



Monthly Digest of Case Laws (May 2010)

Compiled by: Ajay Singh, Paras Savla, Rahul Hakani, Sujeeth Karkal and Rangesh Banka, Advocates, KSA Legal

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

S. 2(1A) : Agricultural income - Trees of spontaneous growth on waste land

In the absence of any evidence of any agricultural operations having been carried out on the waste lands, the enhanced compensation received by the assessee for compulsory acquisition of the said waste lands and trees by the State Government can not be treated as agricultural income.

Sajjansinh N. Chauhab vs. ITO (2010) 38 DTR 155 (Guj.).

S. 4 : Income - Capital or revenue receipt - Surplus on cancellation of forward foreign exchange contract [S. 2(47), 28(iv)]

Surplus received by the assessee upon cancellation of forward foreign exchange contract was a capital receipt not liable to tax, as the foreign exchange acquired under the contract is for the purpose of discharging an obligation on capital account. Mere cancellation of the contract does not result in any transfer of any asset, even if the extended definition under section 2(47) is made applicable.

Dy. CIT vs. Garden Silk Mills Ltd. (2010) 38 DTR 48 (Guj.)

S. 4 : Income - Reimbursement of expenses

Amount received by assessee towards reimbursement of traveling expenses of its technicians who were deputed to the establishment of a customer is not chargeable to tax.

Director IT vs. Krup Udhe GmbH. (2010) 38 DTR 251 (Bom.)

S. 5 : Income – Accrual - Interest on enhanced compensation

Interest on enhanced compensation accrues from year to year and has to be spread over respective years.

Sajjansingh N. Chauhan vs. ITO (2010) 38 DTR 155 (Guj.)

S. 9(1)(vii) – Income Deemed to accrue arise in India - fees for technical services – International Taxation

Income deemed to accrue or arise in India. Service rendered outside India. Fees for Technical Services, even if rendered outside India, are taxable.

Ashapura Minichem vs. ADIT (ITAT Mumbai) (Source: www.itatonline.org)



S. 10(23C)(vi) - Exempted income - charitable purpose

Surplus does not mean trust ceases to be “solely for educational purposes and not for profit”.

Vanita Vishram Trust vs. CCIT (Bombay High Court) (source: www.itatonline.org)

S. 10(23G) : Infrastructure capital company - change of name

Change in the name of the entity at the time when the shares of such undertaking are sold does not affect the claim of exemption under section 10(23G).

Jaykay fineholdings (India) (P) Ltd. vs. Addl. CIT (2010) 38 DTR 302 (Mum.) (Trib.)

S. 14A : Expenditure incurred in relation to income not includible in total income - Insurance business.

Section 14A, is not applicable in the case of insurance business, which is governed by specific provisions of section 44.

Bajaj Alliance General insurance Co. Ltd. vs. Addl. CIT (2010) 38 DTR 282 /130 TTJ 398 (Pune) (Trib.)

S. 17(1)(iv) : Salary - Profit in view of salary - restrictive covenant - Non compete fee - value of shares

Value of shares issued to the assessee-director by the employer company as consideration in terms of restrictive covenant whereby the assessee agreed to desist from participating in a similar or competitive business for a period of ten years after termination of his employment or association with the company assessable as “profit in lieu of salary”. Receipt can not be construed as capital receipt.

Neville Tuli vs. ITO (2010) 38 DTR 325 (Mum.)

S. 22 : Income From House Property - Principle of Mutuality

Income of the association of flat owners is not taxable on the principle of mutuality, despite the fact that most of the flats are let out and tenants are paying the contribution. Interest earned from bank on surplus funds deposited in the bank is not taxable on the principle of mutuality.

Wellington Estate Condominium vs. ITO, ITAT ‘I’ Bench Delhi, ITA No. 2846/Del./2007, dated on 16-10-2009 (BCAJ 42-A, June 2010 pg. 346)

S. 28 : Capital gains - Business income - sale of shares

Assessee dealer in shares can also hold certain shares as investment. When shares are sold from investment portfolio which were purchased two three years back the same is chargeable to tax as capital gains and not as business income.



Saranath Infrastructure (P) Ltd. vs. ACIT (2010) 124 ITD 71 (Luck.)

S. 28 : Business loss - loans advanced to subsidiaries

Loans advanced to subsidiaries can not be allowed as bad debt or business loss. The loss is capital loss.

Jt. CIT vs. Rallies India Ltd. (2010) 3 ITR 1 (Mum.) (Trib.)

S. 37(1) : Business expenditure - premium on redemption on non convertible debenture

Assessee is entitled to the proportionate deduction, of premium on redemption of non-convertible debenture.

CIT vs. Indian Rayon & Industries Ltd. (2010) 38 DTR 313 (Bom.)

S. 37(1) : Capital or Revenue expenditure - Travelling and incidental expenses

Travelling and incidental expenditure in finalization of project for existing business allowable as revenue expenditure.

Jt. CIT vs. Rallies India Ltd. (2010) 3 ITR 1 (Mum.) (Trib.)

S. 37(1) : Business expenditure - Licence fee

Fees paid by assessee Telecom Company to department of telecommunication for use of licence was to be allowed as revenue expenditure.

ACIT vs. Vodafone Essar Gujarat Ltd. (2010) 38 SOT 51 (Ahd.)

S. 37(1) : Business expenditure - capital or revenue expenditure - year of allowability - cash system - spare parts.

Where assessee following cash system of accounting, the expenditure incurred for purchase of second hand machinery for using its spare parts is revenue expenditure and the same is deductible in the year in which the sale consideration was paid even though the machinery was received in India after the end of relevant year.

Aswath N. Rao (Dr) vs. ACIT (2010) 38 DTR 205 (Kar.)

S. 37(1) : Business expenditure - extra payment of sugarcane price to cane growers

Matter is remanded to CIT(A) to decide whether the differential payment made by the assessee to cane growers after the close of the financial year / balance sheet date constitute an expenditure or distribution of profit, after taking in to account the resolution of the State Government modalities and the manner in which SAP and SMP are decided, the timing difference which will arise on account of the difference in the accounting years, etc.



Dy. CIT vs. Shri Satpuda Tapi Parisar SSK Ltd. (2010) 231 CTR 224 (SC)

S. 37(1) : Capital or Revenue Expenditure - Mobile Talktime and headset Charges

The amount paid for handsets and for talktime charges were not capital in nature.

Radical Marketing Pvt. Ltd. vs. ITO, ITAT 'SMC' Bench, Mumbai, ITA No. 3868/Mum/2008, decided on 19-5-2009 (BCAJ 42-A, May 2010 pg. 171)

S. 41(1) : Profit chargeable to tax - Business income

There is no remission or cessation of liability within the meaning of section 41(1), on unilateral entry of write back of the unclaimed credit balances by the assessee.

CIT vs. Indian Rayon & Industries Ltd. (2010) 38 DTR 313 (Bom.)

S. 44 : Insurance Business - sale of investments

Income from sale of investments by insurance company is not taxable after deletion of sub r(b) of r 5 of first schedule.

Bajaj Allianz General Insurance Co. Ltd. vs. Addl. CIT (2010) 38 DTR 282 /130 TTJ 398 (Pune) (Trib.)

S. 44BBA : Aircraft - Presumptive Taxation - Non resident

When assessee incurred loss, income can not be computed under section 44BBA as the said section is machinery section.

Royal Jordanian Airlines vs. Dy. DIT (2010) 3 ITR 181 (Delhi)(Trib.)

S. 44BBB : Civil construction - Barge hire charges – DTAA - India – Mauritius – Royalty - Permanent establishment (S. 5(2)(i), 9(1)(vi), Arts 5, 7,12)

Barge hire charges amounts to 'royalty' within the meaning of section 9(1)(vi) and under Art. 12 of DTAA, between India and Mauritius and is liable to tax in India under section 44BB. In terms of Art 5(2)(i), of DTAA between India and Mauritius each of the building site, construction project, assembly project or supervisory activities in connection therewith is to be viewed on stand alone basis and where the duration of work under each such separate contracts does not exceed the period of nine months, the assessee cannot be said to have a PE in India, even otherwise, none of the contracts were such that those could be viewed as interconnected or independent so as to call for aggregation of their duration.

Asst. Director of IT vs. Valentine Maritime (Mauritius) Ltd. (2010) 38 DTR 117 /130 TTJ 417 (Mum.) (Trib.)

S. 44D : Royalties – Foreign Companies - Double Taxation relief - India & Australia - Art.7, Income Tax Act (S. 5, 9(1)(vii), 115A)



Fees received by non-resident for performing services in India through a PE are taxable in accordance with Article 7 of DTAA. If Article 7 applies, S. 9(1)(vii), 44D and 115A would not apply.

Rio Tinto Technical Services vs. Dy. CIT, ITA No. 3399/Del./2002, 5372/Del./2003, 4742/Del./2004, (BCAJ 42-A, June 2010 pg. 352)

S. 45 : Capital gains - slump sale - (S. 50)

Sale of industrial unit by the assessee firm as a “going concern”, in its entirety on “as is where is” basis for a lump sum sale consideration which was arrived at by profit capitalization method and is not allocable to individual assets was a slump sale of the business and not a case of itemized sale.

J. B. Electronics vs. Jt. CIT (2010) 38 DTR 393 (Pune) (TM) (Trib.)

S. 45(4) : Capital gains - Distribution of assets on dissolution of firm [S. 50(1)]

Distribution of assets among the partners at the time of dissolution of the firm is to be assessed under section 45(4) and the same is not covered by section 50(1). Assessing Officer was free to refer the assets for valuation under section 55A, as the transfer value shown in the book value which can not be accepted as the fair market value of the assets i.e. Land and Building.

CIT vs. Kumazha Tourist Home (Dissolved) (2010) 38 DTR 166 (Ker.)

S. 45(5)(b) : Capital gains – Compensation - Compulsory acquisition

Enhanced compensation by the assessee for compulsory acquisition of waste lands and trees by the State Government under the Jagir Abolition Act is taxable as per the provisions of section 45(5)(b), therefore, the amount of enhanced compensation is chargeable to tax despite the fact that the cost of acquisition of the said capital asset is nil.

Sajjansinh N. Chauhan vs. ITO (2010) 38 DTR 155 (Guj.)

S. 48 : Capital gains - Interest - Borrowed Funds - Acquisition of Shares

When interest bearing funds are utilized for making an application for allotment of shares and the number of shares allotted is less than the number of shares applied for, the entire interest is to be treated as cost of acquisition of shares allotted.

Neera Jain (Smt.) vs. ACIT, ITAT ‘B’ Bench, Mumbai, ITA No. 1861/Mum./2009, decided on 22-2-2010 (BCAJ 42-A, June 2010 pg. 347)

S. 50 : Capital gains - Depreciable assets - short term capital gains [S. 2 (11)]



When assessee had been allowed depreciation on flat in question as a business asset up to asst year 1995-96, flat continued to be business asset, not allowing the depreciation for two years prior to date of sale, profit arising on sale of said flat would be assessable as short term capital gain.

CIT vs. Shakti Metal Depot (2010) 189 Taxman 329 (Ker.)

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

Set off of the sale proceeds was available to the assessee against the purchase cost of new property falling under the same block of assets.

CIT vs. Scindia Investment (P) Ltd. (2010) 39 DTR 12 (Bom.)

S. 54EC : Capital gains - Investment in bonds - date of investment

For the purpose of calculation of period of six months the date to be calculated from the date of receipt issued by the national housing bank and not from the date of issue of certificate.

Hindustan Unilever Ltd. vs. Dy. CIT (2010) 38 DTR 91 (Bom.)

S. 69B : Unexplained investment - Discrepancy in stock

Stock shown more to bank, additions deleted by the Tribunal was confirmed.

ITO vs. Bhagwati Prasad Raika (2010) 39 DTR 45 (Chhattisgarh)

S. 73 : Speculation - Loss

For the purpose of deciding whether the case of assessee is covered by exception provided in explanation to S. 73, speculation loss is to be excluded while computing business income and arriving at the gross total income.

Paramount Information Systems Pvt. Ltd. vs. ITO ITAT 'K' Bench, Mumbai, ITA No. 921/Mum/2008, decided on 24-2-2010 (BCAJ 42-A, May 2010 pg. 169)

S. 80HH : Deduction - New industrial undertaking - expansion of production capacity (S. 80I)

Expansion of production capacity of the existing unit by merely adding some equipments when raw material finished products, employees electric connection, maintenance of books of account etc. are all common and cannot be identified with new or old plant, did not constitute setting up of new industrial undertaking eligible for deduction under section 80HH and 80I.

Jt. CIT vs. Thirani Chemicals Ltd. (2010) 38 DTR 137 (Del.) (SB) (Trib.)

S. 80HHF : Deduction - Export of film soft ware



Assessee not being the owner of the software that came to be developed as a result of the services provided by it in connection with the production of a film produced by the foreign company, there was no export or transfer of film software by the assessee and therefore, it is not entitled to deduction under section 80HHF in respect of the fixed fee received for the services rendered by it.

Kas Movie Makers (P) Ltd. vs. CIT (2010) 38 DTR 121 (Del.)

S. 80HHF : Deduction – Export - Service income and income from music

Service income, income from music were operational income hence entitled to deduction under section 80HHF.

ACIT vs. Set India Pvt. Ltd. (2010) 3 ITR 454 (Mum.) (Trib.)

S. 80IA : Deduction - Profits and gain from infrastructure undertakings

Assessee carrying on the business of container handling Cranes at Jawaharlal Nehru Port Trust can be considered as developing, maintaining and operating an infrastructural facility is entitled to deduction under section 80IA.

CIT vs. ABG Heavy Industries Ltd. (2010) 189 Taxman 54 (Bom.)

S. 80IA : Deduction - Income from Power Plant - Valuation

Deduction in respect of profit of power generating undertaking generate by eligible unit captively consumed valuation at market price. Rates charged by the state electricity board, including the electricity tax levied thereon, adopted as a benchmark to arrive at the market value and CIT was not right in excluding the electricity tax to arrive at the market value.

DCW vs. ACIT, ITAT 'D' Bench Mumbai, ITA No. 126/Mum./2008, decided on 29-1-2010 (BCAJ 42-A, May 2010 pg. 170)

S. 80M : Deduction - inter-corporate dividend - gross or net

Where the various activities carried out by assessee constituted one single indivisible business of promoting industries in State and dividend income earned in that process assumed character of its business income earned, in such a situation .deduction under section 80M could be allowed on gross amount of dividend income.

Dy. CIT vs. Tamil Nadu Industrial Development Corpn. Ltd. (2010) 124 ITD 117 (Chennai)(TM)

S. 80P(2)(e) : Deduction - Co-operative society - Income from letting of godowns

Department is directed to examine the total income of the assessee society and determine the amount allocable as rental income in the composite charge received by it towards ginning and



passing charges and godown rent by applying the principle of proportionally instead of adopting an ad hoc measure of attributing 50 percent of the charges as rental income.

CIT vs. Baba Saheb Kedar Ginning & Pressing Co-operative Society Ltd. (2010) 38 DTR 153 (SC)

S. 90 : Double taxation relief - International Taxation - India-Mauritius - Permanent establishment – Construction - Assembly project (Art. 5 &7)

For the purpose of determining the applicability of the threshold time-limit under Art. 5(2)(i), of the Indo-Mauritius DTAA, what is to be taken in to account is the duration of the activities of the foreign enterprise on a particular site or a particular project or supervisory activity connected therewith, on a standalone basis and not all the activities in a tax jurisdiction as a whole.

JRAY McDermott Eastern Hemisphere Ltd. vs. Jt. CIT (2010) 38 DTR 161 (Mum.) (Trib.)

S. 90 : Double taxation relief - International Taxation - Indo-US treaty - charter of air craft - FDR interest (Art. 8)

Activity which is directly related to transportation of passengers by assessee as owners / lessee / charter of aircraft would alone fall within the ambit of para. 2(b) of Article 8 of Indo-US Treaty. Deposit of amount in FDR could not be said to be connected with operation of aircrafts para. 5 of Article 8 would not apply.

Asst. DIT vs. Delata Airlines Inc. (2010) 124 ITD 114 (Mum.)

S. 90 : Double Taxation relief - International Taxation – India-Singapore - Permanent establishment (Art. 7, 8)

Income of assessee, a tax resident of Singapore having been taxed in India, denying the benefits of Art. 8, without examining the issue whether the assessee had a PE in India within the meaning of Art. 7, matter remanded for examining the issue of PE and assessment accordingly.

J. M. Baxi & Co. vs. Dy. Director of IT (2010) 39 DTR 1 (Mum.) (Trib.)

S. 90 : Double Taxation Relief - International Taxation

Despite cessation of PE, gains on transfer of PE asset taxable under Act and DTAA

Cartier Shipping vs. DDIT (ITAT Mumbai) (Source: www.itatonline.org)

S. 90 : Double Taxation Relief – International Taxation – INDIA - Permanent Establishment

No PE under DTAA if three criteria are not fulfilled.

Airlines Rotables vs. JDIT (ITAT Mumbai) (Source : www.itatonline.org)



S. 90 : Double Taxation Relief – International Taxation - India & USA - Art. S. 5(2) & 7, Income Tax Act

No income arises to the foreign company in India in the course of deputing personnel to an Indian company, who work under the control and supervision of the Indian company and thus become employee of the Indian company. Amount of salary of deputed employees reimbursed to the foreign company is not taxable in India.

DDIT vs. Tekmark Global Soutions LLC, ITAT Mumbai, ITA No. 671/2007, decided on 23-2-2010, (BCAJ 42-A, May 2010 pg. 171)

S. 92C : Transfer pricing – International Taxation - Arm’s length price - bad debt written off - (Rule 10B)

In view of parameters prescribed in Rule 10B, bad debt written off can not be a factor to determine arm’s length price of any international transaction.

CA Computer Associates (P) Ltd. vs. Dy. CIT (2010) 37 SOT 306 (Mum.)

S. 92C : Transfer pricing – International Taxation - Arm’s length price - Scope of adjustment

Economic and market conditions of Thailand and Vietnam being totally different, adjustments for volume off take, credit period and credit risk though material are not sufficient to make the sale price to AE in Thailand comparable with the sale price to unrelated party in Vietnam, unless suitable adjustments are made for disparity between the two transactions and therefore, matter is set aside to the CIT (A) for deciding the same afresh.

Intervet India (P) Ltd. vs. ACIT (2010) 38 DTR 422 (Mum.) (Trib.)

S. 92C : Transfer pricing - International Taxation - Arm’s length price - service fee from principal

Assessee earned service fees from principal at 12.5% of net advertisement revenue receipt. In the case of principal the same has been accepted at arm’s length price. Computation at 15% of gross revenue receipt not justified.

ACIT vs. Set India Pvt. Ltd. (2010) 3 ITR 454 (Mum.) (Trib.)

S. 92C : Transfer Pricing - International Taxation - Comparables

Assessee’s TP study cannot be rejected lightly, “comparables” have to be comparable on all parameters, no incentive to shift profits offshore if tax rates there are higher.

Dy. CIT vs. Indo American Jewellery (ITAT Mumbai) (Source: www.itatonline.org)



S. 133A : Survey - Loose slips found during survey

Assessee explain the loose slips pad found during survey, as wages paid in earlier. High court held that as there was no iota of evidence in the form of sale bills, bank account, money or property additions cannot be made.

CIT vs. Atma Valves (P) Ltd. (2010) 216 Taxation 241 (P & H)

S.115JA : Book profit - unabsorbed depreciation

Brought forward unabsorbed depreciation has to be set off while computing the book profit under section 115JA.

CIT vs. Gokudas Appearels (P) Ltd. (2010) 38 DTR 199 (Kar.)

S. 115JB : Book Profit - Club registered (S. 25)

A company registered under section 25 of the companies Act, whose income is exempt under principles of mutuality can not be brought with in the purview of section 115JB.

Delhi Gymkhana Club Ltd. vs. Dy. CIT (2010) 39 DTR 48 (Del.) (Trib.)

S. 127 : Power to transfer case - opportunity of hearing

Assessee must be given an opportunity of being heard before transferring the case, further “administrative convenience and for co-ordinating effective investigation” cannot be said to be the reasons as envisaged in section 127(1).The order was quashed.

Anil Kumar Kohari vs. UOI (2010) 39 DTR 19 (Gau.)

S. 143(2) : Assessment – Notice - beyond twelve months - Block assessment - (S. 158BC)

Assessing officer had issued notice under section 143(2), after expiry of twelve months from the end of month in which return was filed, notice issued was barred by limitation and therefore, assessment made in pursuance of said notice was quashed.

Dy. CIT vs. National Refinery (P) Ltd. (2010) 38 SOT 36 (Mum.)

S. 148 : Reassessment – Jurisdiction

Reassessment completed by an Assessing Officer on the basis of a notice under section 148 issued by another Assessing Officer who had no jurisdiction over the assessee is not valid.

K. B. Kumar (Dr. Mrs.) vs. ITO, ITAT ‘D’ Bench, Delhi, ITA No. 4436/Del./2009, decided on 20-1-2010 (BCAJ 42-A, June 2010 pg. 348)

S. 153A : Search and Seizure – Assessment - Joint warrant (S. 132)



Joint warrant in name of assessee and another party is permissible. Search in pursuance of search is valid.

Rajat Tradecom India Pvt. Ltd. vs. Dy. CIT (2010) 3 ITR 321 (Indore) (Trib.)

S. 153A : Search and seizure – Retraction – warrant - (S. 132)

S. 153A order void if search warrant in improper status. Assessee can retract admission of undisclosed income.

Mansukh Kanjibhai Shah (Dr). vs. ACIT (ITAT Ahmedabad) (Source: www.itatonline.org)

S. 153C : Search and seizure - assessment of income of any other person - loose papers

Notice under section 153C, can be issued only where the money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned actually belong to assessee. Notice issued on the basis of loose papers which bear the name of assessee actually not belong to assessee was without jurisdiction.

Vijaybhai N. Chandrani vs. ACIT (2010) 38 DTR 225 / 231 CTR 474 (Guj.)

S. 158BD : Block assessment of third person - Satisfaction

Assessing officer of searched person should record his satisfaction that undisclosed income found during search belonged to such person. If no satisfaction recorded block assessment was invalid.

Dy. CIT vs. Flair Builders P. Ltd. (2010) 3 ITR 158 (Delhi) (Trib.)

S. 158BFA(2) : Search and Seizure - Penalty - Block assessment - filing an appeal

Assessee by filing an appeal against the order of block assessment disputing the rate of tax payable on long term capital gains fails to comply with cl (iv) of the first proviso to section 158BFA(2), and hence is not entitled to the benefit of the proviso regarding non levy of penalty.

CIT vs. Anju R.Innani (Smt.) (2010) 38 DTR 75/ 231 CTR 417 (Bom.)

S. 194C : Deduction of tax at source – Sub-contractor - lorry owners - amount not deductible – [S. 40(a)(ia)]

The payment made to lorry owners at par with payments made towards salaries, rents etc, therefore, payment made to hired vehicles would not be considered as towards sub-contractor with lorry owners. As the provisions of section 194C is not applicable payment made can not be disallowed by applying the provision of section 40(a)(ia).

Mythri Transport Corporation vs. ACIT (2010) 124 ITD 40 (Visakhapatnam)



S. 194C : Deduction of tax at source – Financing - Payments to contractors and sub-contractors (S. 194J)

Finance agreement of assessee with producer /director of films is not a contract with in the meaning of section 194C, but only a financing arrangement therefore neither section 194C nor section 194J is applicable for composite contracts for financing film project.

Entertainment One India Ltd. vs. ITO (2010) 39 DTR 26 (Mum.) (Trib.)

S. 194LA : Deduction of tax at source - Acquisition of property - Compensation

Mere issuance of notification under section 4 of the land Acquisition Act, provision of section 194LA was not attracted.

Infopark Kerala vs. ACIT (2010) 38 DTR 180 (Ker.)

S. 195 : Deduction of Tax at Source – Non-resident - agent

Despite TDS under section 195, payer is liable as “agent” under section 163. However, if payee is assessed, payer cannot be assessed as “representative assessee”.

Hindalco Industries vs. Dy. CIT (ITAT Mumbai) (Source: www.itatonline.org)

S. 195(1) : Deduction of tax at source – Non-resident - Purchase of software

Remittances made by the assessee to the non-resident for purchase of software were in the nature of trading receipt and price of goods purchased by it bear the character of income receipt in the hands of non-resident and therefore, assessee is liable to deduct tax at source under section 195(1).

CIT vs. Sonata Information Technology Ltd. (2010) 38 DTR 350 (Kar.)

S. 195(3) : Deduction of tax at source – Non – Resident - Double Taxation relief - India-USA – Certificate – Writ (Art. 226, Art. 27, Rule 29B)

Certificate under section 195(3), could not be declined on the ground that when the matter is pending before the Dispute Resolution Panel. As no appeal is available against order under section 195(3), writ is maintainable.

Mckinsey & Company Inc vs. UOI (2010) 38 DTR 34 / 323 ITR 544 / 231 CTR 430 (Bom.)

S. 195 : Deduction of tax at source – Non-resident - Double Taxation relief - India & Switzerland - Art. 5 & 7, Income Tax Act

Payments made towards the share of the cost incurred in respect of research and development activities pursuant to cost contribution arrangement is not the payment towards fees for technical



services or royalty. Such contribution is not liable to tax in the hands of the co-ordinating agencies.

ABB Limited, (2010) TIOL 94 ARA-IT dated 15-3-2010

S. 195 : Deduction of tax at source – Non-resident - Double Taxation relief - India & US - Art. 12, Income Tax Act

Basic design services provided by US entity which includes preparation of plan, concept design, design development and other related consultancy services during construction phase are part of architectural services provided by the US entity. Payment received for such services are fees for included services as it involved development and transfer of technical plan and design. The agreement needs to be read having regard to the predominant features of the contract and by taking into account crux and substance of the contract.

Remittance made to the US entity for making payment to consultants directly to the taxpayer represents reimbursement of actual expenses and does not represent income chargeable to tax.

HMS Real Estate (2010) TIOL 17 ARA-IT dated 18-3-2010

S. 195 : Deduction of tax at source – Non-resident - Double Taxation relief– India & USA – Art. 7, Income Tax Act

Consideration paid by Indian company to American company under assignment agreement was not capital gains but business profits. Since American company did not have PE in India, consideration not chargeable to tax in India. Payer not required to withhold tax under section 195.

Laired Technologies India Pvt. Ltd. (2010) 323 ITR 598 (AAR)

S. 234B : Interest - Advance Tax - Retrospective Amendment

Assessee is not liable to pay interest under section 234B when by retrospective amendment made later the amount becomes taxable. Administrative relief can be obtained by the assessee cannot erode the powers of the tribunal while dealing with the valid appeal laid before it.

Sun Petrochemicals Pvt. Ltd. vs. ITO, ITAT 'D' Bench, Ahmedabad ITA No. 1010/Ahd./2009, decided on 5-6-2009 (BCAJ 42-A, May 2010 pg. 168)

S. 234B : Interest - Advance tax - MAT Credit (S. 115JAA)

MAT credit available under section 115JAA, represents tax paid by the assessee before determination of total income under section 143(1) or completion of regular assessment within the meaning of sub section (2) of section 234B and therefore credit for MAT under the provisions of section 115JAA has to be reckoned in computing interest payable under section 234B .Amendment made by Finance Act, 2006, by substituting Explan 1 to section 234B was clarificatory or curative in nature and consequently , even prior to the amendment, the credit



under section 115JAA could not be ignored in determining the liability to pay interest under section 234B.

CIT vs. Apar Industries Ltd. (2010) 38 DTR 128 / 323 ITR 411 / 231 CTR 313 (Bom.).

S. 234B : Interest – Tax Deduction at Source

Interest under section 234B is not chargeable where the income of the assessee is subject to Tax deduction at source.

Director IT vs. Krupp Udge GmbH (2010) 38 DTR 251 (Bom.)

S. 244A : Interest on refunds - MAT- (S. 115JAA)

Interest under section 244A, is allowable on the refundable taxes arrived after giving credit of brought forward MAT under section 115JAA.

CIT vs. Apar Industries Ltd. (2010) 38 DTR 128 (Bom.)

S. 248 : Appeal - Denial of liability to deduct tax

Dispute relating to the chargeability of income of the non-resident recipient can alone be the subject matter of an appeal under section 248 and not the possibility of assessing of the income of the non resident in the hands of the resident payer as no procedure of assessment of the income of the non-resident in the hands of the resident payer is contemplated in sub section 1 of section 195.

CIT vs. Sonata Information Technology Ltd. (2010) 38 DTR 350 (Kar.)

S. 251 : Powers of the Commissioner (Appeals) - Finding - Direction

An appellate authority can not give direction or finding in respect of other years, direction or finding can be given only in respect of year or period which is before the authority.

Sun Metal Factory (I) (P) Ltd. vs. ACIT (2010) 124 ITD 14 (Chennai)

S. 253(4) : Appellate Tribunal - Cross objection

Cross objection at assessee's instance in its own appeal is not maintainable.

Vidya Institute vs. CIT (2010) 3 ITR 491 (Delhi) (Trib.)

S. 253(6) : Appellate Tribunal - Appeal fees - Penalty

An appeal against levy of penalty under section 271 is covered by cl. (d) of section 253(6), and the fee payable is Rs. 500 only.

Dabwali Transport Company vs. ACIT (2010) 38 DTR 434 (Chd.) (Trib.)



Editorial Note:- Refer Ajit Kumar Pandey (Dr.) (2009) 310 ITR 195 (Patna)

S. 254(1) : Appellate Tribunal – Power - Deduction under an alternative section

Assessee having claimed deduction under section 36(1)(vii), Tribunal was empowered to deal with the issue of allowability of the impugned amount as an expenditure under section 37(1).

CIT vs. Khaitan Chemicals & Fertilizers Ltd. (2010) 38 DTR 86 (Del.)

S. 254(1) : Appellate Tribunal – Duty - Reasoned order

While deciding the appeal, Tribunal should deal with issues both on facts and law with reference to submissions urged and then return its own reasoning, quoting the finding of CIT (A) and simply upholding the same without its own reasoning is not proper.

K. D. Wires (P) Ltd. vs. CIT (2010) 38 DTR 210 (MP)

Editorial Note:- Refer Jt. CIT vs. Saheli leasing & Industries (2010) 324 ITR 170 (SC)

S. 254(2) : Appellate Tribunal - Rectification of mistake

Second application for rectification is not maintainable.

S. Panneerselvam (Dr.) vs. ACIT (2010) Tax. L.R. 326 (Mad.) (Vol. 40 May 2010)

S. 254(2) : Appellate Tribunal - Rectification of Mistake – Book Profit – Retrospective Amendment (S. 115JB)

Retrospective amendment after passing order does not lead to “apparent mistake”.

ACIT vs. GTL Ltd. (ITAT Mumbai) (Source: www.itatonline.org)

S. 260A : Appeal - High Court - Condonation of delay - Amendment

In view of the amendment of the Act, giving power to the High Court to condone the delay in filing appeals, liberty is given to the department to move the High court by way of review of the impugned order dismissing department’s belated appeal on the ground that it has no power to condone the delay.

CIT vs. ICICI Bank Ltd. (2010) 38 DTR 319 / 231 CTR 439 (SC)

S. 263 : Revision - erroneous and prejudicial order - merger

Where the Assessing Officer has applied his mind to the issue of applicability of section 40A(3), vis-à-vis block assessment and taken a possible view, the CIT is not justified in exercising powers of revision under section 263. Once the issue was considered and decided by the CIT(A) revision under section 263 cannot be done.

Ranka Jewellers vs. Addl. CIT (2010) 38 DTR 293 (Bom.)



S. 263 : Revision - non compete fee - possible view

The view taken by the Assessing Officer on the date of passing of order being a possible view as per legal position, it cannot be said to be erroneous or prejudicial to the interest of revenue.

Double Dot Finance Ltd. vs. ACIT (2010) 38 DTR 220 (Mum.) (Trib.)

S. 271(1)(c) : Penalty – concealment - false claim of depreciation

Assessee having entered in to an artificial arrangement of purchase and lease back transaction to evade tax liability and the transaction having found to be bogus penalty under section 271(1)(c) is leviable.

Ultramarine & Pigments Ltd. Vs. ACIT (2010) 38 DTR 42 (Mum.) (Trib.)

S. 271(1)(c) : Penalty – concealment - advice of the tax consultant

Where the claim of deduction was made on the basis of advice of the tax consultant supported by tax audit report, there was no concealment or furnishing of inaccurate particulars on the part of the assessee penalty can not be made merely because the claim of deduction was disallowed in assessment proceedings.

Yogesh R. Desai vs. ACIT (2010) 38 DTR 101 (Mum.) (Trib.)

S. 271(1)(c) : Penalty – concealment - disallowance on estimate basis

Assessing Officer having disallowed assessee's claim for expenses on estimation basis and the Tribunal has sustained the addition partly, it cannot be said that there was conscious act of concealment of income or furnishing of inaccurate particulars of income and therefore levy of penalty under section 271(1)(c) is not justified.

Dabwali Transport Company vs. ACIT (2010) 38 DTR 434 (Chd.) (Trib.)

S. 271(1)(c) : Penalty – concealment - duty draw back – DEPB - debatable claim

Assessee having included duty drawback / DEPB in the amount eligible for deduction under section 80IB at the time when there was a debatable regarding allowability or otherwise of such claim, hence the issue being debatable penalty under section 271(1)(c) is not justified.

Baldev Wollen International vs. ITO (2010) 39 DTR 12 (Del.) (Trib.)

WEALTH TAX

S. 2(ea) : Assets – stock-in-trade

Building was held as stock in trade it could not be included in definition of "asset" as per section 2(ea) even though pending completion of sale transaction and it was given on rent to purchasing party.



ITAT ONLINE.ORG
YOUR ONE-STOP RESOURCE FOR ALL ITAT RELATED MATTERS & MORE

Dy. CWT vs. Brilliant Estate Ltd. (Indore) (2010) 124 ITD 8 (Indore)

DISCLAIMER:

While due care has been taken while preparing the digest, if there is any mistake or omission, neither the author nor the association can be held responsible for any personal or professional liability arising out of the same.