

# An analysis of key ITAT (Income Tax Appellate Tribunal) rulings

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An analysis of key ITAT (Income Tax Appellate Tribunal) rulings TopXTop StoriesNews UpdatesColumnsCST & VAT / GSTIncome TaxMore Service Tax Customs & Excise Corporate Laws Other Taxation Events Scan Job ScanLoginSubscribeXSubscribeHOMETop StoriesNews UpdatesColumnsCST & VAT / GSTIncome TaxMore Service Tax Customs & Excise Corporate Laws Other Taxation Events Scan Job ScanBegin typing your search above and press return to search. Home »Headlines » An analysis of key... An analysis of key ITAT (Income Tax Appellate Tribunal) rulings This article lists various decisions of the Tribunal, the Income Tax Appellate Tribunal (ITAT), which delves into the complexities of capital gains, and the application of business income etcBy - Yogitha S. Yogesh |29 April 2025 7:45 AM ISTX A number of landmark decisions under the Direct Tax Laws redefined legal interpretations and procedural frameworks, ushering in a new age of taxation in India. From exemptions, procedural compliance, and the taxation of unique transactions to reassessment letters under the new tax regime, these historic rulings from numerous courts and tribunals addressed a wide range of...Read the full article. A number of landmark decisions under the Direct Tax Laws redefined legal interpretations and procedural frameworks, ushering in a new age of taxation in India. From exemptions, procedural compliance, and the taxation of unique transactions to reassessment letters under the new tax regime, these historic rulings from numerous courts and tribunals addressed a wide range of intricate topics. The Income Tax Appellate Tribunal, which was established in 1941 as an independent appellate court to address complaints under the Income-tax Act. The unwavering cornerstones of this cherished forum remain the noble values of "Sulabh Nyaya and Satwar Nyaya." A factual, legal, or a mix of both issues may be the subject of the appeal to the Tribunal. This article lists various decisions of the remain the noble values of "Sulabh Nyaya and Satwar Nyaya." A factual, legal, or a mix of both issues may be the subject of the appeal to the Tribunal. This article lists various decisions of the Tribunal, the Income Tax Appellate Tribunal (ITAT), which delves into the complexities of capital gains, and the application of business income etc. Rulings on Capital Gain vs. Business Income The term 'capital asset' has been defined in Section 2(14) of the Income-tax Act. The recent ruling from the Income Tax Appellate Tribunal (ITAT) offers a thorough examination of the complex differences between business income and capital gains. The nature of money received from the sale of land and its ensuing tax ramifications are examined in various cases. These ruling deals with important questions about how income is classified under the Income Tax Act, which has a big impact on tax obligations and legal compliance. A.C.I.T. vs Smt. Alka Kiritkumar Upadhyay CITATION: 2016 TAXSCAN (ITAT) 114,in this case, the Mumbai division of the Income Tax Appellate Tribunal, has

recently ruled that the income earned by the assessee on account of sale and purchase of shares will be considered as "capital gain." The Tribunal observed that consistently investing in shares will not amount to "business income" since the said activity is not an "adventure in the nature of trade." The Tribunal held that the gain arising from the sale of shares held by the assessee for not more than twelve months shall be held to be short term capital gain chargeable to tax under the head 'Capital Gains' and not as income from business chargeable to tax under the head 'Profits and gains of Business or Profession' as was held by the AO.

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Trident Commerce Pvt. Ltd vs ITO CITATION: 2023 TAXSCAN (ITAT) 2164 The Kolkata bench of the Income Tax Appellate Tribunal (ITAT) held that the short-term capital gain [Click Here](#)

Trident Commerce Pvt. Ltd vs ITO CITATION: 2023 TAXSCAN (ITAT) 2164 The Kolkata bench of the Income Tax Appellate Tribunal (ITAT) held that the short-term capital gain disposed off within a short span of time will not justify the gain to be treated as business income. The two-member bench held that the assessee has purchased shares and disposed of them within a short span of time will not justify the gain to be treated as business income while the same was shown in the investment portfolio in the books of the assessee. Chandra Ramesh vs Assistant Commissioner of Income-tax CITATION: 2023 TAXSCAN (ITAT) 2189 The Chennai Bench of Income Tax Appellate Tribunal (ITAT) has held that listed shares and securities which had been treated as stock in trade by assessee should be treated as business income regardless of period of holding. The Bench held that the assessing officer and CIT(A), were completely erred in assessing profit/loss from share trading activity under the head income from capital gains as against the assessee's admission under the head income from business and profession. Ruling regarding Real Estate Joint Development The parameters of a landowner and developer's cooperation in developing a property are outlined in a legally enforceable contract known as a Real Estate Joint Development Agreement (JDA). Construction and development activities are carried out by the developer, while the landowner supplies the land. In the JDA, construction guidelines, profit-sharing plans, and ownership rights are specified. The developer and the landowner may both see increased returns on their investment if they split the risks and rewards. Essentially, a JDA ensures that the roles, duties, and financial interests of the landowner and developer are clearly defined, allowing them to work together efficiently on the development of a real estate project.

Sri.Maurice Patrick De Rebello vs The Income Tax Officer CITATION: 2021 TAXSCAN are clearly defined, allowing them to work together efficiently on the development of a real estate project. Sri.Maurice Patrick De Rebello vs The Income Tax Officer CITATION: 2021 TAXSCAN (ITAT) 592 The Income Tax Appellate Tribunal (ITAT), Bangalore Bench held that the capital gain deduction is allowable for eight flats received under Joint Venture Agreement. The AO observed that as such, the assessment year 2009-2010 is the year of transfer and the income is chargeable in the said assessment year. The Assessing Officer also did not grant the benefit of exemption under section 54 of the Income Tax Act for the entire built-up area except for the self-occupied flat of the assessee. The coram held that the assessee is entitled to deduction under section 54 of the Income Tax Act on the entire built-up area received from the builder as per the JDA. ETA Star Infopark vs Principal Commissioner of Income Tax CITATION: 2022 TAXSCAN (ITAT) 1429 The Income Tax Appellate Tribunal (ITAT), Bangalore confirmed revision order under Section 263 of the Income Tax Act, 1961 and held that income from Joint Development Agreement (JDA) is business income. The Bench held

that there was proper examination of the issue disputed by PCIT by AO at the stage of assessment and the PCIT cannot find fault with the action of the AO in accepting the claim of assessee that income arose out of the JDA to be treated as business income instead of Long term capital gain offered by assessee. Stay Updated with the Latest Audit Report Formats & Audit Trials Requirements!, Click Here [Smt. V. Kalpagam vs The Income Tax Officer](#)

CITATION: 2023 TAXSCAN (ITAT) 1963 The Chennai bench of the Income Tax Appellate Tribunal (ITAT) has ruled that the tax incidence for joint development agreements differs from the tax incidence for subsequent flat sales and observed that the Assessing Officer had made a fundamental mistake in computing capital gains for assessment year 2013-14 based on differs from the tax incidence for subsequent flat sales and observed that the Assessing Officer had made a fundamental mistake in computing capital gains for assessment year 2013-14 based on the date of sale of flats, even though the date of joint development agreement and supplementary agreement falls under assessment year 2011-12 & 2012-13. The Two member bench upheld the assessee's appeal and remanded the matter to the Assessing Officer for recalculating capital gains for the joint development agreement and subsequent flat sale. The ITAT ruled that the tax incidence for the joint development agreement differed from the subsequent flat sale. Ruling regarding Royalties on Online Ads Under the Income Tax Act, 1961 (ITA) and the rulings of the Income Tax Appellate Tribunal (ITAT), the taxability of royalties on online advertisements is a complicated matter that frequently depends on the particular facts and how the term "royalty" is interpreted under both domestic law and any applicable Double Taxation Avoidance Agreements (DTAAs). In numerous instances , the ITAT has examined whether payments for online advertising services qualify as "royalty." The decisions haven't always been consistent and frequently depended on the particulars of the agreements and services in question. A thorough analysis of the particular facts, the definition of royalty under the Income Tax Act and any applicable DTAA, and the type of services provided are necessary to determine whether royalties on internet advertisements are taxable under the ITAT. Payments involving the use or right to use intellectual property linked to the advertising platform or the advertiser's brand may still be regarded as royalty, even though payments made exclusively for online advertising space are increasingly being treated as business income (and may be subject to the Equalization Levy). To ascertain their tax responsibilities in India, taxpayers engaged in such transactions should carefully review being treated as business income (and may be subject to the Equalization Levy). To ascertain their tax responsibilities in India, taxpayers engaged in such transactions should carefully review their agreements and take into account the most recent ITAT decisions. ESPN Digital Media (India) Pvt. Ltd vs DCIT CITATION: 2022 TAXSCAN (ITAT) 474 The Income Tax Appellate Tribunal (ITAT), Chennai bench has held that the payment made for advertisement space on website does not amount to "royalty" to attract TDS under section 195 of the Income Tax Act, 1961. The Tribunal held that "The consideration paid by ESPN India is not for 'use' of equipment (server) or for any process nor imparting of any information concerning technical, industrial, commercial, or scientific knowledge, experience or skill. Further, no right has been conferred on ESPN India over the server or website belonging to ESPN UK and ESPN India is merely a reseller of advertisement space it purchases on ESPN UK's website. Further, the reliance of the AO and CIT(A) on the unilateral retrospective amendments to section 9(1)(vi) of the Act to the definition of 'royalty' cannot override the more beneficial definition under Article 13(3) of the UK-India Tax Treaty." Stay

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Google Ireland Ltd. Vs DCIT (IT), Circle 1(1) CITATION: 2023 TAXSCAN (ITAT) 637 The Bengaluru Bench of the Income Tax Appellate Tribunal (ITAT), comprising George George K., Judicial Member and Padmavathy S., Accountant Member observed that the payment for online advertisement space to Google India is not “Royalty”, thereby granting relief to Google Ireland. It was viewed that “In view of above order of Tribunal, where it is stated that the payment made by GIPL to GIL is not in the nature of Royalty or FTS under the Act and DTAA, a different treatment cannot taken in the hands of the payee, i.e. the assessee in the instant case.” “We hold made by GIPL to GIL is not in the nature of Royalty or FTS under the Act and DTAA, a different treatment cannot taken in the hands of the payee, i.e. the assessee in the instant case.” “We hold that the payment on online advertisement is not liable to be taxed as Royalty in view of the aforesaid judicial pronouncements. Therefore, we hold that a sum of Rs.42 crores cannot be brought to tax in the hands of the assessee.” The Tribunal concluded. Ruling regarding Brand Promotion Expenses Under Section 37(1) of the Income Tax Act of 1961, brand advertising costs are typically deductible as long as they fulfill specific requirements. Any commercial expense (except from capital expenditures and personal expenses) that is incurred solely and exclusively for the business or profession's purposes may be deducted under this clause. The main point of disagreement frequently centers on whether brand promotion costs constitute capital or revenue. In general, even if the benefits of an investment last for a while, costs associated with marketing, sales promotion, and advertising to raise a brand's visibility, popularity, and awareness are seen as revenue expenditures. United Breweries Limited vs Deputy Commissioner of Income-tax CITATION: 2022 TAXSCAN (ITAT) 1917 In a significant ruling in favour of United Breweries, the Bangalore bench of the Income Tax Appellate Tribunal ( ITAT ) has held that advertisement expenses for brand promotion are revenue in nature and are allowable as deduction. In this case, it was observed that in the case of United Spirits Limited, the Tribunal held that “merely because the advantage may endure for an indefinite future would not mean that the expenditure would be on capital account and not revenue.” Herbalife International India Pvt. Ltd. vs Deputy Commissioner of Income Tax CITATION: 2023 TAXSCAN (ITAT) 1250 The Bangalore bench of Income Tax Appellate Tribunal (ITAT) has recently held that Advertising Marketing Price (AMP) vs Deputy Commissioner of Income Tax CITATION: 2023 TAXSCAN (ITAT) 1250 The Bangalore bench of Income Tax Appellate Tribunal (ITAT) has recently held that Advertising Marketing Price (AMP) expenditure incurred for promoting and marketing the product manufactured by assessee, does not come within purview of international transaction. It was viewed that payouts that form part of distributor allowances are sales incentives/commissions paid to its members for the sales undertaken by them. He also submitted that on the payments made and classified under the distributors allowances TDS has been deducted under Section 194H of the Income Tax Act and therefore these expenses are purely in the nature of selling expenses and could not be categorised as AMP as alleged by the revenue authorities, he contended. There is no agreement between the assessee and the associated enterprises in relation to any AMP expenditure to be incurred by assessee. Hence such expenditure could not be treated as an independent international transaction, the assessee representative added. Addl. CIT, Special Range vs Jasper Infotech Pvt. Ltd. CITATION: 2022 TAXSCAN (ITAT) 288 The Delhi Bench of Income Tax Appellate Tribunal (ITAT) held that the expenditure incurred on promotion for brand ‘Snapdeal’ is purely revenue

in nature. The bench held that the expenditure incurred by the assessee are purely revenue in nature and cannot be considered as capital expenditure. The Assessing Officer also did not bring on record any evidence to prove his findings. In view of this, all the grounds raised in appeal by the Id. Assessing Officers are dismissed. Ruling regarding Gifts from Employer According to the Income Tax Act of 1961, employer gifts may be subject to taxation. When disagreements emerge, the Income Tax Appellate Tribunal (ITAT) frequently contributes to the interpretation of these clauses. Employer gifts up to ₹5,000 in total each fiscal year are free, however any sum over this the Income Tax Appellate Tribunal (ITAT) frequently contributes to the interpretation of these clauses. Employer gifts up to ₹5,000 in total each fiscal year are free, however any sum over this is subject to perquisite taxation under the "Salaries" heading. In the event of a dispute, the ITAT's decisions frequently center on the type of gift and how it relates to employment. To guarantee correct tax compliance, it is essential that both employers and employees understand these regulations. ACIT vs IREO Waterfront Pvt. Ltd CITATION: 2023 TAXSCAN (ITAT) 1161 Stay Updated with the Latest Audit Report Formats & Audit Trials Requirements!, Click Here The Delhi Bench of Income Tax Appellate Tribunal (ITAT) has held that the expenses incurred for gifts to customers by company during festivals would be allowable under Section 37 of the Income Tax Act, 1961. Further observed that It was customary to incur these expenses on various auspicious occasions especially festivals like Diwali to be given to brokers, persons who work on behalf of the assessee company, customers and suppliers of the assessee, in order to keep them in good humor. The tribunal Bench deleted the disallowance on account of gifts holding that the said expenditure was for the purpose of business as per the principle of commercial expediency. Mahadev Vasant Dhangekar vs The Asstt. CIT CITATION: 2023 TAXSCAN (ITAT) 751 The Pune Bench of the Income Tax Appellate Tribunal (ITAT) recently observed that the payment has been made voluntarily by them out of appreciation for the employee and thus falls outside the rigours of Section 17(3)(iii) of the Income Tax Act. It was viewed that the Department could not produce any documents or evidence on record to show that the payment received from the employer was coupled with some legal obligation on the part of the employer to pay the employee. The Bench further noted that "The revenue should have verified and examined the genuineness of the letter was coupled with some legal obligation on the part of the employer to pay the employee. The Bench further noted that "The revenue should have verified and examined the genuineness of the letter which was produced by the assessee wherein the employer had stated that it is a voluntary payment made as per appreciation for the employee without entering into this exercise simply invoking the provision of the Act is not legally tenable and takes the colour of arbitrariness." Ruling regarding Bogus Share Capital When a business issues shares that are not actually subscribed for, it is referred to as "bogus share capital." This practice is frequently employed as a way to add unexplained funds into the company's accounts. Since it can be used as a weapon for money laundering and tax evasion, the Income Tax Department is quite concerned about this. The importance of the assessee demonstrating the identity, creditworthiness, and authenticity of the share subscribers and the transactions is emphasized by the ITAT's findings. If this isn't done, the share capital may be regarded as unexplained income for the purposes of Section 68 and subject to the appropriate taxation. Spandan Tradecom Private Limited vs ITO CITATION: 2023 TAXSCAN (ITAT) 2345 The Kolkata bench of the Income Tax Appellate Tribunal (ITAT) held that it is not a case of bogus investment but it is a case where proper

accounting under the correct group heading has not been done. Since the investment of Rs. 15 Lakh was made during FY 2011-12 and during FY 2014-15 (AY 2015-16) that investment has been sold and the remaining amount of capital loss of Rs. 10.50 Lakh not transferred to capital loss account, remained as a balance amount in the account of M/s. Kothari Containers Pvt. Ltd. brought forward from the preceding year has been wrongly considered as a bogus investment by both the lower authorities. Thus, the findings of the Commissioner of Income Tax Act (Appeal) [CIT(A)] were set aside and deleted preceding year has been wrongly considered as a bogus investment by both the lower authorities. Thus, the findings of the Commissioner of Income Tax Act (Appeal) [CIT(A)] were set aside and deleted the addition of Rs. 10.50 Lakh. The appeal of the assessee was allowed. Deputy Commissioner of Income Tax vs Bajrang Lal Bamalwa CITATION: 2023 TAXSCAN (ITAT) 2596 The Kolkata bench of the Income Tax Appellate Tribunal (ITAT) has held that disallowance considering the allegation of Bogus Long Term Capital Gain (LTCG) is not valid in the absence of incriminating material. The bench observed that "In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A relates to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings." A perusal of these assessment orders would indicate that in five scrutiny cases of the sale of shares, i.e. TFCIL, gain earned by the assessee was accepted as genuine by the Department itself. Out of these five cases, two are in the re-assessment under section 147 and these assessment orders have been framed after more than one year of the search. The ITAT dismissed the appeal of the revenue. The ITAT plays a crucial role in interpreting these clauses and settling conflicts between the Income Tax Department and taxpayers. Companies should make sure they keep thorough records of their brand promotion efforts and the costs incurred in order to support their deduction claims. Support our journalism by subscribing to Taxscan premium. Follow us on Telegram for quick updates Yogitha S. Yogesh Yogitha S Yogesh is graduated from Government Law College Thiruvananthapuram on BA. LLB and is currently pursuing LLM in Constitutional Law. She is working as a content writer who is passionate in Content creation. Her area of interest are Constitutional law and Co-operate Law. BA. LLB and is currently pursuing LLM in Constitutional Law. She is working as a content writer who is passionate in Content creation. Her area of interest are Constitutional law and Co-operate Law. She is also into teaching, baking, reading and gardening.bogus long term capital gainITAT KolkataNext StoryRelated Stories Advertisement Advertisement Quick Links Top Stories News Updates Columns Interviews CST & VAT / GST Corporate Laws Other Taxations Events Scan Income Tax Service Tax Excise & Customs International Taxation Domestic Taxation Firms Scan Job Scan Know More About Us Careers Advertise Privacy Policy Terms and Conditions Contact Us Get news delivered to your in-box. Subscribe to our newsletter. Please enter a valid email. Successfully subscribed! © 2025 Taxscan. All rights reserved. Powered by Blink CMS All Rights Reserved. Copyright @2019 Powered By HocalwireX