

## **PGBP Case laws**

1. **Lakshmi Vilas Bank Ltd. [1996] (SC)**- Margin money forfeited by assessee is deemed business income of assessee bank  
 AO- The assessee adjusted margin money forfeited against purchase price of the securities, the ITO treated the same as business income  
 SC- The AO was right in treating the forfeited money as income of the assessee earned in usual course of banking business. The securities purchased by the bank in its own name became the property of the bank. If the securities were ultimately sold, any profit made would be profit earned by the bank. The cost of acquisition of the security will be the price actually paid for it.
2. **U.P. State Industrial Development Corporation [1997] (SC)**- Underwriting commission not to be treated as income rather it should be adjusted against expenses incurred  
 AO- Added the underwriting commission and brokerage as part of the taxable income  
 SC- The AO was not justified in his action and the underwriting commission and brokerage cannot be treated as income of the assessee. The assess was correct in reducing such brokerage and commission from the cost of shares.
3. **Chennai Properties & Investments Ltd. (SC)**- Rental Income to be treated as business income if the objective is to give the property on rent and not to be taxed as House property  
 AO- Refused to tax the rental income as Business income. According to AO, since the income was received from letting out of properties, it was in the nature of rental income.  
 SC- Letting out of properties is the business of the assessee hence it is taxable as business income
4. **NDR Warehousing (P) Ltd.**- Same judgement as Chennai Properties & Investments Ltd.
5. **Anil R Dave (Gujarat HC)**- Professional fees received by assessee after elevation to the post of judge is not taxable  
 Brief- Assessee was the sitting judge of this case after being elevated to the post of judge advocates accounts for fees on cash basis as and when received  
 AO- The professional fees was received after discontinuation of the legal profession and therefore, would be taxable under the head PGBP  
 Gujarat HC- Professional fees received by the assessee after the alleviation to the post of judge of the High court is not taxable
6. **Henkel Spic India Ltd. (SC)**- Interest income on application money received kept in separate bank account is taxable in the year of accrual as it is only incidental income  
 Brief- Assessee was of the view that it should be taxable in the year in which allotment takes place and not on accrued basis  
 AO- Taxed interest income in FY 2019-20 as money was received in the FY 2019-20  
 SC- Interest income has accrued only in the FY 2020-21 and taxable in that year only not in FY 2019-20
7. **Shree Rama Multi Tech Ltd. [2018] 403 ITR 426 (SC)**- Interest income from application money kept in separate bank account has been set off against public issue expenses  
 Brief- Contradicting to Henkel Spic India Ltd. As per Henkel Spic India Ltd Judgement it should be taxable in the year of allotment but the SC held it should not be taxable  
 AO- Interest income should be taxable as it is income earned by the assessee  
 SC- Any surplus deposited in bank for purpose of earning interest is taxable but here it was deposited only to comply with statute and interest earned on it is incidental. Since the deposit is related to the share capital which is capital in nature, such deposit should be capitalized and not taxable. Hence allowed to be set off against public issue expenses
8. **K & Co. (Delhi HC)**- Interest earned on deposit of margin money for bank guarantee which is essential for the business is taxed as PGBP and not IFOS
9. **Nidish Transport Corporation (Kerala)**- Assessee is treated as owner of motor vehicle purchased and used for business by him even though it is not registered in his name under Motor Vehicles Act
10. **Mysore Minerals Ltd (SC)**- Acquisition of the possession of the building and its use by assessee for business without getting it registered cannot become a condition to disallow the depreciation. Beneficial ownership is to be checked. If the agreement to sell is entered then the assessee is deemed as owner for depreciation
11. **Dineshkumar Gulabchand Agrawal (Bombay)**- Depreciation is allowed when the asset is actually put to use
12. **Annamalai Finance Ltd. (Madras)**- If the leased asset is being used by the lessee for the purpose of running them on hire then depreciation to the assessee lessor is allowed at higher rate of 30%

13. **I.C.D.S. Ltd. (SC)-** Vehicle is registered under Motor Vehicles Act in the name of lessee but it has been obtained by lessee on lease from lessor

Brief- AO's point contradicted with Annamalai Finance Ltd judgement for the user of the asset

AO- Disallowed the depreciation claim on the ground that the assessee's use of these vehicles was only by way of leasing out the vehicles to others and not as actual user of vehicle in the business of running them on hire and the vehicles were registered in the name of the lessee and not the assessee lessor

SC- Assessee can claim the depreciation irrespective of the fact who is using the asset. The grounds for the benefit of assessee are that he is the owner of the asset, asset is ultimately being used for running them on hire depreciable @ 30%. SC held that being the owner of the asset lessor has the right to inspection of the asset at any time during the lease period

14. **BSES Yamuna Powers Ltd (Delhi)-** Computer accessories and peripherals like printers, scanners, UPS, server which are integral part of the computer to be operated are depreciable @ 40%

15. **Federal Bank Ltd (Kerala)-** EPABX and mobile phone are not computer thus not eligible for 40%

16. **Cable corporation of India Ltd (Bombay)-** WDV of asset in the block is to be reduced by actual sale price and not FMV

17. **Rajiv Shukla-** sec 50 created a deeming fiction to assume the gain to be of short term in nature. In respect of 54F, exemption could be claimed based on the fact of usage of asset for a period more than 36 months

18. **Challapali Sugar Mills Ltd (SC)-** Interest paid on funds borrowed for acquisition and installation of Plant and machinery would be allowed to be capitalized in cost before the installation

19. **Hindustan Polymers Ltd-** Salaries, expenses of guest house maintained for erection staff, travelling, vehicle and general expenses pertaining to setting up of plant forms part of cost

20. **Food Specialities Ltd-** Expenses on test run of machine prior to production are part of actual cost

21. **Govind Nagar Sugar Ltd (Delhi)-** Unabsorbed depreciation will be carried forward to subsequent year even though the ITR of current AY was not filed within the due date

22. **Tuticorin Alkali Chemicals & Fertilizers Ltd (SC)-** The assessee before starting commercial production, invested the idle fund and earned interest on it and adjusted it against the interest paid on borrowed funds

SC- Usage of interest is at the liberty of the assessee in the manner it wishes to use it so it should not be allowed to be adjusted against interest paid and should be taxable us 56 as IFOs

23. **Steel Authority of India Ltd (Delhi)-** as per 43(1) waiver of loan should be reduced from actual cost of the asset

24. **Smiff Securities Limited (SC)-** Goodwill is a depreciable asset as per SC but the same was overruled

25. **Artex manufacturing Company-** CG arises only if sale exceeds cost of asset

26. **Sundaram Fasteners Ltd.-** no restriction u.s. 35(1)(iv) in claiming the WDV of the asset

27. **Berger Paints India Ltd. (SC)-** Share premium not to account for capital employed

28. **Ceebros Hotels Private Limited (Mad)-** deduction cannot be denied based on the year of approval of application in case of hotels

29. **Khodidas Motiram Panchal-** Life insurance premium on life of partner and premium on insurance of asset other than inventory is not allowed. Premium on keyman insurance is allowed u.s. 37(1)

30. **Alembic Glass Industries Ltd.-** If asset for the business is purchased from borrowed amount then that interest is also allowed but from the date of put to use

31. **Sujani Textiles (P) Ltd.-** Interest is not allowed if the loan amount is given to director free of interest

32. **H.R. Sugar Factory (P) Ltd.-** Loan given to director at concessional rate out of the loan taken by company is not allowed

33. **S.A. Builders Ltd.-** Interest on loan given to sister concern for commercial expediency is allowed. Commercial expediency is based on the facts of the case

34. **East India Pharmaceuticals Works Ltd.-** Interest on loan taken for payment of income tax is not allowed. Further, guarantee commission to bank for bank guarantee given by assessee to department is also not allowed. Litigation expenses for income tax cases and tax audit fees are allowed u.s. 37(1)

35. **Tulip Star Hotels Ltd.-** If subsidiary company is formed to carry the business of parent in effective manner then interest on amount borrowed and invested in subsidiary is allowed

36. **A Murali and Co. P. Ltd.-** If money borrowed and diverted to director as advance without positive impact on business is not allowed and even the loan given to director has increased despite progress of business

37. **Reebok India Company**- Interest free advance given to 3<sup>rd</sup> parties out of the loan borrowed is allowed as deduction as it cannot be treated as lack of commercial expediency

38. **P.K. Kaimal**- Bad debt written off by firm but recovered by partner pursuant to taking over of firm by partner, the recovery of bad debt should not be taken as PGBP of the partner

39. **Veerabhadra Rao (SC)**- If business is succeeded and debt is recorded in books of predecessor then also successor can write off bad debt and claim it

40. **T.R.F Ltd.**- There is no onus to prove that bad debt is irrecoverable. Mere writing off in books is enough to claim deduction

41. **Catholic Syrian Bank Ltd.**- SC held to treat rural and urban advance as separate but it was overruled

42. **Hazi Aziz & Abdul Shakoor Bros. (SC)**- Penalty for infraction of law is not deductible

43. **Dr. T. A. Qureshi (SC)**- Loss of illegal business allowed to be set off from legal business income

44. **T. C. Reddy (Andhra)**- Loss due to confiscation of medical drugs by custom is allowed

45. **Indian Aluminium Co. Ltd. (SC)**- expense incurred due to failure of TDS is not allowed  
Assessee failed to deduct TDS but paid to government from his own pocket but was not able to recover from the deductee and claimed it as bad debt

46. **Federal Bank Ltd.**- Interest paid on delayed payment of income tax is not deductible. Interest on loan taken to pay income tax is also not allowed

47. **Westend Indian State Motors (Raj)**- Interest paid on arrears of sales tax is allowed

48. **Swadeshi Cotton Mills Co. Ltd.**- Penalty under Central Sales Tax is not allowed

49. **Nanhoomal Jyoti Prasad**- Demurrage paid to port authority with release of confiscated goods is not penalty for infraction of law, hence allowed

50. **Hyderabad Allwyn Metal Works Ltd.**- Interest under Employee PF Act is allowed

51. **R. D. Sharma & Co.**- Penalty paid for non-completion of contract is allowed as it is not infraction of law

52. **Central Trading Agency**- Penalty for failure to supply goods is allowed

53. **Malwa Vanaspati & Chemical Co. (SC)**- Any penalty paid due to specific provision applied by any government then portion of penalty to be disallowed  
Brief- MP sales tax applied penalty and higher sales tax rate if company makes sale outside MP. Company sold outside also and penalty of 125% was applied  
SC- 100% is related to compensation which is allowed but 25% is for infraction of law as penalty and thus disallowed

54. **Hindustan Zinc Ltd. (SC)**- Inventory was not valued at price prevailing in domestic market, thus concept of lower of cost or NRV is breached and company is not justified in valuing the inventory at London market rate

55. **Indian Visit.Com(P) Ltd. (Delhi)**- Expense on development of website in case of travelling business is allowed as it results in advertisement of business and directly related to business expense

56. **Kerala Road Lines (SC)**- If sale of scrap on demolition of building is treated as business income then interest on purchase of property is to be allowed as business expenses

57. **Dinesh Mills Ltd. (Guj)**- Loss on embezzlement is allowed in the year of discovery of embezzlement

58. **Rotork Controls India (P) Ltd. (SC)**- provision for warranty is allowed based on the fact that due to past data and records it became integral part of the business as the customers will not purchase the product without the warranty

59. **Mamta Enterprises (Kar)**- Compounding fine is not allowed as it is infraction of law (*unplanned flooring of the building*)

60. **Ravidranathan Nair (SC)**- expense on closure of units related to a business is allowed  
SC- all units related to a business constitute a single business and it depends on assessee how to run the business thus all units to be seen as single business by AO

61. **Dr. V. P. Gopinath (SC)**- Interest on FD is grossly taxable and interest on loan paid taken against that FD is not allowed to be reduced from interest income from FD

62. **Travancore Cochin Chemicals Ltd. (Ker)**- expense incurred for the welfare of employees is directly related to the business and allowed  
Brief- Assesse paid share of expenses of running a school where children of its 282 employees were studying. Hence, such expense is treated to be in the nature of welfare of employees

63. **Bombay Dyeing & Mfg. Co. Ltd. (SC)**- Amount paid by assessee on tenements constructed by Housing board on the land owned by government is allowed as business expense as it is paid with a view to have contended labour force and not under any obligation

64. **L. H. Sugar Factory & Oil Mills Ltd. (SC)**- Construction of road inside factory for transport of raw material and other items related to business is allowed

65. **Saurashtra Cement Ltd. (SC)**- Amount received by assessee as compensation towards sterilization of profit earning source and not in the ordinary course of business is a capital receipt (*link to section 28(2)*)

66. **Shanti Bhushan (Delhi)**- Expense paid in the nature of personal expense is not allowed (*in the given case assessee being a lawyer claimed expense incurred on his heart surgery*)

67. **Aswath N. Rao (Kar)**- Machinery purchased for the purpose of using its parts as spares is allowed as business expense

68. **Neelavathi & Others (Kar)**- Payment made to gundas to keep away from cinema is covered under Exp 1 to 37(1) and disallowed

69. **Hindustan Zinc Ltd. (Raj)**- Any expense paid for smelter plant (*any asset without which it is difficult to conduct day-to-day operation of business*) is allowed as it is the expense in the nature of revenue expense because it is not possible to function without it

70. **Millennia Developers (P) Ltd. (Kar)**- Regularization fees paid by construction company for violation bye-laws is in the nature of compounding fees as discussed in Mamta Enterprises and is not allowed as business expense

71. **DCM Ltd. (Delhi)**- Retrenchment compensation and interest on amount borrowed to pay retrenchment compensation for closure of 1 unit of business is allowed as business expense as the business is in continuation as discussed in Ravindranathan Nair

72. **Groz Beckert Asia Ltd. (P&H)**- Corporate membership of club is allowed as it is treated to be in connection with the business

73. **Naidunia News & Networking (P) Ltd. (MP)**- Expense incurred for travelling and education of employee for better understanding of the business is allowed irrespective of the relation of employee with any current KMP, director or any ex KMP, director

74. **Triveni Engg. & Industries Ltd. (Delhi)**- Amount given to employee as advance but irrecoverable will be allowed. Security deposit paid to landlord for renting property used for business is not allowed if it becomes irrecoverable

75. **Orient Ceramics & Industries Ltd. (Delhi)**- expense on glow sign board is allowed as these are subject to frequent replacement due to decay by weather

76. **Shyam Burlap Co. Ltd. (Calcutta)**- Compensation paid by landlord to tenant to vacate the property in order to relet the property at higher rent is allowed only if the rental income is being taxed as PGBP of the landlord

77. **Gujarat State Fertilizers & Chemicals Limited (Guj)**- Loss on sale of fertilizer bond is allowed  
 Brief- It may happen that price of fertilizer set by government is below the cost of production for the manufacturer and is compensated by government in the form of subsidy. Such subsidy is income of manufacturer. In case of cash crunch of government, it issues fertilizer bond whose price is variable thus any loss incurred on sale of such bond is due to variability of price in the open market

78. **Maruti Suzuki India Limited (Delhi)**- Payment to NR agent whose income is not chargeable in India is not required for TDS and hence cannot be disallowed  
 Brief- commission paid to NR agent does not have any obligation to deduct tax u.s. 195 as his income is not taxable in India

79. **Palam Gas Service (SC)**- Provision is applicable in respect of paid and payable both

80. **United Exports (Delhi)**- Assessee gave a huge trade discount to the sister concern but 40A does not cover trade discount as it is not an expense for which payment is made

81. **Attar Singh Gurmukh Singh (SC)**- If payment is made for purchase of inventory then also disallowance will be there is paid in cash to person in a single day exceeding Rs.10,000

82. **Vijay Kumar Ajit Kumar**- Disallowance will be there in the year of execution of transaction even if the advance is paid in any prior year for the transaction. Section 269ST is attracted on date of payment and penalty u.s. 271DA is levied in the year of payment

83. **M. R. Dhawan**- 41(1) is not attracted if liability has become time barred and not written off. Debtor can pay on his own even if it has become time barred but the ground that creditor cannot sue the debtor will not bring liability to an end  
 If it is written off then the debtor assessee is treating it as cessation of liability by writing it off

84. **T. V. Sundaram Iyengar & Sons (SC)**- Loans or advances written off does not attract 41(1) as they are not trading liability but writing off loan attracts 56(2)(x) and if such loan waived was taken for business then its waiver is taxed as PGBP. Same with advances that it is taxed as PGBP
85. **J. K. Synthetics Ltd. (SC)**- In case of any dispute cessation or remission will attract treatment as income only in the year in which the said dispute is finally settled and is not pending elsewhere
86. **Polyflex India (P) Ltd. (SC)**- It is different from J K Synthetics Ltd as there is no trading liability as excise duty is already paid over here and refunded subsequently. So, 41(1) gets attracted in the PY in which benefit is obtained against the loss or expense incurred earlier
87. **Rollatainers Ltd.**- Waiver of working capital loan attracts 41(1) as cessation of trading liability but if loan is taken for capital asset and waived off then it should be reduced from actual cost of asset and does not attract 41(1)
88. **Arvind Mills Ltd. (SC)**- Increase or decrease in liability at the time of payment is adjusted from actual cost – depreciation till date
89. **Elecon Engineering Co. Ltd.**- Roll over premium charges for forward contracts on foreign currency loan to be added to WDV
90. **Udaipur Distillary Co. Ltd. (SC)**- Giving bank guarantee in lieu of payment is not treated as acutal payment and is not allowed under this section
91. **Andhra Ferro Alloys P. Ltd. (AP)**- Unpaid electricity charges are not subject to 43B
92. **Minda Wirelinks Pvt. Ltd. (Delhi)**- Sales tax liability pursuant to government order converted into loan is deemed as actual payment in the year of conversion but the interest on the same is not deemed to be paid unless it is actually paid
93. **Punjab State Industrial Development Corporation Ltd. (SC)**- Fees paid to registrar on expansion of authorized capital is a capital expense and is disallowed but registrar fees on incorporation is allowed u.s. 37(1)
94. **Brooke Bond India Ltd. (SC)**- Expense related to issue of shares to increase share capital is not allowed
95. **General Insurance Corporation (SC)**- Expense in relation to issue of bonus share is just a reclassification of reserves and does not change the capital structure hence it is a revenue expense and allowed
96. **Kodak India Ltd. (SC)**- Expense for increase in share capital is a capital expenditure and disallowed no matter whether it is done in order to comply with regulation or statute by any regulatory body like RBI
97. **Mascon Technical Services Ltd. (SC)**- Share issue expenses are not allowed as deduction irrespective whether the issue has been approved by SEBI or not
98. **India Cements Limited (SC)**- Expense incurred for raising loans/ debentures are allowed
99. **ITC Hotels Ltd. (Kar)**- Expense on issue of debentures to be treated as revenue in nature even if it is for convertible debentures
100. **Madras Industrial Investment Corporation Ltd. (SC)**- Discount on issue of debenture is a liability incurred by the assessee in order to raise funds for the business and hence discount is allowed
101. **S. M. Holdings & Finance (P) Ltd. (Bom)**- Any amount claimed by assessee over the period of debenture in case of zero-interest unsecured redeemable convertible debenture is allowed as the audit report justifies the nature of debenture and the fact should not be disregarded
102. **Taparia Tools Ltd. (SC)**- If interest on debenture issued is paid by assesee as lumpsum instead of paying every 6 months would not prohibit the assessee to claim the entire amount in the year of payment and hence such interest paid is allowed
103. **Kribhco (Delhi)**- Sec 14A is not applicable on deductions under chapter VI-A
104. **Universal Cargo Carriers Inc.**- Carried forward business loss can be set off but unabsorbed depreciation is not allowed to be set off or carry forward
105. **A. S. Glittre**- If assessee has paid tax u.s. 172 and opts for regular assessment then tax paid u.s. 172 is treated as advance tax and his regular assessment will be done and any excess paid is subject to refund and interest
106. **Dempo & Co. Pvt. Ltd. (Bom)**- Payment made for demurrage charges to NR shipping business is governed by 172 and TDS is not applicable
107. **DSD Noell GmbH (Delhi)**- Assessee has benefit of claiming less than 10% to be the PGBP but the AO cannot consider the income higher than 10%
108. **Ashoka Marketing Ltd.**- Legal consultation for transfer of office from one place to another is allowable u.s. 37(1)
109. **K. Natarajan**- Interest paid to government on delayed payment under a contract is allowable u.s. 36(1)(iii)

110. [Honda Siel Cars India Ltd. \[2017\] \(SC\)](#)- Technical fees paid under technical collaboration agreement for setting up of JV is a capital expenditure in a case where JV comes to an end with termination of the agreement. This depends on case to case whether it is a capital or revenue expenditure
111. [Sakti Metal Depot \[2021\] \(SC\)](#)- Depreciable asset forming part of block of asset will be allowed for depreciation until the block cease to exist even if some of the assets from the block are not being used for few years or otherwise
112. [Venkatesh Premises Co-operative Society Ltd. \[2018\] \(SC\)](#)- Transfer charges, non-occupancy charges, common amenity fund charges etc are exempt due to doctrine of mutuality as they are collected from members and doctrine of mutuality says a person cannot make profit from himself
113. [Apex Laboratories Pvt. Ltd. \[2022\] \(SC\)](#)- Incentives given by pharmaceutical companies to the medical practitioner is an illegal expense and not allowed as per section 37(1)