

CHAPTER-IV

THE CASE LAW INVOLVED IN THE
ASSESSMENT PROCEDURE

4.1 Supreme Court Cases on Assessment

SUPREME COURT CASES ON ASSESSMENT

<u>Sr.No.</u>	<u>Section</u>	<u>Case Law</u>	<u>Brief Gist</u>
4.1	139(8)	AIR 1987 SC 438: Levy of interest under Section 139 1986 Tax LR 1187	It is a part of process of assessment - Appeal against order is maintainable provided assessee limits himself to ground that he is not liable to levy at all.
4.2	139(1)	AIR 1985 SC 114: Voluntary filing of return before 1985 Tax LR 497	the end of four years from the end of assessment year - I.T.O. levying interest for period of delay - presumption arises that I.T.O. extended time for filing of return after satisfying himself that it was a case for extension of time - Penalty is not leviable under Section 271 (1)(a).
4.3	139(1),(2), (4) (as existed before 1-4- 1971)	AIR 1988 SC 427: Late filing of returns - 1988 Tax LR 429: Charging of interest - entire amount 1987 (Supp) SCC 442:(1988) 169 ITR 221	of tax assessed paid in shape of advance tax - charging of interest is not justified.
4.4	140(b)	AIR 1969 SC 682	Failure to satisfy tax due by Hindu undivided family in enforcement of certificate under Section 222 - Manager is not liable to be arrested and detained in prison - Income assessed being one of Hindu undivided family, manager cannot be deemed

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			assessee - Word "Person" in Sections 276, 276-A and 277 is not used in the sense in which it is defined in Section 2(31).
4.5	141,210(3)	AIR 1969 SC 470: Summary enquiry - 71 ITR 799: (1969) 1 SCJ 800: (1969)2 SCR 193	Disputed questions of law and fact - No enquiry into carry forward of losses - Claim of set-off against income - Advance tax - Demand on the basis of invalid provisional assessment - Not sustainable.
4.6	144(b)	AIR 1983 SC 977: Chartered Accountant nominated by 1983 Tax LR 1179 Commissioner of Income-tax for auditing Appellant Company's accounts - Reasons for refusal by him to audit found to be frivolous No collusion between accountant and Company, however found - Held, that there was no default nor failure to comply with directions under Section 142(2-A) on the part of the company.	
4.7	144	AIR 1979 SC 209: The authority making a best judge- 1978 Tax LR 1346 ment assessment must make an honest (1979)3 SCC 14: and fair estimate of the income of 115 ITR 524 the assessee and though arbitrari- ness cannot be avoided in such estimate the same must not be capri- cious but should have a reasonable	

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			nexus to the available material and the circumstances of the case.
4.8	147	AIR 1986 SC 1853 1986 Tax LR 867: 1986 Supp. SCC 272: (1986) 159 ITR 153	Notice under Jurisdiction to issue- Revised return showing same profit but with different items - I.T.O. could reasonably feel that there was escapement of income - Notice is valid.
4.9	147(a)	AIR 1981 SC 1363 1981 Tax LR 1069 (1981)3 SCC 143: (1981) 130 ITR 1	Re-opening of assessment under - Expression "Reason to believe" - Reasons must have bearing on matters with regard to which I.T.O. is required to entertain belief.
4.10	147 (b) & 28	AIR 1968 SC 49: 67 ITR 11:(1967) 2 SCJ 842 (1968) 1 SCR 10	Profits of business - Income belonging to trader earned by other person - Income can be taxed in hands of trader - Avoidance of tax liability by so arranging commercial affairs that charge of tax is distributed - Not prohibited.
4.11	147(1)(a), 148	AIR 1987 SC 1897: 1986 Tax LR 298: (1986)2 SCC 409(1986) 2 UI (SC) 249	Re-opening of assessment - non-disclosure of material facts - Assessee paying charge for foreign company for management and secretarial work carried on behalf of assessee in London - claim for deduction - Assessment by I.T.O. on basis of

<u>Sr.No.</u>	<u>Section</u>	<u>Case Law</u>	<u>Brief Gist</u>
			relevant material - subsequent re-opening of assessment under Section 147(1)(a) for non-production of London Auditor's report regarding reasonableness of claim - Held not proper.
4.12	148	AIR 1975 SC 1268: 1975 Tax LR 498:(1975)4 SCC 375: 100 ITR 1	Income escaping assessment by oversight although primary facts were known to Income-tax Officer - Notice under Section 148 read with Section 147(a) is invalid.
4.13	148	AIR 1987 SC 1897: 1986 Tax LR 928	Re-opening of assessment - Deduction regarding expenditure made in foreign country allowed in regular assessment - re-opening sought on ground that report of Auditor of foreign country not produced. - Not proper.
4.14	149	AIR 1987 SC 1378: 1987 Tax LR 681	Re-assessment - notice service is not condition precedent to conferment of jurisdiction on I.T.O. to deal with matter - It is condition to making order of assessment.
4.15	151(2)	AIR 1971 SC 730: 1971 Tax LR 198: (1971)1 SCC 452: 79 ITR 603	Notice issued under Section 148 read with Section 151(2) by I.T.O. on feeling that certain transactions by assesseees with creditors were bogus and that there was case for investigating truth of alleged transactions is invalid as not complying with requirements of Sec.151(2)