



Monthly Digest of Case Laws (March 2010)

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(JOURNALS REFERRED): BCAJ, CTR, DTR, ITD, ITR, ITR (Trib), Income Tax Review, SOT, Taxman, Taxation, TLR, TTJ, www.itatonline.org

1.S. 2(15) – DEFINITIONS - CHARITABLE PURPOSE

In order to achieve objects of giving relief to poor and in furtherance of education and medical relief, if assessee was running some activity that yielded profit, even then recognition can not be denied.

Prasanna Trust vs. DIT (2010) 36 SOT 135 (Bang)

2.S. 2(22)(e) - DEEMED DIVIDEND - TRANSACTION IN THE NORMAL COURSE OF BUSINESS

Transactions in the normal course of business can not be treated as deemed dividend more so as the assessee is not a share holder of the payer company and none of the shareholders of the latter is a share holder in the assessee company having substantial interest.

Dy. CIT vs. Timeless Fashions (P) Ltd. (2010) 128 TTJ 489 (Del.)

3.S. 4 - ASSOCIATION OF PERSONS - PRINCIPLE OF CONSISTENCY

Nursing home run by two individuals Authorities accepting for long length of time that it was not an association of persons. No new material or fact fund. Held that nursing home cannot be treated as an AOP on same facts

Dr. Narendra Prasad & Ors vs. CIT (2010) 322 ITR 171 (Patna)

4.S. 4 - CHARGE OF INCOME TAX - CAPITAL OR REVENUE - CONCESSION IN RATE OF EXCISE DUTY

The receipts from the sale of levy free sugar and concession in the rule of excise duty rebate were capital receipts not liable to tax.

CIT vs. Tiruttani Co-op. Sugar Mills Ltd. (2010) 322 ITR 59 (Mad.)

5.S. 4 - INCOME - DUTY DRAWBACK AND CASH ASSISTANCE ACCRUAL BASIS

Addition on account of duty drawback and cash assistance on accrual basis held to be not justified.

CIT vs. Bajaj Auto Ltd. (2010) 322 ITR 29 (Bom.)

Editorial Note: CIT vs. Matchwell Electricals I Ltd. (2003) 263 ITR 277 (Bom.)

6.S. 4 - INCOME - COMPENSATION – REVENUE OR CAPITAL

The assessee firm entered into an agreement for sale of a cinema building alongwith land. The agreement failed and as per terms of agreement the firm became entitled to compensation. It was held that compensation amount received on breach of contract was a capital receipt.

S. Zoraster & Co. vs. CIT (2010) 322 ITR 35 (Raj.)

7.S. 9 - BUSINESS CONNECTION - INTERNATIONAL TAXATION - INCOME DEEMED TO ACCRUE OR ARISE IN INDIA – INDIA-RUSSIA – DTAA - (S. 90, ARTS. 5 & 7)

Applicant a Russian company, is not entitled to tax in India in respect of the amount received from the Indian company NTPC for execution of off shore supply contract as the materials were shipped outside



India, the title to goods passed outside India (on high seas) and payment was also received outside India as per the terms of the contract.

Joint Stock Company Foreign Economic Association "Tech (2010) 230 CTR 139 (AAR)

8.S. 10B - EXPORT ORIENTED UNDERTAKINGS – SET-OFF OF BROUGHT FORWARD LOSS

Brought forward business loss must be set off first against business profits and thereafter any deduction or exemption under the Act has to be given.

Sword Global (I) (P) Ltd. vs. ITO (2010) 122 ITD 103 (Chennai)

9.S. 10B - EXPORT – ORIENTED UNDERTAKINGS - INCOME DERIVED – INTEREST INCOME ON FDR

Interest income on FDRs and surplus funds could not be held to have been derived from export of information technology services.

Tricom India Ltd. vs. ACIT (2010) 36 SOT 302 (Bom)

10.S. 10(10C) - EXEMPTION – SALARY - VOLUNTARY RETIREMENT - (S. 89)

Amount received under voluntary retirement scheme exempt upto 5 lakhs under section 10(10C). Amount in excess of 5 lakhs entitled to relief under section 89.

CIT vs. T. K. Paliwal (2010) 322 ITR 101 (Raj.)

CIT vs. S. N. Sharma (2010) 322 ITR 105 (Raj.)

Sunil Kumar Ganguly & Ors vs. ITO (2010) 322 ITR 297 (Cal.)

11.S. 10(23C)(v) – EXEMPTION - CAPITAL EXPENDITURE – DEDUCTION - COMPUTATION OF PROFIT

Section 10(23C)(v) benefit cannot be denied merely because there are profits. In computing the profits, capital expenditure has to be deducted.

Pinegrove International Charitable Trust vs. UOI (P & H) Source: www.itatonline.org

12.S. 17(2) - SALARIES – PERQUISITES

Allowance for attire and club membership fees would fall under perquisites, if club membership is purchased in name of employee and fee payable to such a club is reimbursed by company for personal use of employee. If membership is standing in name of company and if any guest of company is entertained by employee for business promotion of company, same can not be treated as perquisites to such an employee.

CIT vs. Wipro Systems (2010) 188 Taxman 280 (Kar.)

13.S. 22 - INCOME FROM HOUSE PROPERTY – BUSINESS INCOME – (S. 28)

The main business of the assessee was of development and sale of property and not renting of property. Hence, the rent received could be taxed under the head income from property instead of income from business.

CIT vs. Haryana Urban Development Authority (2010) 322 ITR 61 (P & H)

14.S. 22 - INCOME FROM HOUSE PROPERTY – BUSINESS INCOME - S. 28

Rent from premises with fittings. Appointment between business income and income from house property held to be justified.

CIT & Anr. vs. Mysore Inter Continental Hotel P. Ltd. (2010) 322 ITR 116 (Karn.)



15.S. 28 - BUSINESS LOSS - OBSOLETE ITEMS - DIMINUTION IN VALUE - 28

The assessee was entitled to write off the obsolete items out of inventories acquired by it in its books of account for the year ending 31st march 1998, even though the process of determination of diminution in the value of inventory was undertaken at a later date.

Kopran Drugs Ltd. vs. ACIT (2010) 35 DTR 380 (Mum.)(Trib.)

16.S. 28(1) – BUSINESS - TEMPORARY SUSPENDED - INTEREST TO PARTNERS

Interest paid to partners is allowable deduction when business is temporarily suspended.

ITO vs. M. M. Textiles (2010) 122 ITD 435 (Mum.)

17.S. 32 - DEPRECIATION - OWNERSHIP OF ASSET

Owner is a person who is entitled to receive income from the property in his own right. In order to claim benefit of sec. 32 it is not necessary that the assessee should be a complete owner. The buses on which the assessee had claimed depreciation were not registered in her name, however the assessee produce all the documents relating to loans obtained, insurance etc relating to the business to establish that she was beneficial owner and received income. It was held she was entitled to depreciation.

CIT vs. A. Sivakami & Anr. (Smt.) (2010) 322 ITR 64 (Mad.)

18.S. 32 - DEPRECIATION – CANTEEN – FACTORY BUILDING

Canteen for workers inside factory premises, constitutes factory building. Entitled to higher rate of depreciation.

CIT vs. Bajaj Auto Ltd. (2010) 322 ITR 29 (Bom.)

19.S. 35AB - BUSINESS EXPENDITURE - KNOW-HOW

Expenditure covered under section 35AB has to be in nature of capital expenditure as scheme of Act, is that all revenue expenses are allowable while computing income from business or profession under section 37.

Mahindra & Mahindra Ltd. vs. Jt. CIT (2010) 36 SOT 348 (Mum)

20.S. 37 - BUSINESS EXPENDITURE - CURRENT REPAIRS – (S. 31, 37)

Replacement of machinery whether current repairs, matter remanded to the High Court for de novo consideration, of assessee's claim for deduction in the light of judgment of CIT vs. Sri Mangayarkarasi Mills Ltd. (2009) 315 ITR 114 (SC).

CIT vs. Hindustan Textiles (2010) 230 CTR 105 (SC) / (2010) 36 DTR 131 (SC)

21.S. 37 - BUSINESS EXPENDITURE - CAPITAL OR REVENUE EXPENDITURE - RESTRUCTURING AND VIABILITY STUDY

Expenditure for restructuring and viability study and preparation of restructuring proposal is a revenue expenditure.

CIT v JCT Electronics Ltd (2010) 188 Taxman 191 (Punj & Har)

22.S. 37 - BUSINESS EXPENDITURE - CAPITAL OR REVENUE EXPENDITURE - FEASIBILITY REPORT FOR ACQUIRING NEW UNIT

Legal expenses incurred on obtaining advice as to feasibility of acquiring a new unit is a revenue expenditure.

CIT vs. United Breweries Ltd. (2010) 36 DTR 80 (Kar.)



23.S. 37 - BUSINESS EXPENDITURE – AMALGAMATION - DISCHARGE OF GUARANTEE OBLIGATION

Payment made by the assessee company to discharge the guarantee obligations vis-à-vis certain companies undertaken by two subsidiaries of the assessee company which amalgamated with the latter had no direct proximity or relationship to the business of the assessee and therefore, the same was not allowable as deduction.

CIT vs. United Breweries Ltd. (2010) 36 DTR 80 (Kar.)

24.S. 37 - BUSINESS EXPENDITURE – PENALTY – FINE - NATIONAL STOCK EXCHANGE

Though every member of National Stock Exchange is obliged to abide by its rules and regulations, a violation of a statutory law or rule hence, fine imposed on the assessee a member of NSE for violation of regulations of NSE can not be disallowed.

Gold Crest Capital Markets Ltd. vs. ITO (2010) 36 DTR 177 (Mum.)(Trib.)

25.S. 37 - BUSINESS EXPENDITURE - REFUNDABLE DEPOSIT WITH STOCK EXCHANGE

Refundable deposit with stock exchange is not a deductible expenditure.

Dy. CIT vs. Khandwala Finance Ltd. (2010) 122 ITD 111 (Mum.)

26.S. 37 - BUSINESS EXPENDITURE - IMPROVING PERFORMANCE

Amount paid to foreign Company, for improving performance of its existing utility vehicles, and for purpose of development of concept of clay model for its utility vehicles, since the expenditure was incurred for improving performance of existing product, same was allowable under section 37(1).

Mahindra & Mahindra Ltd. (2010) 36 SOT 348 (Mum.)

27.S. 37 - BUSINESS EXPENDITURE - EXEMPTED INCOME - AGRICULTURAL OPERATION – (S. 10)

The expenses relating to agricultural operations could not be allowed as expenditures in computing the business incomes for the simple reason that agricultural income did not form part of the total income under the Act.

Kancor Flavours & Extracts Ltd. vs. Dy. CIT (2010) 123 ITD 97 (Cochin)

28.S. 37(1) - CAPITAL OR REVENUE – ROYALTY – (S. 33AB)

Matter is remitted to the High Court to carry out an indepth exercise to understand the actual expenses undertaken by the assessee in “duplication” of software provided by it by the American company and then answer the question as to whether the royalty paid by the assessee to the American Company is allowable in its entirety under section 37 or only one sixth thereof is allowable under section 35AB.

CIT vs. Mastek Ltd. (2010) 35 DTR 106 (SC)

29.S. 37(1) - BUSINESS EXPENDITURE - SETTING UP – COMMENCEMENT – [S. 2(13)]

A finance company having purchased computers and peripherals on 4th Sept 1995, appointed staff, in September and October 1995, and salaries including allowances bonus, gratuity and contribution to provident fund and other funds from November 1995, its business can be said to be set up on 1st November 1995, when it was in a position to commence its business and not when its bank account was opened. Expenditure incurred thereafter is allowable as deduction.

CIT vs. Whirlpool of India Ltd. (2010) 229 CTR 435 (Del.)

30.S. 37(1) - BUSINESS EXPENDITURE – OFFENCE – PENALTY – SEBI



Any payment made for the purpose of compliance with the provisions of law would tantamount incidental to carrying on the business. Payments made by the assessee under the 2002 scheme can not for the purpose of disallowance under the Explanation be treated as penalty or akin to penalty under section 37 of the Income Tax Act 1961.

Kaira Can Co. Ltd. vs. Dy. CIT (2010) 2 ITR 20 (Mum.)(Trib.)

31.S. 40(a)(iii) - BUSINESS DISALLOWANCE – TDS – REIMBURSEMENT OF EXPENSES OF EMPLOYEE

Amounts paid by the assessee to its employees toward overseas maintenance allowance. These amount constituted only reimbursement for the expenses incurred by the employees and would not form part of the salary in the hands of receipts. Sub clause (iii) of clause (a) of section 40 would not be applicable.

CIT vs. Information Architects (2010) 322 ITR 1 (Bom.)

32.S. 40(a)(ia) - BUSINESS DISALLOWANCE – INTEREST - DEBENTURE

Expenditure claimed by the assessee as interest accrued on debentures without deducting the TDS could not be allowed in view of specific provisions of section 40(a)(ia).

Dy. CIT vs. Umang Dairies Ltd. (2010) 36 SOT 383 (Delhi)

33.S. 40(a)(i) - BUSINESS DISALLOWANCE - ROYALTY

During assessment year 2001-02, assessee company made royalty payment to its holding company in US after deducting TDS, however, paid amount was so deducted in the Asst. Year 2001-02. As per proviso to section 40(a)(i) deduction is allowable to assessee in subsequent year in which TDS has been paid or deducted under chapter XVIIIB, however in the present case TDS had been paid by assessee in present year although deducted in preceding year hence its claim for deduction was allowable.

McDonalds (India) (P) Ltd. vs. ACIT (2010) 36 SOT 240 (Delhi)

34.S. 40A(2)(b) - BUSINESS EXPENDITURE - REMUNERATION – EXCESSIVE OR UNREASONABLE

Steep increase in remuneration payable to directors held disallowance is proper.

Shree Laxmi Marketing vs. ACIT (2010) Tax LR 106 (Pune)

35.S. 41(1) - REMISSION OR CESSATION OF LIABILITY - WAIVER OF LOANS

Waiver of loans can not to be charged to tax under section 41(1).

Mindtek (India) Ltd. vs. ITO (2010) 122 ITD 486 (Bom.)

36.S. 43(3) - PLANT – BUILDING- DEPRECIATION – (S. 32)

Where building has been designed specifically to further cause of manufacture or production, then the same would be considered as a “plant”, for the purpose of depreciation.

CIT vs. Shivalik Hatcheriers (P) Ltd. (2010) 188 Taxman 291 (HP)

37.S. 44BB - MINERAL OILS - INTERNATIONAL TAXATION – (S. 9(1)(vii), 44DA, 115A)

Applicant, a Norwegian company ,having hired a seismic vessel from another non-resident company under a time charter party agreement for the purpose of executing its contract for providing 3D seismic data acquisition and onboard processing services to ONGC, second limb to section 44BB(I) is clearly attracted and not section 44DA or 115A and therefore tax has to be deducted at source from the payments made by the applicant @ 4.223 percent.

Wavefild Inseis Asa, In Re. (2010) 230 CTR 106 (AAR) / (2010) 36 DTR 139 (AAR)



38.S. 44BBB - CIVIL CONSTRUCTION BUSINESS - INTERNATIONAL TAXATION - NON RESIDENT

When income of the assessee under section 44BBB is to be computed at 10 percent of gross receipts and the assessee does not claim a lower profit than that to be assessed under sub s (2) of section 44BB , AO can not proceed to determine income of assessee under section 28 to 44AA on the pretext of consistency , assessee is also entitled to set off losses in other business from such income.

DSD Industrieanlagen GmbH vs. Dy. CIT (2010) 36 DTR 121 (Del.) (Trib.)

39.S. 45 - CAPITAL GAINS - BUSINESS INCOME – LAND – [S. 2(13), 28(i)]

Assessee having purchased land jointly with his wife and son applied for sanction for converting the same in to housing plots soon thereafter and sold all the plots some years after obtaining the sanction, the obvious intention behind the purchase of land was to sell the same at a profit and therefore though an isolated transaction, it was an adventure in the nature of trade and the income therefrom has to be treated as business income.

Cherukuri Ramesh vs. ACIT (2010) 36 DTR 269 (Visakha)(Trib.)

40.S. 45 - CAPITAL GAINS - BUSINESS INCOME - INVESTMENT IN SHARES – (S. 28)

Assessee engaged in trading of shares as well as investment in shares profit on sale of investment shown as short term capital gains or long term investments is assessable as capital gains and not as business income.

Paresh D. Shah vs. Jt. CIT (2010) 2 ITR 311 (Mum.)(Trib.)

Editorial Note: Refer Mumbai Tribunal Jayashree Pradip Shah ITA No. 3608/Mum/07 Asst. Year 2004-05 Bench J dt. 24-2-2010. against the assessee.

41.S. 45 - CAPITAL GAINS – LOSS - CONVERTIBLE WARRANTS – [S. (2)(47)]

Forfeiture of convertible warrants results in extinguishment of right of the assessee to obtain a share in the company and results in loss under the head “capital gains”.

CIT vs. Chand Ratan Bagri (2010) 36 DTR 244 (Del.)

42.S. 46(2) - CAPITAL GAINS - COST OF ACQUISITION – LIQUIDATION – (S. 49(1)(iii)(c), 55)

For the relevant assessment year, assessee computed his capital gains by taking cost of acquisition of said property on basis of value of shares purchased by him. Assessing Officer viewed that since the capital asset became assessee’s property on distribution of same by company–in-liquidation, cost of acquisition of said asset had to be taken as cost to previous owner as per section 49(1)(iii)(c). The Tribunal confirmed the view of Assessing Officer.

ACIT vs. T. R. Srinivasan (2010) 36 SOT 312 (Chennai)

43.S. 47(xiii) - CAPITAL GAINS - CONVERSION OF PARTNERSHIP IN TO COMPANY - PART IX – (S. 47A(3) & S. 574 & 575 OF COMPANIES ACT)

No capital gains accrued or arose at the time of conversion of erstwhile partnership firm in to private limited company under part IX of the Companies Act, 1956, as the partners of the firm became the shareholders of the said company having shareholdings identical to the profit–sharing ratio and by reason of transfer of shares to the applicant before five years, the company is not liable to pay tax on capital gains.

Umicore Finance Luxembourg, In Re. (2010) 36 DTR 249 (AAR)

44.S. 48 - CAPITAL GAINS - COST OF ACQUISITION - INTEREST PAYABLE



Interest payable is to be includable in the cost of acquisition of property for computing capital gains on the sale of property, though such interest was not paid till the time the property was sold.

CIT vs. Sri Hariram Hotels (P) Ltd. (2010) 229 CTR 455 (Kar.)

45.S. 48 - CAPITAL GAINS – COMPUTATION - CAPITAL LOSS - PARTLY CONVERTIBLE DEBENTURE

Assessee would be entitled to claim capital loss that had arisen due to transfer of rights issue to partly convertible debentures.

CIT vs. New Ambadi Investments (P) Ltd. (2010) 188 Taxmann 67 (Mad.)

46.S. 55A - CAPITAL GAINS – COMPUTATION - COST OF ACQUISITION - FAIR MARKET VALUE – 1ST APRIL, 1981

Value adopted by assessee much higher than fair market value reference to valuation officer permissible. Average of both valuation was taken.

Valuation charges incurred by assessee, not spent in connection with cost of acquisition or cost of improvement of asset hence not deductible.

VijayKumar M. Shah vs. Dy. CIT (2010) 2 ITR 116 (Mum.)(Trib.)

Editorial Note:– Refer Bombay High Court Daulat Mota HUF ITA NO 1031 OF 2008 DT 22-9-2008 (Unreported), Smt. Krishnabai Tingre (2006) 101 ITD 317 (Pune)

47.S. 56 - INCOME FROM OTHER SOURCES - BUSINESS INCOME – (S. 4)

Interest received by assessee on advances given to contractors for undertaking the expansion project of its refinery, though treated as part of business income is to be adjusted in the work in progress.

Mangalore Refinery & Petrochemicals Ltd. vs. ACIT (2010) 128 TTJ 285 (Mum.)

48.S. 56 - INCOME FROM OTHER SOURCES – BUSINESS – INTEREST – (S. 4)

Interest received by assessee on advances given to contractors for undertaking the expansion project of its refinery, though treated as part of business income is to be adjusted in the work in progress.

Mangalore Refinery & Petrochemicals Ltd. vs. ACIT (2010) 128 TTJ 285 (Mum.)

49.S. 69 - INCOME FROM UNDISCLOSED SOURCES - SURVEY - ADDITION ON THE BASIS OF STATEMENT – (S. 69A, 133A)

Confession made by the assessee during survey proceedings is not conclusive and it is open to the assessee to establish that the same was not true and correct by filing cogent evidence. Additions deleted by the Tribunal was justified.

ITO vs. Vijay Kumar Kesar (2010) 36 DTR 13 (Chattisgarh)

50.S. 72A - CARRY FORWARD AND SETOFF OF LOSSES - AMALGAMATION – DEMERGER - UNABSORBED CAPITAL EXPENDITURE

Terms “accumulated loss” and “unabsorbed depreciation” as defined in section 72A(7), do not include unabsorbed capital expenditure on scientific research, therefore in case of demerger, benefit of section 72A(4), can not be extended to resulting company in respect of unabsorbed capital expenditure on scientific research.

ITO vs. Mahyco Vegetable Seeds Ltd. (2010) 123 ITD 40 (Mum.)

51.S. 80G(5B) - CHARITABLE TRUST - APPROVAL OF INSTITUTION

Single donation of more than 5% for construction of one room in a hostel managed by particular community – Not ground to deny renewal. Matter remanded for fresh consideration.

Shri Sardarmal Sancheti Charitable Trust vs. UOI & Ors. (2010) 322 ITR 167 (Raj.)



52.S. 80HHC – EXPORT – NETTING OF INTEREST

For explanation (baa) to section 80HHC, netting of income from expenditure is **not** allowed. **(90% of Gross interest to be considered)**

CIT vs. Asian Star Co. (Bom.) Source: www.itatonline.org

Editorial Note: Decision of Special Bench Lalson Enterprise vs. Dy. CIT (2004) 89 ITD 25 (SB), not approved.

CIT vs. Shri Ram Honda Power Equip (2007) 289 ITR 475 (Delhi), dissented.

53.S. 80HHC – EXPORT - NON-RESIDENTS

Deduction under section 80HHC can not be granted to non-residents.

Mustaq Ahmed vs. ADIT (2010) 2 ITR 315 (Chennai)(Trib.) Nopromexport” (2010) 36 DTR 25 (AAR)

54.S. 80HHE - EXPORT COMPUTER SOFTWARE - DEPRECIATION

The assessee had a contract for design, development and testing of software outside India. Under the contract the scope of work involved the provision of analysis, programming and testing skills the assessee had deputed qualified personnel under the contract. Held that the assessee was engaged in onsite development of computer software outside India. The nature of work involved was technical services in the development of Software. The assessee was eligible for special deduction under section 80HHE.

CIT vs. Information Architects (2010) 322 ITR 1 (Bom.)

55.S. 80IA - INDUSTRIAL UNDERTAKINGS – ENTERPRISES – COMPUTATION - LOSS IN OTHER UNIT – [S. 80IA(2), (5)]

For the purpose of determining the deduction under section 80IA, the eligible deduction in terms of section 80IA(5), has to be reduced from the total income computed under the provisions of the Act, after setting off loss in another unit and if the total income is less than the eligible amount, deduction under section 80IA has to be limited to such amount.

CIT vs. Accel Trnasmatic Sysyems Ltd. (2010) 230 CTR 206 (Ker.)

56.S. 80IA - INDUSTRIAL UNDERTAKINGS - INITIAL ASSESSMENT YEAR - TRIAL PRODUCTION - COMMERCIAL PRODUCTION – S. 80IA

Initial assessment year for the purpose of section 80IA is the assessment year relevant to the previous year in which the commercial production is started and not the assessment year in which there was only a trial production.

CIT vs. Nestor Pharmaceuticals Ltd. (2010) 36 DTR 200 (Del.)

57.S. 80IA – INDUSTRIAL UNDERTAKINGS - PROFITS AND GAINS FROM INFRASTRUCTURE UNDERTAKING - INTEREST ON OVER DUE PAYMENT

Interest received by an assessee on overdue payments from customers is eligible for deduction under section 80IA.

CIT vs. Advance Detergents Ltd. (2010) 188 Taxman 15 (Delhi)

58.S. 80IB - PROFITS AND GAINS FROM INDUSTRIAL UNDERTAKING - EXCHANGE RATE DIFFERENCE

Exchange rate difference arises out of and is directly related to sale transaction involving export of goods of the industrial undertaking and, therefore, the difference on account of exchange fluctuation is entitled to deduction under section 80IB.



CIT vs. Rachna Udhyog (2010) 230 CTR 72 (Bom.)

59.S. 80IB - PROFITS AND GAINS DERIVED FROM INDUSTRIAL UNDER TAKINGS - INCOME SURRENDERED BY THE ASSESSEE

Additional income surrendered by the assessee firm having been added to the income of the business itself, it is to be considered while working the deduction under section 80IB.

CIT vs. Allied Industries (2010) 229 CTR 462 (HP)

60.S. 80IB(10) - HOUSING PROJECTS - DIFFERENT WINGS

Assessee having constructed Wing “E” after obtaining commencement certificate in 2002 and 2003 though similar certificates had been obtained prior to 1998, in respect of A, B, C, and D wing, Wing E was a separate housing project and same having been completed before 31st March 2005, the assessee was entitled deduction under section 80IB(10) in respect of “E” Wing.

Vandana Properties vs. ACIT (2010) 128 TTJ 89 (Mum.)(UO)

61.S. 80O – ROYALTIES, ETC FROM FOREIGN ENTERPRISES

Assessee having merely converted extensive educational materials in to concise form in CDs and books for better and easy understanding and exported the same to students abroad for coaching them is not entitled to deduction under section 80O as no new invention or design is made by the assessee in respect of educational material.

P. C. Thomas vs. ACIT (2010) 36 DTR 47 (Ker)

62.S. 80O – ROYALTIES FROM FOREIGN ENTERPRISES - INTERNATIONAL TAXATION TDS – DTAA - INDIA-THAILAND – [S. 90, ART. 23(2)]

TDS in the foreign country is not an amount brought in to India and therefore deduction under section 80O is not allowable on that amount.

Credit has to be allowed against the Indian Tax payable to the extent of tax which was deducted in Thailand and such credit should be restricted to the tax payable in India.

Vikram Tannan vs. ITO (2010) 128 TTJ 509 (Mum.)

63.S. 80RRA - REMUNERATION RECEIVED FOR SERVICES RENDERED OUTSIDE INDIA - INTERNATIONAL TAXATION - TAX CREDIT – (S. 90, ART. 25)

The credit could be allowed only against doubly taxed income. Where person is resident is to grant credit for taxes paid in country where income arise but only to extent to which itself is levies tax.

There can not be pathayment of tax outside India and claiming refund in India without actually incurring liability for paying taxes in India.

Manpreet Singh Gambhir vs. Dy. CIT (2010) 123 ITD 16 (Delhi)

64.S. 90 - DOUBLE TAXATION RELIEFS - INTERNATIONAL TAXATION – DTAA -INDIA-UK - REFERRAL FEE – (ARTS. 5, 7, 13)

Referral fee received by the applicant, a UK company from India based recruitment agency for referring potential Indian Clients and candidates to the latter even if it is in the nature of consultancy services, can not be considered to be ancillary and subsidiary to the enjoyment / application of the right or information referred in para. 3(a) of Art. 13 of the Indo–UK DTAA, nor the activity of providing information would fall within the ambit of making available the technical knowledge and experience of the service provider, in the absence of PE, the receipts in the nature of referral fee are not taxable even as business profits.

Real Resourcing Ltd, In Re. (2010) 230 CTR 120 (AAR) / (2010) 36 DTR 132 (AAR)



65.S. 90 - DOUBLE TAXATION RELIEFS - INTERNATIONAL TAXATION – DTAA - INDIA-USA - TRANSPORTATION OF MAIL – (ART. 8)

Transportation of mail or cargo etc by the assessee in the international traffic by the aircrafts as owner / charter / lessee fell within the scope of Art. 8 and therefore, profits attributable to the same can not be taxed in India. benefit of Art. 8 can not be denied to the assessee merely on the ground that the assessee was collecting cargo from its customer's place and transporting the same to airport for the purpose of further transportation in the international traffic and vice versa.

ACIT vs. Federal Express Corporation (2010) 35 DTR 425 (Mum.)(Trib.)

66.S. 90(2) - DOUBLE TAXATION RELIEF - INTERNATIONAL TAXATION – DTAA - INDIA-SINGAPORE - FIXED PLACE OF BUSINESS – PE – (ART. 5.1)

Applicant a Singapore company having entered in to agreement with independent service providers (ISPs), in India who are obliged to make adequate space available to store applicant's products provide other facilities apart from storage, handling, repacking, etc, and deliver the goods to the customers on behalf of the applicant, the demarcated space in the warehouse of ISP constitutes the fixed place of business and the applicant has a PE in India within the meaning of Art. 5.1 of the Indo-Singapore DTAA.

Singate Singapore Head Quarters (P) Ltd., In re, (2010) 230 CTR 110 (AAR)

67.S. 92 - TRANSFER PRICING - INTERNATIONAL TAXATION - ADVERTISEMENT EXPENSES

As per the agreement "MC" would get same amount of royalty whether advertisement expenditure was borne by assessee or by its franchisers, it could not be said that by agreeing to bear a part of advertisement expenses which was to be borne by franchisers, there was any arrangement between assessee and MC, a non-resident, to effect that there was no profit to assessee or lesser profit to assessee, therefore section 92 was not applicable with regard to advertisement expenditure and as a consequence, thereof additions confirmed by the CIT(A) was deleted.

McDonalds (India) (P) Ltd. vs. ACIT (2010) 36 SOT 240 (Delhi)

68.S. 92B - TRANSFER PRICING - INTERNATIONAL TAXATION - CAPITAL GAINS - TRANSFER OF SHARES - CHAPTER X – (S. 45, 195)

Transfer pricing provisions in Chapter X would not be attracted to the contribution of shares of an Indian Company by the applicant, a Bahraini company to its subsidiary in Cyprus without any consideration as no capital gains would be chargeable to tax in India on such transfer. As there is no capital gains would be chargeable the transferee company would not be obliged to withhold tax under section 195.

Amiantit International Holdings Ltd. In RE (2010) 35 DTR 178 (AAR) / (2010) 230 CTR 19 (AAR)

69.S. 92C - INTERNATIONAL TAXATION - TRANSFER PRICING - ALTERNATIVE DISPUTE RESOLUTION MECHANISM – (S. 144C)

Competent Authority has been directed to decide the matter, notwithstanding the pendency of the appeal before CIT(A).

Addl. CIT vs. HCL Technologies Ltd. (2010) 188 Taxman 72 (SC)

70.S. 92C - TRANSFER PRICING - INTERNATIONAL TAXATION – ARM'S LENGTH PRICE

There is no provision that the depreciation to be taken in to account in all situations.

Schefenacker Motherson Ltd. vs. ITO (2010) 2 ITR 196 (Delhi)(Trib.)

71.S. 92C – TRANSFER PRICING - INTERNATIONAL TAXATION - ARM'S LENGTH PRICE



On the facts of the assessee as no details about price at which its associate concerns had supplied raw materials to unrelated customers and thus comparison between price charged by associate concerns from unrelated buyers and price charged from assessee was not possible and assessee was not able to point out any irregularity or discrepancy in profit determined by TPO, the adjustment made by TPO in ALP was confirmed.

IL Jin Electronics (I) (P) ITD vs. ACIT (2010) 36 SOT 227 (Delhi)

72.Tax Avoidance-Planning – Validity- Speculation loss- (94 (7) , 73.)

Tax planning is valid. McDowell and co Ltd v CTO (1985) 154 ITR 148 (S.C.)(5 judges) has been explained in UOI v Azadi Bachao Andolani (2003) 263 ITR 706 (S.C.)(2 judges), the latter judgment is binding. Loss on sale units has to be set off.

Porrits & Spencer (Asia) vs. CIT (P & H) Source: www.itatonline.org

73.S. 115JA - BOOK PROFIT - ADVANCE TAX – (S. 234B)

Failure to pay advance tax as per Book profit the assessee is liable to interest under section 234B.

CIT vs. Brindavan Beverages Ltd. (2010) 321 ITR 197 (Karn)

74.S. 115JA - BOOK PROFIT - MINIMUM ALTERNATIVE TAX - MINERAL OIL – (S. 42)

Deduction claimed by assessee under section 42 can not be considered for the purpose of computing its income under section 115JA.

Gujarat State Petroleum Corporation Ltd. vs. Jt. CIT (2010) 123 ITD 335 (Ahd.)

75.S. 115JB - BOOK PROFIT - CAPITAL GAINS – (S. 54EC)

Capital gain, is part of net profit to be prepared in accordance with the provisions of part II of Sch. VI to the Companies Act. In the absence of any provision for exclusion of capital gains exempted under section 54EC in the computation of book profit under the provisions contained in Explanation to section 115JB, the assessee is not entitled to the exclusion thereof as claimed.

Growth Avenue Securities (P) Ltd. vs. Dy. CIT (2010) 128 TTJ 426 (Del.)

76.S. 115JB - BOOK PROFIT – EXPORT – DEDUCTION – (S. 80HHC)

Deduction under section 80HHC of the Act is to be worked out on the basis of the adjusted book profits under section 115JB.

CIT vs. Ambika Cotton Mills Ltd. (2010) 321 ITR 448 (Mad.)

Editorial Note:- CIT vs. Ajanta Pharma Ltd. (2009) 318 ITR 252 (Bom.), dissented.

Also Refer, Dy. CIT vs. Glenmark Laboratories Ltd. (2010) 127 TTJ 719 (Mum.)

77.S. 115JB - BOOK PROFIT – RESERVE - SCHEME OF ARRANGEMENT

Amount credited by the assessee company to its P & L account having been withdrawn from the reserve transferred to it by another company under a scheme of arrangement which was originally created by the latter in the year 1993-94, it is deductible from the net profit for computing book profit as per Cl. (I) of Explanation to section 115JA.

Kopran Drugs Ltd. vs. ACIT (2010) 35 DTR 380 (Mum.)(Trib.)

78.S. 132(4) - SEARCH AND SEIZURE – RETRACTION – (S. 158BC)

Assessee voluntarily surrendering certain amount as undisclosed income, retraction after about two years held not permissible.

ACIT vs. Hukumchand Jain (2010) (March) VOL 40 Tax L.R. 144 (Chattisgarh)



79.S. 140 - RETURN OF INCOME - SIGNED BY COMPANY SECRETARY - CURABLE DEFECT

Signing of return by secretary was curable irregularity and when managing director had signed and filed the return, it relates back to date when the original return was filed under the signature of company secretary.

CIT vs. Haryana Sheet Glass Ltd. (2010) 188 Taxman 7 (Delhi)

80.S. 143 – ASSESSMENT – NOTICE – (S. 142(1), 143(2), 144)

Assessment made by the Assessing Officer who had no jurisdiction over the assessee, that too without issuing a notice under section 143(2), is null and void and is liable to be quashed.

Pravin Balubhai Zala vs. ITO (2010) 36 DTR 290 (Mum.) (Trib.)

81.S. 143(2) – ASSESSMENT - NOTICE BY AFFIXTURE

Notice served by affixture on last date after office hours is not valid service and assessment framed in pursuance of such notice is not valid, it is immaterial that the assessee appeared in the assessment proceedings.

CIT vs. Vishnu & Co. (P) Ltd. (2010) 230 CTR 62 (Del.)

82.S. 144 - ASSESSMENT - ACCOUNTS – BEST JUDGMENT – ESTIMATE OF INCOME - DEPRECIATION – [S. 32, 145(3)]

Assessee is entitled to depreciation when best judgment assessment is made, and income is estimated.

Shri Ram Jhanwar Lal vs. ITO (2010) 321 ITR 400 (Raj.)

83.S. 145 - METHOD OF ACCOUNTING - ACCOUNTS - BEST JUDGMENT - REJECTION OF ACCOUNTS

Assessing Officer rejected the books of account of the assessee on ground that assessee had not maintained indoor patient registers. Asst. completed under section 145 making addition under different head the CIT(A) deleted the addition on ground that no material was brought on record for estimating the income. The Tribunal and High Court upheld the order of CIT(A).

CIT vs. Bahal (AP) (Dr.) (2010) 322 ITR 71 (Raj.)

84.S. 147 – REASSESSMENT - REASON TO BELIEVE - AFTER FOUR YEARS

In the absence of new material, other than the facts disclosed by assessee before the Assessing Officer during the earlier years, to form a belief that assessee's income for the relevant year had escaped assessment, reopening of assessment was not valid. Assessing Officer had merely relied audit objection.

Purity Techtexile (P) Ltd. vs. ACIT (2010) 230 CTR 157 (Bom.)

85.S. 147 – REASSESSMENT - REASON TO BELIEVE - IRRELEVANT AND NON- EXISTING REASONS – (S. 148)

Assessing Officer having arrived at the conclusion that the amount received by the assessee-partner on his retirement from the firm of solicitors has escaped assessment on the basis of wrong interpretation of clause 35 of the deed of partnership which in fact not applicable to the assessee's case and wrongly opined that the said amount was taxable under section 28(iv), there was no tangible material before the Assessing Officer to form the belief that the income had escaped assessment and therefore, reopening of assessment under section 147 was not valid.

Balakrishna Hiralal Wani vs. ITO (2010) 36 DTR 161 (Bom.)

86.S. 147 - REASSESSMENT - CONDITION PRECEDENT – (S. 148)



No material to show escapement of income from tax – Notice of reassessment not valid.
Shankarlal Nagji & Co. & Ors vs. ITO (2010) 322 ITR 90 (Guj.)

87.S. 147 – REASSESSMENT - FULL AND TRUE DISCLOSURE - AFTER FOUR YEARS – [S. 149(1)]

When there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment, the reopening of assessment was not valid power to reopen an assessment beyond a period of four years but up to six years under section 149(1)(b) is also subject to the requirement spelt out in the proviso to section 147.

Anil Radha Krishna Wani vs. ITO (2010) 36 DTR 185 (Bom.)

88.S. 147 – REASSESSMENT – EXPORT – REASSESSMENT PROCEEDINGS – (S. 80HHC)

Assessee having not claimed deduction under section 80HHC, in its return because it had only income from other sources and no business income, claim made in the revised return by filing audit report under section 147 due to disallowances under section 43B is upheld.

ITO vs. Tamil Nadu Minerals Ltd. (2010) 128 TTJ 386 (Chennai)(TM)

89.S. 148 – REASSESSMENT – NOTICE – SANCTION – APPROVAL – [S. 151(2)]

Notice issued without approval of concerned authority is without jurisdiction.

CIT vs. Suman Waman Chaudhary (2010) 321 ITR 495 (Bom.)

Editorial Note: SLP rejected on 12-2-2008 SLP No. 6757 of 2009 (2009) 312 ITR (St) 339.

90.S. 148 - REASSESSMENT - DEAD PERSON – LIMITATION – (S. 147)

Notice issued on the name of dead person held to be illegal. Notice issued to legal representatives beyond period of limitation hence not valid, being beyond time.

Kesar Devi (Smt.) vs. CIT (2010) 321 ITR 344 (Raj.)

91.S. 148 – REASSESSMENT - EXEMPTED INCOME – (S. 14A)

The Assessing Officer was not competent to reassess the cases prior to the assessment year beginning on or before 1-4-2001. The proviso absolutely excluded the reassessment jurisdiction of the assessing officer, in respect of the specified assessment years, mentioned therein.

Jt. CIT vs. Bombay Dyeing Mfg. Co. Ltd. (2010) 123 ITD 1 (Mum.)

92.S. 153A - SEARCH AND SEIZURE - ASSESSMENT – ABATE – (S. 153C)

Record maintained by a person for his own purpose though referable to the assessee can not be said to be belonging to the assessee within the meaning of section 153C. Where none of the assessments are pending on the date of action under section 153C, such assessments do not abate.

Meghmani Organics Ltd. vs. Dy. CIT (2010) 36 DTR 187 (Ahd.)(Trib.)

93.S. 158BC - BLOCK ASSESSMENT - INCOME DISCLOSED IN REGULAR ASSESSMENT

Any material of evidence unrelated to search could not form the basis of the computation of undisclosed income especially when the income had been disclosed by the assessee in regular assessment and had been assessed by Dept. SLP of the revenue dismissed.

CIT vs. Krishna Kumar R. Parmar (2010) 322 ITR (St.) 2 (SC)

94.S. 158BD - BLOCK ASSESSMENT - SATISFACTION – ASSESSMENT OF THIRD PERSON – (S. 158BC)



Assessing officer having jurisdiction over the person searched had not recorded any satisfaction, as required under section 158BD, and consequently, the proceedings initiated under section 158BD were bad in law.

CIT vs. Anupam Sweets (2010) 321 ITR 485 (Delhi)

95.S. 158BE - BLOCK ASSESSMENT - LIMITATION - LAST PANCHANAMA

Limitation starts from date of Last Panchanama and not from date till prohibitory order is in operation.

CIT vs. Abolf Patric Pinto. SLP (C) No. 26625 of 2009, (2010)322 ITR (St.) 3 (SC)

Editorial Note:– Tribunal order reported in 284 ITR (AT) 207 affirmed by Bombay H. C. Order ITA No. 856/2008 dated 5/9/2008

CIT vs. Ranjana Katyals SLP (Civil) No. 683 of 2010, (2010) 322 ITR 4 (St.) (SC)

CIT vs. White & White Minerals (P) Ltd. SLP (C) No. 4356/2010, (2010) 322 ITR 4 (St.) (SC)

96.S. 158BB - BLOCK ASSESSMENT - COMPUTATION OF UNDISCLOSED INCOME - UNABSORBED DEPRECIATION – LOSS

Loss and unabsorbed depreciation are to be set off against the total income in computing the undisclosed income of the block period.

H. E. Distilleries (P) Ltd. vs. Dy. CIT (2010) 229 CTR 457 (Kar.)

97.S. 158BC - BLOCK ASSESSMENT – LIMITATION - LAST PANCHNAMA – (S. 158BE)

Search conducted on 31-10-2000 and assessment completed on 27-12-2002, revocation of prohibitory passed on 23-12-2000. Revocation order does not amount to execution of a search, as no asset seized. Period of limitation starts from 31-10-2000 hence order passed beyond limitation period (*CIT vs. Deepak Agrawal (2009) 308 ITR 116 (Delhi)*).

CIT vs. Deepak Agrawal (SLP No. 16360 OF 2009 dt. 9-7-2009.) rejected (2010) 321 ITR (St) 165. Section 271(1)(c)

98.S. 158BD - BLOCK ASSESSMENT - UNDISCLOSED INCOME

Addition made by Assessing Officer was in respect of valuation of the stock of shares. The valuation had been done on the basis of stock exchange rate and there was no material before the Assessing Officer to add up the said amount. Therefore it was held that the Tribunal was justified in deleting the additions.

CIT vs. Digvijay Chemicals (2010) 322 ITR 95 (All)

99.S. 170 - SUCCESSION TO BUSINESS OR PROFESSION – COMPANY

The company is a juristic person having its distinct legal entity, separate from that shareholders. The change in the shareholders or company does not change the legal identity of the company. Therefore, section 170 had no application to the facts of the case.

CIT vs. Panchratam Hotels (P) Ltd. (2010) 188 Taxman 299 (HP)

100.S. 194A - DEDUCTION OF TAX AT SOURCE - INTEREST OTHER THAN INTEREST ON SECURITIES – DECREE

Once decree is passed, it is a judgment debtor of the Court, which culminates in to final decree being passed which has to be discharged only on payment of amount due under said decree and therefore judgment debtor is not liable to deduct tax at source on interest component of decree.

Madhusudan Shrikrishna vs. Emkay Exports (2010) 188 Taxamn 195 (Bom.)

101.S. 194C - DEDUCTION OF TAX AT SOURCE – CONTRACT MANUFACTURING – AMOUNTING TO SALE



Tests laid down to determine when contract manufacturing will amount to a contract of sale for section 194C TDS.

CIT vs. Glenmark Pharmaceuticals (Bom.) Source: www.itatonline.org

102.S. 194J - DEDUCTION OF TAX AT SOURCE – SALARY - TECHNICAL SERVICES - CONSULTING DOCTORS – (S. 192, 201)

Where a hospital engaged consulting doctors and provided them with chambers with secretaries assistance and fee collected from out patients and paid to consultants each day after deducting certain amount towards rent and secretarial assistance, it was no a case of payment of professional fees and neither section 192, nor section 194 J was attracted and the hospital can not be treated as assessee in default for not deducting tax from such payments.

ACIT vs. Indraprastha Medical Corp. Ltd. (2010) 128 TTJ 500 (Del.)

103.S. 194J - DEDUCTION OF TAX AT SOURCE - FEES FOR TECHNICAL SERVICES – [S. 9(1)(vii), 40(a)(1)(iii)]

Payment of uplinking charges by assessee to parent company not in the nature of fees for technical services hence not liable to deduction of tax at source.

Reimbursement of expenditure incurred in respect of Global accounts manger can not be treated as payment of salary. Similarly reimbursement of common expenses incurred of parent company for benefit of group concerns not liable for deduction of tax at source.

Expeditors International (India) P. Ltd (2010) 2 ITR 153 (Delhi)(Trib.)

104.S. 194H - DEDUCTION OF TAX AT SOURCE - COMMISSION – [S. 201(1), 201(1A)]

Margin earned by the assessee company on supply of prepaid SIM cards and recharge coupons etc was in the nature of commission and therefore the assessee service provider is liable to deduct tax at source under section 194H.

Vodafone Essar Celluar Ltd. vs. ACIT (2010) 35 DTR 393 (Coch.)(Trib.)

105.S. 195 - DEDUCTION OF TAX AT SOURCE - PAYMENT TO NON RESIDENT

Reimbursement of expenses related to fee for technical services, provisions of section 195 would be applicable, however, in view of fact that all services had been provided by “L”, off shore, assessee would not incur any liability to deduct tax towards payment paid in respect of services.

Bovis Lend Lease (India) (P) Ltd. vs. ITO (2010) 36 SOT 166 (Bang.)

106.S. 195(1) - DEDUCTION OF TAX AT SOURCE – OBLIGATION TO PAY

Section 195(1) TDS obligation does not arise if the payment is not chargeable to tax. Samsung Electronics not followed.

ITO vs. M/s. Prasad Production (Chennai)(Trib.)(SB) Source: www.itatonline.org

107.S. 234B – INTEREST - ADVANCE TAX - TAX DEDUCTION AT SOURCE – (S. 209, 234C)

There can not be any interest liability under section 234B or 234C, for the non–resident assessee where all payments received from Indian Source are subject to TDS.

Cable News Network LP. LLLP vs. ADIR (2010) 36 DTR 233 (Del.)(Trib.)

108.S. 244A – REFUND – INTEREST



Interest granted by the department to the assessee under section 244A of the Act, had to be taxed in the year of receipt.

Dy. CIT vs. Seshasayee Paper and Boards Ltd. (2010) 2 ITR 417 (Chennai)(Trib)

109.S. 245S - ADVANCE RULINGS – BINDING – PRECEDENT

Ruling of Authority for Advance Rulings is binding on the assessee and the assessee can not agitate on those aspects.

Mustaq Ahmed vs. ADIT (2010) 2 ITR 315 (Chennai)(Trib.)

110.S. 251 - APPEAL (CIT) (A) – RECOVERY – STAY - (S. 220)

CIT (A) has not passed any order whatsoever on the stay application filed along with the appeal even after lapse of two and half months, inaction on the part of CIT (A), is deprecated. CIT (A), is directed to hear the stay application and dispose of the same within period of 15 days and meanwhile no coercive action is to be taken against the assessee. CBDT is directed to issue a circular if necessary for disposal of stay application.

Smita Agrarwal (HUF) vs. CIT (2010) 230 CTR 173 (All)

111.S. 254 - APPELLATE TRIBUNAL – PRECEDENT

The appellate Tribunal need not blindly follow earlier decision if it did not reflect the correct position of law.

CIT vs. HI Tech Arai Ltd. (2010) 321 ITR 477 (Mad.)

112.S. 254 - APPELLATE TRIBUNAL – PRECEDENT - BINDING NATURE OF ORDER OF ANOTHER BENCH - JUDICIAL DISCIPLINE - (ART. 226)

One bench can not differ from the view of another co-ordinate Bench. Judicial discipline requires reference to larger bench in case of difference in views between benches on identical facts.

Mercedes Benz India Pvt. Ltd. vs. UOI (2010) 252 E.L.T. 168 (Bom) / Source: www.itatonline.org

113.S. 254 - Appellate Tribunal - Rectification of Mistakes - Order pronounced – [S. 254(2)]

Order pronounced by the Tribunal at the conclusion of hearing though not passed in writing, constituted an order of the Tribunal which could be rectified, however, order is not be recalled for the reasons that the judicial member has kept the matter pending with him after the order was pronounced and expressed his opinion to reopen the case after three months.

ITO vs. V. Meenakshi (Smt.) (2010) 36 DTR 42 (Chennai)(TM)

114.S. 254(1) - APPELLATE TRIBUNAL - DUTY OF TRIBUNAL - REASONED ORDER

It is obligatory on the part of Tribunal to pass reasoned order and adjudicate the list on merits, by ascribing cogent and germane reasons after dealing with the factual issue in detail.

Rajesh Maheshwari vs. ACIT (2010) 36 DTR 43 (MP)

115.S. 254(1) - Appellate Tribunal - Right of Respondent – [S. 253(4)]

Respondent can support the order of CIT (A) by taking any ground, though no cross objection had been filed.

Cable News Network LP LLLP vs. Asst Director (2010) 36 DTR 233 (Del.)(Trib.)

Editorial Note:– See Traice, Source: www.itatonline.org

116.S. 254(2) - APPELLATE TRIBUNAL - RECTIFICATION – REVIEW



Reconsideration of the correctness of the earlier decision on merits, is beyond the scope of power conferred on the Tribunal under section 254 (2).

CIT vs. Earnest Exports Ltd. (2010) 36 DTR 274 (Bom.)

117.S. 254(2) - APPELLATE TRIBUNAL – RECTIFICATION OF MISTAKES - SECOND MISCELLANEOUS APPLICATION

Tribunal having taken a conscious decision in the order passed on the first miscellaneous application that its conclusion in the original order was not based on erroneous facts /and or misappreciation of facts on record that no legal contention going to the root of the matter remained to be considered, second miscellaneous application is not maintainable on the same set of facts.

Kailashnath Malhotra vs. Jt. CIT (2010) 36 DTR 1 (Mum.)(TM)

118.S. 254(2A) - APPELLATE TRIBUNAL – POWER – STAY

Income Tax Appellate Tribunal should dispose off stay granted appeals with in time limit prescribed under section 254(2A) i.e. not beyond 365 days from the stay order.

Shri Jethmal Faujimal Soni vs. ITAT (Bom.) Source: www.itatonline.org

119.S. 260A - APPEAL – HIGH COURT - SUBSTANTIAL QUESTION OF LAW

Issue not raised before the lower authorities can not be permitted to be raised for the first time in appeal under section 260A.

CIT vs. Chand Ratan Bagri (2010) 36 DTR 244 (Del.)

120.S. 263 – REVISION - ASSESSMENT BARRED BY LIMITATION

Assessment barred by limitation, commissioner can not direct Assessing Officer to pass fresh assessment order.

V. Narayan vs. Dy. CIT (2010) 2 ITR 446 (Chennai)(Trib.)

121.S. 271(1)(c) - PENALTY – CONCEALMENT – UNSUSTAINABLE CLAIMS

Penalty cannot for concealment cannot be imposed even for making unsustainable claims

CIT vs. Reliance Petroproducts (2010) 322 ITR 158 (SC), Source: www.itatonline.org

122.S. 271(1)(c) – PENALTY - CONCEALMENT - WORKING CLAIM FOR DEDUCTION – NO CONCEALMENT

Making a working claim for deduction is not at par with concealment or giving inaccurate information – No penalty under section 271(1)(c).

CIT vs. Shahabad Co-op. Sugar Mills Ltd. (2010) 322 ITR 73 (P & H)

123.S. 271(1)(c) - PENALTY – CONCEALMENT - CAPITAL LOSS SET OFF AGAINST PROFITS OF BUSINESS – MISTAKE

Loss suffered on sale of machinery working set off against profit of business – Assessee on realizing the mistake committed accepted the decision of Assessing Officer. Mistake in furnishing of inaccurate particulars due to negligence of counsel was not a deliberate attempt to evade tax.

CIT vs. Sidhartha Enterprises (2010) 322 ITR 80 (P&H)

124.S. 271(1)(c) – PENALTY – CONCEALMENT - SEARCH AND SEIZURE - (S. 153A)



Sales made outside books and not disclosed in original return, no bona fide explanation documents related to undisclosed sales found during search, -explanation I to section 271(1)(c) is applicable. For immunity from penalty specific requirement of declaration of additional income in return. Penalty is leviable on difference of income declared in return filed under section 153A, and original return.
Dy. CIT vs. K. Natarajan (2010) 2 ITR 273 (Bang.)(Trib.) / (2010) 128 TTJ 558 (Bang.)

125.S. 271(1)(c) – PENALTY – CONCEALMENT - SURRENDER OF INCOME

Assessing Officer made addition on the basis surrender made by the assessee and did not issue summons to the lenders to prove that there was concealment of income he was not justified in imposing penalty on the surrendered income.

Raja Rani Mittal vs. ITO (2010) 36 SOT 4 (Delhi) (URO)

126.S. 272(2)(g) - PENALTY – FAILURE TO ANSWER QUESTIONS, SIGN STATEMENTS, ETC.

The tax had been deducted and deposited with the Government treasury. The TDS certificates were sent to the concerned persons by speed post on next day. Compliance under section 203, penalty cannot be imposed.

CIT vs. Ashapura Garments P. Ltd (2010) 322 ITR 83 (Bom.)

127.S. 271A - PENALTY – FAILURE TO GET ACCOUNTS BOOKS AUDITED – (S. 271B)

The requirement of getting the books of accounts audited could arise only where the books of accounts are maintained.

Assessee not maintaining books of account, penalty cannot be levied under section 271B.

CIT vs. S. K. Gupta & Co. (2010) 322 ITR 86 (All)

128.S. 282 - SERVICE OF NOTICE (ORDER V, RULE 15, OF THE CODE OF CIVIL PROCEDURE, 1908)

Where assessee is absent from his residence at time when service of notice is sought to be effected on him and there is no likelihood of his being found at his residence within reasonable time and he has no agent empowered to accept service of notice on his behalf, service of a notice can be made on any member of assessee's family residing with him, whether male or female.

ITO vs. Gurbax Singh Gill (2010) 123 ITD 226 (Asr)

WEALTH TAX

129.S. 2(ea)(i) - WEALTH TAX – ASSET - HOUSE PROPERTY

An incomplete building under construction is not an asset and is not liable to wealth tax as it does not fall within the definition of a building nor within the purview of "urban land".

CIT vs. Neena Jain (Smt.) (2010) 36 DTR 49 (P & H)

130.S. 2(m) - WEALTH TAX – DEBT

The loans availed of by the assessee by taking credit and working capital facility which could not be considered as debts incurred in relation to lands, which are chargeable assets under the Act, hence not deductible.

Phonix International Ltd vs. Dy. CWT (2010) 122 ITD 279 (Delhi)

131.S. 2(ea)(i) - WEALTH TAX – ASSET - HOUSE PROPERTY



An incomplete building under construction is not an asset and is not liable to wealth tax as it does not fall within the definition of a building nor within the purview of “urban land”.

CIT vs. Neena Jain (Smt.) (2010) 36 DTR 49 (P & H)

132.S. 7(1)(4) - WEALTH TAX - VALUATION OF ASSETS - APPLICABLE TO SUBSEQUENT YEARS

The valuation of the property having determined for A.Y. 1971-72 and such assessments having been finalized and attained finality as it was not challenged the same would be applicable to the subsequent years.

CIT vs. Rawal Rajeshwari Singh of Samod (2010) 322 ITR 39 (Raj.)

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