

SUMMARY OF NEWS OF PROFESSIONAL INTEREST ON VOICE OF CHARTERED ACCOUNTANTS

DATE	S.NO.	TOPIC	RELEVANT SEC. (IF ANY)	JUDGMENT PASSED BY
2-Nov-09	255	<p>Dormant bank accounts- RBI issues vital clarification</p> <p>A couple of months back the RBI had issued detailed guidelines on inoperative or dormant bank accounts - savings as well as current account. It had stated that if there are no transactions in the account for a period over two years, it is to be treated as dormant. Further, for the purpose of classifying an account as inoperative, both the types of transactions i.e., debit as well as credit transactions induced at the instance of customers as well as third party should be considered.</p>		
3-Nov-09	256	<p>M/S KIRTILAL KALIDAS DIAMOND EXPORTS (Bombay High Court)</p> <p>Question sought to be raised revolves around deduction of tax under section 195(1) of the Income Tax Act, 1961 as no income accrued to the non-resident of India where services were rendered out of India and payment was made out of India.</p>	Section 195(1)	BHC

	257	<p>M/S.ZANDU PHARMACEUTICALS WORKS LIMITED (Bombay High Court)</p> <p>Works surrender retraction: Revenue's argument that assessee surrender estopped revenue from probing further rejected: ITAT order affirmed.</p>		BHC
4-Nov-09	258	<p><u>SERVICES LTD. (Bombay High Court)</u></p> <p>Assessee is engaged in the business of data processing activities on a large scale, Tribunal, followed the judgment of the Hon'ble Bombay High Court in the case of CIT v. Emirates Commercial Bank Ltd., 262 ITR 55, and held that the assessee is entitled to get benefit of deduction under sec. 80IA.</p>	Section 80-IA	BHC
	259	<p>M/S.JINDAL IRON AND STEEL CO.LTD. (Bombay High Court)</p> <p>Even without revised return new claims can be made before AO.</p>		BHC

5-Nov-09	260	C.I.T ALCATEL (Delhi High Court) Whether Assessee had business connection in India through its subsidiary?		DHC
	261	METAPATH SOFTWARE INTNL LTD. (Delhi High Court) Whether Ld. ITAT in the facts and circumstances of the case erred in holding that such software supplies were sale and hence business income and not Royalty in terms of Indo-UK Treaty?		DHC
	262	NOKIA CORPORATION (Delhi High Court) Whether on a true and correct/interpretation of Section 154 of the Income Tax Act, 1961 the Tribunal was right in law in upholding assumption of jurisdiction under Section 154 of the Act by the Assessing Officer?	Section 154	DHC
	263	NOKIA NETWORKS OY (Delhi High Court) Whether on a true and correct interpretation of the relevant DTAA the Tribunal's reasoning is right in law in holding that NDPL (the subsidiary of the Appellant) is its permanent establishment?		DHC

6-Nov-09	264	ERICSSON RADIO SYSTEM A.B. (Delhi High Court) Whether in law, the Ld. Delhi Tribunal was justified in holding that the assessee did not have a business connection in India.		DHC
7-Nov-09	265	Commissioner of Central Excise V Adani Pharmachem P. Ltd.: CENVAT credit - CESTAT observed that where the sale is on FOB basis or CIF basis, the place of removal has to be the load port only.		CESTAT, AHMEDABAD
	266	CENVAT credit - CESTAT held that wherein assessee has closed its factory and surrendered its excise license refund claim of unutilized Cenvat credit can be made in cash.		CESTAT,ND
9-Nov-09	267	CIT Vs N.H.K. Japan Broad Casting- Low Tax Effect-Batch matters- Delhi High Court. In this case it has been held interalia- that tax effect of each case has to be seen in a batch of appeals and not the cumulative tax effect. Earlier there was no decision on this issue of any High Court. However Hon'ble Delhi High Court has impliedly ruled this proposition.		DHC

	268	<p>Section 115JB- Amendment by Finance Act 2009 – Karnatka High Court.</p> <p>In this case Hon’ble Karantaka High Court has held that the amendment to section 115JB is retrospective and hence the provision made for bad and doubt full debts are required to be added to the book profit as per the provisions of section 115JB.</p>		
			Section 115JB	Kar.HC
	269	<p>JCIT Vs Siemens AKTIENGESELLSCHAFT Income tax - Sec 9(1) (i) - Indo-German DTAA.</p> <p>Assessee is a German supplier of telecom equipment - makes offshore supplies - provides after-sale support services through subsidiary company in India - taxability of business profits - whether income is taxable under the domestic law or is exempted under the DTAA.</p>		
			Section 9(1)(i)	
12-Nov-09	270	<p>CIT Vs NIIT Ltd (Dated: September 22, 2009)- 194I- TDS liability. DELHI HIGH COURT;</p> <p>In this case it has been held that the amount of payments made to franchisees was in the nature of profit sharing and not rent and hence the assessee is not liable to deduct the TDS on the amount paid to its franchisees.</p>		
			Section 194I	DHC

	271	<p>CIT Vs M/s Creative Dyeing & Printing Pvt Ltd (Dated: September 22, 2009) DELHI HIGH COURT;</p> <p>Income tax - Sec 2(22)(e) It has been held that - the 'advance' given for commercial purpose of expansion of business to the sister concern cannot be treated as loan or dividend income in the hands of the shareholders of the assessee company as the</p>	Section 2(22)(e)	DHC
	272	<p>Indo Rama Synthetics (I) Ltd Vs CIT (Dated: September 22, 2009) Income tax - MAT provisions - Sec 115JB : DELHI HIGH COURT;</p> <p>Assessee is into manufacture of yarn and polyester - computes book profit after reducing the net profit by the sum withdrawn from the revaluation reserve created on revaluation of the fixed assets - AO disallows - held, there is no infirmity in the Tribunal's order. Assessee's appeal dismissed</p>	Section 115JB	DHC
17-Nov-09	273	<p>IN THE CASE OF DIRECTOR INCOME TAX Vs. BASANTI DEVI & SHRI CHAKHAN LAL GARG EDUCATION TRUST.- Corpus Amount- Charitable purpose.It has been held that the donations received towards corpus of the trust would be capital receipt and not revenue receipt chargeable to tax.</p>		DHC

	274	<p>ITA NO 467/2007 CIT VS KNORR BREMSE INDIA LTD.- DELHI HC- Section 36(1)(iii)</p> <p>It has been held that when the assessee have sufficient funds in his books to invest in the shares then mere allegation of the AO that the funds which were borrowed for the purpose of investment in plant and machinery were invested in shares is not sufficient to disallow the interest component on such funds.</p>	Section 36(1)(iii)	DHC
	275	<p>In the case of CIT Vs Eastern Medikit Ltd- DELHI HC - Penalty under section 271(1) (c) - contravention of section 80HHC- Not leviable.</p>	Section 271(1)(c)	DHC
	276	<p>WNS GLOBAL SERVICES PVT LTD Vs ITO (Bom)-Section 263, 10A(9)- Change of owner ship of the firm and allowability of deduction under section 10A.</p> <p>It has been held that if the AO fails to considered the provisions of section 10A(9), which debar an assessee from claiming deduction if the owner ship of the business has been changed, then the order</p>	Section 263,10A(9)	ITAT MUM.

19-Nov-09	277	<p>Commissioner of Central Excise, V Alidhara Textool Engineers Pvt. Ltd. .:CENVAT credit - CESTAT held that when the whole transaction of manufacture of the machine, erection and commissioning and supply is treated as one transaction and excise duty is charged on the whole transaction value, services rendered for the purpose of completion of this whole transaction has to be treated to have been rendered in or in relation to the manufacture</p>		CESTAT AHMD.
	278	<p>M/s. Moser Bear India Ltd Vs Commissioner of Central Excise: “Whether in respect of a 100% EOU availing sales tax exemption, for determining the excise duty payable based on aggregate value of customs duty, the element of SAD should be taken into account or not?”</p>		CESTAT ND
23-Nov-09	279	<p>CIT Vs Balbir Singh Mohinder Singh- High Court of P & H- Section 69- 158 BC- The Hon’ble high Court has affirmed the follwing principle of law applied by the ITAT.</p> <p>“The assessee's income is to be assessed by the assessing officer on the basis of material which is required to be considered for the purpose of assessment and ordinarily not on the basis of the statement of third party unless and until there is a material to corroborate that statement”.</p>	Section 69,158BC	P&H HC

	280	CIT Vs Central Mall- P& H- Rule 46A of the I.Tax Rules- It has been held that the provisions of rule 46A are not applicable to those cases where the assessee files affidavit in support of his contentions raised before the AO during the course of proceedings.	Rule 46A	P&H HC
	281	CIT Vs Pritam Singh Chail- P& H High Court- Section 54F- It has been held that a property which is held in the capacity of an individual can not be attributed towards the property of HUF on the ground that the same was shown in the Wealth Tax Return of the HUF.	Section 54F	P&H HC
24-Nov-09	282	CIT Vs STANDING CONFERENCE OF PUBLIC ENTERPRISES – Delhi High Court- Principle of mutuality- The following two important question of law are decided i) Whether the assessee society is a mutual concern so as to claim exemption on principle of mutuality? ii) Whether the ITAT was correct in law in holding that only rental income received by the assessee from non- members is chargeable to tax?		DHC

	283	CIT Vs Tony Electronics Limited- DELHI High Court- Section 154(7) of the Act- Hon'ble HC held that "once we opine that the assessment order had merged with the order of CIT(A) passed on 28.6.2004, the limitation for the purpose of sub-section (7) of Section 154 is to be counted from this date.	Section 154(7)	DHC
	284	CIT Vs Trevani Engg- Delhi- High Court- Nature of pre-commencement expenses- It has been held that expenses incurred on trial run, insurance interest paid on loan are revenue expenditure and hence allowable as deduction. And further held that when the assessee submitted justification as to the excessiveness of the fuel expenses the expenses are allowable		DHC
30-Nov-09	285	CIT Vs MMTC –DELHI- HIGH COURT- COD APPROVAL- SECTION 256 Income tax - Reference application - Revenue argues the assessee being a public sector undertaking should have sought CoD clearance before filing a reference - held, the right to file a reference is conferred by the statute, and the judgment of the Supreme Court in the ONGC case (2002-TIOL-196-SC-CX) does not seek to take away this right.	Section 256	DHC

	286	M/s ESCORTS HEART INSTITUTE & RESEARCH CENTRE LTD OKHLA ROAD, NEW DELHI VS DCIT-ITAT DELHI- SECTION 37(1) Profit in any business is a time-tested guiding factor and any dip in it clearly shows its relationship with the persons insured by the assessee - the premium paid for their insurance policies cannot be disallowed - Assessee's appeal allowed.	Section 37	ITAT DEL
	287	contends before the CIT(A) that the initiation of proceedings u/s. 158BD is not legal as the same is initiated without recording requisite satisfaction as required under law - CIT(A) dismisses the assessee Appeal - Held, since the satisfaction has not been recorded in accordance with law, the proceedings are bad in law and, accordingly, the assessment is annulled. Assessee's appeal allowed.	Section 158BD	ITAT MUM.
5-Dec-09	288	CIT Vs Orient Goa Pvt Ltd – Bombay High Court-Section 195 read with 40(a) (i)- In this case the assessee made payments to the non resident company without deducting TDS, the AO was of the view that the TDS was liable to be deducted on the payments accordingly he disallowed the same by invoking the provisions of section 40(a)(i). CIT (A) and the ITAT reversed the order of the AO High Court has affirmed the order of the AO.	Section 40(a)(i)	DHC

	289	THE SOCIETY OF PRESENTATION SISTERS, PRESENTATION CONVENT, CHEVAYUR, CALICUT- Vs INCOME TAX OFFICER WARD-1(2), CALICUT- the issue was whether the exemption can be availed by an assessee who is partly charitable or partly religious	Section 11(1)(a)	ITAT COCHIN
8-Dec-09	290	CIT Vs Pran Nath Gupta- Punjab and Haryana High Court- Section 37(1). The High Court has upheld the order of the ITAT,	Section 37(1)	P&H HC
	291	Jaibeer Singh Vs CIT- P& H High Court- Section 69- The issue before their lordship was whether the ITAT was justified in confirming the orders of the authorities below in treating the deposits in banks out of various known/declared sources being that of agricultural income, interest income and advance from sale of agricultural land as unexplained income of the assessee.	Section 69	P&H HC
	292	CIT VS Samsung Electronics- Karnatka High Court- Section 195- In this case it has been held that the payments made by the	Section 195	KAR. HC
9-Dec-09	293	M/s MEPCO INDUSTRIES LTD Vs COMMISSIONER OF INCOME TAX & ANR Rectifiable Mistake: It must be a patent mistake, which is obvious and whose discovery is not dependant on elaborate arguments. Decision on debatable point of law cannot be treated as "mistake apparent from the record	Section 154	SC

294	<p>CIT, Hisar Vs Smt Shakuntala Dev- P&H High Court- Section 147, 143(2) held, the lower appellate authorities have overlooked the amendment carried out in Sec 147 by way of Explanation 2(b) which imposes no bar on Revenue to initiate proceedings u/s 143(2) even if Sec 147 proceedings are not valid in this case.</p>		
295	<p>CIT Vs Annamalai Finance Ltd.- Madras High Court</p> <p>In this case following issues are decided:</p> <p>(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that overdue charges on accrual basis not accounted the books of account is not to be brought to tax?</p> <p>(ii) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the additional financial charges (overdue charges) are not to be added as income of the assessee?"</p>	Section 147,143(2)	P&H HC

10-Dec-09	296	M/S Kamdhenu Sweets Vs ACIT Central Circle- Sec.158BD,132		
		In this case it has been held that action under section 158BD is rightly invoked by the department in the case of assessee since only survey was conducted at the premises of the assessee and search was conducted at the premises of the partners.		
			Section 158BD,132	
	297	N MEENAKSHI Vs THE ASSTT COMMISSIONER OF INCOME TAX- MADRAS HIGH COURT		
		Income Tax – Property sold to IOCL for Rs. 99 Lakhs – Registration value Rs. 3.92 Crores – AO passes order before getting Valuation Officer's Report - the right of an assessee conferred under Section 50C of the Act is a valuable statutory right: Alternative remedy cannot be a bar for writ where fundamental right is breached or there is violation of the statutory provisions- The proceedings were set-aside and restored to the file of the AO for fresh consideration.		
			Section 50C	MAD.HC
	298	CIT Vs Entee Builders- Security received from tenant- Non interest bearing- ITAT		
		It has been held that amount of refundable security received from tenant will not be included in the income of the assessee unless and until it will acquire the colour of rent.		

15-Dec-09	299	<p>CIT Vs M/s U.P. State Bridge Corporation Ltd- Allahabad High Court- Penalty u/s 271(1)(c)-</p> <p>Before imposing penalty for concealment of income, the Assessing Officer should bring concrete evidence or material on record for his satisfaction that income has been concealed or inaccurate particulars thereof have been furnished - Mere initiation of proceedings under Section 271(1)(c) cannot be assumed that such a satisfaction was arrived at by the Assessing Officer.</p>		
			Section 271(1)(c)	ALL. HC
	300	<p>Visvas Promoters P Ltd vs ITAT ,ACIT - Hon'ble Madras High Court on Writ and Appeal against ITAT order u/s 254(2)-</p> <p>In this case, Madras HC has decided two issues, one that no appeal lies against an order passed under section 254(2).In so far as second issue is concerned, it has been held that non consideration of non-jurisdictional high Court order did not constitute mistake apparent from records</p>		
			Section 254(2)	MAD. HC

17-Dec-09	301	<p>1. COMMISSIONER OF INCOME TAX Vs. GOURDIN HERBALS INDIA LTD. –High Court Delhi- Section 69-</p> <p>Unexplained Cash Credit we are of the opinion that following the judgment of the Supreme Court in the case of Commissioner of Income Tax Vs. Lovely Exports Pvt. Ltd., 216 CTR 195, the ITAT has rightly held that the assessee had discharged its burden</p>	Section 69	DHC
	302	<p>In the case of CIT Vs Quadra Securities & Financial Services P Ltd: Delhi High Court-Section-68</p> <p>Perusal of the order passed by the Income Tax Appellate Tribunal (ITAT) would reveal that while confirming the findings of Commissioner of Income Tax (Appeal), the ITAT came to the conclusion that identity of the shareholders, who had subscribed to the share capital, had been established.</p>	Section 68	DHC
	303	<p>In CIT Vs Goetze(India) Ltd:-Delhi High Court- on Bad and Doubt full debts- section 37(2)(i)</p> <p>assessee company has been giving ICDs since 1995-96 and interest in income earned by the assessee in all these years was shown as 'income from business' and not income from other sources and also tax paid thereon as business income. Thus, when the interest income from these ICDs/inter corporate deposits shown as income from business, bad debts were rightly claimed as deduction under Section 37(2)(i).</p>	Section 37(2)(i)	DHC

	304	In CIT v Surya Vinayak Ind. Ltd- Delhi High Court- On Genuineness of Purchases- Section 40A(3) - the Income Tax Appellate Tribunal reversed the addition made by AO of purchases observing that the assessee had filed evidences.held that ITAT has rightly held that the provisions of Section 40A(3) were not even attracted	Section 40A(3)	DHC
	305	CIT v LG Chemicals India Pvt. Ltd : Delhi high Court : On Concealment Penalty Section 271(1)(c) -Revised return pursuant to appeal order obtained after filing of return Held that in these circumstances, we are of the opinion that the claim preferred by the assessee in the original return, though withdrawn subsequently, was a bona fide move. Therefore, the ITAT rightly held that the assessee, in these circumstances, could not be subjected to penalty.	Section 271(1)(c)	DHC
21-Dec-09	306	CIT Vs Shri K.K. Palanisamy- Madras High Court- Section 147- Section 54 of the Income Tax Act. It has been held that once the benefit of section 54 has been given to the assessee in assessment proceedings of 143(3) of the Income Tax Act. The same can not be taken away from the assessee in the garb of 147	Section 147, Sec. 54	Mad. HC

	307	<p>CIT Vs M/s Rajini Investment Pvt. Ltd- Madras High Court-Section 36- Bad-Debt.</p> <p>It has been held that condition regarding the continuation of business is applicable only for the purpose of setting off of all carry forward of loss. In these circumstances, and not in the case of writing of bad and doubt full debts.</p>	Section 36	Mad. HC
	308	<p>CIT Vs M/s Creative World Telefilms Ltd.–Bombay High Court-Section 68.</p> <p>It has been held that once the assessee has given Pan No of the share holders then it is incumbent on the AO to search those persons and mere issuance of summons is not sufficient to hold that the share application money was bogus. It has been clarified that no blame can be attributed to an assessee who submits the PAN No of the subscribers and failed to produced them before the AO</p>	Section 68	BHC
	309	<p>CIT Vs M/s Purshottam Transport- Bombay High Court-Section 15BFA(2) - Penalty.</p> <p>In this case it has been held that if the additions, in block proceedings, have been made on estimated basis no penalty can be imposed on assessee since it is not possible to foresee the quantum of undisclosed income for the block period at the time of filing of return</p>	Section 15BFA(2)	BHC

22-Dec-09	310	<p>CIT Vs DLF Power Ltd –Delhi High Court- Section 263</p> <p>It has been held that no action under section 263 could be taken against an order of AO which itself is rectified under section 154 of the Act. In respect of second issue vis-à-vis addition of provisions of bad and doubtful debt it has been held that the view of the AO not adding the same was correct.</p>	Section 263	DHC
	311	<p>CIT Vs J.C.L.International-Delhi High Court- Section 73 and 32</p> <p>It has been held that accumulated depreciation of earlier years can be setoff with the long term capital gain.</p>	Section 73& 32	DHC
	312	<p>DCIT Vs Bombay Diamond- Section 115JB- Bombay ITAT</p> <p>It has been held that AO has power to tinker to with the balance sheets result of the assessee under the provision of section 115JB.</p>	Section 115JB	ITAT Bombay
24-Dec-09	313	<p>CIT vs. Panchratan Hotels Pvt. Ltd (HP High Court) held that Even if it is accepted that by a transfer of shares u/s 2(47), there is a transfer in the right to use the capital assets of the company, still s. 170 is not attracted because there is no “transfer of business”</p>	Section 2(47), Sec 170	HP HC

	314	<p>New Skies Satellites N.V vs. ADIT-ITAT Delhi Special Bench - Provisions of DTA vis-à-vis royalty. held :</p> <p>i) To constitute “royalty”, it is not necessary that the process should be a “secret process.</p> <p>(ii) To constitute “royalty”, it is not necessary that the instruments through which the “process” is carried on should be in the control or possession of the payer</p> <p>(iii) The fact that the telecasting companies are enabled to telecast their programmes by uplinking and downlinking the same with the help of that process shows that they have “use” of the same</p>		
			Section 9(1)(vi)	ITAT Del. Spcl Bench
	315	<p>DCIT Vs M/s Vertex Customer Services (India) Pvt. Ltd.- Explanation 7 of Section 271(1)(c) -ITAT Delhi. - held that no penalty is leviable on the assessee if assessee proves that the that the s. 92C computation was made in good faith and with due diligence and in the case at hand accounts were prepared with due diligence and the entries and adjustments were made under good faith, hence no penalty is leviable</p>		
			Section 271(1)(c)	ITAT Del.
29-Dec-09	316	<p>Deputy Director Of Income Tax(INVESTIGATION) Vs State Of Gujarat & 1- Gujarat High Court - held that once a valid requisition is being made by the authorities mentioned in section 132 (a)(b)(c) then the police is bound to supply the money to the department and hence the order of the Metropolitan Megistrate, releasing the money.</p>		
			Section 132(1)	Guj. HC

	317	M/s Turkmenistan Airlines Vs ADIT, New Delhi (Dated: October 16, 2009) - DELHI ITAT-Following S.C decision in Anjum M H Ghaswala, levy of interest is mandatory, granting off opportunity is not necessary. A.O directed to levy interest up to the date of original assessment following the decision of the coordinate Bench in Freights Consultants P.Ltd	Section 234D	ITAT Del
	318	Cochin in the case of Harrisons Malayalam Ltd. vs. ACIT [2009] 32 SOT 497-ITAT Cochin- Ss. 2(1A), 115JB; A.y 2005-06-held that, Profits arising on transfer of rural agricultural land amounts to agricultural income under section 2(1A). This means that such agricultural income shall not form part of the book profit for the purposes of levy of minimum alternate tax.	Section 2(1A),115JB	ITAT Cochin
31-Dec-09	319	CIT Vs M/s Sahara India Savings & Investment Corporation Ltd–Supreme Court - Interest Tax Act held that there is no merit in the Revenue's contention that the assessee, who is residuary non-banking companies, is covered under sub-clause (vi) of section 2(5B) of 1974 Act, in order to constitute a miscellaneous finance company, it has to be a company which carries on exclusively two or more classes of business referred to in the preceding sub-clauses (i) to (v)		SC
	320	Dana Corporation Vs Director Of Income Tax(International Taxation)- Mumbai- AAR-Income Tax - -The expression 'income' in Section 92 is not used in a sense wider than or different from its scope and connotation elsewhere in the Act.	Sections 45, 48, 92	AAR Mum.

	321	ACIT, Mumbai Vs M/s Kalchuri Corpn- Mumbai ITAT Income tax - Sec 45 -held :plot purchased by the partners of the firm before they joined the firm from their own funds and no fund was borrowed for the same and even bank account was opened after the sale - it is a case of long-term investment - such income to be treated as capital gains - Revenue's appeal dismissed	Section 45	ITAT Mum.
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