



# **Analysis of Judgements under Income Tax**

**-Ajay Vohra, Senior Advocate**

# Judgement No. 1



## **Title**

CIT vs. Balbir Singh Maini

## **Citation**

[2017] 398 ITR 531 (SC)

## **Issue**

Taxability of income in the hands of landowner in Joint Development Agreements (JDAs)

# Balbir Singh Maini (SC)

---

---

- The apex Court held that where for want of permissions, transaction envisaged in JDA fell through, no gain from transfer of capital asset could be taxed u/s 45 r.w.s 48 of the Income tax Act, 1961 ('the Act')
- The Court pertinently observed that:
  - ✓ After enactment of Registration and Other Related Laws (Amendment) Act, 2001, to attract section 53A of the Transfer of Property Act, 1882 and to ultimately constitute 'transfer' u/s 2(47)(v), 'part performance' should be in pursuance of a registered agreement/ contract
  - ✓ For attracting section 45 real income must 'arise' on assumption of transfer of a capital asset. Income must have been received or 'accrued' u/s 48 because of the transfer
  - ✓ Hypothetical income cannot be taxed u/s 45 of the Act

# Judgement No. 2



## **Title**

PCIT v. Aarham Softronics

## **Citation**

[2019] 412 ITR 623 (SC)

## **Issue**

Deduction under section 80IC- initial assessment year- substantial expansion

# Aarham Softronics (SC)

---

---

- The 3-Judge Bench of the Apex Court approved multiple “initial year” concept u/s 80IC based on substantial expansion of unit
- Held that assessee having set up new eligible industry availing 100% exemption under section 80-IC(3) (which is admissible for 5 years) could start claiming exemption at same rate beyond that period if it carried out substantial expansion in its manufacturing unit in terms of section 80-IC(8)(ix) within period of 10 years
- The previous year in which substantial expansion is undertaken would become 'initial assessment year', and from that year, assessee is entitled to fresh 100% deduction
- Recalled earlier Division Bench decision in the case of CIT v. Classic Binding Industries: 407 ITR 429 (SC)

# Judgement No. 3



## **Title**

ITO v. Venkatesh Premises  
Co-operative Society Ltd.

## **Citation**

[2018] 402 ITR 670 (SC)

## **Issue**

Principles of Mutuality

# Venkatesh Premises Co-operative Society (SC)

---

---

The Apex Court approved the principle of mutuality for co-operative housing societies' income. Their Lordships held:

- Doctrine of mutuality is premised on the theory that a person cannot make a profit from himself
- The essence of mutuality lies in commonality of the contributors & the participants (as a class) who are also the beneficiaries
- Receipts of housing society such as non-occupancy charges (members do not occupy flats themselves), transfer charges (on outgoing members), common amenity fund charges and certain other charges from members are exempt from income-tax based on the doctrine of mutuality as the fund is utilized for purposes/ benefit of the members

cont..

# Venkatesh Premises Co-operative Society (SC)

---

---

- Any difference in the contributions payable by old members and fresh inductees cannot fall foul of the law
- Commonality shall exist between contributory members and participatory members as “a class”
- The fact that the receipts are in excess of the limits prescribed by the State Government does not mean that the Societies have rendered services for profit, attracting an element of commerciality



# Judgement No. 4



## **Title**

Sesa Goa Ltd v. JCIT

## **Citation**

[2020] 117 taxmann.com  
96 (Bom.)

## **Issue**

Allowability of education  
cess on income tax as  
business deduction

# Sesa Goa Ltd (Bom.)

---

---

- There is an ongoing legal controversy whether 'education cess' is allowable as deduction while computing business income
- The issue arises basis the import & interpretation of section 40(a)(ii) which provides for disallowance of any "sum paid on account of any rate or tax levied on the profits or gains of any business or profession".
- Recently, the Bombay High Court held education cess to be allowable as business deduction for the following reasons:
  - ✓ Taxing statutes be interpreted strictly; since 'cess' does not find specific mention in section 40(a)(ii), it deserves to be allowed
  - ✓ Unlike section 10(4) of the Indian Income Tax Act, 1922, which disallowed payment of 'any cess, rate of tax'; section 40(a)(ii) expressly omitted the word 'cess'

cont..

# Sesa Goa Ltd (Bom.)

---

---

- ✓ Allowability of 'cess' u/s 40(a)(ii) was expressly clarified by CBDT in Circular No. F. No.91/58/66-ITJ(19) dated 18.05.1967
- ✓ Similar claim was upheld by the Rajasthan High Court (Jaipur Bench) in the case of Chambal Fertilisers [ITA No.52/2018]
- ✓ Apex Court in Jaipuria Samla Amalgamated Collieries v. CIT: 92 ITR 580 held that profits or gains of business or profession has reference only to profits and gains as determined in accordance with section 29; any rate or tax levied upon profits calculated in a manner otherwise could not be disallowed u/s 40(a)(ii)

cont..

# Sesa Goa Ltd (Bom.)

---

---

- Arguments against allowability of the claim are also highlighted:
  - ✓ Education cess, being an additional surcharge on income tax partakes the same character
  - ✓ Legislative history of section 40(a)(ii) is not determinative since the same predates the introduction of the levy of education cess; further, the CBDT Circular dated 18.05.1967 (supra) envisaged cess levied under other laws;
  - ✓ The phrase ‘any rate or tax’ under section 40(a)(ii) has to be construed having regard to its ordinary acceptable meaning, which includes education cess;
  - ✓ Education cess cannot be termed as being paid “wholly and exclusively for the purpose of assessee’s business” warranting allowance u/s 37

# Judgement No. 5



## **Title**

Essar Shipping Limited v.  
CIT

## **Citation**

[2020] 117 taxmann.com  
389 (Bom.)

## **Issue**

Taxability on waiver of  
loan

# Essar Shipping Limited (Bom.)

---

---

The Hon'ble Court analyzed for taxability of waiver of loans and held the same to be not taxable u/s 28(iv) in the hands of borrower:

- For applicability of section 28(iv) of the Act, income must arise from the business or profession and in form other than in the shape of money. Said clause not applicable to monetary benefits (refer CIT v. Mahindra & Mahindra Ltd.: 404 ITR 1 (SC))
- Waiver of loan cannot be equated with subsidy and thus cannot be taxed accordingly
- Two concepts are fundamentally different- 'loan' has been explained as sum of money that is expected to be paid back with interest, while 'subsidy' is a grant or contribution of money without any repayment for facilitation or promotion of any industry and/or in public interest

cont..

# Essar Shipping Limited (Bom.)

---

---

- Open questions:
  - Whether provisions of section 56(2)(x) applicable on waiver of loans?
- Decision assumes significance for cases where substantial haircuts in loans are undertaken specially in resolution proceedings under Insolvency & Bankruptcy Code, 2016

# Judgement No. 6



## **Title**

PCIT v. Hybrid Financial Services

## **Citation**

ITA No. 1265 of 2017  
(Bom.)

## **Issue**

Bad debts written off



# Hybrid Financial Services (Bom.)

---

---

- The High Court reiterated settled position that post 1.4.1989, it is not necessary to establish or prove that the debt is irrecoverable but it would be sufficient if the bad debt is written off in the accounts of the assessee [also see T.R.F. Ltd v. CIT : 323 ITR 397 (SC)]
- Interestingly, the Court also observed that, there is no requirement under the Act that the bad debt must accrue out of income under the same head, i.e., 'income from business or profession' to be eligible for deduction. All that is required is that debt in question must be written off by the assessee in its books of accounts
- Could lead to a situation that – (a) debt is created when income is offered under any other head of income; and (b) deduction is claimed under the head PGBP when the same is written off?

# Judgement No. 7



## Title

Brahm Datt vs. ACIT

## Citation

[2019] 260 Taxman 380  
(Del.)

## Issue

Section 149- Limitation for  
reassessment

# Brahm Datt (Del.)

---

---

- The High Court of Delhi held that amendment to section 149 by Finance Act, 2012, which extended limitation for reopening assessment in certain cases to sixteen years as against maximum of six year earlier, could not be resorted for reopening proceedings in respect of which existing limitation had already expired/ lapsed before amendment became effective.
- Lays down larger principle of law that once the limitation has expired, subsequent amendment extending limitation cannot be made effective to earlier period which attained finality prior to amendment

# Judgement No. 8



## **Title**

Navin Jolly v. CIT

## **Citation**

[2020] 117 taxmann.com  
323 (Kar)

## **Issue**

Claim for deduction under  
section 54F

# Navin Jolly (Kar.)

---

---

- **Provisions:** Section 54F provides for exemption of capital gains arising on transfer of capital asset (other than residential house) if the net-consideration received on transfer of capital asset is invested in purchase or construction of “residential house”

Exemption is not available if on the date of transfer, assessee owns more than one “residential house” (other than new asset)

- In the facts of the case, the assessee earned capital gains on transfer of shares. Exemption was claimed u/s 54F since he invested net-consideration received in construction of new residential house
- On the date of transfer of shares, the assessee owned various commercial properties and two apartments/ flats in a building sanctioned for residential use/ purpose, but which were used for commercial purposes as serviced apartments

Cont..

# Navin Jolly (Kar.)

---

---

- The question before the Court was whether exemption u/s 54F would be available where the assessee already held two apartments sanctioned for residential purposes though used for commercial purposes
- Answering the question in affirmative, the Court allowed exemption to the assessee holding that :
  - ✓ the usage of property must be considered for determining whether the property is residential or a commercial property. Since apartments were put to commercial use, it could not be said that assessee held any residential house
  - ✓ alternatively, since two residential apartments were in one building, they are to be treated as one residential house combined (owning one residential house is permissible)

# Judgement No. 9



## **Title**

CIT v. C. Ramaiah Reddy

## **Citation**

[2020] 117 taxmann.com  
540 (Kar.)

## **Issue**

Property received as stock  
in trade on partition-  
section 45(2) not  
applicable

## C. Ramaiah Reddy (Kar.)

---

---

- Assessee received lands as stock in trade on partition of HUF which was recorded at fair value by assessee and was subsequently sold. Gains (difference between sale value and recorded value) were offered as business income.
- HUF was engaged in real estate business and so was the assessee post partition
- The AO held that once partition took place, asset which came in share of assessee partake the character of “capital asset” & therefore, conversion of capital asset into stock in trade attracted provision of section 45(2) and cost was to be determined as per section 49(1) of the Act
- Accordingly, the assessing officer brought to tax the difference between the FMV at time of partition and cost of the asset as capital gains

cont..



## C. Ramaiah Reddy (Kar.)

---

---

- On the facts of the case, the Court held that :
  - ✓ Assets taken over by assessee were forming part of stock-in-trade of real estate business and same continued to be in the nature of stock-in-trade in the hands of assessee
  - ✓ There was no iota of material on record to show that the assets obtained by assessee were capital asset. The character of assets received on partition did not change
  - ✓ The HC thus held that the provisions of sections 45(2) & 49(1) were not applicable as the asset received was stock-in-trade

cont..

## C. Ramaiah Reddy (Kar.)

---

---

- Open issues:
  - ✓ Whether distribution of assets held as stock in trade by HUF on partition would not be considered as transfer in terms of section 47(i)?

Can one argue that what was distributed on partition was “real estate business” which was a capital asset and hence exempt from capital gains tax under section 47(i) while individual asset in the business were “stock in trade” only?

- ✓ Would the interpretation adopted by the High Court lead to avoidance of tax on difference between FMV of asset acquired as stock in trade on date of partition and acquisition cost in the hands of HUF?

# Judgement No. 10



## **Title**

Daimler India Commercial Vehicles (P) Ltd v. DCIT

## **Citation**

[2019] 416 ITR 343 (Mad.)

## **Issue**

Set-up of business

# Daimler India (Mad.)

---

---

- In the facts of the case, the AO disallowed operating & financial expenses and depreciation claimed by the assessee holding that assessee did not commence business since commercial production and sale of commercial vehicles had not started and plant was under erection
- The CIT(A) noticed that assessee had already commenced several activities such as designing, R&D, sourcing etc. though not manufacturing and sale of commercial vehicles and thus allowed assessee's claim
- On appeal by Department, the Tribunal held that business of the assessee was not “set-up” and restored the assessment order

Cont..

# Daimler India (Mad.)

---

---

- On appeal, the Hon'ble Court held that :
  - ✓ The finding of the Tribunal that business was not “set up” is beyond jurisdiction as it was not even the case of the assessing officer. The Court held that Tribunal could not venture into an issue which was not before the AO
  - ✓ After considering that assessee had commenced activities such as R&D, designing and sourcing relating to business, it was held that even though manufacturing plant was under erection, the business cannot be said to have not been set up
  - ✓ It was held that date of “set-up” of business is what is relevant for computation of business income. Difference between set-up and commencement of business have been reiterated

Cont..

# Daimler India (Mad.)

---

---

- ✓ Court dealt with issue of composite business activities and allowability of expenses. It was held that test of composite business is established when there is a unity of control & management and common fund apart from other features
- ✓ The Court held that all the activities of the assessee including designing, R&D, sourcing, manufacturing etc. are composite activities forming part of “business” and thus business of the Company was held to have been set-up despite plant was under erection
- ✓ The Court had analyzed almost all the landmark decisions on the issue of “set-up” of business

# Judgement No. 11



## Title

Shri Suresh Kumar  
Agarwal v. ACIT

## Citation

ITA No. 8703/Del/2019  
(Delhi Trib.)

## Issue

Addition under section 68-  
Penny Stocks

# Suresh Kumar Agarwal (Del Trib.)

---

---

The Tribunal deleted addition made u/s 68 on alleged introduction of unaccounted black money in garb of fictitious long-term capital gains generated from “penny stocks” on the following reasoning:

- Shares were purchased online and sold online through registered broker
- The assessee discharged onus u/s 68 by submitting contract notes, purchase bills from broker, proof of payment immediately after purchase of share, details and statements of demand account, copies of account from the broker’s books etc.
- The AO simply placed reliance on the investigation wing’s report wherein the name of the company whose shares were traded was mentioned
- No evidence or cogent material was brought on record by the AO to counter the assessee’s submissions or prove his allegations

cont..



# Suresh Kumar Agarwal (Del Trib.)

---

---

The bench also threw light on the manner in which the AO ought to have investigated the matter on receipt of information (para 31). The AO should have :

- Summoned the assessee u/s 131 to know about investment made such as - the business of the investee, how assessee came to know about credentials of the company, history of investments etc.
- Examined brokers of the assessee with relevant documents
- Examined/ verified the details of the transaction from stock exchange and details of counter parties purchasing these shares
- from where did the shares of the alleged company enter into Demat of the assessee
- Followed SOPs issued by the Department to investigate the penny stock cases

cont..

## Suresh Kumar Agarwal (Del Trib.)

---

---

- When assessee has sold shares there has to be date and time stamped transaction at the respective stock exchange. Time and date stamped transaction would have shown that the broker of the assessee has entered into a synchronized trade with the broker of the buyer. If the synchronized trade showed that the shares have been purchased by any of the 18 exit providers mentioned in the list of the investigation wing, it would have been conclusively proved that assessee has obtained bogus long-term capital gain

The Tribunal, however, upheld the jurisdiction of the assessing officer to reopen concluded assessment u/s 147/ 148 based on investigation report(s) in relation to fraudulent transactions involving “penny stocks”

# Judgement No. 12



## Title

Renu T Tharani v. DCIT

## Citation

ITA No. 2333/Mum/2018  
(Mum Trib.)

## Issue

Addition on account of  
amount held in Swiss bank

# Renu T Tharani (Mum Trib.)

---

---

The Mumbai Bench of the Tribunal confirmed addition of Rs. 196 cr. in hands of assessee who was the alleged beneficiary of deposits in the Swiss account of a Family Trust (in 2006-07) for the following reasons:

- 'Base note' received by Investigation Wing as part of Swiss Leaks revealed that assessee was sole 'discretionary' beneficiary of a Family Trust (which has an underlying company based in Cayman Islands and operated HSBC Geneva Bank Account)
- Denial to sign 'consent waiver' form by the assessee is viewed adversely by the Tribunal. It was held that such denial prohibits the Department to obtain necessary details from the HSBC Private Bank Geneva due to Swiss secrecy and data protection laws and thus would prevent actual facts from coming to lights

cont..

# Renu T Tharani (Mum Trib.)

---

---

- Considered preponderance of probabilities to adversely view the facts that within short time of the information about the above account coming to the possession of the Government of India-
  - ✓ the account was closed
  - ✓ underlying company was closed in Cayman Islands
  - ✓ whatever assets were being held in this bank account were transferred back to the company in Cayman Islands-a tax haven where it is almost impossible to find out about beneficial owners of a corporate entity.
- HSBC Pvt Bank has also been indicted by several Governments worldwide and it has even confessed to be being involved in money laundering

# Judgement No. 13



## **Title**

Maruti Suzuki India Limited v.  
DCIT

## **Citation**

ITA No. 961/ Del/ 2015 (Del  
Trib.)

## **Issue**

Levy of Dividend Distribution  
Tax (DDT) at lower rate of  
DTAA- Admission of additional  
ground

# Maruti Suzuki (Del Trib.)

---

---

- Application was made by the assessee before the Tribunal for admission of additional ground claiming levy of DDT u/s 115-O of the Act to be restricted at the beneficial/ lower rate specified for Dividend Income under the DTAA. The Tribunal was pleased to admit the additional ground/ claim
- The Tribunal held that:
  - ✓ A legal plea can be raised at any point of time by the assessee
  - ✓ There is no time limit to raise additional ground of appeal, which can be raised at any time before disposal of appeal
  - ✓ There is no estoppel in law for the assessee to resile from claims originally made
  - ✓ DDT is covered under definition of tax under section 2(43) and issues related thereto can be raised in appeal(s) emanating out of assessment proceedings

# Maruti Suzuki (Del Trib.)

---

---

- Writ Petition filed by the Department challenging the aforesaid admission was also rejected by the Delhi High Court in W.P.(C) 13241 of 2019 vide order dated 16.12.2019 holding that:
  - ✓ The order of the Tribunal was an interlocutory order during appellate proceedings which did not determine any rights of the parties on merits of the matter
  - ✓ Tribunal had merely admitted the ground which does not mean that additional ground is accepted on merits
  - ✓ The Department could challenge the admission of additional grounds and merits of the matter in case it is aggrieved by the final order passed by the Tribunal on disposal of appeal, while preferring appeal under section 260A



A stylized illustration of a hand holding a sign. The sign is white with a black border and contains the text 'THANK YOU' in large, bold, blue letters, and 'ANY QUESTIONS?' in smaller, blue letters below it. The hand is orange and is positioned on the right side of the sign. The sign is set against a purple background. The entire scene is framed by a purple border. On the left side of the image, there are several diagonal stripes in blue and black.

**THANK YOU**  
ANY QUESTIONS?