



THE CHAMBER OF TAX CONSULTANTS

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Case laws affecting- Tax Audit under Section 44AB of I.T Act 1961.

- (1) Disallowance- Contribution to employee's State Insurance Corp and P.F Fund deposited beyond due date prescribed under Section 36 (1) (Va)

Alliaz Corhill Information Services (P) Ltd. V/s Dy CIT (2018) 65 ITR (T) (Cochin ITAT) Page 33.

Disallowance justified I.T Act 1961 Se.36 (1) (Va) followed CIT V/s Mechem Ltd (2015) 378 ITR 443 (Kerala H.C)

- (2) Disallowance. Firm Remuneration to Partners. Se 40 (b)

S.K. Diamonds V/s Dy CIT 65 ITR (T) Ahd. Page 80

Remuneration to Partners
Supplementary partnership deed mentioning that amended provisions of section 40 (b) would be applied as applicable. Assessee entitled to determine remuneration payable to partners- deduction of remuneration allowable- Se 40: Amount not deductible.

Se 40(b) Any Payment of Remuneration to any partner who is working partner or Interest to any partner which in either case is not authorised by or is not in accordance with the terms of the partnership.

(iii) is authorised by and is in accordance with the terms of the partnership deed but which relates to any period (falling prior to the date of such partnership) for which such payment was not authorised by, or is not in accordance with, any earlier partnership, So, however that the period of authorization for such payment by any earlier partnership deed does not cover any period prior to the date of such earlier partnership deed.

- (3) Rule 11 UA Income from other Source:-

Minda S.M. Techno cast (P) Ltd V/s Addln CIT (2018) 65 ITR (T) 84 Delhi Tribunal.

Shares received for price greater than fair market value determination of fair market value . Book value of Assets and liabilities declared by company should be taken into consideration.

- (4) Loss Set off. Long tem Capital gains.

EIH Ld V/s Dy CIT

ITR (OL) Tribunal OL. Volume 12. Page 438 Kolkata.

Depreciable assets sold and sale consideration received exceeding written down value- of such Assets. No change in character of Assets- Deeming provision not applicable. Assessee entitled to set off brought forward long term Capital loss against deemed Short term capital gains. I.T Act 1961 74.

- (5) Se 14A:- disallowance of Expenditure in relationship to exempt Income:-
Force Motors Ltd V/s Dy CIT (2018) 66 ITR (T) 17 Pune.
Assessee not receiving any tax free Income during instant assessment year. No disallowance warranted I.T Act 1961 Se 14A rule 8D (2) (ii)
- (6) Dy CIT V/s Dishti Industries Ltd.
(2018) 66 ITR (T) (Pune) 21
Expenditure incurred in earning Exempt Income. Assessee not showing any exempt Income in return No disallowance I.T Act 1961 Se.14A.
- (7) Se 14A Income Disallowance of Expenditure relating to Exempt Income.
Jayshree Industries Ltd V/s Joint CIT (OSD)
(2018) 66 ITR (T) Kolkata 135.
Disallowance of Expenditure relating to exempt Income. A.O not looking into working given by assessee. No satisfaction that calculation by assessee incorrect and invoking computation mechanism No disallowance could be made.
- (8) Derivative would be deemed business loss.
ITO Ward 8 (4) Ahmadabad V/s Upkar Retails (P) Ltd.
(2018) 171 ITD 626.
Se 70 read with Se 43 (5) and 73 of I.T Act 1961 Losses set off from one source against Income from other sources under same head of Income (Speculation business) A.Y. 2011-12.Calcutta High Court held that loss incurred on Accounts of derivatives would be deemed business Loss u/s 43 (5) and not speculation loss and accordingly, Explanation to Se.73 could not be applied and as such, Loss would be set off against Income from Business- However, Delhi High Court took a different view on this matter and decided same in principle, against assessee whether view taken by Calcutta High Court being favourable to assessee was to be followed Held YES.
- (9) Bonus or Commission:- General.
Nat Steel Equipment (P) Ltd V/s Dy CIT Mumbai.
95 taxmann.com 159 Mumbai Tribunal (2018) 171 ITD 482.
Exception carved out in Section 36 (i) (ii) would apply only to an employee who is also shareholder in company.

Interest Income Earned by assessee Company on Bank deposit made out of share capital prior to commencement of business. Principal CIT Bangalore V/s. Bank Note Paper Mill India (P) Ltd. (2018) 95 Taxmann.com 158 Karnataka.

- (10) Asst. CIT V/s. River View Hotels.
(2018) 171 ITD 404

Section 35AD of the I.T Act 1961. Specified business, deduction of expenditure in respect of (Hotel) A.Y. 2012-13. Whether for availing benefit of a three star hotel u/s 35AD. What is not relevant is date of certification for classification as tax or more star hotel but existence of classification as two or more Star hotel therefore once assessee engaged in hotel business was granted certification for categorization of its hotel as three star hotel entire Capital expenditure incurred by assessee in respect of its hotel was to be allowed for deduction u/s 35AD Held 'YES'.

- (11) Retention Money.
Dy CIT V/s Commtel Net works (P) Ltd. (Mumbai)
(2018) 171 ITD 360 Mumbai Tribunal.

Where assessee entered into contract for providing telecommunication services and in terms of contract certain amount was withheld by contractee towards retention money for satisfactory execution of contract by assessee retention money was to be taxed in assessment year in which it was actually paid by assessee. (Now See Section 43CD (2) (1) the contract revenue shall include retention Money.

- (12) Business Expenditure Allowability.
Indian Galvanies Cyrium Foils Ltd V/s Dy CIT
(2018) 168 DTR Page No 241 (Bombay H.C)

Expenditure on directors son for higher education abroad in the absence of material on record like basic qualification of directors son, subjects in which he did his administration course, how much subjects has had nexus to business activities of assessee and so on expenditure on higher studies of director's son was not allowable as business expenditure.

- (13) Disallowance under Se 40(a) (ic) and 40 (a) (ii)
Education Cess:- Whether allowable as Expenses (?)
Everest Industries Ltd V/s Jt. CIT
(2018) 168 DTR (Tribunal) 178

(a) Education Cess is levied under Finance Act as an item to increase Income tax and it has been **held to be part of "Income tax"** and therefore deduction of Education Cess is to be disallowed in terms of SS 40 (a) (ic) and 40 (a) (ii).

(b) Company Tax on Distributed profits.

Disallowance u/s 115-O (5) Education Cess is levied under Finance Act as an items of increase Income tax and it has been held to be part of 'Income tax'. Therefore, deduction of Education cess is to be disallowed in terms of Se 115-O (5).

- (14) **Business Income vis-a-vis Income from Other Sources:-**
Interest on Deposits:-
Dy CIT V/s First Source Solutions Ltd.
(2018) 168 DTR (Mumbai Tribunal) 161
Interest Income earned on deposit of surplus funds on short terms fixed Deposits is taxable as Business Income.
- (15) Depreciation Intangible Asset: Goodwill
CLC & Sons (P) Ltd V/s Asst, CIT (Del) (SB)
(2018) 168 DTR (Tribunal) 157
Goodwill will fall under the expression or any **other business or commercial rights of** similar nature and depreciation is available on genuine goodwill.
- (17) Business expenditure: Allowability:-
Re-imbursalment of "shared services cost' to holding Co.
CIT V/s Ask Wealth Advisers (P) Ltd.
(2018) 168 DTR (Bombay H.C) 349
Reimbursement of shared services cost to holding company Tribunal was justified in holding that the payment of shared services cost to holding company was genuinely incurred by the assessee wholly and exclusively for purpose of its business and hence allowable as business expenditure.
- (18) **Which provision are applicable Se.194C or 194J (?)**
Payment for information technology Services:-
Bombardier Transportation India (P) Ltd. V/s Dy CIT
(2018) 168 168 DTR (Tribunal Ahmedabad) 212.
Payment made by assessee for rendering integrated Information technology Services by the payee shown as itemised billings for bundled services was fee for technical Service attracting TDS @ 10% under Se., 194J and not contractual payments attracting TDS @ 2 percent u/s 194C.
- (19) Exemption under Section 10B:- Manufacture or production. Conversion of Garble Pepper into fit for human consumption Nishant Export V/s Asst. CIT
(2018) 168 DTR (Kerala H.C) 157
Conversion of garble Pepper into fit for human consumption did not constitute manufacture or production hence not eligible for exemption under Se 10B.
- (20) **Deemed Dividend.**
Holding of beneficial Interest.
Asst. CIT V/s New Delhi V/s K.P Singh (2018) 95 taxmann.com 263 (Delhi Tribunal)
Where assessee was holding shares in lender company without voting rights where as it merely held non-cumulative preference shares with fixed rate of dividend in borrower company amount of loan is question could not be added to assessee's Income as deemed dividend.

- (21) **Accrual of Income.**
CIT V/s Malayala Manorama Co. Ltd.
(2018) 405 ITR (Kerala H.C) 249 (249)
Time of accrual Interest of refund. Assessment for A.Y. 1988-89 on 22/3/1991.
Interest on refund actually granted on 9-10-2002 (A.Y., 2003-04) Interest not assessable in Assessment Year 1992-93.
- (22) **Business Income. Income from Other Sources:**
Principal CIT V/s Sangam Power Generation Co. Ltd.
(2018) 405 ITR (All) 390
Amount borrowed for setting up Business Interest on fixed deposits of unutilised amount. Assessable as Income from Other sources.
- (23) **Business Loss:** Carry forward and set off. Se 72 (1)
Lavish Apartment (P) Ltd V/s Asst.CIT
(2018) 405 ITR 165.
Income of rent, Car and Computer hire charges and Commission. Whether Business Income-To be decided on the Basis of Commercial principles and not on basis of head of Income earned as result of such activities- finding that Income constituted Business Income.
Assessee entitled to set off brought forward business loss against such Income.
- (24) **Reimbursement of Administrative Expenses to Joint Venture Partners.**
Whether TDS Provision Applicable.
CIT V/s ITD Chem India J.V.
(2018) 405 ITR (Bombay H.C) 533.
Payment liable to deduction of tax at source.
Business Expenditure. Disallowance. Reimbursement of administrative Expenses to Joint Venture Partner. Genuineness of transaction established on verification finding of fact Disallowance rightly deleted by Tribunal.
- (25) **Dividend Trade Advances.** Deemed dividend u/s2 (22) (e)
CIT V/s Malayala Manorama Co. Ltd.
(2018) 405 ITR (Kerala H.C) 595
Trade advances from subsidiary company- Not assessable as deemed dividend I.T Act 1961 (2) (22) (e).
- (26) **Remission or Cessation of trading Liability.**
Business Income Se 41 (1)
CIT V/s Vishal Transformers and Switchgears(P) Ltd.
(2018) 405 ITR (Allahbad H.C) 266.
Amount remaining unrecoverable as creditors- Not ground to conclude that there was cessation of liability cessation has to be in law- Provision of Section 41 (1) can not be invoked.
- (27) **Income Accrual of Income:** Method of Accounting .

Principal CIT V/s Sarangpur Co-operative Bank Ltd.

(2018) 406 ITR 302 (Gujarat H.C)

Mercantile System of accounting Co-operative Bank.

Interest on non-performing assets- cannot be recognised on accrual basis

Assessee bound by R.B.I guideline.

- (28) **Depreciation:** Additional depreciation condition precedent.
Cherian Varkey Construction Co(P) Ltd V/s Union of India. (2018) 406 ITR (Kerala H.C)262.
Manufacture of article- Assessee need not be principally engaged in manufacture. Ready mix concrete is an article. Which has been manufactured. Assessee entitled to additional depreciation on plant and machinery used in manufacture of ready mix concrete.
- (29) **Loss Speculative business:-**
Asst CIT V./s Surya International (P) Ltd.
(2018) 406 ITR (Allahabad H.C) 274
Difference between speculation and hedging- Loss in hedging transaction .Deductible I.T Act 1961 Se,.43 (5).
- (30) **Business Expenditure.**
Popular Vehicles and Services (P) Ltd V/s CIT
(2018) 406 ITR 150 (Kerala H.C)
Contribution of employees towards provident fund and employee's State Insurance. Effect of Section2 (24) (X) and 36 (1) (va)- deduction available only if contributions paid within due dates prescribed in respective statutes. Non obstante clause of section 43B has no effect in so far employee's contribution which is specifically covered by Se 36 (1) (va) I.T Act 1961. Se 2 (24) (X) 36 ((1) (Va) 43B.
CIT V/s Mechem Ltd. (2015) 378 ITR 443 (Kerala H.C) followed.
CIT V/s ALOM Extrusions Ltd (2009) 319 ITR 306 (SC) also refer to Allied Motors (P) Ltd V/s CIT (1997) 224 ITR 677 (SC)
CIT V/s Vinay Cement Ltd (2007) 213 CTR (SC) 268.
CIT V/s. Dharmendra Sharma (2008) 297 ITR320 (Delhi H.C)
Employers contribution V/s Employee's contribution.
The issue whether employee's contribution can be differently treated from employers contribution for purposes of Se 36 (1)(Va) and 43B has also been subject matter of controversy. Kerala H.C deal with the issue in CIT V/s G.T.N. Textiles Ltd. (2004) 269 ITR 282 Kerala taking view that the employee's contribution need not have different character following its earlier decision- CIT V/s South India Corp (2000) 242 114 (Kerala H.C)
- (31.) A Similar view was taken in CIT V/s Jairam and Sons.
(2004) 269 ITR 285 (Kerala H.C)
3 Pric CIT 3 V/s Hind filter Ltd Bombay H.C
(2018) 90 Taxmann.com 51.

(32) **Depreciation.**

Carry forward and set off: Change of law: Effect.

13-7-2018: Their Lordships. A.K. Sikri and Ashok Bhushan JJ. Dismissed the Department's special leave petition against judgment dated December 5, 2017 of the Jaipur Bench of the Rajasthan High Court in D.B. I.T.A No. 131 of 2017 whereby the High Court held that taking into consideration the amendment to section 32 which came into force with effect from April 1, 2002, depreciation could not be claimed with effect from April 1, 2002 that seven years has not lapsed in year 2002, and the Tribunal was justified in allowing the set off of unabsorbed depreciation of Rs.6,03,67,470/- pertaining to assessment year 1997-98 against the income of the assessment year 2007-08 against the income of the assessment year 2007-08: Pr. CIT V/s Ginni International Ltd. Diary No.,21378 of 2018.

33. Mahavir Industries (2018) 406 ITR 315 (S C)

Industrial undertaking special deduction Tax Holiday period of ten years. Inclusion of period for which deduction availed of under Section 80-IA and 80 IB. Limited to Industrial undertaking set up in North Eastern Region. Where unit not located in North- Eastern Region. Where unit not located in North Eastern State period for which deduction availed of under Se. 80 IA and 80 IB not to be reckoned for deduction under Section 80 IC. The inclusion of the period for which the deduction is availed of under Se 80 IA and Section 80 IB for the purpose of counting the ten years is **provided in Sub Section (6) of Section 80 IC and it is limited to those Industrial undertaking or Enterprises which are set up in the North-Eastern Region. By making specific provision of this kind,** the Legislature has shown its intent, namely, where the Industry is not located in a North Eastern State the period for which deduction is availed of Earlier by an assessee under Section 80 IA and Section 80 IB will not be reckoned for the purpose of availing of the benefit of deduction u/s 80 IC of the Act.

(34) **Business Income:** Deemed Profits: Se 41 (1)

CIT V/s. Balkrishna Industries Ltd. ITROL Volume 12. Page 144

Remission or Cessation of trading Liability – Deferral of Sales tax under State Government Scheme. Differed tax treated as loan- Amendment of Statute providing for repayment of differed tax prematurely at net present value and treating such payment as full payment of tax. Not a case of remission or cessation of liability- Balance after repayment at net present value not taxable.

(35) **Business Income.,**

Benefit or perquisite arising from business: Waiver of loan.

2-7-2018: Their Lordships **Abhay Manohar Sapre and Uday Umesh Lalit JJ.** Following 404 ITR 1, dismissed the 'Department's special leave petition against judgement dated June 2, 2017 of the Jaipur Bench of the Rajasthan High Court in D.B. I.T. A No. 160 of 2017 where by the High Court held that waiver of loan was not a benefit or perquisite arising from business: **Pr. CIT V/s Modern Threads (I) Ltd. S.L.P (C) No. 16276 of 2018.**

(36) Export.

Exemption: Computation of total turnover.

4-5-2018: Their Lordship **ABHAY MANBOHAR SAPRE and A.M. KHANWILKAR** JJ. Following 404 ITR 719, *dismissed* the Department's special leave petition against judgment dated August 1,2017 of the Karnataka High Court in I.T.A. No 414 of 2016 whereby the High Court held that expenses excludible from the export turnover are to be excluded from the total turnover also for the purposes of section10A: **Pr.CIT v. AURIGENE DISCOVERY TECHNOLOGIES Pvt. Ltd.** S.L.P (C) No.13455of 2018.

37. Loss Transaction in future and options failure by assessee to prove loss genuine and to produce party before authorities. No records in National Stock Exchange for such transactions Bogus Loss- Disallowance proper Disallowance Proper ITO V/s.Mukund Trikamlal Parmar. ITR Tribunal OL Volume 12. Page 236.
- 38.(a) Business Expenditure. Deduction only on actual Payments.
Bartronics India Ltd V/s Dy CIT
(2018) 65 ITR (Tribunal) 540 Hyderabad.
Employers and employees Contributions to employee's State Insurance and P F deposited prior to filing of return Allowable. Se36(1) (Va)
(1) Sagun Foundry (P) Ltd V/s CIT (2017) 78 taxmann.com 47 Allahad H.C follow.
(2) CIT V/s Ghatge Patil Transporters Ltd (2014) 368 ITR 749.
- 38(b) Exemption Export oriented undertaking Delay of One month in filing return Se 10B.
Bartonics India Ltd V/s Dy. CIT
(2018) 65 ITR Hyderabad 540
Export oriented undertaking Delay of one month in filing return System of assessee affected by virus- Reasonable cause. To be considered as return filed under Se 139
(1) Assessee entitled to exemption u/s 10B.
39. Deduction of tax at source: Commission Payment to No Resident.
Dy CIT V/s Sterling Ornament (P) Ltd.
(2018) 65 ITR (Tribunal) 492 Delhi (Tribunal)
Non- Resident Income deemed to accrue or arise in India foreign Agency Commission- Payments in nature of Commission earned services rendered outside India with no tax implications in India Tax need not be deducted at source:- Se 40 (a) (i)
- 40 Valuation of Stock Principles of Accountancy.
(2018) 65 ITR (Tribunal) 65 Dy CIT V/s Mittal Corporation Ltd.(Indore)

Valuation of Stock- Principles of accountancy- Assessee following exclusive method of accounting consistently for past many years – Assessee accounting for excise duty and taxes paid or charged under head :current assets” and recorded purchases net of taxes- assessee not required to add excise duty and other taxes while valuing closing stock- Income –tax Act, 1961,S.145A- Accounting Standard, Paragraph 2 – Deputy CIT V/s Mittal Corporation Ltd.