Module 11 · Case Study — SM case laws in one line P15 · topic 11.0

SM pp. 409–442. Q8 was **case law** in J24 (two), D24 and J25 (14 / 7 / 7 marks), then MAT + TP replaced it from Dec'25; keep the cases as a backup (expected ~3 marks) and for **MCQs and "state with reasons" parts** elsewhere.

ANSWER FORMAT ICMAI ASKS FOR (J24 Q8, J25 Q8)

1. **Issue involved** — one line as a question.
2. **Provisions applicable** — the section(s).
3. **Analysis of the issue** — the facts against the provision + the case (name, court).
4. **Conclusion** — one line: allowed / not, taxable / not.

PAST QUESTIONS

- **D24 Q8(b)**: software bought from a non-resident under an EULA — royalty? TDS u/s 195? → **Engineering Analysis** (SC): not royalty, no TDS. Also postal Q5(b).
- **J25 Q8(a)**: 80-IA deduction limited by s.80AB to business income? → **Reliance Energy** (SC): no; 80-IA on the eligible undertaking's profit (within GTI).
- **J24 Q8(a)**: exchange loss on a foreign loan for leasing; fresh claim before ITAT · **J24 Q8(b)**: foreign tax not credited — deductible? ⚠ neither case is in the current SM list; answer from principles (s.37(1), s.40(a)(ii), Rule 128).
- **MQP Q5(a)**: ITAT moving an addition from s.68 to s.69A → **Sarika Jain** (All): ITAT cannot add under a section that was not the subject of appeal.

A International taxation and TDS cases

Case	Holding (one line)
Engineering Analysis Centre of Excellence (SC 2021)	Payments by Indian end-users / distributors to non-resident software makers under **EULAs / distribution agreements are not royalty**; no TDS u/s 195. [SM 434–435]
Gracemac Corporation (Delhi)	Licensing of Microsoft software products is not royalty taxable in India. [SM 438]
Vinzas Solutions (Mad 2017)	A dealer's outright purchase of software is not royalty. [SM 418]
Amazon Web Services (Delhi 2025)	Standard cloud-computing (IaaS) payments are neither royalty nor FTS under the India–US DTAA — customers get no right over the hardware or code. [SM 409]
Kotak Securities (SC 2016)	Transaction charges paid to BSE are not FTS (no customised service). [SM 423]
BHEL (P&H 2016)	Usual technical inputs in construction / erection contracts do not make them FTS for TDS. [SM 419]
E-Funds IT Solution (SC 2017)	Outsourcing by a US company to its Indian affiliate is not a PE under the India–USA treaty. [SM 419]
UAE Exchange Centre (SC 2020)	A liaison office doing preparatory / auxiliary activities is not a PE. [SM 430]
Samsung Heavy Industries (SC 2020)	A project office doing non-core, auxiliary work is not a fixed-place PE (Article 5(4)(e)). [SM 433]
Thyssen Krupp (Bom 2015)	TP adjustments only on transactions with AEs, not with unrelated parties (cf. J25 Q8(b)). [SM 424]
Open Solutions Software (Del 2020)	TNMM comparables are tested for functional similarity; none excluded for high turnover alone. [SM 432]
SAP Labs India (SC 2023)	The Tribunal's ALP finding is not final — an appeal u/s 260A lies to the High Court. [SM 438–439]
Renault Nissan (Mad 2018)	A cryptic DRP direction simply accepting the TPO's order is set aside. [SM 428]
Prasar Bharati (SC 2018) · **Bharti Cellular** (SC 2024) · **Corporation Bank** (Kar 2021)	Agency commission to advertising agencies attracts 194H · no 194H on distributors' margin on prepaid kits (principal-to-principal) · no 194H on NFS ATM network charges. [SM 426, SM 435, SM 441–442]
Purnima Advertising (Guj 2017) · **IVRCL-KBL** (AP 2016) · **Hightension Switchgears** (Kol 2016)	No 206AA demand for a wrong PAN in a TDS return · TDS credit allowed though all work was sub-contracted · no TDS on transport reimbursed by the buyer to a seller who pays the GTA. [SM 413, SM 419, SM 423]

B Business income, capital gains, procedure

Case	Holding (one line)
Reliance Energy (SC 2022)	s.80AB does not cut down s.80-IA: deduction is on the eligible undertaking's profit (as if its only source), not limited to PGBP of other units (J25 Q8(a)). [SM 440]
Cognizant Technology (SC 2023)	Forex gain solely relatable to export business qualifies for s.10AA. [SM 440]
KBD Sugars (SC 2023)	A dysfunctional unit can be demerged "on a going concern basis"; the resulting company sets off its losses u/s 72A(4). [SM 440–441]
McDowell & Co. (SC 2017)	s.41(1) deemed income of the amalgamating company reduces the loss carried forward u/s 72A. [SM 414–416]
Equinox Solution (SC 2017)	Slump sale of a running business: no part of the price taxed u/s 50(2) as STCG on depreciable assets. [SM 414–416]
Siemens Public Communications (SC 2016)	Voluntary subvention by a parent to protect its investment in a loss-making subsidiary is a capital receipt. [SM 409]
Peerless General Finance (SC 2019) · **Aditya Balkrishna Shroff** (Mum-Trib 2021)	Collective-investment subscriptions are capital receipts · forex gain on a personal loan is a capital receipt. [SM 428, SM 437]
Raj Dadarkar (SC 2017) · **Maneklal Agarwal** (SC 2017)	Sub-licensing income from property is house property income · rentals from sub-lessees taxed in the first lessor's hands if the lease is sham. [SM 411–412]
Palam Gas Service (SC 2017)	s.40(a)(ia) also covers amounts **actually paid**, not only payable. [SM 412]
U. K. Paints (Del 2016)	s.14A disallowance only after recording dissatisfaction with the assessee's own disallowance. [SM 409–411]
Mother Hospital (SC 2017) · **Tally Solutions** (Kar 2021) · **NCR Corporation** (Kar 2020) · **Kohinoor Indian** (Trib 2021)	Lessee gets depreciation only on its own construction cost · non-deduction of TDS on an asset purchase does not bar depreciation · an ATM is a computer (higher rate) · an iPad is not. [SM 414, SM 430, SM 437]
Berger Paints (SC 2017) · **Honda Siel** (SC 2017)	Securities premium is not "capital employed" for s.35D · JV-linked technical fee is capital expenditure. [SM 424–427]
National Travel Services (SC 2018) · **Vasisth Chay Vyapar** (SC 2018) · **Tejua Kapadia** (SC 2018)	s.2(22)(e) applies to a loan to a ≥ 10% beneficial shareholder · NBFC income on NPAs on receipt basis (RBI norms) · purchases not bogus u/s 69 where payment and sales are proved. [SM 424, SM 426]
Supnekar (Bom 2016) · **Navin Jolly** (Kar 2020) · **Noida Cyber Park** (Trib 2021) · **P. P. Mahatme** (Bom 2019) · **Ranjan Pai** (Kar 2021)	54EC investment may come from an advance under the sale agreement · several flats in one building = one unit for 54F · s.50C not for leasehold rights · family settlement is not a transfer · bonus shares not taxed u/s 56(2)(x). [SM 418, SM 430, SM 432, SM 435, SM 437]
Yum! Restaurants (SC 2020) · **Secunderabad Club** (SC 2023) · **BCCI** (Trib 2021)	No mutuality in a commercial arrangement · a club's FD interest from member banks is not mutual (taxable) · BCCI's IPL funds used to promote cricket — not commercial. [SM 432, SM 435, SM 439–440]
Ian Peter Morris (SC 2016) · **Ramgopal Minerals** (Kar 2017) · **Anil Kumar** (Kar 2016)	No 234B / 234C on salary income (TDS) · no s.41(1) cessation when payments to untraceable creditors are proved · no estimate without rejecting the books. [SM 417–419]
Sarika Jain (All 2017) · **Reliance Telecom** (SC 2021) · **Pepsi Foods** (SC 2021) · **Shreeram Durgaprasad** (Bom 2016)	ITAT cannot add under a section not in appeal (MQP Q5(a)) · ITAT cannot recall its order u/s 254(2) beyond rectification · ITAT stay ends after 365 days only if the delay is the assessee's (D24 Q8(a)) · penalty order during pending assessment is void. [SM 413, SM 419, SM 434–435]
Rajesh Kumar Aggarwal (Del 2017) · **Iven Interactive** (SC 2019) · **T.K.S. Builders** (Del 2024) · **KMG Wires** (Bom 2025) · **IT Bar Association** (Guj 2025)	54F can be allowed in 264 revision · a new address in the return is not intimation to the AO · FAO and JAO both may issue 148 notices · notice relying on AI-invented case laws quashed · audit-report date extended → ITR date must be too. [SM 409–410, SM 414–417, SM 428]

Practise: D24 Q8(b) · J25 Q8(a) · J24 Q8(a), (b) · MQP Q5(a) · postal Q5(b) · **ICMAI Practice Workbook: no problem on this module**. Shankar Dalal (Bom): local land laws decide "agricultural land"; Priya Blue (Guj): ship-breaking output is not scrap for TCS. [SM 414, SM 424]