

50 Important Judgements of Honourable Shri G.S. Pannu, Vice-President, Income-tax Appellate Tribunal, New Delhi, by Neelam Jadhav, Advocate.

Executive Summary.

1. S. 2(22)(e) : Deemed dividend- Where AO made an addition to an income of assessee-company under section 2(22)(e) in respect of loan on the ground that there was a common shareholder in case of the assessee and lender company, since addition if any, could be made in hands of such registered shareholder, same deserved to be deleted in assessee's case. (AY. 2010 -11)

Dy. CIT v. Gilbarco Veeder Root India (P.) Ltd. [2018] 96 taxmann.com 262 (Mum.)(Trib.)

2. S. 4 : Charge of income-tax - Assessee earned interest income on income-tax refund - It also paid interest on late payment of tax - Assessee claimed that interest paid by it was to be set off against interest received and, it was only net interest that was liable to tax. The assessing Officer rejected the assessee's claim. Assessable in respect of gross interest received from the department and not merely on net interest remaining after set off of interest paid to department.(AY. 1992 -93)

Dy. CIT v. Sandvik Asia Ltd. [2011] 133 ITD 126 / [2012] 143 TTJ 528 (TM) (Pune)(Trib.)

3. S. 4 : Charge of income-tax - Capital or revenue - Pursuant to cancellation of the land development agreement, the amount received by assessee was in excess of advance and same was on account of compensation for the extinction of its right to sue the landowner, since said receipt was not in ordinary course of its business, same has to be construed as capital receipt not liable to tax.[S. 2(14)] (AY. 20012-13)

Chheda Housing Development Corpn. v. Add. CIT [2019] 179 ITD 154 (Mum.)(Trib.)

4. S. 4 : Charge of income-tax – Capital or revenue - Shifting allowance- Hard ship allowance - Assessee being a beneficiary of a housing society had received compensation as a shifting allowance during the redevelopment of his flat which was paid to compensate for hardship arising out from redevelopment, such hardship allowance received by the assessee were capital receipt not chargeable to tax. [S. 56] (AY. 2015 -16]

Narayan Devarajan Iyengar v. ITO [2023] 201 ITD 503 (Mum.) (Trib.)

5. S. 9(1)(vi) : Non-Resident — Taxability in India — Royalty — Licence charges for use of copyrighted Software - The plea of the assessee that it had granted only a user right to BA Life and BA General in terms of the license agreement, was not disputed by the Assessing Officer. Pertinently, there was no dis-agreement that the copyright continued to remain with the CGI as observed by the Assessing Officer. The payments had been received by the assessee for the grant of use of copyrighted software and not for use of the copyright itself. The license charges earned by the assessee were not liable to be treated as royalty.

ALLIANZ SE, Formerly Known As Allianz Ag v. ADIT (IT) [2012] 19 ITR (Trib) 321 (Pune)(Trib.)

6. S. 9(1)(vi) : Income-Deemed to accrue or arise in India-Royalties / Fee for technical services - Computer software-The assessee a US company, had entered into agreements with Indian telecommunication companies for the supply of basic telecom infrastructure equipment software and assist them in setting up telecommunication networks, since the agreement between the parties made it clear that ownership rights over software remained with the assessee, amount received by the assessee

from Indian Company was not taxable as royalty income as the assessee had not transferred use or right to use, copyright of a literary, artistic or scientific work so as to fall within the definition of royalty under article 12 of India-USA DTAA. (Art. 12)(AYs. 2004-05 & 2005-06)

UT Starcom Inc vs. ACIT [2023] 155 taxmann.com 117 (Delhi)Trib.)

7. S. 10B: Export-oriented undertakings-Income by way of reimbursement of CST, interest on term deposits, and interest on deposits with the Electricity Board were earned from surplus business income of 100 percent EOU under the definition of profits derived from export contained in section 10B(4), said income was eligible for deduction. [S.10B(4)] (AY. 2007 -08, 2008-09)

Krupa Trading Company v. Add. CIT [2017] 77 taxmann.com 177 (Mum.)(Trib.)

8. S. 11 : Property held for charitable purposes-The assessee was registered under section 12A as a charitable society offering services to the nation as an arm of Govt. of India under the Software Technology Park of India (STPI) scheme, Commissioner (Appeals) was justified in holding that assessee was eligible for benefit of exemption under section 11. [S. 2(15), 11, 12A] (AY. 2011 -12)

Software Technology Parks of India v. Dy. CIT [2024] 207 ITD 63 (Delhi)(Trib.)

9. S. 13 : Denial of exemption-Trust or institution-Investment restrictions -Objects of assessee-trust were strictly not for the Christian community in particular, but were both for purposes of the Christian community and other public at large, the assessee was a charitable religious trust, and provisions of section 13(1)(b) would not be applicable. [S.2(15), 11, 13(1)(b)]

Diocese of Pune (CNI) v. CIT [2015] 57 taxmann.com 175 / 42 ITR 348 / 68 SOT 554 (Pune)(Trib.)

10. S. 13A : Political parties - The assessee filed its return of income beyond the due date as per section 139, there was an apparent non-compliance with requirements of third Proviso to section 13A, hence, the claim of exemption under section 13A had been rightly denied. Political party received certain sums in cash from various persons, and details clearly showed that each contribution was in cash in excess of Rs. 2,000, thereby reflecting clear violation of clause (d) of first proviso, exemption under section 13A had rightly been denied. Once mandatory requirements contained in section 13A are violated, there is no discretion with income-tax authorities to give any relaxation in allowing the exemption envisaged in said section. [S. 13A(d), 139] (AY. 2018 -19)

Indian National Congress All India Congress Committee v. Dy. CIT [2024] 160 taxmann.com 260 / 111 ITR 1 / 206 ITD 384 (Delhi) (Trib.)

Editorial : Affirmed, Indian National Congress All India Congress Committee v. Dy. CIT ([2024] 298 Taxman 630 (Delhi)(HC)

11. S. 28(i) : Business income - Capital or revenue -Assessee is involved in selling holiday membership plans and business of assessee was considered a Collective Investment Scheme (CIS) and NAC (non-utilized amount) paid by assessee to its members was considered as interest on deposits, revenue received from members is to be considered as capital receipt and not revenue receipt. [S. 40(a))(ia) 194A] (AY. 2009 -10 to 2015 -16)

Royal Twinkle Star Club (P.) Ltd. v. Dy.CIT [2023] 152 taxmann.com 374 (Mum) (Trib.)

12. S. 28(i) : Business income -Company, engaged in the business of construction of commercial complex had earned rental income for letting out same along with all facilities and amenities to occupants, same was taxable as business income and not rental income. [S. 22, 23, 24, 32] (AY. 2010 -11, 2012 -13)

Active Securities Ltd. v. ITO [2024] 163 taxmann.com 714 (Delhi)(Trib.)

13. S. 28(i): Business income-Capital or revenue - Compensation-Upon acquisition of the business of a company by the assessee total consideration paid was capitalized, any reduction in purchase consideration by way of refund/compensation would retain the same character as the original amount, i.e. capital receipt. (AY. 2005 -06)

Sandvik Mining & Construction Tools India (P.) Ltd. v. ITO [2016] 69 taxmann.com 318 / [2015] 40 ITR 54 (Pune)(Trib.)

14. S. 32: Depreciation- Intangible assets - Assessee acquired a business which included intangible assets such as customer base, technical know-how, manpower, etc., depreciation under section 32(1)(ii) is to be allowed on same as intangible assets.[S. 32(1)(iii)] (AY. 2007 -08)

Brembo Brake India (P.) Ltd. v. Dy. CIT [2015] 56 taxmann.com 217 / 68 SOT 263 (Pune)(Trib.)

15. S. 35ABB: Licence to operate telecommunication services - Telecommunication License -Spectrum charges- Assessee-telecom company paid the license fee and spectrum fee to the government, in view of the decision of the High Court in the assessee's own case license fee paid/payable up to 31-7-1999 should be treated as capital, and the balance amount paid/payable on or after 31-7-1999 should be treated as revenue. [S.37(1)].(AY. 2015 -16)

ACIT v. Bharti Hexacom Ltd. [2023] 157 taxmann.com 724 (Delhi)(Trib.)

16. S.37(1): Business expenditure - Penalty for violation of KYC norms- Payment made towards penalty for violation of KYC norms by Telecom Company would not fall within ambit of Explanation 1 to section 37(1).(AY. 2015 -16)
ACIT v. Bharti Hexacom Ltd. [2023] 157 taxmann.com 724 (Delhi)(Trib.)
17. S.37(1) : Business expenditure-The assessee, ITES provider, had made payment to its Indian counterpart for acquiring part of its business relating to debt collection service since the assessee is not in debt collection service business before acquiring said business, expenditure incurred for acquiring completely new business set up was income generation tool and, hence, capital in nature.[S. 32] (AY. 2010 -11)
Genpact Services LLC. v. Dy. CIT(IT) [2023] 200 ITD 48 (Delhi)(Trib.)
18. S. 37(1) : Business expenditure – Capital or revenue - Subscription fee paid to Deloitte Touché Tohmatsu (DTT) by assessee-firm is allowable as revenue expenditure. (AY. 2010 -11)
Deloitte Haskins & Sells v. ACIT [2021] 125 taxmann.com 432 / 86 ITR(T) 121 (Delhi) (Trib.)
19. S. 37(1) : Business expenditure – Capital or revenue - Processing fees - Processing fee paid by the assessee for acquiring term loans from banks for making investments in group companies and for promoting new companies is allowable as revenue expenditure. (AY. 2004 -05)
Tata Industries Ltd. v. ITO [2017] 82 taxmann.com 227 / [2016] 181 TTJ 600 (Mum.)(Trib)
20. S. 40(a)(ia) : Amounts not deductible - Deduction at source - Amount payable to a contractor or sub-contractor -Time of deposit of tax - TDS

in respect of freight charges was deducted in the previous assessment year but same was deposited in the subsequent assessment year, deduction of freight charges under proviso to section 40(a)(ia) in subsequent year is justified. (AY. 2010 -11)

Bora Agro Foods v. Addl. CIT [2016] 71 taxmann.com 283 / [2015] 172 TTJ 808 (Pune)(Trib.)

21. S. 40(a)(ia) : Amounts not deductible - Deduction at source - Amendment to section 40(a)(ia) by Finance (No.2) Act, 2014 takes effect from 1-4-2015 and will, accordingly, apply in relation to assessment year 2015-16 and subsequent years. [S. 28(i), 194A] (AY. 2009 -10 to 2015 -16)

Royal Twinkle Star Club (P.) Ltd. v. Dy. CIT [2023] 152 taxmann.com 374 (Mum (Trib.))

22. S. 44BB: Mineral oils – Computation – Section does not envisage only direct use of plant and machinery in prospecting for or extraction or production of mineral oils and, therefore, the amount received by assessee from hiring of barge used for offshore accommodation of employees is also liable to be taxed under section 44BB. (AY. 2007 -08)

Valentine Maritime (Gulf) LLC v. ACIT (IT) [2017] 163 ITD 32 / 186 TTJ 705 (Mum)(Trib)

23. S. 48 : Capital gains –Mode of Computation –Brokerage and commission- Assessee paid brokerage/commission to three brokers for sale of property and genuineness of impugned payment as transfer expenses in connection with transfer of property was well established, disallowance of brokerage expenses is not justified.[S. 54] (AY. 2021 -22)

Sunil Kapoor v. ACIT (IT) [2024] 161 taxmann.com 748 (Delhi)(Trib.)

24. S. 48 : Capital gains –Mode of Computation - On account of non-payment of corporate loan as per agreed terms, a charge on mortgaged property was created by assessee himself in terms of section 13(2) of SARFAESI Act, 2002, in such a case, upon sale of property so mortgaged, assessee could not claim deduction of principal amount of loan either as expenditure under section 48 or as diversion of income by overriding title. [S. 4] (AY. 2010 -11)

Perfect Thread Mills Ltd. v. Dy. CIT [2020] 77 ITR 603 / 181 ITD 1 (TM) (Mum.)(Trib.)

25. S. 50 : Capital gains - Depreciable assets - Block of assets - Assessee had parted with full sale consideration and reduced terms of agreement into writing by way of allotment letter and by gaining ability to have every other person excluded from dealing with property, proceeded with work of fit-outs of property, it had demonstrated that he had acquired property for purposes of section 50(1)(iii). [S. 32, Transfer of Property Act, 1882, S.53A] (AY. 2012 -13)

Indogem v. ITO [2016] 160 ITD 405 / [2017] 186 TTJ 392 (Mum.)(Trib.)

26. S. 50B: Capital gains – Slump sale - The assessee-company had only transferred its business leads to sister concern without transfer of undertaking or business activity as a whole, the transaction in question would not fall within the ambit of slump sale.[S. 2(19AA, 2(42C)] (AY. 2003 -04)

L & T Finance Ltd. v. Dy. CIT [2018] 168 ITD 52 (Mum.)(Trib.)

27. S. 50C : Capital gains - Full value of consideration - Stamp valuation Amendment made in scheme of section 50C(1), by inserting third proviso thereto and by enhancing tolerance band for variations between stated sale consideration vis-à-vis stamp duty valuation from 5 percent to 10 percent are effective from the date on

which section 50C, itself was introduced, i.e. 1-4-2003.[S. 45] (AY. 2012-13)

Amrapali Cinema v. ACIT [2021]190 ITD 36 (Delhi) (Trib.)

28. S. 56 : Income from other sources-Transfer-The assessee had acquired right in the ownership of the flat at the time of issuance of allotment letter-Date of allotment letter is to be considered as date of purchase-Addition made on the basis of stamp valuation on the date of registration was deleted. [S. 2(47), 56(2)(vii)(b)] (ITA No. 7120/Mum/2018 dated November 09, 2022) (AY 2014-15)

ITO v. Rajni D. Saini (Mum.)(Trib.) (www.itatonline.org)

29. S. 56 : Income from other sources - Assessee allotted 5 percent non-cumulative redeemable preference shares to a company at a certain price per share including share premium, since the valuation report as submitted by the assessee in form of additional evidence was good enough to explain valuation, impugned addition made by Assessing Officer on the ground that assessee had not furnished report from merchant banker with respect to computation and rational behind price of each share for purpose of rule 11UA is set aside.[R.11UA] (AY. 2017-18)

Dy. CIT v. Weldon Polymers (P.) Ltd. [2024] 163 taxmann.com 773 (Delhi) (Trib.)

30. S. 69A: Unexplained money - DRP deleted the addition made by the Assessing Officer under section 69A in respect of the amount remitted outside India, however, the Assessing Officer while passing the final assessment order in pursuance to directions of DRP, made additions of an amount accepted in the draft assessment order, the order having been passed in clear violation of directions of DRP was a nullity in eyes of law and hence quashed.[S. 144C] (AY. 2004 -05)

**Oxbow Energy Solutions LLC v. Dy. CIT (IT) [2023] 199 ITD 770
(Delhi)(Trib.)**

31. S. 72A : Carry forward and set off of accumulated loss and unabsorbed depreciation – Amalgamation – Demerger - Only 'specific assets and liabilities' of two divisions of the assessee-company were transferred to another company for 'consideration', there would be no demerger; hence, accumulated loss and unabsorbed depreciation relating to the transferred division would remain with the assessee-company. [S.2 (19AA), 2(41A)]

**Dy. CIT v. NOCIL Ltd. [2017] 165 ITD 138 / 190 TTJ 192
(Mum.)(Trib.)**

32. S. 80IB (10): Housing projects- The assessee had violated provisions of section 80IB(10)(c) in respect of two units of the housing project, denial of deduction under section 80IB(10) would be limited only to said two units, and for balance units, the assessee would be entitled to the deduction. (AY. 2009 -10 to 2015 -16)

**ITO v. Paras Builders ([2015] 58 taxmann.com 286 / 40 ITR
507/ 69 SOT 82 (URO) (Pune)(Trib.)**

33. S. 90: Non-resident — Taxability in India — Double taxation avoidance- The tax levied at a higher rate in the case of a foreign company was not to be regarded as a violation of the non-discrimination clause in the Agreement. The Act provides that a higher tax rate on a foreign company should not be regarded as a violation of the non-discrimination clause. Art. 26- DTAA- India – France. (AY. 2017-18, 2018 -19) [art. 26]

**BNP Paribas v. ACIT, International Taxation, [2023] 149
taxmann.com 56 / 102 ITR (Trib) 587 (Mum)(Trib.)**

34. S. 92B: Transfer pricing – International transaction - Arm’s length price -Avoidance of tax -The manner in which the Transfer Pricing Officer had proceeded to determine the arm’s length rate based on the probable rate as charged by the commercial banks was not justified. As the assessee claimed, the rate of 0.50 percent would be justified as the arm’s length rate for the purpose of determining the arm’s length income on account of the guarantee commission fee. Hence, the order of the Commissioner (Appeals) was set aside to determine the addition afresh accordingly. (AY. 2008 -09)

Thomas Cook (India) Ltd. v. Add. CIT [2016] 69 taxmann.com 443 / 49 ITR (Trib) 113 (Mum)(Trib.)

35. S. 92C : Transfer pricing – Arm’s length price - Avoidance of tax - International transaction - Dispute resolution panel -Powers - Additional grounds- - Fresh claim seeking exclusion of its royalty income from its overseas subsidiaries - DRP was not justified in not entertaining assessee's fresh claim seeking exclusion of its royalty earnings from its overseas subsidiaries on ground that matter was remanded back to it by Tribunal on certain points only, when there was no fetters put by Tribunal on DRP to the effect that DRP was to hear no points other than those remanded by Tribunal. Held that the DRP misdirected itself in not entertaining the aforesaid claim of the assessee for adjudication because there were no fetters put by the Tribunal on the DRP to the effect that the DRP was to hear no points other than those remanded by the Tribunal.- DTAA -India -Egypt. [S.144C, art. 13] (AY. 2006-07)

Asian Paints Ltd v. Dy. CIT (2017) 88 taxmann.com 677 / 184 TTJ 275 (Mum)(Trib)

36. S. 92C : Transfer pricing – Arm’s length price - Avoidance of tax— Information Technology Enabled Services -Arm’s Length Price could not be comparable to a concern rendering information technology-enabled services.(AY. 2019 -20)

BNY Mellon International Operations (India) P. Ltd. v. Dy. CIT [2015] 41 ITR 407 /173 TTJ 354/ 119 DTR 345 (Pune) (Trib)

37. S. 115JB: Company - Book profit –Computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to computation as contemplated under section 14A read with rule 8D. (AY. 2009 -10 too 2015 -16)

Royal Twinkle Star Club (P.) Ltd. v. Dy. CIT [2023] 152 taxmann.com 374 (Mum)(Trib.)

38. S.119: Central Board of Direct Taxes- Instructions – Circular -law does not draw any distinction between instructions/circulars issued under section 119(1) and 119(2); both are binding on Department Officers. Instructions of the Board including those prescribing monetary limits for filing appeals before various forums are binding on Income-tax authorities. [S.119(1) 119(2)] (AY. 1993-94)

ITO v. Bir Engg. Works [2005] 94 ITD 164 / 93 TTJ 257 (SB) (Amritsar)(Trib.)

39. S.119: Central Board of Direct Taxes- Instructions – Circular - An assessment order was passed without DIN, such communication would be presumed to have never been issued, and would become a voidable communication at the instance of the assessee as per CBDT Circular no. 19/2019, dated 14-8-2019. [S. 143(3), 153A] (AY. 2012-13 to 2018 - 19)

Deepak Kumar v. Dy CIT [2024] 159 taxmann.com 358 (Delhi)(Trib.)

40. S. 153A: Assessment – Search - No addition could be made with respect of the assessment that had become final, in the event that no incriminating material was found during the course of the search. [S.132] (AY.2004-05)

K. Sera Sera Productions Ltd. v. Dy. CIT [2017] 87 taxmann.com 249 (Mum.)(Trib.)

41. S. 194H: Deduction at source – Commission or brokerage -Discounts provided by a telecom company to pre-paid card distributors could not be termed as commission and thus section 194H did not apply to distributor discount.[S. 40(a)(ia)] (AY. 2015 -16)

ACIT v. Bharti Hexacom Ltd. [2023] 157 taxmann.com 724 (Delhi - Trib.)

42. S. 194H : Deduction at source – Commission or brokerage - Assessee provided testing services and it made arrangement with sample collection centres (TSPs) for collection of samples and forwarding same to assessee and assessee raised invoices on TSPs and they made payment to assessee as the assessee was recipient of amount for providing testing services, Assessing Officer erred in observing that assessee was payer and TSPs were recipients of amount and assessee was under obligation to deduct tax at source under section 194H. [S.194J, 201] (AY. 2009-10, 2012-13)

ITO (TDS) v. Thyrocare Technologies Ltd. [2022] 139 taxmann.com 556 (Mum) (Trib.)

43. S. 220: Collection and recovery - Assessee deemed in default - Fringe benefits (FBT) - Revenue had failed to establish that intimation and demand notice concerning FBT demand was ever served on the assessee, interest charged under section 220(2) upon the assessee is deleted.[S.115WE, 220(2)] (AY. 2017 -18)

Sony India (P.) Ltd. v. Dy. CIT CPC [2024] 205 ITD 194 (Delhi)(Trib.)

44. S. 234A : Interest - Default in furnishing return of income - Interest - Advance tax. Assessing Officer levied interest under section 234A on

account of belated filing of returns. It was apparent from records that income for each of captioned assessment years had been filed on 30-11-2007 and that too in response to notices issued under section 147/148. It was also noted that assessee had received impugned interest income on 31-8-1999 and prior to that date, assessee did not have any taxable income. On facts, assessee was liable to pay interest under section 234A for period 1-9-1999 up to 30-11-2007. Agricultural land belonging to the assessee was acquired by Chandigarh Administration on 22-11-1985 by issuance of a Notification under section 4 of Land Acquisition Act, 1894. Original compensation was awarded through an award by Land Acquisition Collector on 30-3-1987. Said award was further enhanced by order of District Judge, Chandigarh, dated 29-10-1996, who also awarded interest on such enhanced compensation. Only income which was assessed in hands of assessee was interest received along with enhanced compensation relating to different assessment years. In course of assessment, Assessing Officer held that assessee was liable to pay interest under section 234B on account of shortfall in payment of tax. Since prior to order dated 29-10-1996 passed by District Judge, assessee was not even aware of interest income in question, liability to pay interest under section 234B in each of captioned assessment years did not arise. Therefore, order of the Assessing Officer is set aside. [S. 234B] (AY. 1988 -89 to 1997 -98))

**ITO v. Raghbir Singh (HUF) [2010] 42 SOT 112 (SB)
(Chd)(Trib.)**

45. S. 249 : Appeal - Commissioner (Appeals) - Form of appeal and limitation - Appeal filed by the assessee was not admitted by Commissioner (Appeals) by referring to clause (a) of section 294(4) due to non-payment of tax on income declared in return, since the assessee had paid tax on returned income before passing of said order by Commissioner (Appeals), order refusing to admit appeal is set aside.[S. 249(4)(a)] (AY. 2006 -07 to 2009-10)