CA FINAL
DIRECT TAX CASE LAWS
RTP - MAY 2018 EXAM

1) **HONDA SIEL CARS INDIA LTD (SC) 2017**

Whether Technical Fee paid under a Technical Collaboration agreement (TCA) for setting up a Joint Venture Company in India is Revenue or Capital Expenditure

The purpose of TCA was to setup the Joint Venture not only to transfer technical Information but complete assistance for establishment of Plant & Machinery etc to setup manufacturing unit and upon termination of TCA, the Joint Venture would come to an end.

Judgement

The SC held that Fee paid is CAPITAL in Nature since upon termination of TCA, Joint Venture would come to an end.

"Against the Assessee"

2) PALAM GAS SERVICE (SC) 2017

Whether Section 40(a)(ia) ie Disallowance on non-deduction / Payment of TDS when amount is not "payable" to a Sub-Contractor but has been actually paid during the year.

The Assessing officer disallowed the expenses on account of failure of deduct TDS.
The Assessee Contended that Section 40(a)(ia) did not apply as the amount not payable but actually paid.

Judgement

The SC held that disallowance shall be attracted in both the Cases, when amount is paid or amount is Payable

"Against the Assessee"

3) RAJ DADARKAR & ASSOCIATES (SC) 2017

Whether Rental Income earned from Letting out of premises is to be treated as Business Income or House Property Income.

The Assessee has acquired the Rights to Conduct a Market on Certain Land, the assessee spent sum to construct 95 shops and 30 stalls and treated Income from Sub-Letting of such shops as Business Income

Judgement

The SC observed that the Right (Leasehold) are given for more than 12 years (Assessee is deemed owner u/s 27) In this Case Letting out of premises is not the business of Assessee. Hence, SC held that Income from Sub-Letting is to be treated as Income under the head House property.

"Against the Assessee"

4) RAGHUVIR SYNTHETICS LTD SC 2017

Whether the nature of an expenditure can be considered debatable for not invoking adjustment U/s 143(1)(a), where Jurisdictional HC has taken a view that expenditure is capital in nature even though some other HCs have held that same is revenue in nature

The Assessee had claimed Expense as Revenue on account of advertisement and public issue

Judgement

The SC noted that HC of Madras, AP and Karnataka held such expense as Revenue However HC of Allahabad, HP, Delhi, Calcutta, Bombay, P&H, Gujrat and Rajasthan held such expense as Capital in nature

The SC held the issue is not debatable Since the Registered office of the Assessee is in GUJRAT, the Law down by Gujrat HC is binding on the Assessee ie Expense is Capital in nature

"Against the Assessee"

5) BERGER PAINTS INDIA LTD 2017 (SC)

Whether "Premium" on Subscribed Share Capital is CAPITAL EMPLOYED in the business u/s 35D to be eligible for deduction.

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For the purpose of Computing Capital employed u/s 35D, Issued share Capital is Considered and Issued share Capital does not Include Share premium.

Judgement

The SC held that the Assessee is NOT entitled to claim deduction in relation to the premium amount.

"Against the Assessee"

6) A.P. Moller Maersk SC 2017

Whether payment made by the agents in India responsible for booking Cargo and acting as clearing agents, to use Centralized Communication system maintained by the assessee Company engaged in shipping business, Can be treated as fee for technical Services.

Judgement

The SC observed that the expenditure for running this system was shared by all the agents and payment to the assessee were merely as reimburshment of expenses Incurred. The SC held that amount paid by Indian agents to the Non-Resident Company would not be Liable to tax as fee for Technical Services.

"Favour of Assessee"

7) SANDEEP SINGH SC 2017

Whether payment of sums due, after the deadline Stipulated by Settlement Commission would Save the Petitioner from withdrawal of Immunity from the Prosecution.

Judgement

The SC held that the Assessee having Cleared all taxes due is Immune from Prosecution.

"Favour of Assessee"

8) GOPAL & SONS (HUF) SC 2017

Is Loan to HUF who is a shareholder in a closely held Company chargeable to tax as deemed dividend u/s 2(22)(e)

Judgement

The SC held that the Loan amount is to be assessed as deemed dividend U/s 2(22)(e)

"Against the Assessee"

9) BALAKRISHNAN SC 2017

Whether Receipt of higher Compensation after notification of Compulsory acquisition would change the character of Transaction into a Voluntary Sale.

Judgement

The SC held that even if the Compensation is negotiated, it would Continue to remain as Compulsory acquisition. hence, exemption u/s 10(37) Can not be denied.

"Favour of Assessee"

10) TRAVANCORE DIAGNOSTICS (P) LTD (KER) 2017

Whether omission to Issue notice U/s 143(2) is a defect not Curable in spite of Section 292BB.

Judgement

Even though the assessee had participated in the proceedings in the absence of mandatory notice, such Assessment is not Valid

Section 292BB helps revenue in Case notice has been issued.

"Favour of Assessee"

11) MOVALIYA BHIKHUBHAI BALABHAI (GUJ) 2016

Is Interest on Enhanced Compensation U/s 28 of Land Acquisition Act 1894 assessable as Capital Gains or Income from other sources.

Interest U/s 28 of Land Acquisition Act 1894 represents enhance Value of Land thus having nature of Compensation and not Interest.
Section 34 of Land Acquisition Act is for delayed in making payment hence liable to be taxed U/H Other Sources.

Judgement
The HC held that Interest awarded U/s 28 of Land Acquisition Act was not liable to be taxed U/H Other Sources

" Favour of Assessee "

12) RAVJIBHAI NAGJIBHAI THESIA (GUJ) 2016

Whether the AO is bound to Consider the Report of Departmental Valuation officer, when it is available on Record.

Judgement

The HC held that Capital Gain has to be Computed in Conformity with the Value So determined by Departmental Valuation officer.

"Favour of Assessee"

13) MEGA TRENDS INC. (MAD) 2016

Does the CIT(A) have the power to change the Status of Assessee

Judgement

The HC held that the power to change the status is available to Assessing authority and when it is not used by him, the Appellant authority is having power to change the status.

"Against the Assessee"

14) SUNIL VISHWAMBHARNATH TIWARI (BOM) 2016

Is the Increase in Gross Total Income Consequent to disallowance U/s 40(a)(ia) eligible for Profit-linked deduction under chapter VI-A.

Judgement

The HC held that the Assessee is entitled to claim deduction U/s 80IB in respect of enhanced Gross Total Income in Consequences of disallowance U/s 40(a)(ia)

"Favour of Assessee"