

**Shariq Contractor**

**Important issues in**  
**Business Deductions**

**Direct Tax Refresher course**  
**6<sup>th</sup> June, 2015**

# What is Business

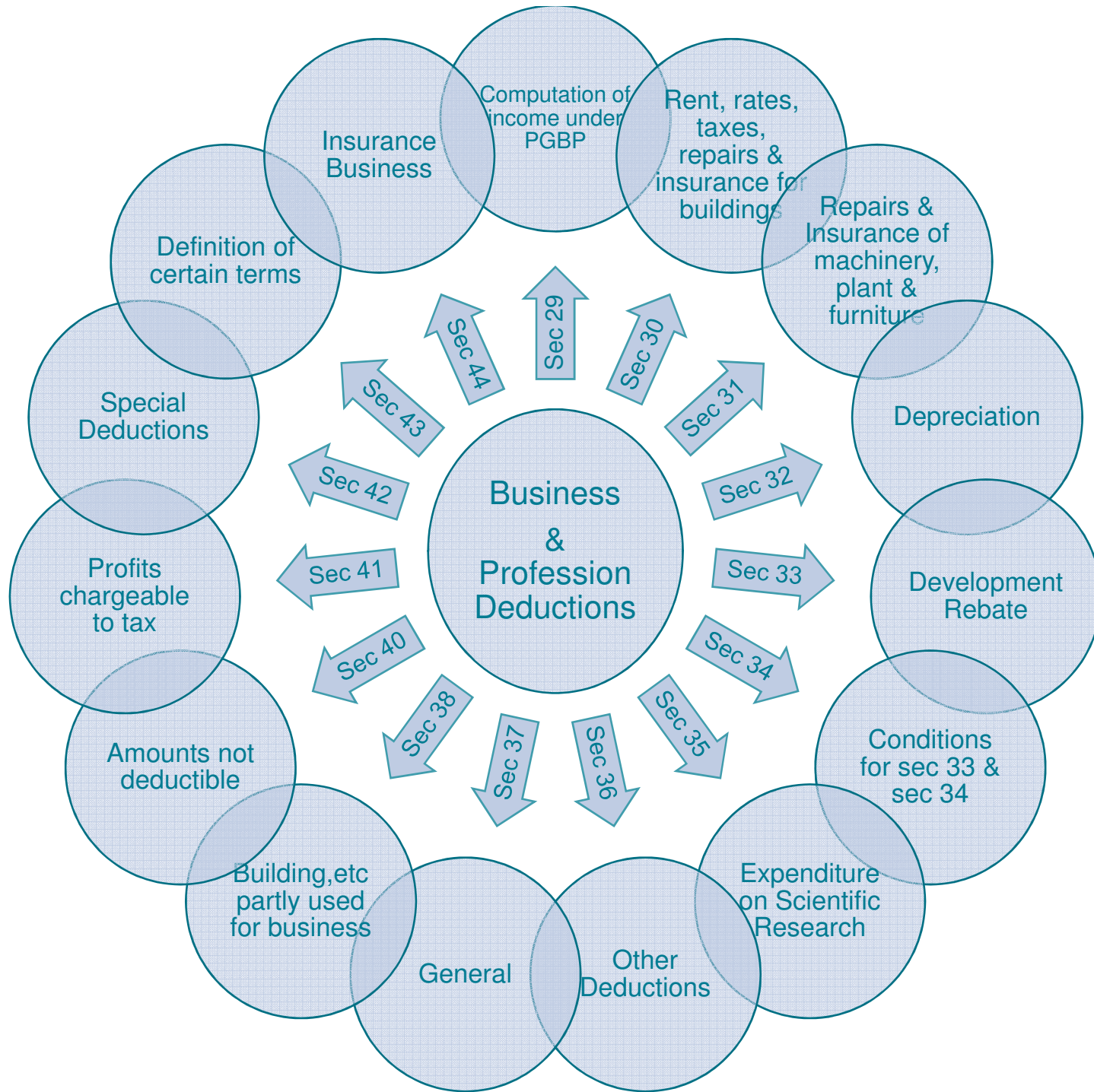
- The word '**Business**' is defined in S. 2(13) to include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture.
- "Business" connotes some real, substantial and systematic or organised course of activity or conduct with a set purpose.
- ❖ ***Narain Swadeshu Wvg. Mills, 26 ITR 765 (SC)***
- To regard an activity as a business, there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive and not for sport or pleasure.
- ❖ ***Sole trustee, Lok Shikshana Trust, 101 ITR 234 (SC)***

# Adventure in the Nature of Trade

- A single transaction can also amount to a business transaction.
- ❖ **Prabhu Dayal, 82 ITR 804 (SC)**
- This postulates the existence of certain elements in the adventure which in law would invest it with the character of trade or business.
- It is a transaction that is characterised by some of the essential features of trade or business, but not all of them. So even an isolated transaction can satisfy the description of an adventure in the nature of trade.
- ❖ ***G. Venkataswami Naidu & Co, 35 ITR 594 (SC)***
- ❖ ***Estate Investment Co Ltd, 121 ITR 580 Bombay High Court***

# Overview of Sections

- **Section 28** – Charging Section to charge Income tax under the head “Profits and gains of business or profession”.
- **Section 29** – Computation of business income (i.e. in accordance with the provisions contained in section 30 to 43D).
- **Section 30 to 43D** – Business deductions i.e. allowable expenses that can be claimed against business income.



# Revenue v Capital Expenditure

## **Expenditure in the nature of capital expenditure:**

- The term Capital Expenditure is not defined in the Act and must be construed in the business sense
- The words “in the nature of capital expenditure” occurring in S. 37(1) make it more elastic in its application to the facts of each case
- The word 'capital' connotes permanency and therefore it is closely akin to the concept of securing a tangible or intangible property, or corporeal or incorporeal right, so that they could be of lasting or enduring benefit to the enterprise in issue
- Revenue expenditure is operational in its perspective and solely intended for the furtherance of the enterprise

❖ ***CIT v. Ashok Leyland Ltd. 72 ITR 137 SC***

# Revenue v Capital Expenditure

Contd...

## **Payment for Know-how:**

- Payment for know-how and royalty. Whether outright purchase or only right to use know-how transferred
- If the ownership and the intellectual property rights in the know how or technical information do not become asset (ownership) of the assessee, the license fees (generally) is revenue in nature
- The fact that after 10 years and after returning the tangible properties, the assessee could still continue to use technical knowhow would be a trivial and inconsequential as in the automobile industry, technology upgradation is constant and rapid

❖ ***CIT v Hero Honda Ltd, 372 ITR 481 Delhi High Court***

# Revenue v Capital Expenditure

Contd...

**Expenses incurred for expansion of current business is revenue in nature:**

- Assessee incurred expenses for setting up a new unit by way of vertical and horizontal expansion of business, which finally did not materialize
- The new unit was to be established in a new geographical region, but was under the common control of the BoD of the company and was out of the surplus funds generated by the existing business
- Revenue expenditure incurred were in the nature of salary, wages, repair, maintenance, design and engineering fee, travelling and other expenses of administrative nature
- The test of existing business with common administration and common fund was clearly met. Since the project was abandoned, no new asset also came to be created

❖ ***Indo Rama Synthetics v CIT, 333 ITR 18 Delhi High Court***



# Revenue v Capital Expenditure

Contd...

## **Expenses to be carried as WIP:**

- Assessee in construction business was carrying out 13 projects, the cost of which was shown as WIP
- It incurred expenses on advertisement, sponsorship and brand building, in relation to redevelopment/construction proposals that did not materialize. Hence expenses were not relatable directly any particular project.
- Assessee could not be denied deduction on the argument that there was no corresponding income, or it being not relatable to any revenue stream. The expenses were selling costs which were not to be capitalized to be included in valuation of work in progress

❖ ***Vardhaman Developer Ltd. v ITO, Mumbai ITAT 38 ITR(T) 512***

# Revenue v Capital Expenditure

Contd...

## **Repairs to tenanted premises:**

- Assessee incurred expenditure towards repair and renovation of the rented premises to achieve it's functional utility. It claimed the same as revenue expenditure u/s 30(a)(i)
- Expenditure incurred on refurbishment and renovation of an old premises, in an inoperable state, so as to make it fit for use cannot be classified as 'repairs'; since expenditure was incurred to render it in a functional state and, therefore, is clearly in the capital field
- The ingredients of a capital expenditure would remain the same, and not undergo any change irrespective of whether the repairs were claimed for tenanted premises or were “current repairs” as envisaged in S. 30(a)(ii)

❖ ***Vardhaman Developer Ltd. v ITO, Mumbai ITAT 38 ITR(T) 512***

# Personal v Business Expense

- The 1961 Act inserted the phrase 'wholly and exclusively for the purposes of the business or profession' in S 37. Wholly and exclusively does not mean necessarily
- The word 'wholly' here refers to the quantum of expenditure and the word exclusively refers to the motive, objective and purpose of the expenditure

## **Connection between expenditure and object should be real and not remote and illusory:**

- Assessee claimed deduction for payments to working directors purportedly for agreeing not to carry on any further business of promotion of companies for five years
- Tribunal noted that they were not in position to promote new companies after revocation of their licences and held that payment was in fact for working for the Company
- Payments made were held to be inadmissible as business deduction

❖ **B.K. Khanna & Co. (P.) Ltd. v CIT, 247 ITR 705 (Delhi)**

# Personal v Business Expense

Contd...

**Held no disallowance can be made on grounds of reasonability of expense:**

- When expenditure is claimed to have been incurred by an assessee for promotion of his business, there is no legal obligation imposed on the assessee to prove that the expenditure was necessary for promotion of his business
- Foreign trips by director for promotion of business considered necessary even though foreign agents were appointed?
- So long as the expenditure is incurred by an assessee for promotion of sale of products/services, the assessee is entitled u/s 37(1), to claim revenue deduction for such expenditure
- ❖ ***CIT vs. Williamson Tea , 355 ITR 323 High Court of Gauhati***

# Depreciation

- Depreciation is allowable on an asset owned and used for the purpose of business
- Depreciation is an allowance u/s 32 and not an expenditure
- Depreciation is allowable as a deduction both according to accounting principles and according to Income tax Act
- It is a statutory allowance not confined expressly to diminution in value of an asset
- Under the block of asset concept individual assets lose their identity

# Depreciation

Contd...

## **Title deeds v. Ownership of asset:**

- Asset was transferred to the assessee trust by the State Government without possession of title deeds.
  - Transfer was recorded in the books of accounts the assessee trust and the asset was used by the trust for its activities.
  - The trust exercised dominion over assets and used it as its own asset.
  - This was considered sufficient and the assessee was entitled to depreciation.
- ❖ ***CIT v. Jawahar Kala Kendra, 362 ITR 515 Rajasthan High Court***

## **Depreciation on goodwill on account of acquiring annual maintenance contracts:**

- Assessee acquired a running business on slump sale basis including maintenance contracts for elevators which were under the warranty period. These were expected to yield revenue once the warranty period expired.
- It was held that the specified intangible assets referred to in section 32(1)(ii) includes “business or commercial rights of similar nature”.
- It was also held that excess consideration paid by the assessee over the value of net assets should be considered as goodwill of the business. Accordingly, depreciation was allowable to the assessee.

❖ ***ThyssenKrupp Elevator (India) (P.) Ltd. v ACIT ,66 SOT 103 Delhi ITAT***

# Depreciation

Contd...

**Business or Commercial Rights? Held Compensation for transfer of clients is a depreciable asset:**

- Assessee paid consideration for acquiring the entire business of another company including acquisition of the rights over more than one lakh existing clients.
- The assessee claimed depreciation contending that the consideration paid was for intangible asset eligible for depreciation.
- The customer base acquired by the assessee had provided an impetus to the business of the assessee.
- It was held that the specified intangible assets acquired under slump sale agreement were in the nature of "business or commercial rights of similar nature" and hence entitled to depreciation.

❖ ***SKS Micro Finance Ltd v. DCIT, 145 ITD 111 Hyderabad ITAT***



# Depreciation

Contd...

## **Payment to Outgoing Partner can not transfer goodwill to assessee firm:**

- Money paid to retiring partner cannot be treated as paid towards goodwill for claiming depreciation
- Initially, four partners constituted the firm and thereafter three partners were added and the firm was continued with seven partners
- Later, in each successive assessment year one after the other the initial four partners retired
- It was held that the previous owner cannot be said to have transferred the goodwill to the assessee firm. A partner who retires from the partnership takes his initial investment and profit, if any, payable to him
- Thus, there is no transfer of any interest and the money cannot be said to have been paid towards goodwill. The firm cannot claim depreciation on such goodwill

❖ ***Oberon Trading Corporation v ITO, 95 DTR 65 Kerala High Court***

# Interest

- Interest paid in respect of capital borrowed for the purpose of business is allowable as an expense u/s 36(1)(iii)
- However from A.Y. 2004/05, any interest in respect of capital borrowed for acquisition of an asset **for extension of existing business or profession** for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction
- Finance Act, 2015 have omitted the words “for extension of existing business or profession”

# Interest

Contd...

## **Held Interest payment by guarantor is a deductible expense:**

- The assessee was a guarantor in respect of the loan taken by its subsidiary company for its business
  - Assessee as a guarantor had to make repayments of loans along with interest on such payments.
  - Held: interest payment was deductible u/s 36(1)(iii) as all conditions of that section were satisfied
- ❖ ***J.K. Synthetics Ltd v CIT, 369 ITR 310 High Court of Allahabad***

## **Upfront Discount on Debentures:**

- The assessee issued nonconvertible debentures giving option to subscribers to either receive interest periodically over the period of debentures or by way of one-time payment of lower amount payable upfront
- The one-time payment so made was shown in books as deferred expenditure to be written off over period of debentures
- It was held that this treatment in the accounts would not affect the claim to deduction in the year of incurring the liability
- The liability was incurred upon exercise of option by the subscriber and hence the sum paid in the first year was deductible in full in that year as provided in section 36(1)(iii)

❖ ***Taparia Tools Ltd v Joint Commissioner of Income Tax , 372 ITR 605 (SC)***

## **Excess payment to customer on cancellation of flat booking:**

- Assessee received advance payments from customers for booking flats
  - Customers could not fulfill the payment schedule and requested for a refund
  - The assessee identified new customers and sold flats at a higher rate
  - The payments received from previous customers was returned with a margin, in order to maintain good business relations
  - The excess amount paid was debited to “excess payment refund” in the P&L account. No tax was deducted at source
  - It was held that the nomenclature does not change the character of the payment which was in the nature of interest
- ❖ ***ITO (TDS) v Beacon projects (P.) Ltd, 65 SOT 297 Cochin ITAT***

# Bad Debts

- Assessee entitled to claim the amount of bad debts (or part thereof) written off as irrecoverable in the accounts
- Bad debt can be written off in the same year in which it was shown as income
- ❖ ***KPMG India P. Ltd, 17 ITR 569 Mumbai ITAT***
  - Bad debt written off cannot be disallowed merely on account of failure to prove debt as bad
- ❖ ***Rabo India Finance Private Limited, 3 ITR 793 Mumbai ITAT***
  - However, *this does not mean that no inquiry is permitted*
- ❖ ***Kohli Brothers Color Lab P. Ltd, 329 ITR 80 Allahabad High Court***



## **Write off without RBI permission:**

- Write offs in respect of export income cannot be disallowed only because of lack of RBI permission
- ❖ ***Big Bags International P. Ltd, 35 ITR 459 Bangalore ITAT***

## **Not necessary to close individual debtor accounts:**

- It is not necessary for assessee to close individual account of each debtor in its books. it would suffice if amount had been reduced from debtors balance shown on asset side of balance-sheet at close of year
- ❖ ***KEC International Ltd, 20 ITR 282 Mumbai ITAT. Also refer Vijaya Bank, 323 ITR 166 (SC)***

# Corporate Social Responsibility

- CSR expenses should be relating to activities specified in Schedule VII of the Companies Act
- It also covers foreign companies having a branch or project office in India
- CSR does not include activities undertaken in pursuance of normal course of business
- Explanation 2 to S. 37(1) clarifies that any expenditure incurred by the assessee on activities relating to CSR shall not be deemed to be expenditure incurred for the purpose of business
- Donation to Swachh Bharat Kosh or to Clean Ganga Fund will not be eligible for deduction u/s 80G if it is claimed as CSR expenditure
- Donations made under other clauses of S. 80G would be eligible for deduction even if such expenditure also claimed as CSR?
- Expenditure incurred on eligible project or scheme u/s 35AC?
- Can CSR expenditure be claimed as deduction u/s 30 to 36?



# Software Expenses

- The concept of enduring benefit must respond to the changing economic realities of business
- Software is generally an aid in the manufacturing process rather than the tool itself
- It does not work independent of the hardware
- Computers including computer software is entitled to 60% depreciation
- Different tax treatment for outright purchase of software for commercial use and expenses towards licenses for business use?
  
- Expenditure on upgradation of software is revenue in nature as it only improves efficiency of work while purchase of software creates an asset and hence is capital in nature

**DCIT v Madras Engineering Industries (P.) Ltd , 34 ITR (T) 703 Chennai**

**CIT v Southern Roadways Ltd, 304 ITR 84 (Mad)**

# Software Expenses

Contd...

## **Application Software:**

- Payment for such application software, though there is an enduring benefit, does not result in acquisition of any capital asset and it merely enhances the productivity or efficiency and hence, has to be treated as revenue expenditure
- ❖ ***CIT v IBM India Ltd, 357 ITR 88 (Karn)***
- ❖ ***CIT v. Karur Vysya Bank Ltd. TAX [Appeal No. 186/2013]- High Court of Madras***

# Software Expenses

Contd...

## **Upgradation and support services:**

- Software developed during the course of providing services under control and ownership of the service provider.
- Expenses towards software development and upgradation, which include data administration services, information and technology support services, are revenue in nature as auxiliary services are repetitive in nature
- ❖ ***CIT v. N.J. India Invest (P.) Ltd CIT (A)805/2013- High Court of Gujarat***

# Software Expenses

Contd...

## **Software is a tangible asset:**

- Three tests i.e. ownership, enduring benefit and functional tests to determine if expenditure is capital or revenue in nature
- Computer software or license to use such software is a tangible asset
- When the software becomes obsolete with technological innovation and advancement within a short span of time, the expenditure would be revenue
- If the advantage consists merely in facilitating the trading operations to enabling the management and conduct of the business to be carried on more efficiently or more profitably while leaving the fixed assets untouched ( eg: MS Office, Tally, etc.) , the expenditure is revenue in nature
- If the expenditure results in acquisition/creation of asset as well as the assessee becoming owner thereof (eg: customized ERP software), expenditure may be treated as capital in nature
- *If treated as capital in nature, then depreciation @ 60% would be available*

❖ ***Amway India Enterprises v DCIT, 21 SOT 1 Delhi Tribunal***

# Employee Stock Option

- Companies often incentivize their employees by granting them ESOP. Employee has option to acquire the shares at a pre-determined (discounted) price during the vesting period
  - Discount deductible u/s 37(1), based on SEBI Guidelines and accounting principles. The same is treated as a liability definitely incurred by an assessee and not a contingent liability, notwithstanding the fact that its quantification may take place in a later year
  - Mere fact that the quantification is not precisely possible at the time of incurring the liability would not make an ascertained liability contingent
  - The deduction to be allowed during the years of vesting on straight line basis and not to be postponed till the exercise of the option
  - If deduction is claimed, but subsequently employees don't exercise the option then the amount of deduction earlier claimed would have to be reversed
- ❖ ***Biocon Ltd. v. Deputy Commissioner of Income-tax (LTU), 159 TTJ 649 Bangalore ITAT***

# Employee Stock Option

Contd...

## **ESOP from Parent Company:**

- Employees of the Indian Subsidiary were entitled to ESOPS of the parent company
  - The difference between fair market value of shares of parent company on date of issue of shares and price at which those shares were issued by the Indian Company to its employees, was reimbursed by the Indian Company to its parent company
  - The sum so reimbursed was claimed as expenditure by the assessee as an employee cost.
  - Since the ESOPs are offered at a discounted price to retain the best talent, the expense is exclusively for the business purpose and hence allowable
- ❖ ***Novo Nordisk India (P.) Ltd. v. DCIT , Bangalore ITAT 63 SOT 242***



# Disallowances

## **Short deduction of tax not ground for disallowance:**

- Assessee deducted tax at source @ 2% us 194C, instead of at 10% u/s 194J. It was held that short deduction of tax at source cannot be a ground for disallowance u/s 40(a)(ia)

❖ ***Three Star Granite P. Ltd .v ACIT, 32 ITR 398 Cochin ITAT***

## **Held disallowance u/s 40(a)(ia) not applicable to capital expenditure:**

- Expenditure incurred on technical know-how was capitalized and not claimed as revenue expenditure. It was held that deduction for depreciation could not be disallowed under the above section

❖ ***CIT v Mark Auto Industries Ltd., 358 ITR 43 Punjab and Haryana High Court***

# Disallowances

Contd...

## **Disallowance u/s 40(a)(ia) when no accounting entry passed in the books for interest:**

- Assessee claimed deduction of interest expenditure for which no accounting entry was passed in books of accounts
  - It was held that the event for deduction of tax at source arises only when the amount of interest is credited to the account of the payee or when it is paid, whichever is earlier
  - Since the interest was neither credited in the books of accounts nor paid in the year, section 194A was not attracted. As there was no liability to TDS u/s 194A, the provisions of section 40(a)(ia) could not be attracted
- ❖ ***Pranik Shipping & Services Ltd, (2012) 135 ITD 233 (Mumbai). BCAJ 744 (2013) 45-A***



# Disallowances

Contd...

## **Applicability of section 40(a)(ia) :**

- S. 40(a)(ia) is applicable only to amount “payable” and not to expenditure that is “paid” during the year. Expenditure paid is not disallowable even where the tax is not deducted or not deposited after deduction
- The legislature has replaced the expression “amount credited or paid” with the expression “payable” in the final enactment

## **Decisions in favour of assessee**

- ❖ *Vector Shipping Services P. Ltd, ITA No 122 of 2013 (Allahabad HC)*
- ❖ *Ushodaya Enterprises Ltd, 38 ITR (Trib) 148 (Hyderabad)*
- ❖ *Sri Narayana Moorthy Travels, 38 ITR (Trib) 592 (Chennai)*

## **Decisions against**

- ❖ *Crescent Exports Syndicate, 33 Taxmann.com 250 (Calcutta HC)*

# Remission or Cessation of Liability

## **Period of Limitation and Conditions for Remission:**

- Section 41(1) applies when an assessee gets a benefit in respect of trading liability by way of remission or cessation of a liability. This shall include an unilateral act of the assessee of writing back such liability in his accounts
- Assessee had outstanding liabilities on account of employee dues, which were outstanding for more than 5 years. Assessee was unable to obtain confirmation and did not claim that the employees were actively pursuing their claim
- It would be illogical to say that employer holding onto unpaid dues should be given a benefit of his showing the amount as liability even though he would be entitled in law to say that the claim for recovery was time-barred
- Explanation 1 used the term "shall include" and not the term "means", which meant there could be other means of deriving benefit by way of cessation or remission of liability

# Remission or Cessation of Liability

- The Delhi High Court rejected the claim that no period of limitation was provided for under the Industrial Disputes ACT
- Therefor it was held that there was a benefit derived by the employer by cessation or remission of liability and that the amount of outstanding workmen's' dues were taxable under u/s 41(1).
- ❖ ***CIT v. Chipsoft technology (P) Ltd. 210 Taxman 173 Delhi High Court***
- A remission of a liability can only be granted by a creditor, and a cessation of that liability can only occur either by reason of operation of law, or by the debtor unequivocally declaring his intention not to honour his liability when payment is demanded by the creditor, or by a contract between the parties or by discharge of debt
- ❖ ***CIT v Sugauli sugar Works (P) Ltd , 236 ITR 518 (SC)***
- ❖ ***Bombay Dying and Manufacturing Company Ltd, AIR 1958 SC 328***

# Remission or Cessation of Liability

Contd...

## **Held that amount is only taxable when written back in books:**

- When a debt becomes time barred, it does not become extinguished, but only unenforceable in the Court of Law
- Law of limitation bars filing a suit for recovery, it does not bar payment by a willing debtor
- If there is no write back of the accounts of the sundry creditors to the profit and loss account, the amount not taxable under section 41(1)
- ❖ ***CIT v. Shri Vardhaman Overseas Ltd., 343 ITR 408 Delhi High Court***

# Flats Held As Stock in Trade

- On completion of construction of building, a builder may be left with unsold houses or offices
- Whether the rental income from such flats (whether notional or actual) is taxable, under the head "Income from House Property" or "Profits and Gain from Business or Profession"
- **Held as income from House property:**
- The assessee, a property developer and builder, in course of its business activities constructed a building for sale, in which there were some unsold flats
- During the year, the assessee received rental income from letting out of the unsold flats. It was concluded that the income derived by way of letting out the unsold flats should be assessed under the head 'Income from house property'
- ❖ ***Azimganj Estate (P.) Ltd. v CIT, 352 ITR 82 Calcutta High Court***

# Flats Held As Stock in Trade

Contd...

## **Held as income from House property:**

- Assessee as an owner was liable to be taxed under the head “income from House Property” irrespective of whether the property was let out or not
- The incidence of charge was on account of ownership
- The High Court held that exclusion u/s 22 for property occupied for business, applied to active use of the property for business instead of mere passive use
- ❖ ***CIT v. Ansal Housing Finance and Leasing Co. Ltd, 354 ITR 180 Delhi High Court***

# Flats Held As Stock in Trade

Contd...

## **Held as income from Business:**

- Income derived from property would always be termed as income from the property, but if the property was used as stock in trade, then the property would partake the character of the stock, and any income derived from the stock would be income from business
- Rental income cannot be compared with dividend or interest income
- ❖ ***CIT v. Neha Builders (P) Ltd. , 207 CTR 231 Gujarat High Court***

# Bogus Purchases

## **Held legal source of expense is a necessity:**

- Unexplained expenditure having no satisfactory source, will be deemed to be the income of the assessee u/s 69C
  - It is not the reasonableness of the expenditure which requires explanation but the source of such expenditure. The question of addition cannot be negated simply because the expenditure was actually incurred. On the failure to explain the source of the expenditure, it is liable to be added
- ❖ ***CIT v. Bhagwati Developers (P.) Ltd. 261 ITR 658 High Court of Calcutta***



# Bogus Purchases

**Held reasonable profit to be estimated in case of Bogus purchases:**

- No opportunity to cross examination offered by AO to the appellant
  - The entire amount of purchases found to be bogus cannot be disallowed, particularly when assessee was able to link it with corresponding sale. The Tribunal directed the AO to calculate 30% net profit of bogus purchases. Section 28 & 37(1) were considered
- ❖ ***General Mechanical Works, 2014-TIOL-391-ITAT-AHM. 46-A BCAJ 532***

# Bogus Purchases

Contd...

**Held that mere declaration of a supplier as a hawala dealer does not make the purchase bogus:**

- AO made the addition as one of the supplier was declared a hawala dealer by the VAT Department. It was a good starting point for making further investigation
  - However, purchases cannot be disallowed, merely because the supplier is treated as a hawala dealer by VAT authorities, particularly if receipt of material is substantiated by delivery challan and other evidence and payment is by account payee cheque
- ❖ ***Rajeev G. Kalathil, 56-A BCAJ 696 Mumbai Tribunal***

# Bogus Purchases

Contd...

## **Onus on AO:**

- No sales were likely to be effected if there were no purchases
  - Statement by third parties cannot be concluded adversely in isolation without corroborating evidences
  - If the addition made by the A.O. is accepted, then G.P. Ratio of the appellant will become abnormally high
  - Onus on A.O. to prove, by bringing adequate material on record that such a high G.P. ratio exists in the nature of business carried out by the appellant
- ❖ ***Shri Ramila Pravin Shah, I.T.A. No.5246/Mum/2013***

# Carbon Credits

- Carbon Credits were introduced by the United Nations with a view to reduce Green House Gases emissions
- Carbon Credits are measured in terms of Certified Emission Reduction (CER) and certificates are issued to the companies in proportion to the carbon emission reduction targets met by them. These certificates are saleable
- Whether consideration received from sale of carbon credits is taxable as business income?
- Consideration received on sale – income under section 2(24)?
- Carbon Credits – capital asset?

# Carbon Credits

Contd...

**Held carbon credit is revenue in nature:**

- Carbon credit was a privilege/entitlement given for reducing emission of carbon gas- similar to import entitlements which are specifically taxable under section 28(iia)
- Assessee claimed deduction under section 80-IA and did not claim carbon credit to be a capital asset

❖ ***Apollo Tyres Ltd. v ACIT 31 ITR 477 – Cochin Tribunal***



# Carbon Credits

Contd...

## **Held carbon credit is Capital in nature:**

- Carbon credits had no connection with sale of products/by-products, but was offshoot of environmental concerns and not offshoot of business, hence not business income
  - There was no cost of acquisition or cost of production to get carbon credits. It was also not incentive in the course of business nor received under any scheme of the government for benefit of a particular industry or to reimburse cost of raw materials or cost of capital asset
  - Not a perquisite, as not received from company having business connection with any person
  - Subsidy received for public good and not on revenue account – not taxable as income under section 2(24) or 28
  - Capital in nature and neither chargeable to tax under the head business income nor liable to tax under the head capital gains
- ❖ ***My Home Power Ltd v Dy CIT 21 ITR 186 – Hyderabad Tribunal***



# Thank You