

## GIST OF CASE LAWS

S. No	Case law	Issues discussed
1	<b>GOETZE LIMITED Vs. COMMISSIONER OF INCOMETAX</b>	Assessee company first filled return of income then claimed deduction through letter. Disallowed as that can be done by filling revised return.
2.	<b>KELVINATOR OF INDIA LIMITED Vs. COMMISSIONER OF INCOMETAX</b>	Reopening of assessment Reopening cannot be done without material evidence. Before 1989, the AO should record reason in writing after 1989 not necessary.
3	<b>UP FOREST CORPORATION AND OTHER Vs. DCIT</b>	Claiming exemption as trust The precondition is registration u/s 12A in form 10A within one year delay can condoned by CCIT/CIT
4.	<b>P.V.A.L. KULANDAGAN CHETTIAR Vs. COMMISSIONER OF INCOMETAX</b>	Double taxation Assessee having business income and capital gain in Malaysia Not taxable in India as the Provision of DTAA prevails over the Act.
5	<b>BROOKE BOND INDIA LIMITED Vs. COMMISSIONER OF INCOMETAX</b>	Expenditure in connection with issue of share capital whether revenue or capital Decide as capital expenditure can't be claimed as business expenditure
6	<b>ANAND THEATRES Vs. COMMISSIONER OF INCOMETAX</b>	Depreciation for building claimed by assessee plant (for higher rate).  Even building constructed with specification, it cannot be considered as plant. As per act, plant is an inclusive and those included are moveable hence building cannot be considered as plant
7	<b>PODAR CEMENTS PRIVATE LIMITED Vs. COMMISSIONER OF INCOMETAX</b>	Ownership of house property Not as per common law but as IT law. The person should enjoy the property as owner and not on behalf of owner
8	<b>SAHELI LEASING AND INDUSTRIES LIMITED Vs. JOINT COMMISSIONER OF INCOMETAX</b>	Concealment of income and penalty Even if there is no income or there is a loss and if the AO found there is concealment, then penalty can be levied.

9	<b>TRF LIMITED Vs. COMMISSIONER OF INCOMETAX</b>	Writing off of bad debts The assessee can write off bad debts when he has bad debts, previously before 01/04/89, the bad debts should be established
10	<b>SHAMBU INVESTMENTS (P) LIMITED Vs. COMMISSIONER OF INCOMETAX</b>	Property let out with other amenities cannot be considered as business income, and it should be considered as income from house property
11	<b>TRILOK NATH MAHROTRA Vs. COMMISSIONER OF INCOMETAX</b>	Salary paid to member of HUF from firm whether individual income or income of HUF, if it is part of return for the investment made HUF in the firm, then it is income of HUF
12	<b>CHELLAPALLI SUGAR LIMITED Vs. COMMISSIONER OF INCOMETAX.</b>	Cost of asset for the purpose of claiming depreciation. Interest paid before commencement of business will be included in the cost of asset
13	<b>TUTICORINALKALI CHEMICALS AND FERTILISER LIMITED Vs. COMMISSIONER OF INCOMETAX</b>	Income earned before commencement of business will not be considered as capital and will be charged as income from other sources
14	<b>MC. DOWELL AND CO LIMITED Vs. COMMERCIAL TAX OFFICER</b>	Tax evasion and tax avoidance Excise duty paid by buyer will be included in the amount of turnover
15	<b>BRITISH PAINTS INDIA LIMITED Vs. COMMISSIONER OF INCOMETAX</b>	Valuation of stock cost or market price whichever is less. The company excluded the cost of overhead and considered only the cost of raw material which is wrong.

## **1. GOETZE LIMITED Vs. COMMISSIONER OF INCOMETAX**

Section involved 139 and 254

Issue involved: way of claiming deduction.

Assessee filed return for the assessment year 1995-96 on 30/11/1995

Later, claiming deduction by writing letter to the assessing officer on 12/01/1998 stating that they can raise the point of law even before the appellate tribunal.

The Assessing officer disallowed the claim on the ground that amendment is possible only through revised return and not by letters.

The Assessing Officer view was affirmed by the CIT (A), Tribunal and Supreme Court.

## **2. KELVINATOR OF INDIA LIMITED Vs. COMMISSIONER OF INCOMETAX**

Section involved 147

Issue involved: Reopening of assessment

The Assessing officer cannot reopen an assessment mere because of change of opinion. There must be tangible material evidence to come to the conclusion that there was escapement of income from assessment.

Prior to 01/04/1989, the reason for reopening of assessment should be recorded by the Assessing officer in writing. After an amendment with effect from 01/04/1989, the Assessing officer can reopen assessment when there is any reason to believe.

### **3. UP FOREST CORPORATION AND OTHER Vs. DCIT**

Section involved: 11(1)(a)

Issue involved: claiming exemption and registration u/s12A

The assessee company is a corporation constituted under UP forest Act and claimed exemption for their income as they are the local authority as per section 10(20) of the Income tax Act and also contended that eligible for exemption under section 11(1)(a). The CIT (A) and tribunal stand by the above view.

Based on SLP filed by the revenue, the SC held that the term local authority not defined in the act and rejected the appeal of the assessee. As far as claiming exemption u/s11(1)(a) registration u/s12A in Form 10A is to be made before the expiry of one year from the date of creation of the trust or the establishment of the institution whichever is later. The CIT/CCIT vested with discretionary power to admit application after the expiry of the prescribed period.

However, section 12A registration is precondition for claiming exemption u/s11(1)(a). Without registration exemption cannot be claimed. Hence, the revenue stand is affirmed.

### **4. P.V.A.L. KULANDAGAN CHETTIAR Vs. COMMISSIONER OF INCOMETAX**

Section involved: 4 and 5

Issue involved: Double taxation.

The assessee is a citizen of Malaysia having business income and income from capital gains in Malaysia. The business income and income from capital gains whether taxable in India.

Section 90 of the Income tax Act 1961 says that the global income is taxable as per section 4 and 5 subject the provision contained in the Double Taxation Avoidance Agreement.

Section 90(2) of the Act says that if there is any conflict between the act and the provision of DTAA, the provision prevails over the act.

If the assessee is a resident of a foreign country his residence in India become irrelevant and DTAA prevails over section 4 and 5.

Accordingly, the business income and capital gain earned in Malaysia is not taxable in India.

## **5. BROOKE BOND INDIA LIMITED Vs. COMMISSIONER OF INCOMETAX**

Section covered: 37

Issue involved: Expenses in connection with issue of shares whether capital or revenue.

Brooke bond India Limited issued shares of Rs.1675000/- of Rs.10/- each and incurred an expenditure of Rs.1399305/- in connection with issue of shares and claimed it as deduction from the profit stating that

The additional capital issued was to meet the need for working capital requirement of the company(Working capital means the funds require to run the day to day business) which in turn gives more profit to the concern. Therefore the expenditure should be considered as revenue and not as capital.

The Assessing officer dismissed the claim and treated the expenditure as capital.

The Supreme Court, citing the Punjab State Industrial Development Corporation limited Vs. CIT (where the assessee claimed fees paid to the Registrar of companies in connection with enhancement of capital as revenue which was dismissed and treated as capital expenditure) dismissed the appeal of the assessee and allowed the view of the Assessing officer.

## **6. ANAND THEATRES Vs. COMMISSIONER OF INCOMETAX**

Section covered: 32 and 43(3)

Issue involved: Assessee considered building as plant and claimed higher depreciation.

The assessee is having two building one for theatre and one for hotel. The assessee claimed that the building is constructed with specification suited for hotel and theatre, hence it should be treated as plant and not as building.

There should be a distinction between premises in which business is carried and plant with which business is carried on. Building which are constructed specially for a specific business doesn't make it plant.

Section 43(3) defines plant which is inclusive. Each item included under section is moveable. Since, building is not a moveable one, which cannot be considered as plant.

However, section 32(1)(v) provides that building which are constructed for a special purpose, additional depreciation can be claimed.

## **7. PODAR CEMENTS PRIVATE LIMITED Vs. COMMISSIONER OF INCOEMTAX**

Section covered: 22 and 27

Issue involved: Ownership of House property

As per section 22 of the Income tax Act, owner must be the person who can exercise the right of the owner not on behalf of the owner but in his own right.

Under common law, owner means a person who got valid legal title over property as per transfer of property Act, Registration Act.

The assessee company purchased two flats directly from the seller and two other through sister concern in Bombay. These properties were let out and the assessee claimed this income is income from other sources as no title deed was

transferred in the name of the assessee and also contended that the income should be calculated based on annual value and not on the actual rent received,

The Assessing Officer disallowed both the representation of the assessee which was affirmed by the CIT(A), Tribunal, Supreme Court.

## **8. SAHELI LEASING AND INDUSTRIES LIMITED Vs. JOINT COMMISSIONER OF INCOMETAX**

Section covered: 271(1)(c)

Issue covered: concealment of income and penalty.

The assessee filled loss return for the particular assessment year and claimed 100% depreciation for plant and machinery. During assessment, the AO disallowed depreciation and some other expenses even after that the income was nil. However, AO charged penalty under section 271(1)(c) in respect of depreciation.

The Assessee claimed that as there is no income no penalty should be levied. CIT (A) dismissed the appeal. Tribunal and HC allowed and deleted the penalty.

Whereas the SC, in its judgment quoted section 271(1) [c] said mere because of the reason that there is no income, no penalty is levied and the view of the AO is affirmed.

Section 271(1)(c) is to penalize the assessee

for concealing particulars of income and or furnishing inaccurate particulars of such income, whether the returned income was profit or loss. Even if no tax was payable penalty was still leviable.

One word occurring in different sections of the same act can have different meanings if the objects of the two sections are different and they operate in different fields.

## **9. TRF LIMITED Vs. COMMISSIONER OF INCOMETAX**

Section covered: 36(i)(vii)

Issue involved: writing off bad debts

Section 36(i)(vii) was inserted by the amendment made in the Act with effect from 01/04/1989. In the amendment, the word established was deleted. Accordingly, with effect from 01/04/1989, the assessee can write off the bad debts in their books and not necessary to establish that the debts are irrecoverable. However, before 01/04/1989, it was the duty of the assessee to establish that the debts are irrecoverable to claim deduction for bad debts.

It was held by court in the given case that, the assessing officer has not examined, whether bad debts or part thereof is written off in the accounts of the assessee. The matter is remitted to the AO for de novo consideration.

## **10. SHAMBU INVESTMENTS (P) LIMITED Vs. COMMISSIONER OF INCOMETAX**

Section covered: 22 and 263

Issue involved: property let out with other amenities, Business income or property income.

The assessee company let out a part of the property with amenities such as furniture and fixtures, lights and air conditioner, watch and ward staff, electricity, water and other common facilities. The assessee company also received security deposit of Rs.400000.

The assessee company received income from such property and claimed it as business income.

The commissioner of Incometax made revision order under section 263 stating that it is erroneous and prejudicial to the interest of the revenue and directed the Assessing officer to reassess the same as house property income under section 22.



It is held by the tribunal that the AO is not erroneous and prejudicial to the interest of the revenue and cancelled the order passed by CIT.

However, it is held by the HC and SC, in the given case, the prime object was let out the property, such income should naturally be considered as income from house property under section 22.

### **11. TRILOK NATH MAHROTRA Vs. COMMISSIONER OF INCOMETAX**

Section covered: 4

Issue involved: member of HUF in a partnership firm, salary to member whether individual income or HUF Income.

If a member of Hindu undivided family joined a partnership firm and is given salary for managing the firm or rendering special services to the firm, the salary would be treated as his individual income.

But if the salary is paid to member for the amount invested by the HUF in the firm or is a part of return of the investment made by Hindu Undivided family in the partnership firm then such income should be treated as income of HUF.

### **12. CHELLAPALLI SUGAR LIMITED Vs. COMMISSIONER OF INCOMETAX.**

Section involved: 43(1) 32 and 10 (2) (XV)

Issue considered: cost before commencement of business, wealth tax paid whether deductible as business expenditure

The assessee company borrowed money from IFCI before the commencement of business for installation of plant and machinery. The company also paid interest to the financial institution and included the interest into the cost of the plant and machinery and claimed depreciation for the entire amount.

The company paid tax on wealth owned by the company and claimed the wealth tax as business expenditure.

The assessing Officer disallowed the claim stating that interest is revenue expenditure and which should not be capitalized. The AO also disallowed wealth tax paid as business expenditure citing section 4 of the Act.

The court held that in case of claiming depreciation, there is no clear rule in the IT Act as to the cost of the asset. Hence, what is the rule followed in accountancy should be followed here also. As per accounting rule, cost of asset means all cost incurred to bring such asset into existence and put them into working condition. Accordingly, the assessee claim of including the interest paid for the borrowed capital into the cost of asset is allowed.

As far as payment of wealth tax and deduction as business expenditure, the SC citing the Indian Aluminum Company limited Vs. Commissioner of Incometax, states that when a person has a dual capacity of a trader-cum owner, and he pays tax in respect of property which is used for the purpose of trade, the payment must be taken to be in the capacity of a trader according to ordinary commercial principles.

The SC allowed both the claims of assessee and order passed against revenue.

### **13. TUTICORINALKALI CHEMICALS AND FERTILISER LIMITED Vs. COMMISSIONER OF INCOMETAX**

Section covered: 56 Income from other sources 72 set off of losses

Issue involved: interest earned on short term investment before commencement of business whether business income or Income from other sources and whether such income used for set off of business loss.

The assessee company had taken loan from various banks and financial institutions. The company also deposited the unused funds in banks as short term deposits. In filling the return, the assessee company claimed this as income from

other sources and also claimed business loss under the head business or professional income and used the interest income for set off the business loss.

Later company filled a revised return for the above income, stating that the income earned before commencement of business should be capitalized and also as the company is liable to pay interest for the loan taken from various banks and institutions this interest is used for adjusting the interest payable by the company and accordingly there is no interest income.

The Incometax officer rejected the claim of assessee (that is no interest income) which was upheld by the CIT (A) and tribunal.

The SC held that

Profits and gains of business or profession is only one of the heads under which the Company's income is liable to be assessed to tax. If a company has not commenced business, there cannot be any question of assessment of its profits and gains of business. That does not mean that until and unless the company commences its business, its income from any other source will not be taxed.

The company has chosen not to keep its surplus capital idle, but has decided to invest it fruitfully. The fruits of such investment will clearly be of revenue nature.

It is true that the company will have to pay interest on the money borrowed by it. But that cannot be a ground for exemption of interest earned by the company by utilizing the borrowed funds as its income.

Accordingly, the interest earned by the company is revenue in nature and as no business is commenced such income will not be taxed as business income, interest income will be taxed as Income from other sources. Further, before commencement of business, no income is charged under the head business or profession no loss can also be claimed.

Hence, the petitions of the assessee are dismissed and allowed in favour of the revenue.

#### **14. Mc. DOWELL AND CO LIMITED Vs. COMMERCIAL TAX OFFICER**

Issue Involved: tax evasion and tax avoidance.

The company was a licensed manufacturer of Indian liquor. Buyers of Indian liquor from the assessee company's distillery obtain distillery passes for release of liquor after making payment of excise duty and present the same at the distillery plant, there upon the bill of sale or invoice prepared by the distillery showing the price of liquor but excluding excise duty. The assessee company books of account also did not contain any reference to excise duty paid by the purchaser.

The assessee company paid sales tax to the Andhra Pradesh government based on turnover excluding the excise duty which was not accepted by the AP sales tax authorities as turnover includes excise duty.

The matter referred to SC in the year 1982-83 and held by the SC that the view of the Sales tax authorities were correct as turnover should not be included with excise duty, since the excise duty did not go into the common till of the company and did not become a part of the circulating capital.

The AP government amended the AP distillery Rules No. 76 with 76(a) stating that "No spirit of liquor" manufactured or stored shall be removed unless the Excise duty specified in rule 6 has been paid by a holder of D-2 licence. Based on the amendment, the AP sales tax authorities issued notice to the company to tax for the excise duty which directly paid by the buyer in the year 1982-83. The Company moved to the high court to quash the notice.

The High Court dismissed the writ petition on the findings (a) that the turnover related to liquor; and (b) that the excise duty which was payable by the appellant but had by amicable arrangement been paid by the buyer was actually a part of the turnover of the appellant and was, therefore, liable to be so included for determining liability for sales tax.

Tax planning may be legitimate provided it is within the framework of law, Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to

dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges.

In the given case, the incidence of excise duty is directly relatable to manufacture but its collection can be deferred to a later stage as a measure of convenience or expediency.

The change in Rule 76 of the AP Distillery Rules has clearly affirmed the position that liability for payment of excise duty is of the manufacturer and the provisions of rules 80 to 84 do not militate against it. These rules do not detract from the position that payment of excise duty is the primary and exclusive obligation of the manufacturer and if payment be made under a contract or arrangement by any other person it would amount to meeting of the obligation of the manufacturer and nothing more.

Excise duty though paid by the purchaser to meet the liability of the appellant, is a part of the consideration for the sale and is includible in the turnover of the appellant. The purchaser has paid the tax because the law asks him to pay it on behalf of the manufacturer.

Hence, the petition of the assessee company is dismissed.

## **15. BRITISH PAINTS INDIA LIMITED Vs. COMMISSIONER OF INCOMETAX**

Section Involved: 145

Issue discussed: valuation of stock

The assessee company engaged in the business of manufacturing paints consistently valued stock at cost of raw materials price excluding the overheads stating the reason that the goods manufactured by them being the paints is having limited storage life and if not sold within a limited period will have no market value.

The Incometax Officer rejected the arguments of the company on the grounds that the well framed accounting rule is stock should be valued at cost or market price which ever is less. Further, the assessee at no time claimed any deduction for deterioration or damage to goods in the income statements.

The CIT (A) and Tribunal upheld the decision of the AO. However, the High court reversed the decision of the tribunal.

Based on the appeal by the revenue, the SC held that

It is not only the right, but the duty of the Assessing Officer to consider whether or not the books disclose the true state of accounts and the correct income can be deducted therefrom. It is incorrect to say, as contended on behalf of the assessee, that the Officer is bound to accept the system of accounting regularly employed by the assessee the correctness of which had not been questioned in the past. There is no estoppel in these matters, and the Officer is not bound by the method followed in the earlier years.

Accordingly, the appeal is allowed in favour of the revenue.

### PRIVIOUS YEAR 'S OBJCTIVE TYPE QUESTIONS

1. In which of the following decisions the Supreme Court held that tax planning may be legitimate provided it is within the frame work of tax, colorable devices cannot be part of tax planning?

A	CIT Vs. Podar Cements private limited
B	CIT Vs. British Paints India limited
C	Mc.Dowell and co limited Vs. Commercial tax Officer
D	CIT Vs. Shree sajjan mills limited

2. In which of the following cases the Supreme Court has taken the view that for the purpose of determining the actual cost for allowance of depreciation and development rebate, interest paid on amounts borrowed for the purpose of such depreciable assets could be treated as part of cost?

A	CIT Vs. challapalli sugar limited
B	CIT Vs. podar cements private limited
C	Kedarnath jute manufacturing co limited Vs. CIT
D	CIT Vs. Shree sajjan mills limited

3. In which of the following Supreme Court decisions it is held that interest derived by the assessee from the borrowed fund which are invested in short term deposits in bank would be chargeable to tax under income from other sources?

A	CIT Vs. Podar Cements private limited
B	CIT Vs. Tuticorin alkali chemicals and fertilizer limited
C	Kedarnath jute manufacturing co limited Vs. CIT

D	None of the above
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4. In which of the following decisions the Supreme Court held that any system of accounting which excludes for valuation of the stock in trade all costs other than the cost of raw-material for the goods in process and finished products, is likely to result in a distorted picture of the true state of business for the purpose of computing the taxable income?

A	CIT Vs. challapalli sugar limited
B	CIT Vs. British Paints India limited
C	CIT Vs. Tuticorin alkali chemicals and fertilizer limited
D	None of the above

5. In which of the following cases the supreme court held that interest earned during the pre commencement period of business was taxable?

A	CIT Vs. Tuticorin alkali chemicals and fertilizer limited
B	CIT Vs. Raja vinay kumar sahas
C	Shree sajjan mills limited Vs. CIT
D	None of the above

6. In chelapalli sugars Limited Vs. CIT it was held that

A	Interest was an allowable expenditure
B	Depreciation was not allowable
C	Interest was includable in cost of plant and machinery
D	Interest was not be capitalised

7. McDowell and Company Limited is a landmark judgement on

A	Property income
B	Striking at the root of attempt to legitimize tax avoidance
C	Provision of bad and doubtful debts
D	Agricultural income



8. Tuticorin Alkali Chemicals Vs. CIT deals with taxability of

A	Commission income
B	Property income
C	Interest income prior to commencement of business
D	Interest income post commencement of business

9. In McDowell and Company Limited, it was held that

A	Excise duty was not part of turnover
B	Excise duty was part of turnover
C	It is not the duty of every citizen to pay tax honestly
D	Agricultural income is not taxable.

10. As per Supreme Court decision in Tuticorin Alkali Chemicals Vs. CIT the expenditure/ loss incurred before commencement of production was held to be

A	Full allowable
B	Partially allowable
C	Of revenue in nature
D	Not allowable

11. In CIT Vs. British Paints India Limited decision was in context of

A	Taxation of property income
B	Inclusion of property in taxable wealth
C	Valuation of closing stock
D	Deduction of sales tax

12. In CIT Vs. British Paints India Limited decision it was held that

A	The object of stock valuation is to correctly determine profit or loss
B	Under section 145 of the Incometax Act, it is the duty of the assessing officer to deduce correct profits and gains from the accounts maintained
C	Exclusion of costs other than the cost of raw materials for valuing closing stock will result in distorted picture of the profits and gains
D	All of the above.

13. In CIT Vs. Podar cements private limited, the meaning of owner was expounded in the context of

A	Section 2 of the IT Act.
B	Section 10 of the IT Act.
C	Section 22 of the IT Act.
D	Wealth tax Act

1] c	2] a	3] b	4] b	5] a	6] c	7] b	8] c	9] b	10] c
11] c	12] d	13] c							

**The evil consequence of tax avoidance:**

- (i) there is substantial loss of much needed public revenue particularly in a welfare State like ours;
- (ii) there is the serious disturbance caused to the economy of the country by the piling up of mountains of black money directly causing inflation;
- (iii) there is "the large hidden loss" to the community by some of the best brains in the country being involved in the perpetual war waged between the tax avoider and his expert team of advisers, lawyers and accountants on the side and the tax-gathered and his perhaps not so skillful, advisers on the other side;
- (iv) there is the "sense of injustice and inequality which tax avoidance arouses in the breasts of those who are unwilling or unable to profit by it"; and
- (v) last but not least is the ethics (to be precise, the lack of it) of transferring the burden of tax liability to the shoulders of the guideless, good citizens from those of the "artful doggers.