ICAI LATEST CASE LAWS – NOV 2023 - SUMMARY

CASE LAW 1: Reliance Telecom Ltd./Reliance Communications Ltd. (2022) (SC)

Can the powers under sec 254(2) be exercised by the Tribunal to recall an order and rehear the entire order on merits?

While allowing the application u/s 254(2) and recalling its earlier order, the Tribunal had **reheard the entire appeal** on the merits as if the Tribunal was deciding the appeal against the order passed by the CIT(A). The order passed by the Tribunal recalling its earlier order was **unsustainable,** and ought to have been set aside by the High Court.

CASE LAW 2: CIT v. Reliance Energy Ltd. (2022) (SC)

Does profit-linked deduction under Chapter VI-A have to be restricted to income computed under the head "Profits and gains of business or profession"?

For the purpose of calculating profit-linked deduction under any section of Chapter VI-A, loss sustained in other divisions or units cannot be taken into account, as only profits from the eligible business have to be taken into account as if it was the only source of income. Profits and gains from eligible business cannot be reduced by the loss suffered in any other business owned by the assessee.

The net profit made by the assessee from the "eligible business" represented income from the "eligible business" u/s 80-IA and was the only source of income for the purposes of computing deduction u/s 80-IA. The deduction admissible u/s 80-IA **could not be limited to income under the head "PGBP", by setting-off losses from non- eligible business against profits from eligible business.**

CASE LAW 3: Apex Laboratories Pvt. Ltd. v. DCIT (2022) (SC)

Are expenses incurred by pharmaceutical companies in providing incentives to medical practitioners, which are in violation of the provisions of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, allowable as deduction u/s 37 in the hands of the pharmaceutical companies?

In the present case too, the incentives (or "freebies") given by the Pharmaceutical company, to the doctors, had a direct result of exposing the recipients to the odium

of sanctions, leading to a ban on their practice of medicine. Those sanctions are mandated by law, as they are embodied in the code of conduct and ethics, which are normative, and have legally binding effect. The conceded participation of the assessee – Pharmaceutical company, i.e., the provider or donor, was plainly prohibited, as far as their receipt by the medical practitioners was concerned. That medical practitioners were forbidden from accepting such gifts, or "freebies" was no less a prohibition on the part of their giver, or donor, i.e., Pharmaceutical company.

Thus, pharmaceutical companies' **gifting freebies to doctors is clearly "prohibited by law", and not allowed to be claimed as a deduction u/s 37(1).** Doing so would wholly undermine public policy.

CASE LAW 4: Wipro Finance Ltd. v. CIT (2022) (SC)

Would the loss incurred in foreign currency fluctuation at the time of repayment of loan taken for financing acquisition of plant and machinery on lease/hire purchase by Indian enterprises with whom the assessee-company has lease/hire purchase agreement be treated as allowable revenue expenditure?

The assessee was engaged in leasing business. The assessee also financed the enterprises with whom it had entered into a lease agreement to enable them to obtain the plant, machinery on lease from it. For such financing, the assessee had obtained loan in foreign currency and incurred loss on account of currency fluctuation while repaying the loan. It was held that since the loan was borrowed for the financing activity, which was an activity concerning the business of the assessee, the **loss was allowable u/s 37**. It was **not a loan borrowed** for acquisition of asset, in which case, the loss would have had to be adjusted against the actual cost of the asset.

CASE LAW 5: PCIT v. Annasaheb Patil Mathadi Kamgar Sahakari Pathpedi Ltd. [2023]

Would a co-operative society engaged in providing credit facilities solely to its members be eligible for deduction under sec 80P?

Merely because a co-operative society gives credit to its members, **it cannot be said to be a co-operative bank** under the Banking Regulation Act, 1949. Banking activities under that Act are altogether different activities.

Taking into consideration the CBDT Circulars and the definition of bank under the Banking Regulation Act, the assessee cannot be said to be a co-operative bank/bank, and,

therefore, sec 80P(4) denying benefit of deduction to a co-operative bank would not be applicable in this case.

Accordingly, the Apex Court held that the assessee could not be termed as a bank or co-operative bank. Being a credit society, it is entitled to deduction u/s 80P.

CASE LAW 6: CIT v. Cognizant Technology Solutions of India Pvt. Ltd. [2023] (SC)

Is deduction under sec 10AA available in respect of foreign exchange gain solely relating to the export business of the assessee?

In order to allow deduction u/s 10AA, it has to be seen whether such benefit earned by the assessee was derived by virtue of export made by the assessee. The exchange value based on upward or downward of the rupee value is not in the hands of the assessee. The assessee does not determine the exchange value of the Indian rupee. But for the fact that, the assessee is an export house, there was no question of earning any foreign exchange. Therefore, when the fluctuation in foreign exchange rate was solely relatable to the export business of the assessee and the higher rupee value was earned by virtue of such exports carried out by the assessee, the deduction u/s 10AA would be available in respect of such foreign exchange gains.

CASE LAW 7: New Noble Educational Society v. CCIT (2022) (SC)

Does the requirement u/s 10(23)(vi) to solely engage itself in education mean that such institution cannot have objects not related to education? Also, is it necessary that the profits of business referred to in the seventh proviso to sec 10(23C) be the profits of such business incidental to educational activity and not any other activity?

The requirement of the charitable institution, society or trust, etc., to "solely" engage itself in education or educational activities, and not engage in any activity of profit, means that such institutions cannot have objects which are unrelated to education. In other words, all objects of the society, trust, etc., must relate to imparting education or be in relation to educational activities.

The term "solely" is not the same as "predominant/mainly". The term "solely" means to the exclusion of all others.

Where the objective of the institution appears to be profit-oriented, such institutions would not be entitled to approval u/s 10(23C).

CASE LAW 8: ACIT (Exemptions) v. Ahmedabad Urban Development Authority (and other appeals) (2022) (SC)

When can an activity be considered as trade, commerce or business for attracting the provisions of the proviso to sec 2(15)?

The conclusions arrived at by way of this judgment, neither precludes any assessee (whether statutory or non-statutory) advancing objects of general public utility, from claiming exemption, nor the taxing authorities from denying exemption, in the future, if the receipts of the relevant year exceed the quantitative limit. The assessing authorities must on a yearly basis, scrutinize the record to discern whether the nature of the assessee's activities amount to "trade, commerce or business" based on its receipts and income (i. e., whether the amounts charged are on cost-basis, or significantly higher). If it is found that they are in the nature of "trade, commerce or business", then it must be examined whether the quantified limit in proviso to sec 2(15), has been breached, thus disentitling them to exemption.

CASE LAW 9: Singapore Airlines Ltd/ KLM Royal Dutch Airlines v. CIT/ British Airways Plc v. CIT(TDS) [2022] (SC)

Would the additional income (supplementary commission) earned by a travel agent over and above the minimum fare fixed by the airlines be also subjected to tax deduction at source u/s 194H besides the standard commission on base fare?

Sec 194H does not distinguish between direct and indirect payments. Both fall within the meaning of "commission" under clause (i) of the Explanation thereto.

An illustration showing how additional income arises in the hands of travel agent is given hereunder -

Base fare for Wingfly Airline Delhi (Set by IATA)	Net fare (Set by the airline)	Actual fare (Set by the travel agent)	Standard commission (7% of the base fare)	Supplementary commission (Actual fare-net fare)
Rs.1 lakh	Rs.60,000	Rs.80,000	7% of Rs.1 lakh = Rs.7,000	Rs.80,000 (-) 60,000 = Rs.20,000
Ceiling price	Income of the assessee (Airline)	Rs.20,000 left after payment of net fare to the assessee	Income of the travel agent	Additional Income of the travel agent

Applying the rationale of the Apex Court in the above case, TDS u/s 194H is required to be deducted both on the standard commission of Rs.7,000 and on the supplementary commission of Rs. 20,000.

CASE LAW 10: Pioneer Overseas Corporation USA (India Branch) v. CIT (International Taxation) (2022) (SC)

Is pendency of dispute resolution under MAP a valid ground for waiver of interest u/s 220(2A)?

The Supreme Court observed that merely raising the dispute before any authority cannot be a ground not to levy the interest and/or waiver of interest u/s 220(2A). Otherwise, each and every assessee may raise a dispute and thereafter, may contend that since the litigation was bona fide, no interest is leviable. It is required to be noted that u/s 220(2), the levy of simple interest on non-payment of the tax at 1% p.a is, as such, mandatory.

CASE LAW 11: SAP Labs India Pvt. Ltd. v. ITO (and other appeals) [2023] (SC)

In an appeal u/s 260A, is the High Court precluded from examining the correctness of the determination of the ALP on the ground that once the Tribunal determines the ALP, the same is final and cannot be the subject matter of scrutiny by the High Court as it does not give rise to a substantial question of law?

The view taken by the Karnataka High Court in the case of Softbrands India (P.) Ltd. that in the transfer pricing matters, the determination of the ALP by the Tribunal is final and cannot be subject matter of appeal u/s 260A cannot be accepted. In an appeal challenging the determination of the ALP, it is always open for the High Court to examine in each case, within the parameters of sec 260A, whether while determining the ALP, the guidelines laid down under the Income-tax Act and the Rules are followed or not and whether the determination of the ALP and the findings recorded by the Tribunal while determining the ALP are perverse or not.

CASE LAW 12: US Technologies International Pvt. Ltd. v. CIT [2023] (SC)

Can penalty u/s 271C be levied for non-payment or belated remittance of the tax deducted at source under CH XVII-B to the credit of the Central Government?

Sec 271C(1)(a) is applicable in a case of failure on the part of the assessee to "deduct" the whole or any part of the tax as required by or under the provisions of Chapter XVII-B of the Act. The words "fails to deduct" used in sec 271C(1)(a) are clear; and it does not speak about belated remittance of the tax deducted at source.

The words "fails to deduct" in sec 271C(1)(a) cannot be read as "failure to deposit/pay the tax deducted". Therefore, on correct interpretation of sec 271C, no penalty would be leviable u/s 271C on delay in remittance of the tax deducted at source after deducting it on time.

CASE LAW 13: ACIT v. AT-Dev Prabha (JV) and others (2023) (SC)

Can prosecution proceedings u/s 276B be launched for delay in depositing tax to the credit of Central Government, where the period of delay and the amount of TDS were not substantial and the amount of TDS has been subsequently deposited with some delay along with interest?

In the present case, the High Court, considering the CBDT Circular (wherein it is mentioned that **prosecution u/s 276B shall not normally be proposed when the amount involved, or the period of default was not substantial** and the amount in default had been deposited in the meantime to the credit of the Central Government) quashed the criminal proceedings and orders passed by the Special Economic Offences court against the assessee holding that the tax deducted at source in all the cases had been deposited with interest, though there was some delay in depositing the tax. Moreover, apart from one or two cases, the deducted amounts were not more than Rs. 50,000.

The Apex Court upheld the High Court decision and accordingly, dismissed the special leave petition.

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