

KALPESH CLASSES

CA FINAL

VIDEO LECTURES

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LAST MINUTE REVISION

CA FINAL – NOV 2018

**(UPDATED 40 DAYS
BEFORE EVERY EXAMS)**

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Whatapp group for CA final Taxation

<https://chat.whatsapp.com/4Qaa5BuidbVDA09Hnnl7c9>

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Youtube – Full 50 mark case study discussed and explained (5 hours video)

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“If you have **youtubed yourself** and done **oral study** remember you are doing a big **mistake.**”

CA Kalpesh Sanghavi

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RECENTLY AMENDED SECTIONS
IMPORTANT FROM EXAM POINT OF VIEW
(AY 18-19)

23	House property held by builder for one year is not taxable in HP income. After 1 year will be taxable.
35AD 40A(3) 43(1)	Cash expense not allowed – limit 10,000 Asset cost not eligible for depreciation – Limit 10,000
43(1)	If 35AD asset is taxed due to violation then cost of those assets for depreciation will be Actual cost – depreciation that would have been allowed
36(1)(viiia)	Deduction for banks or financial institution is 8.5 % (old 7.5 %) students must know manner of full computation of BD for banks and financial institution. Refer our question bank for the same.
43B	Co-operative banks covered for interest payments deduction upon payment basis.
44AA	Limit for 44AA maintainence of books of account have been revised for individual or HUF Profession – 2.5 Lakhs Business – 2.5 Lakhs income / 25 Lakhs turnover
44AB	Tax audit limit – 1 cr (for 44AD cases 2 cr) For profession limit 50 lakhs
44AD	8 % of turnover will be income 6 % of turnover will be income (if the transaction is done through banking channel.)
45(5A)	In case of developer contract, where immovable property is transferred before the OC of the property then it is taxable in such year of transfer. In case year of OC will be the year of taxation otherwise. SDV will have to be considered. 194IC – TDS is 10 %
10(38)	LTCG on listed shares the STT should have been paid both at the time of acquisition and at time of transfer.
2(42A)	Listed shares – 12m (Long term) Un-Listed shares – 24m (Long term) Immovable Property – 24m (Long term) Others – 36m (Long term)
50CA	Transfer of Un-Quoted equity shares if SP < FMV then FMV will be full value of consideration.
54EC	Any notified / specified bonds will be covered
55	FMV as on 1-4-2001 to be considered for old assets acquired prior to this date
56	Taxation of gifts apply to any person, aggregate value 50,000 (for detailed discussion refer our videos)
70	HP loss maximum 200,000 can only be setoff against salary income in intra head adjustment excess if any will have to be Carried forward
79	For eligible startups (companies) all the shareholder should continue to hold shares for set off.
80CCD	Limits have been updated

80CCG	Withdrawn
80G	Cash donation up to 2000 only allowed
234C	No interest leviable for cases of 44AD
234E	Fail to furnish return up to December then 5000 late fees or else 10,000 late fees
241A	Refund can be withheld by the officer if likely to adversely affect the revenue. Refund claim to be made in prescribed form.
TDS	
194IB	Rent payers other than 194I persons Limit 50,000 pm TDS 5 %
194IC	45(5A) consideration not in kind (developer contract) TDS 10 %
194J	2 % TDS for call center
194LA	No TDS for award which is exempted (compulsory acquisition)
194LC	Infrastructure debt fund date extended 01-07-2020
194LD	Business trust date extended 01-07-2020
197A	194A / 194D no deduction or lower rate subject to procedure
206CC	For TCS PAN to be provided else TDS at twice the rate or 5 % which ever is higher.
13A	Political Parties donation other than bank receipt < 2000 allowed Furnish return as per 139(4B)
11 expl 2	Inter trust donations out of income should not be corpus donation in hands of recipient trust.
MAT	115JAA credit for 15 years Compliance to Indian Accounting standards to be done
	Tax credit for tax paid in foreign country is not to be allowed as carried forward. However it can be adjusted against previous years tax liability.
269ST / 271DA	Any cash transaction above Rs. 200,000 is subject to penalty. (limit aggregate per person / single transaction / single event / occasion)
139(4C)	List of exempt persons to file Return has been extended
139(4AA)	Aadhar to be linked with PAN
140A	Self assessment to be done with the payment of late fees if any.
153	Time limit to complete the assessment AY 18-19 – 18 m from end of AY AY 20-21 – 12 m from end of AY Re-assessment to be completed in 12 m
132	Reasons of doing search need not be disclosed to any person or tribunal Proper officer can also provisionally attach property for 6 months
132A	Reasons for requisition of books need not be disclosed to any person including tribunal.
133A	Premises of charitable institution can also be surveyed.
133C	Centralised Issuance of Notice can be done

153A	Notice for search cases can be issued beyond period of 6 years up to 10 years if the income escaped is more than 50 lakhs.
153B	Time limit for completion of assessment for search cases. AY 18-19 – 18 m AY 20-21 – 12 m
90	For DTAA terms used should have same meaning as assigned in DTAA and otherwise as per domestic law.
92BA	Transfer pricing income addition to be also reflected in books of account (called as secondary adjustment) if the amount of adjustment is more than 1 cr (students should study in detail the application of this provision)
94B	Restriction for deduction of interest expense as paid to associated enterprise. If the amount of expense is more than 1 cr. (students should study in detail the application of this provision)
115BBDA	Aggregate dividend income if exceed 10 lakhs then taxed @ 10 %
115BBG	Carbon credit income taxed @ 10 %
Advance ruling	Appointment of member procedure has been revised.
271J	Accountant / Registered Valuer / Merchant banker provide any incorrect information then there is penalty of 10,000.

Most important Questions for Nov 2018**Business Income computation (16 marks)**

1. With adjustment of Bad debts for banks and financial institution
2. With the adjustment of transfer to special reserve for bad debts with opening balance in reserve.
3. With adjustment of sale of property with different stamp duty value on date of agreement and on date of sale.
4. With adjustment receipt of shares without consideration where transaction is covered by section 47.
5. With adjustment Cash transactio of share subscription where amount is more then 200000
6. With adjustment Tax liability calculations also with dividend income from foreign subsidiary.
7. With adjustment of carbon credit income
8. With concept of dependent agent.

Capital Gains (8 marks)

Transaction of sale of listed shares with investment in eligible asset of 54 series. (4 marks)

Sale of unquoted shares involving valuation of shares. (4 marks)

AOP computation (6 marks)

Where AOP is having LTCCG as income and also subje to MMR.

Partnership Firm (10 marks)

With following main adjustments

1. Computation of firms income where HUF is a partner in partnership firm.
2. Remuneration is paid to HUF who is partner in representation.
3. Where firm has brought forward depreciation, where book profits are subject to depreciation set off.

TDS / TCS (4 marks)

Questions based on recent development of law.

Assessment procedure (8 marks)

Time limit of completion of assessment where there was special audit conducted with reference to period of limitation. (2 marks)

Search case completion of assessment where income found in search is 50 lakhs or more. (2 marks)

Late fees for filing return late. (2 marks)

Re-assessment done on the matter not decided in to an appeal. (2 marks)

Tax liability of private Trust (4 marks)

Where benefiery is two sons, where one is major and other is minor.

Most important Questions for Nov 2018
International Taxation

DTAA computation of rebate (8 marks)

Where income is from 2 countries. From one country it is loss and other country it is profit.

Special Rates of Taxes (5 marks)

Where payment is made to NR and NC sports person NET of taxes. Its tax and TDS liability both.

Transfer Pricing (9 marks)

1. Situation where there is 6 or more ALP available for given transaction and statistical method to be used for the purpose of final computation of ALP. (6 marks)
2. Safe harbour rules adjustment. (3 marks)

NR shipping companies (8 marks)

Where assessee is individual owner of ship and he also prefers option to file Regular return at the end of financial year.

Black Money Act (6 marks)

Computation of tax liability where assessee Individual is partner in foreign partnership firm having assets abroad.

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LIST OF IMPORTANT POINTS / SECTIONS TO BE GLANCED AT LAST MOMENT

Section	Note
<i>High value exam topics</i>	(1) Taxation of companies with tax liability calculations and dividend tax (2) Taxation of firms (3) Taxation of charitable trust / private trust with tax liability calculations (4) Taxation of AOP with tax liability calculations (5) Capital gains exemptions (6) Powers and full procedure and advance tax calculations (7) International taxation (DTAA / Special rates / Transfer pricing / GAAR) particularly tax liability and penalty calculation in all the cases.
10(36),10(37)	Exemption regarding, compulsory acquisition of urban agricultural land. Exemption regarding Long term capital gains.
HUF	Assessment of HUF. As much as tax treatment of partition is concerned. Also daughters (whether married or not) are now co-parceners.
Trust	Assessment of trust. Tax treatment of inter trust donations. (1) Treatment for depreciation in computing trust income. (2) Treatment for 11(2) over accumulation (3) Treatment for exp to 11 where monies are accrued but not received (4) Capital gains for Charitable trust (5) Tax liability where violation of section 13 has encountered. (6) Inter trust donations. (7) Full computation of trust with referenc to anonymous donation and full tax liability computation should be studied. (8) Tax liability difference between private and public trust.
12(2), 13(6)	The value of services being medical, or educational granted by trust running hospital or educational institution to specified person shall be taxable as income of the trust. Trust shall not loose exemption only because such benefit are extended to specified persons.
Explanation 11 to section 43(1)	Tax treatment of second hand assets acquired out side India and now brought in India.
47(iii) Prov. 1 Prov. 4 to 48, 115	Tax treatment of ESOP. When it has been under an approved as well as un approved scheme.
28 (iv)	Value of benefit or perquisite out of carrying on of business or profession. With the taxation of gifts section 56.
28 / 58	Any consideration for termination / modification of contract / services is taxable. If contract is employment contract then IFOS.
35AD	Full computation of specified business. 35AD, 28(vii), 50B, 56, 43(i) & 73A
172	Tax treatment of shipping business of non resident.
35ABB	Treatment of sale of Telecom Rights.
40(a) (i)(ia)(iii)	Payment to nonresidents, residents and outside India. TDS compliance to be effected.
40A(3)	Now condition of account payee cheque instead of crossed cheque.

40(b)	Tax treatment for partnership firms. Read with 184, 185 etc. also treatment when partner is a partner in representative capacity. Full computation with revised limit of remuneration.
(LLP)	LIMITED LIABILITY PARTNERSHIP (LLP) – SECTIONS 2(23), 140 & 167C
44AD, ADA, 44AE	Provision of presumptive taxation.
Business Income	Should should know the full computation like (1) Assessee with agricultural income and non agricultural income (2) Assessee with specified incomes of 33AB (Tea / Rubber development account) (3) Bad debts for banks / financial institution / foreign banks (4) Correct application of presumptive incomes (5) Specific treatment of specific provisions like telecom rights / 35AD business. (6) Detailed concepts of Firms and LLP vis-a-vis what if HUF is a partner in partnership firms together with remuneration and tax liability calculations. (7) Computation of income when there is loan given to specified shareholder / there is change in shareholding pattern of company with tax liability calculation with dividend tax liability computations.
45(3) (4)	Taxation of firms capital gains where assets are withdrawn from firm in ordinary course and firm is a going concern.
45(5)	Computation capital gains incase of reduction of compensation. Also tax treatment in case of advance compensation paid by the land acquisition collector without passing the order of purchase.
46	Capital gains for company in liquidation. Particularly where the agricultural land is subject matter of division.
48	NR computation for sale of shares covered by Prov 1 to 48. (exchange fluctuation to be taken in to account for capital gains for sale of shares and debentures.)
54	Investment in more than one residential house. (including treatment on temporary residential house). Tax treatment of renovation expense of the new asset. Payment to tenant to vacate the premises after the acquisition of property is done.
54F	The condition of exemption relaxed. Where assessee owns one house on the date of transfer than also exemption is available. However assessee can not acquire house other than one specified in the section.
54G / 54GA / 54D	Provision relating to compulsory acquisition and shifting of Industrial undertaking. Specially covering the treatment for violation of holding period of new asset.
Firms	Students must know variety of situation of firms 1. Firm with presumptive income of 44AD or 44ADA or 44AE 2. Firm with set off adjustment rw 40(b) 3. Firm with retirement of partner and set off adjustment of 78. 4. Firm with HUF as one of the partner and remuneration to HUF. 5. Firm with 35AD deduction and AMT 6. Firm with different clauses in partnership deed for remuneration and interest 7. Firm with NR partner and payment of remuneration and interest.

Capital gains	<p>Students must be familiar with</p> <ol style="list-style-type: none"> (1) Treatment of stamp duty value / compulsory acquisition. (2) Slump sale transaction (3) All the exemptions particularly where 54 / 54F combine exemption for one transaction to be given. (4) Students must clearly know the combine interpretation of 50C / 50CA / 43CA / 56 for under valuation of transaction in hands of seller and buyer. (5) Students must also know the valuation principles for valuation assets as per Rule 11U and 11UA.
56	<p>Taxation if gifts / without consideration is to be studied very precisely. Remember that now 56(2)(x) is applicable to all the persons. Thus situation like amounts received by private trust for benefit of child will be also be covered by 56.</p> <p>Stamp duty value to be adopted on date of agreement if payment by cheque is received at time of agreement.</p>
68,69 etc.	Certain cases of deemed income. For the gifts also genuineness to be proven apart from the movement of funds.
72A	Carry forward and set off in case of amalgamation. Amalgamation of banks.
73	Tax treatment of carry forward and set off the speculative business loss. And interpretation of expl. 1 to 73 as much as it relates to the deemed speculative loss.
94(7)	Dividend stripping
94(8)	Bonus stripping
115JB	MAT for companies.
115JAA	Tax credit on account of MAT. Including treatment for foreign tax credits.
132	Powers of income tax authority. In case of search stock can not be seized. Together with assessment in case of search. I.e. 153A, 153B, 153C.
132B	Limitation of time in case of seizure of assets.
133A	Powers of survey.
142A	Powers of officer to make reference to valuation officer.
142(2A)	Provisions relating to special audit.
143(3) & 153	Scrutiny assessment. In certain cases of presumptive income there is compulsory scrutiny. Newer time limit for completion of assessment. 153.
160 / 163	Assessment of the trustees of the trust. Trustees of trust can not be regarded as association of persons. Also agent of non residents.
164	Rates of Taxes for Private Trust. Trust with partly public and partly private objectives. Tax liability calculation of private trust should be studied with reference to situation where trust is having mix operation of public as well as private acts.
167B	Taxation of AOP and tax liability calculation with respect to situation where AOP is also having special income like LTCG.
187	Change in constitution of firm. Including treatment at time of dissolution of firms.
194LA	TDS on compulsory acquisition of property. Particularly in case urban agricultural land.

206(C)	Tax collection at source. Whether collection is to be made inclusive of excise or not. Also some of the licensing transaction for which the collection is to be effected.
230	Tax clearance in case certain cases at time of departure from India.
263	Powers of CIT for making revision. Intimation can not be covered by 263.
264	Concept of partial merger should be known.
270A	Penalty calculations with respect to under reporting of income and mis-reporting of income. Students must know full tax liability calculation and relevant penalties.
Appeal procedure	Treatment for additional evidence / additional grounds / procedure of tribunal for deciding a matter.

IMPORTANT POINTS / CHECK LIST FROM EXAM POINT OF VIEW INTERNATIONAL TAXATION

Equilisation levy	Computation of levy to be paid to government should be known.
Black Money Act	<p>Student should note that this act has good potential from exam point of view particularly from the valuation of the assets under the BM act. Student should be familiar with valuation of different assets form (value of interest in firm / AOP) and tax liability calculations.</p> <ol style="list-style-type: none"> (1) Valuation of bank account (2) Valuation of interest in firm (3) Valuation of un-quoted equity shares (4) Valuation of other assets (5) Scope of cost of asset.
NR taxliability	<p>Students must know the taxliability calculation for</p> <ol style="list-style-type: none"> (1) NR senior citizen tax liability (2) NR with different inveseemnt for deductions (3) NR 80D / 80C deduction (4) NR foreign LIC payments (5) NR prov 1 to 48 for exchange fluctuation adjustment for capital gains. (6) Foreign company residential status
TDS	<p>With respect to transaction with non residents. Purchase of property owned by non resident. Treatment for non compliance of TDS in business income. Interest payment by firm to NR partner.</p>
9	<p>Students must know correct scope of Business connection.</p> <ol style="list-style-type: none"> (1) With respect to substantial presence in India (2) With respect to Indirect Transfer of shares. (3) Students must know the difference between treatment of commission / royalty / TF / service charge transaction.
111A / 112 / XII etc	<p>Students must be familiar with all the taxliability calculations like</p> <ol style="list-style-type: none"> (1) Tax liability of Resident / Non resident (2) Resident senior citizen / NR senior citizen (3) Special tax rate and income calculations for many situation of chapter XII and XII A (4) All different special rates for special incomes should be known. (5) Deductions or allowance with respect to income covered by special rates of taxes under chapter XII or XIIA (6) All the working methods should be known precisely and should have practiced the computations thoroughly in writing. If students are just youtubing the learning module orally remember you are doing a big mistake.
Dividends	<p>Taxation of dividends in excess of limit Taxation of dividend from foreign subsidiary Taxation of dividend from foreign company</p>

XIIA	Capital gains and other incomes for non residents Indians. NRI and NR difference in computation of tax liability should be known. NRI chapter XIIA is optional thus student must do alternate computation of tax liability when computation of tax is asked for NRI.
DTAA	Computation of full tax liability with tax rebate for incomes of resident from country with which India do not have DTAA. With reference to Income exempt in foreign country but taxable in India. With reference to Losses of foreign country not allowed in that country but allowed as per law in India. With reference to deductions under chapter VIA allowed against foreign income in India but not allowed in that country.
115AC,47,49	Tax treatment of GDR's.
115ACA	Tax treatment of GDR's issued under an approved scheme of ESOP.
115A	Through interpretation of Royalty / TF / Interest with rates of taxes. Students should know that whether deductions are allowed against Royalty / TF / Interest or not. Refer our class work questions. Student should know treatment for royalty / TF of foreign company with / without branch operation in India.
90	DTAA treatment with different methods of elimination of Double taxation. Like for how the double taxation will be eliminated with DTAA or without DTAA. Entire tax liability calculations must be known to students.
92A 144C	Transfer pricing provision students must be familiar with (1) Scope of TP income (2) Which is correct method of applying valuation where there is multiple methods applicable. (3) When multiple ALP for same transaction is available for example if there are 10 ALP for one transaction then statistical method to be used to arrive at ALP. (4) Calculation of penalty due to transfer pricing adjustment (5) Transfer pricing restriction of interest expense its carry forward and set off (6) Treatment of multiple ALP for one transaction (7) Treatment for transaction with entity in notified jurisdictional area with TDS application
92CA	TPO procedure should be studied well, powers of TPO and time limit for completion of assessment when reference is made to TPO. Extension of time limit with reference to period of limitation should be known.
153	Time limit for completion of assessment by AO in case TP reference is made / not made to TPO.
115BBA	Tax treatment for Non resident / Non citizen sports person should be known.
AAR	Students should know (1) Who is applicant and what is the binding force (2) Can resident apply to AAR (3) What are the circumstances in which application to be rejected compulsorily.
GAAR	Entire scope of GAAR and its implication.
44B	Non resident / FC, shipping business @ 5 % presumptive income
44BB	Non resident / FC, Oil exploration service @ 10 % presumptive income

44BBA	Non resident / FC, aircraft business @ 5 % presumptive income
44BBB	FC, Turnkey power projects @ 10 % presumptive income

Business And Profession

<u>Section 2(13) Adventure In Nature Of Trade</u>	
B. K. Kotru (Bombay High Court)	The receipt of Rs. 96,000 for not taking employment in competing firm could not be linked with salary, perquisites or profit in lieu of salary as the receipt of this amount was after cessation of the employer and employee relationship. This receipt could only be a capital receipt.
Chinna Nachimuthu Constructions (Karnataka High Court)	Investment of amount in FDR secure bank guarantee to acquire contract work. Interest accrued on deposit is business income and not assessable as income from other sources.
Konkan Barge Builders P. Ltd. (Bombay High Court)	Amount awarded on arbitration of business dispute. Interest on amount awarded by arbitrator. Assessable as income. Interest awarded on amount of compensation by arbitrator accrues from year to year. Entire amount not assessable in year of receipt.
Dai-ichi Karkaria Ltd. (AT) (Mumbai)	Foreign currency payment for drawings, designs and for services related to setting up a plant. Refund of money due to cancellation of agreement and surplus on account of fluctuation in exchange rate is capital receipt not chargeable to tax. Not a benefit arising out of business.
Indramani Bai (SC)	Even a single isolated transaction of capital in nature can be regarded as adventure in nature of trade. Eg. Buying and selling of plot of land
Raja Bahadur Kamakhya Singh (SC)	Merely there is sale in bulk quantities of gold and shares it does not amount to the adventure in nature of trade. <ol style="list-style-type: none"> 1) assessee opened the account named "A/c of 48 Lakhs floating in the share market. 2) From the above account it acquired gold kept it for 4 years and then sold it. From the sale proceeds it acquired the shares in the company for the controlling interest of 51 % and in the later year sold the shares 3) Held by the SC that name of the account is immaterial and since the intention of the party was to keep it as an investment it is on the capital account.
Koshika Telecom Ltd. (Delhi High Court)	Interest income ordinarily falls under the head "Other sources". But where it is linked by nexus with business, such income may well be liable to tax only as business income.
Nijrang Specific Family Trust (Gujarat High Court)	Assessee retiring from partnership and compensation received for goodwill is income from other sources.
<u>Section 2(36) – Profession</u>	
Avinash Pasricha (Del)	Prize won in photography contest by Professional photographer is his business income.
<u>Section 2(36) - Vocation</u>	

All Saints Church (Kar) P. Krishna Menon (SC)	<ol style="list-style-type: none"> 1) Activity of church also constitute a vocational activity and thus church building is entitled to depreciation. 2) It does not matter whether teaching and preaching is done by the representative of the church 3) Teaching of vedanta is also an vocational activity and any offering on that account is business income of the assessee
K. George Thomas (SC)	Assessee was propagating religious faith and publishing newspaper. Donations received by assessee from USA for furtherance of his objects is not casual and non-recurring receipt. It is taxable as receipts arising from the carrying on of a vocation. Any donation received on for the preaching of religion as a mission is vocational income of the assessee.
C. Rajagopalachariar (Mad)	A vocation is only a way of living or a sphere of activity for which one has special fitness. It is not necessary that such activity should be one indulged in for earning a livelihood before it can be called "vocation". Nor can it be said that a person cannot have more than one vocation. A motive for making a profit is not an essential requisite of a vocation. A vocation does not involve any organised or systematic activity like business.
<u>Section 28(ii) - Mutual Association</u>	
Bankipur Club Ltd (SC) Chelms Ford Club (SC)	The principle that no one can make a profit out of himself has long since been found to be applicable to a combination of persons with transactions confined as between themselves, so that there is complete identity between the contributors and the participators.
Delhi Stock Exchange Association Ltd (SC)	Company was doing stock exchange business. Admission fees received from members and their authorised assistants and profits were distributed to shareholders. Mutuality was lacking and the fees were assessable to tax. Since as the body of trading members who paid the entrance fees and the shareholders among whom the profits of the company were distributed were not identical and the element of mutuality was lacking, the company carried on a business whose profits were taxable and, therefore, the admission fees received from members were taxable in its hands.
Haryana State Co-Operative Labour And Construction Federation Ltd. (P & H)	The assessee, a co-operative society, received contributions from its members. The contributors had no control over the funds received by the assessee from them and they could not direct that the remaining amount after meeting the expenses should be returned to them. The funds could only be used for the specific purposes only. The principle of mutuality could not be invoked.
Walkeshwar Triveni Co-Operative Housing Society Ltd. (Bom)	A co-operative housing society, once it is conceded to be a mutual association, the premium which is paid by the transferor as a member at the time of payment is exempt and not the premium received from the transferee, who was not the member at the relevant time following the principles laid down under co-operative laws and the principle of mutuality.

Bangalore Club (Karnataka High Court)	Club having nationalised banks as members and surplus funds placed in fixed deposits in member banks. Relationship of banker and customer exist. Principle of mutuality not applicable. Interest from deposits taxable as income.
Saraswati Kunj Co-operative House Building Society (Delhi High Court)	Co-operative house building society has object of buying agricultural land, converting it into plots and allotting to its members. Sums received from time to time from members placed in savings account. Interest on sum in savings account is capital and not to be treated as income.
Shivalika Co-operative Group Housing Society Ltd. (AT--Delhi)	A co-operative society is a mutual association. A co-operative housing society was found to be such a mutual association, so that its income should be exempt on the principle of mutuality. Interest earned on surplus funds of a mutual society deposited with a banking institution, is also covered by this principle and should not be taxable, so that reassessment proceedings to bring the amount to tax were held to be non-maintainable
Trivandrum Club (Kerala High Court)	The real contributors of income by availing of the facilities of the marriage hall were not the members but non-members. In order to enable them to avail of the facilities of the club, non-members were to be given temporary membership only for the purpose of availing of this benefit. The Trivandrum Club's case [1989] 177 ITR 550 (Ker) was decided on the basis of the admitted factual position that no non-member was enjoying the facilities of the club. The principle of mutuality would not apply. Rental income received from non-members was taxable.

Section 28(iv) – Value Of Benefit Or Perquisite

Boeing (Mad)	The amount was received from a manufacturer by way of incentive for achieving the target. The receipt was clearly a trading receipt.
Prem Raj Loonawat (Raj)	The assessee was a partner in a firm. He was looking after the business of the firm. The firm purchased a flat in Bombay. The assessee occupied two thirds portion of the said flat for his personal residence and the remaining one-third portion was used for the purpose of the business of the firm. The assessee had been rightly assessed for the benefit or perquisite because of the occupation of a portion of the building for purposes of residence.
Diners Business Services Pvt. Ltd. (Bom)	Where assessee has taken the rent of property let to sister concern and also accepted the interest free deposits from sister concern. Held that there is no benefit or perquisite out of carrying on of business and profession. Section 28(iv) is not applicable.
G.S.R. Krishnamurthy (Mad)	The assessee was a film artiste. The Assessee's children received gifts from producers. Since there was ordinarily no reason why producers should have given gifts to the actor's children, the Assessing Officer assumed that these gifts were actually additional remuneration paid to the actor for his services over and above what was stipulated in the agreements. The Revenue has the duty to enquire into such cases and come to a right conclusion. Making an addition without such enquiry is probably a glaring instance of breach of such duty, and addition to income is not justified.

Section 43(5) - Speculative Transaction

Pangal Vittal Nayak And Co. P. Ltd. (SC)	<ol style="list-style-type: none"> 1) assessee had own business of speculation in the line of coconut oil and also did the speculation on behalf of the customer since only member of the association could make the deal 2) brokerage earned on account of the customers is normal business income and not the speculative income. 3) Thus the brokerage can not be set off against the speculative business loss of the assessee.
P. Shantilal & Co. (SC)	A transaction cannot be described as a "speculative transaction" within the meaning of 43(5), where there is a breach of the contract and a dispute between the parties damages are awarded as compensation by an arbitration award. What is really settled by the award of such damages and their acceptance by the aggrieved party is the dispute between the parties. Section 43(5), however, speaks of a settlement of the contract, and a contract is settled when it is either performed or the promise dispenses with or remits, wholly or in part, the performance of the promise made to him or accepts, instead of it, any satisfaction which he thinks fit.
S.C. Kothari (SC)	There was loss in illegal transactions and the question was whether it can be taken into account in computing profits of same business of the assessee or not. However if the business in which the loss was sustained was the same as the business in which the profit was derived, then the loss had to be taken into account while computing the profits of the business. The assessee was not entitled to a set-off the loss from illegal transaction against its profit in speculative transactions.
Mangal Chand (Raj)	The actual delivery of share certificates along with the blank transfer form, but without the same having been registered in the name of the assessee would not bring it within the purview of section 43(5).
Rewashanker A. Kothari (Gujarat High Court)	In order to determine whether profits arising on sale is business income, this court has given the guidelines.
Bhikamchand Betala and Sons (Gauhati High Court)	Shares purchased from broker on principal to principal basis and resold without taking physical delivery of shares. Loss by paying difference between purchase and sale value of shares is speculation loss. Not deductible.
<u>EXPL. TO SECTION 28 - Only Exclusion To "BUSINESS"</u>	
East India Housing And Land Development Trust Ltd. (SC)	Letting of House Property is income under the head House Property because specific head of income is provide for such category of Income. If the income from a source falls within a specific head set out, the fact that it may indirectly be covered by another head will not make the income taxable under the latter head.
Neha Builders P. Ltd. (Gujarat High Court)	Assessee engaged in development, construction, sale and lease of immovable property. Properties treated as stock-in-trade. Income from property assessable as business income.

Sultan Brothers (P) Ltd. (SC)	There was composite letting of building fitted with furniture and fixtures for the purpose of being run as a hotel. Income was derived from lease of the rooms. Question was whether it is income from business or under the head house property. Letting of building was inseparable from letting of furniture and fixtures. The income is not assessable under the head house property.
Shambhu Investment P. Ltd. (SC)	The assessee had let out some portion of commercial space for use as table space with all facilities like security, power, water and other common amenities. However agreement was that of tenancy. In such situation held that income shall be assessable under the head house property.
Saptarshi Services Ltd. (Guj)	It was found after review of the case law on the subject, that the income of a sub-lessee developing the property as a business centre and providing various services like provision of lift, services as those of receptionist besides secretarial services, data processing, conference room, etc. with many facilities, has necessarily to be assessed as business income.
Chennai Properties And Investments Ltd. (Mad)	Held that, it was clear that the assessee, as owner of the building, was only exploiting the property as owner by leasing out the same and realising income by way of rent. Such rental income was liable to be assessed under the head "Income from house property".
Sri Hanuman Sugar And Industries Ltd. (Cal)	Income from lease of property should ordinarily be property income. Where it is a composite lease of factory, it would be assessable as income from other sources. But in cases, where the business is merely suspended with the lease agreement itself providing an option to the assessee-company to determine the lease before the expiry of the period of lease, it could well be assessable as business income.
Smt. Sureshini Mittal (Allahabad High Court)	The firm was deriving only rental income, but because hiring was of a cinema hall along with machinery, it is to be assessed as business income in the hands of the firm. The other sources or house property chapter would not be applicable here.
T.V. Sundaram Iyengar And Sons Ltd. (Mad)	Where the assessee's property was being used by employees of a sister concern, a different inference would follow in that, such income could be assessed only as income from property, as held in CIT v. T. V. Sundaram Iyengar and Sons Ltd. [2004] 271 ITR 79 (Mad) distinguishing Modi Industries' case.
Kohinoor Tobacco Products P. Ltd. (Madhya Pradesh High Court)	It was held that temporary letting out of property used normally for business, which was not intended to be closed down, will be assessable as business income. There is a mistaken view that income from commercial property should be assessable as business income and that income from residential properties alone should be assessable as income from property.
Mohiddin Hotels P. Ltd. (Bombay High Court)	Where a property is let out with all the infrastructure for running a hotel along with trained staff, the income of the owner is business income, though described as rental.

SECTION 31 - Rent Repair

Rama Krishna Steel Rolling Mill (Del)	<ol style="list-style-type: none"> 1) Capital expenditure on the premises held as tenant is not a capital expenditure. 2) Expenditure on the repair of roof of said building is an allowable expenditure. 3) Now explanation 1 to section 32 would prevail, that deems such capital expenditure as building and assessee is now entitled to depreciation accordingly as building.
Kalyanji Mavji And Co. (SC)	Accumulated repairs is different than the term repair and ordinarily not allowable as deduction under this section 30/31 but as an revenue expenditure under the general section. Assessee was owner of coal mines and while war it was requisitioned by the military people. When after the war it was de-requisitioned assessee has to incur expenditure for bringing the machinery in the working condition. Held that it as accumulated repairs and thus allowable under section 37(1)
Volga Restaurant (Del)	Large outlay in replacement of air conditioning plant and parts of electric motor to renovate the same after fire is an allowable as deduction.
Madras Cements Ltd. (Mad)	In order to constitute “current repairs” the expenditure must have been incurred to “preserve and maintain” an already existing asset, and the object of the expenditure must not be to bring a new asset into existence or for obtaining a new advantage. Replacement implies the removal or discarding of the thing that was in use, by a different or new thing capable of performing the same function with the same or greater efficiency.
Janakiram Mills Ltd. (Mad)	In relation to Textile Mills, entire mill to be treated as one single plant and machines are only a part of it. Replacement of cards/blow room machinery/combing machinery creates no new assets in process of replacement of worn out machines and thus revenue expenditure. Such replacement of worn out machinery expenditure can be considered either under “current repairs” or under “expenditure laid out wholly and exclusively for business”.
L. S. Mills Ltd. (Madras High Court)	The replaced machinery did not bring about any asset or any distinct advantage to the assessee and no structural change was also brought in. The expenditure on replacement of machinery was revenue expenditure. CIT v. Janakiram Mills Ltd. [2005] 275 ITR 403 (Mad) followed.

<u>SEC 32 - Depreciation</u>	
Bharatbhai J. Vyas (Ahmedabad Bench)	Upon the retirement of partner of firm amount was paid as goodwill. The firm sought to claim depreciation on such sum. In light of that goodwill cannot be treated on par with other intangible assets like know-how, patents, copy right, trade mark or any business or commercial rights of similar nature.
Turner International India P. Ltd. (Delhi High Court)	Assessee engaged in providing satellite signals decoders owned by assessee and given on loan to cable operators. Loan transactions forming part of business of assessee in distributing satellite channels and signals relating to satellite channels. Assessee entitled to depreciation.
Alankar Business Corporation Ltd. (AT) (Chennai)	Sale of business of manufacture and sale of soft drinks. Value of broken bottles and crates could not be reduced from written down value of assets. Sale of business of manufacture and sale of soft drinks. Sale of goodwill. Goodwill sold in a subsequent year so gains attributable to goodwill not assessable in relevant assessment year.
Mahindra Sintered Products Ltd. (AT--Mumbai)	Block of assets need not be separated in respect to each of the business.
Mysore Mineral Ltd. (SC)	Owner for the purpose of depreciation need not necessarily be the registered owner. Person having the domain over the property qualifies for the depreciation. It is also well settled that for one property there can not be two owners simultaneously.
Mother Hospital Pvt. Ltd. (Kerala High Court)	Company reimbursed expenditure on construction of building owned by firm and company was using it for its business. There was no provision in agreement for transfer of title to company however company is the user of the property. Held in this case that assessee company is not owner of building and thus not entitled to depreciation in respect of it.
Mohd. Bux Shokat Ali (No.2) (Raj)	The consideration for the purchase of vehicles had been met by the firm consisting of eight partners and debited to the books of account of the firm only. It was also a finding of fact arrived at by the Tribunal that the vehicles had been exclusively used for the purpose of the business of the firm. Merely because, the vehicles had been registered under the Motor Vehicles Act in the name of one of the partners only, it would not deprive the firm of the ownership of the vehicle which is not distinct from its partners.
Fazilka Dabwali Tpt. Co. Pvt. Ltd. (P&H)	Buses were initially purchased by the directors of the assessee-company and the finance was raised by them from bankers in their individual names. However, the buses were taken over by the assessee. When assessee claimed the depreciation on the said buses it was rightly to be allowed, although it was not registered in the name of the assessee. The owner will include the beneficial owner also.
Rajshree Roadways (Raj)	In respect of assets leased out in the course of leasing business, it is the lessor, who is the owner though the asset is used by the lessee. Where the agreement for lease clearly spells out the ownership of the lessor indicating that the sale of the truck would be made to the lessee only after the expiry of the lease, it follows that the lessor would be entitled to depreciation as owner, while the lessee would be entitled to the deduction of the lease rent paid by him.

S.B.I. Home Finance Ltd. (Calcutta High Court)	In case of lease (operating lease) of property lessor will qualify for the purpose of depreciation.
Alps Theater (SC)	Depreciation available only on the building and not on the cost of the land.
Associated Floor Mill (P) Ltd (Gau)	Temple in the factory premises is eligible for depreciation.
Engine Valves Ltd. (Mad)	Canteen premises in the factory building would be same as factory building.
Gwalior Reyon Silk Mfg. Co. Ltd. (SC)	Roads laid within factory premises as links or providing approach to the buildings to carry on the business activity of the assessee are "buildings" within the meaning of section 32. Depreciation is admissible on the capital expenditure incurred thereon as "building". Equally, drains also would be an integral part of the building for convenient enjoyment of the factory. Depreciation would be available in the same manner on expenditure incurred in laying drains.
Indore Municipal Corporation (SC)	Expenditure on construction of roads is capital expenditure. If there is mere construction of roads without association with building than roads can not be termed as building. It do not qualify for the purpose of depreciation.
Industrial Cables (India) Ltd. (Pun and Har)	Expenses or outlay on temporary roads linking workers' quarters with factory is revenue expenditure as was decided in CIT v. Industrial Cables (India) Ltd. [2002] 254 ITR 267 (P&H). The reasoning was that temporary structure does not spell out an enduring advantage. Alternatively even otherwise it should have been eligible for 100% depreciation, even if it were in the nature of capital expenditure by treating such temporary roads as capital assets.
Jodhan Real Estate Development Co. P. Ltd. (Raj)	Sanitary pipeline fittings in a cinema theatre fall in the category of plant and are entitled to depreciation at the rate of of plant.
Sangrur Vanaspati Mills Ltd (Punjab and Haryana High Court)	Expenditure incurred by the assessee on the cost of powerline for independent feeder, incurred prior to commencement of production, had to be treated as part of plant and machinery being necessary for commencement of production and had to be capitalized.
Geetha Hotels P. Ltd. (Mad)	Supreme Court in CIT v. Taj Mahal Hotel [1971] 82 ITR 44 "did not hold that the building in which a hotel was run was a plant. It was only held that the sanitary fittings were one of the essential amenities which are normally provided in any good hotel and such fittings, having regard to the wide meaning required to be given to the word 'plant' were to be regarded as "plant".

<u>Plant And Machinery</u>	
Scientific Engineering House (P) Ltd. (SC)	Plant is means of doing the business and not the place of doing the business
Warner Hinduatan Ltd. (AP)	Well dug by the pharmacuitle company in immediate vicinity of the factory is plant eligible for the depreciation.
Girnar Construction Co. (Raj)	New bodies built on trucks qualifies for depreciation.
Astra-IDL Ltd (Kar)	Functional test is decisive when building is to regarded as plant. Building used by assessee solely for the manufacture and supply of medicine can be regarded as plant.
Steel City Beverages Ltd. V/S State Of Bihar (SC)	Bottles and crates used in the manufacture of the soft drink is not Plant, since it is an investment for the storage of the final product and not linked with the manufacture of the soft drink. Case relates to the issue of SSI, where investment in the fixed capital was to be determined. Judgement is based on the notification of the central government under the industrial development and regulation act. 1951.
Delhi Airport Service (Del)	The air-conditioner fixed in the bus was an integral part of the bus. Therefore, the depreciation on air-conditioning plant should be allowed at the rate applicable to the bus not at the rate applicable to the air-conditioning plant.
Madurai Soft Drinks Pvt. Ltd. (Madras High Court)	Crates and bottles were entitled for depreciation at the rate of 100 per cent. The security deposit collected by the assessee from the agents and retailers did not form part of the sale transaction.
Mahendra Mills (SC)	Depreciation is a benefit to assessee and it can not be thrust upon. The term "ALLOWED" does not mean "NOTIONALLY ALLOWED". A thing is allowed when it is claimed. A previlidge can not can not be a disadvantage. Thus depreciation is optional. Finance act brought an explanation to 32 to set at not the effect of this judgment.
"Used For The Purpose Of Business And Profession" A Controversy. (In Examination Condition User Includes Passive User)	India tea and timber trading co. (Gau) user must be given the widest possible meaning to include the passive user also. Suhrid geigy Ltd. (Guj) Depreciation for the period building was not in existence can never be allowed as deduction. Oriental Coal (Cal) when factory in lock out for the entire period of 12 m than is can not be said that it is used passively and depreciation be allowed on that. G.N. Agarwal (Bom) truck in repair for the entire period of 12 m during the previous year qualifies for the depreciation since it is used passively.
Pepsu Road Transport Corporation (P&H)	The assessee was a transport corporation. It had a large fleet of buses. These can normally be seen standing by the road side. Thus, it had to keep spare engines in store. The engines are meant to be used in case of need. There is a normal depreciation of value even when a machine or equipment is merely kept in a store. Depreciation on such engine is allowable.

Circular 002/2001	Where asset is not factually not in to existence the allowance of depreciation do not arise at all. Accounting standard on “lease” requires lessee to capitalize the assets in the books of accounts, this by itself do not entitle assessee to claim depreciation under the act.
Air Travel Enterprises India Ltd. (Ker)	Illegal use of the asset is not use for the purpose of business and profession. Where the permit is obtained only in the next succeeding year, the assessee cannot be eligible for depreciation, though the asset was apparently used without such permit during the year.
Anil Bulk Carriers P. Ltd. (Allahabad High Court)	Where an assessee purchased a new truck on 17th February, 1997, built up a body thereon and claimed to have brought it to use before 31st March, 1997, officer did not believe it. However it was fined by the Transport Department for having used the truck before registration on 31st March, so that such finding became evidence of use. Since it was used it must qualify for the purpose of depreciation.
Rishiroop Polymers P. Ltd. (Income-tax Appellate Tribunal-- Mumbai)	Machines ready for use but not actually used are not eligible for depreciation. No manufacturing activity for five years in assessee’s factory due to strike/lock out thus depreciation not allowable on such non-use of asset forming part of block of assets. Mearly because assets form part of block of asset will not make it eligible for depreciation.
Yellamma Dasappa Hospital (Kar)	Machinery kept ready for use. But no evidence of actual use. Assessee not entitled to depreciation.
Dineshkumar Gulabchand Agrawal (Bom)	The word “used” in section 32 of the Income-tax Act, 1961, denotes that the asset has been actually used and not that it is merely ready for use. The expression “used” means actually used for the purposes of the business.
Indian Express (Madurai) Pvt. Ltd. (Mad)	Is it necessary that the assessee should use the plant and machinery on which depreciation is claimed exclusively by it ? In CIT v. Indian Express (Madurai) Pvt. Ltd. [2002] 255 ITR 68 (Mad), it was held that the fact that the product of the machinery is used by a sister concern should not stand in the way of the claim being allowed.

<u>Actual Cost</u>	
Om Sindhoori Capital, Investment Ltd. (Chennai)(ITAT)	JWSIL was owner of a furnace (Purchased in 1976 for 1,78,000) and this furnace was claimed to have been sold (Rs. 1 crore) to assessee and then it was leased back to JWSIL. On this amount assessee claimed depreciation at 100 per cent. In instant case Explanation 4A to section 43(1) was attracted therefore, the cost to assessee would have to be limited to written down value as in hands of lessee before its transfer to assessee.
Investment Trust of India Ltd. (presently known as HFCL Infotel Ltd.) (AT--Chennai)	Assessee running leasing business. Assets were purchased and leased back to same person. Assessee is entitled to depreciation and whether asset put to use by lessee not material.
Ashwin Vanaspati Industries (Guj)	Assessing officer is empowered to determine actual cost only if transfer of assets was for claiming depreciation on enhanced cost as per explanation 3 to section 43(1). Where assessee is taking over assets of other person on its dissolution and depreciation is claimed on enhanced value of only three items there is no evidence that transfer was made with a view to claiming depreciation on enhanced cost.
P.J. Chemicals (SC)	Where Government subsidy is intended as an incentive to encourage entrepreneurs to move to backward areas and establish industries, the specified percentage of the fixed capital cost, which is the basis for determining the subsidy, being only a measure adopted under the scheme to quantify the financial aid, is not a payment, directly or indirectly, to meet any portion of the "actual cost". Such a subsidy does not partake of the incidents which attract the conditions for its deductibility from "actual cost". The amount of subsidy is not to be deducted from the "actual cost" under section 43(1) for the purpose of calculation of depreciation.
Sahney Steel And Press Works Ltd. (SC)	If payments in the nature of subsidy from public funds are made to the assessee to assist him in carrying on his trade or business, they are trade receipts. The character of the subsidy in the hands of the recipient_whether revenue or capital_will have to be determined, having regard to the purpose for which the subsidy is given. However, if the purpose is to help the assessee to set up its business or complete a project the monies must be treated as having been received for capital purposes. But if monies are given to the assessee for assisting him in carrying out the business operations and the money is given only after and conditional upon commencement of production, such subsidies must be treated as assistance for the purpose of the trade. Such subsidies were of revenue nature and would have to be taxed accordingly.
Sirpur Paper Mill (SC)	If asset is damaged by the fire and excess insurance claim has been received then it cannot go down to reduce the WDV since only those assets that are sold, discarded, demolished, destroyed are covered.

Tata Iron And Steel Co. Ltd. (SC)	The manner of repayment of a loan cannot affect the cost of the assets acquired by the assessee. What is the actual cost depends on the amount paid by the assessee to acquire the asset. The amount may have been borrowed by the assessee. But even if the assessee did not repay the loan it will not alter the cost of the asset. If the borrower defaults in repayment of a part of the loan, the cost of the asset will not change. What has to be borne in mind is that the cost of an asset and the cost of raising money for purchase of the asset are two different and independent transactions.
Hinduatan Times Ltd. (SC)	When residential building is converted in to commercial building than commercialisation charges paid to land development officer is cost of the conversion of land that will add to the value of land which is not entitled for the depreciation. Than later again such payment was made for the construction of additional floors on the existing structure is cost of the building and not an case of improvement to the land. One can not say that payment is for the use of the land since earlier it has already converted in to commercial land.

32(1) (iii) / 41(2) Balancing Charge

United province electricity supply co. (SC)	U/s 41(2) moneys are taxable when received. Where government determined the compensation and assessee accepted the payment subject to dispute of valuation, it will be taxable in the year of receipt. Because of the dispute if additional compensation is paid later on than it will be taxable as business income. If later on compensation is reduced than must resort to other remedies for refund. Even if original payment was said as ad-hoc price, yet it was against the purchase price and sum was taxable u/s 41(2) as balancing charge.
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Section 35 - Scientific Research Expenditure

Ciba Of India (SC)	Buying the fruits of else's research is not eligible for the deduction. I.e Royalty like payment for the use of the secret formula is not a expenditure on scientific research.
National Reyon (Bom)	When research is done as per the direction of the assessee than it is an expenditure on scientific research.
Sandoz India Ltd (Bom)	Assessee was engaged in manufacture of dye-stuffs and pesticides. Assessee incurred expenditure on laying approach road to its research and development laboratories. The road was necessary and adjunct to research laboratories. Held that expenditure was incurred solely for scientific research related to business of assessee and that same might also be used as approach road to other buildings of assessee is immaterial. Expenditure is allowable deduction under section 35.
Bharat Ram Charat Ram (P) Ltd. (Del)	When payment of rent is made to a third party but on behalf of the scientific research association is similar to contribution to scientific research association and thus qualifies for the purpose of the deduction. This was so held based on the genuineness of the case.
Sunderam Fastetner Ltd. (Mad)	'incurred' in relation to section 35 is to be understood as per the method of accounting followed by the assessee thus assets on which depreciation was claimed regularly when transferred to S/R department must eligible for the deduction on its WDV.
J.K. Synthetics V/S UOI (SC)	When payment is made S/R institution subject to its approval qualifies for the deduction when later on approval has been granted.
Rane Brake Linings Ltd. (Mad)	The deduction on account of scientific research is for the expenditure to the extent incurred. Expenditure incurred on on-going construction of a building designed for housing the research wing is clearly capital expenditure and is deductible.
Multi Metals Ltd. Vs. Cit (Raj)	For the purposes of depreciation it is enough if the assessee owns the asset but for the benefit of allowance under section 35, the assessee should incur expenditure for scientific research. In the absence of such a provision, the mere transfer entry in the books of account from one head to other head does not make the assessee eligible for deduction under section 35.
U.P. Electronic Corporation Ltd. (Allahabad High Court)	Business for the purpose of section 35 would include the business of consultancy services also. Also that business has to be understood in a wider sense to include business owned by the subsidiaries.

Section 35 D – Amortisation Of Preliminary Expense

Madras Fertilizer Ltd. (Mad)	Word survey includes the advertisement expense but shall not include the warehousing charges and depreciation
Shree Synthetics Ltd. (MP)	35D(2) of the Income-tax Act starts with the words " where the assessee is a company, also expenditure ", which read with sub-clause (iv), viz., " in connection with the issue, for public subscription of shares in or debentures of the company, being underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus", indicates that the word "being" used there is " illustrative and not restrictive ". The word " being "would include the last stage in connection with the issue of shares, namely, even refund of the amount of over subscription.
Berger Paints India Ltd (Delhi High Court)	Assessee collecting premium on issue of shares is neither a long-term borrowing nor a debenture. Not part of “capital employed in business of company” within meaning of section 35D.

Deduction U/S 36 (1) (III) - Interest

East India Pharmasuiticle Work (SC)	Interest on the borrowal made for the payment of income tax is not allowable as deduction.
India Cements (SC)	The appellatant obtained a loan of Rs. 40 lakhs from the Industrial Finance Corporation secured by a charge on its fixed assets. In connection therewith it spent a sum of Rs. 84,633 towards stamp duty, registration fees, lawyer's fees, etc., and claimed this amount as business expenditure. Held, that the amount spent was not in the nature of capital expenditure and was laid out or expended wholly and exclusively for the purpose of the assessee's business and was therefore allowable as a deduction. Expenditure in connection with the raising of funds is an allowable expenditure u/s 37(1) and not governed by 36(1) (iii).
Madhav Prasad Jatia (SC)	Interest on borrowed money for the payment of donation is not an allowable since it personal obligation to do so.
Calico Dying And Printing Works (Bom)	Interest on money borrowed for the purpose of investing in the new plant and machinery is an allowable deduction since we have not to see the whether investment is made in capital asset or an revenue asset.
Belapur Co. Ltd. (Bom)	Interest on money borrowed for the payment of divided is an allowable deduction
Expended Metal Manufactures (All)	Interest on Money's borrowed for the commencing whole new business of rubber when existing business is that of metal considering that it one business altogether is an allowable deduction
Kanhiram Ramgopal (MP)	Interest on money's borrowed for the expansion of the business is an allowable deduction.
Alembic Glass (Guj)	In order to start new unit the money was borrowed and interest there on was allowable as deduction.
Middle East Construction Equipment (Ori)	Money borrowed and invested in the government securities since it was required to do so as per government's rules and regulations to obtain the work contract from state government. Interest on money so borrowed is allowable as deduction.
Bombay Steam Navigation (SC)	Capital means money only. Thus if any compensation paid for the delayed payment of purchase consideration of amalgamation will not qualify as deduction u/s 36(1)(iii). However such compensation is revenue in nature and fully allowable as deduction.
Veecumsees Ltd (SC)	Interest on capital borrowed for the purpose of discontinued activity is an allowable deduction.
Bharat Commerce And Industries Ltd. V/C CIT (SC)	Interest on capital borrowed for the discharging the VDIS tax liability is not allowable as deduction.
Gopal Bansilal Inani (SC)	Interest paid by HUF to its co-parceners on the moneys lent by them is not an allowable deduction.

V.P. Gopinathan (SC)	When interest is paid on the loan taken on the security of fixed deposits by itself do not qualify for the purpose of deduction. What in reality to be seen is the utilization of the borrowed money. If it was utilised for the purpose of business or profession than the interest on loan shall qualify for the purpose of deduction.
Saraswati Chemicals and Allied Industries (P.) Ltd. (Del)	The interest paid by the assessee to the directors on undisbursed salaries did not constitute interest on capital borrowed for the purpose of the business within the meaning of section 36(1)(iii).
Kirloskar Electric Co. Ltd. (Kar)	Preference share capital is a contribution to capital of company by shareholders and not a borrowing by company subject to payment of interest. Dividend which is paid to such shareholders is to be paid only out of profits of company and dividend paid cannot be equated to interest paid on borrowed capital. Dividend on preference shares not deductible as interest.
Core Healthcare Ltd. (Guj)	Interest which is capitalized in the books of accounts, after the commencement of the business but before an asset is first put to use cant be allowed as a deduction under section 36(1)(iii).
JCT Ltd. (Calcutta High Court)	The interest paid before the asset was first put to use would be included in the actual cost and then it is to be treated as capital expenditure eligible for being capitalized on which depreciation would be admissible.
Tin Box Co. (Del)	Part of the disallowance on account of interest is not justified where interest free loan were granted to sister concern of the assessee. Also noted that assessee had sufficient funds available to cover the interest free loans to sister concerns.
Lokhandwala Construction Inds. Ltd. (Bom)	The High Court found that the borrowing was for the purpose of business and in fact for a developer, the land is stock-in-trade. In fact, even if it were for acquiring a capital asset, it would have been deductible as held by the Supreme Court in India Cements Ltd. v. CIT [1966] 60 ITR 52.
Kejriwal Enterprises (Cal)	The assessee has borrowed money for investment in joint venture company. The the issue as to whether money was lying as mere application money or investment in shares or whether interest was payable or it was interest free would not be relevant in the facts and circumstances of the case, as long as it was a borrowing for business purposes and it was so applied for such purposes. Thus the interest was allowable as deduction.
Indian Shavings Products Ltd. (Raj)	Interest on borrowed capital to be deductible, it should be for purposes of business. Where dealing in shares is not the business of the assessee, interest on money borrowed for acquiring shares cannot be allowed as a business deduction under section 36(1)(iii) of the Act.
S.A. Builders Ltd. (P&H)	Where the money borrowed was diverted for giving interest free loans to sister concerns, the proportionate interest attributable to such loans could be legitimately disallowed by the Assessing Officer.

Dakshesh S. Shah (Bom)	Interest on capital borrowed for acquiring shares is not allowable as deduction against dividend income since such income is exempt from tax. Also section 14A applies. However such interest could be capitalized with the cost of the shares CIT v. Maithreyi Pai [1985] 152 ITR 247 (Kar).
Radico Khaitan Ltd. (All)	Assessee company had sufficient funds other than the borrowed money for giving the amount in question as loan to its sister concern, which finding had not been specifically challenged in the present appeal, the conditions of section 36(1)(iii) of the Act had been complied with and, therefore, the assessee company was entitled to full allowance of the amount of interest paid by it on borrowed capital.
S. A. Builders Ltd. (Supreme Court of India)	Interest on money borrowed from bank and lent to sister concern without charging interest whether allowable ? Test is same as that for allowance of business expenditure, viz., “for the purpose of the business”. It will be allowable if made as a measure of commercial expediency.
Harish Krishnakant Bhatt (Ahmedabad Bench)	Interest on capital borrowed for the investment in shares where dividend is exempt is not allowed as deduction. In light of section 14A.
Kwality Fun Foods and Restaurants P. Ltd. (AT) (Chennai)	Advance paid for construction of cold storage. Work not done and part of advance not recoverable. Such loss was on capital account and not deductible.
L. K. Trust (Karnataka High Court)	Asset purchased with borrowed capital must be put to use. borrowed capital used to purchase shares. Shares not issued. Interest not deductible.

36(1) (VI) - Deduction For Animals

Venketasubbiah Reddiar (Mad)	Horse in business of horse races can be said to have become permanently useless when race club authorities issued the certificate of revocation for that horse.
Shri Krishna Dairy & Agricultural Farm (AP)	Calves in dairy business when sold can not be give rise to any profits since it is capital asset for the assessee, more over it can not even be subjected to capital gains on the grounds of B.C. shriniwasa shetty (SC).

36(1)(Vii) – Bad Debts

T. Veerbhadra Rao (SC)	Successor of the business is entitled to deduction on account of bad debts for the debts incurred by the predecessor.
Mysore Sugar Co. Ltd. (SC)	Advance in the course of the business when becomes irrecoverable than it amounts to the bad debts. In case of assessee in sugar industry advance for the seedlings, fertilizer etc was contracted to be given to the farmers and was to be recovered against the crop. However during the year because of bad monsoon the crop failed and the advance to the farmers could not be recovered. Such advance was allowable as deduction on account of bad debt.
Vithaldas H. Dhanjibhai Bardanwala (Guj)	In books of accounts debited the profit and loss account but credited the suspense a/c is valid entry qualifying for the deduction.
Indian Aluminium (SC)	The amount which the assessee was bound to deduct from the payment made to the non-resident and which it failed to recover from that company could not be regarded as a bad debt and the payment made under a statutory obligation because the assessee was in default could not constitute expenditure laid out for the purpose of the assessee's business.
Birla Bros (P) Ltd. (SC)	Guarantee was given by the company for its selling agent and ultimately it was required to be paid by the assessee since the selling agent was insolvent held that it is not allowable as deduction on the grounds that <ol style="list-style-type: none"> 1. It was not the obligation of the assessee as the per terms of the agency to give such guarantee 2. It was never found that it was so done in the ordinary course of the assessee's business.
B.D. Bharucha (SC)	Advance for commitment of release of movie in the specified period is to be regarded as in the ordinary course of the business of film line. And thus when such advance becomes irrecoverable is loss in the course of the business.
Travancore Tea Estate Co. Ltd. (SC)	<ol style="list-style-type: none"> 1) At what point of time debt has become bad is pure question of fact and thus and thus the appeal in this matter can not lie to the supreme court. 2) Claim of BD at time matter pending in the arbitration is not allowable as deduction.

Difference Between "Taken In To Account" And "Taxed As Income" Under Section 36(2).	Considered the matter of the share broker and also apply to the similar cases. When share broker buys share for his client for Rs. 100 and bills 102 with the brokerage of Rs. 2 the taxed amount is only 2 and not 102. If he could not recover 102 can claim it as bad debts since it is taken in to account in computing the income as per section 36(2)
Sri Ram Gupta (Decd.) (Allahabad High Court)	Loan granted to company by assessee becoming irrecoverable. It was written off as bad debt. Mere failure to initiate legal proceeding would not make bad debt recoverable. It is for assessee to take or not to take legal proceedings to recover loan. deduction to be allowed on account of bad debts.

36(1)(VIII) Bad Debts For Banks And Financial Institutions

Concepta Cables Ltd. (Income-tax Appellate Tribunal--Mumbai)	Bad debt. Non-banking financial company NBFC not entitled to deduction on account of provision for advances.
Oman International Bank Saog (Income-tax Appellate Tribunal--Mumbai)	No obligation on part of assessee to prove that debt written off by him has become a bad debt in previous year for 36(1)(vii).

Computer / Computer System

Samiran Majumdar (Calcutta Bench)	The printer and scanner were an integral part of the computer system and they were to be treated as computer for the purpose of allowing higher rate of depreciation.
Southern Roadways Ltd. (Madras High Court)	Computer is a capital asset, so that its cost is not admissible as a revenue expenditure. The assessee is only entitled to depreciation, but that does not mean that the cost of upgrading should be capital expenditure.
Southern Roadways Ltd. (Madras High Court)	Upgradation of computers by changing certain parts thereby enhancing the configuration of the computers for improving their efficiency, but, without making any structural alterations is not of an enduring nature. Further the assessee had not acquired any computer software. The expenditure incurred by the assessee had therefore to be treated as revenue expenditure.

Sec 40 (a) – Certain Disallowances

Circular 786	Any commission to NR-agents out side India does not accrue or arise in India and thus no tax is required to be deducted there on. When such payment is made out side India without deduction of tax at source is justified and can not be disallowed under 40(a)
Nestle India Ltd. (Delhi High Court)	Where tax is deducted in the month of march and payment is made within due date of section 200 in next month, there shall be no dis-allowance regarding it as violation of deduction of tax at source.
Smith Kline & French India Ltd. (SC), Eskayef (SC)	Surtax is nothing but the amount of tax only and thus is to be disallowed.
Jaipuria Samla Amalgamated Collieries (SC)	Though CESS is on the % of the profit it is to be allowed as deduction.

Section 40(A) (2) - Payment To Relatives

S. K. Engineering (Income-tax Appellate Tribunal--Bangalore)	Reasonableness to be seen from view point of businessman and not from view point of revenue authorities for allowing deduction.
Ganesh Soaps Works (MP)	Commission paid to wife on the fact being unreasonable shall be disallowed.

Section 40(A) (3) - Cash Payment Over 10000

Attarsingh Ghanmukh Singh (SC)	The word "expenditure" in section 40A(3) has not been defined in the Act. It is a word of wide import. Section 40A(3) refers to the expenditure incurred by the assessee in respect of which payment is made. It means that all outgoings are brought under the word "expenditure" for the purpose of the section. The expenditure for purchasing stock-in-trade is one of such outgoings. Section 40A(3) is, therefore, attracted to payments made for acquiring stock-in-trade and other materials. Payment for the acquisition of stock in trade is covered even if such stock is lying in the closing stock.
Aakash Films (Kar)	Payment for the distribution of films in film industry is an allowable expenditure and thus liable for the consideration under this section.
Smt. Santosh jain (Punjab and Haryana High Court)	Where there is estimate of income and application of gross profit rate. Disallowance cannot be made under section 40A(3) on account of cash payments.

Section 41 - Deemed Income

Mahindra and Mahindra Ltd (Bom)	Where a capital liability is waived it can not be regarded as income of the assessee under section 41. However it can not be regarded as benefit or perquisite out of the exercise of business or profession. This such waiver of capital liability is not taxable.
CIT Vs. Thirumalaiswamy Naidu And Sons; (SC)	Assessee collected the expected sales tax liability and there after the money was not paid to the government is deemed income of the assessee however if later on it is paid to the government or to the purchaser should be allowed as deduction

Section 43B - Certain Deduction On Actual Payment

Lakhanpal National (Guj)	Advance payment of tax is also an allowable deduction.
Chowrangee Sales Bureau (P) Ltd (SC)	The appellant, a private company dealing in furniture, also acted as an auctioneer. In respect of the sales effected by it as auctioneer, the appellant realised in addition to the commission, Rs. 32,986 as sales tax. This amount was credited separately in its account books under the head "Sales tax collection account". The appellant did not pay the amount of sales tax to the actual owner of the goods. Nor did it deposit the amount realised by it as sales tax in the State Exchequer, because it took the position that the statutory provision creating that liability upon it was not valid, or refund it to the persons from whom it had been collected. Held that the sum of Rs. 32,986 realised as sales tax by the appellant in its character as an auctioneer formed part of its trading or business receipts.
D. Shankaraiah (SC)	Where assessee is agent, amount of sales tax collected from purchasers and not deposited with sales tax department do not constitute trading receipt. Where assessee received refund from sales tax department it also do not constitute trading receipt and thus not taxable in the hands of the assessee being an agent. [I.e. Principal will be subject to tax.]
Gujarat Polycrete (SC)	As per the subsidy scheme of the state government some times the sales tax has been deferred. I.e. Assessee is given liberty to pay the monies at the future point of time. Say after 10 years. This is so done by converting the amount of sales tax due in to loan to assessee. I.e. assessee as good as made payment to the sales tax department and in turn borrowed money from the sales tax department. Held in the court that assessee was entitled to the deduction under section 43B of the income tax act for the amount covered by the deferred payment scheme of the state government even when actual payment is not made to the sales tax department. [Appropriate amendment under the sales tax must be brought to affect the scheme Or appropriate notification must be issued.] Circular 674, 496
Devendra Udhyog (Raj)	The amount of sales tax collected had not been converted into loan as required under the Circular 496 is the income of the assessee.
Gorelal Dubey (SC)	Royalty payable to the government is a not a tax. Thus it is not governed by the provision of 43B.
Orient Beverages Ltd. (Cal)	The interest payable for arrears of municipal taxes is really compensatory in nature and not a penalty or tax. Thus for the payment of interest 43B can not be applied.

Ganeshka Kanoi Tea Co. (P.) Ltd. (Cal) (AT)	Assessing Officer disallowed the contribution to a recognised provident fund on the ground that the deposit of provident fund collections was not made on the due date. Held, that since the tea estates were in remote areas, the provident fund authorities had authorised the manager/superintendent of the tea estates to act on behalf of them. Thus the disallowance under section 43B is not tenable in law.
Mewar Motors (Raj)	The object of section 43B is to curb the activities of those taxpayers who do not discharge their statutory liability of payment of sales tax or excise duty for long periods but claim deduction in that regard from the income on the ground that the liability to pay this amount had been incurred by them in the relevant previous year. Interest paid is part of the sales tax. Interest payable to the Sales Tax Department is also “tax” and the provisions of section 43B of the Act are applicable thereto.
National Standard Duncan Ltd. (Cal)	Where sales tax payable is exempted, adjusted or set off in accordance with sales tax rules, such sales tax should be treated as actually paid and allowed as a deduction under section 43B of the Income-tax Act
Chemicals And Plastics India Ltd. (Mad)	Section 43B is an independent provision authorising deduction of specified amounts on actual payment. Hence, the fact that the assessee had not debited such amount in the accounts is not a bar for the deduction.
Berger Paints India Ltd (SC)	The entire amount of excise duty/customs duty paid by the assessee in a particular accounting year is allowable under section 43B, as a deduction in respect of that year, irrespective of the amount of excise duty/customs duty included in the valuation of the assessee’s closing stock at the end of the accounting year as relating thereto.
Mohinder Kumar And Party (Rajasthan High Court)	Whatever is paid to the Excise Department does not necessarily become excise, so as to be covered under section 43B to require payment before deduction could be allowed.
Distillers Co. Ltd. (Supreme Court of India)	An excise duty which is in the nature of tax can be imposed only by a statute which answers the description of article 265 of the Constitution of India. Thus covered by 43B. The additional amount paid as fee for permission for bottling arrack without having such arrack matured in wooden vats for at least fifteen days and the amount paid for not affixing labels on bottles are not payments in connection with manufacture of excisable articles. It is not in nature of penalty or additional excise duty and thus not covered by 43B.
Ideal Sheet Metal Stampings and Pressing P. Ltd. (Guj)	Excise duty collected from customers and kept in a separate account is not deductible. Allowable as per 43B upon payment basis. It is assessable as trading receipt.
Mugat Dyeing and Printing Mills (Guj)	Bank guarantee given to excise department is not equivalent to payment till it is invoked by the party entitled to it. Thus not entitled to deduction u/s 43B.
United Cardamom Auctioners (Kerala High Court)	Amount collected as sales tax, additional sales tax and handling charges but not paid to department is includible as assessee’s income.

Section 44 AB – Tax Audit

Venkata Rao (T.D.) Vs. Union Of India (SC)	Chartered accountants, by reason of their training have special aptitude in the matter of audits. It is reasonable that they, who form a class by themselves, should be required to audit the accounts of businesses u/s 44AB. An income-tax practitioner does not have the same expertise as a chartered accountant in the matter of accounts. Hence, excluding them for purposes of auditing accounts does not violate articles 14 and 19 of the Constitution of India. Section 44AB is valid.
Surajmal Parsuram Todi. (Gau)	Where assessee is penalised under section 271A [failure to maintain the books of accounts as per 44AA]. After that there can be no possibility of any offence as contemplated by section 44AB [audit of books of accounts] and, therefore, penalty cannot be imposed under section 271B of the Act.
Staywell Hotels P. Ltd. (Madhya Pradesh High Court)	Where there was a delay only of two months in filing the audit certificate under section 44AB, it was found that penalty being discretionary could not have been levied, since the delay was short and an explanation was also furnished for the delay.

Section 44 AD / AF- Presumptive Income

Manohar Ram Chandra Patil (Ori)	The argument that section 44AD of the Act does not apply to sub-contracts and applies only to a contract cannot be accepted. Thus contract for 44AD also includes the sub-contract.
Shivani Builders (AT) (Ahmedabad)	Assessee maintaining accounts and income higher than presumptive income of 44AD (civil construction). Held 44AD is not applicable.

Section 37(1) – General Decisions

Peerless Securities Ltd. (Calcutta Bench)	Setting up and commencement of business. In the case of a trader, it may be inferred that he had set up his business when he had acquired stocks for sale. However, in the case of a manufacturer, he should be in a position to manufacture on a commercial basis, before he could be inferred, that he has set up the business. In the case of a stock broking firm, where the claim related to a lump sum payment to a stock exchange as development fee and fees for operating on the floor of the exchange, besides training fee payable to the stock exchange for training of its employees, besides the fee for setting up a small apparatus it can be said that business was setup. Except for payment of development fee which was capital expenditure, all the other expenses are deductible, whether they were lump sum payments or periodical payments, because the assessee had already set up its business.
Assam Bengal Cement (SC)	Protection fees to avoid the competition is capital in nature and thus if any paid for the specific period is capital in nature.
Coal Shipment (P) Ltd. (SC)	Payment to avoid competition is revenue in nature since agreement was terminable at the option of the assessee.
Mcdowell and Co. Ltd. (Kar)	Non-competition fee was paid by assessee. Entire expenditure incurred revenue in nature and allowable.
M.K. Bros (SC)	Payment to discharge a debt is capital in nature. Assessee was commission agent and it forgo its agency rights for consideration. When such consideration was set off against the sum payable on account of loan it is income of the assessee even if actually not received by the assessee.
Empire Jute (SC)	Purchase of loom hours is a revenue expenditure allowable
Maheshwari Devi Jute Mills Ltd. (SC)	Sale of loom hours is capital receipt.
Gemini Cashew Sales Corporation (SC)	Retrenchment compensation to shut down a department is revenue in nature.
Sital Pur Sugar Works (SC)	Expenditure on shifting of plant and machinery is capital expenditure.
Madura Coats Ltd (Mad)	Expenditure on shifting of administrative office is an allowable deduction.
Devidas Vithaldas (SC)	Payment for acquisition of goodwill is capital expenditure and for the use of the same is revenue expenditure.
Bijlee Cotton Mills (SC)	Any sum called as “Dharmada” collected together with the sales is ear marked specifically and can not be termed as surcharge on sale and can not be termed as part of the trading receipt.
Nanalal Mansukhram (Guj)	Interest paid on such charities as covered by Bijlee Cotton Mills (SC) is an allowable deduction.

Bharat Steel Tubes Ltd. (Del)	Commission paid for engaging a premises for rent would partake of the character of normal revenue expenditure of the business. But in this case the amount paid was Rs. 21,110, while the annual rent was only Rs.2,625. It is probably in these circumstances, that the amount was treated as salami or premium and was disallowed.
Gopal Das Estate (Del)	The amount of brokerage was paid at the rate of 11/3 times the monthly rent. As against this, the benefits secured were also required to be taken into consideration as also the loss, which would be suffered by the brokers on the lower rate of monthly rent on account of higher security deposit and advance paid by the persons/tenants. In view of the totality of the situation, no interference was called for in this matter and the brokerage is to be allowed as deduction to assessee.
UCO Bank Vs. Commissioner Of Income-Tax (SC)	Tax treatment of Stick Loans. However, by circular dated October 9, 1984, the Board decided that interest in respect of doubtful debts credited to suspense account by banking companies would be subjected to tax but interest charged in an account where there has been no recovery for three consecutive accounting years would not be subjected to tax in the fourth year and onwards. The circular also stated that if there is any recovery in the fourth year or later, the actual amount recovered only would be subjected to tax in the respective years. Such circulars are valid and can not be said in contradiction with section 145A (Method of Accounting)
Calcutta Co. Ltd. (SC)	The assessee is to be allowed deduction of a provision in respect of what he has undertaken by way of amenities, when it had sold a plot in a layout. This has been followed in a number of cases. It was for this reason that the warranty claim is also found allowable in other cases.
Kanakateegala Enterprises (Andhra Pradesh High Court)	The assessee as organiser had formed a scheme for each group with 250 members expected to contribute specified monthly subscription on due date. A lottery was drawn for each month, with a single winner in the lot being awarded a vehicle. When the scheme ran out after 40 months, the 210 members who were not lucky to win the lot would get back the subscriptions paid without interest only if they had paid their subscriptions without default. The assessee made provision for the members who were likely to get the refund back was not allowed on the grounds of contingent liability.
U. P. Upbhokta Sakhari Sangh Ltd. (All)	Amount given by government for distribution to specified persons does not constitute income of assessee.
Elgin Mills Co. Ltd. (All)	Liability to contribute to expenditure of marriage of daughters of employees is a liability contingent in nature. Actual contribution in year alone deductible.
IBM India Ltd. (AT--Bangalore)	Provision for warranty liability is deductible. cost of application software is revenue expenditure. Amount received for training skilled personnel and sharing customer data base is revenue receipt.

Indian Transformers Ltd. (Ker)	As regards warranty claims, the High Court followed not only this decision on leave encashment by the Supreme Court, but also the decision in Calcutta Co. Ltd. v. CIT [1959] 37 ITR 1 for the principle that a certain liability in future is not a contingent liability even as held by the Privy Council in IRC v. Mitsubishi Motors New Zealand Ltd. [1996] 222 ITR 697 (PC) specifically on the subject of warranty. The decision of the High Court based upon these well established precedents should merit acceptance, subject to such provision being reasonable.
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Section 37(1) - Donations Whether Allowable Or Not

Associated Cement Company (SC)	Expenditure incurred to Install water pipe line, electricity, roads in lieu of municipal taxes is a revenue in nature.
Lakshmi Sugar Mill (SC)	Contribution to cane development council for the development of infrastructure is revenue in nature
Sri Venketa Satyanarayan Mills (SC)	Donation to district welfare fund is an allowable deduction.
Coats Viyella India Ltd. (Mad)	Payment made to government for construction of new bridge providing access to assessee's factory for its workmen and movement of goods is a revenue expenditure and allowable as deduction. The fact that such contribution resulted in a capital asset would not make any difference, because the assessee is not the owner of such asset created by the contribution.
Madras Refineries Ltd. (Mad)	The amount spent for bringing drinking water as also for establishing or improving the school meant for the residents of the locality in which the business was situated could not be regarded as being wholly outside the ambit of the business concerns of the assessee, especially where the undertaking owned by the assessee was one which was to some extent a polluting industry. The expenditure was deductible

Section 37(1) - Issue Of Shares And Debentures

India Cements (SC)	Expenditure in connection with the raising of funds is an allowable deduction
Brooke Bond India Ltd. (SC)	Expenditure on additional issue of share capital is capital expenditure.
Hindustan Insecticides Ltd. (Del)	Fees paid to registrar of companies for increasing share capital is capital expenditure and not allowable as deduction. Also section 35D deduction could not be given since it was not in connection with the extension of business.
Punjab State Industrial Development Corporation Ltd (SC)	Fees paid to registrar of companies for enhancement of capital is a capital expenditure.
Kodak India Ltd (SC)	Expenditure on the issue of capital is an capital expenditure. Even if such capital is to be issued under the direction of the Reserve Bank of India to reduce the non resident holding to 40 %. Such cases are also not covered by 35D. It is needed to amend the 35D cover such cases since assessee do not loose the chance to claim it as deduction.

General Insurance Corporation Of India (No.1) (Bom)	Expenses incurred in connection with issue of bonus shares are deductible as revenue expenditure. A case relating to expenditure on the issue of bonus shares should merit a favourable view, since there is no effective increase in capital because the issue is only out of reserves forming part of the net owned fund.
<u>Section 37(1) - Deferred Revenue Expenditure</u>	
Madras Auto Service (P.) Ltd. (SC)	Under an agreement of lease the assessee obtained certain premises for a period of thirty nine years at Bangalore. The building was of the ownership of the lessor. Therefore, by spending this money on reconstruction, the assessee did not acquire any capital asset. The only advantage which the assessee derived by spending the money was that it got the lease of a new building at a low rent. The expenditure was, therefore, to be treated as revenue expenditure.
Mukund Ltd. (Income-tax Appellate Tribunal--Mumbai)	Lump sum paid as non-refundable "premium" for securing leasehold rights to land for factory in industrial area from state development corporation. It is not a sum paid as advance rent. Enduring advantage in form of 99 year lease. It is capital expenditure.
Tunga Bhadra Industries (Cal)	Premium on redemption is allowable as deduction in the year in which it is paid.
Madras Industrial Investment Corporation Ltd. (SC)	Discount on issue of debentures is an allowable deduction to be amortised over the life of the debentures.
Universal Cables Ltd. (Cal)	Premium payable on redemption of debentures issued during year is to be allowed proportionately each year over period for redemption.
Expenditure On The Issue Of The Convertible Debentures.	At the ITAT level the controversy exist that gives two opinion 1) The convertible debentures is nothing but the capital and thus expenditure is on issue of capital and thus not to be allowed as deduction. 2) What is to be seen is nature of borrowing in the assessment year and what happens at the later point of time is not a material criteria for the year in debate. And thus expenditure is revenue in nature and qualifies for the deduction. Both the view is equally possible and one has to mention both in the examination condition.
Gemini Arts P. Ltd. (Mad)	Premium paid for lease of land has been generally understood as capital expenditure. But in this case payment of a lump sum for a lease of 48 years was found to be eligible for deduction as revenue expenditure. That "whatever substitutes for revenue expenditure should normally be considered as revenue expenditure".
Hede Consultancy Pvt. Ltd. (Bom)	The assessee had taken a godown on lease. It spent Rs. 9,20,436 for converting the godown premises into office by renovating it, incurring expenses on interior decoration. since the assets created by spending the said amounts did not belong to the assessee but the assessee got the business advantage of using modern business premises at a low rent, thus saving considerable revenue expenditure for a considerably long period, the Tribunal was perfectly justified in coming to the conclusion that the expenditure should be looked upon as revenue expenditure.

Khimline Pumps Ltd. (Bom)	Where a premium is paid for acquiring leasehold rights from a lessee with the unexpired period of such lease being about 70 years, such amount should necessarily be treated as capital expenditure.
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Section 37(1) - Commercial Expediency

Chandulal Keshavlal (SC)	Waiver of agency commission is deductible on the grounds of commercial expediency
Sasson J. David (SC)	Payment of 6 months compensation to the employees in the scheme of transfer of management is an allowable deduction since company in turn to get benefited by the better management. When there is going to be the reduction in the wage bill of the company there is going to be increase in the profitability of business.
Ahemedablad Cotton Mfg. Co. Ltd. (SC)	Fine paid to textile commissioner for the non performance of promised export at the option of the assessee is an allowable deduction.

Section 37(1) - Cost Of Defending A Suit

H. Hirjee (SC)	Hoarding and profiteering ordinance was violated and there was criminal proceeding initiated and the cost of the suit is not an allowable deduction.
Dhanrajgirji Raja Naraingirji (SC)	What is to be seen is whether there was initiated proceeding in the character of being a trader or not irrespective of whether it was civil or criminal.

Section 37(1) - Fine Paid In Contravention Of The Law

Haji Aziz & Abdul Shakoor Bros (SC)	Penalty for the confiscation of the goods is not an allowable deduction since There is violation of customs law
Prakesh Cotton Mill (SC)	Penalty is of two types compensatory and penal. To the extent of compensatory in nature is allowable deduction.
Standard Batteries (SC)	Penalty under 36(3) of the Bombay Sales Tax Act for delayed payment of sales tax is of both compensatory and as well as penal in nature.
Lachmandas Mathuradas (SC)	Should interest on sales tax arrears be treated differently from interest under income-tax law Since sales tax unlike income-tax is an allowable deduction, it can be disallowed only if it is for violation of law. Interest on arrears of sales tax was found to be compensatory in character and therefore deductible.
Mamta Enterprises (Kar)	Compounding fees paid to the municipal corporation is a penalty and is not deductible under section 37.
Catholic Syrian Bank Ltd. (Ker)	Banks are obliged to pay interest to the Reserve Bank of India for shortfall in the prescribed cash reserves under the Banking Regulation Act, 1949, such interest for the first default is not penal in nature. Thus allowable as deduction.

Section 37(1) – Business Loss Concepts

Badris Das Daga (SC)	Loss sustained by a business by reason of embezzlement by an employee or agent is not an admissible deduction under general section 37(1), for when an agent or employee misappropriates moneys belonging to his employer in fraud of him and in breach of his obligations to him, it cannot be said that he owes these moneys under an agreement. Nor can a claim for deduction of loss by embezzlement be admitted because moneys which are withdrawn by the employee out of the business till without authority and in fraud of the employer can in no sense be said to be an "expenditure laid out or expended wholly or exclusively" for the purpose of the business under section 37(1). Loss resulting from embezzlement by an employee or agent in a business is, however, admissible as a deduction under section 28, if it arises out of the carrying on of the business and is incidental to it.
Associated Banking Corporation Of India (SC)	Year of allowability of the deduction is the year in which it is finally determined that the monies are not recoverable. The amount of the deduction is the amount not finally recovered.
Indian Aluminium (SC)	The amount which the assessee was bound to deduct from the payment made to the non-resident and which it failed to recover from that company could not be regarded as a bad debt and the payment made under a statutory obligation because the assessee was in default could not constitute expenditure laid out for the purpose of the assessee's business.
Piara Singh (SC)	Carriage of the currency notes across the border was an essential part of the smuggling operation and detection by the customs authorities and consequent confiscation was a necessary incident and constituted a normal feature of such an operation. The confiscation of the currency notes was a loss occasioned in pursuing the business of smuggling. It was a loss in much the same way as if the currency notes had been stolen or dropped on the way while carrying on the business. It was a loss which sprang directly from the carrying on of the business and was incidental to it and its deduction had to be allowed.
Nainital Bank Ltd. (SC)	A large quantity of jewellery pledged with the respondent bank by its constituents and currency notes were stolen by dacoits from its premises. In regard to the loss of the jewellery, the bank settled the claim of the constituents. Under the adjustments so made, the bank made payments and claimed deduction of the respective amounts in computing its taxable income. Such payments is allowable as deduction. Cash is stock in trade of the banking business and loss by dacoitee is an allowable deduction.
Sutlej Cotton Mill (SC)	Exchange currency loss on account of devaluation is an allowable deduction.
Swadeshi Cotton Mill (SC)	Non recovery of advance to acquire the fixed asset is an capital loss.
Abdulbhai Abdul Kadar (SC)	Loss of third party is not an allowable deduction. I.e. when person is treated as agent of NRI and required to pay dues of NRI can not be allowed as business loss.

Jagannath Kissonlal (SC)	When liability is joint and several and one is required to pay others liability is an allowable deduction since it was in ordinary course of the business.
Amalgamation (P) Ltd (SC)	Guarantee loan bad debts is an allowable deduction.
Hasimara Industries Ltd. (SC)	The assessee's business was of manufacture and sale of tea and it was not engaged in cotton manufacturing business at all. That the amount of advance in a sum of rupees twenty lakhs was given not for its own purpose by way of business expenditure for modernising the mill, but as capital to the lessor who in turn had to modernise the mill. The loss suffered by the assessee was a capital loss and hence the amount could not be deducted from the assessee's income as business loss.
Nedungadi Bank Ltd. (Ker)	Where a bank purchases securities, the interest paid for the broken period for the acquisition of the securities till the date of such acquisition would constitute allowable outgo in the hands of the assessee and is an admissible deduction in the computation of the total income of the bank under the head "Profits and gains" of business or profession.
Bank Of Baroda (Bom)	The loss (Business Loss) had been debited to the profit and loss account which was reflected as a provision for liability in the balance-sheet and the shares and securities were valued at cost on the assets side. The assessee was entitled to the deduction on account of loss.

<u>Section 37(1) - Other Recent Cases</u>	
Sivkami Mills Ltd. (SC)	Guarantee commission paid to the make the payment of capital asset is an allowable deduction
City Mill Distributors (P) Ltd. (SC)	Profit from the pre incorporation contracts Bijlee cotton mill (All) co. is chargeable to tax if accepts the contracts Tea producing co. of India Ltd. (Cal)) co. not chargeable to tax since not in existence.
P. Mariappa Gounder (SC)	1) Assessee entered in to the agreement to purchase factory when vendor did not convey the property it filed an suit. In the court it was held in favor of the assessee and it also awarded the “mesne profit” or “Loss of profit” and directed trial court to determine the amount of profit. 2) Held that such profit is taxable in the year in which it is determined by the trial court considering the mercantile method of accounting. (Whether it is received or not in that year)
Vellore Electric Corporation Ltd. (SC)	Any statutory transfer to the contingency reserve as per the electricity act can not be allowed as deduction since the money belonged to the company. Similar question can also be set in relation to a banking company in the examination condition
General Insurance Corporation Of India (SC)	“Spending” means “expenditure”. Expenditure is something which is paid out irretrievably. As per the GI rules amount set aside for the redemption of the preference shares is debited to profit and loss account does not become expenditure for the purpose of the Income Tax act.
Karnal Co.Op Sugar Mills (SC)	Where in the pre-commencement period monies were deposited with the bank in order to finance the acquisition of the plant and machinery, and interest there on deposit shall reduce the cost of the machinery. In case the interest is paid for the pre-commencement period can be added to the cost of the plant and machinery.
Autocast Ltd (SC)	Assessee borrowed money for investing in to fixed deposits. Until the acquisition of the fixed assets it invested the money in short term deposit of the banks. Held that interest earned on such deposits is taxable as income of the assessee under the head other sources.
New India Mining Corporation P. Ltd (SC)	Mearly because some expenditure is allowable as deduction can not be the grounds of its allowability. I.e. actual incurring of the expenditure is a must before any allowance can be given to the assessee.
K.Ravindranathan Nair (SC)	Assessee was owner of 10 manufacturing units of which 4 were under lockout for through out the period of previous year because of labour unrest. Ultimate settlement with the labour union was effected and compensation was paid to the workers working at the factory. Held that decision of keeping the 4 units under lock out was for the purpose of the business and profession. And when the compensation was paid it was also for the purpose of the business and profession and was allowable as deduction. Assessee knows how to do the business better.

Bison Field A Estate (SC)	Coffee grower might have credited the value of coffee handed over to coffee pool based on the value given the polling agents. Although consideration finally determined in the later year. Held that handing over of the coffee by grower to the pool is a sale and related consideration is required to be accounted in the year of sale. Excess received in the subsequent year also accrues in the year of sale.
Hela Holdings Pvt. Ltd. (Cal)	The assessee is entitled to change his regular method of accounting by another regular method. It would be open to the assessee to produce records and show that it had followed such changed accounting method in subsequent years. The method of valuation of stock cost or market value whichever is less was acceptable. Such change in method of accounting should be acceptable.
Sambandam Spinning Mills Private Ltd. (Mad)	Where the employee is an interested person as in the case of a managing director, the question would arise whether medical expenses could be allowed as a business deduction prompted by commercial expediency. Held in this case that is not allowable as deduction.
Natvarlal V. Desai (Guj)	Where the assessee's right to receive the fifty per cent. share from the firm was subject to one-half of it being given to his wife and the wife had a prior charge over the share income received from that firm. Was a case of diversion of income by overriding title.
Tamil Nadu Brick And Tile Manufacturers Industrial Service Co-Operative Society Ltd. (Mad)	Section 72 of the Co-operative Societies Act, which specifically referred to the payment of "bonus" to the members with reference to the business done with or service rendered to the registered society, such payment is payable not because they are members, but because they have made certain purchases from the society on the basis of which the bonus is quantified. Thus such bonus is not payment of dividends but it is an expense to be allowed as deduction.
Tamil Nadu Sugar Corporation Ltd. (Mad)	The accounting standards for taking into account events after the last day of the accounting year cannot possibly cover instances of fluctuation in market rates in inventory valuation.
Kishore Chand Shivcharan Lal (All)	It was decided that to the extent to which disputed liability is ascertained, it can be allowed in the year in which it is so ascertained.
Kerala Small Industries Development Corporation Ltd. (Ker)	In order to be eligible for deduction under section 37 of the Income-tax Act, 1961, the expenditure should not be of the nature of capital expenditure. Provision for loss does not qualify for the purpose of deduction.
Connemara Business Associates (Cochin)	An item of expenditure can be allowed in computing the taxable income of an assessee as a deduction only if the assessee has actually incurred that expenditure. Therefore, the crucial test to be applied in examining the deductibility of a claim of expenditure is whether the expenditure was actually incurred or not, during the relevant previous year. Thus method of accounting plays no role in deciding such case where there is no expenditure in reality. i.e. bogus expenditure can not be allowed as deduction.

Hiranand (Raj)	Expenditure, which would constitute offence is specifically disallowed under the Explanation to section 37(1). Losses suffered on infringement of any law is being disallowed except in rare cases, where such violation is innocent and the amount payable is compensatory in character. But where the assessee is carrying on illegal business, there is no bar for deduction of loss or expenses as decided.
M. Subramaniam (Mad)	A right may be acquired either on payment of a lump sum as premium or periodically by way of rent or royalty. There could be both premium as well as rent in respect of the same transaction. Premium would be capital however the rent would be revenue.
Kwality Textile Associate Pvt. Ltd. (Mad)	The assessee was engaged in the business of export of textile spares and equipment. The assessee disputed the assessability of an amount of fees received for technical and engineering services rendered by the assessee outside India. The Commissioner (Appeals) and the Tribunal held that the amount was not assessable in India. On appeal to the High Court Held, that the income earned in Malaysia was not assessable in India.
Montgomery Watson Consultants India P. Ltd. (Bom)	Assessee had derived benefit of enduring nature by entering into the agreement to ward off business competition for a sufficiently long period of ten years. Thus it was held to be capital in nature.
Amar Raja Batteries Ltd. (Hyd (AT))	Expenditure on launching a new product in an existing business is fully deductible, even if the assessee had treated it as deferred revenue expenditure in its books.
Giriraj Udyog (P.) Ltd. (All)	The mercantile system does not create income. It only recognises income that has accrued. Where there is no chance of recovery of the principal amounts and the assessee chooses not to charge interest on the same, the Assessing Officer is not justified in bringing to tax such interest not charged as accrued income.
Consolidated Fibres And Chemicals Ltd. (Cal)	Where the assessee had claimed at off of interest paid against interest received from short term deposits during the period, when the project was under construction. Apparently, the income itself was considered taxable under the head "Other sources", so that the High Court had little difficulty in dismissing the assessee's claim on the ground that the borrowing was not for purpose of investment following the rationale of the decision in CIT v. Dr. V. P. Gopinathan [2001] 248 ITR 449 (SC).
Srikrishna Bottlers P. Ltd. (AP)	For the destruction of bottles the ex-gratia compensation was paid which is held to be revenue in nature.
Kailash Investments P. Ltd. (Gujarat High Court)	where the assessee incurred a loss in conversion of call money liability into a debt, such loss cannot be treated as a business expenditure under section 37 or a loss covered either by section 28 or under the head "capital gains" in section 45 or loss or expenditure under "other sources" in section 57. It was so decided in Kailash Investments P. Ltd. v. CIT[2006] 281 ITR 92 (Guj).
Mahendra N. Shah (Gujarat High Court)	Business loss has necessarily to be deducted though it is not one of the items listed for deductions.
Tamil Nadu Minerals Ltd. (Income-Tax Appellate Tribunal--Chennai)	where the assessee subscribing to a public issue receives commission given to underwriters, such commission may well be an abatement of the cost of shares in circumstances where the assessee is not a dealer in shares

Neset Holdings P. Ltd. (Delhi High Court)	Where a payment is made for acquiring OTC membership in a stock exchange, the initial payment as security deposit, which is non-refundable and non-transferable, though described as deposit, is revenue expenditure.
Margarine And Refined Oils Co. Ltd. (Karnataka High Court)	Retrenchment compensation was found inadmissible at the time of closure of business in CIT v. Gemini Cashew Sales Corporation [1967] 65 ITR 643 (SC). But where what is proposed is not closure of business, the claim could be allowed as was found in CIT v. Doongaji and Co. Distillery [2005] 276 ITR 402 (MP).
I. G. Electronic (India) Ltd. (Delhi High Court)	The date of setting up a business and the date of its commencement could be two separate dates. The law has reference to the date of setting up of the business. The Tribunal had noted that the business of the assessee was set up on February 21, and that in view of the definition of the expression “previous year” the previous year shall be the period beginning with the date of setting up the business.
Prem Heavy Engineering Works P. Ltd. (Allahabad High Court)	The payment for acquiring know-how for manufacture of equipment for a period of seven years does not necessarily mean that it is capital expenditure.
Sakthi Soyas Ltd. (Madras High Court)	An expenditure in launching a project for crop development of soya products should ordinarily be revenue expenditure, because launching a project is different from launching a new business. Even if in the books of accounts it would have been treated as capital expense.
Video Electronics Ltd. (Income-Tax Appellate Tribunal--Delhi)	The principle of real income comes into play in exceptional circumstances where subsequently it transpires that there was never any right to receive income or there was no likelihood of enforcement of such right, if any. The real income theory cannot be pressed into service for the reason only that the income could not be subsequently recovered. However if income subsequently not recovered could be claimed on account of loss subject to provisions of law.
Karnataka Urban Infrastructure Development And Finance Corporation (Karnataka High Court)	The assessee is acting as a mere agency managing the funds entrusted to it in the manner expected of it. Interest income could not be treated as its income, because such income is out of moneys advanced by the Government of India for a particular purpose as a tied-up grant or advance. It is like income of the government and thus not taxable in the hands of the agent.
Indo Swiss Jewels Ltd. (Bombay High Court)	Inter-corporate deposits were made by the assessee from the surplus funds that were set apart for payment for imported machinery. The interest earned on the short term deposits of the money kept apart for the purposes of business had to be treated as income earned from business and could not be treated as income from other sources.
Anil M. Gehi (Bombay High Court)	Loss arising out of action under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) on confiscation of foreign currency, where the assessee was treated as a smuggler and had been detained under that Act, will have to be allowed as business deduction. Since the assessee was in the illegal business.

Modern Spinners Ltd. (Delhi High Court)	Where the assessee's liability for payment of interest to a financial institution was settled, subject to the assessee fulfilling further conditions, the amount claimed could not be disallowed merely on the ground that such deduction has to await satisfaction of the conditions. It had become an ascertained liability, so as to be eligible for deduction.
Mandovi Hotel P. Ltd. (Bombay High Court)	The dissolution deed did not specify any capital sum payable to the retiring partners. The payment of 30 per cent to made annually for some years is revenue expense for the firm as it was in the course of the business.
Lakshmi Vilas Bank Ltd. (Madras High Court)	The assessee was dealing in purchase and sale of Government securities. The profit and loss on the sale of Government securities has to be assessed as business income/loss under the Income-tax Act.
Sanco Trans Ltd. (Madras High Court)	It is not unusual for group companies to share services, which are common as between them. It will be allowed as deduction.
Jayaram Metal Industries (Karnataka High Court)	Where the assessee paid an amount of about Rs. 2 lakhs as redemption fine to redeem confiscated goods from the Central Excise Department and it debited the sum to the purchase account, such payment being in the nature of penalty for infraction of law, could not be allowed as a deduction.
Mac Explotec P. Ltd. (Karnataka High Court)	The cost of meeting educational expenses of one's child is on the parent. Such expenditure is not ordinarily deductible from business income of such parent. Where a family company meets the cost of education of the son of the directors, who were both husband and wife, for meeting the cost of normal education and not any specialised training necessary for running the business, the amount is not deductible.
General Insurance Corporation (Supreme Court of India)	Expenses by way of stamp duty and registration for issue of bonus shares was incurred by company. The company does not acquire any benefit or advantage of enduring nature. Expenses are revenue in nature and allowable.
Mahanagar Telephone Nigam Ltd.. (Authority for Advance Ruling)	Supplier of capital equipment caused delay in delivery within stipulated time. Liquidated damages were paid. The supplier requesting for refund of damages. Assessee refunding such amount under directions of telecom commission is amount capital in nature. Not deductible in computing business income.
Vasu Farms P. Ltd. (Madras High Court)	Expenditure on chicks before they reached the stage of laying eggs is revenue expenditure.
Saraf Chemicals Ltd. (Income-tax Appellate Tribunal--Mumbai)	Purchase of business as going concern and amount paid for agreement by seller not to compete for fifteen years is amount paid for elimination of competition. Such payment is capital expenditure.
Industrial Credit and Development Syndicate Ltd. (Karnataka High Court)	Where the assessee repurchased debentures issued by it before the date of redemption by acquiring such debentures at a price below the face value, the issue was whether the surplus would have revenue character or could be a capital receipt. The Karnataka High Court in CIT v. Industrial Credit and Development Syndicate Ltd. [2006] 285 ITR 310 accepted the assessee's contention that the surplus amount credited to the reserves in the balance sheet did not constitute a revenue receipt on the ground that the amount saved by the assessee by being able to discharge its liability at a lower amount could not be income of revenue nature.

Dr. T. A. Quereshi (Supreme Court of India)	Where stock is lost, such loss is a business loss. It was so held by the Supreme Court in Dr. T. A. Quereshi v. CIT [2006] 287 ITR 547.) That even though the assessee was committing a highly immoral act in illegally manufacturing and selling heroin, the case had to be decided on legal principles and not on one's own moral views. Decision of the Madhya Pradesh High Court in CIT v. Dr. T. A. Qureshi [2005] 275 ITR 352 reversed.
Glen View Rubber Co. P. Ltd. (Ker)	Expenditure on installation of water treatment plant is capital expenditure.
RECENT CASES OF 2008	
First Leasing Co. of India Ltd. (Madras High Court)	Premium payable on actual redemption of debentures in future years. Provision to be spread over and part of it deductible in relevant assessment year. Expenses incurred for issue of debentures in earlier years to be spread over and allowable in relevant assessment year.
Ucal Fuel Systems Ltd. (Madras High Court)	Assessee taking premises on lease for 20 years making lump sum payment. Is revenue expenditure.
Dr. S. N. Naik (Individual) (AT) (Pune)	Doctor running his own hospital. Expenditure on education and training of son in medical college is not laid out for purposes of business. It is personal expenditure and not deductible.
Kerala Road Lines (Supreme Court of India)	Purchase of land with buildings thereon. Assessee demolishing buildings and selling scrap materials. Income from sale of scrap material treated as business income. For delay in paying purchase consideration and interest paid by assessee. Is a revenue expenditure.
A. Builders P. Ltd. (Punjab and Haryana High Court)	Compensation on account of breach of contract does not fall in category of payment of penalty for breach of any law. Compensation for breach of contractual obligations are deductible.
G. E. Capital Services Ltd. (Delhi High Court)	Assessee using ms office which requires regular upgradation. Expenses incurred not capital expenditure.
Saw Pipes Ltd. (Delhi High Court)	Service charges paid for laying service line to a new unit. New unit extension of existing business. Service line belonging to electricity board. Benefit derived of a commercial nature and a business advantage to be treated as revenue expenditure.
Pranav Vikas (India) Ltd. (AT) (Delhi)	Investment in debentures. Decision not to charge interest on debentures in particular year due to financial difficulties of creditor. No interest accrued to assessee.
Jagath Enterprises P. Ltd. (Madras High Court)	Diversion by overriding title. Promoters of company trustees advance by trust to company for purchase of property. Rental income arising to company not diverted to trust by overriding title.

Tata Investment Corporation Ltd. (AT) (Mumbai)	Disallowance of expenditure incurred on earning income which is not includible in total income. Investment company whose sole object to earn income from investment in group concerns. Expenditure on salary of personnel utilised to carry out objectives of company to be disallowed. Assessee to furnish break up of salaries failing which assessing officer at liberty to estimate expenditure attributable to earning of dividend income. Such estimate to be limited to proportion of dividend income vis-a-vis total income.
Bajaj Ashok Chunnilal (AT) (Bangalore)	Income of minor to be computed in accordance with provisions of act. Minor entitled to follow own method of accounting. Interest shown as payable to minor in balance sheet of assessee's business and minor accounting for income on receipts basis. Income not paid by concern does not accrue to minor is not includible in assessee's hands.
B. Amrithalakshmi (Madras High Court)	Change in method of valuation of closing stock of shares from market price to cost price. Only a substitution of one method by another scientific method. No finding that assessee resorted to ad hoc change in valuation to secure temporary gain or advantage. Valuation of stock correct.

High Value Exam Question types On Business

Income

Type 1 (16 Mark Type)	<p>Computation of Full Business Income <u>With 8-10 adjustment of like types</u></p> <ul style="list-style-type: none"> ✓ Dividend Income referred to in 2(22)(e) deemed dividend ✓ Dividend from domestic company amount more than 10 lakhs. ✓ Section 79 where there is change in shareholding pattern and set off adjustment. ✓ Section 78 where there is retirement of partner and set off adjustment. ✓ Depreciation ✓ Profit or loss on sale of asset ✓ Contribution to eligible fund / political parties ✓ Expense on shares issues / debenture issue / finance cost ✓ CSR expense ✓ Cash payment to transporter ✓ Related party payments ✓ TDS non compliance with respect to payments to Non residents ✓ Receipt of government grants / subsidy / incentive ✓ Stock in trade converted to capital assets. ✓ Dividend income from foreign companies. ✓ Income / loss from derivatives. ✓ Animals used for business and they have died. ✓ Bad debts written off without any legal action on debtor. Bad debts to guarantee obligations. ✓ Interest on funds lend to related parties. ✓ 43B payments. ✓ Assets have been refurbished. ✓ Stock valuation adjustment (over or under valuation) ✓ Transaction of immovable property with stamp duty valuation. (different stamp duty on date of agreement and on date of sale) ✓ Capital account cash transactions, like share issued for consideration in cash. ✓ Mark to market income or losses. ✓ Illegal expense or incomes. ✓ Pre-operative incomes or expense / amortisation. ✓ Huge brand promotion expense. ✓ Litigation expense ✓ Penalties / Fines ✓ Corporate guarantee / Bank guarantee payments. ✓ Retrenchment compensation on close of business / division. ✓ Transfer to reserves / statutory reserves for banking and electricity companies.
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Type 2 (16 Mark Type)	Mix of Agri Income and Non Agri Income with tax liability calculations. Tea / Rubber / Development account. <u>With adjustment of like types</u> <ul style="list-style-type: none"> ✓ Amount withdrawn from specified reserve and its utilisation / mis-utilisation. ✓ Set off adjustment of non agri income. ✓ Dividend income of 2(22)(e) ✓ Dividend form foreign company ✓ Change in share holding pattern adjustment of 79 ✓ Change in constitution of firm / retirement of partner adjustment of 78 set off.
Type 3 (10 Mark Type)	Presumptive Income computations with tax liability and Interest calculations.
Type 4 (16 Mark Type)	Adjustment of Bad debts for banks and financial institution, where computation of foreign bank will be asked with bad debts allowance. <u>With adjustment of like types</u> <ul style="list-style-type: none"> ✓ Bad debts claimed as per specified % of 36. ✓ However actual bad debts are more then % of baddebts allowed. ✓ Special reserve for bad debts balance is more then excess over specified % ✓ Shares trading transaction of banks ✓ Shares valuation for banks. ✓ Head office expense for foreign branch of a bank. ✓ Special rates of taxes / computation of tax liability with interest income on foreign branch in India.
Type 5 (8 Mark Type)	Special reserve for financial institution and computation of its income.
Type 6 (10 Mark Type)	Eligible Business of 35AD with set off adjustments. Where there are 2 business one is eligible for 35AD and other is not. Eligible business is generating losses and other business is generating profits.

Certain Cases Of Deemed Income.

<u>Section 68 - Cash Credits</u>	
Sophia Finance Limited (Del)	Where company issued share capital to a person that was not traceable amount of credit to the capital account shall be assessed under section 68. Just because it is credited to capital it can not be the grounds for not assessing under section 68.
Shiv Shakti Timbers (MP)	When partnership firm credited some money in the name of its partners and partner fail to explain its source. It's a case under section 68 for partnership firm and not under section 69. The fundamental difference between 68 and 69 is that 68 pre-supposes a book entry and 69 don't.
Kamdhenu Vyapar Co. Ltd. (Cal)	The assessee may seek assistance of section 131 of the Act for the purpose of proving its own case of unexplained cash credit under section 68. Section 131 empowers the Assessing Officer to exercise the same power as vested in a civil court for compelling attendance of witnesses. An opportunity in-built in section 68 of the Act has been given to the assessee to prove to the satisfaction of the Assessing Officer that the apparent is real and the transaction was genuine. Thus officer must invoke the powers of 131 to give fair opportunity to assessee when it was requested by assessee.
Nemi Chand Kothari (Gau)	In order to establish the receipt of a cash credit, as required under section 68 the assessee must satisfy three conditions, viz., (i) identity of the creditor, (ii) genuineness of the transaction, and (iii) creditworthiness of the creditor. However identity of sub-creditor is required to be proven by the assessee.
ITC Classic Finance Ltd. (Bom)	Additions made for suppressed sales consideration on grounds of non genuine transaction is justified.
Bhola Shankar Cold Storage Pvt. Ltd. (Cal)	Where most of the subscriber to share capital was farmers and being poor could not produce the certificate and proofs is not a satisfactory explanation,
Haji Nazir Hussain (Del) (AT)	Section 68 is applicable only when any sum is found credited in the books of an assessee maintained by him. However, books of account do not mean cash book only. It would mean the complete records which a businessman is required to maintain to record his day-to-day transactions. Thus where cash book is debited but actual posing of credit is not done it can be covered by section 68.
Vir Bhan And Sons (P&H)	The explanation of the assessee for the purpose of section 68 would be satisfactory only when the credit worthy ness of the creditor is proven. The loan confirmation statement and accounts verification does not mean that the explanation is satisfactory.
Murlidhar Lahorimal (Gujarat High Court)	An assessee can be asked to prove the source of credit in the books, but cannot be asked to prove the source of the source.
Jagmohan Ram Ram Chandra (All)	There is no reason to restrict the powers of the officer under section 68 and 69. Where the assessee under the respective section did not gave the explanation then subsequent additions are very much justified. Both the section can also be simultaneously applied.

A. Rajendran (Madras High Court)	Explanation that credits in accounts represented gifts. Assessee establishing identity of donor, source, solvency of donor and his love and gratitude for family of assessee which made him make gift. Donor on notice appearing before income-tax authorities and affirming his gifts. No evidence to show that gifts received by assessee sent by any other person other than donor in his own name. Donor writing letters to assessee in alias name cannot mean that identity of donor is disputed. Assessee discharged of their burden of proof. Cash credits not to be treated as income of assessee.
Subhash Chander Sekhri (Punjab and Haryana High Court)	The burden of proving that a gift is genuine having been received on account of natural love and affection, is on the taxpayer. Failing which additions can be done u/s 68.
Davinder Singh (Income-tax Appellate Tribunal--Amritsar)	Provisions of 68 are wide enough to cover all credits including credits of nature found in books of assessee. Contention that provision applicable only to cash receipts/loans has no merit.
Rajeev Tandon (AT) (Delhi)	Assessee must establish identity of donor, his financial capacity to make such gift, as well as genuineness of gift transaction. Genuineness to be determined looking into aspect of human probabilities, relationship of donor and donee, occasion for making gift and existence of reciprocity. Gifts from abroad. Donor can produce certified/notarised copy of return accompanied by balance-sheet indicating his capital base and assets owned by him, bank statement furnished by assessee not even pertaining to name of donor. Certificate issued by tax consultant unaccompanied by any corroborative evidence. Bank statement not showing donor in position to advance huge money to assessee who was not related to him. Assessing officer justified in treating gifts as not genuine and adding gift amounts to income of assessee.
Mangilal Agarwal (late) (Rajasthan High Court)	Seizure of primary gold and gold ornaments by customs authority--cegat finding assessee not owner of gold and released gold from confiscation. Assessing authority failing to establish ownership. Presumption of ownership cannot be drawn on possession. Value of gold not taxable in hands of assessee.
Prameshwar Bohra (Rajasthan High Court)	Sum carried forward from preceding year is not an investment or cash credit generated during relevant year. So not taxable as income of year in question.
Prakash Chand Nahta (Madhya Pradesh High Court)	Statement of third party relied on by revenue. Third party retracted statement subsequently. Assessee not allowed to cross-examine third party. Power of assessing officer to summon third party. Violation of principles of natural justice. Assessment order not valid.
Sandeep Kumar (HUF) (Delhi High Court)	Mere identification and showing movement through banking channels is not sufficient. Failure to establish that gift was genuine. Additions justified.

Section 69 - Unexplained Investment

V.B. Paleker (Bom)	Assessee must be found to be the owner of the assets. Because section 69 refers to the “assessee found to be in the ownership of the assets” however possession do not amount to the ownership.
P.K. Noorjahan (SC)	Word “MAY” does not mean “SHALL”. That is to say it is assessing officers discretion to invoke the section keeping in mind views, facts and circumstances of every case.
<u>Section 69A - Unexplained Money</u>	
M. Sundaram (Madras High Court)	when the assessee claims that V and J who came for bleaching work to U handed over the huge sum of money for safe custody, he might have known the address, telephone number and other particulars. No businessman would receive a sum of Rs. 2 crores without knowing the identity and address. Section 69A can be applied.
K.T.M.S. Mohamood (Mad)	When cash is found in the possession of the assessee and 69A is made applicable the value of cash found in the possession of assessee must be subject to tax. Onus to prove is on the person who is in possession of money or assets that he is not the owner of the same.
<u>Section 69C - Unexplained Expenditure</u>	
Kedarnath Modi (Del)	Amount of addition on account of unexplained expenditure is pure a question of fact. Assessee with the family went on holidays to Kashmir for period of one month. Holiday expenditure debited to the capital account was only 1800. held that addition under section 69C was justified.
<u>170 : Succession Of Business</u>	
S. Kodar (Ker)	Where firm is converted in to company it is a case of succession of business.
United Coir Works (Ker)	Test of succession is Identity and Continuity of Business. Where firm sold its business to another firm it is a case of succession of business. Even when the partner of the of the old firm are also the partners in the new firm. Section 170 applies.
Motor sales (All)	Where there is an admission of partner it do not amount to succession of the firm.
Premji Khimraj Shah (Guj)	Firm was declared insolvent. One of the creditor of the firm took over the stock of the firm, it can not amount to succession. Even assuming that assets and liabilities were taken over it do not amount to succession. Firm with several agency business was incurring losses and partners became insolvent. One of the agencies and stock-in-trade pertaining to it taken over by assessee related to one of the partners of firm does not amount to succession. Notice issued under section 170 quashed.
Ettumanoor Motors Pvt. Ltd (Ker)	Assessing officer can recover dues from the successor of the business. No opportunity of being heard is provided. However successor is entitled to receive the notice.

Discontinuation Of Business

Motichand Devidas (Bom)	One of the partners of the firm died. Upon the death old firm was dissolved and remaining partners enter in to new partnership. Assets and liabilities of the firm was not taken over. New firm was in the same name of the old firm. Held that it was a case of discontinuation of business.
Sarat Chandra Bose (Cal)	Discontinuation of business or profession largely depends on the state of mind. Where barrister was arrested and while under detention he retrenched his peon and sold his office. It was a case of discontinuation of business.
Gurudeo Prasad Jagannath Prasad (All)	Where upon retirement of the partner firm was dissolved it is a case of discontinuation of business. Mearly because notice was not given u/s 176(3) firm can not be said to have continued.
United Construction Contractors (Ker)	Where by virtue of 176(3A) / (4) income is charged to tax. The net income can only be charged to tax. I.e. deduction against the income must be allowed.
Y.V. Subba Rao (AP)	Business was discontinued by firm but the firm was not dissolved. After the discontinuation arbitration award was grant to the firm. One of the partner of the firm received the award and forwarded back to the firm. Held the receipt of the award was firm and not the partner receiving it. I.e. partner received it as a trustee of the firm.
Roma Bose (Cal)	Professional person died. Upon the death arrears of professional fees were received. Held that it was a case covered by 176(4) and it shall be taxable in the hands of the person receiving it. It shall be taxable under the head "other sources".
V. Parthasarathy (AP)	Assessee a lawyer was appointed as judge. Upon the appointment practice was discontinued. Which gave rise to 176(4). Subsequently the appointment as judge was cancelled and so he resume the practice. After resuming he received the arrears of fees held that it was taxable under 176(4). Discontinuation of profession need not be on account of death or retirement only. Time length of discontinuation is not a criteria. I.e. it can be temporary or permanent discontinuation. Discontinuation may be voluntary or not. Lawyer appointed as judge amount to the discontinuation of profession.
Dipson & Co. (Del) (AT)	Partnership firm claimed expenditure incurred on engagement of lawyer for earning amount of arbitration awarded in respect of discontinued business. While computing assessee's income for purposes of assessment, expenditure was necessarily to be excluded from amount received.

Capital Gains

<u>Section 2(14) – Capital Asset</u>	
Jayantilal A. Shah (Bom)	The assessee realised capital gains on sale of silver utensils which were purchased by him. All personal effects need not be used daily. So long as they were meant for personal use, they would have to be considered as personal effects. Therefore, the gains resulting from the sale of the silver utensils were not assessable to tax on capital gains.
Rana Hemant Singhji (SC)	An intimate connection between the effects and the person of the assessee must be shown to exist to render them " personal effects". The legislature intended only those articles to be included within the expression " personal effects" which were intimately and commonly used by the assessee. The assessee was liable to tax on the capital gains derived by the sale of sovereigns, silver bars and rupee coins,. The silver bars or bullion could by no stretch of imagination be deemed to be " effects " meant for personal use. Nor could the sovereigns and silver coins by their use on special occasions of worship of Maha Lakshmi be designated as effects meant for personal use.
Gemini Picture Circuit (P) Ltd. (SC)	Rural agricultural land is excluded from capital asset. In order to determine agricultural status of land totality of relevant facts must be taken into consideration. Where land is situated in most important business center of a city and part of land is used for construction of non-residential buildings the mere fact that vegetables were grown in the land as stop-gap activity is not conclusive that land was agricultural. Profits on sale of such land is assessable as capital gains.
<u>Section 2(47)- Transfer</u>	
Vania Silk Mills (SC)	<p>When asset is destroyed by fire can not be regarded as transferred since on the basic test</p> <ol style="list-style-type: none"> 1. Existence of asset at the point of time of transfer is precondition 2. Destruction of asset is not the transfer. 3. In case of insurance whether insurance company took over the asset or not does not alter the character of the insurance transaction <p>When asset was destroyed it was not transferred but was disappeared. With effect from the assessment year 2000-01 law is amended by insertion of section 45(1A) to tax such receipt of insurance but it has limited applicability. Only cases damage or destruction of, any capital asset, as a result of, (i) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature; or (ii) riot or civil disturbance; or (iii) accidental fire or explosion; (iv) or action by an enemy or action taken in combating an enemy (whether with or without a declaration of war), is covered.</p>

Anarkali Sarabai (SC)	When a preference share is redeemed by a company, what the shareholder does in effect is to sell the share to the company. The company redeems its preference shares only by paying the preference shareholders the value of the shares and taking back the preference shares. In effect, the company buys back the preference shares from the shareholders. The redemption of preference shares by a company, therefore, is a sale and squarely comes within the phrase "sale, exchange or relinquishment" of an asset in section 2(47).
Kartikey V. Sarabhai (SC)	When as a result of the reducing the face value of the share, the share capital is reduced, the right of the preference shareholder to the dividend on his share capital and the right to share in the distribution of the net assets upon liquidation is extinguished proportionately to the extent of reduction in the capital. Such reduction of the right in the capital asset would clearly amount to a transfer within the meaning of that expression in section 2(47).
G. Narsimhan (SC)	When there is reduction in share capital 2(22)d is operative and amount received on reduction is to be reduced by the dividend u/s 2(22)(d) and than capital gains is to be computed.

Section 45 (2) – Conversion Of Capital Asset In To Stock

Bai Shirinbai Kooka (SC)	Where the assessee who held by way of investment several shares in companies commenced a business in shares converting the shares into stock-in-trade of the business, and subsequently sold these shares at a profit. The assessee's assessable profits on the sale of the shares was the difference between the sale price of the shares and the market price of the shares prevailing on the date when the shares were converted into stock-in-trade of the business in shares, and not the difference between the sale price and the price at which the shares were originally purchased by the assessee.
Smt. Radha Bai (Del)	In respect of sale of real property after holding it for a significant period, the issue that often arises is whether it was acquired by the assessee with intent to resell, in which case, it becomes an adventure in the nature of trade, even if the assessee were not a regular dealer in real property. The test is the intention of the assessee at the time of purchase, though he may later convert it into stock in trade, which contingency is covered under section 45(2) of the Act. The developer contract would be covered by this case and it would be a case of conversion of capital asset in to stock in trade.
Circular 791	For the purpose of making investment in specified assets for 54EC, period of 6 months shall be taken from the date on which such stock in trade was sold or otherwise transferred.

Section 45(2A) – Demat Of Securities

Circular 768	How FIFO method to be understood when shares are to be sold in electronic form.
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Section 45(3) / (4) – Partnership Firms

Sunil Siddirthbhai (SC)	Conversion of asset into partnership concern is not a transfer but now with specific provision treated as transfer
Hind Construction Ltd. (SC)	If a person revalues his goods and shows a higher value for them in his books, he cannot be considered as having sold those goods and made profit therefrom. Nor can a person by handing over his goods [stock in trade] to a partnership of which he is a partner as his share of the capital be considered as having sold the goods to the partnership.
Mohanbhai Pamabhai (SC)	When a partner retired from the firm and received his share of an amount calculated on the value of the net partnership assets including goodwill of the firm, there was no transfer of interest of the partner in the goodwill, and no part of the amount received by him would be assessable as capital gains under section 45. But in view of the departmental interpretation of section 45(4) to include "retirement" within the meaning "or otherwise" following dissolution, there is a possible liability for the firm when it parts with a capital asset in settlement of the accounts of a retiring partner as deemed transfer.
Tribhuvandas G. Patel (SC)	It is possible for a person to sell his interest in a firm and thereby render himself liable for capital gains tax, though settlement of accounts after retirement would not constitute transfer.
Moped And Machines (Madhya Pradesh High Court)	Where one of the two partners of the firm dies, there is dissolution of the firm. But where the surviving partner carries on the business as a going concern with all assets and liabilities, there is no "distribution" within the meaning of the Supreme guidelines given in Sakthi Trading Co. v. CIT [2001] 250 ITR 871
Rasi Silks (Income-Tax Appellate Tribunal--Chennai)	Where a firm made some capital gains, but sought set off of the deficit in the retiring partner's account against capital gains, the Tribunal found that such loss is a capital loss not arising on transfer of an asset and therefore not deductible.
Mangalore Ganesh Beedi Works (Kar)	Where the firm continues its business after dissolution without distribution of capital assets on dissolution, no capital gains would arise in the year of dissolution, even in the light of the language of section 45(4).
Gandamal and Sons (Income-tax Appellate Tribunal--Pune)	The effect of the insertion of 45(4) is that when a capital asset belonging to a firm is transferred to a partner on dissolution, reconstitution or on such similar occasion, such a transfer shall be deemed to be a transfer for the levy of capital gains tax under the provisions of section 45(4). The word "otherwise" in this section takes into its ambit, not only cases of dissolution but also cases of subsisting partners of a partnership, transferring assets to a retiring partner.
Unity Care and Health Services (Income-tax Appellate Tribunal--Bangalore)	Conversion of firm into a company under part IX of companies act. Vesting of property of firm in company. No distribution of capital assets to partners and no dissolution of firm. No capital gains chargeable in the hands of assessee-firm 45(1)/(4).

Suvaradhan (Karnataka High Court)	Distribution of capital assets on dissolution of a firm amounts to transfer.
<u>Section 45(5) - Additional Compensation</u>	
Bikram Singh (SC)	Interest received on delayed payment of the compensation under the Land Acquisition Act, is a revenue receipt exigible to income-tax. Once it is construed to be a revenue receipt, necessarily, unless there is an exemption under the appropriate provisions of the Act, the revenue receipt is exigible to tax. However, the appellants were entitled to spread over the income for the period for which payment came to be made, so as to compute the income for assessing tax for the relevant accounting year.
C.P. Lonappan And Sons (Ker)	Section 45(5) would treat the date of receipt of compensation amount in compulsory acquisition case as the date on which capital gains arise. Where an advance has been received, such advance cannot obviously be treated as having the character of compensation, since it may be returnable in case the acquisition does not take place
Smt. Shantavva (Kar)	High Court pointed out that the disputed compensation in the light of section 45(5) cannot be treated as compensation. What is received is an interim payment, subject to the final outcome of the dispute, so that it does not have the same character as compensation contemplated by the law relating to capital gains and more particularly under section 45(5) of the Act. Section 45(5) fixes only the year of taxation, so that, where it is taxable, it is taxed in the year of receipt.

Section 46 – Company In Liquidation

Ruby Trading Co. Pvt. Ltd. (Raj)	Section 54EC would have application only where there is an actual transfer and not in a case, where there is only a deemed transfer. Section 46 is a case of deemed transfer and thus capital gain covered by section 46 will not qualify for the exemption under section 54EC.
N. Bagavathy Ammal (SC)	The argument that section 46(2) applies only where money and not a capital asset is received was found to be unacceptable. The market value of agricultural lands should be treated as amounts distributed, because what he received is in satisfaction of the right as a shareholder. The capital asset in question for the assessment of the shareholder is the share and not the land. Thus market value of agricultural land is taxable under section 46(2) in the hands of shareholder.
Girdhardas And Co. P. Ltd. (SC)	The amount distributed in every distribution by the liquidator of a company is to be deemed to be received by the shareholders partly as accumulated profits and the rest as capital, in the proportion which the accumulated profits bore to the capital in the accounts of the company at the commencement of winding up, and that part of the receipt which is attributable to the accumulated profits would be taxable as dividend. The Income-tax Officer has therefore in the first instance to determine the accumulated profits in the hands of the company, whether capitalised or not, and the rest of the capital immediately before the liquidation. He has then to determine the ratio between such capital and the undistributed profits and to apply the ratio to the amount distributed to determine the component attributable to the accumulated profits.
Brahmi Investments P. Ltd. (Gujarat High Court)	Company receiving assets on liquidation of wholly owned subsidiary. Not a case of transfer of asset by subsidiary to holding company but of shareholder receiving assets on liquidation of company. Not a case falling within excluded transfers. Provision of 46(2) applies not only to individual shareholders but also to companies holding shares in other companies.

Section 47 – Transactions Not Regarded As Transfer

TISCO (Bom)	Transfer of shares prior to amalgamation is not one enjoying the benefit of exemption.
Gautam Sarabhai Trust (Guj)	When consideration was paid in shares + debentures + cash is not entitled for the exemption under section 47
Dalmia Ceramic Industries Ltd. (Delhi High Court)	Section 47(iv) and (v) would not regard any transfer of capital asset as between a holding company and a wholly owned subsidiary as transfer for purposes of capital gains tax. Where such assets are subsequently transferred by transferee company the cost should be cost to previous owner. In case of depreciable assets the WDV of transferor should be the cost to transferee.
Hoechst GmbH, (Authority for Advance Ruling)	In the context of the holding company of an Indian subsidiary itself getting amalgamated with another foreign company, there is transfer of the shares in the Indian company as an asset located in India, but such transfer is not regarded as transfer under section 47(via).
Circular 751	Guidelines for the securities landing scheme as approved by SEBI

Section 48 - Computation Of Capital Gains

B. C. Shrinivasa Shetty (SC)	When computational machinery fails the entire chapter fails in case of goodwill of business.
Ganpathi Raju Jogi (SC)	Route permit not taxable on the grounds of B. C. sriniwasa shetty
A. Gasper (SC)	In relation to tenancy rights the question was related to whether there is transfer or not regarding it as extinguishment of the rights there in. Held that it was a transfer but the concept of B. C. sriniwasa shetty was never applied.
Mrs. Pushpa Sofat (Chandigarh) (ITAT)	In case of inheritance of asset indexation shall be allowed with respect to the year in which the previous owner acquired the asset. I.e. where father acquired the property in 1972, son inherited it in the year 1992-93 the base year for the indexation shall be 1981-82 (CII - 100). This case can be applied in case of gift and amalgamation also.
A.R. Krishnamurthy (SC)	Assessee purchased land. Subsequently granted mining lease at a premium. It amounts to transfer of "capital asset" being "right to lease". Date of acquisition of right to grant lease is same as date of acquiring freehold. Cost of acquisition of leasehold right can be determined from cost of land. Fair amount is to be allowed as deduction.
Hindustan Times Ltd. (Delhi High Court)	Where an assessee purchased a property occupied by his employee subject to such tenancy and much later sold the property subject to the same right of tenancy with the assessee receiving the compensation payable to the employee for surrender of tenancy rights, the argument as to whether such receipt was liable to tax in the assessee's hands as capital gains or income, had arisen in CIT v. Hindustan Times Ltd. [2005] 275 ITR 203 (Delhi). Decided that since both the transaction were under tenancy such receipt would be revenue in nature.
Tata Services Ltd. (Bom)	Any right which can be called property will be included in the definition of "capital asset". A contract for sale of land is capable of specific performance. It is also assignable. Therefore, a right to obtain conveyance of immovable property is clearly property as contemplated by section 2(14) of the Act. The entire amount, being the difference between the amount received by the assessee and originally paid by the assessee as earnest money, would be capital gains in the hands of the assessee, subject to deduction on account of legal and other expenses.
V.S.M.R.Jagdishchandra (SC)	Discharge of mortgage is not the cost of acquisition normally but if mortgage was created by the previous owner than it is the cost of acquisition for the assessee.
Gopee Nath Paul And Sons (Calcutta High Court)	Amount paid to discharge self created mortgage is allowable as deduction while computing capital gains. However this judgement needs to be reviewed.
Orient Trading Company (SC)	Exchange of shares when held as stock in trade will amount to business profit and not any capital gains. The difference between the book value and the exchange price shall be subject to the business income or loss as the case may be since it amount to valid transfer.

CITI Bank N.A. (Bom)	Land appurtenant to building has separate identity for the computation of capital gains. Where land is sold separately then building the capital gains in relation to land is to be computed as distinct then that of building. Building in such cases may form part of the block of asset.
Smt. Lakshmi B. Menon (Ker)	Land can be regarded as a capital asset as per section 2(14) of the Act and in accordance with the scheme of the Act, land would be considered as a separate capital asset, even if a building is constructed thereon. Where the land has been held for more than the prescribed period, the gains arising from the sale of land could be considered as long-term capital gains, though the building thereon was a new construction held for a period of less than 36 months. The land and the superstructure can be assessed separately as a “long-term capital asset” and as a “short-term capital asset” for the purposes of capital gain.
Ashok Soi (Del)	Where a property belonged to the assessee's wife and sons, but a part of consideration was made to the father of the assessee in pursuance of an alleged compromise settling his claim against the property on being made a confirming party to the sale deed, the question arose whether such payment would go to reduce the capital gains. Held that it was not a case of diversion of income by means of over riding title and thus capital gains would not arise at all. (not a genuine case of diversion of income)
Bradford Trading Company (Mad)	Where there is reimbursement for settlement of dispute pursuant for transfer of capital asset is part of the full value of consideration. Any such sum is paid on account of settlement of dispute is expense on account of transfer.
Union Co. (Motors) Ltd. (Madras High Court)	Where a seller has a building demolished before handing over the land in a transaction of sale of land, there can be no element of inference of sale of building.
H. H. Sri Raja Rajagopala Thondaiman (Madras High Court)	Where an ex-ruler sold his palace under a merger agreement with the Indian Union at no cost, capital gains was found not assessable.
Mrs. G. Seetha Kamraj (Andhra Pradesh High Court)	Lease premium on the sub-lease agreement and holding that the deposit (non refundable) of Rs. 4,30,000 received by the assessee was a consideration for granting sub-lease of the assessee's rights and not a payment of monthly rent in advance and as such was liable to tax as capital gains.
N. K. Leasing and Construction P. Ltd. (Andhra Pradesh High Court)	For sale of shares the deed of settlement showing surrender of shares in company with covenant not to interfere in management of company was executed. It is an outright sale of shares. Sale having nexus to trading activity of assessee. Excess consideration taxable like and exchange transaction.
Mahesh J. Patel (AT) (Mumbai)	Assessee purchasing entire business in order to obtain share in stock exchange. Sale of business after twelve months. Assessee had acquired share in stock exchange which was incorporated as a company and had sold it. Transaction covered by section 2(42A). Gains assessable as long-term capital gains.
Mrs. June Perrett (Karnataka High Court)	Expenditure incurred wholly and exclusively in connection with transfer. Sale of property received under will. Expenditure incurred on obtaining probate, travel expenses of executors and expenditure on evicting illegal tenant is deductible.

Smt. Suniti Singh (Madhya Pradesh High Court)	In dairy business amount realised by sale of calves. No cost of acquisition. Amount not assessable as capital gains.
G. Saroja (Madras High Court)	No written agreement between assessee and builder. No sale agreement and no sale consideration received during relevant period. No proof that assessee put builder in possession of property. Tribunal holding property not transferred. Order of tribunal based on valid materials and facts not warranting interference.
<u>Section 49,55 - Cost Of Acquisition</u>	
Cost In Case Of Previous Owner Where Transferor Is HUF And HUF Has Received As Gift From Its Member.	<p>1) Kanubhai R. Shah HUF (Bom) 55(3), applies only in cases where the cost for which the previous owner acquired the property cannot be ascertained. More over assessee claimed that cost should be FMV as on that date of assessee becoming owner. Held that 55(3) is not applicable to this case. The cost to assessee shall be nil.</p> <p>2) Harbhagwan (P&H) held that cost should be cost to the last previous owner as mentioned under explanation to section 49 (1). However it seems to be fair that section 49(1) must prevail i.e. cost to the last previous owner must be considered as relevant.</p>
Bharat S. Shah (Income-tax Appellate Tribunal--Mumbai)	Cost of bonus shares can not be average cost.
Jayakumar B. Patil (Income-tax Appellate Tribunal--Pune)	Assessee purchased shares at par and gifted to associations of persons with option to revoke gift after 74 months. Subsequent revocation of gift and sale thereafter. Cost of acquisition is cost to previous owner, i.e., association of persons, ascertainable at nil. section 55(3) does not apply.
Maithreyi Pai (Kar) Mithlesh Kumari(Del) SAS Hotel (P.) Ltd. (Mad)	<p>Interest on borrowings for purchase of shares. Whether constitutes part of cost of acquisition of shares for computing capital gains on sale of shares. ITO disallowing claim on ground that interest already allowed as deduction under s. 57 was justified. However if the deduction is not allowed it can amount to part of the cost of the asset.</p> <p>Interest paid by the assessee on money borrowed for the purchase of an open plot of land constituted part of actual cost. Mithlesh Kumari(Del)</p> <p>What should be accountable as a revenue outgoing cannot be treated as either capital cost or improvement for purposes of capital gains tax. It was in this context, it was held in SAS Hotel (P.) Ltd. (Mad), that urban land tax and corporation tax could not be treated as part of cost of acquisition or its improvement.</p>
Alcan Inc. (AT) (Mumbai)	Purchase of shares in foreign currency. Provision requiring gains to be computed in foreign currency and converted into Indian rupees. Shares purchased prior to 1-4-1981. Cost of acquisition assessee will be entitled to adopt fair market value as on 1-4-1981. Assessee entitled to concessional rate of 10 per cent, u/s 112. Bonus shares allotted prior to 1-4-1981 will have option to adopt fair market value as on 1-4-1981. Cost of bonus shares allotted after 1-4-1981 to be taken at nil.

Section 50 - Depreciable Asset

Common Wealth Trust Ltd. (SC)	There is no option available to substitute the fair market value as on the 1-4-2001 for the depreciable asset because section 55 opens with the words that “for the purpose of section 48,49” Thus where computation is to be made under section 50 which is independent one that option is not available to the assessee
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Section 50B - SLUMP SALE

Garden Silk Weaving Factory (Gujarat High Court)	Where there is slumpsale, there should not be any capital gains computed separately for depreciable assets under section 50.
Premier Automobiles (Bom)	In the case of a slump sale, there is a sale for consideration. That consideration is paid to the transferor-company and not to shareholders. A slump sale agreement is contractual in nature. The only condition in the case of slump sale is that the sale should be for a lump sum sale price. Therefore, in the case of a slump sale, there is a transfer of the entire business activity for a fixed price and sale value is not attributed to individual items of assets. Such capital gains to be computed on that basis. Nowadays such situation will be governed by 50B.
Zuari Industries Ltd. (AT) (Mumbai)	Net worth of assets can never be a negative figure.

Section 51 - Advance Money

Travancore Rubber And Tea Co. Ltd. (SC)	“Advance” under section 51 shall includes deposit made by the purchaser for the due performance of the contract and not forming part of the consideration.
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Section 54 / 54F - Exemption From Capital Gains

Uday S. Kotak (Income-Tax Appellate Tribunal--Mumbai)	The word “purchased” in section 54F cannot be interpreted in a manner to include within its ambit the terms “cost of acquisition” and “cost of improvement”. Amount paid to tenant to vacate the property after the purchase of tenanted property is not allowable as exempt as part of the purchase cost.
Mrs. Prema P. Shah (Income-Tax Appellate Tribunal--Mumbai)	Where an assessee sells a residential property in India and purchases within the permissible time another property in the U. K., the requirement of section 54 for deduction is satisfied. The fact that such acquisition was by way of lease for 150 years or that the property was in the U. K. would not come in the way of relief.
Sumati Chand Kothari (HUF) (Jaipur) (AT)	Out of sale consideration of his residential house, certain amount was invested by assessee in purchase of a flat as well as terrace space under two separate sale agreements bearing same date. Since terrace space being adjacent to said flat could not be used by any one else except owner of that flat, and both flat and terrace were purchased on one date, assessee is entitled for deduction of whole amount invested in purchase of flat including terrace space.
Ketan Bolinjkar (Mum)(AT)	Assessee sold their ownership rights in a property and claimed deduction of certain amount paid to their sister for vacating portion of property occupied by her peacefully. Amount paid to sister was a deductible expenditure from sale proceeds for computation of capital gains.
H.H. Raghavachari (Mad)(AT)	Capital gains arose from sale of property used for residence together with land appurtenant there to. Assessee claimed full exemption on the ground that gains invested in residential flat. Officer restricted exemption on appurtenant land. Since no part of land could be sold independent of building exemption will be available for even the land.
Mrs. Chellammal Sampath (Mad)(AT)	Assessee sold residential house and constructed another house but let it out after occupying it for one year. Exemption could not be denied on the ground that newly constructed house was not occupied for a minimum period of three years.
Damodar Raheja (Mad) (AT)	Assessee purchased flat for purpose of his own residence after sale of his residential house, benefit of section 54 could be denied only because assessee was using small part of said flat as his office.
Anilaben Upendra Shah (Guj)	The relevant date for determining whether sale of flat is long term or short term would be the date on which the member acquires the shares in the co-operative housing society and the date on which the member had sold his shares in the said co-operative housing society.
Gulshan Banoo Mukhi (Mum) (AT)	Where investment is made in more than one house, any one house shall qualify for the purpose of exemption. Any repair expenditure incurred by the assessee will form part of the investment in new asset if it was necessary to make the house habitable. Renovation expense do not qualify for the purpose of exemption. Where structure is not united any one property will qualify for the purpose of exemption.
Ms. Sushila M. Jhaveri (AT) (Mumbai)	Meaning of “a” residential house. Exemption only to investment in single residential house.

P.K. Lahiri (Allahabad High Court)	Section 54 grants the benefit for the transfer of residential house subject to condition of investment in residential house. House transferred must also include land appurtenant. Land appurtenant to the building implies that the ownership of the building and the land appurtenant should be of the same person. If the building is owned by one person and the land is owned by another person then it will be the case of land adjoining the building and by no stretch of imagination can it be called land appurtenant to the said building. Also where the plot is large one admeasuring about 3.5 acres containing a residential bungalow of only 5700 sq.ft., the application of section 54 on the capital gains on sale proceeds of the entire land was obviously not correct, since the adjacent land could not be treated as really appurtenant. In other words the reasonable land would qualify for the purpose of exemption.
Harsutra J. Raval. (Guj)	The expression “for the purpose of his own residence” in section 54(1) would suggest that the benefit of the provision is intended for the new asset which is meant at the time of purchase or construction, to be used for dwelling purposes by the assessee and this will rule out use by way of mere temporary occupation which will not be a use for permanent residence.
Circular 471, 672	Allotment of house in self financing scheme of Delhi Development Authority is a case of construction. Where scheme of allotment of house by co-operative society or other institutions is same as of DDA than it must be regarded as a case of construction.
Circular 538	Section 54 refers to house where income is chargeable under the head house property. However annual value of one SOP is regarded as Nil under that chapter. Yet such house must qualify for the purpose of exemption under section 54.
Beena K. Jain (Bom)	Date of agreement to sale is not relevant. Actual date of sale is relevant for the section 54.
J. R. Subramaniam Bhatt (Kar)	Date of completion of construction is relevant and not the commencement of construction.
Hilla J. B. Wadia (Bom)	Registration of the sale deed is not relevant for the purpose of capital gains
B. B. Sarkar (Cal)	Even when both the condition of purchase and the construction is satisfied than also exemption is permissible.
T. N. Arvinda Reddy (SC)	Consideration in kind is at par with the consideration in cash for this chapter
Phiroze H. Patch (Bom)	Same property reacquired eligible for the exemption since in the opinion of the court the transaction was a genuine one.
K.C. Kaushik V. P.B. Rane, ITO [Bom]	In case the assessee has purchased more than one house/flat within the period prescribed in section 54, it is for the assessee to claim relief against the purchase of any one of the house/flat provided the other conditions mentioned in the section are satisfied.

Investment In More Than One House Whether Permissible Or Not	<p>K. G. Vyas (Bom) ITAT (now not to follow)</p> <ol style="list-style-type: none"> “a” does not mean as one since wherever law intended to restrict the benefit to one property it has expressly said so. In the general clause act while interpreting a statute singular form will automatically mean its plural form i.e. residential house will mean houses also Since intention of the section is to promote investment in the residential house the number of houses does not matter at all. <p>Satish chandra (Del) ITAT</p> <p>Opposite view has been taken that investment must be in one house only.</p>
Smt. Sunita Aggarwal (Delhi High Court)	The Delhi High Court in CIT v. Smt. Sunita Aggarwal [2006] 284 ITR 20 (Delhi) has found that, when the assessee had acquired four portions of property by four different sale deeds, but they all constitute one residential house, where she was residing with her husband and children, the benefit will be available in respect of all.
Sasiklal N. Satra (Income-Tax Appellate Tribunal--Mumbai)	The Legislature has used the word “a” before the words “residential house” in section 54F. It must mean a complete residential house and would not include a shared interest in a residential house.
Circular 743	Taxability of the unutilised balance of capital gains in the hands of legal heirs of the deceased.
Circular 667	When land is acquired and on which construction is made than cost of the land also qualifies for the exemption benefit regarding it as land appertenant there to.
Mrs. Leela P. Nanda (Income-tax Appellate Tribunal--Mumbai)	<p>Assessee purchasing two adjoining flats and converting them into a single residence--not two separate residential houses to be treated as one residential house for purpose of section 54.</p> <p>That the payment of Rs. 1,01,000 made to the brokers was an expenditure incurred wholly and exclusively in connection with the transfer of the asset as provided under section 48(1)</p>
Rajesh Kumar Jalan (Gauhati High Court)	Profits to be used for purchase of residential property or deposited in specified account before date for furnishing income. Date for furnishing income can be date under section 139(4). Unless this decision is accepted by the Revenue, it may not be safe for the taxpayer to rely on this decision and delay the return/deposit. Nor is it safe to assume, that part performance under section 53A should be treated on par with purchase.
Natarajan (Madras High Court)	Sale of residence and purchase of house for residence within stipulated period. Purchase of house in wife’s name and there was finding that income from house was assessed in hands of assessee. Exemption available U/S 54.
Smt. Nargis A. Irani (Income-tax Appellate Tribunal--Pune)	Property is a bundle of rights. Title is different from possession. Right to enjoyment of the property may belong to different persons as co-owned property or belonging to different persons at different points of time, when one holds for life with right to remainder in favour of another. Such transfer of rights is exigible to capital gains. It can not be said that it is sale of house and thus section 54 can not be available.
V. Pradeep Kumar (Madras High Court)	Construction for 54F should not be a symbolic construction. Mere construction by way of extension of the old existing house would not mean constructing a residential house as contemplated under section 54F.

Saleem Fazelbhoy (Income-tax Appellate Tribunal--Mumbai)	Scope of section 54F. Amount spent on making house inhabitable part of investment for purposes of section 54F.
Usha Gupta (Rajasthan High Court)	Sale of residential house and construction of new residence. Deduction under section 54F denied in the absence of documents.
Ipun Mehrotra (AT) (Bangalore)	Net consideration to be invested in specified asset before date of filing return under section 139. 139(4) not specified. Compliance before filing return under section 139(4). Exemption available. Controversial and not to follow.

Section 54 B - Agricultural Land

R. Vijaykumar (Mad)	Benefit not available to person other than individual since the words was is assessee or its parents
Smt. Savita Rani (P&H)	The condition under section 54B is that the land so acquired must have been used for agricultural purposes. Where there is evidence of such use, neither the fact that the assessee's intention was to use it for non-agricultural purposes nor the fact that the land was in a commercial area can come in the way of exemption under section 54B.

Section 54 D - Industrial Undertaking

M. A. Nazeer Cashew Industries (Ker) Hemsons Industries (AP)	Section 54D, which grants an exemption must be construed liberally and the expression "industrial undertaking" occurring in section 54D must be given its popular meaning. An undertaking mentioned in section 54D must be one maintained by a person for the purpose of carrying on his business. The Government acquired the land and building forming part of an ice factory belonging to the assessee. The assessee claimed exemption from tax under section 54D on the ground that he had invested the capital gain in the construction of a lodging house. Held, that the running of a lodge could be said to be an industrial undertaking within the meaning of section 54D. The assessee was entitled to the exemption under section 54D.
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54 EC – Long Term Capital Gain Exemption.

Circular 359	Investment in specified asset out of the earnest money before the actual transfer do qualify for the purpose of the exemption.
Assam Petroleum Industries (P.) Ltd. (Gau)	Capital gain may have been received by the assessee on depreciable assets, if the conditions necessary under section 54EC are complied with by the assessee, he will be entitled to the benefit envisaged in section 54EC.
Smt. Saraswati Ramanathan (AT) (Delhi)	Investment of gains in specified bonds. Investment in joint names. Object of insertion of section 54EC is development of infrastructure. Investment in name of assessee exclusively or joint names not relevant. Funds flowing from assessee so exemption allowable.

55A : Valuers Report

Namita Sarkar (Calcutta High Court)	Valuer report just a piece of evidence. Officer can also reject the report of valuer. However where the Tribunal rejected the valuer's report and made its own estimate without indicating its basis of valuation, the valuer's report is to be preferred.
Rallis India Ltd. (Bombay High Court)	The Assessing Officer becomes functus officio, once he passes an assessment order. A reference to the valuer as regards the value of the property as on April 1, 1981, for purpose of capital gains serves no purpose after the assessment, since such reference is required to be made only for the purpose of computation of capital gains in the assessment.

High Value Exam Question types On Capital Gains

Type 1 (10 Mark Type)	Computation of Slump Sale with tax liability calculations.
Type 2 (6 Mark Type)	Sale of property with stamp duty value on date of agreement being different then on date of actual sale, together with investment in bonds or other eligible exemption of 54 series
Type 3 (6 Mark Type)	Tranaction between holding and 100 % subsidiary.
Type 4 (6 Mark Type)	Sale of listed shares with tax liability calculations.
Type 5 (10 Mark Type)	Computation of income of companies in liquidation.

Deduction Of Tax At Source

Halliburton Offshore Services Inc. (Utt)	In respect of tax deductible items (salary), there can even otherwise be no question of liability for interest under section 234B. Where tax is deductible at source, the recipient is entitled to take into account, the amount that should have been deducted at source in reckoning his liability for advance tax in view of the clear language of section.
Manav Greys Exim (P.) Ltd. (Mum)(AT)	There is no merit in contention that interest under section 201(1A) is not chargeable in a case where payer has not deducted and paid tax at all. Date of payment made by recipient should be considered as date on which tax is actually paid.
Daljit Family Trust (Gau) (AT)	Tax deducted by foreign Government would not be part of income of assessee and, therefore, amount of tax paid should be deducted from gross amount of prize money.
Vinsons (Mum) (AT)	Assessing officer having found that assessee in his capacity as an employer had deducted very negligible sum as TDS from salary of its employees in initial months of year and had deducted very high amounts of tax in last few months, levied interest under section 201(1A) on amount of such tax from date on which tax was deductible to date on which tax was actually paid. Held charging of interest for mere short deduction in initial months was wrong and not justified.
State Bank Of Patiala (P&H)	Employer is not under obligation to investigate in to the affairs of the employee.
Ramchandra A. Datur (SC)	Judgment Debt is not salary and so tax there on is not required to be deducted.
Circular 764	Transport allowance to the employees of central and the state government is part of the taxable salary and thus tax must be deducted thereon considering it as part of the taxable income.
Circular 761	When bank makes the payment of pension it did not deduct the amount of tax since on the grounds that there is no employer employee relationship and tax shall not be deducted. It has been clarified that for the deduction of tax there shall not be employer employee relationship and salary includes the pension and thus banks are under the obligation to deduct the tax there on.
Circular 756	On recommendation of 5 th pay commission salary of the government employees were revised and on the arrears the TDS is required to be deducted by DDO.
Circular 758	On recommendation of 5 th pay commission salary of the government employees were revised and on the arrears the TDS is required to be deducted by DDO.
Ernakulam District Co-Operative Bank Ltd. (TDS) (Ker)	The levy of interest for failure to deduct tax on advance of salary and held that levy of such interest is warranted because it is not only compensatory but also mandatory.

NHK Japan Broadcasting Corporation (Delhi High Court)	The assessee did not deduct tax at source under section 192, in respect of the retention money paid outside the country to the Japanese expatriates working in India. Penalty was levied upon the assessee under section 271C. The Tribunal held that the facts of decided earlier which were affirmed by the High Court were similar to the case of the assessee and that there was reasonable cause for not deducting the tax at source, and accordingly cancelled the penalty.
Eli Lilly and Co. I. P. Ltd.	Accrual of salary of expatriate-executives outside India. No obligation on Indian employer to deduct tax at source. Executives paying tax and also interest. Department not entitled to claim interest from deductor.
Baldeep Singh (P&H)	Meaning of person responsible for paying. For salary the employer, for interest the borrower, for other sum the payer himself.
Ghaziabad Development Authority vs. Dr. N.K. Gupta (National Consumer Disputes Redressal Commission)	Where the purchaser of a flat from the DDA was found entitled to interest for deficiency and delay in handing over the flat under an order from the State Consumer Disputes Redressal Commission, the requirement for tax deduction under section 194A was not applicable because the character of the payment though described as interest fixed at 18 per cent. per annum, was only compensation measured with reference to the yardstick of interest.
Kranti Kumar Saxena (MP)	Where land is compulsorily acquired and the money to be paid as enhanced compensation, is deposited in the execution court and interest is awarded on such compensation, the court is not the person responsible for paying any income by way of interest to the assessee. In terms of sections 194A and 204 the real person responsible for paying income by way of interest is the Land Acquisition Officer/Collector who has money in his possession.
Shankar (Del) (Important – 2003)	In view of the decision of the Supreme Court in Bikram Singh v. Land Acquisition Collector [1997] 224 ITR 551 wherein it was held that the interest received on delayed payment of compensation under the Land Acquisition Act, 1894, was a revenue receipt exigible to tax and section 194A is applicable. The person entitled to compensation would be entitled to a spread over of the income for the period for which payment came to be made so as to compute the income for assessing tax for the relevant accounting year.
New India Assurance Co. Ltd. Vs. Mani (Mad)	The compensation amount which earned interest, because of the delayed payment is liable to be taxed and because of the amended provision, when the interest amount exceeding Rs. 50,000 has been paid by the insurance company, during the financial year, they are bound to deduct the income-tax at source under section 194A of the Income-tax Act, 1961. Thus tax should be deducted only where the interest payment exceeds the limit of 194A.
Thodupuzha Urban Co-Operative Bank Ltd. (Ker)	Agricultural co-operative society is not liable to deduct tax at source on interest on deposits as per 194A(3).

Viswapriya Financial Services & Securities Ltd. (Mad)(AT)	Company was engaged in providing financial services to its customers/investors including funds management and asset securitization. According to schemes floated by it, monies received from investors were to be invested by fiduciary and custodian, appointed by assessee, so that a monthly return of 1.5 per cent could be paid to investors. Investors were also entitled to accumulate profits under schemes. It was contended by assessee that it was only fund-manager and entitled to only management fees. Therefore, assessee was liable to deduct tax at source under section 194A on payments to investors made by it.
Circular 478/485	For winning from lotteries exemption under section 10(3) is to be considered. The winning is to be considered after deducting amount paid to commission agents.
Commercial Corporation Of India (Bom)	Lottery means Prize against Price. I.e. element of purchase must be present. When agent is entitled to winning on unsold tickits and got the prize. Then it can not be subject to TDS u/s 194B.
Director Of State Lotteries, Assam (Gau)	The character of receipts in the hands of the agent is different from the one in the hands of the subscriber to the lottery ticket. Prize money in the hands of the agent forms part of his business income and therefore not liable for tax deduction under section 194B.
Iqbal Chand Khurana (Del)(AT)	In case of assessee conducting lottery on behalf of State Government amount of prize on unsold tickets, unclaimed prize and unclaimed agents' and stockists' bonus could be said to come to assessee as business income and not in form of winnings from lotteries when he never purchased tickets nor participated in draw nor was entitled for any type of prize and thus source of all these amounts were business transactions.
Deputy Director Of Small Savings (Mad)	Before a scheme can be regarded as a lottery, there must be the element of distribution of prizes which should be by chance or lot and such distribution should be among those who had paid a price for participating in the scheme. Mere gratuitous distribution without any price having been paid by the participants for acquiring the chance and receiving a prize that is ultimately distributed, would not amount to a lottery.
Dharam Prakash Jain (Del) (AT)	Winnings from lotteries, crossword puzzles, horse races, etc. Assessee purchased small saving prize bond of bank of madurai for rs. 500 and won a prize of Rs. 50,000. Said winning by assessee was from lottery and was taxable under section 2(24)(ix) like lottery winnings.
Malayala Manorama Co. Ltd. (AT)	Assessee was distribution of prizes, for those who predicted the results of election and sports. Where skill is involved in poll forecast or World Cup football results, there is the factor of knowledge and skill and not mere chance. Further, where there is no fee for participation, it is not a game purely of chance as a lottery is. Thus it is not to be regarded as lottery winning.
K. R. Syamkumar (Income-Tax Appellate Tribunal--Cochin)	Lottery income is taxed at flat rate. Even where the assessee has no other income, the basic exemption is not available to him. It was so held in K. B. Syamkumar v. ITO [2006] 284 ITR (AT) 218 (Cochin).

Circular 240	Winning under section 194 BB is excess received over the bet. Where assessee bet on two horse A and B for Rs. 100 each and won on horse A. winning would be $500 - 100 = 400$.
Canaan Kuries And Loans (P.) Ltd. (Ker)	Prize schemes by dealers for sale of consumer goods or by kuri companies rewarding subscribers who make prompt payments, by a draw among them can not be regarded as lottery.
BDA Ltd. (Bombay High Court)	Supply of printed labels by itself does not convert a contract of sale simpliciter into a work contract.
Pompuhar Shipping Corporation Ltd. (Madras High Court)	Where an assessee uses transport in pursuance of a contract for transporting coal by hiring it, the payment made by it as hire charges cannot be subject to tax deduction at source. The fact that the hired ships were used for transport does not render the payment as one for payment for hire of transport. Section 194C was held inapplicable in such a case.
Dabur India Ltd. (Delhi High Court)	Section 194C would require tax deduction at source in respect of payments for carrying out any work including supply of labour. In a case of sale of goods, it could have no application.
Circular 004 of 2002	Earlier CBDT had clarified regarding payments made to a hotel for rooms hired during the year would be of the nature of rent ? where in its opinion Payments made by persons other than individuals and Hindu undivided family for hotel accommodation, taken on regular basis will be in the nature of rent subject to TDS under section 194-I. Where earmarked rooms are let out for a specified rate and specified period, they would be construed to be accommodation made available on "regular basis". Similar would be the case, where a room or set of rooms are not earmarked, but the hotel has a legal obligation to provide such types of rooms during the currency of the agreement.
Circular – 736	194 I and 194 J is not applicable to the film distributor and film exhibitor for sharing of proceeds in-between them out of the film.
United Airlines (Delhi High Court)	Landing fee and parking fee for aircraft amounts to rent.
Circular 005 of 2001	Where tax is deducted on the advance rent the TDS credit shall be allowed by spreading it over the years in the ratio of income offered to tax in relation to rental income. Where tax is deducted on the advance rent, and the agreement of the rent is cancelled or the property is sold in subsequent year the entire tax credit shall be allowed in the year in which such agreement is cancelled or the property is sold.
Amalendu Sahoo (Cal)	Where a property is let out to a body of individuals, the limit for 194I should be a collective one. But if it is let out to each member of such body, the limit has to be a split one.
Tejmalbhai And Co. (Income-Tax Appellate Tribunal--Rajasthan)	On the facts of the case even though the customers making payments to the assessee had booked the expenditure in their books of account under the head rental expenditure and deducted tax at source thereon under section 194-I, the income so received was assessable in the assessee's hands as income from business and not as income from rent or income from house property.
Reebok India Company (Delhi High Court)	Amount described in lease agreement as security deposit. Agreement provided for reduction of security deposit every six months by amount of rent payable. Security deposit was in effect advance rent.

Skycell Communications Ltd. (Mad)	“Technical service” contemplates rendering of a “service” to the payer for the fee. Mere collection of a “fee” for use of a standard facility provided to all those willing to pay for it does not amount to the fee having been received for technical services. Cellular services are outside the purview of 194J.
Ahmedabad Stamp Vendors Association (Guj)	This decision points out the distinction between commission/brokerage and discount. Discount is an abatement of cost, where it is given at the time of sale. It is not for services rendered by the purchaser, so as to constitute commission or brokerage. Such discount even including cash discount for prompt payment has been treated consistently for sales tax purposes as abatement of cost, so that sales tax becomes leviable only on the net amount. Bonus, discount or rebate have been all understood as abatement of price. The discount made available to the licensed stamp vendors does not fall within the expression “commission” or “brokerage” under section 194H of the Act.
Around The World Travel And Tours P. Ltd. (Mad)	Discount is normally an abatement of price, so that it would not ordinarily be treated as brokerage and commission, where it is allowed against the list price.
Circular – 740	When interest is remitted by the Indian branch of foreign banking company abroad such H O shall be treated separately for the TDS and deduction of tax is required to be made on such payment.
Transmission Corporation Of A.P. Ltd. (SC)	TDS under section 195 for NRI is to be deducted on the gross payment. Amount of income element in the payment is not relevant for the purpose of deduction of tax at source.
Kanchanganga Sea Foods Ltd. (AP)	Where a non-resident company earns income from leasing its fishing vessels to an Indian company, being remunerated at 85 per cent. of the earnings from the catch of the fish with the right accruing on the catch of the fish, is subject to deduction of tax at source. This decision in Kanchanganga Sea Foods Ltd.'s case is the subject matter of special leave at the instance of the assessee, which has since been granted [2003] 264 ITR (St.) 139.
Mrs. Meena S. Patil (International Taxation) (AT) (Bangalore)	Payments to non-resident for purchase of property. Failure to deduct tax. Deed of sale clearly showing seller non-resident. Purchaser liable to deduct tax at source. Interest for failure to deduct is payable only up to date of payment by seller--sum deductible calculated at rates in force much higher than sum tax actually payable by seller according to assessment order. Interest payable only on sum not paid.

SECTION 206 – Returns Of TDS

Circular 744	When return of TDS is filed by branch office there is no need to file again by the head office of the same company. I.e. every branch can be considered as separate unit for the purpose of TDS procedure. Separate TAN no. can also be allotted for branch. However this procedure is at the option of the assessee.
Circular 796	Computerised chalangans and forms can be used for the purpose of filing the TDS returns provided that they are exact replica of the original form.
Circular 797	Returns of TDS can be filed on the magnetic media, where data must meet the specification and it must not contain any virus.

SECTION 203 – Certificate Of TDS

Circular – 749	When payment is made by the central government to its employees the tax is deducted at source but TDS certificate does not contain the date of payment made to the income tax department because payment to income tax department is made by means of book entry and not by means of banking channel. Assessing officer was not allowing the credit to assessee on the grounds that certificate is defective. It has been clarified that tax credit must be allowed to the assessee.
Circular 785	Where payer of income agreed to bear tax and make the payment net of tax, they refuse to issue the TDS certificate. Clarified that in such a case also TDS certificate must be issued.

SECTION 197 – Lower Deduction Of Tax

Circular 774	When certificate for lower rate of TDS or No TDS is granted such credit must be available on or after the date of issue of such certificate and not before that.
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Refund Of TDS

Circular 790	Where there was termination or modification of the agreement with Non Resident as result there is no liability of TDS or the liability reduces. But earlier the payment was already made. Such monies can be refunded back to the depositor. Since income tax department do not acquire good title to such monies. However such monies will be refunded after adjusting any existing liability of the assessee under the act and the refund will be granted only to the depositor and under no circumstances to the person whose tax was deducted.
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Section 206(C) – Tax Collection At Source

A. Sanyasirao (SC)	<ol style="list-style-type: none"> 1. Not unconstitutional 2. Can not be termed as tax on purchase of goods 3. It is machinery to collect tax 4. Denial of relief has nothing to do with the provision of tax.
Om prakash S.S. & Co. (SC)	License fees paid to government for obtaining license to carry on liquor business is not within the perview of 206(C). However when such license holder places order wit the supplier the provisions of 206(C) are attracted.
Harvansh And Sons (MP)	A perusal of the M. P. Excise Act, 1915, makes it clear that when liquor is purchased from a warehouse, payment of excise duty is to be made at the rate of duty in force on the date of issue. Excise duty is to be paid separately to the State. Hence, tax has to be collected at source on the cost price of liquor excluding the amount paid towards excise duty.
District Excise Officer (Uttaranchal High Court)	Where the amount collected is in the nature of basic licence fee being part of bid money and not consideration for sale of goods, but for parting with a privilege, tax is not collectible at source under section 206C.
Viond Rathore (Madhya Pradesh High Court)	Tax collection at source on specified products is required on the sale price. In ascertaining sale price, excise duty payable cannot be excluded.

Set Off, Carry Forward

<u>Section 70,71 – Inter And Intra Head Adjustment</u>	
Lalita M. Bhat (Bom)	Association of persons is an independent assessable entity different and distinct from its members. Loss of association of persons can be set off only against its own profits and not against profits of its members.
Milling Trading Co. (P) Ltd. (Guj)	Section 70,71 is not optional but mandatory in nature
Chensing Ventures (Madras High Court)	Amount assessed as income from undisclosed sources. The other loss can be set off against such income.
<u>Section 72 – Business Loss</u>	
Brooke Bond India Ltd. (SC)	Dividend on the shares held as stock in trade though chargeable under the head other sources but is still the in the nature of business income. Nature of income is to be considered for the purpose of set off and carry forward.
Co. Canada Radhaswamy Bank Ltd. (SC)	Bank security held as stock in trade for the banking business if there is any income shall be taxable under the head other sources but in the nature of business income.
Produce Exchange Corporation Of India (SC)	Test of same business – dealer in more than one commodity
<u>Section 72 A – Amalgamation</u>	
Marshall & Sons (SC) (Important - 1997)	Effective date of amalgamation is one stated in the scheme or as specified by the court. The date of sanction of scheme and date of making application to the court is not relevant for the amalgamation. (same should also be made applicable for the purpose of Demergers)

Section 73 - Speculation Business

Circular 13	Different Speculative business must be regarded as one business only.
Circular 23	Speculative loss of the current year should be adjusted against current years speculative profit and then the carried forward speculative losses shall be adjusted. Alternatively carried forward speculative losses shall be adjusted first and then the current years speculative losses. Whichever at the option of the assessee.
Venkateswar Investment and Finance P. Ltd. (AT)	Since the inception of the assessee-company, it was engaged in the business of financing by way of granting loans and advances and earned interest income there from. Thus it can be said that its main business is of granting loans and advances and thus explanation to section 73 is not applicable to this case.
Godavari Capital Ltd. (Hyd (AT))	Section 73 is applicable only in cases where losses are incurred in speculation business. The object of this section is to curb the device being resorted to by some business houses to manipulate and reduce the taxable income by booking speculative losses. This section cannot be invoked in a case where there is a profit from a speculative transaction.
Jindal Exports Ltd. (Income-tax Appellate Tribunal--Delhi)	The loss on sale of shares held as investments cannot be covered by the Explanation to 73, which would have no application in such cases.
Merfin (India) Ltd.(Hyd) (ITAT)	Assesses-appellate company was a member of National Stock Exchange of India and derived income by way of brokerage through purchase and sale of shares on behalf of clients. It also purchased and sold shares on its own account. It described such shares bought and sold on its own account as its investments and claimed that it had incurred loss on the purchase and sale of such shares held as investments. Question of physical delivery is relevant only in the context of section 43(5) only. Even if there is physical delivery, loss may have to be regarded as speculative loss if it is hit by provisions of Explanation to section 73. Assesses was clearly hit by provision of said Explanation. Therefore loss in question was rightly regarded as speculation loss.
Micro India Ltd. (Gauhati High Court)	The Tribunal without discussing whether the assessee-company could prove that its principal business was of granting loans and advances and thus came within the scope of the exception stipulated in the Explanation to section 73, had held that section 73 was not applicable in the case of the assessee-company, by simply relying on the submission made by the assessee. The order of the Tribunal had to be set aside.
Sucham Finance and Investments (I) Ltd. (AT--Mumbai)	Where business activity consisting of purchase and sale of shares has to be treated as speculation business even if the entire business activity of a company consists only of purchase and sale of shares. The entire business will be treated as speculation business.

SECTION 78 – Succession By Inheritance

Madhukant M. Mehta (SC)	After the death of sole proprietor the business was carried on by the legal heirs forming partnership of the same business. Held that the carried forward loss of the proprietor qualifies for the setoff in the hands of the firm.
Rajasthan Rajya Sahakari Spinning And Ginning Mills Federation Ltd. (Raj)	When there is no specific provision like section 72A for companies, that the Legislature has no intention to extend a similar benefit in the case of merger of societies. Section 78(2) also extends the benefit of carry forward or set off of losses only in the case of succession. 78 (2) has no application in case of merger of societies.

SECTION 79 – Private Limited Company

Concord Industries (SC)	Losses shall mean all the losses but excludes depreciation.
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Agricultural Income

Raja Benoy Kumar Sahas Roy (SC)	There should be basic operation on the land itself and there should be subsequent operation in conjunction with the basic operation than only it will qualify for the benefit of exemption. Benefit is available regardless of the crop whether food crop of cash crop. Benefit is not available for the Dairy farming, cheese making, butter making, poultry farming since there is no work upon the land itself.
Bacha F. Guzdar (SC)	Dividend on share is not an agricultural income even if company is having agricultural income.
R.M. Chidambaram Pillai (SC)	Share of profit from the partner ship firm is on account of special profit and thus character of income will retain the same in the hands of the partner which will be agricultural income if firm is having agricultural income.
Circular 600	Computation of total income when there is profit from the export of tea out of India. First compute business income after applying rule 8 and then 80 HHC benefit shall be granted.

Executors, Legal Heirs Etc. Sec. 159, 168

Taxation Of Executor In Case Of Intestate Succession.	Mahamaya dasi (cal) administrator “pendente lite” not to be taxed since has no role to play at all. Usha d. Shah (Bom) Executor must be given the widest possible meaning and administrator must be taxed.
Viswanatha Sastri (Mad)	The legal fees due to the deceased on the date of his death is one of the assets left by the deceased and will be part of his estate and will probably be liable to estate duty, but on the language of s. 168 such arrears of fees cannot be brought to charge as income of the estate. Realisation of the arrears would amount to recovery of part of the deceased's estate.
Abdulgafur A. Mistry (Gujarat High Court)	Will by mother bequeathing certain assets for benefit of her minor grandchildren, will appointing assessee's wife and another as guardians and trustees. Profit income from firm to be divided in equal share and deposited in accounts of each minor. On facts no trust was created. Executor representing interest of minors and depositing business income in each minor's account is not in capacity of trustee but as executor of will. Clubbing of income to assessee by section 64(1)(iii) is not applicable.

Companies In Liquidation Sec. 178

Imperial Chit Fund (P) Limited (SC)	<ol style="list-style-type: none"> 1. Section 178 of the income tax act provides that liquidator of the company in liquidation must provide in books of accounts sum due as well as payable and also LIKELY TO BECOME DUE AND PAYABLE THERE AFTER. 2. 530(1) (a) of the company act provides that only that amount due and payable must only be provided and NOT that are likely to become due and payable. <p>SC resolved the controversy that as per the income tax act the amount must be provided since its intention is to fasten the liability of tax and company law provides for only procedural matter.</p>
Minal Oil And Industries Ltd. (Gujarat High Court)	<p>Preferential payments in favour of secured creditors and workmen have priority over the claim of the Income-tax Department as was held in ACIT v. Official Liquidator of Minal Oil and Industries Ltd. [2007] 290 ITR 643 (Guj) on consideration of the provisions of section 178(3) and 529A of the Companies Act, 1956.</p>

Directors Of Private Limited Companies

K.V. Reddy (AP)	<p>Liability of directors will arise only when tax liabilities can not be recovered from the company and there must be finding to that effect.</p>
Indubhai T. Vasa (HUF) (Gujarat High Court)	<p>Section 179 would hold the directors of a private company to be responsible for the dues of the company on its liquidation. It could, however, be enforced, inter alia, only when the amount could not be recovered from the company.</p>

Mode Of Repayment Of Loan And Deposits

Jagir Singh Balraj Kumar & Co. (P&H)	Where commission agent accepted deposits in form of “AMANAT” on sale of agri-produce. Held 269 SS is not applicable. “AMANAT” can not be termed as LOANS OR DEPOSITS.
Indore Plastics P. Ltd. (MP)	During that year, the assessee-company accepted deposits in cash from the promoter from time to time. However, held that the penalty under section 271D so imposed is to be vacated on the finding that the said payment was not by way of deposit or loan, but towards adjustments of the amount drawn by the promoter from the company’s account.
Manoj Lalwani (Raj)	Where the assessee had taken a loan of Rs. 2.5 lakhs of which Rs. 2.45 lakhs was deposited immediately in the bank to meet the urgent demand for a time bound supply, there was reasonable cause. In such cases, the Assessing Officer has no jurisdiction to impose penalty.
Mrs. Rupali R. Desai (Bom)	Special loan transaction during the course of winding up is a reasonable cause and thus penalty should not be imposed.
Bhalotia Engineering Works Pvt. Ltd. (Jharkhand)	Share application money to be regarded as deposit for the purpose of 269SS, where it was repaid in cash the penalty is imposable. However this judgment needs to be reviewed on the point that share application monies can not be regarded in deposit in any terms.
Kundrathur Finance And Chit Co. (Madras High Court)	Where there is a reasonable explanation for acceptance of cash in violation of the requirement of section 269SS, penalty under section 271D is not exigible as was found in CIT v. Kundrathur Finance and Chit Co. [2006] 283 ITR 329 (Mad),
All India Deaf And Dumb Society (Delhi High Court)	Tribunal had recorded a finding that the funds were not available for meeting day-to-day expenses, and therefore, loans were taken in cash and when the funds were available, the same were returned in cash. This is a genuine case and penalty of 271D / 271E is not to be imposed.
Dewan Chand Amrit Lal (Income-Tax Appellate Tribunal--Chandigarh)	The authority competent to impose penalty under sections 271D and 271E is the Deputy Commissioner (now the Joint Commissioner) and the Assessing Officer does not have the power either to initiate the penalty proceedings or impose the penalty.
Ratna Agencies (Madras High Court)	Contravention of 269SS AND 269T alleged against the assessee did not result in any unaccounted transaction such as lending and repayment and that both lending and repayment were entered in the books of the assessee and the figure involved was meagre and that the same was incurred only for meeting the sudden demand of overdraft account. Thus penalty should not be imposed.
Idhayam Publications Ltd. (Madras High Court)	The transaction between the assessee and the director-cum-shareholder was not a loan or deposit and it was only a current account in nature and no interest was being charged for the above transaction. The deletion of penalty was justified.
Kasi Credit Corporation (Madras High Court)	Penalty under section 271E for repayment of deposits in cash exceeding the prescribed limit can be spared, if the assessee is able to show reasonable cause for the contravention of section 269T of the Act

281/281B

Pondicherry Textile Corporation (Mad)	Where there was transfer of an undertaking in scheme of compulsory acquisition, section 281 can not be invoked to recover tax liability of SICK transferor company from transferee corporation. Sec. 170 also can not be invoked. I.e. compulsory acquisition do not amount to transfer for 281 and 170.
Atria power corporation ltd. (Kar)	Assessee company acquired US \$ 100 million contract which was financed by IDBI and SBI. Charge was proposed to be created on all its assets. Application was made to assessing officer and certificate was granted. Subsequently the certificate was cancelled. Held that such order of cancellation of certificate was not valid since reasons of cancellation was not given. [such certificate of cancellation will be valid if applicant fail to disclose the material facts at the time of making the application.]
Smt. Ramana (P&H) VLS Finance Ltd (Del)	Assessee was owner of two houses. One of the house of transferred by means of gift to the grand son. Assessing officer invoked 281 for recovery of tax dues and regarded gift as void. Assessee opted to attach the other house against the recovery. Held that transfer includes gift for the purpose of 281. Held also that there is no provision under income tax act to debar department to proceed against the house attached first.
Gangadhar Vishwanath Ranade (SC)	Provisions of sec. 281 are declaratory in nature. I.e. no orders are required to be passed. Where department seek to remedy 281 must file a suit to declare the transfer void. 281 will not affect the legal rights of the parties since 281 refers to only void ab the rights of department.
Ilaben Ramanlal Zariwala (Guj) Gaurav Goel (Cal)	Every order of extention must be passed by CIT or CIT must approve it. Such orders or approval must be made after the application of mind. Order of extention of time without inquiring in to why the matter was pending was not valid in the eyes of law. Reasons of extention must be recorded in writing.
Ahmedabad Stock Exchange (SC)	Stock broker card was proposed to be provisionally attached in the scheme of tax recovery. Membership constitute personal permission for the participation in stock exchange. Such permission is subject to rules and regulations. Mere fact that such card can be sold or auctioned by the stock exchange it does not make it a property and could not be provisionally attached u/s 281(B)
Samson John vs. Tax Recovery Officer (Bombay High Court)	Property purchased in minor's name in 1974 and house constructed in 1979-80. No transfer of property to minor within the meaning of explanation to section 222(1). Property could not be attached and sold in recovery proceedings against minor's father.

Disclosure Of Information

Dagi Ram Pindi Lall (SC) Nathuram Weljibhai (Bom)	Any person referred to u/s 138 (1)(b) shall mean any person other than court of law. There is no reference under 138 for the powers of court to summon document from ITO. Thus such powers of the court is not taken away by the income tax act.
H.L. Sibal (P&H)	Where there is several document in one file CIT must exercise jurisdiction for every document of the file and not the entire file. Mearly because several assessee's are processed together in the same file it can not be the grounds of claiming priviledge.
Thavarakkattil Chandri (Ker)	Assessee made application to court of law to summon the documents from ITO. Since 138(1)(b) remedy was not exhausted the petition could not be entertained.

Assessment Of Persons Leaving India

Barium Chemicals (AP)	In case of business connection with non-residents the liability of non-residents falls on both agent as well as principal. Assessing officer followed procedure of 174 by issuing notice on non-residents. That by it self can not be the bar on applying 160 and 163 (assessment in the hands of the agent).
Ramzan (Ker)	Application of tax cleareance certificate is a proof enough of "LACK OF INTENTION TO RETURN BACK TO INDIA".

House Property

Premsudha Exports Ltd. (AT) (Mumbai)	P.	Where property is let and is vacant for whole or part of year. Meaning of "property is let" does not mean that property should have been let in earlier year or should have been actually let in year in question. Property must held with intention to let. Property purchased by assessee in year and record showing steps taken by assessee to let it and property lying vacant despite efforts. Annual letting value to be taken at nil.
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Settlement of Cases

<u>Settlement Commission</u>		
Kuldeep Industrial Corporation (SC)		Assessee made application for settlement in respect of three assessment years. Assessee admitted that no manufacturing was done and losses claimed were untrue for all three years. Also submitted combined computation of income given for all three years. Dismissal of application for one year and admission of application for other two years was misdirection in law. Application for all three years to be dismissed.
P. T. Antony And Sons (Kerala High Court)		Proceeding of settlement commission does not grant immunity from the state laws.
Ajmera Housing (SC)		In Ajmera Housing, the Supreme Court considered the provisions of the said Act with regard to settlement. In the context of Section 245C of the said Act, the Supreme Court observed as under:- "27. It is clear that disclosure of "full and true" particulars of undisclosed income and "the manner" in which such income had been derived are the prerequisites for a valid application under Section 245-C(1) of the Act. Additionally, the amount of income tax payable on such undisclosed income is to be computed and mentioned in the application. It needs little emphasis that Section 245-C(1) of the Act mandates "full and true" disclosure of the particulars of undisclosed income and "the manner" in which such income was derived and, therefore, unless the Settlement Commission records its satisfaction on this aspect, it will not have the jurisdiction to pass any order on the matter covered by the application."

Certain Exemptions

Satish U. Pai (T.) (Kar)	The firm was carrying on business of printing and book-binding. Assessee partner, started independent business of book-binding. Assessee was doing business as individual and no unity of control in regard to businesses of assessee and firm. No transfer of either capital, machinery or any other asset from firm to assessee. Labour employed in assessee's business is different from that of firm. In this case assessee's business is not out of splitting up or reconstruction.
Textile Machinery Corporation Ltd. (SC)	For the reconstruction of an existing business there must be transfer of the assets of the existing business to the new industrial undertaking. A new activity launched by the assessee by establishing new plants and machinery by investing substantial funds may produce the same commodities of the old business or it may produce some other distinct marketable products, even commodities which may feed the old business. These products may be consumed by the assessee in his old business or may be sold in the open market. Such new activity is not reconstruction of business.
Hindustan General Industries Ltd. (Del)	It is no doubt true that in a case of reconstruction there might be a transfer of assets from the old to the new undertaking. But the converse is not true that in every case where there is a transfer of such assets, there is necessarily a reconstruction. It is not every alteration in the mode, method or scope of the activities of a business and it is not every transfer of assets from one unit to another that will involve "reconstruction". The expression is no doubt very wide but it does not take in a case of a company setting up or establishing a totally independent and viable industrial unit for carrying on the same or similar business even though it might be so set up by way of expanding the already existing business.
Menon Impex P. Ltd. (Mad)	The interest received by the assessee was on deposits made by it in the banks. It was the deposit which was the source of the interest income. The mere fact that the deposit was made for the purpose of obtaining letters of credit which were in turn used for the purpose of the business of the industrial undertaking did not establish a direct nexus between the interest and the industrial undertaking and, therefore, the assessee was not entitled to get the benefit of section 10A in relation to the interest.

Assessment of Entities – Part B

Assessment Of Co-Op Society

Circular 722	Merely because the co-operative society in cottage industry makes payment to the third party for the services made available can be no grounds to deny the benefit of 80-O to the society.
Rajasthan Rajya Bunker Sahakari Sangh Ltd. (Raj)	This Court found its way to accept the claim of apex society to the benefit of deduction on the ground, that it was in full control of the manufacturing activities of the weavers, who were members of the primary societies, so that the assessee-society itself could be treated as engaged in cottage industry. Thus the deduction under section 80P(2)(a)(ii) shall be allowed to the assessee society.
Kota Co-Operative Marketing Society (Raj)	When the business of the assessee is segregable for the purpose of exempted income, the Income-tax Officer has rightly restricted the income for the purpose of section 80P(2) which was earned in dealings with the members of the society.
Ganganagar Sahkari Spinning Mills Ltd. (Raj)	For the purpose of making deduction under section 80P, it is necessary to first determine the gross total income in accordance with the other provisions of the Act. This means that the gross total income must be determined by setting off against the income the business losses of the earlier years as required under section 72 of the Act before allowing deduction under section 80P.
District Co-Operative Federation (All)	Section 80P(2)(e) allows deduction of the whole of the income from letting godowns and warehouses for storage, processing or facilitating marketing of commodities. In CIT v. District Co-operative Federation [2004] 271 ITR 22 (All), the issue was whether a cold storage could be treated as a godown or warehouse for the purpose of this deduction.
Jamnagar Jilla Sahakari Kharidvechan Sangh Ltd. (Gujarat High Court)	Where the taxpayer has one indivisible business with part of the income eligible for deduction under 80P the common expense is to be fully allowed.
Udaipur Shahkari Upbhokta Thok Bhandar Ltd. (Rajasthan High Court)	Consumer co-operative society. Society authorised to be wholesale dealer of essential commodities. Society purchasing supplies from food corporation of India to be sold at fixed price. Commission earned not entitled to special deduction.

Minimum Alternate Tax

Apollo Tyres Ltd. (SC)	Section 115J does not empower the Assessing Officer to embark upon a fresh enquiry in regard to the entries made in the books of account of the company.
Kinetic Motor Co. Ltd. (Bom)	It is not in dispute that under the Companies Act both the straight line method and written down value method are recognised. Therefore, once the amount of depreciation actually debited to the profit and loss account was certified by the auditors, it was not permissible for the Assessing Officer to make book adjustments even if there was a change in method of providing depreciation.
Circular 013 of 2001	Advance tax is required to be paid for the companies covered by section 115JB since 115JB is self contained code in itself.
Kwality Biscuits Ltd. (Supreme Court Of India)	The Supreme Court has resolved the controversy regarding the liability to pay advance tax and the consequent levy of interest, if it is so payable, but not paid. The interest of 234B and 234C should not be charged.
Rashtriya Ispat Nigam Ltd., (Authority for Advance Ruling)	Where the statutory provision is silent regarding carry forward of business loss and unabsorbed depreciation after reduction against the current year's profit, the carry forward would be according to the general principles of law and accountancy as applicable for the purpose of carry forward of unabsorbed loss/depreciation under the other Acts. It is not open to the taxpayer to opt for an inconsistent method of accounting.
Usha Martin Industries Ltd. (AT--Calcutta)	A mere provision for bad debt is not an admissible deduction in computation of taxable income. The same rule need not have application in computation of book profits under section 115JB.
Dhanalakshmi Paper Mills Ltd. (AT --Chennai)	Tax on distributed dividend under section 115-O is also income-tax, so that it cannot be allowed as a deduction from book profits.
Malayala Manorama Co. Ltd. (Supreme Court of India)	Jurisdiction of assessing officer is limited to matters specified . No power to rework net profit arrived at by company by consistently charging depreciation at the rates specified in income-tax rules.
GE Capital Transportation Financial Services Ltd. (AT) (Delhi)	Accounting of leases. Lease equalisation charges not part of undistributed profits or capital. Addition in computation of book profit is not permissible.
BASF Aktiengesellschaft (International Taxation) (AT) (Mumbai)	Capital gains from transfer of shares in Indian company. Shares purchased in foreign exchange and capital gains computed in foreign currency. Rate of tax as provided in 115AB, 115AD will be applicable. Benefit of indexation and consequent rate of tax of 10 % not available. 48, 112, 115AB, 115AD

High Value Exam Question types On MAT

Type 1 (16 Mark Type)	Full length tax liability calculation of both Normal Tax and MAT.
Type 2 (16 Mark Type)	Foreign companies with PE in India and MAT tax Liability.
Type 3 (6 Mark Type)	MAT tax credit adjustment of carry forward or set off where tax is paid in foreign country.
Type 4 (9 Mark Type)	MAT calculation of tax liability with certain incomes which are eligible for special rates of taxes, for example companies having Royalty Income / LTCG and also covered by MAT.
Type 5 (6 Mark Type)	Dividend tax liability with grossing up concept.
Type 6 (6 Mark Type)	Dividend tax implication with 2(22)(e) type dividend.

HUF

<i>Hindu Undivided Family – Concepts</i>	
R.Sridharan (SC) Perumal V/S Ponnuswamy (SC)	S a Hindu man married R, a Christian woman of Austrian descent, and a son, N, was born to them. In regard to assessments to income-tax and wealth-tax S claimed the status of a Hindu undivided family for himself and his son, N, contending that the property held by him was ancestral. There was no material on record to show that N was not brought up as a Hindu. S had unequivocally acknowledged and expressly declared that he and his son, N, formed a Hindu undivided family.
C.Krishna Prasad (SC)	"Family" always signifies a group. Plurality of persons is an essential attribute of a family. A single person, male or female, does not constitute a family. A family consisting of a single individual is a contradiction in terms. Section 2(31) treats a Hindu undivided family as an entity distinct and different from an individual. Assessment in the status of a Hindu undivided family can be made only when there are two or more members of the Hindu undivided family.
N.V.Narendranathen (SC)	There need not be at least two male members to form a Hindu undivided family as a taxable unit for the purpose of the Wealth-tax Act, 1957. The expression "Hindu undivided family" in the Act is used in the sense in which a Hindu joint family is understood in the personal laws of Hindus. Under the Hindu system of laws a joint family may consist of a single male member and his wife and daughters and there is nothing in the scheme of the Wealth-tax Act to suggest that a Hindu undivided family as an assessable unit must consist of at least two male members.
Surjitlal Chhabda (SC)	At the time of 1 st creation of HUF there must be more than one co-parcener present.
Pushpa Devi (SC)	Female member cannot blend the property with that of family even if she is the sole owner of the property. This is so because she is not a co-parcener. However she can gift her property to the HUF.
Sandhya Rani Dutta (SC)	Wife and daughters of the sole deceased Hindu male can-not enter in to an agreement to create an HUF of deceased.
Verrappa Chettiar (SC)	Property of HUF on death of sole male member will constitute as that of the family. After the decision in Pushpa Devi's case, the decision in this case would appear to have been superseded on the simple ground that absence of a male member would rule out a Hindu joint family.

Vijayapuri Chettiar (Mad)	The conditions precedent for a valid reunion are (1) There must have been a previous state of union. Reunion is possible only among the persons who were on an earlier date members of a Hindu undivided family; (2) There must have been a partition in fact (3) The reunion must be effected by the parties or some of them who had made the partition; and (4) There must be a junction of estate and reunion of property because reunion is not merely an agreement to live together as tenants-in-common. Reunion is intended to bring about a fusion in the interest and in the estate among the divided members of an erstwhile Hindu undivided family so as to restore to them the status of a Hindu undivided family once again and, therefore, reunion creates a right in all the reuniting coparceners, in the joint family properties which were the subject-matter of partition among them, to the extent they were not dissipated before the reunion.
Chander Sen (SC)	There was a partition between father and son. Thereafter business run in partnership and later on there was death of father intestate. In the books of the firm the amount were standing to credit of father and devolves on son in his individual capacity and not on the HUF of his son. It is not an asset of such HUF. When property is inherited the status of the property depends on the status of the person from whom it has been inherited. I.e. individual property of the father when inherited by son will be the individual property of the son.
Mahendra Kumar Sewti Devi (All)	Where the Tribunal had found that the mother was allocated no portion of the properties under division nor was she compensated in lieu of the loss of her share in the said properties Held, that the partition of the Hindu undivided family was not valid. However contrary views also exist.
M.V.Valliappan (SC)	The provision regarding de-recognition of the partial partition is constitutionally valid since the object of the law behind those provision is to put a check on the tax avoidance.
Amrit Lal (Allahabad High Court)	Members of HUF can divide themselves groupwise. Not necessary to define share of each member of each group. Income-tax officer treating groups as tenants-in-common and including 50 per cent. of income arising from partition in hands of assessee is not proper. Claim of partial partition between various groups upheld and allowed.
Parshottamdas K. Panchal (Guj)	An individual who receives ancestral property at a partition and who subsequently acquires family, but has no male issue, would hold that property only as the property of the family. Under the Hindu law the wife of the coparcener is certainly a member of the family.
R. Kuppayee Vs. Raja Gounder (SC)	Supreme Court decided that there is no reason why gift of immovable property also within reasonable limits in favour of his daughter on the occasion of her marriage or even long after her marriage, keeping in view the total extent of the property of the joint family, should not similarly be valid.
Bhagat Ram vs. Teja Singh (SC)	Hindu female is dying intestate without any childrens. Property inherited by such hindu female from father or mother property would devolve on heirs of father. Property inherited by such Hindu female from husband or father-in-law would devolve on heirs of husband.

Girdhari Lal (Decd.) (All)	When a Hindu dies intestate his self-acquired property becomes ancestral property in the hands of his sons. This is because under Hindu law the property which a person inherits from his father, father's father and father's father's father is ancestral property.
Smt. Meera Prem Sundar (HUF) (Allahabad High Court)	Tribunal was not right in holding that there was a deemed partition and disruption of the Hindu undivided family as per Explanation 1 to section 6 of the Hindu Succession Act where one of the co-parcener dies.

Partnership Firm

<u>Partnership Firm Regarded As AOP</u>	
George Talkies Circuit (Raj)	Where firm was insolvent and business was carried on by the receiver. Held that firm stands to be dissolved and it shall be assessed in the status of AOP.
Ramakrishbna Chit Fund Co. (AT) (Hyderabad)	<i>A deity cannot be sui juris so as to be taken in as a partner of a firm.</i> One of the partners a hindu deity. Deity not represented by shebait. Signature on behalf of deity. Firm not valid. Assessee constituted as association of persons.
<u>Partnership Firm Change In Constitution, Succession And Dissolution.</u>	
Ishwar Bhuvan Hindu Hotel (Bombay High Court)	A partnership between the karta of a Hindu undivided family and an individual member of the family, where the latter is taken in as a working partner is valid.
Har Nath Ram Nath (All) Fazal Hussain & sons (All)	Where minor attains majority it can not be said that valid dissolution has taken place. Nor it is a case of succession of business. When minor was partner he do not bear losses of the firm and when he attains majority he agrees to bear losses as well and since there is a change in loss bearing ratio and thus there is change in constitution of firm. [CBDT instruction No. 1082]
V. Baliah Chetty sons & co. (Mad)	Where there is retirement or admission of partner and at the time of retirement or admission dissolution deed was executed there is a valid dissolution. If the same business is carried on by newly constituted firm it amounts to succession and two assessment is required to be done. Partnership law in such case can not be totally ignored. Mearly there are common partners it can not be the grounds of regarding it as change in constitution.
N. Mavukkarai estate tea factory (Mad)	Four out of the five partners retire. The remaining partner enters in to partnership with outsiders on the same day. Held that it is a case of succession of business and not a case of change of constitution. Old partnership stands to be dissolved and as good as there was proprietary concern and subsequently new firm was constituted. Mearly there was common partners it cannot be the grounds of regarding it as change in constitution.
Vimal and Amar Talkies (MP)	Similar case to N. Mavukkarai estate tea factory (Mad) but held that it was a case of change in constitution of firm and no recourse shall be made to partnership law.

Partnership Firm Amounts Received After The Dissolution.

Excel producton (Ker)	There was succession of firm. Subsidy accrued to predecessor firm and was received by successor firm. Held that 189 applies and shall be taxable in the hands of the predecessor firm.
Paily Pillai & co. (Ker)	There was dissolution of firm. Arbitration award was granted subsequently. Held that 189 do not apply and 176(3A) would be applicable. Even if accrual of income would have been argued the arbitration award would accrue in the year of receipt/ delivering the judgment
Diza Electricals (Ker)	Where sales tax of the previous year is paid after the dissolution of the firm by one of its partner to take over the assets and liabilities of the firm held that in computing the income of the firm such sales tax was allowable as deduction.
Star Andheri estate (Bom) Banyan and berry (Guj)	189(1) must be assessed in the hands of the firm where income relates to the period prior to the dissolution. 176(3A) in the hands of the person who receives it since it relates to the period after the dissolution of the firm
A. L. A. Firm (SC)	Upon the dissolution of the firm the partners of the firm having revalued the stock-in-trade for the purposes of mutual adjustment which was the only basis on which the real rights of the partners, it was untenable for them to contend that the valuation should be on some other basis for income-tax purposes. The stock-in-trade had been valued at market price, the surplus had to be reflected in the profits of the firm and had to be charged to tax.
Sakthi Trading Co. (SC)	As a result of death of one of its partners the firm was dissolved and reconstituted with remaining partners. As the business of the firm was never discontinued but was taken over on succession by another firm, the closing stock of the assessee firm had to be valued at cost or market price whichever was lower.
M. Kathiresan (Madras High Court)	Conversion of proprietary business into partnership business. Stock need not be valued at market price.

Partnership Firm Computation Of Income 40(b)

Kalyanji Ravji & Co. (SC)	Capital for the purpose of 40(b) shall include the fixed as well as current capital. 40(b) shall apply when there is payment of interest made by firm to the partners. In case there is any payment of interest by partner to firm 40(b) is inapplicable.
Architectural Associates (Hyderabad Bench (Appellate Tribunal))	Section 40(b) provides for deduction of interest and salary paid to partners to the extent stipulated in the partnership deed, but not exceeding the parameters laid down under section 40(b). Calculation of interest must be made on reasonable and consistent basis.
Mysore Bangles Works (Kar)	Commission paid to one of the proprietary concern of a partner is same as paid to partner and thus subject to 40(b)
Heastie V/S Veith & Co. (CA)	Rent does not mean salary, bonus, commission, or remuneration
Chitra Kalpana (AP) [1988] Reported Before Yoganand Textile (Guj)]	40 (b) applies for the services that are part of the obligation of the partner i.e. if there is no obligation of the partner than 40 (b) does not apply. Firm paid to partner A 25000 and to partner B 15000 on account of story writing and direction of a movie held that 40 (b) does not apply since there was no obligation to provide to firm by the respective partner.
Yoganand Textile (Guj) 1993	Partner is not an employee of the firm 12, 13 of the partnership act do not entitle partners any remuneration 40 (b) does not bifurcate an obliged work and un obliged work if proprietor gets work done through some body else than expense is allowable but if he himself does that work than cant claim the amount as deduction the partner to firm is in same capacity as that proprietor. Thus reimbursement of expense will be subject to 40 (A) (2) but can not be subject to 40 (b).
Trilok Nath Mehrotra (SC)	When member of the HUF is partner in a firm as representative capacity than the salary for special services would always be his individual income unless it can be linked with the amount of investment made in that firm.
Rasik Lal And Co. (SC)	Firm paid commission to a partner a HUF where Karta was partner in the representative capacity, held that payment can not be regarded as payment to the HUF and disallowance of section 40(b) applies since it is payment to partner for the firm. It would be individual income of the assessee partner. It can not be said that he is legally a partner but in reality he is not because he is required to pay the money beck to the members of the HUF as per the terms with the other members of the HUF.
CIT Vs. Parthasarathy Naidu (G.) And Sons (SC)	There were two partnerships constituted by different partnership deeds carried on different businesses. Though they had the same partners their shares were different. It was clearly specified that the business of one partnership shall not be deemed to be part and parcel of the other. There was no inter-lacing or inter-locking between the two firms. Thus the assesement of both the firms can not be clubbed.

B.S. Sundaravadivel Mudaliar And Sons (Mad)	This court found that in view of section 171, the partial partition has to be ignored and that the joint family should be treated as continuing for income-tax purposes not only for assessment of the income of the joint family, but also for purposes of section 40(b).
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High Value Exam Question types On FIRMS

Type 1 (16 Mark Type)	Full length tax liability calculation of both Normal Tax and AMT. Interest to partners on capital account and current account. Interest on loan to partners subject to 40(b) One of the partner retired and there is also adjustment of section 78. Set off of depreciation and business loss together where 40(b) book profit can only adjust depreciation.
Type 2 (16 Mark Type)	Computatio of firms income where partner is HUF (representative capacity)
Type 3 (9 Mark Type)	Presumptive income and Firms with tax liability and interest calculations.
Type 4 (9 Mark Type)	Computation of firms income where one of the partner is minor, and remuneration is provided to minor partner.

Association Of Persons

Mohamed Noorullah (SC)	O, a Mohamedan, who was carrying on the business of manufacture and sale of beedies of a particular brand, died intestate leaving as his heirs, N a son by his predeceased wife, L his widow, and his four children by L. The widow L and one D carried on the business after the death of O. Held, that the business was the business of an association of persons. None of the partners wanted to break the unity of control of the business or its continuity and the business was of such a nature that it could not be carried on without such consensus. The income was the income of a business which was carried on as a single business by the consent of all the parties.
Ganesh Chhababhai Family Trust (Gujarat High Court)	Settlor creating trust for benefit of her twelve grand children but naming forty-five trusts as beneficiaries instead of twelve grand children. Tribunal finding trust created for carrying on business and not a genuine trust. No infirmity. No finding that twelve grand children of settlor opted to join together for purpose of conducting business. Tribunal holding assessment to be in status of association of persons at maximum marginal rate is incorrect. Tribunal to determine as to who is correct person and in whose hands income to be taxed.
Shivsagar Estate (SC)	The income from property held by 65 co-owners had to be assessed separately in the hands of the individual co-owners and not in the hands of an association of persons.
Meera & Company (SC)	Business of deceased was carried on by his widow and three minor children. Held that it can be assessed in the status of Body of Individuals.
Indira Balkrishna (SC)	Test of AOP. There shall be joint efforts to produce income. Where co-widows as co-heirs derive income out of the inherited properties it can not be assessed in the status of AOP.
Arumugham Chettiar (Mad)	A worker of cycle shop borrowed 50 paise against 25 % charge on the lottery prize money. There was a winning on the same lottery of Rs. 17.5 Lakhs. Held that winning can not be assessed as an AOP. Since there was no element of purchase of tickets for earning of income.
Kulwant Singh And Co. (Punjab And Haryana High Court)	Merely because an excise licence was stated to have been issued in the name of three persons, who constituted a firm with effect from April 1, it could not be said that a firm or an association of persons had in fact come into existence prior to the said date.
Atchaiah (SC)	There is no option to assessing officer to assess the income in the hands of members of the AOP. Thus where income is of the AOP it must be assessed in the status of the AOP only.

High Value Exam Question types On AOP

Type 1 (10 Mark Type)	Full length tax liability calculation of both Normal Tax and AMT. Interest to member on capital account and current account. Interest on loan to member subject to 40(ba)
Type 2 (10 Mark Type)	Tax liability calculations per 167B @ MMR and AOP is also having other special rate income say LTCG.
Type 3 (6 Mark Type)	Where one foreign company is member of AOP, share of member is determined and tax liability calculations.

Assessment Of Public Trust

Circular 100	Trust can borrow the money and can apply it for its object. In future years repayment of said borrowing will be regarded as amount applied for the object.
George Forana Church (Ker)	Word applied is of wider import than of expenditure. Word expenditure means disbursement, To Pay, To Spend however applies means Put to Practical use. Where by which word applied do not mean that money must go out irretrievably. Thus capital expenditure on acquisition of the building will also be within the ambit of word applied.
Ganga Charity Trust Fund (Guj)	<ol style="list-style-type: none"> 1) Income derived from trust property must be determined on commercial principals and in so doing so, all outgoings including outgoing by way of income tax paid by assessee trust must be deducted and only the surplus available for the application must be considered. 2) I.e. net receipt after taking into account the necessary expenditure for the earning the income must considered for the accumulation. For the purpose of section 11(1) (a)
Institute Of Banking (Bom)	Normal depreciation can be considered as a legitimate deduction in computing the real income of the assessee on general principles or under section 11(1)(a).
Maharana Of Mewar Charitable Foundation (Raj)	<ol style="list-style-type: none"> 1) There is no provision under section 11(1)(a) that income must be applied in the year in which it has arisen. 2) According to the circular issued by the Central Board of Direct Taxes dated January 24, 1973, if a trust wants to spend more money on its objects, it can take a loan and the said loan can be repaid out of the income of the subsequent year and the payment of the said loan out of the income of the subsequent year would amount to application of income for object under section 11(1)(a) of the Act. It will not hold good when earlier trust has utilised money out of the corpus and excessively applied.
Delhi Stock Exchange Association Ltd. (SC)	General public utility must be carried out with the obligation to do so under the act [registration of the trust], thus if said activity is done without the obligation than section 11 benefit can not be available to the assessee.
Hyderabad Race Club Charitable Trust (AP)	The licence to run races and betting itself could be treated as property and the said property was obtained with the consent of the club and with the licence granted by the Government of Andhra Pradesh. The term “property” itself had widest import for income-tax purposes and was inclusive of holding a licence. The income derived by the trust for the relevant assessment years was from property held under trust and, as such, it was exempted under section 11.
Thanti Trust (SC)	Donation by book entry is valid. As there was no challenge on the part of officer as regards the genuineness of the credit entry.

<p>Expenditure Under Section 11(1) (A) Includes The Capital Expenditure. See Also Forana Church's Case Above.</p>	<ol style="list-style-type: none"> 1. Thiruppani trust (SC) (1998) The condition to invest in government securities [as per section 11(5)] applies only if the 25 % or more income is to be accumulated. [now new section 13 requires that whole of the trust funds shall be invested in the mode specified u/s 11(5).] 2. Expenditure for the purpose of section 11(1) (a) includes the capital expenditure for the object of the trust.
<p>Concept Of The General Public Utility</p>	<p>Trust was created for the benefit of personnel of the police department benefit of section 11,12,13 applies since the employment is not personal i.e. government employment Andhra Pradesh police welfare society (AP). Association was formed to promote the welfare of its caste members. Caste members constitute the section of the public since the general public utility does not mean whole of man kind. Since services was not an personal one it enjoyed the benefit of section 11,12,13 Ahmedabad Rana Caste association (SC). Association of the employee was formed to facilitate the suffered families in the event of death of an employee. Benefit was to be given as per the rules and regulation of the association and at the discretion of the managing committee. It was held that 11,12,13 benefit do not apply to the assessee since it was the private services to be provided Bel employees death relief fund and service benefit fund association (Kar)</p>
<p>Jodhpur Chartered Accountants Society (Raj)</p>	<p>Where the predominant object of the Chartered Accountant society was dissemination of knowledge and education of commercial laws and tax laws for the benefit of the general public to inculcate a sense of responsibility towards the nation and foster law abiding citizens. The objects clause emphasised the propagation and dissemination of knowledge about auditing, accounting, direct and indirect taxes by holding seminars, conferences, workshops, etc. The fruits of such seminars would be available to the public at large. Therefore, the society was not for the benefit of a small group of individuals and it was also not only for the benefit of members but to promote awareness and education of the commercial and tax laws for the general public without any profit motive. Thus the activity of society is for general public utility.</p>
<p>Bharat Diamond Bourse (SC)</p>	<p>Where the main object is to promote export of diamonds and develop the trade and export market and for this purpose a diamond bourse is established to facilitate liaison between industries in India and abroad, so that there could be a modern diamond market, the object is one of general public utility and the company, which was formed for the purpose is entitled to exemption. In the case of a charitable institution formed as a company, every signatory to the memorandum of association has to be treated as founder, so that money lent to such a person without adequate security constitutes a benefit, which would deprive the exemption for the company.</p>

V.G.P. Foundation (Mad)	By giving advance to a sister company which merely retained the money with it for the whole of the year, it was not possible to give the assessee trust the benefit regarding the amount as having been applied for a charitable purpose. There had also been contravention of section 13(1)(d) read with section 11(5), inasmuch as the trustees were also directors of the company and that company had the benefit of this amount throughout the year.
Shri Radha Krishna Temple Trust (Allahabad High Court)	A charitable trust or institution is barred from making any investment in a concern in which a person is an interested person as defined under section 13(3). Where the trust is in receipt of gift of shares in a company, there is no violation of section 11(5) since the funds of the trust were not invested in violation of section 11(5).
Thiagarajar Charities V/S Addl CIT (SC)	<p>General principles for the object of the trust</p> <ol style="list-style-type: none"> 1. trust enjoys the exemption if it is incorporated for the object of general public utility. 2. It need not necessarily mean that it should not make any profit however such is not possible that income = expense 3. Main object of the trust is medical relief, poor relief, and education in order to achieve that it was authorised to educational institution and other like institutes and to engage in carry on, help, aid, assist, and promote rural reconstruction, cottage industry, and incidental activity there to. 4. One year cottage industry was stated and with idea to promote the simple enterprise for the poor section, said business was not the object to do so but incurred to attain its main object of the trust 5. Held that it was an activity of the general public utility and benefit of 11,12,13 is available to the assessee.
Sacred Heart Church (Gujarat High Court)	Where loans were advanced to economically weaker persons for housing purposes in pursuance of the objects of a public charitable trust and such amounts are subsequently written off, the amount so written off could be treated as application for the object of general public utility.
Keshav Social And Charitable Foundation (Delhi High Court)	The assessee had furnished the list of donors. The Assessing Officer disallowed the claim stating that the assessee could not furnish details regarding the donors and that it was just a way of introducing unaccounted money into the books of the assessee trust and thus treated the amount as cash credit under section 68 of the Act. Held that action of the officer in treating the donation as income is not justified.
Indo-American Society (Income-Tax Appellate Tribunal--Mumbai)	It has been decided that the fact that the elite class benefits from a public activity is not a bar for exemption u/s 11.

High Value Exam Question types On Charitable Trust

Type 1 (10 Mark Type)	Computation of Income of Trust With the adjustment of Annonymous donation With tax liability calculations where certain amounts are applied for the benefit of related party. With depreciation adjustment.
Type 2 (10 Mark Type)	Computation of Income of Trust With the adjustment of over accumulation of income and time allowed for over accumulation has expired.
Type 3 (6 Mark Type)	Computation of Income of Trust With adjustment of application of income on capital account. With interest dividend income.
Type 4 (6 Mark Type)	Capital Gains for Trust with re-investment of Income.

Assessment Of Private Trust

K.R. Patel (SC)	When does executor wears the robe of an trustee depends upon the construction of the will. What one has to see is when function as an executors come to an end.
T.A.V. Trust (Ker)	Under the scheme of 161(1A) It is only the income by way of profits and gains of business that can be charged at the maximum marginal rate. Any other interpretation would be against the very scheme of the Act and further such an inter-pretation will make the provisions of sub-section (1A) of section 161 unconstitutional.
L.R. Patel Family Trust (Bom)	Revenue sought to tax trustees as an AOP on sale of capital assets, the sale proceeds of which were to be distributed to the beneficiaries, on the ground that such distribution entailed dissolution of the AOP covered by section 45(4), which required the association to be assessed on capital gains by adopting the market value. Is not acceptable and assessment has to be in the hands of each beneficiary in terms of section 164 and that section 45(4) would have no application in view of the fact that there is no case for presuming an AOP.
P.N. Bajaj (Mad)	The trustee is assessable as a representative assessee in the same status as that of the beneficiary and not as AOP. The question of including income in the hands of the beneficiary for rate purposes should not have arisen.
Manik Chandra (Utt)	Where the trust for the benefit of the minor was a partner, was a mode adopted for avoiding application of section 64(1)(iii) providing for clubbing of the income of the minor child from the benefit of partnership. Such issue has now to be decided in the light of section 64(1A) and the clubbing of the income is to be done. But this decision is on the grounds that a right gets vested in the minor, while only the payment is deferred. On this interpretation, the fact that the clubbing is automatic is accepted.
Poonam Trust (Punjab And Haryana High Court)	A discretionary trust is liable to tax at the maximum marginal rate, unless it is a trust created under a will, such trust being the only trust created by the will. The High Court found that in the case of a sole beneficiary, the share stands specified, so that the maximum marginal rate provided for trusts, where shares are not specified, would have even otherwise no application.
Smt. Comilla Mohan (Allahabad High Court)	Assessee creating two trusts by transferring certain shares. Sole beneficiary of each of two trusts neither in existence nor identifiable at time of creation of trusts. Such trusts is a valid trust although the share of the beneficiary is not known.
Kamalini Khatau (SC) Moti Trust (SC) Important On Record – 1999	Section 164 says that if share is not determined than shall be taxed at maximum marginal rate, section 166 says that direct assessment is not barred. Thus when share is not determined can the direct assessment be made Held yes.

High Value Exam Question types On Private Trust

Type 1 (10 Mark Type)	Income of Trust where Partly it is for Private purpose and Partly it is for Charitable purposes.
Type 2 (6 Mark Type)	Tax Liability calculation where trust is having business income and it is subject to MMR.

ITA Powers and Procedure – Part C

Powers of ITA

<u>131 Powers Of Discovery And Inspection</u>	
Rajiv Agrawal or his Successor in office (Gujarat High Court)	Seizure of cash by police and no satisfactory explanation regarding cash was given. It was requisition by IT. Authorities. Such amount should be handed over.
Amway India Enterprises (Ker)	Section 131(1A) grants power to the Assessing Officer to issue summons for discovery or inspection or for production of books of account. Which can be exercised without the pendency of proceedings.
<u>132 Powers Of Search And Seizure</u>	
Motilal Kishangopal Thanvi (Bom)	There is no provision for reward in Income-tax Act or Rules. Reward is an ex gratia payment and is in absolute discretion of Department. Right to receive reward cannot be enforced in a court of law. Reward fixed by Income-tax Department and accepted by income-tax informer subsequently informer could not claim higher payment.
E. Sankaran (Kerala High Court)	Quantum of informers reward is to be decided after considering relevant factors like nature and extent of help, risk and trouble undertaken, quantum of work and quantum of extra taxes levied and recovered.
Mahesh Kumar Agarwal (Cal)	The income-tax authorities found that the assessee and his brother were doing business under the same brand name but separately. According to information gathered, documents, papers, undisclosed cash, jewellery and other assets were likely to be found at his residence. It was stated that there was likelihood that papers relating to his unconnected income and assets may be found at his residence. Is not a valid reason for carrying out search operation.
Ajit Jain (SC)	Mere information from CBI that cash was found in possession of individual is not “information” for purposes of authorising search. Search based on such information is not valid.
Dr. Sushil Rastogi (All)	Dental surgeon earning huge income in profession and disclosing same in his return. During search operation there was seizure of articles and cash not exceeding limits prescribed in CBDT guidelines. Reasons were recorded under section 132 were only general and based on rumours. Search and seizure illegal.
Seth Brothers (SC)	Power under section 132 is a serious invasion is made upon the rights, privacy and freedom of the taxpayer, the power must be exercised strictly in accordance with the law and only for the purposes for which the law authorises it to be exercised. Keeping services of police officer does not amount to use of excessive force.
Harihar Shah (Gauhati High Court)	Search and seizure. Warrant of authorisation in the name of a particular person and there was a discovery of fixed deposits belonging to third person. Consequent to that search of bank premises and seizure of fixed deposits held to be not valid.

Ushakant N. Patel (Gujarat High Court)	The presumption regarding seized materials is that materials found during search belong to the person in possession and control of the premises under section 132(4A), but such presumption does not extend to the inference that the handwriting in the documents found is also that of the same person. No concealment could have been presumed on the basis of such inference under section 132(4A) of the Act.
District Superintendent Of Police, Chennai Vs. K. Inbasagan (Supreme Court Of India)	Where a search reveals cash or other assets, it is presumed to belong to the person in possession and control of the premises. It is not unusual that it may be under the joint control of more than one person. The search by the Income-tax Department disclosed moneys disowned by the husband, while the wife admitted the same as her undisclosed income and paid tax thereon. The Supreme Court held that since the husband had disowned the assets and the wife had substantiated the same as her own with some corroborating evidence and the entire money was also assessed in the hands of the wife by the Income-tax Department, the husband could not be found guilty under the Prevention of Corruption Act, 1988.
Dr. C. Balakrishnan Nair (Kerala High Court)	It is indeed extremely difficult for the taxpayer to prove mala fides, since the law would assume that all official acts are bona fide done in accordance with law placing the burden on the taxpayer. In view of the widespread complaints of excessive use of search powers, there should be an administrative remedy like an ombudsman, so that there could be immediate relief, where the assessee has a reasonable grievance, which he can air at the relevant time. After all, search provision itself has been held to be valid only because of various safeguards provided for the searched party under the Act.

132(3) / 132(1)(iii) / Prov 2 to 132(1) POWERS OF SEIZURE.

Punamchand R. Shah (Mad)	Where the department acquired complete control over the valuables in the iron safe and almirah, by having the keys with them and hence the seizure was complete on that date.
Shajahan (M.) (Ker)	Scope of sec. 132(3). There was discovery of bank pass book during search. Order can be issued under sec. 132(3) on bank in respect of amount deposited by assessee. Since it is “not practical” to seize a bank balance.

132(4A) Presumption As To Books And Documents

Daya Chand (Del)	Cash credits were found in the books which were seized. Assessee provides no satisfactory explanation. Amount of cash credit were added to total income under section 68. Presumption under section 132(4A) does not absolve assessee of explaining source of cash credit. Additions made are justified.
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132A Power To Requisition Books Of Accounts.

Abdul Khader (Ker)	The warrant issued under section 132A of the Act by the Commissioner of Income-tax and the seizure of the gold from the custody of the court was not valid. [The CIT was directed to return the gold seized forthwith to the Judicial First Class Magistrate Court.]
Samta Construction Co. (MP)	Power to requisition can be exercised only in respect of documents or assets "taken into custody" by officer or authority under any other law. Document or asset must have been taken against will of person in possession or control of same. Bank draft given by customer to bank for clearance is not "taken into custody". Order of requisition of such bank draft is not valid.

133 Powers To Call For Informations

Kechery Service Co-operative Bank Ltd. (Ker)	Notices were issued to certain co-operative societies and co-operative banks calling for information such as a list of persons, who had made term/recurring deposits of Rs. 50,000 and above as on date along with their complete postal addresses, etc. powers of 133(6) were rightly invoked.
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<u>133A Powers Of Survey</u>	
Reckitt And Colman Of India Ltd. (Cal)	Powers under sections 131 and 133A are not confined to proceedings under Chapter XIV for regular assessment. Since tax deduction at source (TDS) is also a requirement of law is also extends to TDS matters.
Shyam Jewellers (All)	Sealing of business premises cannot be done under the provisions of section 132, 133A or any other provision of the Income-tax Act.
Dialust (Bom)	Assessee was exporter of diamonds. Search operations under FERA showed stock of diamonds that was not disclosed. There was no evidence that diamonds did not belong to assessee. Subsequent survey operation to verify the validity of Jangads and then addition of value of diamonds as undisclosed income of assessee is justified.
Durga Kamal Rice Mills (Cal)	During the course of survey operation separate books were found. There was a difference in opening and closing balance of capital account. The amount of difference between the closing balance of the preceding year and the opening balance of the current assessment year was treated as undisclosed income. The additions were justified.
Vinod Goel (P&H)	The survey ordered at the premises of the assessee under section 133A and conversion of the said operation into a search operation on the basis of the authorisation given by the Additional Director is legal.

High Value Exam Question types On Powers of ITA

Type 1 (4 Mark Type)	Survey or Search conducted in Mid night. Survey or Search conducted for non profit making organisations.
Type 2 (4 Mark Type)	Impounding of books documents and its time period and release of the same.
Type 3 (4 Mark Type)	Power of summons and call for voluminous records.
Type 4 (4 Mark Type)	Special survey during Function / ceremony / event
Type 5 (4 Mark Type)	Questions on deemed seizure, difference between seizure and deemed seizure.

Assessment Procedure

<u>142(1) (i) – Return In Response Of Notice</u>	
Ranchi Club Ltd (SC)	Interest not leviable for the failure to comply with notice of 142(1)(i).
<u>Section 139 (4B) – Returns Of Political Parties</u>	
Common cause a registered society (SC)	Political parties not filing the return of income as per section 139 (4B) have violated the statutory provision of law.
<u>Section 139 (4) & 139 (5) – Belated And Revised Returns</u>	
Kumar Jagdish Chandra Sinha (SC)	Voluntary return under section 139(4) cannot be revised. Section 139(5) permits a later or revised return to be filed only when the return was filed under section 139(1). Filing of revised return is not contemplated under section 139(5) in cases governed by section 139(4).
Niranjan Lal Ram Chandra (ALL)	Revised return can be revised and the time limit is still the same
Radhey Shyam (ALL)	Basic condition regarding the revision that the mistake must be discovered and there must be genuine omission or a wrong statement. Omission means unintentional mistake or neglect on part of the assessee. However the fraud or intentional mistake is not covered by section 139(5). Cases of concealments and false statements are not covered - Section 139(5) will apply only to cases of ‘omission or wrong statements’ and not to cases of ‘concealment or false statements’.
Andhra Cotton Mill (AP)	Under section 139(5), a revised return can be filed only if there is an omission or wrong statement in the original return. Where in the original return, the profit and loss account containing the provision for depreciation had been filed. In the circumstances, it could not be said that there was any wrong statement in the original return which could enable the assessee to file a revised return under section 139(5).
Panchamahal Steel Ltd. (SC)	Revised return filed after the draft assessment order is not a valid return since assessing officer has done every thing that he was suppose to do and all procedure at that time is over.
Ramesh Chand Gupta (AT) (Lucknow)	After availing of several adjournments to produce books of account, the assessee filed a revised return. Based on the revised return, his assessment was completed under section 143(3) of the Act. Held that such assessment was validly done in light of revised return validly filed. Although there should be no penalty for such bonafide revision in course of the assessment.

Section 139 (9) – defective returns

Rai Bahadur Bissessarlal Motilal Malwasie Trust (Cal)	The defects specified in 139(9) are illustrative and not exhaustive. The object of 139(5) and 139(9) is to get removed and rectified all defects and omissions in the return filed, whether they are discovered by the assessee or by the Assessing Officer. Both the provisions are enabling provisions inserted to facilitate reflection of correct income in the return and assessment thereof. These provisions can be simultaneously applied.
Circular 281	A return of income is to be regarded as defective only if it contains any of the defects referred to in the Explanation to section 139(9). In other words, the provision in section 139(9) will not be applicable in the case of returns which do not contain any of these specified defects.

Section 140 – Sign On The Return

Kesab Chandra Mandal (SC)	There must be physical contact between the person and the signature or mark. When signature by an agent is permissible, the writing of the name of the principal by the agent is regarded as the signature of the principal himself. But this result only follows when it is permissible for the agent to sign the name of the principal.
Narandra Kumar J. Modi (SC)	Junior member of the family can sign the return of the income in his capacity as being KARTA since he can be KARTA of the family. However sign can be put only with the consent of the other members of the family.
Rudra Bilas Kisan Sahkari Chini Mills (Allahabad High Court)	Where co-operative society had accepted return signed by the accounts executive could be treated as agent of society.

Section 143 (3) – Scrutiny Assessment

Regency Express Builders P. Ltd. (Delhi High Court)	Mr. G, employee of assessee, receiving notice served on assessee. Representative of assessee attending hearing before assessing officer and obtaining adjournment. Thereafter, in presence of assessee / representative, assessment completed. The assessment done is justified.
Flotech Welding And Cutting Systems Ltd. (Bom)	The Assessing Officer's intimation treating return as invalid for the reason reasons that there was discrepancy in books and auditors report in special audit was struck down by the High Court.
Vijay Kumar Rajendra Kumar And Co. (MP)	In deciding whether a special audit is required it is the subjective satisfaction of the authority concerned to decide on the basis of the material on record, as to whether the accounts are complex in nature, or not. The word "complex" is not defined in the Act and, hence, it has to be given its wide and liberal meaning.
Gujarat Electricity Board (SC)	It is not open to the Revenue to issue intimation under section 143(1), after notice for regular assessment is issued under section 143(2).
Pt. Lashkari Ram (All)	Officer called for some information of assessee say pass book, and some investment in to assets. Assessee appeared before him on the next day. Assessment order was passed on the next day of the hearing. From a perusal of the order, it was clear that it was not a speaking order. Thus any revised return thereafter is valid.

Smt. Ritu Devi (Mad)	The Department served notice dated say March 30, on the petitioners only in the afternoon of that day. However, the petitioners were directed to forward their comments so as to reach the office by 10.30 a.m. on the very next day. Failing which when the assessment was done it was against the principles of natural justice.
Lunar Diamonds Ltd. (Delhi High Court)	Where the assessee claims that he has not received the notice, it is for the Revenue to prove such service.
Bhan Textiles P. Ltd. (Delhi High Court)	Service of notice after time stipulated under section 143(2). assessment not valid.
Goetze (India) Ltd. (Supreme Court Of India)	It is possible for an assessee to claim relief, which he had omitted to claim in the return of income by filing a revised return, if it is in time. However in case of scrutiny assessment assessee could have also wrote a letter and claimed the relief.
Shanker Lal Ved Prakash (Delhi High Court)	Notice under section 143(2). Presumption that notice served within time. Burden on assessee to prove that there was no service within time.
Areva T and D India Ltd. (Madras High Court)	Difference between nullity and irregularity in order. Assessee participating in reassessment proceedings and failure to consider objections and failure to issue notice under section 143(2). Reassessment order not void but irregular.

<u>SPECIAL AUDIT</u>	
Jharneshwar Nagrik Sahakari Bank Maryadit (Madhya Pradesh High Court)	The opinion formed inter alia on the basis of the seized and impounded material to appoint an auditor under section 142(2A) could not be said to be improper in the peculiar facts of the case. The direction was valid.
U. P. Financial Corporation (Allahabad High Court)	Where the assessee himself is unable to furnish information required and would need several months to comply while discrepancies in the accounts have been pointed out by the statutory auditors, the special audit in such circumstances cannot be questioned as held in U. P. Financial Corporation v. Joint CIT [2006] 280 ITR 100 (All).
Welspun India Ltd. (Bombay High Court)	Assessee requested extension of time to submit special audit report of section 142(2A). Subsequently filed writ petition challenging order for special audit. Decided that such writ petition is not maintainable.
Atlas Copco (India) Ltd. (Bombay High Court)	The law makers while enacting section 142(2A), empowered the Assessing Officer to direct the assessee to get the accounts audited by a special auditor. The Legislature, should ensure that such power is not abused, provided safeguards are kept.
Sahara India Mutual Benefit Co. Ltd. (All)	The assessee petitioner had more than 1,200 branches and a large number of depositors disclosed the complexity of the accounts. It was a matter of satisfaction of the authorities concerned and they had arrived at a definite conclusion on the basis of available material and exercised their powers under section 142(2A).
Swedeshi Cotton Mills (All)	In order to direct the special audit CBDT guidelines is not necessary since complexities of the accounts to be considered in the opinion of the assessing officer
West Bengal State Co-Operative Bank Ltd. (Cal)	Special audit cannot be ordered in a routine manner. The Assessing Officer should examine the books of account and form an opinion, that the accounts are complex and require special audit. The Commissioner too should apply his mind before according sanction. An inference that a special audit is required cannot be lightly formed, where the accounts of a co-operative bank has already been subject to co-operative audit.
Living Media Ltd. (SC)	Assessee submitting details running into about thousand pages before the assessing authority. This prima facie supports the formation of the opinion by the assessing authority for conducting special audit under section 142(2A) of the Act.
Indian Aluminium Co. Ltd. (Cal)	It has been held positively that intimation under section 143(1) is not a substitute for scrutiny under section 143(2). All the same, where both the notices are issued on the same date, there is redundancy. 143(1) intimation will be assumed to be redundant.

Assessment Order

Kalyan Kumar Ray (SC)	Order must specify the tax liability and total income and need not be on a standard page or a format
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Section 144 - Best Judgement Assessment

State Of Orrissa V/S Shri B.P. Singh (SC)	Merely because the material is not reliable on the record does not allow one to pass the arbitrary orders.
Brij Bhusanlal Parduma Kumar (SC)	<p>Government contractors and was executing the works contract when the best judgement assessment was effected by rejecting he books of accounts ad hoc amount shall not be taken as profit but</p> <ol style="list-style-type: none"> 1 Total value of the contract 2 Less the material supplied by the government <p>Is the relevant value to be taken for the purpose of calculating the GP since profit cannot accrue on the value of material supplied by the government at the agreed price. Since best judgement assessment is not an Ad-Hoc assessment. The normal accounting policies can not be ignored.</p>
C. Velukutty C/S State Of Kerela (SC)	<p>Guesswork should not be wild but reasonably connected to available material. Though there is an element of guesswork in a 'best judgment assessment', it should not be a wild one, but should have a reasonable nexus to the available material and the circumstances of each case. Though the section provides for a summary method because of the default of the assessee, it does not enable the assessing authority to function capriciously without regard to the available material.</p>
Swedeshi Polytex (SC)	<p>If the chartered accountant nominated by the Commissioner to audit the accounts of the assessee under section 142(2A) declines to undertake the audit for a frivolous reason, obviously the assessee cannot be held responsible and there is no default or failure to comply with the directions issued under section 142(2A) on the part of the assessee so as to attract the provisions of section 144 for making a best judgment assessment.</p>
Khemchand Ramdas (Sin)	<p>The show cause notice does not take away the right of appeal in cases where an assessee upon whom an assessment has been made ex-parte does not challenge the assessment itself, but only challenges his liability to be assessed in the capacity in which he has been assessed.</p>

Section 147 – Income Escaping Assessment

Basics	
Comunidado of Chicalim (SC)	Where the assessment is challenged on the grounds that no reasons are recorded in writing. High Court must call for and examine the reasons.
Trustees Of HEH Nizam's Supplementary Trust (SC)	Unless original return of income filed has been disposed off, notice for the re-assessment can not be issued on the assessee.
Sun Engineering Works (P) Ltd. (SC)	Proceedings are for the benefit of revenue only. Since the proceedings under section 147 are for the benefit of the revenue and not an assessee, and are aimed at gathering the 'escaped income' of an assessee, the same cannot be allowed to be converted as 'revisional' or 'review' proceedings at the instance of the assessee, thereby making the machinery unworkable. "such income" under section 147 means income escaped only and not any other income. 1. Loss can not be set off against the income escaped 2. No beneficial assessment can be made for the assessee 3. Re-assessment is not an appeal 4.Can not reagetate any claim
Selected Dalur Band Coal Co. (P) Ltd. (SC)	Letter based on the letter of chief mining officer on the inspection together with the employees is a valid assessment.
Sanghvi Swiss Refills P. Ltd. (Bombay High Court)	Assessee engaging in manufacture of ball pens and refills as also ink. No new information available with assessing officer regarding income escaped assessment. Assessing officer not considering out of raw materials production of ink and waste in production of ink as also in filling of refills. No reasons to believe assumption of jurisdiction and issuing notice. Reassessment invalid.
Piaggio Vehicles P. Ltd. (Bombay High Court)	Depreciation on goodwill granted in original assessment. contradiction discovered subsequently between tax audit report and return of income regarding date of acquisition of goodwill. Notice for reassessment was valid.
Abdul Khader Ahamed (Kerala High Court)	Letter of commissioner informing assessing officer of requisition of gold seized by police from assessee. Direction to issue notice for reassessment and take proceedings in accordance with law-. Assessing officer independently applying mind to facts, recording prima facie belief and reasons therefor before issuing notice is not a case of acting under dictates of superior officer. Thus reassessment valid
Mavany Brothers (AT) (Panaji)	Transfer of theatre property to developer. Right given to developer to demolish existing structure and carry out development of construction of new commercial complex. Valid partnership constituted and property shown as its asset and outgoing partners paid amount on their retirement from firm. Cost of construction certified by developer not challenged. Cost of acquisition taken by authorities not challenged. Reassessment valid.
Indian Express Newspapers (Bombay) P. Ltd. (Bombay High Court)	Statement of third party that loan to him from assessee was not genuine. Retracement of statement and subsequent death of third party. Notice based on such statement not valid.

Issue Of The Notice Of The Income Escapement

Fateh International (Income-tax Appellate Tribunal--Mumbai)	Notice issued under section 143(2) but assessment not completed under section 143(3). Notice under section 148 is not valid.
Herbs India Ltd. (All)	While it is not open to the assessee to straightaway call upon the Assessing Officer to disclose or indicate the reasons on the basis of which the notice was issued under section 148(1) the Assessing Officer is obliged to disclose the reasons once the proceedings assume quasi-judicial character.

Condition After The Assessment Of 4 Years From The End Of Assessment Year

Lakhamani Mewal Das (SC)	Interest paid to creditors were allowed as deduction. Subsequently information was obtained that creditors were name lenders. Based on the information the re-assessment proceeding initiated are valid. Disclosure of material and facts by producing all books, bank statement does mean that all disclosure has been made. In case of loan taken from name lenders the income escaping assessment was justified
Canara Sales Corporation (Kar)	Scope of duty to disclose. Duty to disclose arises only when assessee has knowledge of the facts. Embezzlement by employee and inflation by him of purchase account discovered by assessee subsequent to original assessment, reassessment on the ground that assessee had failed to disclose inflation of purchase account is not valid.
IBM World Trade Corporation (Bom)	Condition precedent for notice under section 147(a) is failure to disclose material facts must be deliberate. There was inadvertent error in the allocation of expenditure which was voluntary disclosed. Income arose as a consequence of such error and tax on such income was paid on self-assessment. Held that there is no failure to disclose material facts and notice under section 147(a) not valid. [facts are covered by Prov 1 to 147]
Raymond Woollen Mills (SC)	Information obtained by the revenue in the subsequent year is valid information based on which reassessment proceedings can be initiated. Assessee valued stock not inclusive of duties and direct manufacturing cost which resulted in low inventory valuation. Held reassessment was valid.
Chuggamal Rajpal (SC)	Action taken on the letter of CIT regarding the bogus loan was not justified since the statutory provision are taken lightly. I.e. reason to belief must be that of the officer
Coca Cola Export Corporation (SC)	There was an over remittance out side India as per the provision of the FERA and RBI issued letter to verify the remittance and assessing officer issued the notice under section 148 to make the reassessment held that no valid reassessment could take place since both the act operate in the saperate field and acts are not inter linked.

Andhra Bank Ltd. SC)	Bank changed method of accounting in respect of interest on securities on account of difficulties. Excess on sale of securities was also claimed as capital receipt. The change was accepted by ITO and assessments was made allowing the claim. Later on assessment was reopened to disregard the change. It was a case of change of opinion and reopening held not valid.
Purshottam Das Bangur (SC)	Assessment was completed accepting claim to loss on sale of shares on basis of value quoted on stock exchange. Subsequently officer received letter of deputy director of investigation giving information that company prospering at relevant time and low stock exchange quotation was owing to manipulation. This letter is information from which ITO could have reason to believe income escaped assessment. Notice issued on next day after receipt of letter from deputy director does not preclude application of mind by ITO. The notice of re-assessment is valid.
P.V.S. Beedies Pvt. Ltd. (SC)	Assessing officer granted the deduction under section 80G overlooking the fact that 80G certificate had already expired. This was pointed out by internal audit party of income tax department. Reopening of a case on the basis of a factual error pointed out by the audit party was permissible under law. Therefore, the reopening of the assessment was valid.
Darshan Singh (P&H)	The proceedings under section 147 had been initiated solely on the report of the Valuation Officer. The proceedings were not valid. However if the reference earlier would have been made pursuant to which action would have been taken could be justified.
Dass Friends Builders P. Ltd. (Allahabad High Court)	The reopening based on the reason that there was defect in accounts is not valid. As the information was based on presumption and on extraneous and irrelevant considerations.
Raunaq Finance Ltd. (Raj)	In the original assessment the proof of acquisition of asset was submitted. The depreciation there on was claimed. Subsequently officer believed that the said proof may not be genuine. And so issued notice for the re-assessment. Held that such notice is valid.

Section 154 - Rectification Of Mistakes

Hind Wire Industries (SC)	The word "order" in the expression "from the date of the order sought to be amended" in section 154(7) was not qualified in any way, it did not necessarily mean the original order. It could be any order including the amended or rectified order.
Volkart Bros (SC)	A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may be conceivably two opinions. A decision on a debatable point of law is not a mistake apparent from the record.
Bombay Dyeing And Mfg. Co. Ltd. (SC)	When there is retrospective amendment in the law rectification is permissible provided it is in the time frame of 4 years
Model Mills Nagpur Ltd. (SC)	Some advance tax was collected illegally and application of writ was made to the high court and high court directed to refund the collection of tax and thus it enjoyed the right of rectification indirectly.
V.R. Soni (Cal)	Once the decision of the supreme court is available than one can not say that two view point is available. Based on the decision of supreme court any action taken under section 154 is justified.
Geo Miller And Co. Ltd. (Cal)	The Supreme Court does not lay down the law. It only interprets the law, so that once there is an interpretation from the apex court, the law should be so understood from the inception of that law. All the decisions contrary to such interpretation become erroneous. It is for this reason that the Income-tax Department considers itself entitled to correct closed matters, so as to bring them to conform to such interpretation by resorting to power of rectification under section 154 or by re-opening back assessment under section 148, if within time. But if some further investigation is required before decision of the Supreme Court could be applied, rectification would not lie.
Hero Cycles (P) Ltd. (SC)	Rectification under section 154 can only be made when a glaring mistake of fact or law committed by the officer passing the order becomes apparent from the record. Rectification is not possible if the question is debatable. Moreover a point which was not examined on facts or in law cannot be dealt with as a mistake apparent from the record. Assessee in the original assessment claimed the weighted deduction for the foreign sales promotion expense which was disallowed in the scrutiny assessment but then was proposed to be allowed in 154 held that since the matter was debatable it can not apply
South India Bank Ltd. (SC)	On purchase and sale of securities in course of business of banking when interest was paid for broken periods and were allowed as deduction in assessment cannot be rectified as a mistake apparent from the record u/s 154.
Arihant Industries Ltd. (Pun & Har)	Proceedings under section 154 for rectification cannot be initiated after the Assessing Officer has issued notice under section 143(2) to the assessee.

D.S. Srinivas (Kar)	The assessee claimed depreciation on motor vehicle in terms of 32(1). It was accepted. Even in the regular assessment after verification of the books of account, statements and other particulars filed by the assessee, the claim was allowed by the officer. Thereafter a notice under section 154 was issued to withdraw the depreciation on the ground that the assessee being a hirer was not liable to claim depreciation. Is not acceptable.
Vijay Mallya (Cal)	Section 154 empowers the income-tax authority to rectify a mistake apparent from the record. The mistake contemplated under section 154 must be a mistake apparent on the face of the records. It must be obvious, clear and patent. Where is issued relating to residential status is debatable it section 154 can have no application.
Thirumalai Fertiliser and Co. (Madras High Court)	Rectification of mistakes must be obvious. Question whether section 44AE was applicable to assessee was debatable so rectification proceedings are not valid.
India Cements Ltd. (Mad)	It is well established that the jurisdiction for rectification is not available, where the matter to be rectified is debatable. In respect of sales tax collected but not paid, on the inference, it was found to be debatable and that, therefore, it could not be subject matter of rectification under section 154.
Circular 669/581	<ol style="list-style-type: none"> 1) If evidence is brought in at the later point of time [even after 143(1) (a) or 143(3) intimation / orders] with the application of the rectification that can be entertained. Where there was no breach of statutory provision of law by non submission of documents at the original point of time. 2) This is an specific circular for the cases of 43B. When the proof of payment of tax was submitted later on with the application of 154 it can be considered and appropriate orders can be passed. (Circular 669)
Mewat Zinc Ltd. (AT) (Delhi)	Rectification of intimation cannot be made after issuance of notice under section 143(2).
Rajiv Gupta (AT) (Chandigarh)	Carry forward and set off is permissible only if determined pursuant to return filed within time prescribed. Assessment permitting set off of long-term capital loss wrongly permitted to be carried forward. Mistake apparent from record and rectification permissible.
GTC Industries Ltd. (AT) (Mumbai)	Mistake can be rectified on application by assessee. Even after issue of notice under section 143(2). So long as intimation not cancelled by court or appellate authority.

Section 246 - Appeals To AAC

Rai Bahadur Harduotray Motilal Chamaria (SC)	<ol style="list-style-type: none"> 1. One must see case from the point of view of its taxability and not from the incidental point of view. 2. Assessee withdraw the 250000, 150000, 30000 from the bank account at Calcutta and transferred to branch at Bihar for the payments. Addition was made considering that it was not possible to transport said amount in one day was not justified.
Whether Other Sources Of Income Can Be Assessed By AAC	Shapoorji pallonji mistry (SC) 1962 [not applicable now] No new sources of income can be assessed that was not before the ITO. Nirbheram Daluram (SC) 1997 [applicable now] Additional source of income was debated and added in form of Hundi held that was allowable since jurisdiction under section 251 of AAC is not restricted to matters before ITO
Can Additional Ground Be Raised	Gurjargravurus (P) Ltd. (SC) 1978 [not applicable now] No additional grounds can be raised. Jute corporation of India Ltd. (SC) 1991 [applicable now] Additional grounds can be raised because it could not be raised in front of ITO because liability of the purchase tax on just was defined properly

Section 252 - Appeals To ITAT

Bimal Kumar Anant Kumar (Allahabad High Court)	Additional evidence can be filed along with an application stating the reason for filing such additional evidence. A party cannot file any additional document as a matter of right which was not before the authorities below. An application has to be filed seeking leave of the Tribunal to bring on record the additional evidence.
S. Nelliappan (SC)	Additional grounds can be entertained by the ITAT

Section 263 - Revision

Gulam Rasool (MP)	The operation of sections 147 and 263 is somewhat similar and it is the Income-tax Officer who under section 147 and 148 of the Act can reopen the assessment on account of the income escaping assessment. As against this if the Commissioner under sections 263 of the Act finds that the assessment order is prejudicial to the interests of the Revenue, then he can reopen the issue. Therefore, virtually, both these provisions are for reopening the assessment one at the Income-tax Officer level and other at the level of the Commissioner. Both can invoke their power after the assessment order, but both are not exclusive of each other.
Chunnilal Onkarmal (MP)	The assessment order was rectified under section 154. The original assessment was held erroneous and prejudicial and proceedings under section 263 were initiated by the Commissioner of Income-tax. On a reference of the question whether the Commissioner had jurisdiction to revise held that when the power of revision was exercised the order was not in existence. On that day, there was no order which could have been considered as erroneous and prejudicial to the interests of the Revenue because that order was superseded by the order of rectification. The order of revision was not valid.
Malabar Industries Co. Ltd (SC)	“Prejudicial to the interest of the revenue”, every loss due to revenue consequent to the orders passed by the officer can not be treated as Prejudicial to the interest of the revenue. For e.g. where assessing officer has two alternate option to follows and he prefers one than 263 can not be applied.
Paul Mathews and Sons vs. (Ker)	It was after verifying the account books and various materials gathered in the survey and after considering the offer made by the assessee that the Income-tax Officer had exercised a judicial discretion in the matter while completing the assessment. Subsequently CIT invoking power under section 263 is not justified.
Vincast Engineering (Allahabad High Court)	Retrospective amendment can be the reason to invoke the powers of section 263 by the CIT.
Associated Food Products P. Ltd. (Madhya Pradesh High Court)	The orders were passed by the officer in very short time. However provisions of the law was applied correctly. Thus CIT must not invoke 263.
Ashok Construction Co. (Allahabad High Court)	Scope of order which is erroneous and prejudicial to revenue u/s 263. There was failure to comply with compulsory audit of accounts. Also there was failure to initiate penalty proceedings. The credit wrongly given for tax deducted at source based on certificates dated outside assessment year. For which CIT took action u/s 263 and held that order of officer was erroneous and prejudicial to revenue. Revision proceedings were valid.
Smt. Lila Choudhury (Gau)	Order of revision without considering explanation is not valid.
Hilltop Holdings India Ltd. (Calcutta High Court)	Intimation of section 143(1) is not order and so it can not be subject matter of 263.

Sohana Woollen Mills
(Punjab and Haryana
High Court)

Order should be erroneous and prejudicial to revenue. Commissioner cannot initiate revision proceedings on the basis of an audit objection. Tribunal finding no error in assessment order so order of revision not valid.

Section 264 - Revision

Coimbatore Cotton Mills Ltd/ (Mad)	It is a settled position of law that once an assessment order has been made, the subject of an appeal to the Commissioner of Income-tax (Appeals) or to the Tribunal, the Commissioner's revisional power under section 264 comes to an end and it cannot be exercised at all while the appeal is pending or even after it is disposed of. Appeal and revision are not concurrent remedies.
C. C. Jayaram (Ker)	'subject to appeal' must be read as 'subject to effective appeal' and thus if appeal was dismissed because of non payment of tax or if it was time barred then reference can be validly resorted on to.
Hindustan Aeronautics Ltd. (SC)	CIT under Section 264 has no authority to pass an order which was subject matter of appeal, even if the matter referred is different than what is decided in the appeal. This remains the same irrespective of whether appeal is filed by department or assessee. This is not the case under section 263 since it expressly grants such benefit.
N. Seetharaman (Madras High Court)	Specific and precise direction by commissioner. Assessing officer cannot expand revisional order. Assessing officer bound by direction of commissioner.

High Value Exam Question types On Assessment Procedure

Type 1 (4 Mark Type)	Circumstance under which special audit can be conducted.
Type 2 (4 Mark Type)	Time limit calculation of completion of assessment with period of limitation.
Type 3 (6 Mark Type)	Concept of merger and partial merger, for 264 it is full merger.
Type 4 (3 Mark Type)	Re-assessment reasons there of .
Type 5 (4 Mark Type)	In appeal additional evidence to be admitted conditions.
Type 6 (4 Mark Type)	In appeal additional grounds to be admitted.
Type 7 (4 Mark Type)	Powers of stay of tribunal
Type 8 (3 Mark Type)	Tribunal decision by majority

International Taxation – Part D

Non resident taxation

<u>Foreign Collaboration Contracts / Royalty / TF</u>	
Toshoku Ltd. (S C)	It could not be said that the making of the entries in the books of Indian concern amounted to receipt, actual or constructive, by the non-resident in India. They could not, therefore, be charged to tax on the basis of receipt of income, actual or constructive, in the taxable territories.
Standard Triumph Motor Co. Ltd. (S C)	The credit entry of the royalty to the account of the appellant in the books of the Indian company amounted to receipt of the royalty by the appellant and it was accordingly taxable. The method of accounting adopted by the non-resident was irrelevant.
T.I. and M. Sales Ltd. (SC)	Indian company was canvassing orders for non-resident company. The Indian company do not have authority to accept offers on behalf of non-resident. The contracts entered into, delivery made and prices received were outside India. Held that there is no business connection. The Indian company is not assessable as agent of non-resident.
Performing Right Society Ltd. (SC)	Royalties received from the Government of India under the agreement for broadcasting from the stations of All India Radio accrued in India.
In Re Millennium IT Software Ltd (AAR)	S. 9(1)(vi) & Article 12 define the term “royalty” to include any payment for the use of, or the right to use, a “copyright” of scientific work. Software programmes are a “copyright” and are protected under the Copyright Act, 1957. As the software programme is a “copyright”, any payment received for transferring the right to use it is “royalty” as defined in the Act. The argument that there is a distinction between a “copyright” and a “copyrighted article” is not acceptable because there is no such distinction made either in the Income-tax Act or the Copyright Act. The use of software involves the use of the copyright; the software cannot be divorced from the copyright itself. Accordingly, even a fee for the use of a “copyrighted article” is assessable as “royalty”. (Microsoft/Gracemac 42 SOT 550 (Del) followed; Dassault Systems 322 ITR 125 (AAR) not followed; Tata Consultancy 271 ITR 401 (SC) distinguished)
Wavin (India) Ltd. (SC)	The technical information given to the Indian company was "non-exclusive" and "non-transferable". In other words, this was not an out and out sale of technical know-how. The assessee was merely given a non-exclusive and non-transferable right of user of the technical information. The expenditure was deductible.

Hitachi Zosen Corporation (Mum)(AT)	While computing total income for purpose of section 115A, provisions of section 70 could not be ignored and loss from one source of income set off against income from another source under same head of income. Therefore, where assessee foreign company gained profit from ONGC contract while suffered loss from SPIC contract, loss would have to be set off against profit for calculating income by way of fees for technical services.
<u>Lottery Winning</u>	
Mrs. Roshan D. Nariman (Mum) (AT)	Assessee received Premium Savings Bond in London as a gift from her cousin, a British citizen, who had purchased it in assessee's name in. It had fetched prize in draw subsequently which amount was credited in assessee's account on. Held that such amount is winning as contemplated under section 115BB.

Business Connection

Barendra Prasad Roy (SC)	<p>Business connection will also include the professional connection.</p> <p>The word "business" is one of wide import and it means an activity carried on continuously and systematically by a person by the application of his labor or skill with a view to earning an income. The Courts are of the view that in the context in which the expression "business connection" is used in section 9(1) of the Act, there is no warrant for giving a restricted meaning to it excluding "professional connections" from its scope.</p> <p>In the case of Barendra Prasad Ray v. ITO, the contention of the appellants was that a professional connection cannot amount to a business connection attracting section 9(1) of the Act. The Court held that the word "business" is one of wide import and it means an activity carried on continuously and systematically by a person by the application of his labour or skill with a view to earning an income. The judges were of the view that in the context in which the expression "business connection" is used in section 9(1) of the Act, there is no warrant for giving a restricted meaning to it excluding "professional connections" from its scope.</p>
R.D. Aggarwal and Co (SC)	<p>The expression 'business connection' limits no precise definition. The import and connotation of this expression has been explained by the Supreme Court in their judgment in C.I.T. v. R.D. Aggarwal and Co .which still holds good. Although the question whether a non-resident has a 'business connection' in India from or through which income, profits or gains can be said to accrue or arise to him within the meaning of section 9 of the Income-tax Act, 1961, has to be determined on the facts of each case but its definitely has given some relief so as do away with the prevalent confusion regarding the term business connection. Generally confusion prevailed in a situation where few transactions of purchases of raw materials took place in India and the manufacture and sale of goods took place outside India, the profits arose from such sales were considered to have arisen out of a business connection in India which was a wrong practice .Later the case of CIT v. Fried Krupp Industries has made the concept even more clear by hinting at “continuity of business” which is essential so as to establish business connections. Therefore the term business connection has been rationalized with the help of the judicial interpretation and been successful to a larger extent in resolving various complications related to transaction and unlike few years back</p>
Fried Krupp Industries (SC)	<p>Mere purchase abroad and use in India is not ‘continuing business’ - The term ‘business connection’ postulates a continuity of business relationship between the foreigner and the Indian. There is no question of continuing business relation when a person purchase the machinery or other goods abroad and uses them in India and earns profit as it was held in CIT v. Fried Krupp Industries .In this case the court looked into the question whether principal to principal transaction amounts to any business connection.</p> <p>Principal to Principal (P2P) transactions are not business connections.</p>

Tata Chemicals Ltd (Bom)	The Supreme Court referred and approved the decision of the Bombay High Court in CIT v. Tata Chemicals Ltd. , wherein it had been held that in order to rope in the income of a non-resident, under the deeming provision, it must be shown by the department that some of the operations were carried out in India in respect of which the income was sought, to be assessed. Therefore the court declared that in respect of principal to principal transaction there is no question of any business connection
Hazoor Singh (P&H)	Income in the hands of the agent of NRI will also include the income of NRI from the undisclosed source.
Premier Automobiles (SC)	Liability to make the payment of advance tax is also on the agent of NRI and it does not violate the article of equality of constitution of India. Liability of pay advance tax is on all the person including the agent of NRI.
R Lines Ltd. (AT) (Mumbai)	Who is an agent of non resident and under what circumstances. Person accepting status of agent of non-resident on his own or as a result of action initiated by assessing officer. Such person can only be an agent. Assessment confined to incomes which are deemed to accrue or arise in India under section 9(1) and not all incomes of non-resident. Reassessment against agent of Mauritian shipping company's global incomes in India is not possible under section 160(1)(i) Provision requiring notice not to be issued beyond two years from end of relevant assessment year is applicable to person who suo motu accepts status of agent of non-resident.
UAE Exchange Centre (AAR)	The liaison office was engaged in downloading information regarding remittances through electronic media and transfer of amounts from the UAE to various places in India for a commission, by getting cheques printed by it in India and sending them to the addresses of beneficiaries in India according to instructions received. Since this service itself was understood as business in view of the continuity of such service, the liaison office was to be treated as permanent establishment. There is a business connection.
Dun And Bradstreet Espana S.A., (AAR)	Payment to a non-resident for information, which is downloaded for Indian customers' use, is not technical fee, because the information, that is paid for, is in the nature of business information and not technology. It is an incident of e-commerce between two independent parties, so that the resident cannot be branded as a branch or sales outlet of the non-resident, so as to constitute a permanent establishment in India, the income being essentially from business.
Cargo Community Network Pte. Ltd. (Authority for Advance Ruling)	Providing access to internet based air cargo portal outside India. Indian subscribers paying fees for access and use of portal for booking cargo with airlines, training subscribers and help connected therewith, such fees arise in India. Fees are royalties and fees for technical services taxable in India. Subject to tax deduction at source.

Speciality Magazines P. Ltd., (AAR)	The applicant, an Indian company, was an advertisement concessionaire, of a non-resident company registered in the UK, which was carrying on the business of publishing magazines from London. As advertisement concessionaire the applicant got 15 per cent. commission on the gross value of the invoices raised outside India directly from Indian advertisers. Held that there is no business connection and Indian company could not be regarded as agent of non resident.
Jay Shree Tea And Industries Ltd., (AAR)	The applicant, a resident company, had taken a loan of US \$ 34,00,000 from R of Singapore. Interest on the same was paid by resident company. Held that interest is taxable in India. However there is no business connection between the resident and non resident.
Rajiv Malhotra, (Authority For Advance Ruling)	The commission income out of exhibition organized in India would, therefore, be taxable in India, as income arising from a “source of income” in India.
ABC Ltd., (Authority For Advance Ruling)	Where the Indian company is permitted to download information from its data base relating to world-wide business information reports for a consideration, the income of the non-resident in such cases is income from business. But such income can not be taxed in India since there was no permanent establishment in India.
Sedo Forex International Drill Inc (Supreme Court Of India)	Where a non-resident enjoys his off-period drawing the salary for such period from the Indian employer, the law as understood thus far was, that the salary for the off-period would be treated on par with the salary for on-period, provided that during the break period they are the employees of the assessee.

Non resident – Computation of Income

<p>LS Cable Limited vs. DIT (AAR)</p>	<p>The clauses in the offshore supply contract agreement regarding the transfer of ownership, the payment mechanism in the form of letter of credit which ensures the credit of the amount in foreign currency to the applicant's foreign bank account on receipt of shipment advice and insurance clause establish that the transaction of sale and the title took place outside Indian Territory. The ownership and property in goods passed outside India. The transit risk borne by the applicant till the goods reach the site in India is not necessarily inconsistent with the sale of goods taking place outside India. The parties may decide between them as to when the title of the goods should pass. As the consideration for the sale portion is separately specified, it can well be separated from the whole. (Ishikwajima Harima 288 ITR 410 (SC) & Hyosung Corporation 314 ITR 343 (AAR) followed; Ansaldo Energia SPA 310 ITR 237 (Mad) distinguished)</p>
<p>In Re Cairn U.K. Holdings Ltd (AAR)</p>	<p>The expression "before giving effect to the 2nd proviso to s. 48" in the Proviso to s. 112(1) pre-supposes the existence of a case where computation of long-term capital gains could be made in accordance with the formula contained in the 2nd proviso in s. 48. It means that the asset must be one qualified for indexation under the second proviso to s. 48. There is no justification in not giving effect to the words used in the proviso. As the 2nd proviso to s. 48 is not applicable to non-residents, occasion to apply the proviso to s. 112(1) does not arise. A non-resident foreign company cannot claim the double benefit of protection against rupee value fluctuation as well as indexation. Timken 294 ITR 513 (AAR) not followed; BASF AG 293 ITR (AT) 1 followed</p>
<p>In Re The Timken Company (AAR)</p>	<p>Though s. 2(17) defines a "company" to include a "foreign company", the context of the definition has to be seen. Income, which does not have a source in India, cannot be made part of the book profits. The annual accounts, including the P&L Account, cannot be prepared as per s. 115JB(2) in respect of the world income and laid before the company at its AGM in accordance with s. 210 of the Companies Act. The speech of the Finance Minister and the Memorandum explaining the provision also become out of sync if the meaning of "company" appearing in s. 115JB is adopted as 'foreign company'. Any other meaning would take away force and life from the true intent of the makers of the Act. The contention of the department that there is no demarcation between a 'domestic company' and a 'foreign company' while applying s. 115JB is not acceptable. As the applicant did not have a place of business in India and was not required to prepare its accounts under s. 594 r.w.s. 591 of the Companies Act, it could not have prepared its accounts in accordance with the the companies Act.</p>

Composite Contract

Alstom Transport SA vs. DIT (AAR) In Re Roxar Maximum Reservoir Performance WLL (AAR)	Though in Ishikawajima–Harima 288 ITR 408 (SC), Hyundai Heavy Industries 291 ITR 482 (SC) & Hyosung Corp 341 ITR 18 (AAR), it was held that that a composite contract was capable of being dissected and it was open to the assessee to raise the contention that parts of the contract should be treated separately for the purpose of deciding whether income from the performance of that part of the contract arose onshore or offshore and that part of the income attributable to offshore transaction cannot be taxed in India, this is no longer good law in view of the larger bench decision in Vodafone International Holdings where it was held that the transaction has to be looked at as a whole and not by adopting a dissecting approach. The basic principle in interpretation of a contract is to read it as a whole and to construe all its terms in the context of the object sought to be achieved. Reading parts of the contract as imposing distinct obligations is not the proper way to understand a composite contract.
Samsung Electronics Co. Ltd. (Bangalore) (AT)	Where the payment is for the sale of rights / goods. It can not be termed as on account of royalty. Generally understood is that royalty is for the use of the rights and not for the sale of rights.
Sutron Corporation, (AAR)	It was inferable that service was rendered by internal arrangement between the applicant with such other concerns constituting division of work and sharing of the profits as between them. However, the AAR made it clear that only such part of the income of the non-resident as arising on sale of equipment, installation and service agreement will be deemed to accrue or arise in India.
Sriram Bearings Ltd. (SC)	Where the foreign collaboration agreement is in two parts, one for sale of trade secrets and the other for technical assistance, the agreement had to be read disjunctively and that the income relating to sale of trade secrets cannot be taxed in India.
Southern Switch Gear Ltd. (SC)	The disallowance of a part of the technical fees and royalty paid as capital expenditure was upheld by the Supreme Court on the ground that the collaboration agreement provided for technical aid even for setting up the factory and not merely for the right to sell the products.

Concept Of PE

In Re Aramex International Logistics Pvt Ltd (AAR)	A “permanent establishment” is something which enables a non-resident to carry on a part of its whole business in a particular country. The Aramex group could not have done business in India without a presence in India. This presence in India can be achieved through an independent entity or through a subsidiary. If the entity is an independent & uncontrolled entity, then there is no PE if the requirements in Article 5(2) of the DTAC are not satisfied. However, if a 100% subsidiary is created for the purpose of attending to the business of the group, the subsidiary must be taken to be a PE of the group in India applying common sense
In Re Booz & Company (Australia) Pvt. Ltd (AAR)	As regards a “permanent establishment”, various factors have to be taken into account to decide a Fixed place PE which inter alia includes a right of disposal over the premises. No strait jacket formula applicable to all cases can be laid down. Generally the establishment must belong to the Employer and involve an element of ownership, management and authority over the establishment. In other words the taxpayer must have the element of ownership, management and authority over the establishment. As regards a “business connection”, the essential features may be summed up as follows: (a) a real and intimate relation must exist between the trading activities carried on outside India by a non-resident and the activities within India; (b) such relation shall contribute, directly or indirectly, to the earning of income by the non-resident in his business; (c) a course of dealing or continuity of relationship and not a mere isolated or stray nexus between the business of the non-resident outside India and the activity in India, would furnish a strong indication of ‘business connection’ in India.
ABN Amro Bank NV (Calcutta Bench)	A non-resident is taxable on income attributable to a permanent establishment, if any, in respect of his business income. A branch may constitute a permanent establishment, so that the income attributable to such permanent establishment is taxable.
Morgan Stanley & Co. Inc., (Authority For Advance Ruling)	The ruling of the AAR is to some extent inconclusive as regards the non-resident’s liability, when it held that it would depend upon the nature of service rendered by the employees deputed to India and the inference of permanent establishment in India, which would also depend upon such fact.

In Re WorleyParsons Services Pty. Ltd (AAR)	Where the assessee, an Australian company, entered into an agreement with Reliance and it was agreed that the consideration thereof constituted “royalty” but the assessee claimed (i) that the said royalty was “effectively connected” with a permanent establishment (PE) and consequently assessable as business profits, (ii) that the portion of such “profits” as was not “attributable” to the PE was not assessable to tax in India and (iii) that even otherwise the royalty was not assessable to tax in view of Ishikawakima 288 ITR 408 (SC) where it was held that fees for technical services (and royalty) was not assessable to tax u/s 9(1)(vii) (9(1)(vi)) if it was not rendered and utilized in India, HELD: In order to be “effectively connected”, the PE should be engaged in the performance of royalty generating services. There must be a real and intimate connection and clear co-relation between the services giving rise to royalty and the PE. A connection between the PE and the contract is not enough.
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High Value Exam Question types On Non residents

Type 1 (4 Mark Type)	Scope of Royalty and Technical Fees where there is composite contract of supply of machinery and its maintainence.
Type 2 (6 Mark Type)	NR computation of capital gains of shares and debentures. Prov 1 to 48.
Type 3 (10 Mark Type)	Tax liability of Non Resident with special rate income of Royalty income. With or without operating Branch in India. (44DA is applicable) With or without Interest income on foreign currency bonds. With or without capital gains income as adjustment.
Type 4 (6 Mark Type)	Where payment to non resident is net of tax, as per the terms of contract. Its TDS application also.
Type 5 (6 Mark Type)	TDS for non resident when DTAA concessional rate of tax is applicable.
Type 6 (6 Mark Type)	TDS for non resident when PAN is not available.
Type 7 (6 Mark Type)	Tax liability of Non resident and Non citizen sports person / entertainer. or any other special rates of taxes for non residents.
Type 8 (10 Mark Type)	Non resident Indian (NRI) chapter XIIA full computation with capital gains computation as per Prov 1 to 48. With the double tax liability calculation since chapter XIIA is optional.
Type 9 (10 Mark Type)	Foreign company tax liability calculation where there is Royalty income Other income And 80G deduction.

DTAA Intrepretation

In Re Cummins Limited (AAR)	Managerial services rendered by a UK Co to an Indian Co, even if technical in nature, is not assessable as “fees for technical services” under Article 13 of India-UK DTAA if it does not “make available” any skill, technical know-how etc
In Re Tiong Woon Project & Contracting (Pte) Limited (AAR)	An installation project which does not last more than 183 days in a fiscal year is not a "Permanent Establishment" and the business profits are taxable only in Singapore under Article 7(1) of the India-Singapore DTAA
In Re Cummins Limited (AAR)	Managerial services rendered by a UK Co to an Indian Co, even if technical in nature, is not assessable as “fees for technical services” under Article 13 of India-UK DTAA if it does not “make available” any skill, technical know-how etc
In Re Dow AgroSciences Agricultural Products Ltd (AAR)	Transfer of shares of an Indian Co by a Mauritius entity to a Singapore entity due to group reorganization is not a scheme for avoidance of tax. The capital gains are exempt under India-Mauritius DTAA. Treaty shopping is permissible. A ROI u/s 139(1) need not be filed if income is exempt from tax
In Re E*Trade Mauritius Ltd (AAR)	The effect of Azadi Bachao Andolan is that there is no “legal taboo” against ‘treaty shopping’. Treaty shopping and the underlying objective of tax avoidance/mitigation are not equated to a colourable device. If a resident of a third country, in order to take advantage of a tax treaty sets up a conduit entity, the legal transactions entered into by that conduit entity cannot be declared invalid. The motive behind setting up such conduit companies is not material to judge the legality or validity of the transactions. The principle that “every man is entitled to order his affairs so that the tax is less than it otherwise would be” is applicable though a colourable device adopted through dishonest methods can be looked into in judging a legal transaction from the tax angle. Tax avoidance is not objectionable if it is within the framework of law and not prohibited by law. However, a transaction which is ‘sham’ in the sense that “the documents are not bona fide in order to intend to be acted upon but are only used as a cloak to conceal a different transaction” stands on a different footing.

Anapharm Inc vs. DIT (AAR)	In order to consider the meaning of the term “make available” in Article 12 of the India-Canada DTAA, one can have regard to the India-USA DTAA. The term requires that the service provider should also make his technical knowledge, experience, skill, know-how etc., known to the recipient of the service so as to equip him to independently perform the technical function himself in future, without the help of the service provider. In other words, payment of consideration would be regarded as ‘fee for technical / included services’ only if the twin test of rendering services and making technical knowledge available at the same time is satisfied.
Small Business Corp vs. DIT (AAR)	For purposes of Article 20 of the India-Korea DTAA, a Government undertaking with corporate status cannot be equated to the Government. Even if the Articles of Incorporation make it clear that the Government has pervasive control over the undertaking, it still cannot be treated to be a wing or an integral part of the Government. However, the fundamental requirement of Article 20(1)(a) is that the remuneration should be paid by the Contracting State. Even if it is paid out of funds allocated by the Government to the undertaking specifically towards personnel expenses, the requirement of Article 20(1) is satisfied. It is as good as payment by the State itself. The expression “payment by a Contracting State” cannot be given a rigid or literal interpretation so as to cover the payments made directly by Government or a department of the Government. Even if the payment is made out of State’s funds set apart for that purpose, the requirement of Section 20(1)(a) will be attracted and the Indian income-tax cannot be levied in such a case.

High Value Exam Question types On DTAA

Type 1 (6 Mark Type)	Elimination of DTAA when there is No DTAA with country from which resident is deriving income. (Indian and That country both is showing income in computation)
Type 2 (9 Mark Type)	Indian – Income Foreign – Loss (not allowed as set off in that country)
Type 3 (10 Mark Type)	Indian – Income Foreign – Income (But exempt in that country, but taxable in India and eligible for some VIA deductions.)
Type 4 (9 Mark Type)	Where India and foreign country is having DTAA signed up. Indian – Income Foreign – Income (as per DTAA not taxable in other country but included for rate purposes)
Type 5 (6 Mark Type)	Where India and foreign country is having DTAA signed up. Indian – Income Foreign – Income (taxable in other country but eligible for Full credit of taxes)
Type 6 (6 Mark Type)	Where India and foreign country is having DTAA signed up. Indian – Income Foreign – Income (taxable in other country but eligible for special rebate as per average rate of taxes.)

Transfer Pricing

Sony India P. Ltd. (Delhi High Court)	Instructions of board regarding reference to transfer pricing officer is valid. Instruction that cases where international transactions exceed Rs. 5 crore to be taken up for scrutiny is not discriminatory.
Shilpa Shetty vs. ACIT (ITAT Mumbai)	We are of the view that since chapter 10 pre-supposes the existence of "income" and lays down machinery provision to compute ALP of such income, if it arises from an „International transaction“. Section 92 is not an independent charging section to bring in a new head of income or to charge tax on income which is otherwise not chargeable under the Act. Accordingly, since no income had accrued to or received by the assessee u/s 5, no notional income can be brought to tax u/s 92 of the Act
Mitchell Drilling India Private Limited vs. DCIT (ITAT Delhi)	Transfer Pricing: The "international transaction" as defined in s. 92F(v) has to be a genuine transaction. Transfer pricing provisions do not apply to non-genuine or sham transactions
CIT v. Thyssen Krupp (Bombay High Court)	Transfer Pricing: An adjustment with respect to transfer pricing has to be confined to transactions with Associated Enterprises and cannot be made with respect to transactions with unrelated third parties
Calance Software Pvt. Ltd vs. DCIT (ITAT Delhi)	Transfer Pricing: CBDT's Instruction No. 3/2003 is binding on the AO. Consequently, the ALP of international transactions where the quantum is less than Rs. 5 crore has to be determined by the AO and cannot be referred to the TPO. If such reference is made, it is invalid and the extended time for completing the assessment is not available to the AO. The assessment is void as it is time-barred
In Re Dana Corporation (AAR)	No capital gains in a business reorganization if consideration not determinable. Transfer pricing law does not apply if there is no income
CIT vs. Aurionpro Solutions Ltd (Bombay High Court)	Advances were made to the company situated abroad. The LIBOR rate naturally will be considered to determine the Arms Length interest, the same would be reasonable and proper in applying the commercial principle. The Tribunal has directed the appropriate rate would be LIBOR plus 2% instead of LIBOR plus 3% applied by the TPO
CIT vs. Aurionpro Solutions Ltd (Bombay High Court)	Transfer Pricing ALP of foreign advances: If the advances are made to a AE situated abroad, the LIBOR rate has to considered to determine the Arms Length interest and not the interest rate in India (SBI PLR). This would be reasonable and proper in applying commercial principles
Thomas Cook (India) Limited vs. ACIT (ITAT Mumbai)	Transfer Pricing: Corporate Guarantees are not comparable to Bank Guarantees & so the commission of 3% charged by Banks is not a benchmark to evaluate the ALP of a corporate guarantee but it has to taken at 0.5%. ITAT decisions which upheld the 3% rate cannot be followed as they are contrary to Everest Kanto 378 ITR 57 (Bom)

Associated Enterprise

Pr CIT vs. M/s Veer Gems (Gujarat High Court)	S. 92A Transfer Pricing: The mere fact that an enterprise has de facto participation in the capital, management or control over the other enterprise does not make the two enterprises "associated enterprises" so as to subject their transactions to the rigors of transfer pricing law
Orchid Pharma Limited vs. DCIT (ITAT Chennai)	Transfer Pricing - Meaning of "Associated Enterprises": The fact that an enterprise can "influence prices and other conditions relating to sale" does not make it an "associated enterprise" of the assessee if it does not participate in the (a) capital, (b) management, or (c) control of the assessee and thus does not fulfil the basic rule u/s 92A(1). S. 92A(2)(i) has to be read with s. 92(A)(1). Even if the conditions of s. 92A(2)(i) are fulfilled, these enterprise cannot be treated as 'associated enterprise' if the requirements of s. 92A(1) are not fulfilled
Geoconsult GmbH vs. DIT (AAR)	Where the applicant had entered into a joint venture with two Indian companies for providing consultancy services for the development of tunnels and the question was whether the JV constitutes an 'Association of Persons.

Appropriate Method Of ALP

Pr CIT vs. Amphenol Interconnect India P. Ltd (Bombay High Court)	Transfer Pricing: The Comparable Uncontrolled Price (CUP) method is not the Most Appropriate Method for determining the Arm's Length Price (ALP) in respect of the transactions of (sales of goods and sales commission) with Associated Enterprises (AEs) if there are geographical differences, volume differences, timing differences, risk differences and functional differences. If it is not shown that the selection of TNMM as the Most Appropriate Method is perverse, the same cannot be challenged
Zee Entertainment Enterprises Ltd vs. ACIT (ITAT Mumbai)	The Transfer Pricing Officer has selected RPM as most appropriate method for determining the arm's length price of the transaction of sale of programmes and film rights to ATL in contrast to the TNM method selected by the assessee. The first controversy is as to whether the Transfer Pricing Officer was justified in selecting the RPM as most appropriate method. Section 92(1) of the Act provides that the arm's length price in relation to the international transaction shall be determined by any of the methods prescribed therein, being the most appropriate method. Notably, the phraseology of section 92C(1) of the Act makes it clear that the selection of the most appropriate method is to be made "having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors.....". Further, Rule 10B of the Rules enumerates the various methods to determine the arm's length price of an international transaction and for the present purpose, what is relevant is clause(b) of Rule 10B(1) of the Rules, which prescribes the manner in which the RPM is to be effectuated

CIT vs. Tata Power Solar Systems Ltd (Bombay High Court)	Transfer Pricing: A party is not barred in law from withdrawing from its list of comparables a company found to have been included on account of mistake of fact. The Transfer Pricing Mechanism requires comparability analysis to be done between like companies and controlled and uncontrolled transactions by carrying out of FAR analysis. The assessee's submission in arriving at the ALP is not final. It is for the TPO to examine and find out the companies listed as comparables which are in fact comparable
Avenues Asia Advisors Pvt Ltd vs. DCIT (Delhi High Court)	Transfer Pricing: Steps to be undertaken in identification of comparable transactions/entities while fixing the ALP and the margin explained. Though the TNMM method allows broad flexibility tolerance in the selection of comparables, broad functionality is not sufficient to find the comparable entity. There must be similarity with the controlled transaction In so far as identifying comparable transactions/entities is concerned, the same would not differ irrespective of the transfer pricing method adopted. In other words, the comparable transactions/entities must be selected on the basis of similarity with the controlled transaction entity. Comparability of controlled and uncontrolled transactions has to be judged, inter alia, with reference to comparability factors as indicated under rule 10B(2) of the Income Tax Rules, 1962. Comparability analysis by the transactional net margin method may be less sensitive to certain dissimilarities between the tested party and the comparables. However, that cannot be the consideration for diluting the standards of selecting comparable transactions/entities. A higher product and functional similarity would strengthen the efficacy of the method in ascertaining a reliable arm's length price. Therefore, as far as possible, the comparables must be selected keeping in view the comparability factors as specified. Wide deviations in profit level indicator must trigger further investigations/analysis
Fresenius Kabi India Private Limited vs. DCIT (ITAT Pune)	Transfer Pricing: In the case of an assessee engaged in distribution activity there is no value addition to the product in question even if the selling and marketing expenses are borne by the assessee. Accordingly, the Resale Price Method is the most appropriate method for benchmarking the transaction and determining whether it is at arms' length. The TPO is not entitled to thrust TNMM to evaluate the transaction
Pr CIT vs. Amphenol Interconnect India P. Ltd (Bombay High Court)	Transfer Pricing: The Comparable Uncontrolled Price (CUP) method is not the Most Appropriate Method for determining the Arm's Length Price (ALP) in respect of the transactions of (sales of goods and sales commission) with Associated Enterprises (AEs) if there are geographical differences, volume differences, timing differences, risk differences and functional differences. If it is not shown that the selection of TNMM as the Most Appropriate Method is perverse, the same cannot be challenged
CIT vs. Pentair Water India Pvt. Ltd (Bombay High Court)	Transfer Pricing: Companies with large turnover like Infosys & Wipro are not comparable to companies with smaller turnover and should be excluded from the list of comparables

Cotton Naturals (I) Pvt. Ltd vs. DCIT (ITAT Delhi)	CUP is the most appropriate method for ascertaining the arms length price of an international transaction of lending money. Where the transaction is of lending money in foreign currency to its foreign subsidiaries, the comparable transactions have to be of foreign currency lent by unrelated parties.
Aithent Technologies Pvt Ltd vs. ITO (ITAT Delhi)	The assessee was required to comply with the transfer pricing provisions of s. 92 to 92F with respect to the transaction of interest-free loan to its subsidiary. The CUP method is the most appropriate method in order to ascertain the ALP of such international transaction by taking into account prices at which similar transactions with other unrelated parties have been entered into. For that purpose, an assessment of the credit quality of the borrower and estimation of a credit rating, evaluation of the terms of the loan e.g period of loan, amount, currency, interest rate basis, and additional inputs such as convertibility and finally estimation of arm's length terms for the loan based upon the key comparability factors and internal and/or external comparable transactions are relevant. None of these inputs have anything to do with the costs; they only refer to prevailing prices in similar unrelated transactions instead of adopting the prices at which the transactions have been actually entered in such cases, the hypothetical arms length prices, at which these associated enterprises, but for their relationship, would have entered into the same transaction, are taken into account. Whether the funds are advanced out of interest bearing funds or interest free advances or are commercially expedient for the assessee or not, is wholly irrelevant in this context. As the transaction is of lending money, in foreign currency, to its foreign subsidiary, the comparable transaction should also be of foreign currency lending by unrelated parties (Perot Systems 130 TTJ 685 (Del) followed).

Transfer Pricing Officer – TPO

Alpha Nipon Innovatives Ltd vs. DCIT (Gujarat High Court)	Transfer Pricing: As per CBDT's Instruction No.3/2016 dated 10.03.2016, the AO is required to give an opportunity to the assessee to show cause why the reference should not be made to the TPO and thereafter pass a speaking order while making a reference to the TPO. The failure to do so renders the reference void
Hyundai Rotem Company vs. ACIT (ITAT Delhi)	Transfer Pricing: The TPO is required to be consistent in matters relating to selection of comparables. If a comparable has been included or rejected in an earlier year, he is not entitled to take a different view in a later year if there is no change in circumstances
CIT vs. Tata Power Solar Systems Ltd (Bombay High Court)	Transfer Pricing: A party is not barred in law from withdrawing from its list of comparables a company found to have been included on account of mistake of fact. The Transfer Pricing Mechanism requires comparability analysis to be done between like companies and controlled and uncontrolled transactions by carrying out of FAR analysis. The assessee's submission in arriving at the ALP is not final. It is for the TPO to examine and find out the companies listed as comparables which are in fact comparable
Eaton Fluid Power Limited vs. ACIT (ITAT Pune)	Transfer Pricing: Entire law on whether the TPO can sit in judgement over the business model of the assessee and determine the ALP of the transactions with AEs at Nil explained in the context of judgements in Kodak India 288 CTR 46 (Bom), Lever India Exports 292 CTR 393 (Bom), Cushman and Wakefield 233 TAXMAN 250 (Del), R.A.K. Ceramics 293 CTR 361 (AP) & Deloitte Consulting 137 ITD 21 (Mum)

Safe Harbour Rules

Mehsana District Co-operative vs. DCIT (Gujarat High Court)

S. 92CB Transfer Pricing Safe Harbour Rules: If the assessee has exercised the safe harbour option under Rule 10THD(1) & the AO has not passed any order under rule 10THD(4) declaring the exercising of option to be invalid, the option is treated as valid. Thereafter, the Transfer Pricing regime does not apply & the AO has no authority to make any reference to the TPO to ascertain the arm's length price of the assessee's specified domestic transactions. CBDT's circular dated 10.3.2006 could not have and does not lay down anything to the contrary

Transfer Pricing AMP (Advt And Marketing Promotion) Expense

Essilor India Pvt.Ltd vs. DCIT (ITAT Bangalore)	Transfer Pricing: The existence of an "international transaction" w.r.t. AMP Expenditure cannot be assumed. The onus is on the TPO to prove such transaction. There is no machinery provision to ascertain the price to promote the AE's brand values. The AMP Expenditure should be treated as operating cost to apply TNMM and determine ALP of transactions with AE
CIT vs. Whirlpool of India Ltd (Delhi High Court)	Transfer pricing of AMP Expenditure: the onus is on the Revenue to demonstrate by tangible material that there is an international transaction involving AMP expenses between the Indian Co and the AE. In the absence of that first step, the question of determining the ALP of such a transaction does not arise. In the absence of a machinery provision it is hazardous for any TPO to proceed to determine the ALP of such a transaction since Bright Line Test has been negated as a valid method of determining the existence of an international transaction and thereafter its ALP
Maruti Suzuki India Limited vs. CIT (Delhi High Court)	Transfer Pricing: Important legal principles on whether an adjustment for Advertisement & Market Promotion (AMP) expenses can be made on the basis that there is an assumed "international transaction" with the AE because the advertisement expenditure of the Indian company is "excessive" explained
LÓreal India Private Limited vs. DCIT (ITAT Mumbai)	Transfer pricing of AMP Expenditure: In the case of a manufacturer operating in a competitive industry, high AMP expenditure cannot be assumed to have been incurred for the benefit of the brand owner. The TPO has to prove that the real intention of the assessee in incurring AMP expenses was to benefit the AEs and not to promote its own business. Also, if the assessee has reported high turnover & profits & offered to tax, the basic ingredient required to invoke s. 92 that there is transfer of profit from India remains unproved. In the absence of the AO/ TPO showing that there is a formal/ informal agreement to share the AMP expenditure, the adjustment cannot be made. The matter cannot be remanded to the AO/ TPO for reconsideration
Hyundai Motor India Limited vs. DCIT (ITAT Chennai)	Transfer Pricing AMP Adjustment: Entire law on whether the advertisement expenditure incurred by the Indian AE towards brand of a foreign company can be treated as an "international transaction" and whether a notional adjustment can be made in the hands of the Indian AE towards compensation receivable from the foreign AE for "deemed brand development" explained

High Value Exam Question types On Transfer Pricing

Type 1 (10 Mark Type)	Computation of TP income where unit is eligible for 10AA exemption.
Type 2 (10 Mark Type)	Computation based on methods of ALP.
Type 3 (10 Mark Type)	Multiple ALP available and more then 6 (or less then 6) comparable prices are available. Statistical method of arriving at ALP / average method with tolerance level.
Type 4 (6 Mark Type)	Interest payment to AE restriction
Type 5 (6 Mark Type)	Transaction with unit in notified jurisdictional area and TP computation.
Type 6 (3 Mark Type)	Transaction with unit in notified jurisdictional area and TDS application.
Type 7 (6 Mark Type)	Choosing of Most appropriate method of ALP and then applying it.
Type 8 (6 Mark Type)	Safe Harbour Rules based computation.
Type 9 (6 Mark Type)	Transfer pricing income and penalty computation.
Type 10 (3 Mark Type)	Transfer pricing documentation and its penalties.
Type 11 (4 Mark Type)	Transfer pricing and specified domestic transaction computation.

Advance Ruling

Monte Harris (AAR)	<ol style="list-style-type: none"> 1. For the purpose of applicant's status be NRI it must not be considered as on the date of application but must be considered as per the financial year that was preceding the year in which the application was made since residential status is in respect of the a year 2. AAR has power to reject the application if it is pending before income tax authority, such case pending before the income tax authority must be considered as on the date of the application and not with respect to any future date. 3. The maintainability of the application cannot be made to depend on the pendency of the issue before the income-tax authorities on varying date. Hence the word is "already pending" shall be interpreted to mean already pending at the time of the application and not concerning future date as held by the Authority in <i>Monte Harris (supra)</i>
In Re. (AAR)	If there is prima facie point that application is made for the avoidance of tax than it can be rejected at any point of time of the procedure.
Hyosung Corporation vs. AAR (Delhi High Court)	S. 143(2)/ 245R(2): A notice u/s 143(2)(ii) cannot be issued in a routine, casual or mechanical manner but after forming an opinion that it is "necessary or expedient" to do so. A S. 143(2) notice in the standard form is not a bar u/s 245R(2) for admission of an AAR application for advance ruling
In Re Orient Green Power Pte. Ltd (AAR)	U/s 82 of the Companies Act, shares in a company is moveable property transferable in the manner provided by its Articles of Association. The applicant has not shown the gift was authorized by its Articles. It is difficult to imagine the Articles of Association of a company providing for gifting away of the assets in the form of shares in another company by what is attempted to be described as oral gift. A "gift" by one company to another company of shares in a public company appears to be strange, unless it be one which has been set up for some purpose. The revenue's contention that the purpose of the gift is to avoid tax and s. 56(2)(viiia) is not far-fetched. Also, s. 47(i) & (iii) appear to apply to gifts by individuals and HUFs and not by companies. The Authority has the right & the duty to consider the reality of the transaction and genuineness of the transaction, in addition to its validity. When such transactions are entered into involving substantial assets the applicant has to prove to the hilt the factum, genuineness and validity of the transaction, the right to enter into the transaction and the bona fides of the transaction. To postulate that a corporation can give away its assets free to another even orally can only be aiding dubious attempts at avoidance of tax payable under the Act. The AO is in a better position to make a proper enquiry into the question of the genuineness and validity of the transaction. Hence, a ruling is declined

<p>Nuclear Power Corporation of India Ltd In Re (AAR)</p>	<p>The argument that the pendency of the question in the case of the recipient cannot bar the application in the case of the payer is not acceptable because an “advance ruling” is a determination in relation to a “transaction”. A “transaction” always involves the payer and payee. It is not possible to separate an applicant from a transaction while he is seeking a Ruling, since the Ruling relates to a transaction undertaken by him or to be undertaken by him. A ruling also cannot be divorced from a transaction. The question posed before the income-tax authorities in the case of the recipient and before the AAR in the case of the payer is the same, namely, whether the income is assessable to tax. Consequently, the bar in s. 245R(2) applies and the payer’s application is not maintainable. The contrary view taken by the AAR in Airports Authority of India In re 168 Taxman 158 is not correct (Foster (AAR No. 975 of 2009) followed)</p> <p>The applicant sought an advance ruling on the obligation to deduct tax at source on payments made to a non-resident entity. The non-resident entity was already taxed in India. The Applicant urged that the ruling sought was to determine the obligation to deduct tax at source, and the non-resident assessed to tax is of no consequences. The Authority held that it is not possible to separate an applicant from a transaction since the decision relates to a transaction undertaken or proposed to be undertaken. The ruling is not only applicant specific, but, also transaction specific. The non-resident already being assessed to tax the application was not allowed.</p>
<p>In Re Groupe Industrial Marcel Dassault (AAR)</p>	<p>On facts, the French company’s (ShanH) only asset were the shares in the Indian company & it had no other business. When its shares were sold, what really passes were the underlying assets and the control of the Indian company. A gain was generated by the transaction. If the transaction is accepted at face value, control over Indian assets and business can pass from hand to hand without incurring any liability to tax in India. Such transactions have to be treated as ineffectual. It is not necessary to ignore the existence of ShanH to come to a conclusion that what is put up is a facade in the context of the tax law and would amount to a scheme for avoidance of tax</p>
<p>Shirishkumar Kulkarni., In re 288 ITR 530 (AAR)</p>	<p>The applicant sought the determination of the Authority on whether the withdrawal from the individual retirement account set up abroad or on his death the distribution to his beneficiary would be exempt from tax in India. The Authority dismissed the application, as withdrawing of once own money was neither generating any income nor undertaking any transaction with a person in India.</p>
<p>Y Ltd., In re 221 ITR 172(AAR)</p>	<p>The Applicant sought an advance ruling relating to the liability to interest under section 234B and 234C that accrues on account of the transaction (capital gains on the sale of shares and debentures). The Authority held on facts that the there was a direct nexus between the transaction and charging of the interest. Therefore, the application was to be allowed.</p>
<p>Hindustan Powerplus Ltd., In re 267 ITR 685 (AAR)</p>	<p>The applicant filed an advance ruling to determine the liability to tax under the Act on the remuneration received by a resident employee outside India. The Authority rejected the application as the advance ruling has to be in relation to the tax liability of a non-resident and not a resident.</p>

Connecteurs Cinch, S.A., In re 268 ITR 29 (AAR)	The Authority ruled that the entitlement to tax exemption under section 10A of the Act in the hands of the Indian subsidiary would not be any consequence of a transaction undertaken or proposed to be made by the non-resident applicant hence the application was not allowed.
Trade Circle Enterprises LLC., In re 361 ITR 673(AAR)	The Applicant a non-resident was to form a consortium involving a proposed subsidiary company along with another Indian company. The consortium was to claim deduction under section 80IA of the Act. The Authority did not follow the ruling in the case of Umicore Finance (supra) as there was no transaction between the Indian company and the applicant. The issues raised were for determining the tax liability arising in the Indian entity hence the application was dismissed. If the facts permit, some of the decision above may require reconsideration post the introduction of the Notification No. 3014 dated 28/11/2014 under section 245N(a)(ia) of the Act, permitting applications from residents whose tax liability arising out of one or more transaction is valuing Rs 100 crores or more.
Instrumentarium Corpn., In Re 272 ITR 499(AAR)	Section 245R(2)(ii) of the Act, bars question raised relating to the determination of the fair market value. In the case of Instrumentarium Corpn., In Re 272 ITR 499(AAR) the Authority has taken the view that benchmarking of the transaction as arm's length price is also the determination of fair market value.
ABC International Inc. USA, In re 241 CTR 289 Mahindra BT Investment Co (Mauritius) Ltd v/s Director of Income Tax 359 ITR 485	In the case ABC International Inc. USA, In re 241 CTR 289, the Authority held that it has powers to determine whether the transaction is designed for the avoidance of tax not only at the admission stage but also at the final hearing. The Bombay High Court in the case Mahindra BT Investment Co (Mauritius) Ltd v/s Director of Income Tax 359 ITR 485 held that the authority could exercise its discretion not to give a ruling only in the case where the fraud and/or illegality are ex facie evident, or the fraud or the illegality has been established in some proceedings. Such a discretion shall not be exercised on a mere suspicion.
Canoro Resources Ltd., In re (AAR) 313 ITR 2 (AAR)	The Authority held that the applicant has, prima facie, given a convincing explanation for restructuring its business. The revenue cannot complain when a taxpayer resorts to a legal method available to him to plan his tax liability, as a result, would be more beneficial to the taxpayer. The decision may require reconsideration post the introduction of the Section 245N(iv) of the Act dealing with impermissible avoidance arrangement.

Royal Bank of Canada, In re 323 ITR 380 (AAR)	<p>Hypothetical question, not to be entertained</p> <p>For the Authority to consider an application the full facts, documentation, and relevant issues in deciding the ruling shall be placed on the record. Where the relevant factual information is not available or incomplete, the Authority can dismiss the application. In the case of Royal Bank of Canada, In re 323 ITR 380 (AAR) the applicant sought an advance ruling on a proposed activity of purchase and sale of equity shares. The Authority held that no doubt that the advance ruling can be in respect of a proposed transaction. However, where the determination is base on certain crucial facts, the actual pattern of dealings or the modus operandi of the transaction, were not known, it would not be appropriate to undertake the task of giving a formal ruling on a hypothetical basis. In another case, Ms Meenu Sahi Mamik., In re 287 ITR 514 (AAR)the Authority held that the basic facts dealing with the nature of the business nor the agreement were placed on the record. Dismissing the application as being as premature and not maintainable as the question raised could not be answered hypothetically.</p>
Columbia Sportswear Company (SC)	<p>In the case of Columbia Sportswear Company the Hon'ble Supreme Court held that the ruling issued are binding upon the parties in respect of the transaction sought and for others, the decision will hold persuasive value on principles of law. In the case of Prudential Assurance Co Ltd v/s Director of Income Tax (International Tax) 324 ITR 381 (Bom) the Assessing Officer passed an order following the ruling in the Petitioner case. The Commissioner issued a notice under section 263, seeking to set aside the order on the ground of subsequent decision of the Authority. The Hon'ble High Court held that the commissioner had manifestly exceeded his jurisdiction and the notice is contrary to section 245S of the Act. The Commissioner cannot rely upon the subsequent ruling while ignoring the clear mandate provided by the statutory provision. In another case before the Bombay High Court Director of Income-tax (International Taxation) v. Dun & Bradstreet Information Services India (P.) Ltd. 338 ITR 95 wherein the court held the assessee not liable to deduct tax at source, by following the decision of the Authority on similar facts in the same subject matter.</p>
Onmobile Global Ltd v/s Chairman, Authority for Advance Ruling (Income -Tax)	<p>The Authority has powers to dismiss the application ex parte on merits (Rule 17 of the Procedural Rules). The aggrieved party can apply for the recall within 15 days of the receipt of the order by presenting sufficient cause for non-appearance. The Authority may set aside the ex parte order after providing an opportunity to be heard. In the case of Onmobile Global Ltd v/s Chairman, Authority for Advance Ruling (Income -Tax) 279 CTR 518 the Karnataka High Court held that Rule 17 allows the Authority to dismiss an application ex parte only on merits for non-appearances. Further, the court held that the application could not be rejected as the notice of hearing was never within the knowledge of the applicant.</p>
Acers Computer International Ltd., 189 CTR 498 (AAR)	<p>when the issues raised have become of academic interest the Authority can decline to pronounce the ruling.</p>

High Value Exam Question types On Advance Ruling

Type 1 (4 Mark Type)	Where one persons ruling is sought to be used by another person, scope of binding force.
Type 2 (4 Mark Type)	Where payer of money is applicant and matter is pending with respect to payees application on same transaction. Scope of compulsory rejection.
Type 3 (4 Mark Type)	Scope of pending and compulsory rejection, in situation where notice of 143(2) has been issued to applicant before the filing of application.
Type 4 (4 Mark Type)	When application is sought for GAAR related matters by non-notified resident.

NR Shipping / Aircraft business

Gosalia Shipping P. Ltd. (SC)	A non-resident company, had entered into a charter-party with the owners of a ship on a time charter. The ship called at an Indian port where it was loaded with the company's own goods and the ship left for Canada. The company paid hire charges to the owners of the ship and since it loaded the ship with the company's own goods, the company received nothing on account of carriage of the goods. No tax was, therefore, exigible under section 172(2).
Pestonji Bhicajee (Guj)	"Dead freight" is not freight, that is, a payment made on account of carriage of goods, but it is in reality damages for breach of contract. Therefore, any payment made on account of "dead freight" cannot be treated as payment on account of carriage of goods in a ship.
Czechoslovak Ocean Shipping International Joint Stock Co. (Cal)	The case of a non-resident who receives or is deemed to have received in India income in any year or on whose behalf such income is received from whatever source derived, is covered by section 5(2) of the Act and if freight for the carriage of goods to India includes any amount chargeable to tax as income, such income is certainly received in India and is chargeable under section 5(2).
Circular 09 of 2001	The payment of tax under section 172(3) / (4) is at par with advance tax instalments. Hence, in case of a regular assessment under section 172(7) the assessee is entitled to refund, as well as interest on such refund.
Circular 723	The provisions of section 172 are to apply, notwithstanding anything contained in the other provisions of the Act. Therefore, in such cases, the provisions of sections 194C and 195 relating to tax deduction at source are not applicable.

44BB - NR Oil Exploration

O.N.G.C. (Uttaranchal High Court)	Where presumptive income is the mandate of law, the computation of income under the head business in the normal course is not possible. It was so held in CIT v. O. N. G. C. [2003] 264 ITR 340 (Uttaranchal), where the High Court, in the context of income from prospecting, extraction or production of mineral oil of a non-resident, held that the income is bound to be assessed under section 44BB on a presumptive basis and that it was not open to the Assessing Officer to resort to the provision for adding the tax borne by the contractee as a perquisite under section 28(iv).
ONGC (Uttaranchal High Court)	The concept of multiple stage grossing up of income is not applicable to the deemed profits derived by a non-resident under section 44BB
ARB Inc (Delhi Bench) (AT)	It was incidentally pointed out that GAIL itself does not have an oil well, so that the assessee, which facilitates its activity could not be engaged in extraction or production of mineral oil within the meaning of section 44BB. GAIL itself was not producing natural gas, but only producing liquefied petroleum and other products, which are commercially different from natural gas. Thus 44BB is not applicable.
Sedco Forex International Inc. (Uttarkhand High Court)	Non-resident and exploration of mineral oils. Mobilisation charges received. No nexus with actual amount incurred by non-resident for transportation of drilling units of rigs to specified drilling locations in India. Not reimbursement of expenditure so includible.
B. J. Services Co. (Uttarkhand High Court)	Presumptive tax--amount received on account of supply of spare parts. Covered under section 44BB.
Halliburton Offshore Services Inc. (Uttarkhand High Court)	Non-resident prospecting, extraction or production of mineral oils. Reimbursement of freight and transportation charges includible in income.

High Value Exam Question types On NR other topics

Type 1 (10 Mark Type)	Where assessee is NR individual operating ships and section 172 as well as 44B is applicable and computation of tax liability.
Type 2 (6 Mark Type)	Non resident in business of operation of shipping or aircraft. Its presumptive income computation and application of MAT for foreign companies.
Type 3 (7 Mark Type)	Non resident income grossing up concept with respect to oil exploration business and receiving NET of tax payments.
Type 4 (4 Mark Type)	Any income of NR resident in special rates of Taxes, receiving Net of tax payment and its TDS application.
Type 5 (6 Mark Type)	Any income of NR resident in special rates of Taxes, receiving Net of tax payment and its TDS application. But where DTAA rates are also applicable and its TDS application.
Type 6 (6 Mark Type)	Non resident senior citizen tax liability calculations. With 80D deduction in computation. With LTCG also part of income and un-used basic exemption limit.
Type 7 (4 Mark Type)	TDS application when payment is made to resident foreign company.