. Submission of the assessee that in applying the formula under sub section (3) of section



80HHC the expression “profits of the business” would need to be substituted by book profits cannot be accepted.

CIT v AL –Kabeer Exports Ltd (2010) 233 CTR (Bom) 443.

Editorial : In view of ratio of Ajanta Pharma Ltd (SC) www.itatonline.org the judgment may not be good law.

S. 120.Jurisdiction- Non resident.

Where the assessee claims the status as non resident, then the AO (International Taxation) had the jurisdiction to make the assessment.

Manoj Kumar Reddy v ITO (2010) 42 DTR (Bang) (Trib) 171.

S.132B (1) (i).Search and Seizure- Release of seized assets- after expiry of 120 days.

Petitioner having made an application within the permissible time limit for release of seized gold ornaments and jewellery explaining the nature and source of acquisition thereof, respondents have no authority to retain these assets after the prescribed period of 120 days by rejecting the petitioner’s application after the expiry period, the respondent authorities are directed to release the seized ornaments and jewellery forthwith.

Mitaben R. Shah v DY CIT (2010) 42 DTR (Guj) 124.

S. 142A. Assessment- Audit-Special audit-remuneration.

The remuneration for special auditor to be fixed by the Commissioner as per the scale approved by the ICAI , subject to maximum of Rs 30 lakhs per year. Ad hoc remuneration of Rs.20 lakhs fixed by the Commissioner was set aside.

Dhanesh Gupta & Co v CIT (2010) 42 DTR (Del) 7.

S. 143 (2). Assessment-Notice-Block assessment .(S.158BC.).

Omission on the part of the assessing authority to issue notice under section 143 (2), within prescribed time cannot be a mere procedural irregularity and the same not curable , as the notice under section 143(2), was issued beyond the period of limitation ,the proceedings initiated pursuant to the notice are vitiated.

CIT v Pai Vaibhav Hotels (P) Ltd (2010) 42 DTR (Kar) 121.

S. 145. Assessment- income-addition-

Addition could not be made in the case of the assessee carrying on the business of purchase and sale of milk and milk products arbitrarily on the basis of difference in the fat content which is explained by the assessee ,when such fat content compared favourably with other dairy units in the same business.



Gayatri Dairy Products (P) Ltd v Asst CIT (2010) 42 DTR (Guj) 19.

S. 145 Method of accounting- Income –Accrual- advance receipt.

Where the Tribunal has affirmed the finding of fact of the CIT (A) that the change in the method of accounting with respect to accounting of commission, exchange and discount and locker rent on accrual basis though received in advance was bona fide and consistently followed and as such a change was not detrimental to the interest of the Revenue, no interference was called for.

CIT v Bank of Rajasthan Ltd (2010) 233 CTR (Bom) 530.

S. 147: Reassessment – Beyond Four Years – Material Facts.

Reopening beyond 4 years on basis of Supreme Court's judgement not justified if assessee has not failed to disclose material facts.

CIT vs. Baer Shoes (Madras High Court) (www.itatonline.org.)

S. 147. Reassessment- full and true disclosure-after expiry of four years-issue subject matter of appeal.

Where there was a full and true disclosure of the facts by the assessee and a due application of mind by the AO, the condition precedent to the exercise of the jurisdiction to reopen the assessment beyond four years from the end of the relevant assessment year has not been fulfilled. Further very issue on which the assessment is sought to be reopened was canvassed in appeal and was determined in the appellate proceedings by the CIT (A), and therefore in terms of the second proviso to section 147 the assessment could not have been reopened.

Prashant Projects Ltd v Asst CIT (2010) 42 DTR (Bom) 257.

S. 147. Reassessment- Writ jurisdiction- maintainability.

Question as to whether in view of the failure to disclose the fact that exemption under section 10B had been allowed to the other EOU of the petitioner, the disclosure made by the petitioner can be said to be a true disclosure vis-à-vis its claim for exemption under section 10B in respect of the alleged new unit can conveniently dealt with in the proceedings under the IT Act, rather than a writ petition under art 226 of the Constitution of India, and therefore writ petition challenging the reopening of petitioner's assessment is dismissed.

Sociedade De Formento Industrail (P) Ltd v Asst CIT (2010) 43 DTR (Bom) 167.

S. 158BB.Block assessment- Undisclosed income-Firm- Partner.

In view of proviso to clause (b) of Explanation of section 158BB(1), if an income is earned by firm or on behalf of firm, whether disclosed or undisclosed, it has to be assessed in hands of firm only and as such



an assessment cannot be made merely because said income is not disclosed in account of firm or it is pocketed by partner.

Asst CIT v K.T.Joseph (2010) 125 ITD 235 (Cochin) (TM) 235

S. 158BD.Block assessment- Search and Seizure- Service of notice- Civil procedure code, rule 17 order V.

When there was no evidence of any local person having been associated with an identifying the place of business of the assessee and the report is not witnessed by any person at all , service of notice by affixture was not valid.

CIT v Naveen Chander (2010) 42 DTR (P&H) 156.

S. 194. Deduction of tax at source.-Dividend.

When payment is made to a non shareholder section 194 does not apply.

MTAR Technologies (P) Ltd v Asst CIT (2010) 39 SOT 465 (HYD).)

S. 195: Tax Deducted at Source – Shares – Foreign Company – Acquisition (S.9)

The purchase of shares of a foreign company by one non-resident from another non-resident attracts Indian tax if the object was to acquire the Indian assets held by the foreign company.

Vodafone International Holdings B.V. vs. UOI (Bombay High Court) (www.itatonline.org)

S. 195. Tax deduction at source-Legal expenses- GDR issue.

Payment of legal charges to the firm of solicitors in connection with the assessee's GDR issue is covered within the ambit of "fees for technical services " as per provisions of section 9 (1) (vi) and is liable to TDS under section 195.

DY DIT v Tata Iron & Steel Co Ltd (2010) 42 DTR (Mumbai) (Trib) 204.

S.195(1): Tax Deducted at Source – Non Resident Recipient.

TDS obligation u/s 195(1) arises only if the payment is chargeable to tax in the hands of non-resident recipient.

GE India Technology Centre vs. CIT (Supreme Court) (www.itatonline.org)

S. 201 (1). Assessee in default- Limitation- TDS.



Maximum time limit for passing the order under section 201 (1) or (1A), is the same as prescribed under section 149 i.e. Four years or six years from the end of the relevant assessment year, as the case may be depending upon the amount of income in respect of which the person responsible is sought to be treated as assessee in default.

DY DIT v Tata Iron and Steel Co Ltd (2010) 42 DTR (Mumbai) (Trib) 204.

S. 234B – Settlement Commission – Liability to Pay Interest

Even if no interest under S. 234B was levied on the assessee in the original order of assessment, the assessee is liable to any interest for that portion of the income forming part of the total income as determined by the settlement commission words, “the interest shall be increased”, would contemplate both a situation where interest had been levied on the assessee in the first instance, and a situation where no interest has been levied on the assessee in the original order of assessment.

Akbar Travels of India (P) Ltd. v Income tax settlement Commission & Ors. (2010) 43 DTR 49 (Bom.)

S. 237 : Refund- TDS- Amount recovered from employer (S. 240)

Where assessability of the perquisite value of stock option was held as not justified and not in accordance with the law by apex court, TDS recovered from assessee by employer company was refundable to the assessee.

Ramaa Sivaram (Smt) v Chief CIT (2010) 42 DTR (Mad) 215.

S. 245C - Settlement commission-power to grant immunity from penalty and prosecution (S. 245D)

Assessee can go before the settlement commission at any stage, even after investigation /detection of concealed income by the assessing authority. The matter remanded back to the settlement commission to consider the immunity from penalty and prosecution

CIT v The Vyaya Bank Ltd (2010) 42 DTR 97 (Kar)

S. 245C: Settlement Commission – Revision – Undisclosed Income.

Revision of undisclosed income in Settlement Application is not permissible.

Ajmera Housing Corporation vs. CIT (Supreme Court) (www.itatonline.org)

S. 245F: Settlement Commission – Rectification of Mistakes – Charge Interest

Settlement commission committed an error apparent by not following the decision of the special bench of Settlement Commission which was confirmed by the Gujarat High Court and therefore Settlement



Commission was justified in exercising the power under s. 154 and in allowing the miscellaneous application of the department for charging interest under s. 234B

Akbar Travels of India (P) Ltd. v Income tax settlement Commission & Ors. (2010) 43 DTR 49 (Bom.)

S.245HA - Settlement Commission-Constitutional validity- Abatement of proceedings

High Court passing an interim order that proceedings will not abate, held court's interim order is valid & it would decide the constitutional validity of section 245HA. Supreme court up held the interim order.

UOI v Rajendra Construction Co (2010) 217 Taxation 273 (SC).

S. 254 : Appellate Tribunal- Duties of Tribunal to consider facts.

Tribunal mechanically following decision of High Court which was not applicable to the facts, the court held that the order of Tribunal not valid and matter remanded to the Tribunal.

CIT v Damodar Mangalji Mining Co (2010) 326 ITR 437 (Bom).

S. 254 : Appellate Tribunal- Power- (Appellate Tribunal Rule 11.).

Tribunal can examine on its own any aspect of the subject matter of appeal, whether the same has been examined by the authorities below or not. In the appeal contesting the taxability of the assessee, a UK based firm in India it is open to the Tribunal to consider the issue of admissibility of benefits of Indo –UK treaty to the assessee though not raised earlier.

Linklaters LLP v ITO (2010) 132 TTJ (Mumbai) 20.

S. 254 : Appellate Tribunal- Order- Communication.

Members of the Tribunal do not become functus officio till the order is communicated to the parties, and before that they can change it as many times as they want.

Star Drugs & Research Labs Ltd v Asst CIT (2010) 42 DTR (Chennai)(TM) (Trib) 343

S. 254 : Appellate Tribunal- additional or new ground-

In the appeal filed by the department against deletion of disallowance of unaccounted expenditure under proviso to section 69C, it is entitled to raise a fresh plea before the Tribunal to consider the allowability or otherwise of the expenditure under section 37 (1) as the subject matter of the appeal remains the same.

Asst CIT v Amarnath Reddy (2010) 42 DTR (Chennai)(TM) (Trib) 449.

S. 260A. Appeal to High court- Jurisdiction-Territorial Jurisdiction of High court.(Income Tax (Appellate Tribunal),Rules ,1963 –Rule 4 (1) note 4.)



Punjab and Haryana High court has no territorial jurisdiction to entertain an appeal arising out of an order passed by the assessing officer at Bangalore, though the registered office is shifted to Punjab.

CIT v Motorala India Ltd (2010) 326 ITR 156 (P&H).

S. 260A. Appeal to High Court-Jurisdiction-Territorial jurisdiction of High Court.(Income tax (Appellate Tribunal)Rules , 1963. R. 4 (1) note 4.)

Order passed by Tribunal in Chennai, and subsequent shifting of assessee's office to Punjab. Punjab and Haryana High Court has no jurisdiction to consider appeal.

CIT v H.F.C.L.Infotel Ltd (2010) 326 ITR 167 (P&H).

S. 260A. Appeal to High Court-issue pending before supreme court-

In view of the importance and recurring nature of issue and the reference being made by Division Bench doubting the correctness of judgment pending in appeal before the Supreme court, the court can proceed to hear the case instead of deferring the same.

CIT v South Indian Bank Ltd (2010) 42 DTR (Ker) (FB) 109/233 CTR (Ker) (FB) 214.

S. 263. Revision- Judgment of Jurisdictional High Court.

When a High Court declares the law on the subject, the declaration goes back to the date of enactment of that particular law so as to state that law from the date of its enactment itself, was in the manner decided by court subsequently. Commissioner was justified in revising the order under section 263 on the basis of judgment of jurisdictional High Court.

Intellinet Technologies India P . Ltd v ITO (2010) 5 ITR (Trib) 96 (Bang).

S. 263. Revision- ESI – PF - Lack of proper enquiry.

AO having not made any enquiry in relation to late payment of employee's contribution towards ESI and PF , by assessee , CIT was justified in invoking the provisions of 263 and setting aside the order of the AO for redoing the same.

Star Drugs & Research Labs Ltd (2010)42 DTR (Chennai) (TM). (Trib) 343.

S. 263. Revision-Lack of proper enquiry.

AO having allowed deduction of "interest" under section 40 (b), to the assessee firm without making any enquiry or applying his mind on the aspect as to whether the interest paid by the assessee firm on capital accounts is disallowable in view of the fact that the capital accounts of the partners and that the dividend income on shares is exempt and whether the dividend income received by the partners on such shares has been entered in the P&L account of the firm or not ,order passed by the AO was erroneous and prejudicial to the interests of the Revenue , and therefore the CIT rightly invoked the provisions of section 263.



Shiv Automobiles v ITO (2010) 43 DTR (Agra)(TM) (Trib) 345.

S. 263(1): Revision – Merger with Appellate Order .

CIT (A) having deleted the addition made by the AO on the basis of Assessee's mother's will, the order of the AO on the issue of addition on the basis of will got merged with the order of the CIT(A), and therefore, CIT had no jurisdiction to invoke the provisions of S.263 on the issue of examination of veracity of bequeathal under the will.

S. K. Jain v CIT (2010) 43 DTR 1 (Agra) (TM) (Trib)

S. 269 SS : Deposits - Receiving back money from borrower in cash (S. 271D)

Provisions of section 269SS and 271D, are not applicable in case where assessee received back money from borrower in cash and not advanced money or accepted loan in cash.

Dy CIT v Ankush Rao Ingle (2010) 39 SOT 263 (Hyd)

S. 271 (1)(c) - Penalty- concealment- purchase invoices was fictitious

Transaction of sale was not genuine and the assessee had claimed depreciation on non existent assets. It was further noticed that the assessee was a habitual concealer of income as it had been surrendering bogus depreciation year after year when it confronted with evidence of non existence of assets. On facts it was held that assessing officer was justified in imposing penalty upon assessee.

Asstt CIT v TVS Finance & Services Ltd (2010) 125 ITD 341 (Chennai)(TM).

S. 271(1) (c) : Penalty-concealment- disallowance –deeming provisions.

In a matter of interpretation of provisions of the Act, merely because certain claim has been disallowed , and allowed in subsequent year ,penalty under section 271 (1)(c), cannot be levied.

AT&T Communication Services India (P) Ltd v Dy. CIT (2010) 42 DTR (Del) (Trib) 22.

S. 271(1)(c) : Penalty – Concealment – Addition - (S. 68)

Assessee having produced confirmations for both the alleged loans, it cannot be said that the explanation of the assessee was not bonafied or that material facts were not disclosed merely because additions under s. 68 have been confirmed for the reason that the first creditor denied that the amount was given to assessee as a loan and there was serious doubt about the genuineness of the source of source of second loan and, therefore, Explan. 1 to 271(1)(c) is not applicable and penalty is not leviable.

Bhartesh Jain v ITO (2010) 43 DTR 320 (Del) (Trib)

S. 271 (1) (c) : Penalty- Concealment- Provision for bad debts and provision for diminution in value



Assessee claimed deductions on account of provision for bad debts and provision for diminution in value of investments in express violation of provisions of law hence the revenue authorities were justified in imposing penalty under section 271(1)(c).

Gujarat State Financial Services Ltd v Asst CIT (2010) 39 SOT 570 (Ahd).

S. 271B – Penalty - Delay in filing audit report. (S. 44B, 264)

When audit reports as required under section 44AB for asst years 1990-91 to 1993-94 had been obtained before due date and the same were furnished along with the return of income, penalty under section 271B was not leviable, since the amendment in section 44AB requiring to furnish the audit report by the due date was incorporated by the Finance Act, 1995, w.e.f. 1st July 1995 only.

S. V. Pathak & Company v N. C. Tiwari CIT (2010) 42 DTR (Bom) 227

S. 271D – Penalty - Deposit or loan - Transaction bonafide- Technical default (S. 269SS)

Accepting the share application money of Rs.20,000/-, in cash, as the transaction was bonafide, the default being technical cancellation of penalty by the tribunal was held to be justified.

CIT v Speedways Rubber Pvt Limited (2010) 326 ITR 31 (P&H).

S. 273A. Penalty- waiver- interest.

Assessee voluntary filing of return, waiver application for interest was rejected. The court held that rejection of application solely for failure to pay interest was not justified when no notice was issued by the department under section 139 or 148.

Prakash Kumari (Smt) v CIT (2010) 326 ITR 82 (Bom)

Writ-Clearance from COD - Order of settlement commission - writ petition by CIT.

Clearance from COD is not necessary to maintain the writ petition filed by the Revenue to quash the order passed by the settlement commission as the lis is between the revenue and the first respondent (assessee) and not between the petitioner and the settlement commission. CIT has implied powers to file writ petition questioning the order passed by the settlement commission.

CIT v The Vyasa Bank Ltd (2010) 42 DTR (Kar) 97.

Interest Tax.1974.

S. 2 (5). Interest Tax- Chargeable- refinancing operations.

Interest earned on refinancing operations to be included from chargeable interest.

CIT v Punjab State Industrial Development Corporation (2010) 326 ITR 390 (P&H).



Service tax-

Though software is “goods”, its supply may be a “service” and not a “sale”.

Infotech Software Dealers Association vs. UOI (Madras High Court) (www.itatonline.org).

Wealth Tax.

S. 4 (7). Wealth tax – asset - Flat in society- registration.

Assessee purchasing the flat before 1-4-1993, and admitted as member of society. Transfer not registered in books of society, not relevant, value of flat includible in net wealth of assessee.

Bennett Coleman and Co Ltd v Asst CIT (2010) 326 ITR 447 (Bom).

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