Top 10 Judgments 2017

21st December, 2017
Mega Conclave on Direct Tax & GST
WIRC of ICAI, Mumbai.

Tushar P. Hemani
Advocate, High Court

Countdown
No. 10

CIT vs. Hewlett Packard Global Soft Ltd. (2017) 87 taxmann.com 182 (Karnataka)(FB)

- **Facts**:
- Assessee, a 100% EOU, had set-up four units in STPI scheme and had no other units from which it carried on any other activity other than 100% export of software projects. Assessee is eligible for exemption u/s 10-A in respect of "Profits & gains derived from export business".
- Assessee earned *"interest income"* on short term deposits made out of surplus funds temporarily parked in a bank and also on loans advanced to its staff.
- Assessee claimed *exemption u/s 10A* in respect of both such *"interest income"* which came to be denied by AO on the count that such interest income is taxable u/s 56 of the Act as "Income from other sources".

- **<u>Held</u>**:

- Exemption u/s 10-A encompasses entire income "derived by" the "export business" of the eligible undertaking, including "interest income" earned on deposits made by temporary parking of funds and on loans to staff.

- Dedicated nature of business or special geographical locations in STPI /SEZs makes them a *"special category of assessees"* entitled to incentives in the form of exemption u/s 10-A rather than it being a *"special character of income"* entitled to deduction from gross total income under Chapter VI-A.

- Incidental activity of parking surplus funds with bank or staff by such “special category of assessees” covered u/s 10-A and/or 10-B of the Act is an integral part of their “export business activity”. Such a business decision and “incidental interest income” cannot be delinked from its profits and gains derived by the eligible undertaking by making export.

- Hence, all profits and gains of the undertaking, including incidental income in the form of interest on deposits/staff loans, is eligible for exemption u/s 10-A and 10-B of the Act.

- **Issues:**
- 10A is held to be deduction [Makino India 393 ITR 291 (SC)]. Therefore ratio of this judgment may be made applicable to deductions under Chapter VI-A of the Act.
- “derived by an undertaking” vs “derived from”
- “income derived by the business of an undertaking” vs “income derived from an undertaking”
- While interpreting incentive provisions, liberal approach to be adopted.

Countdown
No. 9

Plastibends India Ltd. vs. ACIT (2017) 86 taxmann.com 137 (SC)

- **Facts**:

- Assessee claimed deduction u/s 80-IA in respect of profits derived from two eligible industrial undertakings during the year under consideration. However, assessee did not claim "depreciation" while computing income eligible for deduction u/s 80-IA.
- AO reworked the quantum of deduction u/s 80-IA by reducing "depreciation" from "profits derived from eligible industrial undertakings".
- CIT(A) allowed deduction u/s 80-IA without reducing "depreciation" from the "eligible income". However, ITAT and High Court decided the issue against the assessee and confirmed the view taken by AO.

- **Held**:
- Hon'ble the Apex Court held that "depreciation" is to be reduced while computing deduction u/s 80-IA of the Act since it is a complete code in itself.
- Deduction u/s 80-IA is a "special deduction" under Chapter VI-A and is to be computed after deducting all deductions allowable u/s 30 to 43D.
- By not claiming depreciation, assessee cannot be permitted to inflate the "profit linked incentives", as envisaged u/s 80-IA of the Act.
- Hence, whether an assessee has claimed deduction u/s 30 to 43D or not, quantum of deduction u/s 80-IA is to be worked out after deducting all allowable deductions u/s 30 to 43D, including depreciation u/s 32 of the Act.

- **Issues:**

- 80IA is a code by itself and can be claimed on the profit after claiming all the expenditure including depreciation.
- Concept of real or commercial profit
- Remuneration and interest – whether the same are also compulsory?

Countdown
No. 8

CIT vs. Balbir Singh Maini
(2017) 86 taxmann.com 94 (SC)

- **Facts**:
- A co-operative housing society, of which assessee is a member, entered into a tripartite Joint Development Agreement (JDA) with two developers for development of a land. Such JDA was *not registered*.
- As per the JDA, part consideration was received and balance consideration was to be received *only after the permission for development is granted by authorities*.
- Somehow, such permission was not granted and hence, JDA did not take off the ground. Accordingly, even balance consideration was never received.
- AO held that S.53A of The Transfer of Property Act, 1882 is applicable to transactions under the JDA and accordingly, "transfer" in terms of S.2(47)(v) has been effected since "possession" was handed over in part performance of JDA. Thus, he made addition in respect of "capital gain".

- **Held**:
- As per S.17(1A) of The Indian Registration Act, 1908 as amended by Amendment Act of 2001, an "unregistered" agreement (like JDA in this case) shall have no effect in law for the purposes of S.53A. Since JDA has not been registered, it has no binding force in the eye of law and hence, no "transfer" can be said to have taken place under such JDA. Hence, question of any "capital gain" does not arise at all.
- For want of requisite permissions, the transaction envisaged in the JDA could not materialize and did not result into any income which was dependent upon obtaining requisite permissions. Thus, no profit/gain ever arose from transfer of capital asset which could be brought to tax u/s 45 r.w.s. 48.

- Distinction between possession for the limited purpose of development vis-à-vis possession in part performance of an agreement to sell a property.
- Capital Gain is only on real income and not on hypothetical or notional income.
- S.2(47)(vi) of the Act can be invoked even if there is no change in the membership of Society. “in any other manner whatsoever” is wide so as to include these kinds of arrangements.

- **Issues:**
- Wef 01/04/2018, registered JDA shall be governed by 45(5A) of the Act.
- Unregistered JDA would not be treated as transfer within the meaning of S.2(47)(v) in view of this SC decision.
- Decision of Chaturbhuj Dwarkadas Kapadia [260 ITR 491, (Bom)]
- Issues with regard to transfer in year one and right to receive consideration or actual receipt of consideration in later years.

Countdown
No. 7

DIT(IT) vs. A.P. Moller Maersk A S [2017] 392 ITR 186 (SC)

- **Facts:**
- Assessee is a tax resident of Denmark and is engaged in shipping business. Assessee's agents in India booked cargo and acted as clearing agents for it.
- Assessee maintained a global telecommunication facility (Maersk Net System) to help agents worldwide. This centralised system avoided costs of having the system at the agents place.
- Agents were paying for it on a *pro rata basis* to access tracking of cargo of a customer, transportation schedule, customer information, documentation system etc.

- AO rejected the contention of the Assessee that it was on a cost sharing basis and held the payments to be Fees from Technical Services (FTS) taxable u/Art.13(4) of the India-Denmark DTAA. CIT(A) dismissed Assessee's appeal.
- ITAT held that utilisation of the Maersk Net Communication System was an automated software based communication system which did not require the assessee to render any technical services.
- HC confirmed the order of the ITAT and held that it was a cost sharing arrangement to efficiently conduct shipping business and would not fall under any provisions of the Act except DTAA. (No finding by authorities that profit element involved).

- **Held:**

- The system was integral to the shipping business.
- No technical services are provided by Assessee to its agents and payments cannot be treated as FTS.
- It is a reimbursement of cost. AO or CIT(A) have not indicated that there was a profit element.
- Revenue has given the Assessee the benefit of Art.9 of the DTAA by not taxing freight income from operations of ships in international waters. This System is an integral par of the shipping business.
- Technical Services, like Managerial and Consultancy Services, would involve services that cater to the special needs of the consumer.

- **Issues :**

- Test for "Technical Services": test of specialised, exclusive and individual requirement of the user or consumer.
- Facility vs. Service: Use of a facility provided to all does not constitute technical services as it does not cater to special needs of the user. (CIT v. Kotak Securities Ltd. [2016] 383 ITR 1 (SC))
- Why did the SC simply not hold that once the System is determined to be an integral part of the shipping business, it would not be necessary to examine the issue further as shipping income of the Assessee was undisputedly exempt u/Art.9 of the DTAA?
- Can this income be taxed as Royalty?

Countdown
No. 6

CIT vs. Vodafone Essar Gujarat Ltd. (2017) 85 taxmann.com 32 (Gujarat)

- **Facts**:
- The assessee-company made "provision for bad and doubtful debts" and simultaneously reduced such provision from gross debtors in the Balance Sheet.
- AO added such "provision for bad and doubtful debts" while computing "book-profit" for the purpose of MAT liability u/s 115JB. CIT(A) and ITAT held that the said adjustment is not permissible in the eye of law.
- On Revenue's appeal, two decisions (viz. *"CIT vs. Deepak Nitrite Ltd."* and *"CIT vs. Indian Petrochemicals Corpn. Ltd."*), apparently running contrary to each other, were cited and hence, the matter was referred to a larger Bench.

- **<u>Held</u>**:
- Prior to insertion of clause (g) to *Explanation* 1 to S.115JA [clause (i) in case of 115JB)] by Finance (No. 2) Act, 2009 w.r.e.f 01/04/1998 [01/04/2001], decision of Hon'ble the Supreme Court in the case of "HCL Comnet Systems - 305 ITR 409 (SC)" was holding the field.

- It was held therein that clause (c) to Explanation to S.115JA cannot be invoked so as to add provision for Bad Debt while computing the book profits as the same cannot be said to be a provision for liability. It's a provision for diminution in the value of asset.

- After insertion of clause (g)/(i) as the case may be, issue of adding back of provision for Bad Debt while computing the book profit became debatable.

- Hon'ble the Karnataka High Court consistently took the view in favour of the Assessee even after amendment whereas Gujarat High Court allegedly took contrary views in two decisions;
- In "CIT vs. Deepak Nitrite Ltd", it was held that "provision for bad and doubtful debts" is to be added while computing book profit in view of insertion of clause (i) to *Explanation* 1 to S. 115JB of the Act. "HCL Comnet Systems [305 ITR 409 (SC)] was held to be no more a good law in view of the above referred amendment.

- In "CIT vs. Indian Petrochemicals Corpn. Ltd.", following the view taken by Hon'ble the Karnataka High Court, it was held that if an assessee makes provision for bad and doubtful debts which is adjusted against debtors/loans and advances while preparing the Balance-sheet, the same would be required to be added while computing book profit.
- Hon'ble the Gujarat High Court, thus, held that there was no conflict between the above two judgments and both operated in different fields.

- **<u>Issues</u>**:
- After the insertion of clause (i) to *Explanation* 1 to S. 115JB of the Act, if there is a provision for bad and doubtful debts with mere debit to P & L A/C and credit to Bad Debt Provisions A/c, the same will have to be added back to book profit.

- However, if after providing for bad debts, if such provision is obliterated by simultaneously reducing the same from Debtors/Loans and Advances A/c on the asset side of the Balance- Sheet, the same would no longer remain a provision; for it will be an actual write off, and resultantly, not to be added back to book profit.

Countdown
No. 5

CIT vs. Chaphalkar Brothers Pune
(2017) 88 taxmann.com 178 (SC)

- **Facts**:

- Govt. of Maharashtra and West Bengal came out with a "subsidy scheme" in the form of *"exemption of entertainment duty"* in the specified "Multiplex Theatre Complexes" for specified period i.e. the concerned assessee shall collect "entertainment duty" on sale of tickets to the customers but shall not be liable to pay the same to the Govt. fully/partially, as specified, for the prescribed period.
- AO and CIT(A) treated such subsidy as "revenue" in nature whereas ITAT and High Court held that such subsidy was "capital" in nature.

- **<u>Held</u>**:

- Hon'ble the Apex Court that the test laid down for determining the character of receipt in the hands of the assessee is the *"purpose test"* i.e. the purpose for which such subsidy is given. "Point of time at which subsidy is paid", "source of subsidy" and "form of subsidy" are absolutely irrelevant.

- In this case, Govt. decided to grant concession in entertainment duty to Multiplex Theatre Complexes *to promote construction of new cinema houses*. The idea was *to help the industry to set up such highly capital intensive entertainment centers*. Hence, such subsidy was held to be "capital" in nature.

- **<u>Issue:</u>**
- Can MAT be levied on such Subsidy treated as Capital Receipt under the normal provisions of Income Tax Act?
- **AS 12** – Accounting for Government Grants : *"Para 16. Government grants of the nature of promoters' contribution should be credited to capital reserve and treated as a part of shareholders' funds."*

Countdown
No. 4

CIT vs. Sinhgad Technical Society (2017) 84 taxmann.com 290 (SC)

- **Facts**:

- "Assessee-society" is an "educational institution" registered under The Bombay Public Trusts Act, 1950 and The Societies Registration Act, 1860. Assessee is also registered u/s 12AA of The Income-tax Act, 1961.

- A search action u/s 132 was carried out in the case of "President" of the "assessee-society" and his "wife". During the course of such search, certain documents containing cash entries pertaining to capitation fees received by various institutions run by the "assessee-society" were seized.

- Thereafter, AO issued notice u/s 153C to the assessee-society, assessee's registration certificate u/s 12A was cancelled and special audit u/s 142(2A) was ordered. Finally, assessment was framed u/s 153C r.w.s. 143(3) wherein deduction u/s 11 was denied and addition in respect of receipt of capitation fees, as emanating from the seized material, was made.

- Before ITAT, assessee raised an additional ground challenging *"validity of notice issued u/s 153C"* which was decided in assessee's favor. The said view was upheld by Hon'ble the High Court as well. Hence, the Revenue approached Hon'ble the Apex Court.

- **Held**:

- Issue of validity of notice u/s 153C of the Act can be challenged for the first time before ITAT since it's a jurisdictional issue where all the facts are available on record.

- Hon'ble the Apex Court held that as per the provisions of S.153C, "incriminating material" seized during search must pertain to the assessment year in question. However, in the assessee's case, the seized documents did not establish any co-relation with the assessment years in question and hence, notices u/s 153C for such assessment years were quashed.

- **<u>Issues</u>**:

- Proceedings for 6 years don't get automatically invoked u/s 153C of the Act even if material belonged to an Assessee is found for one of the years.
- "belongs to" vs "pertains to" vs "relates to" (S.153C wef 01/06/2015).
- Validity of Legal and/or Jurisdictional ground being raised before ITAT for the first time as regular ground or as an additional ground. S.292BB relevant?
- 147vs 153C – concepts of "reason to believe", "income having escaped assessment", "AO satisfied" and "have a bearing on determination of the total income"

Countdown
No. 3

Common cause (A Registered Society) vs. UOI (2017) 77 taxmann.com 245 (SC)

- **Facts:**
- Raids were conducted by CBI and Income-tax Department on the Birla and Sahara group.
- During the course of such raid, incriminating material in the form of *"random sheets and loose papers, computer prints, hard disks, pen drives, etc."* were found. *"Evidence of certain highly incriminating money transactions"* were also found.
- The moot question before Hon'ble the Apex Court was whether a case was made out on the basis of above material for constituting SIT and for directing investigation against various functionaries/officers and monitor the same.

- **Held:**

- "Loose sheets" are not admissible as "evidence" u/s 34 of The Indian Evidence Act, 1872. Only bound papers can be treated as books so as to be treated as admissible evidence.

- When the material, on the basis of which investigation is sought, is itself irrelevant to constitute evidence, investigation cannot be directed.

- There must be some "relevant and admissible evidence" as well as "cogent reason" so as to infer that a particular person was involved in a given matter or that he has done some act which can be correlated with the entries in such loose papers.

- Here, the department had no evidence to prove that entries in such loose papers and electronic data were kept regularly during the course of business of the concerned business house.

- It was proved that such entries were fabricated and non-genuine.

- Even the PCIT/DR failed to prove evidentiary value of loose papers and electronic documents.

- Hence, no case was made out for directing investigation based on such loose sheets.

- **Issues:**

- Whether addition u/s 68/69A/69B/69C/69D of the Act can be made on the basis of "entries" in some "loose and random sheets" which itself is legally not admissible as an evidence under section 34 of The Indian Evidence Act, 1872?
- Can loose papers found from a third party be used as basis for initiating action u/s 147/153C of the Act? Can such loose papers be used for making addition?

Countdown
No. 2

2. Formula One World Championship Ltd. vs. CIT(IT) [2017] 394 ITR 80 (SC)

- **Facts:**
- Formula One World Championship (FOWC) entered into a Race Promotion Contract (RPC) with Jaypee granting Jaypee the right to host, stage and promote the Formula One Grand Prix of India event (Event) for consideration.
- FOWC is a tax resident of UK. FOWC has acquired commercial rights w.r.t. F-1 Championship for wherever they take place.
- FOWC-Jaypee Agreements: 1) RPC: host, stage & promote Event. 2) Artwork Licence Agreement (ALA): Jaypee can use marks and IP.

- **Held:**
- s.9(1)(i): income earned directly/indirectly is deemed to accrue/arise in India. (Must have business connection)
- Business activity carried on *through* an agent will constitute business connection. If a non-resident has a PE in India, business connection is established.
- India-UK DTAA: Art.5(1)- PE requires a "fixed place" and that from such a place business of enterprise (FOWC) is carried on, wholly/partly.
- SC referred to commentaries of Philip Baker, Klaus Vogel and OECD. The place of business must be *at the disposal* of the enterprise. OECD: Sufficient to require no more than the type and control necessary for the specific business activity.
- **Twin conditions for PE:** (i) existence of a fixed place of business; and (b) through that place business of an enterprise is wholly or partly carried out.

- Buddh International Circuit is a fixed place.
- Grant Prix is economic/business activity.
- Core question: whether the place was put at the disposal of FOWC?
- Whether it was a fixed place of business of FOWC?
- All agreements have to be read together to know who has real and dominant control over the Event.
- Commercial rights are with FOWC and its affiliates as race cannot take place without teams, circuit and paddock, which are all controlled by FOWC and its affiliates. These are exploited with actual conduct of race in India.
- Physical control of the circuit was with FOWC. For PE: important factor is that race was only for 3 days per year and for that entire period the control was with FOWC.

- Having regard to the duration of the event (limited number of days) and that for the entire duration FOWC had full access, **number of days for which access was there would not make a difference.**
- SC confirmed the HC order.
- RPC & other agreements: Jaypee's capacity to act was extremely restricted.
- At all material times, FOWC had access - exclusively, to the circuit, and all the spaces where the teams were located. (though not permanent & everlasting)
- In this model of transactions, six-week access during the racing season is sufficient for Art.5(1) of DTAA. As RPC was for 5 years, such access was repetitive.
- Jaypee created circuit for this and other event, but no other events possible during this event.
- Though FOWC's access or right to access was not permanent/everlasting, its exclusive circuit access was up to 6 weeks at a time during season.

- Nature of activity was of a shifting and moving presence. Hence, no substantiality w.r.t. time period, but exclusive nature of the access and the period for which it is accessed make the presence "fixed" u/Art.5(1) of DTAA.
- The presence is neither ephemeral or fleeting, or sporadic.
- All the commercial rights remained with FOWC except for a limited class of rights, making FOWC the Commercial Rights Holder of the event. Entire event was organised and controlled by FOWC. It had the central and dominant role.
- All PE characteristics - Stability, productivity and dependence are present.
- FOWC is liable to pay tax in India on income attributable to PE and TDS also to be deducted on the same.

- **Issues:**
- The definition of PE has become wider with the result that the scope of Indian taxation has increased.
- The earlier judicial position was that to constitute a fixed place, the presence should be for a reasonable period of time (Duration Test). However, by this decision, number of days alone cannot lead to a PE and it has to be seen in the context of the nature of the business.
- Similarly, the type and extent of control necessary for the specific business activity will be sufficient to constitute a PE.
- By relying on the OECD Commentary, the SC has paved the path for all the lower authorities to rely on the OECD Commentary while dealing with any tax disputes involving DTAAs.

No. 1

1. Chamber of Tax Consultants vs. UOI (2017) 87 taxmann.com 92 (Delhi)

- **Facts:**

- Central Govt. notified ten ICDS in exercise of powers u/s 145(2) of The Income-tax Act, 1961wef AY 17-18. Such ICDS were, to an extent, contrary to judicial pronouncements as well as provisions of the Act and the Rules.

- **Held:**

- Central Govt. can notify ICDS which do not have the effect of overriding binding judicial pronouncements as well as provisions of the Act and the Rules. That's how the amended S.145(2) has to be read.

- The power to enact a “validation law” is essentially a “Legislative power”. Hence, the same can be exercised only by the “Parliament” and not by the “Executive” (i.e. the “Central Govt.”).
- Interpreting the amended S.145(2) of the Act in any other manner would be ultra vires the Act and Article 141 read with Article 144 and 265 of The Constitution.
- It is settled law that accounting standards cannot override the basis on which the taxable income is computed - *Tuticorin Alkali Chemicals & Fertilizers Ltd.* v. *CIT* [1997] 227 ITR 172 (SC)

- **Facts:**
- "ICDS – I" dealing with "significant accounting policies" contained a negative provision to the effect that *"prudence is not to be followed unless it is specified"*. Thus, concept of prudence has been done away with.

- **Held**:
- Non-acceptance of the concept of "prudence" is contrary to the provisions of The Income-tax Act, 1961 as well as various judicial precedents viz. *CIT* v. *Triveni Engg. & Industries Ltd.* [2011] 336 ITR 374 (Del) and *CIT* v. *Advance Construction Co. (P.) Ltd.* [2005] 275 ITR 30 (Guj). Hence, to that extent, ICDS – I is held to be ultra vires of the Act and struck down.

- **Facts:**

- "ICDS – II" dealing with "valuation of inventories" provides that in the event of dissolution of partnership firm, "stock-in-trade" is to be valued at *"market value"* only irrespective of the fact as to whether such partnership firm continues or discontinues thereafter.

- **Held**:

- ICDS – II is contrary to the decision of Hon'ble the Apex Court in "Shakthi Trading Co. vs. CIT – 250 ITR 871 (SC)" wherein it is held that where, post dissolution of the firm, *business of the firm is continued by other partners*, "stock-in-trade" can be valued at *"cost or market value" whichever is lower*. Hence, to that extent, ICDS–II is held to be ultra vires of the Act and struck down.

- **Facts**:

- "ICDS – III" dealing with "Construction contracts" states that "retention money" would form part of "contract" and the same must be taxed on the basis of the "proportionate computation" method.

- **Held**:

- The above provisions are contrary to the decisions of various High Courts wherein it is held that "retention money" does not accrue as an income unless the defect liability period is over and the Engineer-in-charge certifies that no liability is attached to the assessee. Hence, to that extent, ICDS – III is held to be ultra vires of the Act and struck down.

- **Facts**:

- Conjoint reading of "ICDS – III" on "construction contracts" and "ICDS – IX" on "Borrowing costs" reveals that "incidental income" cannot be reduced from "borrowing cost".

- **Held**:

- The above provisions are contrary to the decision of Hon'ble the Apex Court in the case of "CIT vs. Bokaro Steel Ltd. – 236 ITR 315 (SC)" wherein it is held that any income, which is inextricably linked with the process of setting up of its plant and machinery, would be reduced from cost of its assets. Hence, to that extent, ICDS – III is held to be ultra vires of the Act and struck down.

- **Facts**:
- ICDS – IV on "revenue recognition" provides for recognizing *"income from export incentives"* in the year of making claim if there is "reasonable certainty" of its ultimate collection.

- **Held**:
- The above provision is contrary to the decision of Hon'ble the Apex Court in the case of "CIT vs. Excel Industries – 358 ITR 295 (SC)" wherein it is held that assessee's right to receive payment and corresponding obligation of the Govt. to pay such sum arise only in the year in which such claim is accepted by the Govt. and hence, only in such year, income from export incentives accrue and can be recognized as income. Hence, to that extent, ICDS – IV is held to be ultra vires of the Act and struck down.

- **Facts**:

- ICDS – IV on "revenue recognition" permits only "percentage completion method" for recognizing *"revenue from service transactions"*.

- **Held**:

- The above provision is contrary to various judicial precedents which recognize both the methods viz. *"percentage completion method"* and *"contract completion method"* as valid method of accounting under the mercantile system of accounting. Hence, to that extent, ICDS – IV is held to be ultra vires of the Act and struck down.

- **Facts**:

- "ICDS – IV" on "revenue recognition" provides that interest shall accrue on the time basis determined by the amount outstanding and the rate applicable.

- **Held**:

- The above provision is not contrary to any of the decisions pronounced either by Hon'ble the Apex Court or any other High Courts. Hence, no fault can be found with such provision.

- **Facts**:

- "ICDS – VI" dealing with "effects of changes in foreign exchange rates" states that marked to market loss/gain in case of foreign currency derivatives held for trading or speculation purposes are not to be allowed.

- **Held**:

- The above provision is contrary to the decision of Hon'ble the Apex Court in "Sutlej Cotton Mills Ltd. vs. CIT – 116 ITR 1 (SC)" insofar as it relates to not allowing marked to market loss arising out of forward exchange contracts held for trading or speculation purposes. Hence, to that extent, ICDS – VI is held to be ultra vires of the Act and struck down.

- **Facts**:

- "ICDS – VII" dealing with "Government grants" provides that recognition of Government grants cannot be postponed beyond the date of accrual receipt i.e. such income has to be recognized on receipt basis even if it has not accrued.

- **Held**:

- The above provision is contrary to the "accrual system of accounting". Hence, to that extent, ICDS – VII is held to be ultra vires of the Act and struck down.

- **Facts**:

- "Part A" of "ICDS – VIII" dealing with "valuation of securities", as applicable to entities not governed by RBI, accounting prescribed by the AS is to be followed.

- **Held**:

- The above treatment is different from ICDS. Such entities, therefore, will be required to maintain separate records for income-tax purposes for every year since the closing value of securities would be valued separately for income-tax purposes and for accounting purposes. Hence, to that extent, ICDS – VIII is held to be ultra vires of the Act and struck down.

Thank You