

RECENT DECISIONS

- A Bird's Eye View

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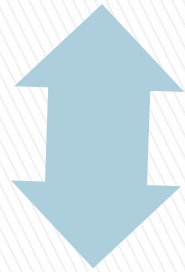
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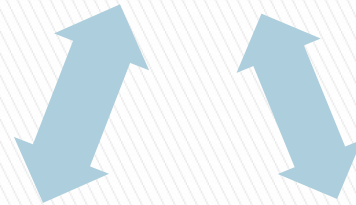
INCOME TAX PROVISION

*MACHINERY
PROVISIONS*

*CHARGING
PROVISIONS*



*Failure
of AO*



*Specific
provisions*

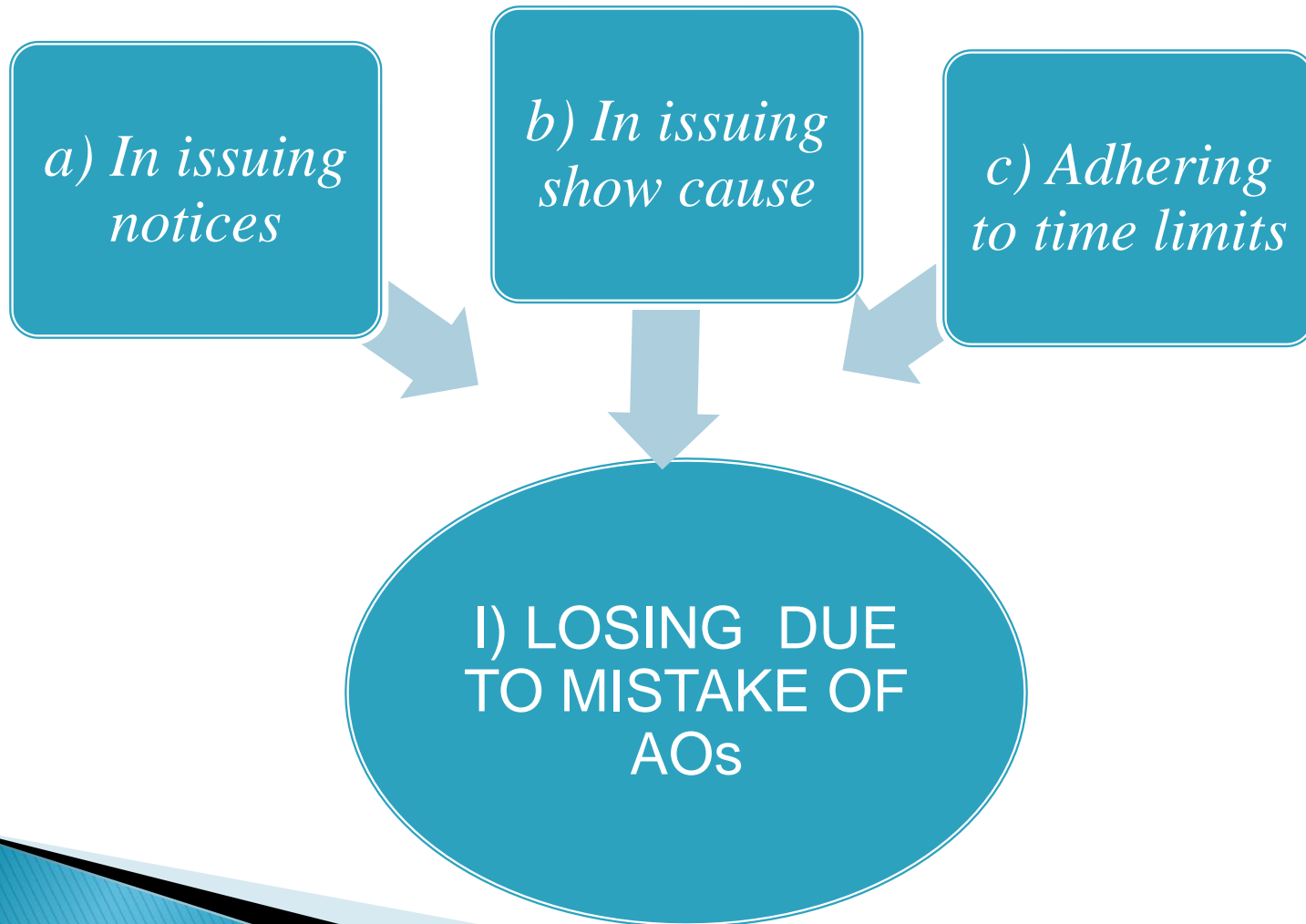
*General
provisions*

MACHINERY PROVISIONS

▶ **FAILURE OF AO**

- ▶ *Losing due to mistake of AOs.*
- ▶ *Various aspects of addition u/s. 148.*
- ▶ *Exercise of power u/s.263.*
- ▶ *Incomplete preparation of facts during assessment.*

FAILURE OF AO :



a) Hind Samachar Ltd.

335 ITR 277 (P&H)

Issue :

Validity of notice u/s.142(2A) when reasons not mentioned.

b) R D Hande's case

ITA No. 6908/M/2008

Issue :

- AO passed assessment order after receiving audit report u/s. 142(2A).***
- Assessee contended it to be time barred.***
- Deptt contended that last day for passing order was a Saturday and order was rightly passed on Monday, considering section 10 of General Clauses Act.***
- AR contended that last day was Friday since the word "within 180 days" would mean 179 clear days only.***

c) *Deep Malhotra*
334 ITR 232 (P&H)

Issue :

Whether transfer order u/s. 127 communicated to assessee valid in absence of reasons?

d) *Hotel Blue Moon*
321 ITR 362 (SC)

[followed in Virendra Dixit 331 ITR 483 (All.)

Bandana Gogoi – Gauhati & Pavan Gupta, Delhi]

Issue :

Issue of notice u/s. 143(2) within prescribed time whether mandatory under block assessment?

*e) Sargam Cinema
(2010) 328 ITR 513 (SC)*

Issue : Whether AO has a right to refer matter to DVO even when books not rejected?

II) Various aspects of addition u/s. 148

i)

- *Issue of notice*

ii)

- *Failure of disclosure*

iii)

- *Other income added only if income as per reasons is added*

iv)

- *Change of opinion*

a) Prashant Projects Ltd
333 ITR 368 (Bom.)

Issue :

Whether notice for assessment issued after 4 years was valid when there was no failure to disclose the material facts and “escaped income” was the subject matter of appeal?

b) Sadbhav Engineering Ltd.
333 ITR 483 (Guj.)

Issue :

Whether reassessment by issuing a notice after 4 years valid when there was no failure on the part of assessee to disclose all material facts fully and truly?

c) *Simbhaoli Sugar Mills*
333 ITR 470 (Del.)

Issue :

Whether reassessment after 4 years based on audit report valid?

d) *Aayojan Developers*
335 ITR 234 (Guj.)

Issue :

Validity of notice u/s.148 if reasons recorded do not mention the omission or failure by assessee.

***e) Kanubhai Patel HUF
43 DTR 329 (Guj.)***

Issue :

Whether notice u/s. 148 time barred if dated within time but delivered to post office beyond time?

***f) Gujarat State Co-Op. Bank
(2011) 56 DTR 124 (Guj.)***

Issue :

Whether reassessment was valid when notice issued after 4 years, there was no failure on the part of assessee and basis for reopening order was subsequent decision of High Court?

g) Kelvinator of India Ltd.

320 ITR 561 (SC)

Issue :

Import of reason to believe, which are to be recorded and based on tangible material.

h) CIT v. Jet Airways (I) Ltd.

(2011) 331 ITR 236 (Bom.)

Ranbaxy Laboratories Ltd. v. CIT

(2011) 57 DTR 281 (Del.)

Issue :

Whether AO has a right to assess other income not referred to in notice of reassessment and for which no reason has been recorded?

III) EXERCISE OF POWER U/S. 263

a) *Hindustan Coca Cola Beverage Pvt. Ltd.*
331 ITR 192 (Del.)

Issue :

Exercise of power u/s.263 whether valid on the ground that goodwill not entitled to depreciation?

IV) Incomplete Preparation of Facts during assessment :

a) *Brijpal Sharma*

333 ITR 229 (P& H)

Facts & issue :

AO failing to summon party to determine the correctness of claim and making addition of expenses & disallowance on account of excessive charges.

b) *Bangodaya Cotton Mills v. CIT*
330 ITR 105 (Cal.)

Facts & issue :

The income assessed by AO on the basis of letters found in search on third party.

c) *CIT v. Bharti Cellular*
330 ITR 239 (SC)

Facts & issue :

The department relied merely on the contract between the parties and did not examine the technical experts to decide the legal issues of factual foundation.

CHARGING PROVISIONS

▶ SPECIFIC PROVISIONS

- ▶ *Section 41*
- ▶ *Section 41(1)*
- ▶ *Section 80IB(10)*
- ▶ *Section 2(22)(e)*
- ▶ *Section 68*
- ▶ *Section 36(1)(iii)*
- ▶ *Section 36(1)(vii)*

▶ GENERAL PROVISIONS

- ▶ *Revenue Recognition*
- ▶ *Revenue v. Capital*
- ▶ *Penalty u/s.271(1)(c)*

SPECIFIC PROVISIONS :

I) Section 41 :

Tosha International

331 ITR 440 (Del.)

Facts & issue :

Whether mere crediting to capital reserve on account of financial institution write off whether assessable u/s. 41?

II) Section 41(1) :

Iskraemeco Regent Ltd.

331 ITR 317 (Mad.)

Facts & issue :

Whether waiver of bank loan of trading receipt taxable u/s.41(1)?

III) Section 80IB(10) :

Brahma Associates

333 ITR 289 (Bom.)

Facts & issue :

Whether deduction u/s. 80IB(10) prior to 1/4/2005 permissible in case of commercial use in a project?

IV) Section 2(22)(e) :

a) Ankitech Pvt. Ltd.

(2011) 57 DTR (Del.) 345

Facts & issue :

Whether a person who is not a shareholder can be treated as covered by dividend u/s.2(22)(e)?

***b) CIT v. Universal Medicare Private Limited
(2010) 324 ITR 263 (Bom.)***

Issue : Whether the transaction not reflected in the books of accounts be treated as deemed dividend u/s. 2(22)(e) and if yes, in whose hands it is to be taxed?

V) Section 68 :

a) *Oasis Hospitalities P. Ltd.*

333 ITR 119 (Del.)

Facts & issue :

In case of credits received from shareholders for share subscription, when can the assessee said to have discharged its onus to escape from liability u/s.68?

b) *STL Extrusion P. Ltd.*

333 ITR 269 (MP)

Facts & issue :

Although the assessee had established the identity and source of credits, yet the AO had disbelieved the material furnished and made addition.

VI) Section 36(1)(iii) :

a) S.A. Builders Ltd.

288 ITR 1 (SC)

Issue :

Allowability of interest on borrowed funds when money is borrowed from banks and lent to sister concern without charging interest

VII) Section 36(1)(vii) :

a) Sirpur Paper Mills

334 ITR 256 (AP)

Facts & issue :

Whether write off debt is irrecoverable sufficient for claim u/s.36(1)(vii)?

b) Krone Communications Ltd.

(2010) 333 ITR 497 (Karn.)

Facts & issue :

Although the assessee had established the identity and source of credits, yet the AO had disbelieved the material furnished and made addition.

GENERAL PROVISIONS :

I) Revenue Recognition

Dinesh K Goel

331 ITR 10 (Del.)

Facts & issue :

Whether advance received to be included in the income even though services were not fully rendered?

II) Revenue v. Capital

a) *CIT v. Rasoi Ltd.*

335 ITR 438 (Cal.)

b) *Shree Balaji Alloys*

333 ITR 335 (J&K)

Facts & issue :

Whether subsidy granted by State Government was in nature of revenue or capital receipt?

III) Penalty u/s. 271(1)(c) :

Reliance Petro Products Ltd.

(2010) 322 ITR 158 (SC)

Facts & issue :

Whether penalty u/s.271(1)(c) was validly levied due to disallowance of assessee's claim for deduction?

Alternate views and case laws on these topics are welcome and may be emailed at the below mentioned email address.

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Thank you.

