2018
DIGEST OF CASE LAWS
DIRECT TAXES

Supreme Court
High Courts
Tribunals
Authority for Advance Ruling
Allied Laws
Reference to Finance Bill, Finance Act,
CBDT Circulars, Notifications,
DTAA, Schemes and Articles

(For Private Circulation)
Compiled by Research Team

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All disputes are subject to Mumbai Jurisdiction.

Compiled by Research team of AIFTP Journal Committee and KSA LEGAL CHAMBERS

ACKNOWLEDGEMENTS

Sincere thanks to the research team and to the editorial team of the Journal Committee of the All India Federation of Tax Practitioners (AIFTP), the editorial team of www.itatonline.org and the research team of KSA Legal Chambers, staff members of the AIFTP, ITAT Bar Association, Mumbai and KSA Legal Chambers.

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PREFACE

2018 – Digest of Case Laws on Direct Taxes

In the year 2012, we have published "Digest of case laws – Direct taxes – (2003-2011) – A Tax Companion" to commemorate 150 years of the Bombay High Court, which was published jointly with the AIFTP and the ITAT Bar Association. We are glad to present "2018 – Digest of case laws on direct taxes". This year's digest is the Eighth year of our private publication for reference purpose for professional colleagues who regularly appear before High Courts, the Tribunal and Commissioners of Income-tax (Appeals).

In this publication, our research team has digested section-wise cases which are reported in the year 2018 in various reports, journals, magazines and online media. The cases are digested in the descending order of relevance, i.e. Supreme Court, High Courts, Tribunal and Authority for Advance Ruling.

We have made an attempt to make editorial notes in some of the cases where the judgment of Tribunal is affirmed or reversed by High Courts or where an SLP is granted or rejected by the Supreme Court against the judgments of High Courts.

Important case laws on allied laws and interpretation of taxing statutes are also digested. A separate chapter on reference to circulars and articles is also provided which are arranged section wise and subject wise. The entire publication is hosted on www.itatonline.org for the benefit of tax professionals and public at large. Those who desire to refer to digest may download and store the same on their desktops/laptops, mobiles and iPads. From 2008 onwards we have also hosted entire digest till date on www.itatonline.org in the column of "DIGEST". The digest is updated on regular basis.

The index to case laws is prepared in alphabetical order. For instance, where the Revenue is the petitioner/appellant, the index is shown as under:

Case	**Presented in index of case laws as ;**
PCIT v. Adani Retail Ltd	Adani Retail Ltd ; PCIT. v .
JCIT v. Bharat Business Channels	Bharat Business Channels ; JCIT v.
CIT v Cochin Ship Yard	Cochin Ship Yard ; CIT. v.

This digest is for private circulation in print form with the objective of facilitating quick reference for professional colleagues.

Your valuable suggestion may be sent to ksalegal@gmail.com. While referring to the digest, if any error or mistake is noticed by readers, they are requested to inform us by e-mail or in writing which will enable us to take corrective measures in our

next publication. We hope this publication will serve as a useful reference to busy professionals. Special thanks to Mr. Subash Shetty, Mr. M. Subramanian and Mr. Paras Savla, advocates, who spared their valuable time to edit this publication.

For Research and Editorial Teams,

Yours Sincerely,

Dr. K. Shivaram
Senior Advocate

31-08-2019

ABBREVIATIONS

Journals, Reports, Magazines and online

Ahmedabad Chartered Accountants Journal	– ACAJ
All India Federation of Tax Practitioners Journal	– AIFTPJ
All India Tax Tribunal judgements	– TTJ
All India Reporter	– AIR
The Bombay Chartered Accountant Journal	– BCAJ
Bombay Law Reporter	– Bom. L.R.
The Chamber of Tax Consultants	– The Chamber's Journal (CTCJ)
Company Cases	– Comp-Cas
Current Tax Reporter	– CTR
Direct Taxes Reporter	– DTR
GST Law Times	– G.S.T.L
Goods and Service Tax Reports	– GSTR
Income-tax Tribunal Decisions	– ITD
ITR's Tribunal – Tax Reports	– ITR (Trib.)
Income Tax Reports	– ITR
Supreme Court Cases	– SCC
Selected Orders of ITAT	– SOT
Taxman	– TAXMAN
VAT and Services Tax cases	– VST

Online

www.bombayhighcourt.nic.in
cchtaxonline.
www.ctconline.org
www.delhihighcourt.nic.in
www.itatonline.org
www.itat.nic.in
www.manupatra.com
www.taxlawsonline.com
www.taxmann.com

Abbreviations – Authorities

Additional Commissioners of Income-tax	– Addl. CIT
Authority for Advance Rulings	– AAR
Assistant Commissioner of Income-tax	– ACIT
Assistant Directors of Income-tax	– ADIT
Assessing Officer	– AO
Income Tax Appellate Tribunal	– ITAT
Central Board of Direct Taxes	– CBDT
Chief Commissioner of Income-tax	– CCIT
Commissioner of Income-tax	– CIT
Commissioner of Income-tax (Appeals)	– CIT(A)
Deputy Commissioner of Income-tax	– Dy. CIT
Director of Income-tax	– DIT
Director General of Income-tax	– DGIT
High Court	– HC
Income-tax Officer	– ITO
Income-tax Settlement Commission	– ITSC
Joint Commissioner of Income-tax	– JCIT
Joint Directors of Income-tax	– JDIT
Principal Chief Commissioner of Income Tax	– PCCIT
Principal Director General of Income Tax	– PDGIT
Supreme Court	– SC
Tax Recovery Officer	– TRO
Transfer Pricing Officer	– TPO
Union of India	– UOI

Courts

Supreme Court	– (SC)
High Court	– (HC)
Allahabad	– (All)
Andhra Pradesh	– (AP)
Bombay	– (Bom.)

Bombay	– (Aurangabad)
Bombay	– (Nagpur)
Bombay	– (Panaji-Goa)
Calcutta	– (Cal.)
Chhattisgarh	– (Chhattisgarh)
Delhi	– (Delhi)
Gauhati	– (Gauhati)
Gujarat	– (Guj.)
Himachal Pradesh	– (HP)
Jammu & Kashmir	– (J&K)
Jharkhand	– (Jharkhand)
Karnataka	– (Karn.)
Kerala	– (Ker.)
Madhya Pradesh	– (MP)
Madhya Pradesh (Gwalior)	– (MP)
Madras	– (Mad.)
Orissa	– (Orissa)
Patna	– (Patna)
Punjab & Haryana	– (P&H)
Rajasthan	– (Raj.)
Sikkim	– (Sikkim)
Telangana	– (Telangana)
Uttarakhand	– (Uttarakhand)
Uttar Pradesh	– (UP)

Tribunal Benches

Agra	– (Agra)
Ahmedabad	– (Ahd.)
Allahabad	– (All.)
Amirtsar	– (Asr.)
Bangalore	– (Bang.)
Bilaspur	– (Bilaspur)

Calcutta	– (Kol.)
Chandigarh	– (Chd.)
Chennai	– (Chennai)
Cochin	– (Cochin)
Cuttack	– (Cuttack)
Delhi	– (Delhi)
Guwahati	– (Gau.)
Hyderabad	– (Hyd.)
Indore	– (Indore)
Jabalpur	– (Jabalpur)
Jaipur	– (Jaipur)
Jodhpur	– (Jodh.)
Lucknow	– (Luck.)
Mumbai	– (Mum.)
Nagpur	– (Nag.)
Panaji	– (Panaji)
Patna	– (Patna)
Pune	– (Pune)
Raipur	– (Raipur)
Rajkot	– (Rajkot)
Ranchi	– (Ranchi)
Surat	– (Surat)
Vishakhapatnam	– (Vishakha)

Case Laws Index

Section wise Index

Income-tax Act, 1961

S. 2(1A) : Agricultural income – Mushroom is not a 'vegetable', 'plant', 'fruit' or 'animal' but is a 'fungus'. Anything which is produced by performing basic operations on the soil is an "agricultural product" and the income therefrom is "agricultural income". The nature of the product and the fact that it is not a 'plant', 'flower', 'vegetable' or 'fruit' is irrelevant. The only relevant aspect is whether the production is by performing some basic operations on the soil. Accordingly the income from production and sale of Mushrooms can be termed as 'agricultural' income. [S. 10(1)] 1

Tribunal held that, Mushroom is not a 'vegetable', 'plant', 'fruit' or 'animal' but is a 'fungus'. Anything which is produced by performing basic operations on the soil is an "agricultural product" and the income therefrom is "agricultural income". The nature of the product and the fact that it is not a 'plant', 'flower', 'vegetable' or 'fruit' is irrelevant. The only relevant aspect is whether the production is by performing some basic operations on the soil. Accordingly the income from production and sale of Mushrooms can be termed as 'agricultural' income. (AY. 2008-09 to 2012-13)

DCIT v. Inventaa Industries Private Limited (2018) 168 DTR 81 / 172 ITD 1 / 194 TTJ 657 / 65 ITR 625 (Hyd.)(Trib.)(SB), www.itatonline.org

S. 2(14)(iii) : Capital asset – Agricultural land – Solitary instance – Adventure in the nature of trade – Business – Purchase of agricultural land and sale of the said land after few years – Not deriving any income or not making any improvement of land and intention to earn profit cannot be the sole test to treat the transaction as adventure in the nature of trade – Solitary instance of sale alone could not characterise the transactions as an adventure in the nature of trade. [S. 2(13)] 2

Dismissing the appeal of the revenue the Court held that the fact that there was an isolated transaction of sale which generated profit to the assessee would not result in the transaction being treated as an adventure in the nature of trade. Though there was an intention to derive profit on sale of such properties purchased as an investment, the assessee, from the circumstances also, was willing to hold it so that the eventual purchase gave him sufficient profit. This alone would take it out of the definition of adventure in the nature of trade and the solitary instance of sale alone could not characterise the transaction as an adventure in the nature of trade. Followed *G. Venkataswami Naidu & Co. v. CIT (1959) 35 ITR 594 (SC). (AY. 2008-09)*

PCIT v. John Poomkudy (2018) 409 ITR 149 / (2019) 261 Taxman 56 / 174 DTR 370 / 307 CTR 81 (Ker.)(HC)

S. 2(14)(iii) : Capital asset – Agricultural land – Beyond 8 kms from nearest Municipality – Nursery – Land record showing the land as agricultural land – Sale consideration is exempt from tax. [S. 45] 3

Dismissing the appeal of the revenue the Court held that; land revenue records showed that land specified was agricultural land and distance from nearest Municipality is

beyond 8 Kms. even though assessee ran a nursery on agricultural land, the fact that there was loss and not income could not have made any difference to the nature and character of the land. (AY. 2007-08)
PCIT v. P. S. Raghupathy (2018) 257 Taxman 225 (Mad.)(HC)
Editorial : SLP of revenue is dismissed PCIT v. P. S. Raghupathy (2019) 261 Taxman 248 (SC)

4 **S. 2(14)(iii) : Capital asset – Agricultural land – Adventure in the nature of land – Land was sold after a period of 16 months – Land shown as agricultural land in revenue records – Fact that said land had been sold to an industrial unit and had potential to be used for industrial purpose, could not be a determinative factor to treat profit earned by assessee on sale of agriculture land as business income – The intention of the purchaser cannot be the determinative factor to treat the profit earned by the assessee on sale of agriculture land as business income. [S. 28(i), 45]**
Dismissing the appeal of the revenue the Court held that; assessee was an agriculturist and, land owned by him had been shown as agricultural land in revenue records. land in question was sold by assessee after a period of 16 months from purchase and, thus, it could not be a regarded as a case of 'adventure in nature of trade'. Intention of purchaser could not be a determinative factor to treat profit earned by assessee on sale of agriculture land as business income. (AY. 2009-10)
PCIT v. Heenaben Bhadresh Mehta (2018) 409 ITR 196 / 257 Taxman 219 (Guj.)(HC)

5 **S. 2(14)(iii) : Capital asset – Agricultural land – Land entered in revenue records as agricultural land – Agricultural income from land declared and accepted by the revenue – Onus is on department to prove contrary – Profits on sale of land is not assessable to capital gains tax. [S. 45]**
Dismissing the appeal of the revenue the Court held that; if the land was recorded as agricultural land in the revenue records, the presumption that it was agricultural land and also when the agricultural income shown by the assessee was accepted by the revenue in earlier years. Referred *Sarifabibi Mohamed Ibrahim v. CIT (1993) 204 ITR 631 (SC) (AY. 2010-11)*
CIT v. Ashok Kumar Rathi (2018) 404 ITR 173 / 302 CTR 490 (Mad.)(HC)

6 **S. 2(14)(iii) : Capital asset – Agricultural land – 8 kms – Distance from Municipal limits to area in which land is situated is to be considered and not distance between particular land and municipal limit – Matter remanded. [S. 45, 54F]**
Tribunal held that, distance from Municipal limits to area in which land is situated and not distance between particular land and municipal limit. The issue raised by the assessee requires a proper investigation of facts and also determination of the fact whether the particular land is situated in the area which is beyond 8 kms from the Municipal limits. Matter remanded. (AY. 2011-12)
Rakesh Garg v. ITO (2018) 173 ITD 302 / (2019) 197 TTJ 632 / 174 DTR 246 (Jaipur)(Trib.)

S. 2(14)(iii) : Capital asset – Agricultural land – Capital gains – Business income – Sale of agricultural land purchased on good price and purchasing the land of higher volumes at different places cannot be regarded as trader – Entitle to exemption. [S. 2(14), 28(i)] 7

Allowing the appeal of the assessee the Tribunal held that; Sale of agricultural land purchased on good price and purchasing the land of higher volumes at different places cannot be regarded as trader assessee is held to be entitle to exemption. (AY. 2009-10)

Shailesh Gangaram Ramani v. ITO (2018) 168 ITD 446 (Rajkot)(Trib.)

S. 2(15) : Charitable purpose – Medical reliefs – Charging nominal fee for providing services exemption cannot be denied, proviso is held to be not applicable. [S. 11, 12AA] 8

AO held that the assessee is involved in trade commerce or business, rejected assessee's claim by invoking proviso to S. 2(15) of the Act. CIT(A) held that mere receipt of nominal fees or charges did not tantamount that assessee was involved in any trade, commerce or business and allowed the exemption. On appeal by the revenue the Tribunal held that, charging nominal fee for providing services exemption cannot be denied, proviso is held to be not applicable. (AY. 2010-11)

ITO v. Escorts Cardiac Disease Hospital Society (2018) 173 ITD 406 / (2019) 197 TTJ 708/ 174 DTR 321 (Delhi)(Trib.)

S. 2(15) : Charitable purpose – Applicability of proviso to S. 2(15) of the Act is a question of fact and should be decided on facts of the case and no generalization is possible. [S. 11, 12] 9

The Tribunal after placing reliance on the CBDT Circular No. 11 of 2008 dated 19 December 2008 and the Finance Minister's speech held that the applicability of proviso to section 2(15) of the Act is a question of fact and no generalisation is possible. Tribunal also further held that the said proviso does not apply to first 3 limbs of section 2(15) i.e. relief to poor, education or medical relief. Further Tribunal held that the proviso shall apply in cases wherein the assessee is engaged in any activity in nature of trade, commerce or business and the object of general public utility is only to mask or hide the true purpose of the business activity.

As in the present facts of the case the AO had not brought any material to show that the assessee was conducting its affairs solely on commercial lines with a motive to earn profit. Also no material was brought to show that the assessee company had deviated from its objects for which it has been constituted. Therefore it was held that the proviso to section 2(15) of the act is not applicable to the present facts of the case and deleted the addition made by the AO.

DCIT v. Raipur Development Authority Bajrang Market (2018) 64 ITR 41 (SN) (Raipur) (Trib.)

10 **S. 2(22)(e) : Deemed dividend – Beneficial owner – Prima facie, *CIT v. Ankitech Pvt. Ltd (2012) 340 ITR 14 (Delhi)(HC)* and *CIT v. Madhur Housing and development company (2018) 401 ITR 152 (SC)*, is wrongly decided and should be reconsidered by larger Bench.**

The term "shareholder", post amendment, has only to be a person who is the beneficial owner of shares. One cannot be a registered owner and beneficial owner in the sense of a beneficiary of a trust or otherwise at the same time. The moment there is a shareholder, who need not necessarily be a member of the Company on its register, who is the beneficial owner of shares, the Section gets attracted without more. To state that two conditions have to be satisfied, namely, that the shareholder must first be a registered shareholder and thereafter, also be a beneficial owner is not only mutually contradictory but is plainly incorrect. Prima facie *CIT v. Ankitech P. Ltd. (2012) 340 ITR 14 (Delhi) (HC), CIT v. Madhur Housing and Development Co. (2018) 401 ITR 152 (SC)* is wrongly decided and should be reconsidered by larger bench. This being the case, we are prima facie of the view that the Ankitech P. Ltd judgment (supra) itself requires to be reconsidered, and this being so, without going into other questions that may arise, including whether the facts of the present case would fit the second limb of the amended definition clause, we place these appeals before the Hon'ble Chief Justice of India in order to constitute an appropriate Bench of three learned Judges in order to have a relook at the entire question.

National Travel Service v. CIT (2018) 401 ITR 154 / 162 DTR 201 / 300 CTR 582 / 253 Taxman 243 (SC)

CIT v. Mahavir Inductomelt (P) Ltd. (2018) 401 ITR 154 / 162 DTR 201 / 300 CTR 582 (SC)

11 **S. 2(22)(e) : Deemed dividend – Loan to share holder – Holding more than 10 per cent of equity shares of lending company and also having substantial interest in borrowing company – Amount of loan given by lender company to borrower company is held to be assessable as deemed dividend – Issue decided by Jurisdictional High Court – Appeal is not maintainable. [S. 260A]**

Dismissing the appeal of the assessee the Court held that; the assessee was holding more than 10 per cent of equity shares of lending company and also having substantial interest in borrowing company i.e. 45 per cent shareholding of OFPL. Accordingly the order of Tribunal is affirmed. Issue decided by Jurisdicinal High Court,appeal is not maintainable. (AY. 2007-08)

Sahir Sami Khatib v. ITO (2018) 259 Taxman 160 / 172 DTR 305 / (2019) 411 ITR 637 (Bom.)(HC) www.itatonline.org

Sarosh Sami Khatib v. ITO (2018) 259 Taxman 160 / 172 DTR 305 / (2019) 411 ITR 637 (Bom.)(HC)

Editorial : Order in ITO v. Sahir Sami Khatib (2015) 57 taxmann.com 13 (Mum.) (Trib.) is affirmed.

12 **S. 2(22)(e) : Deemed dividend – Registered and beneficial share holder – Assessee is not share holder – Addition cannot be made as deemed dividend.**

Mr John Geroge Nechupadom had more than 10 per cent share holding in Plant Lipids (P) Ltd. Plant Lipids (P) Ltd. advanced the amount to Aromatic Ingrediants (P) Ltd. AO

made addition as deemed dividend. Which was deleted by the Tribunal. On appeal by the revenue, dismissing the appeal the Court held that assessee is not the share holder hence deletion of addition by the Tribunal is held to be justified. (AY. 2007-08)
CIT v. Net work Systems & Technologies (P) Ltd. (2018) 172 DTR 445 (Ker.)(HC)

S. 2(22)(e) : Deemed dividend – Records of Registrar of Companies showing shareholding over 10 Per Cent – Revised return filed before Registrar of companies subsequent to notice under Section 148 – Loans received assessable as deemed dividend. [S. 147, 148] 13
Dismissing the appeals of the assessee court held that, records of Registrar of Companies showing shareholding over 10 Per Cent. Revised return filed before Registrar of companies subsequent to notice under Section 148. Loans received assessable as deemed dividend. No question of law. (AY. 2000-01, 2003-04, 2004-05, 2005-06)
Lailabi Khalid v. CIT (2018) 408 ITR 385 (Ker.)(HC)

S. 2(22)(e) : Deemed dividend – Buy – back in excess of fair market price of shares – Direction of Tribunal to make an enquiry in to fair value of shares, which could have implication of deemed dividend – Direction is held to be valid. [S. 115QA, 254(1)] 14
Assessee bought back its own shares from its 99.99 per cent holding company at Mauritius at an abnormally high price. Tribunal held that payment for buy-back in excess of fair market price of shares of assessee, would certainly fall within ambit of section 2(22)(e) and could be taxed as dividends, in hands of assessee – company; however, since this aspect of matter had not been examined by authorities below, matter was remanded to assessing authority. On appeal Court held that, Tribunal was right and within its jurisdiction in directing examination of fair market value of shares bought – back by it during previous year relevant. (AY. 2011-12)
Fidelity Business Services India (P.) Ltd. v. ACIT (2018) 257 Taxman 266 / 304 CTR 244/ 169 DTR 73 (Karn.)(HC)

S. 2(22)(e) : Deemed dividend – Advance to Shareholder – Deemed dividend can be assessed only in hands of registered shareholder. 15
Dismissing the appeal of the revenue the court held that, deemed dividend can be assessed only in hands of registered shareholder. (AY. 2007-08, 2010-11)
CIT v. Ennore Cargo Container Terminal P. Ltd. (2018) 406 ITR 477 (Mad.)(HC)

S. 2(22)(e) : Deemed dividend – Current account – Advance to share holder – Transactions between shareholder and company were in nature of current account addition cannot be made as deemed dividend. 16
Dismissing the appeal of the revenue the Court held that, transactions between shareholder and company were in nature of current account addition cannot be made as deemed dividend. (AY. 2009-10)
CIT v. Gayatri Chakraborty (2018) 407 ITR 730 / 256 Taxman 156 / 303 CTR 541 / 168 DTR 91 (Cal.)(HC)

17 **S. 2(22)(e) : Deemed dividend – Trade advances which were in nature of commercial transactions cannot be assessed as deemed dividend**
Dismissing the appeal of the revenue the Court held that; Trade advances which were in nature of commercial transactions cannot be assessed as deemed dividend
CIT v. Deepak Vegpro (P) Ltd. (2018) 406 ITR 496 / 161 DTR 170 / 300 CTR 98 (Raj.)(HC)

18 **S. 2(22)(e) : Deemed dividend – Loan to shareholder – Finding that loan was not trading transaction therefore assessable as deemed dividend.**
Allowing the appeal of the revenue the Court held that by analysing the transactions and evidences found that loan was not trading transaction therefore assessable as deemed dividend.
CIT v. Prasidh Leasing Ltd. (2018) 403 ITR 129 / 301 CTR 526 / 163 DTR 475 / 254 Taxman 142 (Delhi)(HC)

19 **S. 2(22)(e) : Deemed dividend – Trade discount – Agents' deposit – Regular business transactions cannot be assessed as deemed dividend.**
The word 'advance' which appears in the company of the word 'loan' could only mean such advance which carries with it an obligation of repayment and that the trade advances which are in the nature of money transacted to give effect to a commercial transaction would not fall within the ambit of the provision u/s 2(22) (e) of the Act. The amounts under the disputed heads were being received by the Assessee from its subsidiary only as part of regular business transactions, which was being accounted properly. Payments effected by the subsidiary and received by the Assessee, were as part of the regular business transactions and could not have been treated as 'loan' or 'advances' u/s 2(22)(e) of the Act. (AY. 1995-96 to 1997-98)
CIT v. Malayala Manorama Co. Ltd. (2018) 405 ITR 595 / 162 DTR 281 / 301 CTR 552 / 253 Taxman 292 (Ker.)(HC)

20 **S. 2(22)(e) : Deemed dividend – Loans from two companies addition cannot be made as deemed dividend [S. 260A]**
Dismissing the appeal of the revenue the Court held that; the assessee had not made any payment by way of advance or loan to a shareholder, but on the contrary, had received loans from the two companies. Therefore, if at all, the provisions of section 2(22)(e) were applicable to the companies which had made such payments, provided the assessee had the requisite shareholding. The assessee being the recipient of such amounts, the Tribunal was justified in holding that the provisions of section 2(22)(e) could not be invoked. No question of law arose. (AY. 2010-11)
CIT v. Gladder Ceramics Ltd. (2018) 401 ITR 205 (Guj.)(HC)

21 **S. 2(22)(e) : Deemed dividend – Group companies – Amount received and also paid each other for the purpose of business transactions – No amount has gone to share holder – Addition is held to be not justified.**
Tribunal held that, amount received from group companies and also paid each other for the purpose of business transactions. No amount has gone to share holder – Addition is held to be not justified. Followed earlier years order. (AY. 2010-11)
Saamag Developers (P.) Ltd. v. ACIT (2018) 173 ITD 350 (Delhi)(Trib.)

S. 2(22)(e) : Deemed dividend – Holding cumulative preference shares with fixed rate of dividend – Advance of loan cannot be assessed as deemed dividend. 22

Dismissing the appeal of the revenue; the Tribunal held that,holding shares in lender company without voting rights whereas it merely held non-cumulative preference shares with fixed rate of dividend in borrower company, amount of loan is question could not be added to as deemed dividend (AY. 2006-07)

ACIT v. K. P. Singh (2018) 171 ITD 638 (Delhi)(Trib.)

S. 2(22)(e) : Deemed dividend – Merely because the shares are held by the minor son of the assessee and the loan is received by the assessee it cannot be established that assessee is the beneficial shareholder of 10% or more – Loan cannot be assessed as deemed dividend – Alternatively the amount received was advance rent in the Course of business hence cannot be assessed as deemed dividend. 23

Tribunal held that for assessing the loans or advance the assessee must be the beneficial owner of the shares of 10% or more. In this case Id AO has not established whether the assessee is holding shares as the beneficial shareholder of 10% or more. Merely because the shares are held by the minor son of the assessee and the loan is received by the assessee it cannot be established that assessee is the beneficial shareholder of 10% or more and therefore such loan amount is not chargeable to tax in the hands of the assessee. Furthermore the submission of the assessee before the lower authorities that it is in the nature of advance rent as whenever the rent is payable by the company to the assessee same is deductible from this amount therefore it partakes the character of advance rent. The Ld. AO has also not categorically stated that this amount is not advance rent and not adjusted subsequently against the rent payable by the company to the assessee. According to us if it is an advance rent then it becomes a business transaction and the provisions of deemed dividend cannot apply to such transactions. the instant case, the deposits received by the assessee has already been held by us as sale consideration received on transfer of rights in the property and, thus, in our opinion, it is not in the nature of advance or deposits, which could be held as liable for deemed dividend in terms of section 2(22)(e) of the Act. (ITA No. 4038/Del/2013, dt. 12.10.2018)(AY. 2006-07)

DCIT v. Moni Kumar Subha (Delhi)(Trib.), www.itatoline.org

S. 2(22)(e) : Deemed dividend – account showing movement of funds both ways between a debtor and a creditor – Held, current account transaction and therefore, S. 2(22)(e) would not apply. 24

Account showing movement of funds both ways between the creditor and debtor of the company. Tribunal held that a debit as a result of transactions in such current account cannot be treated as deemed dividend. (AY. 2010-11)

Ravindra R. Fotedar v. ACIT (2018) 192 TTJ 938 (Mum.)(Trib.)

S. 2(22)(e) : Deemed dividend – Amount received back given in earlier years cannot be assessed as deemed dividend. 25

Tribunal held that the, Amount received back given in earlier years cannot be assessed as deemed dividend. (AY. 2010-11)

Nanak Ram Jaisinghani v. ITO (2018) 170 ITD 570 (Delhi)(Trib.)

26 **S. 2(22)(e) : Deemed dividend – Director – Advance received for blocking deal of sale and purchase on behalf of the company for business transaction cannot be assessed as deemed divided.**
Allowing the appeal of the assessee the Tribunal held that ; amounts advanced to assessee director by its company were for business transaction, same would not fall within definition of deemed dividend. (AY. 2012-13)
Dinesh Pandey v. DCIT (2018) 170 ITD 501 (Delhi)(Trib.)

27 **S. 2(22)(e) : Deemed dividend-Share holders – Current and inter banking accounts between group companies cannot be considered as loans and advances and addition cannot be made as deemed dividend – No physical possession of accumulated profits, hence no addition can be made as deemed dividend.**
Allowing the appeal of the assessee the Tribunal held that; Current and inter banking accounts between share holders group companies cannot be considered as loans and advances and addition cannot be made as deemed dividend. Tribunal also held that even otherwise also, the payer companies had already made their investment in capital field more than the accumulated profits and in that situation it cannot be considered that those companies were having physical possession of accumulated profits capable of being disbursed. Therefore, the additions in dispute stand deleted. (AY. 2008-09)
Saamag Developers (P.) Ltd. v. ACIT (2018) 168 ITD 649 (Delhi)(Trib.)

28 **S. 2(24)(iv) : Business Income – Amount paid by company towards personal expenses of assessee is held to be not taxable. [S.4]**
Dismissing the appeal of the revenue the Court held that; the Tribunal was right in holding that the amounts paid by the company towards personal expenses of the assessee could not be taxed in his hands under S. 2(24)(iv) of the Act, as the amount was routed through the franchisee, which was the Hindu undivided family of the assessee (AY. 2002-03)
CIT v. C. S. Seshadri (2018) 404 ITR 191 (Mad.)(HC)

29 **S. 2(28A) : Interest – Usance interest – Paid to holding company for delayed payment for purchase of goods was not part of purchase price, but interest – Liable to deduct tax at source – DTAA – India – Singapore [S. 40(a)(i),195, Art. 7, 11]**
Allowing the appeal of the revenue the Tribunal held that, usance charges paid by the respondent to its holding company for delayed payment of goods was not part of purchase price of goods but same was interest within meaning of S 2(28A) of the Act.
CIT v. Vijay Ship Breaking Corpn. (2003) 261 ITR 113 (Guj.)(HC) (AY. 2003-04)
ACIT v. Overseas Trading and Shipping Co. (P.) Ltd. (2018) 173 ITD 446 (Rajkot)(Trib.)

30 **S. 2(42C) : Slump sale – There was neither any plant, machinery, furniture and fixtures, nor was there any building in existence at time when land was sold therefore it was not a slump sale. [S.50B]**
Dismissing the appeal of the revenue, the Court held that there was neither any plant, machinery, furniture and fixtures, nor was there any building in existence at time when land was sold therefore it was not a slump sale. (AY. 2004-05)
PCIT v. Linde India Ltd. (2018) 254 Taxman 204 / 302 CTR 262 (Cal.)(HC)

S. 2(47)(v) : Transfer – Development rights – Transfer of development rights as per share holder agreement with financial partner for development of integrated township by unregistered agreements, no liability of tax could be fastened on assessee on basis that possession of land had been handed over. [S. 28(i), 45, Registration Act 1908,S. 17(IA), Transfer property Act 1882, S. 53A] 31

Allowing the appeal of the assessee, the Tribunal held that; Transfer of development rights as per share holder agreement with financial partner for development of integrated township by unregistered agreements, no liability of tax could be fastened on assessee on basis that possession of land had been handed over. (AY. 2008-09, 2012-13)

Saamag Developers (P.) Ltd. v. ACIT (2018) 168 ITD 649 (Delhi)(Trib.)

S. 4 : Charge of income-tax – Legislative power of retrospective amendment – Legislature cannot by way of introducing an amendment overturn a judicial pronouncement to declare it to be wrong or nullity – Rather Legislature can amend provisions of any statute to remove basis of judgment – Clause in statute – Prohibiting payment of interest on amount of security deposit is not arbitrary or violative of Article 14 of the Constitution of India. [Art. 14] 32

On appeal, the Supreme Court held that :

(i) Legislature has the power to enact validating laws including the power to amend laws with retrospective effect to remove causes of invalidity. However, Legislature cannot set at naught the judgments which have been pronounced by amending the law not for the purpose of making corrections or removing anomalies but to bring in new provisions which did not exist earlier. The Legislature cannot, by way of introducing an amendment, overturn a judicial pronouncement and declare it to be wrong or nullity but it can amend the provisions of statute to remove the basis of judgment.

(ii) Any provision / clause in the enactment which prohibits payment of interest on the amount of security deposits cannot be said to be arbitrary or violative of Article 14 of the Constitution of India.

State of Karnataka v. Karnataka Pawn Brokers Association (2018) 255 Taxman 12 (SC)

S. 4 : Charge of income-tax – Diversion of income by overriding title – Acted only broker – For determination of taxable income, written agreement is not relevant, conduct of parties can be considered accordingly only income that has actually accrued to the assessee is taxable. [S. 5, 145] 33

Dismissing the appeal of the revenue the Court held that; The income that has actually accrued to the Respondent is taxable. What income has really occurred to be decided, not by reference to physical receipt of income, but by the receipt of income in reality. Given the fact that the Respondent had acted only as a broker and could not claim any ownership on the sum of ₹ 14,73,91,000/- and that the receipt of money was only for the purpose of taking demand drafts for the payment of the differential interest payable by Indian Bank and that the Respondent had actually handed over the said money to the Bank itself, we have no hesitation in holding that the Respondent held the said amount in trust to be paid to the public sector units on behalf of the Indian Bank based on prior understanding reached with the bank at the time of sale of securities and, hence,

the said sum of ₹ 14,73,91,000/- cannot be termed as the income of the Respondent. In view of the above discussion, the decision rendered by the High Court requires no interference. (AY. 1991-92 to 1993-94)

DCIT v. T. Jayachandran (2018) 406 ITR 1 / 165 DTR 176 / 302 CTR 95 / 255 Taxman 344 (SC), www.itatonline.org

CIT v. HDFC Bank Ltd. (2018) 165 DTR 176 / 302 CTR 95 / 255 Taxman 344 (SC)

CIT v. State Bank of India (2018) 165 DTR 176 / 302 CTR 95 / 255 Taxman 344 (SC)

CIT v. Indian Bank (2018) 165 DTR 176 / 302 CTR 95 / 255 Taxman 344 (SC)

Editorial : T. Jayachandran v. Dy. CIT (2013) 263 CTR 629 / 87 DTR 73 / 212 Taxman 620 (Mad.) (HC)

34 **S. 4 : Charge of income-tax – Share application money – The Interest accrued from share application money has statutorily required to be kept in separate account and was being adjusted towards the cost of raising share capital against public issue expenses. [S. 56, 145]**

Dismissing the appeal of the revenue the Court held that; interest accrued on account of deposit of share application money is not taxable income. Such interest is inextricably linked with the requirement to raise share capital and is thus adjustable towards the expenditures involved for the share issue. The fact that part of the share application money would normally have to be returned to unsuccessful applicants, and therefore, the entire share application money would not ultimately be appropriated by the Company, make no significant difference. The Interest earned from share application money has statutorily required to be kept in separate account and was being adjusted towards the cost of raising share capital against public issue expenses (*CIT v. Bokaro Steel Ltd. (1999) 236 ITR 315 (SC). (AY. 1999-2000 to 2001-02*)

CIT v. Shree Rama Multi Tech Ltd. (2018) 403 ITR 426 / 165 DTR 137 / 302 CTR 90 / 255 Taxman 136 (SC), www.itatonline.org

35 **S. 4 : Charge of income-tax – Mutuality – Receipts by Co-operative society form its members i.e. Non-occupancy charges, transfer charges common amenity fund charges and other charges, are exempt from income-tax Act based on the principle of mutuality [S. 2(24), Maharashtra Co-operative Societies Act, 1960, S. 79A]**

Dismissing the appeal of the revenue the Court held that; Receipts by Co-operative society form its members ie. Non-occupancy charges, transfer charges common amenity fund charges and other charges are exempt from income-tax Act based on the principle of mutuality. The notification dated 9, 2001 issued under section 79A of the Maharashtra Co-operative Societies Act, 1960 is applicable only to co-operative housing societies and has no application to premises society which consist of non-residential premises.

ITO v. Venkatesh Premises Co-operative Society Ltd. (2018) 402 ITR 670 / 163 DTR 465 / 301 CTR 514 / 254 Taxman 313 (SC)

Editorial : From the judgement of Bombay High Court in ITO v. Venkatesh Premises Co-operative Society Ltd (ITA No 680 of 2009 dt 11-1-2010)

Mittal Court Premises Co-operative Society Ltd. v. ITO (2010) 320 ITR 414 (Bom.) (HC), and CIT v. Shree Parleshwar Co-op-Housing Society Ltd (2017) 10 ITR-OL 202 (Bom.) (HC) is affirmed.

S. 4 : Charge of income-tax – Non-compete fee – Held to be capital receipt. [S. 28(i)] 36

Dismissing the appeal of the revenue the Court held that, non-compete agreement incorporated restrictive covenant on right of assessed to carry on his activity of development of software. It might not alter structure of his activity, in sense that he could carry on same activity in organization in which he had small stake, but it certainly impaired carrying on of his activity to that extent it was loss of source of income for him and it was of enduring nature, as contrasted with transitory or ephemeral loss. Non-Competition Agreement was genuine and payment made thereunder was indeed non-compete fee. (AY. 1995-96)

CIT v. Tara Sinha (2017) 158 DTR 193 / (2018) 305 CTR 522 (Delhi)(HC)

S. 4 : Charge of income-tax – Capital or revenue – Compensation awarded under Motor Vehicles Act or Employees' Compensation Act in lieu of death of a person or bodily injury suffered in a vehicular accident, is a damage and not an income and cannot be treated as taxable income – Not liable to deduct tax at source on compensation and interest accrued thereon. [S. 194A] 37

Allowing the petition the Court held that, compensation awarded under Motor Vehicles Act or Employees' Compensation Act in lieu of death of a person or bodily injury suffered in a vehicular accident, is a damage and not an income and cannot be treated as taxable income. Accordingly interest awarded by the Motor Accident Claims Tribunal on a compensation is also a part of compensation upon which tax is not chargeable hence the action of Insurance company deduct tax at source on the awarded compensation and interest accrued thereon is illegal and is contrary to the law of land. Accordingly respondent directed to refund the tax deducted at source.

National Insurance Company Ltd. v. Indra Devi (2018) 259 Taxman 579 (HP)(HC)

S. 4 : Charge of income-tax – Capital – Revenue – Amount received by assessee from assigning its business rights is held to be capital receipts. Amount is also not to be included in computing book profits. [S. 155JB, 263] 38

Dismissing the appeal of the revenue the Court held that, amount received by assessee from assigning its business rights is held to be capital receipt. Amount is also not to be included in computing book profits.

CIT v. Om Metals Infraprojects Ltd (2018) 99 taxmann.com 228 / 259 Taxman 355 (Raj.) (HC)

Editorial : SLP of revenue is dismissed, CIT v. Om Metals Infraprojects Ltd. (2018) 259 Taxman 354 (SC)

S. 4 : Charge of income-tax – Capital or revenue – Incentive for sale of Sugar is a capital receipt and hence not chargeable to tax. 39

Dismissing the appeal of the revenue the Court held that ; incentive for sale of Sugar is a capital receipt and hence not chargeable to tax.

CIT v. Kanoria Sugar And General Manufacturing Co. Ltd. (2018) 407 ITR 737 (Raj.)(HC)

Editorial : SLP of revenue is dismissed; CIT v. Kanoria Sugar And General Manufacturing Co. Ltd. (2018) 405 ITR 1 (St)

40 **S. 4 : Charge of income-tax – Capital or revenue – Non-compete Amounts received by assessee under Non-Compete agreement constitute capital receipt – Revenue cannot ignore the specific terms of the agreements and render findings contrary thereto as regards the nature of the income received by the assessee – Form and substance of transaction – Substance of transaction to be considered. [S. 28(i)]**

Allowing the appeals of the assessee the Court held that; a close analysis of the terms of the non-competition agreement, it was abundantly clear that the consideration paid to the company as well as to the assessee was for preventing them from competing with the transferee companies in respect of specified products in specified areas. On its own finding the Tribunal held that it was the assessee who had pioneered the time release technology and promoted the company. This by itself would show that the technical know-how constituted a part of the capital. There was no material to show that the transaction was not genuine. Nor had any specific finding in that regard been rendered. Therefore, there was no reason to ignore the specific terms of the agreements and render findings contrary thereto as regards the nature of the income received by the assessee. The income in the hands of the assessee was a capital receipt. Though, the form in which the transaction which gives rise to income is clothed and the name which is given to it are irrelevant in assessing the nature of receipt arising from a transaction, for ignoring the specific terms of an agreement, a finding has to be necessarily rendered that those terms are a mere cloak or subterfuge for avoiding taxation. (AY. 1998-99, 1999-2000)

V. C. Nannapaneni v. CIT (2018) 407 ITR 505 / 305 CTR 605 / 171 DTR 337 (T&AP) (HC)

41 **S. 4 : Charge of income-tax – Capital or revenue – Subsidy – Technology upgradation of existing units as well as to set up new units with latest technology to enhance their viability and competitiveness in domestic and international markets – Capital receipts. [S. 28(i)]**

Dismissing the appeal of the revenue the Court held that ; the subsidy was clearly for purpose of upgrading machinery and plant and for acquiring capital assets and not for purpose of day-to-day business operations of assessee, held that quantum of subsidy received by assessee was a capital receipt.

CIT v. Gloster Jute Mills Ltd. (2018) 257 Taxman 512 (Cal.)(HC)

42 **S. 4 : Charge of income-tax – Capital or revenue – Interest from mobilization advances made by it to contractor for purpose of facilitating smooth commencement and completion of work of construction – Receipts being intrinsically connected with construction business of assessee would be capital receipt and not income of assessee from any independent source. [S. 56]**

Assessee is engaged in construction and development business, received certain amount by way of interest from mobilization advances made by it to contractor for purpose of facilitating smooth commencement and completion of work of construction. Allowing the appeal of the assessee the Court held that said receipt was adjusted against charges payable to contractor and, thus, resulted in reduction of cost of construction. Accordingly in view of decision in case of *CIT v. Bokaro Steel Ltd. (1999) 236 ITR 315*

(SC), receipts being intrinsically connected with construction business of assessee would be capital receipt and not income of assessee from any independent source.
Roads & Bridges Development Corporation of Kerala Ltd. v. ACIT (2018) 257 Taxman 392 (Ker.)(HC)

S. 4 : Charge of income-tax – Accrual of income – Method of accounting – Gain arising on account of securitization of lease receivables and credited to the Profit & Loss Account is a taxable receipt in the year of securitisation. [S. 145] 43
Dismissing the appeal of the assessee the Court held that, gain arising on account of securitization of lease receivables and credited to the Profit & Loss Account is a taxable receipt in the year of securitisation. Followed *CIT v. T. V. Sunderam Iyengar (1996) 222 ITR 344 (SC).* Argument that the entry represents hypothetical income and not real income and that the amount is assessable in subsequent years on receivable basis is not correct. Question of whether income can also be deferred to subsequent years under the "Matching concept" as per *Taparia Tools Ltd v. JCIT (2003) 260 ITR 102 (Bom.) / Taparia Tools Ltd v. JCIT (2015) 372 ITR 605 (SC) left open. (AY. 2002-03, 2003-04)*
L & T Finance Limited v. DCIT (2018) 170 DTR 362 / 304 CTR 954 (Bom.)(HC), www.itatonline.org

S. 4 : Income chargeable to tax – Capital or revenue – Income from other sources – Interest on funds deposited with banks – Prior to commencement of commercial operations will be in nature of capital receipt and will be required to be set off against pre – operative expenditure capitalized under head capital work-in-progress – Cannot be taxed as income from other sources. [S. 5, 56, 145] 44
Dismissing the appeal of the revenue the Court held that; as per loan agreement executed between consortium of banks and assessee all disbursements were to be deposited in trust and retention account was to be subject to strict control and verification by senior lenders and all disbursements were to be utilized solely for purpose of implementation of project and no other purpose. Funds were thus inextricably linked to setting up of mega road projects and interest earned on such borrowed funds could not be classified as income from other sources. Accordingly the interest received prior to commencement of commercial operations of specified mega projects will be in nature of capital receipt and will be required to be set off against pre-operative expenditure capitalized under head capital work-in-progress and cannot be taxed under head income from other sources.
PCIT v. Road Infrastructure Development Corporation of Rajasthan Ltd. (2018) 257 Taxman 208 (Raj.)(HC)
Editorial : SLP is granted to the revenue, PCIT v. Road Infrastructure Development Corporation of Rajasthan Ltd. (2018) 257 Taxman 186 (SC)

45 **S. 4 : Charge of income-tax – Power subsidy – Capital or revenue – Purpose test – Power subsidy which is available only to new units and units which have undergone an expansion, purpose being incentive as a capital subsidy has to be regarded as capital receipt. [S. 28(i)]**

Dismissing the appeal of the revenue the Court held that; Power subsidy which is available only to new units and units which have undergone an expansion, purpose being incentive as a capital subsidy has to be regarded as capital receipts.

PCIT v. Shyam Steel Industries Ltd. (2018) 303 CTR 628 / 168 DTR 152 (Cal.)(HC)

46 **S. 4 : Charge of income-tax – Interest on bank deposits out of share capital – Prior to commencement of business operations – Interest is liable to be assesses as income from other sources – interest income would go to reduce capital cost of project and was on capital account and same could not be taxed as income from other source. [S. 56, 145]**

Dismissing the appeal of the revenue the Court held that; interest earned before commencement of business operations was not liable to be taxed as same was eligible for deduction against public issue expenses incurred by company, interest income would go to reduce capital cost of project and was on capital account and cannot be assessed as income from other sources. Followed *CIT v. Bokorao Steel Ltd. (1999) 236 ITR 315 (SC) (AY. 2011-12)*

PCIT v. Bank Note Paper Mill India (P.) Ltd. (2018) 256 Taxman 429 / (2019) 412 ITR 415 (Karn.)(HC) www.itatonline.org.

Editorial : Order in, ITO v Bank Note Paper Mill India P. Ltd. (2017) 56 ITR 226 (Bang) (Trib.) is affirmed.

47 **S. 4 : Charge of income-tax – Capital or revenue – Power subsidy received by assessee company from State Government under Power Intensive Industries Scheme, 2005, for setting up a new industrial unit in backward area was capital receipt and, thus, not liable to tax. [S.28(i)]**

Dismissing the appeal of the revenue the Court held that, power subsidy received by assessee – company from State Government under Power Intensive Industries Scheme, 2005, for setting up a new industrial unit in backward area was capital receipt and, not liable to tax. (AY. 2001-01, 2003-04)

CIT v. Keventer Agro Ltd. (2018) 256 Taxman 437 (Cal.)(HC)

48 **S. 4 : Charge of income-tax – Capital or revenue – Business of real estate – Compensation received under Arbitration Award is held to be capital receipt. [S.28(i)]**

Dismissing the appeal of the revenue the Court held that, compensation received under Arbitration Award is held to be capital receipt. The purpose of the ultimate use of the assessee's land when acquired was rendered irrelevant on account of the seller defaulting in its commitment. This rendered the amount expanded by the assessee immobile. The eventual receipt of the amounts determined as compensation or damages, therefore, fell into the capital stream.

CIT v. Aeren R Infrastructure Ltd. (2018) 404 ITR 318 (Delhi)(HC)

S. 4 : Charge of income-tax – Compensation received for loss of source of income and non competition fee is held to be capital receipt. [S. 17(3), 28(va), Prior to Amendment, 2016 wef 1-4-2107] 49

Dismissing the appeal of the revenue the Court held that; there cannot be a straight jacket black and white formula; the analysis to be conducted by the tax authorities or administration has to be a fact dependent one. The assessee had a dual role-both as shareholder and as Managing Director. As Managing Director, he received only the non-compete amounts for two years. It is quite possible that he could have been given this amount as a capital receipt at one go for whatever reasons and that the amount be spread over two years. Undoubtedly, the Parliament has intervened and deemed that such amounts. so far as they relate to consideration for professionals should be treated as income by virtue of the amendment of 2017. However, with respect to the Revenue's contention that regardless of that amendment even in the pre-existing law, this amount had to be treated as receipts and therefore taxable as income, cannot be accepted. It also noted *CIT v. Sapthagiri Distilleries Ltd. (2015) 53 Taxmann. com 218 (SC)*, where the Supreme Court had held that compensation received towards loss of source of income and non-competition fee would be treated only as capital receipts and not liable to tax. Having regard to these decisions and the fact that the view of the ITAT is a plausible one, no question of law arise.

CIT v. Satya Sheel Khosla. (2018) 164 DTR 293 / 305 CTR 534 (Delhi)(HC)

S. 4 : Charge of income-tax – Accrual – Contractor – Income in respect of sale of flats is accrued when possession was given of the flat and not when the allotment letter was issued. [S. 145] 50

Dismissing the appeal of the revenue, the court held that, Income in respect of sale of flats is accrued when possession was given of the flat and not when the allotment letter was issued. (ITA No. 853 of 2015 dt. 30-01-2018)(AY. 2007-08)

CIT v. Millennium Estate Pvt. Ltd. (Bom.)(HC) (2018) 93 taxmann. com 41 / BCAJ-April-P. 74

S. 4 : Charge of income-tax – Capital or revenue – Sales tax subsidy is a capital receipt. [S. 264] 51

Allowing the petition against order u/s 264 the Court held that; the sales tax subsidy received by the assessee was to be treated as a capital receipt and was not to be added to its income. The orders of the Commissioner and the Assessing Officer, treating the sales-tax subsidy as revenue receipt, were to be set aside. (AY. 2007-08 to 2010-11)

Sunbeam Auto Pvt. Ltd. v. CIT (2018) 402 ITR 309 (Delhi)(HC)

S. 4 : Charge of income-tax – VAT subsidy – Refund of value added tax was held to be capital receipt and not chargeable to tax. [S. 2(24)(xviii), 43(1)] 52

Dismissing the appeal of the revenue the Court held that, refund of value added tax subsidy from Government of Bihar was held to be capital receipt and not chargeable to tax (AY. 2009-10)

CIT v. Deepak Vegpro Pvt. Ltd. (2018) 401 ITR 89 / 164 DTR 226 / 302 CTR 269 (Raj.)(HC)

53 **S. 4 : Charge of income-tax – Accrual – Interest on project advance – Development agreement has not taken place as the interest has not accrued, income cannot be assessed on hypothetical basis. [S. 145]**

Dismissing the appeal of the revenue, the Court held that; there was no right to receive income of ₹ 1.98 crores as interest as the development agreement has not been executed, therefore the interest has not accrued, income cannot be assessed on hypothetical basis. Further Board of directors of the assessee company had on 23rd May 2007 passed a resolution, waiving the interest receivable. (AY. 2008-09)

CIT v. Godrej Reality (P) Ltd. (2018) 161 DTR 417 / 300 CTR 257 (Bom.)(HC)

54 **S. 4 : Charge of income-tax – Capital or revenue – Notional sales tax – Question of law. [S. 260A]**

On appeal by the revenue, High Court admitted the following question of law "Whether on the facts and circumstances of the case and in law, the Tribunal was right in holding that notional sales-tax of ₹ 12, 52, 83, 84, 360 is capital in nature and not liable to tax. (AY. 2003-04 to 2006-07)

CIT v. Reliance Industries Ltd. (2018) 161 DTR 420 / (2019) 410 ITR 468 (Bom.)(HC)

55 **S. 4 : Charge of income-tax – Capital or revenue – Causal and non-recurring – Capital gains – Compensation paid for breach of contract was held to be capital in nature. [S. 2(24), 10(33) 45, 55(2)(a)]**

Dismissing the appeal of the revenue the Court held that; there was a breach of contract giving rise to a claim for damages and the compensation was paid on account of failure to honour the commitment. That was capital in nature. A detailed business plan was submitted by the assessee, which was rejected without any specific reason. Thus, there was a breach of the right of first refusal and a receipt of compensation after negotiation, which was shown as non-taxable capital receipt. The contention that such a receipt could not have been taxed as revenue receipt or casual income, was accepted by the Tribunal and had held that the amount received by the assessee by way of compensation, for breach of commitment, was not a capital gain, but a non-taxable capital receipt. (AY. 1998-99)

CIT v. Parle Soft Drinks (Bangalore Pvt. Ltd. (2018) 400 ITR 108 / 161 DTR 86 / 252 Taxman 147 / 300 CTR 415 / (2017) 88 Taxmann.com 24 (Bom.) (HC)

CIT v. Parle Bottling Pvt. Ltd. (2018) 400 ITR 108 / 161 DTR 86 / 252 Taxman 147 / 300 CTR 415 (Bom.)(HC)

Editorial: Order in Parle Soft Drinks P. Ltd. v. JCIT (2013) 27 ITR 663 (Mum.) (Trib.) is affirmed. SLP of revenue is dismissed; CIT v. Parle Soft Drinks (Bangalore Pvt. Ltd. (2018) 258 Taxman 61 (SC)

S. 4 : Charge of income-tax – Sales tax subsidy – Subsidy given to assessee post accomplishment of project or expansion there, without any obligation to utilize subsidy only for repayment of term loans undertaken by assessee for setting up new units/ expansion of existing business, or to liquidate cost incurred in creating capital asset or its expansion, was only in nature of revenue receipt and was liable to be brought to tax. [S.28(i)] 56

Tribunal held that any subsidy given to assessee post accomplishment of project or expansion there, without any obligation to utilize subsidy only for repayment of term loans undertaken by assessee for setting up new units/expansion of existing business, or to liquidate cost incurred in creating capital asset or its expansion, was only in nature of revenue receipt and was liable to be brought to tax. (AY. 2008-09)

Maruti Suzuki India Ltd. v. ACIT (2018) 191 TTJ 148 (Delhi)(Trib.)

S. 4 : Charge of income tax – Capital or revenue – Subsidy – Additional Admitted – Excise duty refund and interest subsidy received from Government for setting up of an industry in the backward area was to be treated as a capital receipt. [S. 28(i), 254(1)] 57

On appellate Tribunal held that the limitation of power of the assessing authority (where the claim is not pressed through a return filed by the assesse) was not applicable to an appellate authority. The Tribunal further held that where a legal issue was raised for the first time before the appellate authority with facts being on record, the additional ground ought to have been admitted. Accordingly, relying on the decision in the case of *Ahmedabad Electricity Co. Ltd. v. CIT (1993) 199 ITR 351 (FB)(Bom.)(HC)*, the Tribunal held that the additional ground was to be admitted. On merits, the Tribunal held that the benefit/ incentive was given for the overall development of the industry and the economy of the state of Jammu & Kashmir. Relying on the decision in the case of *CIT v. Shree Balaji Alloys v. CIT (2011) 333 ITR 335 (J&K) (HC)* the Tribunal held that the same ought to be treated the same as capital receipt. (AY. 2006-07)

Kashmir Steel Rolling Mills v. DCIT (2018) 195 TTJ 125 / 169 DTR 137 (Asr.)(Trib.)

S. 4 : Charge of income-tax – Capital or revenue – Incentive received under Package Scheme of Incentives of Govt. of Maharashtra is capital receipt and not liable to tax. [S.28(i)] 58

Tribunal held that sales tax incentive availed under package scheme of incentive of Government of Maharashtra is capital receipt and is not chargeable to tax. (AY.2005-06)

ACIT v. Ballarpur Industries Ltd. (2018) 64 ITR 21(SN) / 168 DTR 225 / 193 TTJ 521 (Nag.)(Trib.)

S. 4 : Charge of income-tax – Carbon credit – Capital or revenue – Additional ground – Receipt from sale of carbon credit is capital receipt – Not taxable as income – Additional ground was admitted and remanded the matter for verification. [S. 2(24), 80IA(4), 115BBG, 254(1)] 59

On appeal, the CIT(A) held that the receipt from sale of carbon credits if power is generated and thus the gain derived was eligible for deduction u/s 80-IA(4). Aggrieved by the order, the Revenue filed an appeal before the Tribunal. The assessee also filed

cross objection on the said. The assessee submitted that the Hon'ble Andhra Pradesh High Court in *CIT v. My Home Power Ltd. (2014) 365 ITR 82 (AP) (HC)* had decided the issue of taxability of carbon credits in the favour of the assessee and the jurisdictional Bench in Shree Nakoda Ispat Ltd. in ITA No. 109/BLPR/2011 had decided in favour of the assessee. Further, the assessee also pointed out that the Finance Act, 2017 w.e.f. 1st April, 2018 inserted section 115BBG for taxability of carbon credits @ 10% and that the amendment was prospective. The Tribunal admitted the ground raised by the assessee for adjudication and allowed the appeal of the assessee for statistical purposes. (AY. 2011-12)
DCIT v. Godawari Power & Ispat Ltd. (2018) 68 ITR 19(SN) (Raipur)(Trib.)

60 **S. 4 : Charge of income-tax – Capital or revenue – Capital gains – Capital asset – Right to sue – Development agreement – Builder – Right to sue is a right in personam which cannot be transferred and, thus, amount received as compensation in lieu of said right is not chargeable to tax. [S. 2(14), 2(47), 28(va), 45]**
Tribunal held that compensation received by assessee in respect of right to sue for specific performance of its pre-emptive right to purchase of land is a personal right which did not fall within definition of 'capital asset' under S. 2(14) of the Act. Accordingly the damages received from potential purchaser for such relinquishment of right to sue is a capital receipt which is not taxable. Tribunal also held that the assessee had not received amount of damages under an agreement for not carrying out activity in relation to any business or not to share in know-how, patent, copyright, trademark, license etc. as specified under S. 28(va) of the Act enacted for its taxability under the head of business income. Consequently, it is opined that compensation received in lieu of 'right to sue' could not be regarded as revenue receipt. (AY. 2008-09)
Bhojison Infrastructure (P.) Ltd. v. ITO (2018) 173 ITD 436 / 172 DTR 369 / 196 TTJ 518 (Ahd.)(Trib.)

61 **S. 4 : Charge of income-tax – Capital or revenue – Compensation received on closure/ termination of business activity resulting in loss of source of income, impairing its profit making structure or sterilization of profit making apparatus is capital receipt. [S. 28(i)]**
Dismissing the appeal of the revenue the Tribunal held that; compensation received on closure/termination of business activity resulting in loss of source of income, impairing its profit making structure or sterilization of profit making apparatus is capital receipts. (ITA No. 157/RPR/2014, dt. 23/10/2018)(AY. 2011-12)
DCIT v. Rishabh Infrastructure Pvt. Ltd. (2019) 174 DTR 357 / 196 TTJ 857 (Raipur)(Trib.), www.itatonline.org

62 **S. 4 : Charge of income-tax – Forfeited amount cannot be assessed as income – Justified in reducing the said amount from cost of the land. [S. 51]**
Tribunal held that amount forfeited cannot be assessed as income. Assessee is justified in reducing the said amount from cost of the land. (AY. 2008-09)
Geeta Dubey (Smt.) v. ITO (2018) 172 ITD 538 (Indore)(Trib.)

S. 4 : Charge of income-tax – Capital or revenue – Sales tax subsidy – Purpose of sales tax subsidy scheme was to attract people to invest and take part in industrialization of certain areas in the State, either by setting up new unit or expanding existing unit – Subsidy was a non-taxable capital receipt. [S. 28(i)] 63

Hon'ble Tribunal held that the purpose of the subsidy scheme by the Government of Uttar Pradesh was to attract people to invest and take part in industrialization of certain areas in the State. The scheme nowhere stated that it is for the benefit of generating product purchases from the town/district of Uttar Pradesh. In light of the *CIT v. Ponni Sugars and Chemicals Ltd. (2008) 306 ITR 392 (SC)*, since the objective of the scheme was to enable expansion or modernization of existing units, it is capital in nature. (AY. 1995-96 to 1998-99)

Grasim Industries Limited v. ACIT (2018) 193 TTJ 25 (UO) (Mum.)(Trib.)

S. 4 : Charge of income-tax – Capital or revenue – Entertainment subsidy received under Uttar Pradesh Government scheme for promotion of construction of multiplexes is a capital receipt. [S. 2(24), 28(i)] 64

AO treated entertainment subsidy granted by State of UP as revenue receipt holding the same to be for the purpose of helping multiplexes to run profitably and the same was upheld by CIT(A). On appeal, Tribunal noted that the assessee's object to construct Multiplex Theatre Complexes was in line with the object of grant of subsidy which was for promotion of construction of multiplexes. Further, the collection was in form of an entertainment duty via sale of tickets for a limited period but its utilisation was predetermined and granted with an assurance to cover up cost of construction. Therefore, it was not attributed in any manner towards supplementing of day-to-day expenditure or in furtherance of profits and hence could not be said to be in character of revenue receipt. Thereby relying on the case of Chaphalker Brother, the Tribunal dismissed revenue's appeal.

DCIT v. Shipra Hotels Ltd. (2018) 63 ITR 70 (SN) / 52 CCH 288 (Delhi)(Trib.)

S. 4 : Charge of income-tax – Compensation received by the assessee in lieu of withdrawal of criminal complaint filed against a person for impersonation and forging Assessee's signature on a document relating to sale of shares of a company is not taxable as income. [S. 2(24), 28(i)] 65

Dismissing the appeal of the revenue the Tribunal held that compensation received by the assessee in lieu of withdrawal of criminal complaint filed against a person for impersonation and forging Assessee's signature on a document relating to sale of shares of a company is not taxable as income as the compensation received by the Assessee was not for his professional activities but for settlement of dispute between him and third party. Accordingly, the same cannot fit into the definition of income as per section 2(24) r.w.s 4 of the Act. (AY. 2011-12)

ACIT v. Jackie Shroff (2018) 167 DTR 133 / 172 ITD 425 / 194 TTJ 760 (Mum.)(Trib.)

66 **S. 4 : Charge of Income tax – Capital or revenue – Subsidy received from Government for setting up of an industry in the backward area was to be treated as a capital receipt. [S.28(i)]**
Dismissing the appeal of the revenue the Tribunal held that; subsidy received from West Bengal Incentive Scheme from State Government for setting up of an industry in the backward area is to be treated as a capital receipt. (AY. 2005-06)
ACIT v. Pasadensa Foods Ltd. (2018) 163 DTR 243 / 192 TTJ 645 (Delhi)(Trib.)

67 **S. 4 : Charge of income-tax – Discrepancy in AIR data and Form 26AS – Assessee disputed certain transaction reflected in AIR data but claimed credit of TDS – Held, not permissible – Held, AO to verify whether credit of TDS wrongly taken and whether the income does not belong to the assessee. [S.28(i), Form 26AS]**
The assessee contradicted the AIR information by stating that certain transaction does not belong to it, however, it claimed the credit of TDS pertaining to such transaction. The Tribunal held that this was not permissible. Assessee had to prove that the income does not belong to it and that the credit for TDS was wrongly claimed. Accordingly, the matter was remitted back to AO to give any opportunity to the assessee (AY. 2011-12).
Edel Commodities Ltd. v. Dy. CIT (2018) 194 TTJ 86 (Mum.)(Trib.)

68 **S. 4 : Charge of income-tax – Development agreement – The "right to sue" which arises on breach of a development agreement is a "personal right" and not a "capital asset" which can be transferred. Consequently, the damages received for relinquishment of the "right to sue" is a non-taxable capital receipt. [S. 2(14) 28(va)]**
Allowing the appeal of the assessee the Tribunal held that /The "right to sue" which arises on breach of a development agreement is a "personal right" and not a "capital asset" which can be transferred. Consequently, the damages received for relinquishment of the "right to sue" is a non-taxable capital receipt. (ITA. No. 2449/Ahd/2016, dt. 17.09.2018)(AY. 2008-09)
Bhojisaon Infrastructure Pvt. Ltd. v. ITO (Ahd.)(Trib.), www.itatonline.org

69 **S. 4 : Charge of income-tax – Capital or revenue – Sales tax incentive – Remanded to the file of AO. [S.28 (i)]**
The Tribunal held that the co-ordinate bench has restored the issue relating to sales tax incentive to the file of AO in assessment years 2007-08 and 2008-09. The Tribunal set aside the order of CIT(A) on this issue and restore the same to the file of AO with the directions in earlier years. (AY. 2009-10)
Dy. CIT v. Everest Industries Ltd. (2018) 192 TTJ 904 / 168 DTR 178 / 90 taxmann.com 330 (Mum.)(Trib.)

70 **S. 4 : Charge of income-tax – Subsidy received from Government for setting up of an industry in the backward area was to be treated as a capital receipt. [S.28(i)]**
On Revenue's appeal, relying on the Supreme Court's decision in the case of Sahney Steel and *Press Works v. CIT (1997) 228 ITR 253 (SC)* and *CIT v. Ponni Sugar & Chemicals Ltd. (2008) 306 ITR 392 (SC)*, the Tribunal held that 'purpose test' should be applied for determining the character of the subsidy. Since the subsidy in the present case was received by the assessee for setting up of an industry in the backward area of

West Bengal, it was held that the CIT(A) rightly treated the same as capital in nature. (AY. 2005-06)
ACIT v. Pasadensa Foods Ltd. (2018) 163 DTR 243 / 192 TTJ 645 (Delhi)(Trib.)

S. 4 : Charge of income-tax – Personal effects – Sale of painting received by gift from father is held to be capital receipts – Amendment by Finance Act 2007 w.e.f. 1-4-2008 is prospective in nature. [S. 2(14), 28(i)] 71
AO treated the sale of painting which was received by father Late Mr. M. F. Husain as business income instead of capital receipt. On appeal the Tribunal held that the painting received by the assessee from his late father as gift is a personal effect and not liable to tax. Amendment by finance Act 2007 w.e.f. 1-4-2008 is prospective in nature. (AY. 2006-07)
Owais M. Husain v. ITO (2018) 194 TTJ 102 / 167 DTR 49 (Mum.)(Trib.)

S. 4 : Charge of income-tax – Receipt arising on extra sale value of sugar did not arise to Assessee since the receipt was cast with the obligation to pay the same to sugar factories and hence, it had to be diverted by overriding title – Difference in profit was not to be included as income in hands of assessee. [S.28(i)] 72
Tribunal held that it was held that the Assessee/buyer had entered into agreements with three sugar factories which stipulated that in case the purchased sugar under the agreement is not exported for any reason, beyond the control of exporter, the buyer would then have the right to sell the sugar in domestic market. However, seller shall demand the difference towards additional realization and the buyer / exporter agreed for the same. Pursuant to the agreement, sugar which was picked up by the Assessee and in view of low quality of sugar, it could not be exported and it was sold in the open market. The Assessee in such scenario claimed to have sold the sugar at the rates lower than rates prevailing in the market in order to meet the demands of payment by the sugar factories. The average rate at which the Assessee sold the same was at ₹ 1233.50/-per quintal. However, ITAT had come to a finding that the sale price of sugar is to be adopted at ₹ 1290/- per quintal. The Assessee claimed that extra amount arising on sale of sugar out of export quota of sugar is diverted by source, in view of the terms agreed upon by the assessee with the sugar factories. The question which arises is whether the amount reaches the hands of Assessee as its income and hence, is taxable in the hands of Assessee. In this regard, the ITAT has applied the principles laid down by the Supreme Court in *CIT v. Sitaldas Tirathdas*, holding that where there is an obligation to pay and it has to be diverted by overriding title, it could not be treated as income and that the difference in profit is not to be included as income in the hands of Assessee. (AY. 2002-03)
ACIT v. Deepak Jagdish Thakkar (2018) 161 DTR 49 / 191 TTJ 104 (Pune)(Trib.)

S. 4 : Charge of income-tax – Capital or revenue – Book profit – Sales tax subsidy granted by the Government for purpose of setting up or expansion of Mills would be capital receipt – Amended provisions treating subsidy or grant as income u/s 2(24)(xvii) are prospective in nature and not applicable to assessment year prior to AY. 2016-17) [S. 2(24)(xvii), 28 (i), 115JB] 73
Allowing the appeal of the assessee the Tribunal held that, Sales tax subsidy granted by the Government for purpose of setting up or expansion of Mills would be capital

receipt and the said receipts cannot be added to book profit. Amended provisions treating subsidy or grant as income u/s. 2(24)(xvii) are prospective in nature and not applicable to assessment year prior to AY. 2016-17) (ITA Nos. 979/1001/17 /Hyd/ 17 dt. 20-04-2018(AY. 2006-07, 2013-14)
Sanghai Industries Ltd. v. ACIT (Hyd.)(Trib.) www.itat.nic. (UR)

74 **S. 4 : Charge of income-tax – Interest awarded under Land Acquisition Act is in nature of solatium and an integral part of compensation and receipt of same is a capital receipt whereas, interest awarded under the said act is on account of delayed payment of compensation and is revenue receipt. [S. 10(37), Land Acquisition Act, 1894, S, 28, 34]**
Tribunal held that; interest awarded under S. 28 of Land Acquisition Act is in nature of solatium and an integral part of compensation and receipt of said compensation is a capital receipt whereas, interest awarded under S. 34 of Land Acquisition Act is on account of delayed payment of compensation and is revenue receipt. (AY. 2011-12)
Dnyanoba Shajirao Jadhav v. (2018) 169 ITD 291 (Pune) (Trib.)

75 **S. 4 : Charge of income-tax – Mutual concerns – Surplus earned was spent for common benefit of members for carrying on objects of the Club – Principle of mutuality is applicable and surplus cannot be brought to tax. [S.28(i)]**
Dismissing the appeal of the revenue the Tribunal held that Surplus earned was spent for common benefit of members for carrying on objects of the Club therefore Principle of mutuality is applicable and surplus cannot be brought to tax. (AY. 2001-02 to 2010-11)
ITO v. Gymkhana Club (2018) 168 ITD 64 / 167 DTR 113 / 192 TTJ 571 (Chd)(Trib.)

76 **S. 4 : Charge of income-tax – Interest on amount of sundry debtors outstanding cannot be charged on accrual basis [S. 145]**
Dismissing the appeal of the revenue, the Tribunal held that, Interest on amount of sundry debtors outstanding cannot be charged on accrual basis,whether to charge interest is business decision of assessee and not for assessing officer to consider. (AY. 2010-11)
DCIT v. Narayani Ispat Pvt. Ltd. (2018) 61 ITR 371 (Kol.)(Trib.)

77 **S. 4 : Charge of income-tax – Pre-operative expenses – Interest from banks – Capital Receipt – Income from other sources. [S. 3,56, 145]**
Assessee received interest from banks which was capitalized in the books of account as the interest accrued out of investment made in Banks from such borrowed Loan. AO assessed the interest as income from other sources. CIT (A) held that the very purpose of constitution of Assessee was to act as a SPV created by Gov. of India and Govt. of West Bengal in form of JV with equal equity participation for implementation of rapid transport infrastructure in Kolkata. Both Central and State Govts. were to provide requisite finances for implementation of such project. Funds from Central and State Govts flew directly to assessee as equity and subordinate Debt/Loans. Objective was to create and maintain a fund for development of infrastructural assets on a continuing

basis. There was no profit motive as entire fund entrusted and interest accrued there from on deposits in bank though in name of assessee had to be applied only for purpose of welfare of State as provided in guidelines accordingly the method adopted by the assessee was up held. On appeal by the revenue the Tribunal up held the finding of the CIT(A). (AY. 2010-11, 2011-12)
ITO v. Kolkata Metro Rail Corporation Ltd. (2017) 51 CCH 779 (2018) 196 TTJ 17 (UO) (Kol.)(Trib.)

78 **S. 4 : Charge of income-tax – Celebrity – Damages for reputation – Compensation received by a film actress from Coca Cola India Limited (CCIL) towards damages caused to her reputation – Cannot be assessed as any benefit, perquisites arising to her out of exercise of profession-Not liable to tax [S. 2(24) 28 (i)]**
Allowing the appeal of the assessee, Tribunal held that additional amount of ₹ 95 lakh received by assessee towards damages for being sexually harassed by Coca Cola India Limited (CCIL) employee, for having disparaged her professional reputation by false allegations and for repudiatory breach of contract by CCIL. Therefore such compensation could not be termed as any benefit, perquisites arising to assessee out of exercise of profession, hence, it cannot not be assessed as income either under S. 2(24) or under S. 28(i) and hence not liable to tax. (AY. 2004-05)
Sushmita Sen v. ACIT (2018) 172 DTR 201 / 196 TTJ 801 / (2019) 174 ITD 8 (Mum.)(Trib.)

79 **S. 4 : Charge of income-tax – Income derived by a trade, professional or similar association from specific services performed for its members – Non-Resident – Mutuality – Liaison office of non-resident non profit organisation for the benefit of members in the absence of profit motive and surplus if any was ploughed back in to the organisation again to be utilised for same objects-Income cannot be assssed as business income – Receipts from non members only 2.05% and also isolated incident which has not affected the dominant object of the applicant-Membership fee and contribution from members is also not liable to tax in India – Once principle of mutuality is applied, the question of a permanent establishment did not arise – Receipt or income cannot be taxed applying the principle of mutuality. [S. 28(iii)]**
AAR held that Liaison office of non-resident non profit organisation for the benefit of members in the absence of profit motive and surplus if any was ploughed back in to the organisation again to be utilised for same objects therefore the income cannot be asssseed as business income. Receipts from non members only 2.05% and also isolated incident which has not affected the dominant object of the applicant. Membership fee and contribution from members is also not liable to tax in India under the provisions of income-tax Act or the DTAA. Once principle of mutuality is applied, the question of a permanent establishment did not arise. Where the principle of mutuality operates and the profits cannot be distributed, but only be utilised for the benefit of members and confined to the objects of the organisation, the receipts or income cannot be taxed.
International Zinc Association In re (2018) 404 ITR 766 / 167 DTR 81 / 303 CTR 474 (AAR)

80 **S. 5 : Scope of total income – Charge of income-tax – Double taxation – Where the assessee has paid the income-tax at source in the State of Sikkim as per the law applicable at the relevant time in Sikkim, the same income was not taxable under the IT Act, 1961 – In a case of reasonable doubt, the construction most beneficial to the taxpayer is to be adopted. [S. 4,80TT, 256(1), Sikkim State Income Tax Rules, 1948, Art. 371F]**

Allowing the appeal of the assesse the Court held that; where the assessee has paid the income tax at source in the State of Sikkim as per the law applicable at the relevant time in Sikkim, the same income was not taxable under the IT Act, 1961. It is a fundamental rule of law of taxation that, unless otherwise expressly provided, income cannot be taxed twice. A taxing Statute should not be interpreted in such a manner that its effect will be to cast a burden twice over for the payment of tax on the taxpayer unless the language of the Statute is so compelling that the court has no alternative than to accept it. In a case of reasonable doubt, the construction most beneficial to the taxpayer is to be adopted. While S. 5 of the IT Act would not be applicable, the existing Sikkim State Income Tax Rules, 1948 would be applicable. Thus, on the income, it would appear that Income-tax would be payable, under Sikkim State Income Tax Rules, 1948 and not under the IT Act. Since Sikkim is a part of India for the accounting year, there would appear to be, on the same income, two types of income taxes cannot be applied. On the issue of double taxation reference was made to, *Laxmipat Singhania v. CIT (1969) 72 ITR 291 (SC) (294)* and *Jain Brothers and Others v. UOI (1970) 77 ITR 107 (SC)*. As regards other issue whether the income that is to be allowed deduction under section 80 TT of the IT Act is on 'Net Income' or 'Gross Income', becomes academic. (AY. 1986-87)

Mahaveer Kumar Jain v. CIT (2018) 404 ITR 738 / 165 DTR 113 / 302 CTR 1 / 255 Taxman 161 (SC), www.itatonline.org

81 **S. 5 : Scope of total income – Accrual – Interest – Interest on Inter-Corporate Deposits (ICDs) which had become non performing asset (NPA) in terms of prudential norms by RBI, having not accrued not assessable on "accrual" basis, in the hands of non-banking financial company. [S. 145]**

Dismissing the appeal of the revenue the Court held that; Under section 45Q of the RBI Act read with the NBFCs Prudential Norms (Reserve Bank) Directions 1998, it was mandatory on the part of the assessee not to recognize the interest on the ICD as it had become a NPA. The assessee was bound to compute income having regard to the recognized accounting principles set out in Accounting Standard AS-9. AS-9 provides that if there are uncertainties as to recognition of revenue, the revenue should not be recognized. Accordingly, the argument of the revenue that the interest on the NPA can be said to have accrued despite it being a NPA is not acceptable.

CIT v. Vasisth Chay Vyapar (2018) 253 Taxman 401 / 301 CTR 263 / 163 DTR 169 / 410 ITR 244 (SC)

Editorial : Order in CIT v. Vasisth Chay Vyapar (2011) 238 CTR 142 / 330 ITR 440 / 196 Taxman 169 / 49 DTR 300 (Delhi)(HC)

S. 5 : Scope of total income – Accrual – Mercantile system of accounting – Not liable to be taxed on notional interest on non-performing assets considering the guidelines of Reserve Bank of India. [S. 145] 82

Dismissing the appeal of the revenue the Court held that,though the assessee is following mercantile system of accounting, the interest on non performing assets is not taxable on accrual basis considering the guidelines of Reserve Bank of India.

PCIT v. Kutch District Co-op Bank Ltd. (2018) 94 taxmann.com 298 (Guj.)(HC)

Editorial : SLP of revenue is dismissed, CIT v. Jamnagar District Co-Operative Bank Ltd. (2018) 256 Taxman 212 (SC)

S. 5 : Scope of total income – Accrual – Mercantile system of accounting – Not liable to be taxed on notional interest on non-performing assets. [S. 145] 83

Dismissing the appeal of the revenue the Court held that, assessee a Co-operative Bank which followed mercantile system of accounting is not liable to be taxed on notional interest on non-performing assets.

PCIT v. Sarangpur Co-operative Bank Ltd. (2018) 258 Taxman 230 (Guj.)(HC)

S. 5 : Scope of total income – Accrual – Duty drawback is taxable when income has accrued. [S. 4, 145] 84

Court held that that, duty drawback is taxable when income has accrued. (AY.1999-2000)

CIT v. Maruti Udyog Ltd. (2018) 407 ITR 159 / (2019) 308 CTR 682 (Delhi)(HC)

S. 5 : Scope of total income – Co-operative society – Banking business – Accrual – Interest on doubtful debts or Non-Performing Assets (NPAs) without such interest being actually received or credited in profit & loss account of assessee – Not required to pay tax on interest income. [S. 43D] 85

Dismissing the appeal of the revenue, assessee, a co-operative society, carrying on banking business, was not required to pay tax on interest income on bad debts/doubtful debts or Non-Performing Assets (NPAs) without such interest being actually received or credited in profit & loss account of assessee. (AY. 2009-10, 2010-11)

CIT(A) v. Bijapur District Central Co-Operative Bank Ltd. (2018) 256 Taxman 51 (Karn.) (HC)

Editorial : SLP of revenue is dismissed; CIT v. Bijapur District Central Co-Operative Bank Ltd (2019) 260 Taxman 297 (SC) 86

S. 5 : Scope of total income – Real income – Non-Banking financial company – Mercantile system of accounting – Interest on doubtful debts cannot be assessed as income. [S. 145]

Dismissing the appeal of the revenue the Court held that; the Tribunal was justified in holding that under the mercantile system of accounting, interest income did not accrue on the basis of the assessee's contention that recovery as well as the interests on such deposits were doubtful. (AY. 2005-06)

CIT v. Pavitra Commercial Ltd. (2018) 402 ITR 66 (Delhi)(HC)

87 **S. 5 : Scope of total income – Accrual – Interest on Government securities which has become due and payable alone can be considered as accrued and taxable. [S. 28(i), 145]**

Dismissing the appeal of the revenue the Tribunal held that; Interest on Government securities which has become due and payable alone can be considered as accrued and taxable. Merely because in the books of account the interest income which is not due and payable is shown, that itself will not give a right to the Ld. AO to tax unless it has become due and payable as per section 5 of the Act. (AY.2008-09 to 2011-12)

ACIT v. Karnataka Bank Ltd. (2018) 63 ITR 433 (Bang.)(Trib.)

88 **S. 5 : Scope of total income – Retention money – Merely because retention money was accounted for in books of account, same could not be brought to tax without income having been actually accrued – Retention money is taxable in assessment year in which it was actually received. [S. 4, 145]**

Dismissing the appeal of the revenue the Tribunal held that, merely because retention money was accounted for in books of account, same could not be brought to tax without income having been actually accrued to assessee. Retention money is taxable in assessment year in which it was actually received by the assessee. (AY. 2010-11, 2012-13)

DCIT v. Commtel Networks (P.) Ltd. (2018) 171 ITD 360 (Mum.)(Trib.)

89 **S. 5 : Scope of total income – Accounting Standard 9 – Accrual – Since agreement was valid for a period of five years and assessee had to carry on certain activities throughout period of five years by taking participation into management of business affairs of Vibes clinic among other responsibilities, assessee was justified in deferring income over a period of five years. [S. 145]**

Allowing the appeal of the assessee the Tribunal held that; assessee had given its trademark 'Vibes' for a period of five years and received consideration, since agreement was valid for a period of five years and assessee had to carry on certain activities throughout period of five years by taking participation into management of business affairs of Vibes clinic among other responsibilities, assessee was justified in deferring income over a period of five years, i.e., tenure of agreement. (AY. 2007-08)

Alankar Slimming & Cosmetic Clinic (P.) Ltd. v. ITO (2018) 171 ITD 1 (Kol.)(Trib.)

90 **S. 5 : Scope of total income – Non-Resident – Alleged deposit in HSBC foreign bank Account at Geneva – A non-resident having money in a foreign country cannot be taxed in India if such money has neither been received or deemed to be received, nor has it accrued or arisen to him or deemed to accrue or arise to him in India – Addition cannot be made for the alleged deposit in foreign Bank accounts [S. 5(2), 6, 9, 68]**

Dismissing the appeal of the revenue the Tribunal held that, the assessee being a non-resident, having money in a foreign country cannot be called upon to pay income tax on that money in India unless it satisfies the tests of taxability on non-resident under the provisions of the Act, which in the instant case is not getting satisfied in the case

of the assessee. Thus the bank account of HSBC Bank, Geneva is outside the purview of this Act. A non-resident having money in a foreign country cannot be taxed in India if such money has neither been received or deemed to be received, nor has it accrued or arisen to him or deemed to accrue or arise to him in India. Accordingly addition cannot be made for the alleged deposit in foreign Bank accounts. (AY. 2006-07, 2007-08)
Dy. CIT v. Dipendu Bapalal Shah (2018) 171 ITD 602 / (2019) 197 TTJ 149 (Mum.)(Trib.) www.itatonline.org

S. 5 : Scope of total income – Non-resident foreign national – Alleged deposits in HSBC Foreign Bank account at GENEVA – Deletion of the addition by the CIT(A) is held to be not justified– AO is directed to make further investigation to find out whether the source of the deposits in foreign account originated from India. [S. 5(2), 6, 9] 91
AO made an addition on the ground that the assessee could not prove with documentary evidences that the deposits are not from India. CIT(A) deleted the addition on the ground that it is a foreign bank account of a non-resident and the deposits therein cannot be added in the hands of the assessee individual. On appeal by the revenue, the Tribunal held that the assessee has used his invalid Indian passport which he should have surrendered to the Indian authorities in opening a bank account in Geneva. Hence, the intent of the assessee is not above board. Further it is settled law from the Hon'ble Apex Court in *Kapurchand Shrimal (1981) 131 ITR 451 (SC)* that the revenue authorities are entitled to look into the surrounding circumstances and economic reliability. The Assessing Officer is directed to make further investigation into the source of the deposits in the bank accountS. Accordingly, the matter was set aside to the Assessing Officer. (ITA No. 5889/Mum./2016 dt. 1-6-2018) (AY. 2003-04)
DCIT v. Rahul Rajnikant Parikh & Ors (Mum.)(Trib.), www.itatonline.org

S. 5 : Scope of total income – Notional interest – Charging of notional interest for delayed remittance of collection made by its agent was held to be not justified. [S. 145] 92
Tribunal held that, since the assessee had not bargained for interest on late remittance of subscriptions, revenue authorities were not justified in charging notional interest due to delayed remittance of collection by its agent. (AY. 1987-88 to 1992-93)
Sahara India Ltd. v. ACIT (2018) 168 ITD 1 / 164 DTR 49 / 192 TTJ 655 (TM) (Luck.) (Trib.)

S. 5 : Scope of total income – Non-resident – Employees of Indian company sent on assignments – Employees residents of those countries and liable to tax on their worldwide income in those countries for period of their assignment income did not accrue in India and not chargeable to tax in India – Indian Company is not liable to deduct tax on salaries paid in India – Once employees returned and became residents Indian Company can give credit for taxes deducted during deputation outside India – DTAA – India – Germany – USA [S. 2(45) 4, 5(2) 9(1)(ii) 15, 90, 192, art. 4(1), 23,25] 93
Authority held that; Employees of Indian company sent on assignments, employees residents of those countries and liable to tax on their worldwide income in those countries for period of their assignment income did not accrue in India and not chargeable to tax in India Indian Company is not liable to deduct tax on salaries paid in

India. Once employees returned and became residents Indian Company can give credit for taxes deducted during deputation outside India.
Hewelett Packed India Software Operation P. Ltd., In re (2018) 401 ITR 339 / 162 DTR 337 / 301 CTR 12 (AAR)

94 **S. 5 : Scope of total income – Non-resident – Employees of Indian company sent on assignments – Employees residents of those countries and liable to tax on their worldwide income in those countries for period of their assignment income did not accrue in India and not chargeable to tax in India – Indian Company is not liable to deduct tax on salaries paid in India – Once employees returned and became residents Indian Company can give credit for taxes deducted during deputation outside India – Indian company is not liable to deduct tax on split pay and perquisites received in India but accrued outside India. DTAA-India-USA [S. 2(45) 4, 5(2) 9(1)(ii), 15, 90, 192, art. 4(1), 25]**
Authority held that; Employees of Indian company sent on assignments, employees residents of those countries and liable to tax on their worldwide income in those countries for period of their assignment income did not accrue in India and not chargeable to tax in India Indian Company is not liable to deduct tax on salaries paid in India. Once employees returned and became residents Indian Company can give credit for taxes deducted during deputation outside India. When payments were received from more than one source during a particular year, the present employer could give credit for the taxes deducted during his deputation outside India. In the absence of any other provision, recourse to the specific provision in S. 192(2) alone was possible. This provision cast an obligation on the employee to furnish to the employer, the applicant, such details of the salary, etc., received by him from the other employer, the tax paid or deducted therefrom, and other particulars, and the employer would examine and take into account such details before computing the tax deductible.
Texas Instruments (India) Pvt. Ltd., In Re (2018) 401 ITR 289 / 253 Taxman 509 / 162 DTR 305 / 301 CTR 1 (AAR)

95 **S. 6(1) : Residence in India – Individual – Non-resident – Assessee was outside India for a period of more than 182 day – Salary income of assessee received outside India is not liable to tax merely because his foreign employer had deducted the tax at source on such income. [S. 5(2), 192]**
Allowing the appeal of the assessee the Tribunal held that; since assessee was outside India for a period of more than 182 days, he had became a non-resident. Accordingly the salary income of assessee received outside India is not taxable in India merely because was deducted on such income. (AY.2013-14)
Avdesh Kumar v. DCIT (2018) 172 ITD 73 / 67 ITR 42 (SN) (Delhi) (Trib.)

96 **S. 6(1) : Resident in India – Scope of total income – Non-Resident – Stationed in Switzerland for 331 days – Rendered his services outside India-Foreign assignment allowance received by him abroad, was not liable to tax in India. [S. 5 (2)]**
Dismissing the appeal of the revenue, the Tribunal held that; since services of assessee were utilised outside India and, moreover, both accrual and receipt of income happened

outside India, same was outside ambit of tax as per provisions of section 5(2) of the Act. (AY. 2013-14)
DCIT v. Sudipta Maity. (2018) 172 ITD 94 (Kol.)(Trib.)

S. 6(5) : Residence in India – Deemed residence – Where status of assessee was taken as resident for computing his business income, his status would remain the same for salary income earned outside India. [S. 5] 97
On appeal, the Tribunal held that the residential status of the assessee for the business income earned by him was taken as resident. Thus, the assessee ought to be treated as a resident for other sources of income as well in light of section 6(5) and hence the matter was remanded back to the CIT(A). (AY. 2011-12)
ITO v. Rajesh Joshi (2018) 163 DTR 137 (Asr.)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – development of Basic engine – design a new 3 valve cylinder head for improvement of fuel efficiency, performance and meeting Indian emission standard – Payment is not royalty – DTAA – India – Australia. [S. 9(1)(vi), art. 6(2)] 98
Dismissing the appeal of the revenue the Court held that the engine has already been developed by the assessee and scope of the technical services agreement was only to design a new 3-valve cylinder head with a specified combustion system for considerable improvement of fuel efficiency, performance and meeting the Indian emission standards. All products, design of the engines and vehicles are supplied by the assessee. On completion all the drawings are also delivered by the Austrian company to the assessee. The entire project was carried out in Austria and no part of the project was performed in India. Accordingly the payment does not constitute royalty. (AY. 2002-03)
DIT v. TVS Motors Co. Ltd. (2018) 259 Taxman 140 / (2019) 176 DTR 137 (Mad.)(HC)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Representative assessee – Representative assessee not only represents an income which has directly arisen or accrued in India but also that which has indirectly arisen or accrued in this country, through a business connection – International Cricket Council chose India, Pakistan and Sri Lanka to co-host World Cup 1996- Order of Tribunal is setaside. [S. 5 (1) (5(2), 160, 161, 163, 194E, 201(1)] 99
Allowing the appeal of the revenue the Court held that; the Tribunal has made a complete misunderstanding of the law in entertaining the opinion that since the income made by the non-resident Cricket Boards were held to have directly arisen in India, this income could not be deemed to have arisen or accrued to the non-resident in India and the responsibility of the representative assessee was confined to accounting for income which had directly arisen or accrued in India. Furthermore, if the department chooses to make an assessment of the person resident outside India directly, there is no question of assessment of his agent or a representative assessee. In fact, section 166 very clearly lays down that nothing in the foregoing sections relating to representative assessee shall prevent either the direct assessment of the person for whom the money is receivable. The Tribunal, made a clear mistake in believing that since it was held in an earlier proceeding that the income in question arose in India, a representative assessee

could not be liable because it was only liable according to it in respect of the income which was deemed to have arisen in India. The effect of the order of the Tribunal is that in spite of a foreign resident having an agent in India and income directly arising in this country to the foreign resident, the agent would escape liability to assessment. Accordingly the order of Tribunal is set aside. (AY. 1996-97)
DIT(IT) v. Board of Control for Cricket in Sri Lanka (2018) 259 Taxman 6 (Cal.)(HC)

100 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Reassessment – A representative assessee represents all income of a non-resident accruing or arising in India directly or indirectly from any business connection in India. It is wrong to contend that the representative assessee is not liable for income which has directly arisen or accrued in India. It is also wrong that if the department chooses to make an assessment of the person resident outside India directly, it cannot assess the agent or representative assessee. The Dept has the choice of proceeding against either – Order of Tribunal is set aside [S. 5, 9(1),148, 160, 163]**
Question before the High Court was :
"Whether on the facts and in the circumstances of the case the Learned Tribunal erred in law in cancelling the order of assessment under section 147 passed by the Assessing Officer without considering its earlier decision wherein the Learned Tribunal held that the order under Section 163 treating PILCOM as agent of Non-Resident Boards and players was valid?"
Allowing the appeal of the revenue the Court observed that,the Tribunal, in our opinion, made a clear mistake in believing that since it was held in an earlier proceeding that the income in question arose in India, a representative assessee could not be liable because it was only liable according to it in respect of the income which was deemed to have arisen in India. The effect of the order of the Tribunal is that inspite of a foreign resident having an agent in India and income directly arising in this country to the foreign resident, the agent would escape liability to assessment. In those circumstances, the order of the Tribunal dated 6th June, 2007 is set aside. The questions of law framed by the order of this Court dated 26th August, 2008 are answered in the affirmative in favour of the Revenue. The orders of the Assessing Officer and of the Commissioner of Income Tax (Appeals) are affirmed. The points left open by the Tribunal in its impugned order may be decided by it in accordance with law.
DIT v. Board of Control for Cricket in Sri Lanka Through PILCOM (2018) 259 Taxman 6 / 305 CTR 965/ 172 DTR 325 (Cal.)(HC) www.itatonline.org

101 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Liaison Offices In India is not permanent establishment – Income directly or indirectly attributable to these branches or offices was not taxable in India – DTAA – India Japan. [Art. 5(6)(E)]**
Dismissing the appeal of the revenue the Court held that; the Tribunal was right in holding that the Indian branches or offices of the assessee and their activities could not be regarded as permanent establishments of the assessee in India and the income directly or indirectly attributable to these branches or offices was not taxable in India, that the assessee did not have any permanent establishment in India and its income

from business turnover or imports in India was exempt in India in view of the Double Taxation Avoidance Agreement between India and Japan and that the burden of proof had shifted to the authorities. (AY. 2001-02)
DIT v. Mitsui And Co. Ltd. (2018) 407 ITR 294 (Delhi) (HC)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Permanent establishment – No management activity was conducted in India – There was no fixed place of Permanent establishment – No business connection question of estimated income did not arise – Not liable to deduct tax at source or interest – DTAA -India-South Korea. [S. 234A, 234B, Art.5,7] 102

AO assessed in its entirety as permanent establishment of assessee, also agency PE as place of management for Southeast operations and also service PE which was affirmed by DRP. On appeal Tribunal held that there was seamless information exchange between employees of assessee and expat employees, however such information exchange related to models/designs to liking of Indian consumers, plans and strategies relating to sale of products, detailed stock/logistical status, market strategies both mid and long terms etc. None of statement showed that any activity of global business management (GBM) had ever been conducted in India or market survey conducted in India had nothing to do with business of Indian subsidiary. Accordingly in absence of proof as to any management activity of assessee being conducted in India it could not be held that through expatriate employees assessee was conducting business of assessee in India. There was no fixed place PE of assessee constituted through expatriated employees. Tribunal also held that as there was no business activity that was conducted by assessee through expatriate employees, thus question of estimated income did not arise and consequently liability of assessee to deduct tax at source or interest liability u/s. 234 A and 234B also did not arise. (AY. 2004-09 to 2014-15)
Samsung Electronics Co. Ltd. v. Dy. CIT (IT) (2018) 170 DTR 85 / 64 ITR 99 / 193 TTJ 769 (Delhi)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Various coordination/facilitation services rendered – Business of developing and producing entertainment serials for audio visual platform – Consideration cannot be assessed as royalty – DTAA-India-South Africa. [S. 9(1)(vi),9(1) (vii), Art. 12] 103

Tribunal held that, various coordination/facilitation services rendered such as, arranging for locational crew, producer, transportation, paper work for various stunts to be performed and other requirements for setting up and filming series, etc., were in nature of Line Production Services, same could not be termed as technical, managerial or consultancy services. Accordingly the consideration received by assessee for rendering of aforesaid services, could not be brought to tax as FTS. Tribunal also held that the consideration cannot be taxes as royalty since ownership of copyright remained vested with Endemol India. (AY. 2012-13)
Endemol South Africa (Proprietary) Ltd. v. Dy. CIT (2018) 172 DTR 111 / 196 TTJ 594 / 67 ITR 520 / 98 taxmann.com 227 (Mum.)(Trib.)

104 **S. 9(1)(i) : Income deemed to accrue or arise in India – Reimbursement of expenses – Failure to substantiate on basis of any clinching evidence – Assessable as business income – India – Nether land. [Art. 7, 12]**

Tribunal held that assessee failed to substantiate on basis of any clinching evidence that consideration received for services rendered by it to Indian Hotels were in nature of reimbursement of expenses incurred by assessee and there was no markup or profit made by rendering said services, its claim that same not being in nature of income, was not liable to be taxed in India, could not be accepted. (AY. 2009-10)

Renaissance Services BV v. DIT (IT) (2018) 171 ITD 381 / 171 DTR 30 / 195 TTJ 1049 (Mum.)(Trib.)

105 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection-Subsidiary of a foreign company constitutes "business connection" and/ or "fixed Permanent Establishment" and/or "Dependent Agent Permanent Establishment" of assessee in India-Held No, (b) whether any attributes of profits on account of signing, network planning and negotiation of off-shore supply contracts in India could be attributed to such business connection/ permanent establishment – Held No and (c) whether notional interest on delayed consideration of supply of equipment and licensing of software taxable in the hands of assessee as interest from vendor financing – Held No – DTAA-India – Finland – Majority view is in favour of the assesee. [Art. 5, 7]**

These appeals pertaining to Assessment Years 1997-98 & 1998-99 have been taken up for hearing by this Special Bench in pursuance of direction given by the Hon'ble Delhi High Court vide judgment and order dated 7th September, 2012, passed in ITA Nos. 395 of 2005; 1137 & 1138 of 2006, 503 and 1324 of 2007; and 30 of 2008. The Hon'ble High Court has remanded certain issues back to the Tribunal to be decide afresh as to, firstly, whether the Indian subsidiary of the assessee would provide business connection or a permanent establishment in India; secondly, even if so, then is there any attributes of profits on account of assigning, networking planning and negotiation of off-shore contract supply in India and if yes then to what extent and basis thereof; and lastly, the question of notional interest on delayed consideration received for supply of equipment and software, is taxable in the hands of the assessee as interest from vendor financing. All the issues referred by the High Court is answered in favour of the assessee by majority view. i.e., Merely having a subsidiary company or if foreign enterprise has a control on that company which carries out the business in that country (India) will not itself constitute a PE. Nothing is taxable on account of signing, network planning and negotiation of off-shore supply contracts, therefore, there is no question of any attribution of income on account of these activities which are purely related to supply contracts. Accordingly, the issue of attribution which has been remanded back by the Hon'ble High Court has become purely academic. After considering the relevant finding and rival contentions, we find that, it has not been brought on record that in any of the contract the assessee had charged any interest on delayed payment or providing any credit facilities to its customers or any customer has paid any such amount for each day elapsed from the due date to the actual payment. Once none of the parties have either acknowledged the debt or any corresponding liability of the other party to pay, then it cannot be held that any income should be taxed on notional basis which has neither accrued nor received by the assessee.

Minority view, is; the Tribunal held that the assessee company had a PE in India, by way of the premises and existence of its Indian subsidiary Nokia India Pvt Ltd, and that the profit attributable to the specified operations of this PE are 3. 75% of total sales of the equipment in India. In the result, while I uphold the action of the CIT(A) in principle, I marginally reduce the quantum of profits attributable to the PE. As against profit @ 5% of sales held to be attributable to the Indian PE, I hold the profit on 3. 75% of sales to be attributable to PE in respect of the specified activities. In the result, in my considered view, the plea of the assessee against the existence of business connection and the existence of permanent establishment is to be rejected, and plea of the assessee on the attribution of profit is to be partly accepted in the terms indicated above. To this extent, even as I humbly bow to the majority so far results of these appeals are concerned, I disassociate myself with the order as finalized by the majority. Save on the above points, I am in considered agreement with the conclusions arrived at in the lead order and I respectfully endorse the same. (AY. 1997-98, 1998-99)
Nokia Networks OY v. JCIT (2018) 65 ITR 23 / 167 DTR 137 / 195 TTJ 137 / 171 ITD 1 (SB)(Delhi)(Trib.) www.itatonline.org

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Profit earned from offshore supply of installation and commissioning activities of equipments relatable to operations carried out in India is held to be taxable since it had supervisory Permanent establishment in India – DTAA-India-China. [Art. 5] 106
Tribunal held that, profit earned from offshore supply of installation and commissioning activities of equipments relatable to operations carried out in India is held to be taxable since it had supervisory Permanent establishment in India. (AY. 2013-14)
Shanghai Electric Group Co. Ltd v. Dy. CIT (2018) 170 ITD 34 / 165 DTR 225 (Delhi) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Company situated in UAE but having effective control and management situated in Germany could not claim benefit of the India – UAE tax treaty but it can claim benefits of the India – Germany tax treaty. – DTAA – India UAE Germany. [Art. 4,8,29] 107
The assessee was a shipping company. It was denied the benefit of India-UAE DTAA shipping company by invoking article 29 on grounds that the said company had got registration for doing its business in UAE whereas its place of effective control and management was situated outside UAE. In order to invoke article 29 of India-UAE DTAA, what is to be established is that if assessee – company was not formed in UAE, it would not have been entitled for such benefits. It was noted that the entire share capital of the assessee company was held by German entities but then in Indo-German DTAA also same treaty protection with regards to taxability of shipping profits only in State of residents were available and hence the assessee company was to be formed in UAE or in Germany, would not have any material difference so far as non-taxability of said income in India is concerned. (AY. 2008-09)
ITO (IT) v. Martrade Gulf Logistics FZCO-UAE (2018) 162 DTR 22 / 191 TTJ 575 (Rajkot) (Trib.)

108 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Shipping, Inland waterways transport – Matter remanded – DTAA-India-Singapore. [Art. 8, 24]**

Tribunal held that even if income was actually exempt from tax in residence jurisdiction, given unambiguous thrust of treaty on income being subjected to tax in one contracting State to be able to claim treaty protection in other contracting State, and avoidance of double non-taxation being a clear objective of the Indo Singapore tax treaty, such an exempt income would also be eligible to get treaty protection in source State. Since revenue authorities failed to consider aforesaid aspect of case, impugned order was to be set aside and matter was to be remanded back to CIT(A)for adjudication de novo in light of evidence adduced by assessee. (AY. 2015-16)

BP Singapore Pte Ltd. v. ITO IT (2018) 168 ITD 325 (Rajkot) (Trib.)

109 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – In absence of furnishing any shred of credible evidence that shows direct involvement from Japan in making sales to customers in India estimation of rate of net profit at 10 per cent was reasonable and amount of net profit attributable to marketing activities carried out in India would be 30 per cent of amount of net profit relatable to sales in India- DTAA-India-Japan [Art. 5, 7(a), (7)(c)]**

Tribunal held that, No evidence had been brought on record to demonstrate as to how customers in India were approaching assessee in Japan to discuss and finalize their requirements and prices. In absence of assessee furnishing any shred of credible evidence showing its direct involvement from Japan in making sales to customers in India and proving that role of DAIPL was simply confined to a communication channel, entire activity starting from identifying customers, approaching them, negotiating prices with them and finalization of products and prices were done by DAIPL in India not only for products sold directly by them as distributor, but also for which assessee was claiming to have made direct sales. As the DAIPL was dependent agent PE of assessee in India and estimation of rate of net profit at 10 per cent was reasonable and amount of net profit attributable marketing activities carried out in India would be 30 per cent of amount of net profit relatable to sales in India. (AY. 2006-07)

Daikin Industries Ltd. v. ACIT (2018) 171 ITD 301 / 65 ITR 693 / 195 TTJ 663 / (2019) 177 DTR 214 (Delhi)(Trib.)

110 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection-Franchise of Dominos Pizza-Profit and loss from business belonged to Jubilant and no activities were carried out by jubilant on behalf of assessee, Jubilant did not constitute a Permanent Establishment of assessee in India hence not liable to tax in India-DTAA-India-UK. [Art.5]**

Assessee, US company, entered into Master Franchise Agreement (MFA) with Indian company (Jubilant) for franchise of Dominos Pizza Store and provided certain store/ consultancy services to Jubilant and assessee was entitled to charge 3 per cent of sales of store of Jubilant and further 3 per cent on sale of their sub-franchise store. The AO held that, assessee had exclusive franchise right in India and Jubilant did not have economic independence and its modus operandi was not on principal to principal basis

and, therefore, Jubilant was dependent agent Permanent Establishment. Tribunal held that profit and loss from business belonged to Jubilant and no activities were carried out by Jubilant on behalf of assesse, therefore, Jubilant did not constitute a Permanent Establishment of assessee in India. (AY. 2012-2013)
DCIT v. Dominos Pizza International Franchising Inc. (2018) 171 ITD 321 / 193 TTJ 963 / 166 DTR 201 (Mum.)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – For considering the permanent establishment in Article 5(2)(i) the threshold duration is 9 months – Income is not chargeable to tax in India-DTAA-India-Mauritius. [S. 90, Art. 5(2)(i), 7] 111
It has been held by the appellate Tribunal that PE establishment in Article 5(2)(i) of DTAA between India and Mauritius, the threshold duration is 9 months. Contract duration of both contracts are less than the said threshold and therefore, assessee does not have a PE as per that Article. Income is not chargeable to tax in India. (AY. 2006-07)
GIL Mauritius Holdings Ltd. v. Dy. DIT (IT) (2018) 196 TTJ 896 (Delhi)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Permanent Establishment – Global payment solutions facilitating use of electronic forms of Payment, ie by credit card, instead of cash and cheques – Banks and financial Institutions – There was a fixed place permanent establishment, service permanent establishment and dependent agent permanent establishment – On such attribution of income to the permanent establishment, the tax was required to be withheld at full applicable rate at which the non-resident is subjected to tax in India. Even automatic equipment like server can also create a permanent establishment and there was no requirement of human intervention – DTAA-India-Singapore. [Art. 5, 7, 12] 112
AAR held that the applicant had a permanent establishment in India under the provisions of article 5 of the DTAA in respect of the services rendered with regard to use of a global network and infrastructure to process card payment transactions for customers in India. There was a fixed place permanent establishment, service permanent establishment and dependent agent permanent establishment. On such attribution of income to the permanent establishment, the tax was required to be withheld at full applicable rate at which the non-resident is subjected to tax in India. Even automatic equipment like server can also create a permanent establishment and there was no requirement of human intervention.
Mastercard Asia Pacific Pte. Ltd. Singapore, In Re (2018) 406 ITR 43 / 303 CTR 305 / 167 DTR 321 (AAR)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Front-end fee payable by a customer in India, for appraisal of loan application carried out outside India, under financing arrangement with Applicant is not taxable as income from 'interest' and said fee is also not taxable as fee for technical services (FTS) under as they do not pass 'make available' test-Not liable to deduct tax at source – DTAA India-France. [S. 195, Art. 12, 13] 113
AAR held that Front-end fee payable by a customer in India, for appraisal of loan application carried out outside India, under financing arrangement with Applicant is

not taxable as income from 'interest' and said fee is also not taxable as fee for technical services (FTS) under as they do not pass 'make available' test.
Societe De Promotion Et De Participation Pour La Cooperation Economique, In re (2018) 256 Taxman 129 / 166 DTR 361 / 303 CTR 144 (AAR)

114 **S. 9(1)(i) : Income deemed to accrue or arise in India – Permanent establishment – Main business and revenue earning activities of assessee carried on in and from Saudi Arabia, and monitored by Saudi Arabian Ministry – Services carried on by Indian Company in nature of support services only and not constituting main business of Non-Resident – Non-Resident retaining with itself authority to finalise marketing strategies and terms of contracts directly with customers – Indian Company cannot be held to be a Permanent Establishment of Non-Resident – DTAA-India-Kingdom of Saudi Arabia. [Art, 5, 12]**
AAR held that, main business and revenue earning activities of assessee carried on in and from Saudi Arabia, and monitored by Saudi Arabian Ministry. Services carried on by Indian Company in nature of support services only and not constituting main business of Non-Resident. Non-Resident retaining with itself authority to finalise marketing strategies and terms of contracts directly with customers. Indian Company cannot be held to be a Permanent Establishment of Non-Resident. Considering the contract the AAR held that performance of service the Indian Company could not be termed as agent of the applicant, as this was done on its own behalf as per the role assigned to it. AAR also held that the applicant had given an undertaking in the question itself that the Indian company would be compensated on arm's length basis in accordance with the Indian transfer pricing laws and legislation.
Saudi Arabian Oil Company, In Re (2018) 405 ITR 83 / 303 CTR 225 / 167 DTR 185 (AAR)

115 **S. 9(1)(1) : Income deemed to accrue or arise in India – Permanent Establishment – Payment received by the applicant from the Indian hotel owner for provision of global reservation services ("CRS") would be chargeable to tax in India under S. 9(1)(1) read with articles 5 and 7 of the India-Luxemburg DTAA as business income and is attributable to the applicant's permanent establishment in India. Duty of Authority to look at all aspects of questions set forth to enable it to pronounce ruling on substance of questions posed. Giving Ruling on stream of income without regard to other business operations and streams of income leaving other provisions open for regular assessment -DTAA-India – Luxembourg. [Art. 5, 7, 12, R.12]**
AAR held that payment received by the applicant from the Indian hotel owner for provision of global reservation services ("CRS") would be chargeable to tax in India under S. 9(1)(1) read with articles 5 and 7 of the India-Luxemburg DTAA as business income and is attributable to the applicant's permanent establishment in India. In view of this the question whether these payments would be characterised as "royalty" or fees for technical services "becomes wholly academic and is therefore, not considered necessary to be answered. AAR also held that duty of Authority to look at all aspects of questions set forth to enable it to pronounce ruling on substance of questions posed.

Giving Ruling on stream of income without regard to other business operations and streams of income leaving other provisions open for regular assessment.
Frs Hotel Group (LUX) S. A.R.L., IN RE (2018) 404 ITR 676 / 167 DTR 57 / 256 Taxman 361 / 303 CTR 652 (AAR)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Title in equipment imported transferred outside India – Delivery of equipment outside India and consideration for supply of plant and equipment paid in Euros to Bank outside India – Not liable to deduct tax at source. [S. 195] 116
AAR held that, title in equipment imported transferred outside India delivery of equipment outside India and consideration for supply of plant and equipment paid in Euros to Bank outside India therefore the applicant is not liable to deduct tax at source.
Michelin Tamil Nadu Tyres P. Ltd., In Re. (2018) 401 ITR 164 / 301 CTR 397 / 163 DTR 385 (AAR)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Technical and equipment and services for events – DTAA-India-Belgium-Portugal. [S. 9(1)(vii), 90, 195, Art. 7, 12] 117
Applicant provided with exclusive office space as well as on-site space and lockable space for storing tools and equipment, identifiable place of business at its disposal, constitutes permanent establishment therefore income from activity is chargeable to tax in India as business profits.
Organising committee of commonwealth games not acquiring Know-how or ability to use it. "Make Available" clause is not satisfied. Income does not constitute royalty hence income is not taxable as fees for technical services
Production Resource Group, In Re v. (2018) 401 ITR 256 / 301 CTR 62 / 163 DTR 266 (AAR)

S. 9(1)(v) : Income deemed to accrue or arise in India – Interest – DTAA would apply only when recipient of interest was not having a permanent establishment in country where it had received interest – DTAA-India-France. [Art. 12] 118
Allowing the appeal of the assesse the Tribunal held that; provisions of sub-article (1) and (2) of article 12 of India-France DTAA would apply only when recipient of interest was not having a permanent establishment in country where it had received interest. (AY. 2005-06)
Credit Agricole Corporate & Investment Bank v. DIT (IT) (2018) 168 ITD 553 (Mum.)(Trib.)

S. 9(1)(v) : Income deemed to accrue or arise in India – Interest – Guarantee fee earned by the assessee on providing guarantee to various banks to extend credit facilities to its Indian subsidiaries would not fall within the term interest and also in view of clause 3 of Article 23 of the India UK treaty in the absence of any specific provision dealing with corporate or bank guarantee recharge, had to be taxed in India as 'Income from Other Sources'. Also amount paid by AE for seconding its employee 119

was taxable in India or not was remanded back to determine the nature of services rendered in light of the secondment agreement – DTAA-India-UK. [S. 9(1)(vii), Art. 23(3)]

The assessee provided guarantee to various banks to extend credit facilities to its Indian subsidiaries and the guarantee fee charged by it would not fall within expression of 'interest' and in view of clause (3) of article 23 India-UK Treaty, in absence of any specific provision dealing with corporate/bank guarantee recharge, same had to be taxed in India as 'Income from other sources'.

The assessee received certain amount from its subsidiary on account of services rendered by senior management employee seconded to it. The assessee submitted that the said amount represented expenditure incurred by them on employee and same was reimbursed by Indian entity whereas the AO took a view that seconded person was rendering specialist consultancy services for benefit of India AE and chargeable to tax in India. However, since the assessee failed to bring the secondment agreement and the salary reimbursement agreement on record, the matter was restored back to the AO to determine the nature of services rendered. (AY. 2011-12).

Johnson Matthey Plc v. Dy. CIT(IT) (2018) 161 DTR 132 / 191 TTJ 1 (Delhi)(Trib.)

120 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Fees for technical services – Developed basic engine and sent same to a non-resident company of Austria to design a new 3-valve cylinder head for improvement of fuel efficiency, performance and meeting Indian emission standard, payment made to Austrian company would not constitute royalty – DTAA-India-Austria. [Art. 6(2),12]**

Dismissing the appeal of the revenue the Court held that, Developed basic engine and sent same to a non-resident company of Austria to design a new 3-valve cylinder head for improvement of fuel efficiency, performance and meeting Indian emission standard, payment made to Austrian company would not constitute royalty. (AY. 2002-03)

DIT v. TVS Motors Co. Ltd. (2018) 259 Taxman 140 / (2019) 176 DTR 137 (Mad.)(HC)

121 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Deduction at source – Non-resident – Licence fee – Paid for copy righted article – Maintenance fees – Training fees – Not liable to deduct tax at source – DTAA-India-USA. [S. 195, 197, 201, Art.7, 12]**

AO held that foreign remittance made by assessee to Fair Isaac International Corpn. towards 'license fees' was by way of "royalty" was taxable in India as contemplated in Article 12 of the India-USA Tax Treaty as the assessee neither withheld tax while making remittance nor obtained a certificate for non-deduction of tax at source u/s. 197, AO treated the assessee as being in default within meaning of S.201 which was up held by the CIT(A). Tribunal held that the assessee has had made remittance for a non-exclusive and non-transferable license to use copyrighted article i.e "Blaze advisor" software by Fair Isaac International Corpn which had retained with itself copyrights of same, therefore, amount received by said company/ licensor from assessee did not give rise to any royalty income within meaning of Article 12(3) of the India-USA tax treaty. No liability was cast upon assessee to deduct tax at source at time of making of remittance, hence assessee could not be treated as an assessee in default within meaning

of S. 201. The said company did not have a PE in India, hence its business profits from rendering maintenance services also could not be brought to tax in India under Article 7 of India-USA Tax Treaty. Accordingly not liable to deduct tax at source. Rendering of training services by F company could also assume same character as that of software license receipts, and as such would be in nature of its business profits under Article 7 of the India, accordingly not liable to deduct tax at source. (AY. 2009-10)
Reliance General Insurance Co. Ltd. v. ITO (IT) (2018) 171 DTR 185 / 196 TTJ 244 / 67 ITR 26 (SN) (Mum.)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Purchase of software does not fall in realm of 'royalty' – No liability to withhold tax – Cannot be held to be in default – DTAA-India–USA-Singapore-Germany. [S. 90(2), 194, 195 201(1) (201(IA)] 122
Allowing the appeal of the assessee the Tribunal held that payment made for purchase of software was not royalty as per definition of 'royalty' under DTAA between India and USA, Germany and Singapore, since term 'royalty' under DTAA with these different countries had not been amended. Law could not compel a person to do something which was impossible to perform. Even if definition of 'royalty' under the Act stand amended but assessee was not liable to withhold tax on payments made to Non-resident entities on account of purchase of software. As on date of payment, assessee was not liable to withhold tax u/s 195 thus no liability could be fastened on assessee to deduct tax at source on basis of subsequent amendments made in the Act in relation to payments made to Non-resident, on date anterior to date of amendment, though retrospectively applied, Clarificatory nature of amendment to section 9(1)(vi) was applied. (AY. 2007-08)
Tata Technologies Ltd. v. Dy. CIT(IT) (2018) 193 TTJ 833 (Pune)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Amount paid by AE for sale of software is not royalty – Right to use copy right – Matter remanded – DTAA-India-Belgium. [S. 90, Art. 12(3)] 123
Tribunal held that there is a distinction between definition of royalty under the Act and royalty under India Belgium DTAA, however, neither the AO nor the DRP has done such exercise. In view of the aforesaid, the issue is restored to the AO for de novo adjudication after due opportunity of being heard to the assessee keeping in view the observations hereinabove. It was further held by the ITAT that, once in the case of the payer, the payment made to the assessee towards the sale of software is not in the nature of royalty, it cannot be treated as royalty in the case of assessee. (AY. 2014-15)
Agfa Healthcare N. V. v Dy. CIT (2018) 172 DTR 153 / 196 TTJ 690 (Mum.)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Distributor /reseller agreement and service agreement for support to end users and after sales services have to be read together to examine nature of income – Access to trademarks, intellectual property, technical knowhow, derivative works, brand features, confidential information, etc., while discharging its obligation under both agreements – Amount 124

payable under distributor /reseller agreement was 'Royalty' – DTAA-India-Ireland. [S. 195, 201, Art. 12]

Assessee entered into service agreement with its Irish group company ('X') for providing support services for placing advertisements on online portal of its parent company ('Y'). These services involved administering internal and government's guidelines in relation to global advertisements before the advertisements could be placed on Y's web properties and also customer support services post-sales. Thereafter, Assessee and 'X' entered into another agreement pursuant to which Assessee became an authorized distributor/reseller of online advertisement space in India. Assessee credited an amount as payable to X under distributor/reseller agreement. AO held that the amount payable was 'royalty' and tax was liable to be deducted. Held : It was observed that the distributor/reseller agreement obligated the assessee to provide certain services which was dischargeable only through services agreement. To execute services agreement, Assessee was given license to use confidential information, technical knowhow, trade mark, brand features, derivative works, etc. Tribunal held that consideration paid by Assessee was on account of use these intangibles is certainly 'royalty' u/s. 9(1)(vi) as well as under Article 12 of DTAA. (AY. 2007-08 to 2015-16)

Google India (P.) Ltd. v. Jt. DIT(IT) (2018) 194 TTJ 385 (Bang.)(Trib.)

125 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Assessee, a US company, was wholly owned subsidiary of an Indian company entered into an agreement with another US company to acquire patent and technical information related to manufacturing of two products belonging to said foreign company – Assessee got said products manufactured from its holding company in India and same were subsequently sold in US – This shows clear business connection with India-royalty paid by assessee to US company in terms of patent agreement was taxable in India under S. 9(1)(vi) of the Act.**

Where assessee, a US based company, entered into an agreement with another US company in terms of which it acquired patent and technical information related to manufacture of two products, in view of fact that assessee company got said products manufactured from its holding company in India which were subsequently sold in USA, it is a case where there is clear business connection with India. Thus, royalty paid by assessee to said US based company is taxable in India under S. 9(1)(vi) of the Act. (AY. 2009-10)

Dorf Ketal Chemicals LLC v. Dy. CIT (2018) 165 DTR 215 / 193 TTJ 390 (Mum.)(Trib.)

126 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty or business profits – Income from supply of software embedded in hardware – Income relatable to supply of software cannot be treated as royalty income. [S. 9(1)(i)]**

Tribunal held that though the income from supply of computer software has been brought within the ambit of 'royalty' by insertion of Explanation 4 to section 9(1)(vi) by Finance Act, 2012 w.e.f. 1st June, 1976, when a software is embedded in hardware and there is one composite price, the entire amount remains as business income and a part of the same cannot be considered as royalty. (AY. 2002-03 to 2006-07)

Bentley Nevada LLC v. Jt. DIT (IT) (2018) 164 DTR 1 / 192 TTJ 651 (Delhi)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Non-resident – Royalty – Wireless agreement with Tata and Reliance – Burden is on revenue to prove taxability in India-Not taxable in India-DTAA-India-USA. [S.9(1)(vi)(c), Art. 12 (7)(b)] 127

Allowing the appeal of the assessee the Tribunal held that; according to sub-clause (c) of section 9(1)(vi), in the case of a non-resident, the burden is on the Department to prove that the royalty is payable in respect of any right, property or information used or services utilised for the purpose of a business or profession carried on by such person in India or for the purpose of making or earning any income from any source in India. In the absence of any such evidence filed by the Department, the original equipment manufacturers were not carrying on any business in India. Even for some of the years it was shown that the original equipment manufacturers were carrying on business in India but not with respect to the code division multiple access patent technology, those were all the evidence showing the business of the original equipment manufacturers for GSM technology. Therefore there was no evidence to suggest that the original equipment manufacturers who had made payments of royalty, were carrying on any business in India of the code division multiple access patent technology leading to their taxability in India. Therefore royalty income of the assessee earned from the original equipment manufacturers situated outside India for the patents licensed to the original equipment manufacturers for manufacture of the code division multiple access network outside India was not chargeable to tax under section 9(1)(vi)(c). As the revenue was not chargeable to tax in India in terms of the Act the question of looking at the provision of article 12(7) of the Agreement did not arise. (AY. 2009-10 to 2012-13)

Qualcomm Incorporated v. DIT (2018) 65 ITR 248 (Delhi)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Domain name is an intangible asset which is similar to trademark. Consequently, income from services rendered in connection with such domain name registration is assessable as "royalty" – DTAA-India-USA. [S. 115A, Art. 12] 128

Dismissing the appeal of the assesse the Tribunal held that ;Domain name is an intangible asset which is similar to trademark. Consequently, income from services rendered in connection with such domain name registration is assessable as "royalty", therefore, the charges received by the assessee for services rendered in respect of domain name is royalty within the meaning of Clause (vi) read with Clause (iii) of Explanation 2 to Section 9(1) of Income-tax Act. (AY. 2013-14)

Godaddy. com LLC v. ACIT (2018) 193 TTJ 137 / 170 ITD 217 / 165 DTR 57 (Delhi)(Trib.), www.itatonline.org

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Professional charges paid by assessee to a non-resident company located in Bangladesh could not be brought to tax in India as royalty – DTAA-India-Bangladesh. [Art.13(2)] 129

Professional charges paid by assessee to a non-resident company located in Bangladesh could not be brought to tax in India as royalty. Followed order of earlier year. (AY. 2005-06 to 2006-07)

DCIT v. KPMG Advisory Services (P.) Ltd. (2018) 168 ITD 34 (Mum.)(Trib.)

130 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Payment of SAP charges made to Associated enterprise for use of licensed software was liable to tax as royalty in India and liable to deduct tax at source – DTAA-India-Germany. [S. 195, 201(1), 201(IA), Art. 12]**

Dismissing the appeal of the assessee the Tribunal held that; payment of SAP charges made to Associated enterprise for use of licensed software was correctly regarded as royalty by the lower authorities according to article 12 of the DTAA. In view of this, the above payment made by the assessee to its holding company is chargeable to tax as royalty according to Act as well as according to the double taxation avoidance agreement. Therefore, on such payment assessee should have deducted tax at source under the provisions of S. 195 at the beneficial rate of 10 per cent provided under the double taxation avoidance agreement. In view of this, the order passed by the Assessing Officer is correctly confirmed by the CIT(A) (AY. 2000-01 to 2006-07)

SMS Iron Technology (P.) Ltd. v. ITO (2018) 168 ITD 376 (Delhi)(Trib.)

131 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Transfer of technical knowledge, experience, skill, Know-how or process or consists of development and transfer of technical plan or design – Payment to us company for providing management, financial, legal, public relations, treasury and risk management services is not for included services – Payment is not taxable in India – When DTAA is more beneficial than income tax Act, DTAA is applicable – DTAA-India – USA. [S. 90, Art.12]**

Allowing the appeal of the assessee the Court held that; the DTAA having defined "included services", which was technical and consultancy services; but specifically having defined it quite distinctly from the all inclusive definition in the Income-tax Act, even by section 90(3) the definition in the DTAA is to be adopted to decide taxation or its avoidance. There was no technology transfer ; nor was there a plan or strategy relating to management, finance, legal, public relations or risk management transferred to the assessee. The services promised by the non-resident company were only to advice on such aspects as were specifically referred to in the agreement. The non-resident company only assisted the Indian company in making the correct decisions on such aspects as were specifically referred to in the agreement, as and when such advice was required. There was no transfer of technology or know-how, even on managerial, financial, legal or risk management aspects ; which would be available for the Indian company to be applied without the hands-on advice offered by the U. S. company. The advice offered on such aspects would have to be on a factual basis with respect to the problems arising at various points of time and there was no transfer of technical or other know-how to the Indian company. Particularly under the double taxation avoidance agreement, none of these aspects on which the U. S. company had promised to advice the Indian company would fall under the "included services" and the "fees for included services" would not be taxable in India. (AY.2007-08)

US Technology Resources (Pvt.) Ltd. v. CIT (2018) 407 ITR 327 / 171 DTR 225 (Ker.)(HC)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Services of Crew under separate agreement – Matter remanded to Tribunal – DTAA-India-Germany. [S. 10(15A), Art. 111] 132

Court held that the Tribunal has not examined the applicability of DTAA and service agreement. As there was no discussion in the orders of the Tribunal whether the payments made under the technical support agreement or the crew lease agreements were not payments for technical services, apart from an a priori assumption that the question of taxation did not arise if there was no permanent establishment. Accordingly the orders were set aside and remanded to Tribunal.

DIT (Inv) v. Modiluft Ltd. (2018) 404 ITR 228 / 255 Taxman 481 / 169 DTR 289 (Delhi) (HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – fee for technical services – Income from offshore sale of products could not be construed to be FTS or royalty liable to tax in India – DTAA-India-Australia. [Art. 12(3)] 133

Income from offshore sale of products could not be construed to be FTS or royalty liable to tax in India. Repair work undertaken by assessee at its overseas workstations located outside India and since it was in connection with supply of plant and machinery on hire to be used for extraction or production of mineral oils, same would clearly fall within sweep of exclusion contemplated in Explanation 2 to S. 9(1)(vii).Since rendering of repair work by assessee outside India would not enable ONGC personnel to make use of any technical knowledge, experience in future, amount received by assessee could not be brought to tax as 'royalty' or 'fee for technical service' under article 12 (3) of India-Australia DTAA. Since various activities undertaken by assessee under contract with ONGC were seperate, divisible and independent of each other, taxability of revenue from such activities was required to be undertaken separately. (AY.2011-12)

Cameron Australasia Pty. Ltd. v. Dy.CIT (2018) 66 ITR 262 / 196 TTJ 39 / 96 taxmann.com 331 (2019) 175 DTR 386 (Mum.)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – business of providing transportation, logistics, and supply chain solutions – Issue was sent back to for deciding whether services involved in the agreement satisfy 'make Available' criteria or not – DTAA-India-Singapore. [Art.12(4)] 134

Tribunal held that the assessee had not provided complete details, accordingly in the interest of justice, whole issue set back to file of AO for deciding whether services involved in the agreement satisfy ' make Available' criteria or not. (AY. 2010-11)

Ceva Asia Pacific Holdings Co. Pte Ltd. (2018) 192 TTJ 1 (UO) (Dehil)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Income arising from rendering of advisory services in a foreign country cannot be taxed as fees for technical service where the assesse does not have a permanent establishment in India – Reimbursement cannot be asseees as income – DTAA-India-USA. [S. 92, Art, 7,12] 135

Tribunal held that, perusal of clauses of Agreement between assessee and TIL clearly showed that they were purely in nature of advisory services. Accordingly the Income

arising from rendering of advisory services in a foreign country cannot be taxed as fees for technical service where the assesse does not have a permanent establishment in India. Reimbursement cannot be asseees as income. (AY.2002-03, 2003-04)
Add. CIT (I) v. Timken Company (2018) 192 TTJ 823 (Kol.)(Trib.)

136 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Fees for Services received by UAE Company from Indian company was business income in hands of said company as per DTAA between India and UAE and in absence of any PE of any said company in India, business income could not be taxed in India – DTAA-India-UAE. [Art. 5, 7, 12]**
Assessee, UAE based company provided management and technical consultancy services to its Indian AE and received a fee. It did not offer said fee for taxation on ground that DTAA does not have any specific clause on taxability of fees for technical services and, hence, said receipt was taxable as business income. Since employees of assessee had worked for an aggregate period of 156 solar days and, thus, period of working was less than 9 months, assessee had no PE in India, and, consequently, impugned receipt was not taxable in India. (AY. 2011-2012)
Booz & Company (ME) FZ-LLC v. Dy. DIT(IT) (2018) 192 TTJ 33 (UO) (Mum.)(Trib.)

137 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – A Limited Liability Partnership incorporated under Laws of United Kingdom (UK), providing legal advisory services to its clients worldwide including India – By rendering those services, assessee did not 'make available' any technical knowledge, know-how or experience to its clients – Amount received by it was not taxable in India as fee for technical services – Article 15 of India-UK DTAA applies to determine taxable income in hands of individual and not other persons, assessee being a partnership firm, amount of fee received by assessee for rendering legal advisory services was not taxable in India – Reimbursement of expenses being of routine nature and, moreover, there was no mark up involved amount in question could not be brought to tax as assessee's income – DTAA-India-UK. [S. 90, Art. 5(2)(k), 7, 13, 15]**
A Limited Liability Partnership incorporated under Laws of United Kingdom (UK), providing legal advisory services to its clients worldwide including India. By rendering those services, assessee did not 'make available' any technical knowledge, know-how or experience to its clients. Accordingly the amount received by it was not taxable in India as fee for technical services-Article 15 of India-UK DTAA applies to determine taxable income in hands of individual and not other persons, assessee being a partnership firm, impugned amount of fee received by assessee for rendering legal advisory services was not taxable in India. Reimbursement of expenses being of routine nature and, moreover, there was no mark up involved amount in question could not be brought to tax as assessee's income. (AY.2012-13)
Linklaters LLP v. DCIT (2018) 172 ITD 459 / 171 DTR 19 (Mum.)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services – Referral fee earned by the assessee is held to be not taxable in India – DTAA-India-Switzerland. [Art. 7] 138

The Tribunal held that the referral fee earned by the assessee could not be construed to be attributable to assessee's PE in India. Therefore, the same is not taxable in India as per Art. 7 of DTAA between India & Switzerland. The Tribunal further held that since the appeal filed by the revenue is dismissed the appeal & C.O. filed by the assessee is infructuous. (AY. 2011-12)

Credit Suisse AG v. Dy. CIT (2018) 192 TTJ 67 (UO)(Mum.)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Training services rendered by assessee to Indian Hotels could not be held to be technical services, nor same could have been characterized as 'ancillary and subsidiary' services – DTAA-India-Netherland. [Art.12(5)(a)] 139

Tribunal held that consideration received for providing training services to Indian Hotels could not be held to be technical services, nor same could have been characterized as 'ancillary and subsidiary' services. (AY.2009-10)

Renaissance Services BV. v. DIT (IT) (2018) 171 ITD 381 / 171 DTR 30 / 195 TTJ 1049 (Mum.)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Inspection and survey of imported and exported cargo and certifying in relation to quality and price – No technical knowledge, experience, skill, know – how or processes made available to recipient of service – Not chargeable to tax in India-DTAA-India-UK. [Art.13(4)(c)] 140

Tribunal held that, inspection and survey of imported and exported cargo and certifying in relation to quality and price. No technical knowledge, experience, skill, know-how or processes made available to recipient of service. Not chargeable to tax in India (AY. 2010-11 2014-15)

Inspectorate International Ltd. v. ACIT (2018) 65 ITR 333 / 171 ITD 630 (Delhi)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Payments made towards allocation of expenses cannot be treated as fees for technical services – DTAA-India-France. [Art. 13] 141

Allowing the appeal of the assesse, the Tribunal held that; Payments made towards allocation of expenses cannot be treated as fees for technical services (AY. 2005-06)

Credit Agricole Corporate & Investment Bank v. DIT (IT) (2018) 168 ITD 553 (Mum.)(Trib.)

S. 10(6A) : Foreign company – Contract approved by Indian Government – Royalty or fees for technical services – Grossing up amount – Entitle to exemption – Reversal of provision for royalty – Deletion of addition is held to be justified. [S. 143(3), 154] 142

Dismissing the appeal of the revenue the Tribunal held that following the order for earlier years the deduction was allowed. Tribunal also held that in totality of above said facts and circumstances, what had to be accounted for by assessee was revised royalty and not royalty which was provision made during year before finalization of figures of

sales. Order of DRP in deleting proposed addition was upheld. Reversal of provision for royalty – Deletion of addition is held to be justified. (AY.2010-11)
Dy. CIT v. Skoda Auto A.S. (2018) 168 DTR 465 / 195 TTJ 961 (Pune)(Trib.)

143 **S. 10(10A) : Commutation of pension – Employees of statutory corporations cannot be regarded as employees of State or Central Government and exemption is not available, however as the assessee was under *bona fide* belief and discharged its obligation u/s 192, proceedings u/s 201(1), 201(IA) were quashed [S. 192, 201(1), 201(IA)]**
Tribunal held that assessee being a statutory corporation its employees could not be regarded as State or Central Government employees and, therefore, exemption under S. 10(10AA)(i) was not available and assessee was liable to deduct tax at source. However, since the assessee was under bona fide belief that its employees were to be regarded as employees of State Government and that its employees were entitled to exemption of entire sum of unutilized leave encashment under S. 10(10AA)(i), assessee had discharged its obligation under S. 192, proceedings under S. 201(1) and 201(1A) were to be quashed. (AY.2013-14, 2014-15)
KPTCL v. ITO (2018) 170 ITD 587 (Bang.)(Trib.)

144 **S. 10(10B) : Compensation – Workman – De facto termination of employment on payment of agreed compensation – Eligible for exemption – Quantum to be examined by the AO.**
Tribunal held that; the order passed by the Industrial Tribunal was admittedly under the Industrial Disputes Act 1947, and once it was held that the order stood modified so as to take into account the payment of ₹ 6.50 lakhs by the employer, the payment could not but be treated as a compensation under the Industrial Disputes Act, 1947. The first limb of section 10(10B) was thus satisfied. However, that one of the important restrictions on the amount eligible for exemption under section 10(10B) was that it should not exceed fifteen days' average pay for every completed year of services or part thereof in excess of six months. This aspect of the matter had not been examined. Therefore the claim in principle was upheld but the matter was remitted to the Assessing Officer for examination of the quantification. (AY. 2008-09)
Vishnu Mohan T. Nair v. ITO (2018) 61 ITR 796 / 168 ITD 469 / 192 TTJ 872 / 165 DTR 17 (Ahd.)(Trib.)

145 **S. 10(10C) : Public sector companies – Voluntary retirement scheme – ICICI Bank – Early Retirement Option Scheme – Entitled to exemption even though the assessee had filed revised return under S. 139(5), for relevant year beyond prescribed time period. [S. 139(5)]**
Court held that, assessee, who retired from ICICI Bank under early retirement option scheme, is entitled to benefit of exemption under S. 10(10C), even though the assessee had filed revised return under S. 139(5), for relevant year beyond prescribed time period. (AY. 2004-05)
N. Annamalai v. PCIT (2018) 257 Taxman 192 (Mad.)(HC)

S. 10(10C) : Public sector companies – Voluntary retirement scheme – Employee of ICICI Bank – Entitle for exemption. [R. 2BA] 146

Allowing the appeal of the assessee the Court held that Voluntary Retirement Scheme was put to judicial scrutiny in view of Rule 2BA. In *CIT v. Koodathil Kallyatan Ambujakshan (2008) 219 CTR 80 / (2009) 309 ITR 113 (Bom.)(HC)*, held that exemption u/s 10(10C) was applicable to employees, who took benefit of Scheme framed by RBI. Against said order no appeal was preferred by Department and hence, same had attained finality. Accordingly the assessee is eligible for exemption u/s 10(10C) and Rule 2BA could not exceed provisions of Act. Also relied *Chandra Ranganathn & Co. v. CIT dt. 21-10-2009 CA. NO 6997-7002 of 2009 (SC)*.

R. M. Lakshmanan v. CIT (A) (2018) 170 DTR 140 (Mad.)(HC)

S. 10(10C) : Public sector companies – Voluntary retirement scheme – Employee of bank having opted for voluntary retirement under Voluntary Retirement Scheme was eligible for exemption. 147

Allowing the petition the Court held that ; employee of bank having opted for voluntary retirement under Voluntary Retirement Scheme was eligible for exemption. Followed *Chandra Ranganathan v. CIT (2010) 326 ITR 49 (SC)* and *CIT v. Koodathil Kalyatan Ambuakshan (2009) 309 ITR 113 (Bom.) (HC)*

A. Kumarappan v. CIT (2018) 257 Taxman 318 (Mad.)(HC)

R. Banumurthy v. CIT (2018) 257 Taxman 578 (Mad.)(HC)

S 10(13A) : Exemption – Special allowance – Employees claiming interest on housing loan and also exemption on account of house rent allowance are governed by two independent provisions – Entitle for exemption. [S. 22, 192] 148

Some employees of the assessee had claimed deduction on account of interest on housing loan and also exemption on account of house rent allowance u/s. 10 of the Act for payment made on account of rent. This was not accepted by the AO as the deduction, according to him, resulted in allowing double benefit to the concerned employees which was not permissible. The CIT(A) held that these two benefits were governed by two independent provisions and since the concerned employees had satisfied the conditions for claiming the benefits under these two independent provisions, there was no violation on the part of the assessee. Order of CIT(A) is affirmed by the Tribunal. (AY. 2012-13)

ACIT v. Shri SDV International Logistics Ltd. (2018) 68 ITR 35 (SN) (Kol.)(Trib.)

S. 10(14) : Special allowance or benefit – Employees of Life Insurance Corporation – Fixed conveyance allowance, additional conveyance allowance and expenses under head reimbursement of expenses scheme is entitled to exemption – Tax deducted at source to be reimbursed to the employees and benefit under S. 89 to be extended on reimbursement of deduced amount. [S. 10(14)(ii), 89, 192, R. 2BB] 149

Allowing the petitions the Court held that, fixed conveyance allowance, additional conveyance allowance and expenses under head reimbursement of expenses scheme is

entitled to exemption. Tax deducted at source to be reimbursed to the employees and benefit under S. 89 to be extended on reimbursement of deduced amount.
K. S. Chaudhary and others v. Life Insurance Corporation of India (2018) 409 ITR 258 (Delhi)(HC)
Rajesh Kumar Gupta v. Senior Divisional Manager, Life Insurance Corporation of India (2018) 409 ITR 258 (Delhi)(HC)

150 **S. 10(14) : Special allowance or benefit – Allowance received by employee to cover expenses incurred wholly in performance of duties – Extra payment to meet costs in Foreign location is not entitled for exemption. [S. 15, 17, 192]**
Dismissing the appeal of the assessee the Court held that; if an allowance is paid to the assessee to meet his personal expenses at the place where the duties of his office are ordinarily performed, it is not exempt under S. 10(14) of the Act. Allowance such as city compensatory allowance necessitated by the high cost of living in big cities and not granted with reference to the nature of duties but exclusively with reference to the place of posting is not exempt from tax under S. 10(14) of the Act. For being exempt under S 10(14) of the Act, an allowance should have specifically been granted wholly in the performance of duties. (AY. 2001-02 to 2003-04)
Sun Outsourcing Solutions P. Ltd. v. CIT (2018) 407 ITR 480 / 171 DTR 358 / 357 CTR 537 (T&AP)(HC)

151 **S. 10(20) : Local authority – Urban improvement Trust constituted under Rajasthan Urban Improvement Act, 1959 is not local authority, hence not entitle to exemption – The functional test" as laid down in *UOI v. R.C. Jain, (1981) 2 SCC 308* is not applicable after amendment of section 10 (20) of the Act by Finance Act, 2002. [S. 10(20A]**
Allowing the appeal of the revenue the Court held that ; Urban improvement Trust constituted under Rajasthan Urban Improvement Act, 1959 is not local authority , hence not entitle to exemption. The High Court based its decision on the fact that functions carried out by the assessee are statutory functions and it is carrying on the functions for the benefit of the State Government for urban development. The said reasoning cannot lead to the conclusion that it is a Municipal Committee within the meaning of Section 10(20) Explanation Clause (iii). The High Court has not adverted to the relevant facts and circumstances and without considering the relevant aspects has arrived at erroneous conclusions. Judgments of the High Court are unsustainable. The functional test" as laid down in *UOI v. R.C. Jain, (1981) 2 SCC 308* is not applicable after amendment of section 10 (20) of the Act by Finance Act, 2002. (AY. 2003-04 to 2009-10)
ITO v. Urban Improvement Trust (2018) 409 ITR 1 / 259 Taxman 61 / 171 DTR 81 / 305 CTR 121 (SC), www.itatonline.org
Editorial : From the Judgments, CIT v. Urban Improvement Trust, Alwar (2018) 171 DTR 98 / 305 CTR 138(Raj.) (HC)/ Urban Improvement Trust, Kota v. ITO (2018) 171 DTR 98/ 305 CTR 138 (Raj.) (HC)/ Urban Improvement Trust, Kota v. ITO (2018) 171 DTR 109/ 305 CTR 149 (Raj.) (HC)

S. 10(20) : Local authority – New Okhla Industrial Development Authority (NOIDA) is not local authority – Hence is not exempted from payment of income-tax under S. 10(20) and S. 10(20A). Followed, New Okhla Industrial Development Authority (NOIDA) v. CCIT (2018) 406 ITR 178/ 95 taxmann.com 58 / 303 CTR 448 / 168 DTR 48 (SC) 152

New Okhla Industrial Development Authority (NOIDA) is not local authority. Hence is not exempted from payment of income-tax under S. 10(20) and S. 10(20A) of the Act Followed, *New Okhla Industrial Development Authority (NOIDA) v. CCIT (2018) 406 ITR 178/95 taxmann.com 58 / 303 CTR 448 / 168 DTR 48 (SC)*. (AY. 2010-11, 2011-12)

New Okhla Industrial Development Authority (NOIDA)(No.2) v. CCIT (2018) 406 ITR 209 / 168 DTR 145 / 257 Taxman 3 / 303 CTR 553 (SC)

CIT v. HDFC Ltd. (2018) 406 ITR 209 / 168 DTR 145 / 303 CTR 553 (SC)

CIT v. Rajesh Projects (India) (P) Ltd. (2018) 406 ITR 209 / 168 DTR 145 / 257 Taxman 3 / 303 CTR 553 (SC)

Greater Noida Industrial Development Authority v. ACIT (2018) 406 ITR 209 / 168 DTR 145 / 303 CTR 553 (SC)

ITO v. United Bank of India (2018) 406 ITR 209 / 168 DTR 145 / 303 CTR 553 (SC)

S. 10(20) : Local authority – Industrial township referred to in proviso to Article 243Q is not equivalent to a "municipality" and a "local authority" – Income is not entitle for exemption. [S. 10(20A), Art. 243P, 243Q] 153

Dismissing the appeal of the assessee, the Court held that New Okhla Industrial Development Authority (NOIDA) is not covered by the word /expression of 'Municipality' in clause (e) of Article 243P. It is neither included in sub-clause (ii) of Explanation, nor it covered by S. 10(20) except clause (ii). NOIDA was constituted under S. 3 of the U.P. Industrial Area Development Act, 1976 by notification dt. 17-4-1976. The Act was enacted by State Legislature to provide for the constitution of an Authority for the development of certain areas in the State of UP in to industrial and urban township, under the 1976 Act, various functions had been entrusted to the Authorities. Thus NOIDA is not a local authority, hence is not exempted from payment of income-tax under S. 10(20) and S. 10(20A) of the Act. (AY.2003-04, 2004-05)

New Okhla Industrial Development Authority (NOIDA) (No. 1) v. CCIT (2018) 406 ITR 178 / 256 Taxman 396 / 303 CTR 448 / 168 DTR 48 (SC) www.itatonlin.org

S. 10(23) : Sports association – Pendency of application for notification – AO is directed to consider assessee's claim of exemption in case a notification is issued by appropriate authority for the relevant assessment year. [S. 12A] 154

Tribunal held that application for issuance of notification under S. 10(23) for the relevant assessment year is pending before appropriate authority, AO is directed to consider assessee's claim of exemption in case a notification is issued for the relevant year by appropriate authority. (AY. 1999-2000)

Board of Control for Cricket in India v. ITO (2018) 196 TTJ 1067 / (2019) 174 ITD 159 (Mum.)(Trib.)

155 **S. 10(23A) : Professional association or institution – Approval for exemption granted by Central Government to undivided State Bar Council of Madhya Pradesh vide notification dated 09-08-1966 – Notification and exemption would equally apply to the State Bar Council of Chattisgarh by virtue of provisions of S. 78 and 79 of the Madhya Pradesh Reorganisation Act, 2000 ('the Act of 2000') wef 01-11-2000.**
On Writ filed, Court held that notification dated August 9, 1966 granting exemption to the erstwhile State Bar Council of Madhya Pradesh, is law within the meaning of S. 2(f) of the Act of 2000 which was in existence earlier for exempting erstwhile State Bar Council of Madhya Pradesh and would now also be applicable to the State Bar Council of Chhattisgarh (on division), by virtue of S. 78 and 79 of the Act of 2000, till it is modified or altered by competent authority w.e.f. 01-11-2000. (AY. 2009-2010)
State Bar Council of Chhattisgarh v. CIT (2018) 166 DTR 185 / 303 CTR 499 (Chhattisgarh)(HC)

156 **S. 10(23C) : Educational institution – Mere spending a meagre amount, out of total income derived by trust, towards distribution of clothes to relatives of students – Exemption cannot be denied. [S. 10(23C)(iiiad), 12A, 12AA]**
Assessee-trust was established predominantly with an object of providing education to all sections of society. AO rejected assessee's claim holding that apart from educational activity, assessee was also doing other charitable acts like providing clothing and food to parents of students. On writ the court held that mere spending a meagre amount, out of total income derived by trust, towards distribution of clothes to relatives of students exemption cannot be denied. (AY. 2014-15)
Sri Sai Educational Trust v. CIT(E) (2019) 259 Taxman 472 (Mad.)(HC)

157 **S. 10(23C) : Educational institution – Accumulation income – Educational purposes – Assessee – School's utilization of the amount of receipts (exceeding one crore) for purchase of land for further extension of school building, is to be considered for educational purpose only, hence, exemption is eligible. [S. 10(23C)(vi)]**
On appeal, the High Court held that the amount of receipt during the assessment years in question exceeded more than ₹ 1 crore, and the assessee – school utilised the amount for purchase of land for further extension of school building, which was for educational purpose only; exemption under S. 10(23C)(vi) was rightly granted to the assessee. (AY. 2015-2016)
CIT (E) v. Managing Committee, Arya High School (2018) 304 CTR 548 / 168 DTR 257 (P&H)(HC)

158 **S. 10(23C) : Educational institution – Registration u/s. 12AA is not mandatory to claim exemption. [S. 12AA, 10 (23C(iiiad)]**
Dismissing the appeal of the revenue the Court held that,obtaining registration under S. 12AA is not mandatory to claim exemption under S. 10(23C)(iiiad) of the Act. (AY. 2007-08)
CIT v. Shanti Devi Educational Trust (2018) 409 ITR 522 / (2019) 261 Taxman 339 (P&H)(HC)
Editorial : SLP of revenue is dismissed, CIT v. Shanti Devi Educational Trust (2018) 405 ITR 20 (St.)

S. 10(23C) : Educational institution – Exemption cannot be denied only on the ground that institution has earned surplus when the institution is solely for educational purposes. 159

Allowing the petition the Court held that; the assessee was a society registered under the Societies Registration Act, 1860. Its main purpose, aims and objects, as stated in its memorandum of association was to impart education along with ancillary objects. Accordingly the denial of exemption was not justified only on the ground that institution has earned surplus.

J. B. Memorial Manas Academy Management Society v. CIT (2018) 408 ITR 255 / 259 Taxman 537 (Uttarakhand)(HC)

S. 10(23C) : Educational institution – Notice issued by authority other than prescribed authority – Order withdrawing approval is held to be invalid. [S. 11(5), 13] 160

Dismissing the appeal of the revenue the Court held that ; notice issued by authority other than prescribed authority hence the order withdrawing approval is held to be invalid.

CIT v. Modern School Society (2018) 407 ITR 228 (Raj.)(HC)

S. 10(23C) : Educational institution – Disproportionate fee structure – Maximum money for purpose of expansion of institution – Matter remanded to decide the issue after considering the ratio in *American Hotel & Lodging Association Institute v. CBDT (2008) 301 ITR 86 (SC)* and *Queen's Educational Society v. CIT(2015) 372 ITR 699 (SC).[S. 10(23C)(vi)*] 161

Allowing the appeal of the revenue against the order of single Judge the Court held that, assessee is engaged in imparting education, application for exemption under S. 10(23C)(vi) was allowed without considering revenue's objection that assessee had disproportionate fee structure which was devised to earn maximum money for purpose of expansion of institution which did not fall within ambit of charitable activity, impugned order was to be set aside and, matter was to be remanded back for disposal afresh after considering the ratio in *American Hotel & Lodging Association Institute v. CBDT (2008) 301 ITR 86 (SC)* and *Queen's Educational Society v. CIT (2015) 372 ITR 699 (SC)*

CIT v. J. B. Memorial Manas Academy Management Society (2018) 256 Taxman 191 / 303 CTR 811 / 166 DTR 329 / (2019) 415 ITR 271 (Uttarakhand)(HC)

S. 10(23C) : Educational institution – Withdrawal of approval – Collection of capitation fee – Illegal activities – ₹ 52 crores was collected as anonymous donations – Sham or bogus trusts cannot be held to be entitle to exemption. 162

Dismissing the petition the Court held that ; withdrawal of approval is held to be justified, as the Trust has collected capitation fee, carried out illegal activities and ₹ 52 crores was collected as anonymous donations. Court also observed that the Trust has acted against public policy by collecting capitalisation fee which is contrary to the direction of Supreme Court. Court also held that Trust is a sham or bogus trusts cannot be held to be entitle to exemption.

Navodya Education Trust v. UOI (2018) 405 ITR 30 / 253 Taxman 412 / 302 CTR 381 / 165 DTR 16 (Karn.)(HC)

163 **S. 10(23C) : Educational institution – Kindergarten Class – Though the provisions of right to education Act is not applicable to assessee exemption cannot be denied. [S. 10(23)(vi), Right of Children to Free and Compulsory education Act, 2009]**
Dismissing the appeal of the revenue the Court held that; Though the provisions of right to education Act is not applicable to assessee as its school is only from class play to class K. G, exemption cannot be denied. (AY. 2013-14)
CIT v. Infant Jesus Education Society (2018) 404 ITR 85 (P&H)(HC)

164 **S. 10(23C) : Educational institution – Merely on the ground that surplus of society was utilized for expansion of school building, exemption cannot be denied. [S. 10(23C)(vi)]**
Allowing the petition the Court held that merely because surplus earned by assessee educational institution was used for expansion of school building etc., it could not be held that assessee did not exist solely for educational purpose. Accordingly the denial of exemption was held to be not justified.
Mallikarjun School Society v. CCIT (2018) 254 Taxman 170 / 166 DTR 338 / 304 CTR 887 (Uttarakhand)(HC)

165 **S. 10(23C) : Exemption – Approval granted is held to be valid till it is withdrawn – Amount spent on the object was held to be allowable. [S. 10(23C)(iv)]**
Dismissing the appeal of the revenue the Court held that the, approval granted is held to be valid till it is withdrawn. Accordingly the amount spent on the object was held to be allowable. (AY. 2012-13)
CIT v. Haryana State Pollution Control Board (2018) 403 ITR 337 (P&H)(HC)

166 **S. 10(23C) : Educational institution – Merely because surplus profit earned in educational activities did not automatically presuppose a business activity that invalidated the exemption as long as surplus was utilised for charitable purposes. [S. 2(15), 10(23C)(via), 11(4A)]**
Dismissing the appeals and allowing the petition, the court held that, Merely because surplus profit earned in educational activities did not automatically presuppose a business activity that invalidated the exemption as long as surplus was utilised for charitable purposes. The assessee which maintained its eleven schools and the 120 satellite schools in furtherance of the education joint venture agreements with an educational purpose, that also was qualified as "charitable purpose" within the meaning of S. 2(15) and was not in contravention of S. 11(4A). (AY. 1998-99, 2008-09)
DIT v. Delhi Public School Society (2018) 403 ITR 49 / 165 DTR 257 / 255 Taxman 78 / 305 CTR 500 (Delhi) (HC)
Editorial : SLP of revenue is dismissed, DIT (E) v. Delhi Public Schools Society (2018) 259 Taxman 404 / (2019) 260 Taxman 88 (SC)

167 **S. 10(23C) : Educational institution – Application for exemption was made before wrong authority – Authority concerned should have forwarded to the correct authority instead of rejecting the said application after enquiries. [S. 10(23C) (iv)]**
Allowing the petition the Court held that; when the assessee filed the application before the wrong authority, it should have been returned. Instead of returning the assessee's

application, an enquiry was held and additional material was sought, thereby making the assessee believe that its application was pending consideration. Therefore, on the facts of the case, the blame was equally apportionable to both parties. If the assessee were entitled to exemption on the merits, it would be iniquitous to deny consideration of its application, merely because it was not addressed to the correct authority. Therefore, it would be in the fitness of things, if the application dated September 30, 2015, filed by the assessee were treated as the one filed before the competent authority, i.e., the Commissioner (E). The Assistant Commissioner (E) was to forward the application filed by the assessee for exemption in form 56 along with the enclosures to the Commissioner (E) and the Commissioner (E) shall hold an enquiry, pass an appropriate order and communicate it to the assessee. (AY. 2015-16)
Telangana State Pollution Control Board v. CIT (2018) 402 ITR 267 / 166 DTR 117 / 302 CTR 509 (T&AP) (HC)

S. 10(23C) : Educational institution – Delay in disposal of application – Exemption cannot be denied for the AY.2016-17 [S. 10(23C)(vi)] 168
On account of the inordinate delay on the part of the Commissioner in granting approval to the assessee filed the return claiming exemption for the AY. 2016 17, however the CIT(E) has granted exemption from the AY. 2017 18 onwards. Tribunal held that,the CIT (E) was not justified in refusing the approval for the AY. 2016-17. (AY. 2016 – 2017)
C. M. Public School v. CIT (2018) 64 ITR 573 (Chd)(Trib.)

S. 10(23C) : Educational institution – Society running a non profit educational institution – Exemption cannot be denied merely because assessee was simultaneously running profitable hotel, when the exemption was claimed only for educational activities – Matter remanded. [S. 10(23)(iiiab)] 169
Allowing the appeal of the assessee the Tribunal held that; Society running a non profit educational institution, exemption cannot be denied merely because assessee was simultaneously running profitable hotel, when the exemption was claimed only for educational activities. Matter remanded. (AY. 2013-14)
Chandigarh Institute of Hotel Management & Catering Technology (CIHMCT) v. DCIT (2018) 172 ITD 356 (Chd.)(Trib.)

S. 10(23C) : Educational institution – Object clause – Wrong jurisdiction – When trust filed affidavit stating that the trust was created with main object of educating public by establishing schools, technical colleges and other educational institutes and it was not doing any activities other than educational services, registration cannot be denied merely because aims and object of assessee – Trust included some clauses which were not for purposes of education. [S. 10(23C)(vi)] 170
Tribunal held that; when trust filed affidavit stating that the trust was created with main object of educating public by establishing schools, technical colleges and other educational institutes and it was not doing any activities other than educational services, registration cannot be denied merely because aims and object of assessee-trust included some clauses which were not for purposes of education. Tribunal also held

that application for exemption cannot be denied as the society is having its registered office at Chennai and having got its registration under section 12AA from Chennai, instant application was filed at wrong jurisdiction. Tribunal held that it is appropriate to remand back the case to the file of Commissioner (E) to decide afresh within 3 months of the order.
St. Mary's Education Trust. v. CIT (2018) 172 ITD 513 / 172 DTR 321 / 196 TTJ 1117 (Asr.)(Trib.)

171 **S. 10(23C) : Educational institutions – For grant of approval u/s. 10(23C)(vi) the institution must exist solely for educational purpose and not for profit. The other objects such as encourage sportsman and adventurous spirit in the pupils and those connected with the institution; to print, publish and exhibit films, journals, periodicals, books for the diffusion of useful knowledge and to provide residential accommodation either free of cost and educate, train and assist financially the social workers, staff, students, orphans objects other than educational objects – Rejection of application for grant of approval is justified. [S. 10(23C)(vi)]**
Tribunal held that, for grant of approval u/s. 10(23C)(vi) the institution must exist solely for educational purpose and not for profit. The other objects such as encourage sportsman and adventurous spirit in the pupils and those connected with the institution; to print, publish and exhibit films, journals, periodicals, books for the diffusion of useful knowledge and to provide residential accommodation either free of cost and educate, train and assist financially the social workers, staff, students, orphans Objects other than educational objects-Rejection of application for grant of approval is justified. (AY. 2014-2015)
Desales Educational Society v. PCIT (E) (2018) 171 ITD 170 (Vishakha)(Trib.)

172 **S. 10 (23C) : Educational institutions – Any income – Addition made as cash credits would also qualify the exemption. [S. 68, 115BBC]**
Dismissing the appeal of the revenue the Tribunal held that; S. 10(23C) refers any income received by any trust is exempt, therefore addition made as cash credits would also qualify for exemption. Provision of S. 11BBC is brought in to statute with Finance Act, 2002 with effect from 1-4-2003 will apply to the assessment year 2011-12 onwards. (AY. 2010-11, 2011-12)
ACIT v. (E) Gurudatta Shikshan Sanstha. (2018) 168 ITD 191 / 192 TTJ 746 / 165 DTR 70 (Pune)(Trib.)

173 **S. 10(23FB) : Venture capital fund – Exemption – Real estate business – Since real estate sector was removed from the negative list with effect from 5-4-2004, much before the assessee came in to existence – Entitle to exemption – Revision order is held to be bad in law. [S. 115U, 263]**
The assessee trust is registered as a Venture Capital Fund. The Assessee claimed exemption u/s 10(23FB) of the Act. The AO allowed the claim. CIT in revision proceedings held that the assessee had derived income out of investment in Venture Capital Undertakings which were in real estate business and since real estate

undertaking appeared in negative list under third Schedule of SEBI (Venture Capital Funds) Regulations,1996, same is not eligible exemption under S. 10(23FB) of the Act. On appeal allowing the appeal of the assesssee the Tribunal held that, since real estate sector was removed from the negative list with effect from 5-4-2004, much before the assessee came in to existence the assessee entitle to exemption. Accordingly the evision order is held to be bad in law and even on merit the assessee is entitle to exemption. (AY.2013-14)
Milestone Real Estate Fund v. ACIT (2018) 172 ITD 370 (Mum.)(Trib.)

S. 10(23G) : Infrastructure undertaking – Certain incomes of Infrastructure Capital Funds or Infrastructure Capital Companies – Investment in distribution of electricity and not generation of electricity – Not entitle for exemption. [S. 80IA(4)] 174
Assessee claimed exemption u/s 10(23G). AO held that the assessee was not entitled for exemption. CIT(A) by referring to S. 80(IA(4) held that the companies in which assessee made investments were not eligible for business. Tribunal held that S. 80(IA)(4) applies only to enterprises carrying on business of developing, operating and maintaining or developing or maintaining infrastructure facility where as when assessee had made investments in companies which were not generating or producing electricity and were only distributing electricity, it was not eligible for exemption as provided u/s 10(23G of the Act. (AY. 2003-04 to 2007-08)
Cholamandalam Ms General Insurance Company Ltd. v. ACIT (2018) 170 DTR 22 / 195 TTJ 166 (Chennai)(Trib.)

S. 10(27) : Co-operative society – Schedule Castes or Schedule Tribes – Matter remanded for fresh disposal. 175
Tribunal held that ; records of the assessee, a co-operative society claiming exemption under S. 10(27) did not reveal as to whether all individuals admitted as nominal members belonged to schedule Tribes and how much loan was granted to them and hence the matter was remanded back for disposal afresh. (AY. 2009-10)
ITO v. Mizoram Co-operative Apex Bank Ltd. (2015) 154 ITD 421 / (2018) 191 TTJ 371 (Guwahati)(Trib.)

S. 10(34) : Dividend – Domestic companies – Tax on distribution of profits – Applicable only for amounts which suffered tax u/s. 115O does not apply to deemed dividends. [S. 2(22)(e), 115O] 176
Dismissing the appeal the Court held that dividend will be exempt only for amounts which suffered tax u/s. 115O and does not apply to deemed dividend. (AY. 2005-06)
DR. T. J. Jaikish v. CIT (2018) 403 ITR 256 (Ker.)(HC)

S. 10(37) : Capital gains – Acquisition of agricultural land – Interest – Interest awarded on enhanced compensation paid by Government for acquisition of agricultural land under S. 28 of Acquisition Act would partake of character of compensation and would be eligible for exemption. [Land Acquisition Act, 1894, S. 10(37), 56(2)(vii)] 177
Tribunal held that,interest awarded on enhanced compensation paid by Government for acquisition of agricultural land of assessee under S. 28 of Acquisition Act would

partake of character of compensation and would be eligible for exemption. (AY. 2013-14)
ITO v. Vinayak Hari Palled (2018) 173 ITD 399 (Bang.)(Trib.)

178 **S. 10(37) : Capital gains – Agricultural land – With in specified urban limits – Interest on compensation – Interest awarded under section 28 of Land Acquisition Act, 1894 on enhanced compensation paid for acquisition of agricultural land, would be eligible for exemption. [S. 56, Land Acquisition Act, 1894, S. 28]**
Tribunal held that; interest awarded under section 28 of Land Acquisition Act, 1894 on enhanced compensation paid for acquisition of agricultural land, would be eligible for exemption. (AY.2013-14)
ITO v. Sangappa S. Kudarikannur (2018) 172 ITD 332 (Bang.)(Trib.)

179 **S. 10(38) : Long term capital gains from equities-Insurance business – Sale of investments is exempt from tax. [S. 2(29B), 45]**
Sale of investments by insurance co is exempt from tax being long term capital gains. (AY. 2006-07)
PCIT v. New India Assurance Co. Ltd. (2018) 254 Taxman 238 (Bom.)(HC)

180 **S. 10(46) : Authority – Greater Noida Industrial Development Authority which is engaged in undertaking works relating to housing schemes and land development schemes including acquisition, distribution, sale and letting of properties is entitle to exemption.**
Allowing the petition the Court held that, the petitioner was to provide amenities and facilities in industrial estate and in industrial area in the form of road, electricity, sewage etc. The assessee necessarily required money and funds, which were received from the State Government. Assessee, given the regulatory and administrative functions performed is required and charges fee, cost and consideration in the form of rent and transfer of rights in land, building and movable properties. Similarly payments had to be made for acquisition of land, creation and construction of infrastructure and even buildings. Carrying out and rendering the said activities was directly connected with the role and statutory mandate assigned to the assessee. It had not been asserted and alleged that these activities were or were undertaken on commercial lines and intent. Assessee did not earn profits or income from any other activity unconnected with their regulatory and administrative role. Income in the form of taxes, fee, service charges, rents and sale proceeds was intrinsically, immediately and fundamentally connected and forms part of the role, functions and duties of the assessee. Accordingly the Court held that the petitioner is entitle exemption u/s 10(46) of the Act.
Greater Noida Industrial Development Authority v. UOI (2018) 406 ITR 418 / 254 Taxman 289 / 303 CTR 512 / 167 DTR 153 (Delhi)(HC)

S. 10A : Free trade zone – Profits of business – Export turnover – Total turn over – Export turnover is the numerator whereas the total turnover is the denominator in the formula for computing profit from exports. Software development charges are to be excluded while working out the deduction admissible on the ground that such charges are relatable towards expenses incurred on providing technical services outside India. [S. 80HHC. 80HHE) 181

Dismissing the appeals of the revenue the Court held that; if the deductions on freight, telecommunication and insurance attributable to the delivery of computer software u/s 10A of the IT Act are allowed only in Export Turnover but not from the Total Turnover then, it would give rise to inadvertent, unlawful, meaningless and illogical result which would cause grave injustice to the assessee which could have never been the intention of the legislature As the object of the formula is to arrive at the profit from export business, expenses excluded from export turnover have to be excluded from total turnover also. Otherwise, any other interpretation makes the formula unworkable and absurd. Even in common parlance, when the object of the formula is to arrive at the profit from export business, expenses excluded from export turnover have to be excluded from total turnover also. Otherwise, any other interpretation makes the formula unworkable and absurd. Hence, we are satisfied that such deduction shall be allowed from the total turnover in same proportion as well.

CIT v. HCL Technologies Ltd. (2018) 404 ITR 719 / 165 DTR 305 / 302 CTR 191 / 255 Taxman 313 (SC), www.itatonline.org

CIT v. Aditi Technologies (P) Ltd. (2018) 165 DTR 305 / 302 CTR 191 / 255 Taxman 313 (SC), www.itatonline.org

S. 10A : Free trade zone – Development of software – Receiving basic engine from non-eligible unit, developed software at its eligible unit – Entitle for exemption. [S. 260A] 182

Dismissing the appeal of the revenue High Court held that, receiving basic engine from non-eligible unit, developed software at its eligible unit the assessee is entitle to exemption. Finding of the AO that software was substantially developed at non-eligible unit and thereafter it was placed in hard disk and shifted to eligible unit only with an intent to claim exemption was rightly rejected by the Tribunal. (AY.2009-10)

CIT v. Ajay Agarwal (HUF) (2018) 99 taxmann.com 18 / 259 Taxman 134 (Bom.)(HC)

Editorial : SLP of revenue is dismissed,CIT v. Ajay Agarwal (HUF) (2018) 259 Taxman 133 (SC)

S. 10A : Free trade zone – Export turn over – Total turn over Expenses excluded from export turnover should also be excluded from total turnover. 183

Dismissing the appeal of the revenue the Court held that; Expenses excluded from export turnover should also be excluded from total turnover. Court also observed that, when a particular word is not defined by the Legislature and an ordinary meaning is to be attributed to it, the ordinary meaning is to be in conformity with the context in which it is used. (AY.2005-06)

PCIT v. Cypress Semiconductors Technology India Pvt. Ltd. (2018) 408 ITR 531 (Karn.) (HC)

184 **S. 10A : Free trade zone – Depreciation and other deductions – Neither any deduction claimed by assessee for Assessment Years prior to amendment nor exemption granted – Ten years' relief allowed by later amendment in 2003 – Interpretation – Legislative intent – The intent of the Legislature while it made those amendments was not to curtail the relief to an assessee, who had not availed of double benefit – Matter remanded to Appellate Tribunal for reconsideration. [S. 10A(6)]**

On appeal High Court held that the matter required reconsideration because the assessee had not claimed any benefit or deduction in respect of the assessment years 1993-94, 1994-95 and 1995-96 and no exemption had been granted to it. Although it was contended by the Department that a specific bar was created by the 2001 amendment by which the right of the assessee to have sought anything beyond April 1, 2001, was not there and its rights had stood extinguished or exhausted by way of deemed fiction, the later amendment in 2003, allowed ten years relief. The intent of the Legislature while it made those amendments was not to curtail the relief to an assessee, who had not availed of double benefit. The matter was remanded to the Tribunal. (AY. 1993-94, 1994-95, 1995-96)

Phoenix Lamps Ltd. v. CIT (2017) 87 taxmann.com 353 / (2018) 405 ITR 189 (All.)(HC)

Editorial: SLP of revenue is dismissed as the Tribunal has passed the final order after the remand CIT v. Phoenix Lamps Ltd (2019) 263 Taxman 338 (SC)

185 **S. 10A : Free trade zone – Total turn over – Export turn over – Deductions on freight, telecommunication and insurance attributable to delivery of computer software are to be allowed from total turnover – Eligible for exemption export should earn foreign exchange, it does not mean that undertaking should personally export goods manufactured /software developed by it outside Country.**

Dismissing the appeal of the revenue the Court held that for eligible for exemption export should earn foreign exchange, it does not mean that undertaking should personally export goods manufactured /software developed by it outside Country. It might export out of India by itself or export out of India through another STP Unit. If deductions on freight telecommunication and insurance attributable to delivery of computer software were allowed only in Export turn over but not from total turn over then it would give rise to inadvertent un lawful and illogical result which would cause grave in justice to assessee which could never been intention of the legislature. Followed *Tata Eixsi Ltd. v. ACIT (2015) 127 DTR 327 (Kran.)(HC) (AY. 2009-10)*

PCIT v. Arowana Consulting Ltd. (2018) 171 DTR 445 / (2019) 306 CTR 238 (Karn.)(HC)

186 **S. 10A : Free trade zone – For computing deduction if export turnover is arrived at after excluding certain expenses, said expenses should also be excluded from total turnover.**

Dismissing the appeal of the revenue Court held that,while computing deduction if export turnover in numerator is to be arrived at after excluding certain expenses, said expenses should also be excluded in computing export turnover as a component of total turnover in denominator.(AY.2010-11)

PCIT v. Tesco Hindusthan Service Centre (P.) Ltd. (2018) 96 taxmann.com 74 (Karn.)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Tesco Hindusthan Service Centre (P.) Ltd. (2018) 257 Taxman 92 (SC)

S. 10A : Free trade zone – Export amount was not received with in specified time denial of exemption was held to be justified. [S. 260A] 187

Dismissing the appeal, that the conclusion arrived at by the Tribunal regarding the claim of the assessee under section 10A of the Act was based upon concurrent findings of fact recorded by it after appreciating the material on record. Since the appeal was based purely upon the findings of fact recorded after appreciation of the evidence on record, in the absence of any perversity, it would not give rise to any question of law. (AY. 2007-08)

Sahjanand Laser Technology Ltd. (2018) 401 ITR 478 (Guj.)(HC)

S. 10A : Free trade zone – Trail production – Commercial production – Trial production was different from commercial production and benefit of exemption provision was allowable from date of commercial production-Exemption is available for the AY.2010-11. [S. 10B] 188

Allowing the appeal of the assessee the Tribunal held that Trial production was different from commercial production and benefit of exemption provision was allowable from date of commercial production. When the assessee company itself has not claimed exemption for AY 2000-01, incubatory period, cannot be considered as production period merely on the basis of token invoice issued for trial verification of its cost. Even otherwise, the letter issued by the assessee company dated 30.04.2000 to Assistant Director, STPI, Noida intimating date of commencement for production of sale in global market as 30.04.2000 has not been disputed by the Revenue rather entire assessment has been made on the basis of token invoice dated 31.03.2000 issued for trial verification by the assessee company. Followed *CIT v. Nestor Pharmaceuticals Ltd. (2010) 231 CTR 337 (Delhi) (HC) (AY.2010-11)*

North Shore Technologies (P) Ltd. v. ITO (2018) 161 DTR 233 / 62 ITR 294 / 192 TTJ 629 (Delhi)(Trib.)

S. 10A : Free trade zone – Sale by the assessee to HO outside India would amount to Export eligible for deduction u/s 10A of the Act. [S.80IA(8)] 189

Mere absence of any specific provision treating inter-branch transfer as export, would not deny deduction u/s 10A to the assessee on transfer of software to HO outside India. Further, this logic was also strengthened by provision of section 80IA(8) which is part of section 10A. (AY. 2008-09)

Dy. CIT v. Virage Logic International (2018) 63 ITR 10 (SN)(Delhi)(Trib.)

S. 10A : Free trade zone – Communication charges and travelling and conveyance expenses is to be excludible both from export turnover and total turnover – Interest earned on fixed deposits is part of business income which is deductible. 190

Tribunal held that, communication charges and travelling and conveyance expenses is to be excludible both from export turnover and total turnover. Interest earned on fixed deposits is part of business income which is deductible. (AY.2008-09)

Toshiba Embedded Software (India) Pvt. Ltd. v. DCIT (2018) 64 ITR 675 (Bang.)(Trib.)

191 **S. 10A : Free trade zone – Period of ten consecutive years to be reckoned from year of commencement of manufacture and not from incorporation.**
The Appellate Tribunal held that though the assessee came into existence on August 4, 1998, the assessee ventured into the operation of manufacturing software from AY. 2000-01 only. Hence, the assessee is eligible for exemption for a period of ten consecutive assessment years beginning with the AY. 2000-01 to the AY. 2009-10.(AY 2009-10)
Aspire Systems (I) P. Ltd. v. Dy. CIT (2018) 62 ITR 656 (Chennai)(Trib.)

192 **S. 10A : Free trade zone – Eligible for set off unabsorbed depreciation. [S. 32]**
The Tribunal held that the unabsorbed depreciation for the assessment years 1993-94 to 1995-96 pertained to the period before April 1, 2001 and, therefore, could not be set off against the income of the assessment year 2003-04. The High Court remitted the matter for reconsideration holding that the assessee had not claimed any benefit or any deduction in respect of the years 1993-94, 1994-95, 1995-96 and no exemption was granted to the assessee. The intent of the Legislature while making these amendments was certainly not to curtail relief to an assessee, who had not availed of double benefit. Allowing the appeal of the assesse the Tribunal held, that it was not the Department's case that any double benefit has been availed of by the assessee. The assessee would be eligible for set off of unabsorbed depreciation for the assessment years 1993-94 to 1995-96 against the income of the assessee for the assessment year 2003-04. Therefore the Assessing Officer was directed to allow set off of unabsorbed depreciation to the assessee. (AY. 2003-04)
Pheonix Lamps Ltd. v. Add. CIT (2018) 61 ITR 756 (Delhi)(Trib.)

193 **S. 10A : Free trade zone – Communication charges to be excluded from export turnover as well as from total turnover.**
Dismissing the appeal of the revenue, the Tribunal held that, Communication charges to be excluded from export turnover as well as from total turnover. (AY. 2008-09)
DCIT v. Verisign Services India Pvt. Ltd. (2018) 61 ITR 315 (Bang.)(Trib.)

194 **S. 10A : Free trade zone – If the assessee suo motu makes the adjustment and offers higher income, S. 10A/10B deduction cannot be denied. Also, as such notional income is not "export turnover", the condition in S. 10A/10B that foreign exchange must be brought to India does not apply. [S. 10B, 92CA]**
Tribunal held that the assessee is not entitled to S. 10A/ 10B deductions in respect of transfer pricing adjustments applies only where the adjustment is made by the AO/ TPO. If the assessee suo motu makes the adjustment and offers higher income, S. 10A/10B deduction cannot be denied. Also, as such notional income is not "export turnover", the condition in S. 10A/10B that foreign exchange must be brought to India does not apply (Deloitte Consulting v. ITO in ITA No. 157/Mum./2012 dt. 15-07-2015) (Mum.) (Trib.) is not followed as it is contrary to *CIT v. iGate Global Solutions Ltd (ITA No. 453/2008, dt. 17. 06. 2014, (Karn) (HC)). (ITA No. 1051/Pun/2015, dt. 12. 03. 2018)(AY. 2011-12)*
Approva Systems Pvt. Ltd. v. DCIT (Pune)(Trib.), www.itatonline.org

S. 10AA : Special economic zones – Derived from – Surplus amount in freight export account and in insurance export account was derived from export activities eligible for deduction. 195

Dismissing the appeal of the revenue, the Court held that ; Surplus amount in freight export account and in insurance export account was derived from export activities eligible for deduction.(AY.2010-11)

PCIT v. Vedansh Jewels (P.) Ltd. (2018) 97 taxmann.com 521 / 258 Taxman 155 (Raj.)(HC)

Editorial : SLP of revenue is dismissed; PCIT v. Vedansh Jewels (P.) Ltd. (2018) 258 Taxman 154 (SC)

S. 10AA : Special economic zones – Industrial undertaking – Investment in Plant and Machinery for new unit was substantial compared to value of machinery shifted – Entitled to exemption. 196

Dismissing the appeal of the revenue the Court held that ;substantial new capital was introduced in the new unit. All other requirements of S. 10AA had also been fulfilled. Hence the industrial undertaking was entitled to exemption.

CIT v. Green Fire Exports (2018) 404 ITR 266 (Raj.)(HC)

CIT v. Jagdish Prasad Soni (2018) 404 ITR 266 (Raj.)(HC)

S. 10AA : Special economic zones – Assessee manufacturing different items in different units – No dispute about unit wise profitability declared by assesse – Remand report accepting cost of goods were reconciled – Addition made by AO to be deleted. 197

The AO had made an adjustment on account of supressed profits, by taking the net profit ratio at the rate of unit which was exempted under section 10AA of the Act, ignoring the fact that both the units were engaged in manufacture of similar item and were located in the same area, with the exempted unit only declaring abnormally high profit. The DRP had directed to delete the said addition made by AO.

The DRP held that the assesse was not asked by the AO to furnish the details with respect to distinctive items manufactured by each units. The AO conceded the original claim of the assessee that it was manufacturing different items in different units and the unit-wise profitability, declared by the assesse, was correct and all the details with respect to manufacturing units were produced before the AO at the at the time of assessment proceedings. The taxable units were manufacturing H7 bulbs meant for European markets which fetched a high profit, whereas H4 bulbs were meant for the local market where the returns were low.

The Tribunal held that the factual finding of the DRP was not contradicted by the Department. It was the discretion of the assesse to arrange its affairs in a manner which advanced its interest subject to the conditions that the transactions in questions are bona fide. In the remand report it was accepted by the AO that cost of H4 and H7 bulbs reconcile. The DRP duly considered the remand report and the submissions of the assesse and thereafter reached a conclusion in which there was no infirmity. Thus the Tribunal dismissed the Department's appeal.

Dy. CIT v. Phoenix Lamps Ltd. (2018) 64 ITR 466 (Delhi)(Trib.)

198 **S. 10AA : Special economic zones – Merely because consideration was received after 6 months from close of FY, deduction could not be denied to assessee on such sum – AO was directed to consider a sum as export turnover – Deduction cannot be allowed on unbilled revenue as it does not qualify the definition of export and export turnover. [S. 10A(3)]**

Provisions of S. 10AA does not provide any time-limit of bringing such consideration into India like S. 10A(3) which provided for receipt of consideration or sale proceeds in India in convertible foreign exchange within a period of 6 months from end of previous year, or within such further period as competent authority might allow in this behalf. Provision of S. 10A(5) speaks about audit of accounts and submission of report of an accountant in specified Performa. In this case same was complied with by assessee. There was no time-limit prescribed for bringing consideration of export into India. Merely because consideration was received after 6 months from close of FY, deduction could not be denied to assessee on such sum. Accordingly the AO was directed to consider a sum as export turnover of assessee and grant deduction u/s 10AA. Tribunal also held that deduction u/s 10AA cannot be allowed on unbilled revenue as it does not qualify the definition of export and export turnover.

BT E-Serv (India) P. Ltd v. ITO (2018) 195 TTJ 137 (Delhi)(Trib.)

199 **S. 10AA : Special economic zones – Once claim of deduction had been accepted in first year of operations and also in second year, then in third year same could not be withdrawn by examining factors which were required to be seen in first year of claim. – Without withdrawing or setting aside relief granted for first assessment year, AO cannot with draw relief for subsequent assessment years. [S. 10AA(4), 10B]**

Allowing the appeal of the asseee the Tribunal held that,in first year of operation assessee had claimed deduction u/s 10AA which was duly supported by audit report in Form 56F and such claim had been allowed by AO in scrutiny proceedings after completing assessment u/s 143(3), in subsequent assessment year also, similar claim for deduction u/s 10AA had been allowed by AO in order passed u/s 143(3) Tribunal held that conditions laid down in section 10AA (4) had to be seen on date of formation, whether undertaking had violated any conditions prescribed therein or not. Once claim of deduction u/s 10AA had been accepted in first year of operations and also in second year, then in third year same could not be withdrawn by examining factors which were required to be seen in first year of claim. AO could not deny claim of deduction u/s 10AA with assessee. Assessee continued to make addition to fixed assets in SEZ unit independently and there was no iota of any material to show that additions to fixed assets had been by way of transfer from EOU units. Followed, *CIT v. Western Outdoor Interactive Pvt. Ltd. (2012) 349 ITR 309 (Bom.)(HC)*

Macquarie Global Services Pvt. Ltd. (2018) 163 DTR 305 / 62 ITR 666 / 192 TTJ 613 (Delhi)(Trib.)

S. 10B : Export Oriented undertakings – Entitle for deduction in respect of 'Deemed Export' of goods made through a third party – The word 'Export' read with Exim Policy would certainly include 'Deemed Export' within the ambit of 'Export Turnover'. [S. 10B(2), 10B(9A)] 200

Assessee being a 100% Export Oriented Unit (EOU) for AYs in respect of deemed export of goods made by it during period under consideration through a third party. The Tribunal held that assessee was entitled to deduction under section 10B in respect of its profits and gains from its business. The High Court relied on the order of its coordinate bench in the case of *CIT v. Tata Elxsi Ltd. (2016) 127 DTR 327)(Karn.)(HC)* and agreed with the view taken by the earlier division bench and dismissed the appeal of the revenue. The High Court held that the word 'export' read with background of Exim Policy of Union of India would certainly include 'Deemed Export' also within ambit of 'Export Turnover' as explained in Explanation 2 of section 10B(9A). Further, there was no restriction imposed under section 10B(2) on quantum of deduction eligible under section 10B(1) with reference to export of goods manufactured by unit itself. Therefore, benefit of deduction under section 10B(1) cannot be restricted merely because the third party through which export has been made in not a 100% EOU. (AY. 2009-10, AY. 2010-11, 2011-12)

PCIT v. International Stones India Pvt. Ltd. (2018) 168 DTR 21 / 304 CTR 492 / 102 CCH 311 (Karn.)(HC)

S. 10B : Export Oriented undertakings – Entitle deduction in respect of 'Deemed Export' of goods made through a third party – The word 'Export' read with Exim Policy would certainly include 'Deemed Export' within the ambit of 'Export Turnover'. [S. 10B(2), 10B(9A)] 201

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PCIT v. International Stones India Pvt. Ltd. (2018) 168 DTR 21 / 304 CTR 492 / 102 CCH 311 (Karn.)(HC)

202 **S. 10B : Export oriented undertakings – Interest free funds – Artificially imputing non-existent interest costs and denying deduction to the assessee was held to be not justified. [S. 10B(7), 80IA(10)]**

Tribunal held that, where the facts and circumstances suggest that the provision of interest free funds to the assesse claiming deduction u/s. 10B was bonafide, artificially imputing non-existent interest costs and denying deduction to the assessee was not warranted. AO was directed to exclude the interest cost imputed for the purpose of determination of profits of the assesse u/s. 10B of the Act. (AY. 2008-09, 2011-12)

Nabros Pharma Ltd. v. ACIT (2018) 68 ITR 6 (SN)(Ahd)(Trib.)

203 **S. 10B : Export oriented undertakings – Delay of one month in uploading the return – System was affected by virus – Reasonable cause – Exemption cannot be denied. [S. 139(1)]**

Allowing the appeal of the assesssee the Tribunal held that ;when assessee had completed audit, but return was uploaded belatedly. Reason given was that computer got infected and it took some time to set it right so that assessee could upload entire data. This reasoning given was supported by certificate from computer specialist, who attended to problem. Explanation given that computers got infected was reasonable explanation given in circumstances, delay in filing return was not intentional delay but beyond reasonable control of assessee. Denial of exemption is held to be not justified. (AY. 2008-09, 2011-12)

Bartronics India Ltd. v. Dy. CIT (2018) 65 ITR 540 (Hyd.)(Trib.)

204 **S. 10B : Export oriented undertakings – Manufacture – Processed Foods, Pickles, Fresh Fruits and vegetables – Neither the AO nor the Assessee brought on record the process of manufacturing activities – Matter remanded to the AO to find out whether there was manufacture per se, or not, what was the break-up of the exports of the processed foods, pickles, fresh vegetables and fruits separately, and after determining all the facts, the Assessing Officer shall re-adjudicate the issue after granting the assessee adequate opportunity to substantiate its case.**

Tribunal held that what was the process done by the assessee and whether or not there was actual manufacture had not been shown on record. The licence issued to the assessee as a 100 per cent export oriented undertaking showed that under the head "products manufactured" it was specified "processed foods, pickles, fresh fruits and vegetables". Admittedly, fresh fruits and vegetables were not manufactured items. What was the break-up of the processed foods, pickles, fresh fruits and vegetables which have been exported, had not been brought on record. In the assessment order, the Assessing Officer had made a blanket disallowance, the assessee had only given a general reply and claimed the issue to be covered by various case law. Neither the Department nor the assessee had placed the facts before the Tribunal. Therefore the issue was restored to the Assessing Officer for readjudication after verification, if necessary physical verification, as to the activities undertaken by the assessee at its eligible unit in respect of which claim of deduction under section 10B was being made. As to whether there

was manufacture per se, or not, what was the break-up of the exports of the processed foods, pickles, fresh vegetables and fruits separately, and after determining all the facts, the Assessing Officer shall readjudicate the issue after granting the assessee adequate opportunity to substantiate its case. (AY.2006-07)
India Agro Exports P. Ltd. v. ITO (2018) 65 ITR 81 (SN) (Chennai)(Trib.)

S. 10B : Export oriented undertakings – Newly established hundred per cent export – oriented undertakings – Research and development in pharmaceutical, in the export drug related services. Tribunal set aside the matter to AO to decide the nature of business of the company and also to ascertain the claim under S. 10B of the Act. [S. 10A] 205
Tribunal held that the both the lower authorities have been failed to ascertain that what assessee is actually doing and just bury the lead. Assessee is claiming that he has been doing research and development in pharmaceutical, in the export drug related services. The assessee claimed that they fall in the category of back office operation and in the audit report it is also mentioned that assessee is doing research and development work related to drugs and healthcare. But both authorities have not ascertained to the effect that what actually assessee is doing. Therefore, Tribunal set aside the orders of the CIT(A) in both appeals and remitted this matter back to the file of the ld. AO to decide the nature of business of the company. Also directed AO to ascertain that how assessee can get benefit u/s 10B and accordingly, to decide the matter as per law. (AY.2008-09 2009-10)
ACIT (OSD) v. Oxygen Healthcare Research P. Ltd. (2018) 64 ITR 93 (Ahd.)(Trib.)

S. 10B : Export oriented undertakings – Delay of one month in filing return – System of assessee affected by virus – Entitled to exemption. [S. 139(1)] 206
Tribunal held that the assessee had completed audit as on September 2, 2008, but the return was uploaded belatedly. The reason given was that the computer got infected and it took some time to set it right so that the assessee could upload the entire data. The reasoning given was supported by a certificate from a computer specialist, who attended to the problem. Therefore, the explanation was reasonable. Hence the delay was not an intentional delay but beyond the reasonable control of the assessee. The return was to be considered as return filed prior to due date. The Assessing Officer was directed to allow the exemption. (AY.2008-09)
Bartronics India Ltd. v. DCIT (2018) 65 ITR 540/ 195 TTJ 314 (Hyd.)(Trib.)

S. 10B : Export oriented undertakings – Interest from fixed deposits made with Bank for obtaining letters of credit which has direct nexus with export activities is to be includable in computing the income – Matter was remanded for verification – Insurance claim which has direct nexus with industrial undertaking are eligible for deduction. Foreign exchange gain on sale of forward exchange contract arising out of eligible undertaking is entitle to deduction. Export proceeds that were unrealized, claimed that period for realization, had been extended by RBI Master Circular dated 1-7-2005 was directed to be allowed subject to verification. [S. 10A] 207
Allowing the appeal of the assessee the Tribunal held that ; Interest from fixed deposits made with Bank for obtaining letters of credit which has direct nexus with

export activities is to be includable in computing the income. Matter was remanded for verification. Insurance claim which has direct nexus with industrial undertaking are eligible for deduction. Foreign exchange gain on sale of forward exchange contract arising out of eligible undertaking is entitle to deduction. Export proceeds that were unrealized, claimed that period for realization, had been extended by RBI Master Circular dated 1-7-2005 was directed to be allowed subject to verification. (AY. 2003-04, 2005-06, 2006-07))
Moser Baer India Ltd. v. DCIT (2018) 170 ITD 522 (Delhi)(Trib.)

208 **S. 11 : Property held for charitable purposes – Application of income – Any excess expenditure incurred by the trust/charitable institution in earlier assessment year could be allowed to be set off against income of subsequent years. [S.11(1)(a)]**
Affirming Delhi High Court's view, in Subros Educational Society (IT No. 382 of 2015 dt 23rd Sept., 2015), that any excess expenditure incurred by the trust/charitable institution in earlier assessment year could be allowed to be set off against income of subsequent years, the Supreme Court dismissed the Miscellaneous Application of the Revenue.
CIT (E) v. Subros Educational Society (2018) 303 CTR 1 / 166 DTR 257 (SC)

209 **S. 11 : Property held for charitable purposes – Application of income – Write back of depreciation was allowed to be carried forward for application of income of subsequent years [S. 32]**
Dismissing the appeal the Court held that, the High Court has allowed the assessee to write back the depreciation for this year and even for previous years and if that is done, the AO is directed to modify the assessment determining the higher income and allow the recomputed income with written back of by the assessee to be carried forward for subsequent years as application for charitable purposes Though the question was answered in favor of the revenue, relief was granted to the assessee as application of income. (AY. 2005-06)
Lissie Medical Institutions v. CIT (2018) 161 DTR 73 / 300 CTR 130 (SC)

210 **S. 11 : Property held for charitable purposes – CIT(A) can set aside an assessment order, if AO fails to comply the direction of CIT(A) in an earlier order while granting relief to the assessee [S. 11(5) 13(1)(d), 250]**
Question admitted before the High Court was "whether on the facts and in the circumstances of the case, the Tribunal failed to appreciate that the original order of assessment dated 16-3-1988 was farmed without allowing the benefits of section 11 of the Act and hence the assessee could not have raised the ground of method of computing taxable income,if any when applying section 11 of the Act in an appeal against the said order "Allowing the appeal of the assessee the Court held that, CIT(A) can set aside an assessment order if AO fails to comply the direction of CIT(A) in an earlier order while granting relief to the assessee. (AY. 1985-86)
Cotton Textiles Exports Promotion Council v. ITO (2018) 169 DTR 141 (Bom.)(HC)

S. 11 : Property held for charitable purposes – Accumulation of income – Explanation of purposes for which funds accumulated was furnished during course of assessment proceedings is a sufficient compliance. [S. 11(2), form No. 10] 211

Dismissing the appeal of the assessee the Court held that, the assessee had submitted the background under which the board of trustees had met, had considered the material and eventually had passed a formal resolution, which was filed along with the return, setting apart the funds for the ongoing hospital projects of the trust and for modernization of the existing hospitals. Therefore there was no error in the order of the Tribunal allowing the claim for deduction made by the assessee. (AY. 2008-09)

CIT v. Bochasanwasi Shri Akshar Purshottam Public Charitable Trust (2018) 409 ITR 591/ (2019) 261 Taxman 229 (Guj.)(HC)

Editorial: SLP of revenue is dismissed, CIT v. Bochasanwasi Shri Akshar Purshottam Public Charitable Trust (2019) 263 Taxman 247 (SC)

S. 11 : Property held for charitable purposes – Institution imparting education in Banking is entitle to exemption – Grant or refusal to grant exemption under S. 10(22) or 10 (23C) is not relevant. [S. 2(15), 10 (22), 10 (23C), 12A] 212

Dismissing the appeal of the revenue the Court held that, institution imparting education in Banking is entitle to exemption-Grant or refusal to grant exemption under S. 10(22) or 10 (23C) is not relevant. (AY. 2008-09)

CIT v. Indian Institute Of Banking And Finance (2018) 408 ITR 558 / 303 CTR 750 / 166 DTR 253 (Bom.)(HC)

Editorial : Order in Indian Institute of Banking and Finance v. DDIT (E) (2015) 39 ITR 323 (Mum.) (Trib.) is affirmed.

S. 11 : Property held for charitable purposes – Application of income – Adjustment of excess expenditure against income of current year amounts to application of income. [S. 12] 213

Dismissing the appeal of the revenue the Court held that ; Adjustment of excess expenditure against income of current year amounts to application of income. (AY. 2011-12)

CIT v. Shushrutha Educational Trust (2018) 408 ITR 536 (Karn.)(HC)

S. 11 : Property held for charitable purposes – Amount paid to employing foreign personnel for imparting education in India, amount set apart for payment in previous year and paid in subsequent year, expenditure of earlier years adjusted against income of current year ,amounts to application of income – When purposes of accumulation is mentioned in Form 10 charitable merely failure to give details – Exemption cannot be denied. [Form 10] 214

Dismissing the appeals of the revenue the Court held that ; amount paid to employing foreign personnel for imparting education in India, amount set apart for payment in previous year and paid in subsequent year, expenditure of earlier years adjusted against income of current year ,amounts to application of income. Court also held that when

purposes of accumulation is mentioned in Form 10 charitable merely failure to give details, exemption cannot be denied (AY. 2008-09, 2009-10)
CIT v. Ohio University Christ College (2018) 408 ITR 352 / (2019) 306 CTR 282 / 174 DTR 10 (Karn.)(HC)
Editorial : Order in Dy.DIT v. Ohio University Christ College (2015) 44 ITR 291 (Bang.) (Trib.) is affirmed.

215 **S. 11 : Property held for charitable purposes – Accumulation of income did not exceed 15 per cent of income – Entitle for exemption [S. 12A, 263]**
Dismissing the appeal of the revenue the Court held that; accumulation of income of assessee during relevant year did not exceed 15 per cent of its income. Entitle for exemption. (AY. 2005-06)
CIT v. Agricultural Produce Market Committee (2018) 408 ITR 231 / 257 Taxman 234 (Karn.)(HC)

216 **S. 11 : Property held for charitable purposes – Corpus donation – Corpus donation on which it earned interest, in view of specific direction of donors that said interest would also form part of corpus and entitle for exemption. [S. 11(1)(d), 62, 63]**
Assessee received corpus donation on which it earned interest. Assessees claim for exemption on interest earned on corpus donation was rejected. Tribunal allowed the claim. On appeal dismissing the appeal of the revenue the Court held that, in view of specific direction of donors that said interest would also form part of corpus, accordingly assessee's claim for exemption under S. 11 in respect of interest so earned was to be allowed. (AY. 2007-08 to 2012-13)
CIT (E) v. Mata Amrithanandamayi Math Amritapuri (2017) 85 Taxmann.com 26 (Ker.) (HC)
Editorial : SLP of revenue is dismissed, CIT (E) v. Mata Amrithanandamayi Math Amritapuri (2018) 256 Taxman 62 (SC)

217 **S. 11 : Property held for charitable purposes – Surplus earned from organizing exhibition – As separate books of account is not maintained denial of exemption was held to be justified. [S. 11(4A)]**
Dismissing the appeal of the assessee the Court held that S. 11(4A) obliges an institution which seeks to have benefit of S. 11 if it carries on business incidental to its business objects, to maintain separate books of account. Since exhibition organized by assessee was a well-organised and regular activity incidental to business of assessee but no separate books of account were maintained for purposes of carrying out said exhibition and thus, requirement of maintaining separate books of account was not satisfied accordingly the assessee was not entitled to exemption. (AY. 1992-93)
Indian Machine Tools & Manufacturers Association v. DIT(E) (2018) 254 Taxman 243 / 165 DTR 1 / 302 CTR 289 (Bom.)(HC)

S. 11 : Property held for charitable purposes – Society registered at the instance of the Reserve Bank of India for the purpose of assisting banks and financial institutions, for the improvement of their performance is held to be charitable in nature. [S. 2(15), 13(8)]. 218

Dismissing the appeal of the revenue the Court held that; Society registered at the instance of the Reserve Bank of India for the purpose of assisting banks and financial institutions, for the improvement of their performance is held to be charitable in nature. (AY. 2010-11, 2011-12)

CIT v. Institute of Development and Research in Banking Technology (2018) 400 ITR 66 / 165 DTR 104 (T & AP) (HC)

Editorial : Institute for Development and Research in Banking Technology v. ADIT (E) (2015) 42 ITR 219 (Hyd) (Trib.) is affirmed.

S. 11 : Property held for charitable purposes – Education – Accumulation – Section 11(1B) is not applicable where the assessee-society accumulated its income under section 11(2). [S. 12AA] 219

Tribunal held that the assessee had purchased land and used accumulated amount for charitable and educational purposes. Section 11(1B) is not applicable where the assessee-society accumulated its income under section 11(2). (AY. 2008-09)

ACIT v. Scientific and Educational Advancement Society (2018) 196 TTJ 740 / (2019) 174 DTR 266 (Delhi)(Trib.)

S. 11 : Property held for charitable purposes – Dividend income – Income can be taxed if the investment is in violation of the provision-Exemption cannot be denied to the Trust in respect of other income. [S. 11(5), 12AA, 13(1)(d)] 220

The assesse is a charitable institution registered u/s 12AA (1) of the IT Act. It earned dividend income, other than income eligible for exemption u/s 11. The AO denied benefit of exemption u/s 11(1) for the entire income for violation of provision of S. 13(1)(d) read with S. 11(5) pertaining to mode of investment. CIT (A) held that benefit of exemption for entire income could not have been denied and at best AO could have denied exemption to extent of dividend income earned. Tribunal affirmed the order of CIT(A). (AY.2010-11)

ITO v. The Times Centre For Media And Management Studies (2018) 168 DTR 14 / 194 TTJ 715 (Delhi)(Trib.)

221 **S. 11 : Property held for charitable purposes – Object to promote and safeguard rubber industries – Receipts from non-members and other sources was utilised/applied solely towards promotion of objects of association – No portion was paid or transferred directly or indirectly to its members – Proviso to S 2(15) is not attracted – Exemption cannot be denied-Contribution made to an association, formed with an object to promote and safeguard rubber industries, to corpus of Rubber Skill Development Centre, a section 25 company formed under Prime minister Sector Skill development programme, was not a case of investment as envisaged under S. 11(5) read with 13(1)(d) – Exemption cannot be denied. [S. 2(15), 12AA, 13(1)(d)].**

Assessee company, registered under section 12AA, was formed with an object for promoting and safeguarding rubber industry. AO held that the objects of assessee were not for benefit of general public at large, but were limited only to members of assessee-association, therefore, assessee was only a mutual association and not charitable. Further, assessee's receipts from non-members and other sources such as income received from advertisements, sale of books and periodicals, magazine subscription, interest income on fixed deposits and cumulative deposits, etc. was hit by amended proviso to S. 2(15) of the Act. Tribunal held that, memorandum of Association of assessee prescribed that income and property of association when so ever derived would be applied solely towards promotion of objects of association and that no portion thereof would be paid directly or indirectly to members of association. Further, upon winding up or dissolution of association, surplus remaining after satisfaction of all debts and liabilities, if any, would not be paid or distributed amongst members of association but would be given to some other association or institution having similar objects. Accordingly there was no justification for AO to hold that since objects of assessee sought to promote and protect interests of a particular trade and industry, same lost character of being charitable. The fact that some of activities carried out by an entity involving charging of fee, etc. had resulted in a surplus could not ipso facto be determinative of fact that there was an element of profit motive. Therefore, proviso to S 2(15) could not be invoked. Tribunal also held that,contribution made by to an association, formed with an object to promote and safeguard rubber industries, to corpus of Rubber Skill Development Centre, a section 25 company formed under Prime minister Sector Skill development programme, was not a case of investment as envisaged under section 11(5) read with 13(1)(d), and, thus, assessee could not be denied exemption under section 11 of the Act. (AY. 2011-12, 2013-14)

All India Rubber Industries Association v. ADIT (E) (2018) 173 ITD 615 / 175 DTR 409 / (2019) 198 TTJ 388 (Mum.)(Trib.)

222 **S. 11 : Property held for charitable purposes – Nursing school located in hospital's premises – Running hospital and nursing school were intricately connected and dependent on each other and thus, was one inseparable activity entitling to exemption. [S. 2(15), 12A]**

Assessee was running hospital along with nursing school. AO granted exemption claimed by assessee under S. 11 in respect of income received from hospital, however, denied same with respect to nursing school. CIT(A) also confirmed the denial of

exemption. On appeal by revenue the Tribunal held that since nursing school was located within hospital's premises and students of nursing school got training in hospital, assessee's activities of running hospital and nursing school were intricately connected and dependent on each other and thus, was one inseparable activity and therefore, both were entitled to exemption. (AY.2011-12)
MAJ Hospital v. DCIT (2018) 173 ITD 554 / 196 TTJ 1149 / (2019) 173 DTR 236 (Cochin) (Trib.)

S. 11 : Property held for charitable purposes – Application of income – Expenditure incurred in an earlier year could be adjusted against income of succeeding year while computing taxable income of succeeding year. [S. 12, 12A] 223
Expenditure incurred in an earlier year could be adjusted against income of succeeding year while computing taxable income of succeeding year. Followed *CIT v. Institute of Banking Personnel Selection [2003] 264 ITR 110 (Bom.) (HC). (AY. 2012-13)*
ITO v. Namma Sangha (2018) 173 ITD 297 (Bang.)(Trib.)

S. 11 : Property held for charitable purposes – Application of income – Honorarium to doctors outside India for attending a seminar conducted for benefit of its parent body – Payments covered under FEMA – RBI approval is not obtained – Application of income is rejected. [S. 11(1)(c)] 224
Assessee conducted a seminar for benefit of its parent body which was attended by doctors coming from abroad. Assessee paid honorarium to those doctors and claimed said payment as application of income. AO held that though the payments were made outside India through banking channels and, even though said transactions were covered under FEMA, yet assessee did not obtain approval of RBI, accordingly the claim for application of income is rejected. CIT(A) allowed the claim of the assessee. On appeal by the revenue the Tribunal up held the order of the AO. (AY. 2010-11)
ITO v. Escorts Cardiac Disease Hospital Society (2018) 173 ITD 406 / (2019) 197 TTJ 708 / 174 DTR 321 (Delhi)(Trib.)

S. 11 : Property held for charitable purposes – Education – Providing hostel facility to students is an essential component of education institution and also an aid for attaining educational object – Entitle to exemption. [S. 2(15) 12, 12AA] 225
Allowing the appeal of the assessee the Tribunal held that; providing hostel facility is an essential component of an educational institution and it is an aid for attaining educational objects, accordingly entitle to exemption. (AY.2013-14)
Shree Ahmedabad Lohana Vidyarthi Bhavan. v. ITO (2018) 172 ITD 11 / 171 DTR 339 / 196 TTJ 131 (Ahd.)(Trib.)

S. 11 : Property held for charitable purposes – Sports association – Merely because some sponsorship was accepted from a private company for Asian games and Youth Olympic games, exemption cannot be denied. [S. 2(15)] 226
Dismissing the appeal of the revenue, the Tribunal held that; there was no material which suggests that the assessee was conducting its affairs solely on commercial lines with the motive to earn profit. There is also no evidence that the assessee has deviated

from its objects which it has been pursuing since past many decades. Thus, proviso to S. 2(15) of the Act is not applicable to the assessee. The assessee cannot lose its character of charitable purpose merely because some sponsorship was accepted from a private company in respect of Asian games and Youth Olympic games (AY. 2011-12)
Dy. CIT v. India Olympic Association (2018) 171 ITD 674 / 66 ITR 82 / 170 DTR 321 / 195 TTJ 859 (Delhi)(Trib.)

227 **S. 11 : Property held for charitable purposes – Accumulation of income – Allowable at fifteen per cent on gross receipts. [S.11(1)(a)]**
AO had restricted the accumulation up to the extent of 15 per cent of the net receipts only, Tribunal held that the accumulation under S. 11(1)(a) of the Act is to be allowed at 15 per cent of gross receipts, as claimed by the assessee. (AY. 2012-13)
Green Wood High Trust v. ACIT(E) (2018) 62 ITR 264 (Bang.)(Trib.)

228 **S. 11 : Property held for charitable purposes – Revenue had not proved that registration granted u/s. 12AA had been withdrawn – Claim of exemption u/s. 11 would not be denied – Matter reamanded to CIT(A). [S. 12AA, 13]**
On appeal, the Tribunal held that the revenue was not able to demonstrate that the exemption granted to the assessee u/s. 12AA had been withdrawn. Therefore, unless the registration was withdrawn, the assessee would be eligible for exemption u/s. 11 unless it was hit by the provisions of S. 13 of the Act. Further, the Tribunal held that since the contentions of the assessee were not considered by CIT(A), the matter was to be remitted back to the CIT(A) for fresh adjudication of exemption u/s. 11 of the Act. (AY. 2011-12)
Artificial Limbs Manufacturing Corporation of India v. ACIT (2018) 63 ITR 1 (Luck)(Trib.)

229 **S. 11 : Property held for charitable purposes – Micro financing activity is in nature of trade, commerce or business hence is not entitle to exemption as charitable purpose. [S. 2(15)]**
Tribunal held that micro financing activity is in nature of trade, commerce or business hence is not entitle exemption as charitable purpose. (AY. 2007-2008, 2009-2010)
Shalom Charitable Ministries of India v. ACIT (2018) 171 ITD 338 / 195 TTJ 340 (Cochin) (Trib.)

230 **S. 11 : Property held for charitable purposes – Advancement of objects of general public utility Predominant object of assessee society was promotion of game of tennis – Receipts of incidental business income of assessee while carrying out objects of advancement of general public utility over and above prescribed limit under second proviso to section 2(15) would be subject to taxation and not entire income. [S. 2(15), 10(23C), 13]**
Tribunal held that predominant object of assessee society was promotion of game of tennis which is advancement of objects of general public utility. Income from organizing of Davis Cup up to the limit prescribed as per the second proviso to section

2(15), which for the assessment year under consideration is ₹ 25 lacs, will be treated as income from 'charitable purposes' and the assessee will be entitled to claim the exemption u/s 11 of the Act up to that extent in respect of the said income along with other income, if any, from the non-business activity of the assessee. However, the income over and above amount for ₹ 25 lacs from the business activity i.e. from the exploitation of its right to hold Davis Cup will be treated as 'business income' of the assessee and will be liable to include in its total income. The assessing officer, therefore, is directed to bifurcate the income from commercial activity and non-commercial activity and assess the income of the assessee as directed above. With the above observations, the appeal of the assessee is treated as partly allowed. (ITA No. 1382/CHD/2016, dt. 26.07.2018) (AY. 2013-14)

Chandigarh Lawn Tennis Association v. ITO (2018) 95 taxmann.com 308 (Chd.)(Trib.), www.itatonline.org

S. 11 : Property held for charitable purposes – Educational activities – Denial exemption is not justified only on account of charging fees from students – Receipts cannot be assessed as income from other sources – The assessee is entitle to exemption. [S. 2(15), 12, 56] 231

Tribunal held that the educational activity had been specifically treated as charitable purpose under S. 2(15) of the Act. The charging of fee would not take the assessee out of the ambit of charitable activity. The fees charged from the students had been applied for the purpose of carrying out charitable activity. The income by way of fee can be held to be derived from property held under trust. The receipts were not liable to be taxed under the head "Income from other sources". The assessee is entitle to exemption. (AY.2010-11)

Rama Devi Memorial Society, City Public School v. JCIT (2018) 65 ITR 50 (Delhi)(Trib.)

S. 11 : Property held for charitable purposes – Providing technical and managerial services to common people through IT for efficient functioning in government departments and it was charging service fee in addition to statutory fee levied by government and assessee could enhance its fees, since assessee's activities were not charitable. [S. 2(15), 12AA] 232

Tribunal held that the Society which is providing technical and managerial services to common people through IT for efficient functioning in government departments and it was charging service fee in addition to statutory fee levied by government and assessee could enhance its fees, since assessee's activities were not charitable first proviso to S. 2(15) is applied. (AY.2010-11, 2014-15)

Sukhmani Society for Citizen Services. v. ACIT (2018) 171 ITD 32 / 194 TTJ 937 / 169 DTR 89 (Asr.)(Trib.)

233 **S. 11 : Property held for charitable purposes – Advance of loan to another trust where the common trustees had no substantial interest and advance not being investment there is no violation hence exemption cannot be denied and registration cannot be refused. [S. 10(23C)(vi), 13(1)(d)]**

Allowing the appeal of the assessee the Tribunal held that; Advance of loan to another trust where the common trustees had no substantial interest and advance not being investment there is no violation, hence exemption cannot be denied and registration cannot be refused. (AY.2007-08)

Puran Chand Dharmarth Trust v. ITO (2018) 170 ITD 687 / 168 DTR 1 / 194 TTJ 643 / 64 ITR 50 (SN) (Delhi)(Trib.)

234 **S. 11 : Property held for charitable purposes – Depreciation-Income to be computed in normal commercial manner without classification under various heads referred in S. 14 of the Act. [S. 14, 32]**

Dismissing the appeal of the revenue the Tribunal held that income referred to S. 11(1)(a) of the Act was to be computed in accordance with the normal provisions Act but in accordance with the normal rules of accountancy under which the depreciation was to be allowed while computing such income.(AY. 2009-10)

Dy.CIT v. Nirma University (2018) 64 ITR 60 (Ahd.)(Trib.)

235 **S. 11 : Property held for charitable purposes – Providing knowledge, information, awareness, demonstrations, etc., to members of Fragrance and Flavours industry is charitable purpose hence entitle to exemption. [S. 2(15)]**

Allowing the appeal of the assessee the Tribunal held that; receipt of subscriptions from members, sale of publications, Fafai Journal, holding of workshops & conferences, directory receipts etc., were provided for facilitating dominant object of assessee-trust, viz., providing knowledge, information, awareness, demonstrations, etc., to members of Fragrance and Flavours industry is charitable purpose and entitle to exemption. (AY. 2009-10)

Fragrance & Flavours Association of India v. DIT (E) (2018) 170 ITD 312 (Mum.) (Trib.)

236 **S. 11 : Property held for charitable purposes – The denial of exemption was held to be justified as the Trust was running schools and institutes on a commercial basis however donations made by the assessee to another charitable trust should be regarded as application of income towards the object of the trust. [S. 2(15) 13]**

The denial of exemption was justified demonstrating the fact that the trust was not existing for charitable purposes and was running schools and institutes on a commercial basis however donations made by the assessee to another charitable trust should be regarded as application of income towards the object of the trust. However, the Tribunal also held that the donations made by the assessee to another charitable trust should be regarded as application of income towards the object of the trust. (AY. 2007-08, 2009-10, 2010-11)

IILM Foundation v. Addl. DIT(E) (2018) 61 ITR 186 (Delhi)(Trib.)

S. 11 : Property held for charitable purposes – Order of CIT(A) accepting the Trust as charitable Trust and allowing the exemption was set aside. [S. 12AA] 237

On appeal by the revenue the Tribunal held that, CIT(A) did not consider the findings of the AO while deciding the issue on merits It was found that the assessee was not granted registration u/s. 12A. The assessee should have moved a separate appeal to the appropriate authority against the rejection order u/s. 12AA(1)(b)(ii). Accordingly the Tribunal held that CIT (A) should consider contention raised by department and decide issue afresh and then pass a speaking order. (AY. 2013-14)

Dy. CIT v. Dayanand Dinanath Group of Institutions Educational Society (2018) 62 ITR 97 (Delhi)(Trib.)

S. 11 : Property held for charitable purposes – Charging of fees for educational activities which has to be applied for the object of the trust has to be seen as application of income – There is no disharmony between S. 10(23C) and S. 11 and exemption cannot be denied. [S. 10(23C) 12, 12A] 238

Allowing the appeal of the assesse, the Tribunal held that; Charging of fees for educational activities which has to be applied for the object of the trust has to be seen as application of income. There is no disharmony between S. 10(23C) and S. 11 and exemption cannot be denied. (AY. 2011-12)

Adarsh Public School v. JCIT (2018) 169 ITD 255 (Delhi)(Trib.)

S. 11 : Property held for charitable purposes – Quality control accreditation of organisations – Application fees membership fees and fees for organising seminars – Entitle to exemption. [S. 2(15), 12] 239

The assesse was established by the Ministry of Industry and registered under the Societies Registration Act, 1860 and u/s 12A of the Act. Dismissing the appeal of the revenue the Tribunal held that, the amount received by the assesse as application fees membership fees and fees for organising seminars etc is entitle to exemption. (AY. 2013-14)

Dy. CIT v. Quality Council of India (2018) 63 ITR 43 (SN)(Delhi) (Trib.)

S. 11 : Property held for charitable purposes – Development fund – Capital or revenue – Development fund along with tuition fee in a single receipt of fees from students was held to be revenue receipts and cannot be held to be capital receipt. [S. 4, 12A] 240

Allowing the appeal of the revenue the Tribunal held that; Development fund received along with tuition fee in a single receipt of fees from students was held to be revenue receipts and cannot be held to be capital receipt. (AY. 2012-13)

ACIT (E) v. Scholars Education Trust of India. (2018) 168 ITD 183 (Jaipur)(Trib.)

S. 11 : Property held for charitable purposes – letting out function hall cannot be considered as commercial activity – Exemption is entitle – No disallowance can be made for failure deduct tax at source when the income of the assessee was held to be exempt. [S. 2(15), 12A, 12AA, 40(a)(ia)] 241

Dismissing the appeal of the revenue the Tribunal held that; the proviso to section 2(15) was never meant to deprive genuine trusts and institutions whose main object was

charity but which in the process of achieving the main object undertook some income generating activity which was ancillary and incidental to the main object, therefore letting out function hall cannot be considered as commercial activity. Tribunal also held that no disallowance can be made for failure deduct tax at source when the income of the assessee was held to be exempt. (AY. 2012-13)
ITO v. Kalinga Cultural Trust (2018) 61 ITR 24 (Hyd) (Trib.)

242 **S. 11 : Property held for charitable purposes – Charitable purpose – Mere passing book entries cannot be considered as held to be – Depreciation. [S. 2(15, 12, 32]**
Dismissing the appeal of the revenue, the Tribunal held that; mere passing accounting entries in books of account transferring excess of Income over expenditure account to two different accounts is not applying profit for non-charitable activities. Assessee is entitle to exemption. Tribunal also held that a Trust is entitled to claim depreciation on assets on which deduction was allowed as application of income. (AY. 2007-08)
DIT v. Fortune Society For Development And Promotion Of International Business. (2018) 61 ITR 284 (Delhi)(Trib.)

243 **S. 11 : Property held for charitable purposes – Promotion of cricket – No violation of any condition of S. 13 – Expenditure incurred not for the object of Trust – Entire claim of exemption cannot be denied – Exemption can be denied only to the extent of expenditure which was not incurred for object of Trust – Travel expenses of office bearer – No detailes furnished – disallowance is held to be justified – Expenditure on account of purchase of complementary tickets for different international matches for VIPs so as to popularise game of cricket amongst VIPs – Held to be allowable as expenditure – Expenditure towards foreign travel of its office bearers for purpose of attending a meeting-Held to be allowable – Entertainment expenditure for wine, food and gift incurred by a charitable trust, engaged in promotion of cricket, for Government officials and other persons during a meeting is held to be not allowable. [S. 12A,13]**
Tribunal held that, when the expenditure is incurred is not for the object of the Trust and there is no violation of any of condition of S. 13, entire exemption cannot be denied. Exemption can be denied only to the extent of expenditure which was not incurred for object of Trust. As no details of ravel expenses of office bearers were furnished disallowance is held to be justified. Expenditure on account of purchase of complementary tickets for different international matches for VIPs so as to popularise game of cricket amongst VIPs-Held to be allowable as expenditure. Expenditure towards foreign travel of its office bearers for purpose of attending a meeting is held to be allowable. Entertainment expenditure for wine, food and gift incurred by a charitable trust, engaged in promotion of cricket, for Government officials and other persons during a meeting is held to be not allowable. (AY. 1999-2000, 2000-01)
Board of Control for Cricket in India v. ITO (2018) 196 TTJ 1057 / (2019) 174 ITD 159 (Mum.)(Trib.)

S. 12A : Registration – Trust or institution – Charitable purpose – The CIT has no power to cancel/withdraw/recall the registration certificate granted u/s 12A until express power to do so was granted by S. 12AA(3), till 1-10-2014. S. 21 of the General Clauses Act cannot be applied to support the order of cancellation of the registration certificate. [General clauses Act, S. 21] 244

Allowing the appeal the Court held that; The CIT has no power to cancel/withdraw/ recall the registration certificate granted u/s 12A until express power to do so was granted by S. 12AA(3), till 1-10-2014. S. 21 of the General Clauses Act cannot be applied to support the order of cancellation of the registration certificate. (C A No. 6262 OF 2010, dt. 16. 02. 2018)

Industrial Infrastructure Development Corporation (Gwalior) M. P. Ltd. v. CIT (2018) 403 ITR 1 / 163 DTR 49 / 301 CTR 153 / 253 Taxman 480 (SC)

S. 12A : Registration – Trust or institution – Registration cannot be denied merely on ground that secretary of society was getting lease rent for land given to society for running school or his wife who had requisite qualification was teaching in school and was being paid salary. [S. 13] 245

Assessee educational society, set up with various aims and objects including improvement in standard of education of backward students of rural areas, was running a school and Commissioner had not doubted genuineness of aims and objects of assessee, application under section 12A could not be rejected merely on ground that secretary of society was getting lease rent for land given to society for running school or his wife who had requisite qualification was teaching in school and was being paid salary.

CIT (E) v. Ambala Public Educational Society (2018) 259 Taxman 575 (P&H)(HC)

S. 12A : Registration – Trust or Institution – Merely because the charitable activity may mutually benefit members – Object itself would not cease to be charitable in nature [S. 2 (15)] 246

On appeal, High Court held that the provisions contained under S. 12A nowhere empowers the CIT to assess the objects *vis-a-vis* the books of accounts; even otherwise, it is not to be seen at this stage as to whether the fulfilment of the charitable purpose would eventually benefit the members of the society. Hence, CIT was rightly directed by ITAT to grant registration. (AY.2013-14)

CIT v. Chhattisgarh Urology Society (2018) 303 CTR 299 / 166 DTR 114 (Chhattisgarh) (HC)

S. 12A : Registration – Trust or institution – Seed certification agency – Advancement of object of general public utility – Entitle to registration. [S. 2(15)] 247

Dismissing the appeal of the revenue the Court held that ; providing services of seed certification agency is an advancement of general public activity. Entitle to registration. (AY. 2002-03 to 2005-06)

CIT v. Rajasthan State Seed And Organic Production Certification (2018) 408 ITR 513 (Raj.)(HC)

248 **S. 12A : Registration – Trust or institution – Registration of a trust does not involve enquiry into actual activities or application of funds, etc. and at that stage only enquiry required to be conducted is with respect to object of trust alone. [S. 2(15), 11 12AA]**

Dismissing the appeal of the revenue the Court held that; the registration of a trust does not involve enquiry into actual activities or application of funds, etc. and at that stage only enquiry required to be conducted is with respect to object of trust alone; and if assessee is found to have been engaged in any non-charitable activity, benefit of exemption may be denied.

CIT v. Babu Ram Education Society (2018) 96 taxmann.com 606 (All.)(HC)

Editorial : SLP is granted to the revenue; CIT v. Babu Ram Education Society (2018) 257 Taxman 558 / 96 taxmann.com 607 (SC)

249 **S. 12A : Registration – Trust or institution – Non disposal of application for registration after expiry of six months period is deemed to be granted automatically on expiry of six months period. [S.12AA(2)]**

Dismissing the appeal of the revenue the Court held that; where assessee-society filed an application under section 12A for grant of registration and same was responded after nine months, registration was deemed to be granted automatically on expiry of six months period as specified in section 12AA(2).

CIT v. TBI Education Trust (2018) 257 Taxman 355 / 172 DTR 347 / (2019) 306 CTR 295 (Ker.)(HC)

250 **S. 12A : Registration – Trust or institution – Cricket association holding commercial tournaments on behalf of Board of Control for cricket in India is entitle exemption. The court admitted the appeal on the question whether the Tribunal erred in holding that even after addition to the objects clauses of the assessee-trust made without intimation to the Department, the registration could not be ipso facto cancelled under section 12AA(3) on the ground that the registration granted under section 12A and the benefits flowing therefrom, could not continue after amending the objects without the approval of the competent authority. [S. 2(15) 12AA(3), 260A]**

Court held that Cricket association holding commercial tournaments on behalf of Board of Control for cricket in India is entitle exemption. The court admitted the appeal on the question whether the Tribunal erred in holding that even after addition to the objects clauses of the assessee-trust made without intimation to the Department, the registration could not be ipso facto cancelled under section 12AA(3) on the ground that the registration granted under section 12A and the benefits flowing therefrom, could not continue after amending the objects without the approval of the competent authority. (AY.2009-10)

PCIT v. Maharashtra Cricket Association (2018) 407 ITR 9 (Bom.)(HC)

251 **S. 12A : Registration – Trust or institution-when there is no change in objects of Trust, registration cannot be cancelled on the ground that there was amendment in respect of appointment of chief trustees and manner of managing the trust.[S. 11, 12AA(3), 13]**

Dismissing the appeal, of the revenue the Court held that; when there is no change in objects of Trust, registration cannot be cancelled on the ground that there was

amendment in respect of appointment of chief trustees and manner of managing the trust.
CIT(E) v. Sadguru Narendra Maharaj Sansthan (2018) 407 ITR 12 (Bom.)(HC)

S. 12A : Registration – Trust or institution – Cancellation notice having been issued on 6.03.2012, it did not suffer from any jurisdictional error. Matter was remanded to Tribunal to decide the issue on merits. [S. 2(15)] 252
Allowing the appeal of the assessee the Court held that; Cancellation notice having been issued on 06.03.2012, it did not suffer from any jurisdictional error. Matter was remanded to Tribunal to decide the issue on merits.
ACIT v. Agra Development Authority (2018) 407 ITR 562 / 163 DTR 121 / 302 CTR 308 / 90 taxmann.com 282 (All)(HC)
Editorial : SLP is granted to the revenue; ACIT v. Agra Development Authority (2019) 264 taxman 26 (SC)

S. 12A : Registration – Trust or institution – Though the object is charitable the assessee has not carried out any charitable activity of general public utility by utilising the funds which are meant for charitable purpose hence not entitle to exemption. [S. 2(15)] 253
Dismissing the appeal of the assessee the Court held that; though the object is charitable the assessee has not carried out any charitable activity of general public utility by utilising the funds which are meant for charitable purpose, hence not entitle to exemption.
Norka Roots v. CIT (2018) 401 ITR 224 (Ker.)(HC)

S. 12A : Registration – Trust or institution – Appeal before CIT(A) is continuation of original assessment proceedings – Proviso to S. 12A(2) is declaratory and will have and has retrospective effect [S. 11] 254
Dismissing the appeal of the revenue the Court held that; Proviso to S. 12A(2) inserted with effect from 1-10-2014 stating that registration will have effect prior years in respect of which assessment proceeding pending. Proviso is declaratory and will have and has retrospective effect. Appeal is a continuation of the original proceedings and assessment proceedings pending before an appellate authority should be deemed to be assessment proceedings pending before the Assessing Officer.
CIT v. Shree Shyam Mandir Committee (2018) 400 ITR 466 (Raj.)(HC)

S. 12A : Registration – Trust or institution – Proviso to S. 12A(2) which was added by Finance Act, 2014 shall be retrospective in operation – Entitled to get benefit of registration, [S. 10(23C) (iiiad), 10 (23C)(vi),12AA] 255
AO held that the assessee got registration under S 12A w.e.f. 01.04.2011 only, therefore, it was also not eligible for exemption of its income under S 11/12 for year under consideration which was affirmed by CIT (A).Tribunal held that, assessment order was passed on 29th January, 2014 and amendment was made in S. 12A by Finance Act, 2014 by inserting a provision w.e.f. 1st October, 2014. Registration was granted on dated 09-04-2012 which was effective from 01-04-2011 and assessment order was passed on 29-01-2014, therefore, in present case, assessment proceedings could be construed as pending as on date of order u/s 12AA. Amendment made by Finance Act, 2014 by inserting a proviso in S.. 12A should be construed retrospectively in operation because

legislator in its wisdom had brought this proviso to prevent genuine hardship which could be caused on assessee due to non-registration u/s 12A. Accordingly the assessee should be entitled to get benefit of registration, therefore, orders passed by both AO and CIT(A) was set aside and remanded case to AO to decide afresh. (AY. 2011-12)
Sai Wiran Wali Educational Trust (2018) 170 DTR 337 / 195 TTJ 956 (Asr.)(Trib.)

256 **S. 12A : Registration – Trust or institution – Educational trust – Registration could not be denied on ground that assessee should have sought approval under S. 10(23C)(vi) of the Act. Matter remanded to CIT (E), in accordance with law. [S. 10(23C)(iiiad), 10(23C(vi)]**
Tribunal held that, educational trust which is engaged in running, managing and developing school to awaken nation's spirit and scientific approach in students and to motivate poor and disabled students by providing educational facilities along with scholarships, registration could not be denied on ground that assessee having been claiming exemption under section 10(23C)(iiiad) should have sought approval under S. 10(23C)(vi) of the Act. Matter remanded to CIT (E), in accordance with law.
Swami Vivekanand Education Society v. CIT (E) (2018) 173 ITD 101 (Chd.)(Trib.)

257 **S. 12A : Registration – Trust or institution – Strictures – Society are to set up and carry on the administration and management of an academic institution at Anandpur sahib to be known as 'Sri Dashmesh Academy' for imparting education of high standard in general and training for administrative service and armed forces in particular to the children of persons domiciled in Punjab – The properties of the trust, have been created and constituted out of 100% grants given by the State and Central Government and have now been attempted to be shifted in the hands of the private management, may be distributed amongst the private individual members of the trust – The above facts and circumstances also cast doubt about the functioning and genuineness of the objects of the trust – Rejection of application for registration is held to be justified – Exemplary cost of ₹ 1 lakh levied upon trust for fraud in wrongly seeking exemption on basis that it is controlled & managed by the Govt. The ITAT is deemed to be a Civil Court and its proceedings are deemed to be judicial proceedings within the meaning of S. 193 & 228 & of the Indian Penal Code. Any attempt to play fraud on the ITAT by way of conveying wrong and false facts and pleadings is required to be strictly dealt with. [S. 11, 254(1), IPC S. 191, 228]**
Tribunal held that, the facts on the file speaks that the trustees in violation of the 'MOA' and 'Regulations' of the trust have shifted control & management of the Trust from the state and central government officials unto themselves. Under the circumstances, the Ld. CIT(E) had a valid and reasonable apprehension that in case of dissolution, the properties of the trust, which admittedly have been created and constituted out of 100% grants given by the State and Central Government and have now been attempted to be shifted in the hands of the private management, may be distributed amongst the private individual members of the trust. The above facts and circumstances also cast doubt about the functioning and genuineness of the objects of the trust. Accordingly the order of the CIT(E) in rejecting the application of the trust for registration u/s 12A of the Act. Tribunal also held that it is a clear and visible attempt on behalf of the trust to

mislead this Bench of the Tribunal by way of concealing the real and true facts that the Members of the Trust have, by not extending the term of Board of Governors, conveniently entrusted unto themselves the control and management of the Trust. Had the case of the Trust been not carefully examined, these important and relevant facts would have remained wrapped under the carpet, and the Trust could have managed to get the relief of exemption from taxation by presenting wrong and false facts. This is a clear case of an attempt to play fraud not only with the lower Income Tax authorities, but also upon this Tribunal, which is deemed to be a Civil Court for the purpose of discharging its functions and the proceedings before this Appellate Tribunal are deemed to be judicial proceedings within the meaning of sections 193 & 228 for the purpose of section 196 of Indian Penal Code. In view of this, any attempt to play fraud on the Court by way of conveying wrong and false facts and pleadings is required to be strictly dealt with. Hence, the appeal of the assessee is hereby dismissed with exemplary costs of ₹ 1,00,000/-to be recoverable as arrears of tax Revenue by the Department.
Sri Dashmesh Academy Trust v. CIT (E)(2019) 174 ITD 527 (Chd.)(Trib.), www.itatonline.org

S. 12A : Registration – Trust or institution – Registration cannot be denied on the ground that the return of income was filed in response to notice u/s 148 of the Act – Requirement of filing report of audit in prescribed form is merely procedural and, therefore, directory in nature and not mandatory for the purpose of claiming exemption under S. 11 and 12 of the Act. [S. 11, 148] 258
Tribunal held that, registration cannot be denied on the ground that the return of income was filed in response to notice u/s 148 of the Act. Requirement of filing report of audit in prescribed form is merely procedural and, therefore, directory in nature and not mandatory for the purpose of claiming exemption under S. 11 and 12 of the Act. (AY. 2012-13)
Genius Education Society v. ACIT (E) (2018) 172 ITD 640 / (2019) 176 DTR 73 / 198 TTJ 498 (Chd.)(Trib.)

S. 12A : Registration – Trust or institution – Education – Profit – making per se cannot be regarded as detrimental as long as a society pursue a charitable purpose; activities of a trust/institution promoting education need not target to serve poor, but it should function in conformity with its objects – Matter remanded. [S. 2(15)] 259
Tribunal held that,profit-making per se cannot be regarded as detrimental as long as it feeds a charitable purpose. Tribunal also held that 'education' is a 'charitable purpose' per se; however, activities, of an educational trust would not necessarily have to be targeted to serve or educate poor but it should function in conformity with its objects. Matter remanded. (AY. 2017-18)
Lord Shiva Educational Welfare Society v. CIT (2018) 172 ITD 429 (Asr.)(Trib.)

S. 12A : Registration – Trust or institution – Corpus donations received by trust with specific directions by donors to be applied towards specific purpose be treated as capital receipt – Corpus donation cannot be taxed though the trust is not registered. [S. 2(24)(iia), 11, 12AA] 260
Allowing the appeal of the assessee the Tribunal held that ; corpus donations received by assessee-trust with specific directions by donors to be applied towards specific

purpose for which respective fund was created would be treated as capital receipt. Accordingly the corpus donation is not taxable though the trust is not registered under S. 12A of the Act. (AY. 2012-13)
Bank of India Retired Employees Medical Assistance Trust v. ITO (2018) 172 ITD 78 / 172 DTR 140 / 196 TTJ 706 (Mum.)(Trib.)

261 **S. 12A : Registration – Trust or institution – Corpus contributions being capital receipts, cannot be charged to tax though the trust is not registered. [S. 2(24)(iia), 12AA]**
Dismissing the appeal of the revenue the Tribunal held that, corpus contributions being capital receipts, cannot be charged to tax though the trust is not registered. (AY. 2005-06)
ITO v. Serum Institute of India Research Foundation. (2018) 169 ITD 271 / 195 TTJ 820 (Pune)(Trib.)

262 **S. 12A : Registration – Trust or institution – Registration can not be refused on the ground of non – production of books of accounts. [S. 2(15), 11]**
Allowing the appeal of the assessee the Tribunal held that; CIT is not justified in rejecting registration on the ground that the non-production of books and vouchers means that the genuineness of the charitable activities cannot be verified. The CIT is entitled only to examine the objects of the trust at the stage of registration and not the books of account.
Vidyadayani Shiksha Samiti v. CIT (2018) 161 DTR 265 / 191 TTJ 355 / 62 ITR 487 (Delhi)(Trib.)

263 **S. 12A : Registration – Trust or institution – Excess of income over expenditure, which was transferred to its reserve and surplus account cannot be assessed as income – First proviso to section 12A(2) inserted by Finance (No. 2) Act, 2014 with effect from 1-10-2014, has to be applied retrospectively. [S. 2(15), 10(23C)(vi), 11(5)]**
The AO held that the Assessee society was neither registered under section 12A nor approved under section 10(23C)(vi). Therefore excess of income over expenditure, which was transferred to its reserve and surplus account was added to the returned income. In Appeal CIT(A) confirmed the order of the AO. On appeal to the Tribunal, allowing the appeal of the assesse the Tribunal held that; first proviso to section 12A(2) inserted by Finance (No. 2) Act, 2014, with effect from 1-10-2014, being a beneficial provision intended to mitigate hardships in case of genuine charitable institutions, has to be applied retrospectively. Therefore, the order of the CIT(A) is set aside and, consequently, the addition sustained by here is deleted. (AY. 2011-12)
Punjab Educational Society v. ITO (2018) 168 ITD 109 / 61 ITR 622 (Asr.)(Trib.)

264 **S. 12A : Registration – Trust or institution – Denial of exemption was held to be not justified, when the exemption was allowed consistently – Rejection of SLP cannot be construed as having effect of elocution of law by Supreme Court. [S. 2(15) 11]**
Allowing the appeal of the assesse the Tribunal held that, mere dismissal of SLP by Supreme Court against judgment of J&K High Court in case of Jammu Development Authority could not be construed as having effect of elocution of law by Supreme Court on subject against assessee and benefit of exemption under section 11 could not

be denied to assessee, a development authority when it had been granted exemption in past consistently. (AY. 2012-13, 2013-14)
Moradabad Development Authority v. ACIT (2018) 168 ITD 564 / 162 DTR 17 / 191 TTJ 761 (Delhi)(Trib.)

S. 12AA : Procedure for registration – Trust or institution-In the absence of any cogent material or evidence to establish any violation of provisions of S. 12AA(3), cancellation of registration retrospectively is held to be not justified. [S. 11, 12AA(3)] 265
Dismissing the appeal of the revenue the Court held that, in the absence of any cogent material or evidence to establish any violation of provisions of S. 12AA(3), cancellation of registration retrospectively is held to be not justified.
CIT v. Rama Educational Society (2018) 99 taxmann.com 281 / 259 Taxman 369 (All.)(HC)
Editorial : SLP is granted to the revenue, CIT v. Rama Educational Society (2018) 259 Taxman 368 (SC)

S. 12AA : Procedure for registration – Trust or institution – Animal care – Amount spent was less than 10 lakhs towards animal care such as food medical etc. Activities would be included under S. 2(15) of the Act, accordingly benefit of S. 80G(5) (vi) would also be available – Entitle to registration. [S. 2(15), 11, 13, 80G(5)(vi)] 266
Dismissing the appeal of the revenue the Court held that Amount spent was less than 10 lakhs towards animal care such as food medical etc. Activities would be included under S. 2(15) of the Act, accordingly benefit of S. 80G(5) (vi) would also be available. Entitle to registration. Followed *CIT v. Shri Balaji Samaj Vikas Samiti (2018) 403 ITR 398 (All) (HC)*
CIT v. Animal Care Society (2018) 99 taxmann.com 232 / 259 Taxman 350 (All.)(HC)
Editorial : SLP of revenue is dismissed CIT v. Animal Care Society (2018) 259 Taxman 349 (SC)

S. 12AA : Procedure for registration – Trust or institution – At the time of registration what has to be looked in to is whether the trust is a genuine or it is a sham institution – Registration allowed by the Tribunal is held to be justified. [S. 11, 12, 80G] 267
Dismissing the appeal of the revenue the Court held that, at the time of registration what has to be looked in to is whether the trust is a genuine or it is a sham institution. Registration allowed by the Tribunal is held to be justified.
CIT v. Dali Bai Sewa Sansthan (2018) 99 taxmann.com 289 / 259 Taxman 347 (Raj.)(HC)
Editorial : SLP of revenue is allowed CIT v. Dali Bai Sewa Sansthan (2018) 259 Taxman 346 (SC)

S. 12AA : Procedure for registration – Trust or institution – Non communication of changes in the object clause – Registration cannot be refused. [S. 11, 13] 268
Dismissing the appeal of the revenue the Court held that; non communication of changes in the object clause. Registration cannot be refused. Real purpose of registration is to be seen that object falls within definition of section 12AA and proviso; and mere non-communication of changes in objects clause to authority will not automatically cancel registration; rather, it will be open for department, while making assessment, to

follow provision of section 11(5) and section 13 to disallow expenses or income, as the case may be, if same is not as per approved bye-laws. (AY. 2005-06, 2008-09, 2009-10)
CIT v. Rajasthan Cricket Association (2018) 98 Taxman.com 425 / (2019) 260 Taxman 149 (Raj.)(HC)
Editorial : SLP is granted to the revenue, CIT v. Rajasthan Cricket Association (2018) 259 Taxman 90 (SC)

269 **S. 12AA : Procedure for registration – Trust or institution – Genuineness of trust and its activities are not doubted – Registration cannot be refused. [S. 2(15), 11]**
On appeal, the High Court held that the Tribunal was justified in its findings to grant registration under S. 12AA by observing that there was no requirement for any trust to be registered with the Charity Commissioner of the Devasthan Department of Rajasthan and the CIT (E) has to leave its examination only to the objects of the trust and genuineness of the activities which have been examined and no defect has been pointed out by CIT.
CIT (E) v. Shri Suparasnath Jain Sangh Trust (2018) 304 CTR 110 / 167 DTR 129 (Raj.) (HC)

270 **S. 12AA : Procedure for registration – Trust or institution – Delay of 18 years 3 months and 21 days – Registration was granted prospectively with effect from 1-4-2007 relevant to assessment year 2008-09 and onwards, i.e., prospectively is held to be justified – Order of Tribunal to grant the registration retrospectively was set aside.**
Allowing the appeal of the revenue the Court held that ; Tribunal was not justified in condoning the delay of delay of 18 years 3 months and 21 days. Granting of registration prospectively by the Commissioner, with effect from 1-4-2007 relevant to assessment year 2008-09 and onwards is held to be justified. (AY. 2008-09)
CIT v. Hemla Trust (2018) 258 Taxman 406 / 172 DTR 417 / 307 CTR 576 (Mad.)(HC)

271 **S. 12AA : Procedure for registration – Trust or institution – Supplying food to poor school children on funds earmarked and disbursed by State Government – Implementation of such schemes would not lead to any charitable activity – Not entitle to registration. [S. 2(15), 11]**
Allowing the appeal of the revenue the Court held that ; supplying food to poor school children on funds earmarked and disbursed by State Government. Implementation of such schemes would not lead to any charitable activity hence not entitle to registration. The sub-contract of the assessee cannot be considered to be a charitable activity, especially since the supply of food is with the funds of the State Government, received by the assessee as contract amounts.
CIT v. Annadan Trust (2018) 258 Taxman 54 / (2019) 174 DTR 412 (Ker.)(HC)

272 **S. 12AA : Procedure for registration – Trust or institution – Transfer of funds to another charitable institution – Cancellation of registration is not justified. [S. 11]**
Dismissing the appeal of the revenue the Court held that; the Tribunal found that the foreign remittances were duly authorised by the competent authority under the Foreign

Contribution (Regulation) Act, 2010. There was no stipulation in the memorandum of association of the assessee-trust prohibiting any transfer of funds to another charitable trust which was also registered under the provisions of the 1961 Act. The cancellation of registration because the remittances had been transferred to another charitable institution was erroneous. The Tribunal was justified in setting aside the order of cancellation. (AY. 2011-12)
CIT v. Maria Social Service Society (2018) 408 ITR 462 (Karn.)(HC)

S. 12AA : Procedure for registration – Trust or institution – At time of initiation of proceedings for cancellation of registration in year 2008, Commissioner did not have such a power in terms of sub-section (3) of section 12AA and, accordingly the order was to be set aside. [S. 12A] 273
Dismissing the appeal of the revenue the Court held that ;provision empowering cancellation of registration of trust granted under section 12A was brought in by sub-section (3) of section 12AA by Finance Act, 2010, with effect from 1-6-2010, and, thus, at time of initiation of proceedings for cancellation of registration in year 2008, Commissioner did not have such a power in terms of sub-section (3) of section 12AA and, consequently, the order was set aside
PCIT v. JIS Foundation (2018) 89 taxmann.com 226 (Cal.)(HC)
Editorial : SLP of revenue is admitted ; PCIT v. JIS Foundation (2018) 257 Taxman 261 / 96 taxmann.com 257 (SC)/257 Taxman 553 / 96 taxmann.com 611 (SC) 274

S. 12AA : Procedure for registration – Trust or institution – On receipt of registration Form 10 was filed claiming the benefit of S. 11 of the Act – Single judge was justified in condoning the delay in submission of Form 10 and directing the AO to allow accumulation of income. [S. 11(2), Form 10]
Dismissing the appeal of the revenue the Court held that; on receipt of registration Form 10 was filed claiming the benefit of S. 11 of the Act. Accordingly the single judge was justified in condoning the delay in submission of Form 10 and directing the AO to allow accumulation of income. (AY.2006-07)
DIT (E) v. Chennai Port Trust (2018) 256 Taxman 101 (Mad.)(HC)

S. 12AA : Procedure for registration – Trust or institution – Failure to dispose of application before expiry of 6 Months does not result in deemed grant of registration. 275
Allowing the appeal of the revenue the Court held that ; failure to dispose of the application for registration by granting or refusing registration before the expiry of the period of six months, provided under S. 12AA(2) of the Act, did not result in deemed grant of registration. *CIT v. Muzafar Nagar Development Authority (2015) 372 ITR 209 (FB) (All) (HC)* is applied. (AY. 2008-09)
CIT v. Shri Awadh Bihari Shri Ram Lok Vikas Sansthan (2018) 404 ITR 640 (All.)(HC)

S. 12AA : Procedure for registration – Trust or institution – Cancellation of registration on basis of violation of S. 13(1)(c) of the Act is held to be not valid [S. 11, 13(1)(c)] 276
Dismissing the appeal of the revenue, the Court held that ; cancellation of registration on basis of violation of S. 13(1)(c) of the Act is held to be not valid. Cancellation of

registration of Trust under S. 12AA(3) of the Act is only in two contingencies, one the activities of the Trust are not genuine or the trust is not being carried out in accordance with the objects of the Trust.
CIT v. Sadguru Narendra Maharaj Sansthan (2018) 165 DTR 101 / 302 CTR 304 (Bom.) (HC)

277 **S. 12AA : Procedure for registration – Trust or institution – Registration cannot be refused on the ground that the Trust deed does not contain dissolution clause. [S. 12A]**
Dismissing the appeal of the revenue the Court held that, registration cannot be refused on the ground that the Trust deed does not contain dissolution clause. Court observed that S. 55 of the Maharashtra Public Trust Act, 1950 takes care of such contingency. (ITA No. 247 of 2015 dt 31-07-2017) (AY. 2012-13) (ITA No 1247 /Mum./ 2013 dt 14-07-2014)
CIT(E) v. Tara Educational & Charitable Trust (Bom.)(HC)(UR)

278 **S. 12AA : Procedure for registration – Trust or institution – Providing mid-day meals at Village Schools is charitable purpose which is entitle to registration. [S. 2(15)]**
Dismissing the appeal of the revenue the Court held that the activity performed by the assessee was inseparably linked to the "charitable purpose" of providing mid-day meals at village schools. The total receipts of the assessee were below the limit of ₹ 10 lakhs as stipulated under the second proviso to S. 2(15) of the Act. Therefore, the Tribunal had rightly concluded that the restriction created by the first proviso to S. 2(15) of the Act did not operate against the assessee and therefore the activity of the assessee, even though it might have involved an activity in the nature of trade, commerce or business, would fall within the ambit of general public utility and therefore be a charitable purpose under S. 2(15) of the Act.
CIT v. Shri Balaji Samaj Vikas Samiti. (2018) 403 ITR 398 / 254 Taxman 93 / 302 CTR 397 / 164 DTR 56 (All.)(HC)

279 **S. 12AA : Procedure for registration – Trust or institution – Genuineness of activities of the assessee was not doubted hence refusal of registration was held to be not justified [S. 12A]**
Dismissing the appeal of the revenue the Court held that; it was rightly concluded by the Tribunal that the Commissioner was not justified in rejecting the application for registration, under section 12AA, of the assessee-society by insisting on conditions not contemplated by the statute. The Department had not been able to produce any material on record to show that the approach adopted by the Tribunal was legally unsustainable or to show that the view taken by it was erroneous. No question of law arose.
CIT v. Shri Mahavir Jain Society (Regd.) (2018) 402 ITR 301 / 302 CTR 497 / 166 DTR 198 (P&H)(HC)

280 **S. 12AA : Procedure for registration – Trust or institution – Rejection of application for failure to produce Trust deed was held to be not justified, when the assessee was registered under State Wakf Board. [R. 17A]**
Dismissing the appeal of the revenue the Court held that; the factum of existence of a trust could also be established by producing documents evidencing its creation.

The order passed by the Wakf Board recognised various Daudi Vora trusts and the assessee had also listed its objects, who would be the managers of the trust and how such managers would be appointed or removed. The Tribunal had gone through the registration details of the assessee as contained in the order of the Wakf Board and was satisfied that the full details of the functions of the trust were available which established the existence of the trust, its registration by the State Wakf Board and also contained the details of its objects, the manner of appointment of mutawalli, etc. The Tribunal was right in holding that looking to the nature of the assessee-trust no separate trust deed was required for registration under section 12AA as it was registered with the State Wakf Board.
CIT v. Dawoodi Bohra Masjid (2018) 402 ITR 29 / 163 DTR 257 / 301 CTR 268 / 90 taxmann.com 312 (Guj.)(HC)

S. 12AA : Procedure for registration – Trust or institution – Alleged misuse of funds is not a ground for refusing registration [S. 11, 12A] 281
Dismissing the appeal of the revenue the Court held that; Alleged misuse of funds is not a ground for refusing registration.
CIT v. Chaudhary Son Pal Singh (2018) 401 ITR 509 (All.)(HC)

S. 12AA : Procedure for registration – Trust or institution – Dissolution clause – Trust cannot be refused registration on the ground that there is no clause on distribution of asset on dissolution, when the Trust is Registered with sub-Registrar as charitable Trust – Matter remanded [S. 80G Rajasthan Public Trust Act, 1959] 282
Allowing the appeal of the assesee the Tribunal held that Trust cannot be refused registration on the ground that there is no clause on distribution of asset on dissolution, when the Trust is Registered with sub-Registrar as charitable Trust. It is the charity commissioner who will decide the distribution of assets on dissolution. Matter remanded.
Sidha Sthan Shri Kapaleshwar Mahadev Sanyas Ashram Trust v. CIT (2018) 162 DTR 202 / 191 TTJ 131 (Jaipur)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Registration cannot be refused on the ground that all initial trustees had taken citizenship of foreign country – Order of CIT(E) rejection of registration and application u/s 80G is set aside. [S. 80G, FEMA, 1999, S. 6(5) Indian Trust Act 1882, S. 10, 60, 73] 283
CIT (E) rejected the registration application under on ground that all initial trustees had taken citizenship of foreign country and thus there was violation of provisions of S 73 of Indian Trust Act, 1882. On appeal the Tribunal held that S. 73 of 1882 Act per se cannot invalidate a trust, but rather provides bar for appointment of non-resident as a trustees. 60 of Trust Act only provides for a right of beneficiary to have proper trustees, but it does not impinge upon validity of trust. Accordingly the rejection of application is held to be not proper.
Global Academy of Emergency Medicine v. CIT (2018) 196 TTJ 273 / 171 DTR 73 / (2019) 175 ITD 96 (Delhi)(Trib.)

284 **S. 12AA : Procedure for registration – Trust or institution – Educational institution-At time of considering assessee's application for registration under section Commissioner is only entitled to see whether objects of trust are charitable in nature and whether its activities are genuine or not – Rejection of application on the ground that the asessee is primarily engaged in business of education on commercial basis with a profit motive without providing any element of charity to public at large is held to be not justified. [S. 2(15), 11]**

Allowing the appeal of the assessee the Tribunal held that ; at time of considering assessee's application for registration under section 12AA, Commissioner is only entitled to see whether objects of trust are charitable in nature and whether its activities are genuine or not. Rejection of application on the ground that the assessee is primarily engaged in business of education on commercial basis with a profit motive without providing any element of charity to public at large is held to be not justified .

Fateh Chand Trust & College Committee v. CIT (E) (2018) 67 ITR 564 (Agra)(Trib.)

285 **S. 12AA : Procedure for registration – Trust or institution – Cancellation of registration – Educational institutions – Collected huge amount of capitation fee from students for admission to medical colleges – order passed by CIT(E) cancelling registration granted to as well as withdrawing exemption granted to it under S 10(23C)(vi) and 10(23C)(via) of the Act is held to be justified-However denial of registration merely on ground that some part of land on which assessee had setup an university was not in ownership of said university as per certain Government notification, same was unjustified – Matter remitted back to the CIT(E) for the AY. 2009-10. [S. 10(23C)(vi), 10(23C)(via), 12A]**

Assessee, trust which is running various educational institutions, collected huge amount of capitation fee from students for admission to medical colleges. CIT(E) cancelled the registration granted under S. 12AA as well as withdrawing exemption granted to it under sections 10(23C)(vi) and 10(23C)(via) of the Act. On appeal the Tribunal held that cancellation of registration and withdrawal of approval can be made from retrospective date. Tribunal also held that, since non-genuineness of activities of assessee-trust were found from assessment year 2009-10 when assessee had received huge capitation fee in cash, cancellation of registration or withdrawal of approval had to be given from assessment year 2009-10. However denial of registration merely on ground that some part of land on which assessee had setup an university was not in ownership of said university as per certain Government notification, same was unjustified – Matter remitted back to the CIT(E) for the AY.2009-10. (AY.2006-07, 2017-18, 2009-10)

Indian Medical Trust v. PCIT (2018) 173 ITD 508 (Jaipur)(Trib.)

286 **S. 12AA : Registration – Trust or institution – CIT(E) has to examine the objects of the trust and if they are found to be charitable, the assessee deserves to be granted registration. [S. 12A]**

Allowing the appeal of the assessee the Tribunal held that; CIT(E) has to examine the objects of the trust and if they are found to be charitable, the assessee deserves to be granted registration.

Aasho Charitable Trust v. CIT (E) (2018) 163 DTR 193 / 192 TTJ 86 (Delhi)(Trib.)

S. 12AA : Registration – Trust or institution – Procedure for registration of trust – CIT(E) has to examine the objects of the trust and if they are found to be charitable, the assessee deserves to be granted registration The quantum of the genuineness of the activity can be examined only after the trust comes fully into operation. 287

Allowing the appeal of the assessee the Tribunal held that; CIT(E) has to examine the objects of the trust and if they are found to be charitable, the assessee deserves to be granted registration The quantum of the genuineness of the activity can be examined only after the trust comes fully into operation. (AY. 2016-17)

ACE Vision Educational & Charitable Trust v. CIT (E) (2018) 168 DTR 458 / 194 TTJ 764 (Chd.)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Failure to dispose application with in prescribed period of six months – registration would be deemed to have been granted from date of inception of assessee – University. [S. 12A] 288

Allowing the appeal of the assessee the Tribunal held that; since, in instant case, CIT(E) failed to dispose of assessee's application within prescribed period of six months without any justifiable reason, registration would be deemed to have been granted from date of inception of assessee-University. Accordingly the impugned order granting registration from prospective date, i.e. from 1-4-2016 was to be set aside and, Commissioner was to be directed to grant registration with effect from 1-4-1998.

Visvesvaraya Technological University v. CIT (2018) 171 ITD 414 (Bang.)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Refusal of registration was held to be not justified without bringing any evidence to demonstrate that the object of the Trust is not charitable. [S. 2(15)] 289

The Tribunal held that the CIT was not justified in refusing the registration u/s. 12AA without bringing an iota of evidence that objects of assessee are not charitable in nature. The assessee deserves to be granted registration u/s. 12AA.

Aasho Charitable Trust v. CIT (E) (2018) 192 TTJ 86 (Delhi)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Power to reject application cannot be delegated by the CIT to its subordinates. [S. 12A] 290

The Assessee had made an application for registration under S. 12A of the Act. Pursuant to which it received a show cause notice from the office of CIT(E), which was signed by Dy.CIT(E). Assessee furnished various information/clarifications to the Dy.CIT(E), who conducted the proceedings. No proceedings were conducted by the CIT(E). Also no opportunity of being heard was given to the assessee by CIT(E) before rejecting assessee's application under S. 12A of the Act.

On appeal the ITAT held that reasonable opportunity of being heard before refusing the registration u/s 12A ought to be given to the Assessee. Further the CIT cannot delegate the power of refusing the registration u/s 12A to a subordinate, reliance was placed on jurisdictional high court ruling in case of *CIT v. Ameliorating India (2017) 399 ITR 196 (P&H) (HC)*. Hence the ITAT held that the order passed CIT(E) without observing the

due process of law, was procedurally deficient, constituting an irregularity and restored the matter back to the CIT(E).
Parmeshwari Hansraj Jain Khanga Dogra Trust v. CIT(E) (2018) 192 TTJ 45 (UO)(Ars.) (Trib.)

291 **S. 12AA : Procedure for registration – Trust or institution – Establishment of diagnostic center is in line or coherent with objective of medical relief – Non-communication of amended trust deed is a mere irregularity.**
Tribunal following the decision of Moolchand Kairati Ram Trust (ITA No. 141 of 2013) (Delhi) (HC) held that establishment of a diagnostic center was in the line or coherent of its existing objects. ITAT further observed that CIT had only mentioned that establishing diagnostic center was a commercial venture but had not established that why it should not be construed as medical relief to the public (medical relief to poor is one of the original objects of the trust). ITAT further held that non communication of amended trust deed to the department in Form 10A was a mere irregularity and on basis of which registration under section 12A cannot be cancelled.
Paramount Charity Trust v. CIT (2018) 63 ITR 577 (Ahd.)(Trib.)

292 **S. 12AA : Procedure for registration – Trust or institution – Filing or non-filing of return of income or payment of tax has nothing to do with genuineness of activities of an institution – Benefit of S. 11 is subject to application of income and income can also be taxed u/s 13 if there is violation – CIT (E) is directed to grant registration to the assessee forthwith. [S. 2(15) 11, 13(1)(b)]**
Allowing the appeal of the assessee the Tribunal held that ; filing or non-filing of return of income or payment of tax has nothing to do with genuineness of activities of an institution. Benefit of S. 11 is subject to application of income and income can also be taxed u/s 13 if there is violation. CIT (E) is directed to grant registration to the assessee forth with.
B.S. A. College v. CIT (E) (2018) 170 ITD 485 (Agra)(Trib.)

293 **S. 12AA : Procedure for registration – Trust or institution – Genuineness of Trust is established – Registration cannot be refused. [S. 2(15), 12A]**
Allowing the appeal of the assessee the Tribunal held that the assessee had established that it was doing the genuine charitable activities to achieve the object of the Trust making every possible efforts by giving own rent free accommodation to the Trust, hence the refusal of registration was held to be not valid. Accordingly the Commissioner was directed to grant the registration u/s 12AA of the Act.
Shabad Foundation v. CIT (2018) 64 ITR 72/ 167 DTR 381 / 192 TTJ 633 (Delhi)(Trib.)

294 **S. 12AA : Procedure for registration – Trust or institution – Mainly on ground that it was charging hefty fee from students registration cannot be refused as society is providing free education to needy students and free medical aid to needy patients. [S. 2(15)]**
Allowing the appeal of the assessee the Tribunal held that rejection of application for registration was not justified; mainly on ground that it was charging hefty fee from

students registration cannot be refused as society is providing free education to needy students and free medical aid to needy patients.
B. B. Educational Society v. CIT (2018) 170 ITD 362 (Delhi)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Bogus donation – Merely on the basis of information received from Investigation Wing without supplying the copy to the assessee, cancellation of registration is held to be bad in law. [S. 12A, 35(1)(iii), 80G] 295
Allowing the appeal of the assessee the Tribunal held that; Merely on the basis of information received from Investigation Wing that assessee-trust was receiving bogus donation from various parties which were returned to them subsequently after charging certain amount of commission, without supplying the copy to the assessee, cancellation of registration is held to be bad in law. (AY. 2017-18)
Bioved Research Society v. CIT (2018) 170 ITD 160 (All.)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Registration granted cannot be denied in the subsequent years when there is no change in the objects of the assessee only on the presumption that proviso to S. 2(15) is applicable. [S. 2(15)] 296
On appeal the Tribunal held the registration granted cannot be denied in the subsequent years when there is no change in the objects of the assessee only on the presumption that proviso to S. 2(15) is applicable. (AY. 2003-04 to 2013-14)
HMDA v. CIT(E) (2018) 161 DTR 82 / 191 TTJ 122 (Hyd.)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Amount from settler company and same was given as donation to another charitable institution, refusal of registration is held to be justified as the assessee has not carried out any charitable activities. [S. 2(15)] 297
Dismissing the appeal of the Assessee the Tribunal held that, though the Trust was created as an instrument to carry out CSR functions of its settler company it has not carried out any charitable activities. Amount received from settler company and same was given as donation to another charitable institution therefore the assessee trust cannot be treated as trust for benefit of general public hence refusal of registration is held to be justified. (AY. 2016-17)
Goenka Charitable Trust v. CIT (E) (2018) 62 ITR 129 / 89 taxmann. com 311 (Asr.)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Registration cannot be denied only on the ground that the Trust was formed by company for complying corporate social responsibility requirement. [S. 11, 80G] 298
Tribunal held that, registration cannot be denied only on the ground that the Trust was formed by company for complying corporate social responsibility requirement unless genuineness of activities or object is doubted. (AY. 2016-17)
Nanak Chand Jain Charitable Trust v. CIT (2018) 169 ITD 534 (Delhi)(Trib.)

299 **S. 12AA : Procedure for registration – Trust or institution – Assessee, a body corporate, was formed under U.P. Urban Planning and Development Act, 1973, to promote and secure development of local area is eligible for registration. [S. 2(15)]**
Allowing the appeal the Tribunal held that, Assessee, a body corporate, was formed under U.P. Urban Planning and Development Act, 1973, to promote and secure development of local area is eligible for registration(AY. 2014-15)
Firozabad Shikohabad Development Authority v. CIT (2018) 169 ITD 202 (Agra)(Trib.)

300 **S. 12AA : Procedure for registration-Trust or institution Promotion of State Cricket – Entitle to registration [S. 2(15), 12A]**
Allowing the appeal of the assessee the Tribunal held that the object of the association is promotion of State Cricket, activities of the assessee was not in doubt hence the asseessee was held to be entitle to registration. (AY. 1997-98, 2011-12)
Orissa Cricket Association v. CIT (2018) 61 ITR 675 (Cuttak)(Trib.)

301 **S. 12AA : Procedure for registration – Trust or institution – Impart education in the field of nursing is entitle to registration. [S. 2(15)]**
Allowing the appeal of the assessee the Tribunal held that; the object of the assessee to impart education in the field of nursing being charitable object is entitle to registration.
Trisha Welfare Society v. CIT (E) (2018) 168 ITD 207 (Agra)(Trib.)

302 **S. 12AA : Procedure for registration – Trust or institution – Application of income – Funds were diverted to non charitable purposes hence cancellation of registration was held to be valid. [S. 11, 12A]**
Dismissing the appeal of the revenue, the Tribunal held that, the assessee had given donations to various societies, but had neither established user of donations for charitable purposes, nor demonstrated that said donee society was a charitable society registered under section 12A, assessee was not entitled to claim donations as application of its income and, thus, registration granted under section 12A be cancelled by invoking provisions of section 12AA(3) of the Act. (AY. 2008-09, 2009-10, 2010-11)
Winsome Foundation v. CIT (2018) 168 ITD 575 / 192 TTJ 756 / 164 DTR 241 (Chd.)(Trib.)

303 **S. 13 : Denial of exemption – Trust or institution – Investment restrictions – Shares received by way of gift failed to dispose off or convert said shares in to permissible investments – Denial of exemption is to be restricted to only income earned from shares to be taxed at marginal rate under S. 164(2) and not on entire income of the assessee. [S. 11, 13(1)(d)(iii), 164(2)]**
Dismissing the appeal of the revenue the Court held that, denial of exemption under S. 13(1)(d)(iii) of the Act is to be restricted to only income earned from shares to be taxed at marginal rate under S. 164(2) and not entire income of assessee.
CIT(E) v. Santokba Durlabhji Trust Fund (2018) 93 taxmann.com 324 (Raj.)(HC)
Editorial : SLP is garnted to the revenue, CIT(E) v. Santokba Durlabhji Trust Fund (2018) 93 taxmann.com 325 (SC)

S. 13 : Denial of exemption – Trust or institution – Investment restrictions – Trust was restrained from converting shares held by it in private limited company to other forms of permissible investment by virtue of restraint order of High Court in case of settlors from whom it had received shares, it could not be held liable for violation of provisions of S. 11(5) read with S. 13(1)(d) for holding shares for more than prescribed period-Exemption cannot be denied. [S. 11(5), 113(1)(d)] 304

Dismissing the appeal of the revenue the Court held that as a result of a dispute which arose amongst the family members of Dr. Bhai Mohan Singh, the assessee was restrained from converting the shares held in DGHPL to other permissible form of investment before the time limit prescribed in clause (iia) of proviso to S. 13(1)(d) of the Act. The conversion could ultimately take place in 2012 after the restraint was lifted. There was no violation of provisions of S. 11(5) read with S. 13(1)(d) for holding shares for more than prescribed period. Exemption cannot be denied. (AY.2007-08)

CIT v. Bhai Mohan Singh Foundation (2018) 95 taxmann.com 332 (Delhi)(HC)

Editorial : SLP of revenue is dismissed; CIT v. Bhai Mohan Singh Foundation (2018) 257 Taxman 90 (SC)

S. 13 : Denial of exemption – Trust or institution – Investment restrictions – Holding shares in a company – Denial of exemption to be restricted to income from shares to be taxed at marginal rate under S. 164(2) [S. 11, 13(1))(d)(iii), 164 (2)] 305

Dismissing the appeal of the revenue the Court held that; denial of exemption to be restricted to income from shares to be taxed at marginal rate under S. 164(2) of the Act.

CIT v. Santokba Durlabhji Trust Fund (2018) 406 ITR 457 (Raj.)(HC)

Editorial : SLP is granted to the revenue; CIT v. Santokba Durlabhji Trust Fund (2018) 404 ITR 2 (St)

S. 13 : Denial of exemption – Trust or institution-Investment restrictions – Trust is not paying the rent which it occupied third and fourth floor – Repair and renovation of building owned by Trustee done by the Trust – Assessing Officer could not have disallowed expenditure incurred towards repairs and renovation of building owned by trustee on ground that it was in contravention of provisions of section 13(1)(c) as a benefit had accrued to trustee through such payment as the trustees were required to repay the expenditure incurred – Matter remanded. [S. 11, 12] 306

Trust is occupying the third and fourth floor which belong to trustee and it is not paying any rent. Repair and renovation of building dine by the Trust. AO disallowed the expenditure on the ground, it was in contravention of S. 13 of the Act. On appeal the Tribunal held that the Assessing Officer could not have disallowed expenditure incurred towards repairs and renovation of building owned by trustee on ground that it was in contravention of provisions of section 13(1)(c) as a benefit had accrued to trustee through such payment as the trustees were required to repay the expenditure incurred Matter remanded. (AY. 2012-13)

Children Welfare Education Trust v. ITO (E) (2018) 172 ITD 650 (Mum.)(Trib.)

307 **S. 13 : Denial of exemption – Trust or institution – Investment restrictions – Land and interest free loan given to a trust not registered u/s 12AA – Held, objects of the assessee and the recipient trust were same would not make the latter a registered trust u/s 12AA – Denial of exemption is justified. [S. 11, 12AA]**

Assessee trust made available land and also gave interest free loan to a trust which was not registered u/s 12AA. Accordingly, exemption u/s 11 was denied. On appeal to the Tribunal, it held that, in the absence of registration u/s 12AA, dealing with an unregistered trust by trust which is registered would affect the exemption available u/s 11. Objects of the trusts, even if identical, would not make an unregistered trust, as registered u/s 12AA of the Act. Held, exemption u/s 11 was to be denied. (AY. 2009-10)

DIT(E) v. Paramasiva Naidu Muthuvel Raj Education Trust (2018) 66 ITR 3 (SN) (Chennai) (Trib.)

308 **S. 13 : Denial of exemption – Trust or institution – Investment restrictions – High rate of profit margin – Hefty salary to related trustees, scholarship in foreign currency, use of luxury cars without maintaining the log book, denial of exemption was held to be justified – Donation to another trust was held to be application of income. [S. (2(15), 11, 12, 13]**

Dismissing the appeal of the assessee the Tribunal held that; the trust has paid hefty salary to related trustees, scholarship in foreign currency, Trustees have used luxury cars without maintaining the log book and earned high rate of profit margin hence denial of exemption was held to be justified. Tribunal also held that donation to another trust was held to be application of income (AY. 2007-08 to 2010-11)

IIM Foundation v. ADIT (E) (2018) 61 ITR 186 (Delhi)(Trib.)

309 **S. 14A : Disallowance of expenditure – Exempt income – Stock in trade – Controlling interest – Principle of apportionment – Only that expenditure which is "in relation to" earning dividends can be disallowed – AO has to record proper satisfaction on why the claim of the assessee as to the quantum of suo moto disallowance is not correct. [R. 8D]**

Court held that; The argument that S. 14A & Rule 8D will not apply if the "dominant intention" of the assessee was not to earn dividends but to gain control of the company or to hold as stock-in-trade is not acceptable. S. 14A applies irrespective of whether the shares are held to gain control or as stock-in-trade. However, where the shares are held as stock-in-trade, the expenditure incurred for earning business profits will have to be apportioned and allowed as a deduction. Only that expenditure which is "in relation to" earning dividends can be disallowed u/s 14A & Rule 8D. The AO has to record proper satisfaction on why the claim of the assessee as to the quantum of suo moto disallowance is not correct. (AY. 2002-03, 2008-09, 2009-10)

Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640 / 164 DTR 1 / 254 Taxman 325 (SC)

PCIT v. State Bank of Patiala (2018) 402 ITR 640/ 164 DTR 1 / 254 Taxman 325 (SC)

Editorial : Maxopp Investment Ltd. v. CIT (2012) 347 ITR 272 (Delhi) (HC) is affirmed.

Decision of special Bench in ITO v. Daga Capital Management (2009) 312 ITR (AT) 1 (Mum.) (SB) is referred.

S. 14A : Disallowance of expenditure – Exempt income – Rule 8D cannot be held to be applicable retrospectively and cannot be applicable to pending assessments. [R. 8D] 310
Court held that, rule 8D is prospective in operation and could not have been applied to any assessment year prior to Assessment Year 2008-09. (AY. 2003-04)
CIT v. Essar Teleholdings Ltd. (2018) 401 ITR 445 / 162 DTR 225 / 300 CTR 561 / 253 Taxman 321 (SC)
Editorial : CIT v. Firestone International P. LTD. (2015) 378 TR 558 (Bom.) (HC) and CIT v. Essar Teleholdings Ltd (Bom.) (HC) is affirmed

S. 14A : Disallowance of expenditure – Exempt income – Mixed funds – Having sufficient own funds – No disallowance can be made. [R.8D] 311
Dismissing the appeal of the revenue the assessee had sufficient own funds, hence no disallowance can be made. (AY. 2008-09, 2009-10)
CIT v. Gujarat State Fertilizers And Chemicals Ltd. (2018) 409 ITR 378 (Guj.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Recording of satisfaction – Mixed funds – *Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640 (SC)* does not lay down a proposition that the moment it is demonstrated that the assessee had availed of mixed funds, i.e., interest-free as well as interest bearing funds and utilized them for making investments into securities earning tax-free income and the rest applicability of section 14A read with rule 8D would be automatic Resorting to the method prescribed under rule 8D is not automatic-Deletion of addition by the Tribunal is held to be justified. [R. 8D] 312
Dismissing the appeal of the revenue the Court held that, *Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640 (SC)* does not lay down a proposition that the moment it is demonstrated that the assessee had availed of mixed funds, i.e., interest-free as well as interest bearing funds and utilized them for making investments into securities earning tax-free income and the rest applicability of section 14A read with rule 8D would be automatic Resorting to the method prescribed under rule 8D is not automatic-Deletion of addition by the Tribunal is held to be justified. (AY. 2010-11)
CIT v. Shreno Ltd. (2018) 409 ITR 401 / (2019) 261 Taxman 239 (Guj.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – No disallowance can be made when the assessee has not earned any exempt income during the year. [R. 8D] 313
Dismissing the appeal of the revenue the Court held that, no disallowance can be made when the assessee has not earned any exempt income during the year. (AY. 2010-11)
CIT v. Goldman Sachs Services P. Ltd. (2018) 409 ITR 268 (Karn.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot exceed exempt income [S. 263, R.8D] 314
Dismissing the appeal of the revenue the Court held that disallowance u/s 14A cannot exceed exempt income.(AY.2010-11)
PCIT v. State Bank of Patiala (2018) 99 taxmann.com 285 / 259 Taxman 315 (P&H)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. State Bank of Patiala (2018) 259 Taxman 314(SC)

315 **S. 14A : Disallowance of expenditure – Exempt income – Tribunal remanding the issue of interest expenses and deleting other expenses – Order of Tribunal is up held – No question of law. [S. 254(1), 260A, R.8D]**
Dismissing the appeal of the revenue the Court held that Held, Tribunal remanding the issue of interest expenses and deleting other expenses is up held. (AY. 2008-09)
CIT v. Ultra Tech Cement Ltd. (2018) 407 ITR 500 (Bom.)(HC)
Editorial : SLP of revenue is dismissed; CIT v. Ultra Tech Cement Ltd. (2018) 406 ITR 12 (St)

316 **S. 14A : Disallowance of expenditure – Exempt income – Investment in subsidiary – Own interest free funds are more than the investment in subsidiaries – No disallowance can be made. [R.8D]**
Dismissing the appeal of the revenue the Court held that, since the assessee company was having interest free funds of its own far excess of the investment made in subsidiary companies, which yielded the presumption is that the assessee has used its own funds hence no disallowance can be made. (AY. 2006-07)
CIT v. NHPC Ltd. (2018) 408 ITR 237 / 304 CTR 612 / 167 DTR 33 / (2019) 415 ITR 321 (P&H)(HC)

317 **S. 14A : Disallowance of expenditure – Exempt income – Rule 8D is prospective in operation and is not applicable in assessment years 2004-05, 2005-06 and 2006-07. [R.8D]**
Dismissing the appeal of the revenue the Court held that; rule 8D of the Income-tax Rules, 1962 inserted with effect from February 14, 2007 is prospective in operation and is not applicable in assessment years 2004-05, 2005-06 and 2006-07. (AY. 2004-05 to 2006-07)
CIT v. Jammu Central Co-Op. Bank Ltd. (2018) 407 ITR 362 (J&K)(HC)

318 **S. 14A : Disallowance of expenditure – Exempt income – Sufficient funds – Onus is on department to establish nexus between expenditure disallowed and earning of interest income – Deletion of disallowance is held to be justified. [R.8D]**
Court held that; the Tribunal had rendered a factual finding that the assessee was seized of sufficient funds which it could have invested and therefore, the deletion of disallowance, by the Tribunal, on account of interest under section 14A was right. (AY. 1999-2000)
CIT v. Maruti Udyog Ltd. (2018) 407 ITR 159 / (2019) 308 CTR 682 (Delhi)(HC)

319 **S. 14A : Disallowance of expenditure – Exempt income – Investment in shares – Not from borrowed funds – No disallowance can be made. [S. 10(34), R.8D]**
Dismissing the appeal of the revenue the Court held that investment in shares were from own funds and not from borrowed funds, hence no disallowance can be made. (AY. 2008-09, 2009-10)
PCIT v. Rasoi Ltd. (2018) 407 ITR 126 (Cal.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – The expression "does not form part of the total income" in S. 14A envisages that there should be an actual receipt of the income, which is not includible in the total income – If no exempt income is received or receivable during the relevant previous year, no disallowance can be made. [R.8D] 320

Dismissing the appeal of the revenue the Court held that ; The expression "does not form part of the total income" in S. 14A envisages that there should be an actual receipt of the income, which is not includible in the total income. If no exempt income is received or receivable during the relevant previous year, no disallowance can be made.
Followed Chem Invest Ltd v. CIT (2015) 378 ITR 33 (Delhi) (HC) (749 /2014 dt. 22-9-2015) (ITA No. 51 of 2016, dt. 13.10.2016)
PCIT v. Ballapur Industries Ltd. (Bom.)(HC), www.itatonline.org

S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot be made in excess of actual exempted income – Matter remanded. [R.8D] 321

Allowing the appeal of the assessee the Court held that the,AO as well as Appellate Authority disallowed expenses incurred by assessee bank in earning exempt income in excess to actual exempt income, same was per se absurd and hypothetical and therefore, matter was to be remanded back to AO. (AY. 2011-12)
Pragathi Krishna Gramin Bank v. JCIT (2018) 256 Taxman 349 (Karn.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Invested own money therefore no disallowance of interest can be made in respect of borrowed funds. [S. 36(1)(iii), R. 8D] 322

Dismissing the appeal of the revenue the Court held that; the assessee has Invested own money therefore no disallowance of interest can be made in respect of borrowed funds.
CIT v. Deepak Vegpro (P) Ltd. (2018) 406 ITR 496 / 161 DTR 170 / 300 CTR 98 (Raj.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Net interest – Prior to its amendment with effect from 2-6-2016, amount of expenditure by way of interest would be interest paid by assessee on borrowings minus taxable interest earned during financial year. [R. 8D] 323

Dismissing the appeal of the revenue, the Court held that; Prior to its amendment with effect from 2-6-2016, amount of expenditure by way of interest would be interest paid by assessee on borrowings minus taxable interest earned during financial year. (AY. 2008-09)
PCIT v. Nirma Credit & Capital (P.) Ltd. (2017) 85 taxmann. com 72 / (2018) 300 CTR 286 / 161 DTR 333 (Guj.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Assessing Officer cannot attribute administrative expenses for earning tax free income in excess of total administrative expenditure. [R. 8D] 324

Dismissing the appeal of the revenue, the Court held that, Assessing Officer cannot attribute administrative expenses for earning tax free income in excess of total administrative expenditure. (AY. 2008-09)
PCIT v. Adani Agro (P) Ltd. (2018) 253 Taxman 507 (Guj.)(HC)

325 **S. 14A : Disallowance of expenditure – Exempt income – Only those instruments/ securities which yielded exempt income during previous year relevant to assessment year would be considered for computing disallowance – If disallowance falls below disallowance under section 14A offered by assessee in return of income, revenue cannot charge tax on income which never was income of assessee chargeable to tax [S. 139, 143(3), R.8D]**

Tribunal held that only those instruments/securities which yielded exempt income during previous year relevant to assessment year would be considered for computing disallowance. The Tribunal also held that if disallowance falls below disallowance under section 14A offered by assessee in return of income, revenue cannot charge tax on income which never was income of assessee chargeable to tax. (AY. 2011-12, 2012-13)

Sajjan India Ltd v. ADIT (2018) 89 taxmann.com 21 (Mum.)(Trib.)

326 **S. 14A : Disallowance of expenditure – Exempt income – Sub-section (2) of section 14A does not authorize or empower AO to apply prescribed method irrespective of nature of claim made by assessee, AO has to first consider correctness of claim of assessee having regard to accounts of assessee. [R. 8D]**

Allowing the appeal of the assessee the Tribunal held that; if AO want to disturb computation of assessee regarding disallowance that it had incurred more expenditure in relation to exempt income, it was pre-requisite in order to invoke provisions of Rule 8D of the Rules that AO had to record his objective satisfaction regarding assessee's claim of expenses in relation to exempt income or disallowance u/s. 14A read with Rule 8D having regard to accounts of assessee Followed *Godrej & Boyce Mfg. Co. Ltd. v. DCIT (2010) 328 ITR 81 (Bom.)(HC)*. (AY.2009-10)

Morgan Stanley Investment Management (P) LTD. v. DCIT (2017) 160 DTR 19 / (2018) 191 TTJ 365 (Mum.)(Trib.)

327 **S. 14A : Disallowance of expenditure – Exempt income – No disallowance in relation to shares and securities held as stock in trade and where owned funds are more than the value of shares and securities. [R.8D]**

No disallowance in relation to shares and securities held as stock in trade and where owned funds are more than the value of shares and securities (AY. 2009-10 to 2012-13)

Rajasthan State Industrial Development & Investment Corporation Ltd. v. DCIT (2018) 195 TTJ 35 (Jaipur)(Trib.)

328 **S. 14A : Disallowance of expenditure – Exempt income – Investments out of own funds and free reserves not liable for disallowance – 2% of dividend income was disallowed towards administrative expenses. [R.8D]**

The Tribunal after discussing the decision the following case laws *Reliance Utilities & Power Ltd. (2009)313 ITR 340 (Bom.) (HC)* High Court in the case of *JCIT v. Beekay Engineering Corporation (2010) 325 ITR 384(Chhattisgarh) (HC))* and *PCIT v. Sintex Industries Ltd (Guj) (HC)*(TA No. 291 of 2017 dt. 04.05.2017) held that no disallowance of interest can be made as the assessee had sufficient own funds and free reserves.

However, considering the huge investments, 2% of the dividend income should be disallowed towards administrative expenses. (AY. 2011-12)
DCIT v. Godawari Power & Ispat Ltd. (2018) 68 ITR 19 (SN) (Raipur)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – If there were funds available both interest – free and over draft and/or loans taken, then a presumption would arise that investments would be out of interest – free fund generated or available with company, if interest-free funds were sufficient to meet investments. [R.8D] 329
Allowing the appeal of the assessee the Tribunal held that; If there were funds available both interest-free and over draft and/or loans taken, then a presumption would arise that investments would be out of interest-free fund generated or available with company, if interest-free funds were sufficient to meet investments. Followed, *CIT v. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom.) (HC)* and *Wool combers of India Ltd.'s case (1982) 134 ITR 219 (Cal) (HC)*. (AY 2008-09)
Bennett Coleman & Co. Ltd. v. Addl. CIT (2017) 168 ITD 631 / (2018) 164 DTR 145 / 192 TTJ 377 (Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – When no exempt earned during the assessment year, no disallowances can be made. [R. 8D] 330
Tribunal held that ; When no exempt earned during the assessment year, no disallowances can be made. (AY. 2009-10, 2012-13)
ACIT v. Gini & Jony Ltd. (2018) 172 ITD 472 / 67 ITR 45 (SN) (2019) 197 TTJ 322 / 178 DTR 114 (Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot exceed exempt income notwithstanding Assessee's suo-motu disallowance is more than exempt income. [R. 8D] 331
Assessee company made suo motu disallowance u/s. 14A r.w.r. 8D, which was much more than the exempt income. The AO enhanced the disallowance by recomputing amount u/r. 8D(2)(ii) and 8D(2)(iii). The Tribunal observed that Assessee's own funds were higher than investments and that disallowance could not be made u/r. 8D(2)(ii). It further held that the disallowance u/s. 14A could not exceed the exempt income, notwithstanding that Assessee's suo-motu disallowance was more than exempt income. (AY. 2012-13)
Gold Seal Engineering Products P. Ltd. v. ACIT (2018) 66 ITR 37 (SN)(Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Provision would not apply where no exempt income was received or receivable during relevant previous year by assessee. [R. 8D] 332
Dismissing the appeal of the revenue the Tribunal held that;provision would not apply where no exempt income was received or receivable during relevant previous year by assessee. Followed *Cheminvest Ltd. v. CIT (2015) 378 ITR 33 (Delhi)(HC)(AY.2010-11)*
ACIT v. Dish TV India Ltd. (2018) 194 TTJ 897 / 169 DTR 253 (Mum.)(Trib.)

333 **S. 14A : Disallowance of expenditure – Exempt income – Disallowances can be made only where the AO recorded his satisfaction as to how the claim of the Assessee that no expenditure was incurred to earn exempt income is incorrect. [R.8D]**
Dismissing the appeal of the revenue the Tribunal held hat; I the absence of any finding by the Ld. AO as to how the claim of the Assessee that no expenditure was incurred for earning exempt income is incorrect, resort cannot be had to the provisions of sub-rule (2) of Rule 8D of the Rules. (AY. 2008-09 to 2011-12)
ACIT v. Karnataka Bank Ltd. (2018) 63 ITR 433 (Bang.)(Trib.)

334 **S. 14A : Disallowance of expenditure – Exempt income – Disallowance has to be made where the assessee cannot furnish any evidence to prove that the investments were made in earlier years. [R. 8D]**
Tribunal held that since assessee has not furnished any evidence to prove its contention that the investment in tax free bond thereof are made in earlier years. As rule 8D have incorporated for the AY. 2008-09 on wards assessee squarely covered with the provision of S. 14A(3) which makes it mandatory to make disallowance as per the provision of section 14A (2) r.w. rule 8D of Income-tax Rules, 1962.
Dy.CIT v. Rasna Pvt. Ltd. (No 2) (2018) 66 ITR 689 (Ahd.)(Trib.)

335 **S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot exceed amount of exempt income and if there is no exempt income, no disallowance can be made. [R. 8D]**
Dismissing the appeal of the revenue the Tribunal held that ; disallowance cannot exceed amount of exempt income and if there is no exempt income, no disallowance can be made. (AY. 2013-14)
ACIT v. Satish Kumar Agarwal (2018) 172 ITD 143 (Jaipur)(Trib.)

336 **S. 14A : Disallowance of expenditure – Exempt income – Net of interest – Benefits of netting of interest under rule 8D(2)(ii) be allowed without even emphasising on need of having any inextricable link between interest earned and interest paid prior to 2-6-2016. [R. 8D(2)(ii)]**
Dismissing the appeal of the revenue the Tribunal held that ;for the purpose of applying rule 8D(2)(ii) prior to its amendment with effect from 2-6-2016, what would be considered as amount of expenditure by way of interest would be the interest paid by the assessee on the borrowings minus the interest income earned during the financial year. The interest income earned during the year being more than the interest expenditure incurred, the disallowance made by the AO on account of interest u/s. 14A by applying rule 8D(2)(ii) was deleted by the CIT(A) on the ground that there was no net interest expenditure incurred by the assessee. Before the ITAT revenue challenged the same stating that there nothing brought on record to show an inextricable link between the interest earned and interest paid. Tribunal affirmed the order of CIT(A). (AY.2009-10)
Dy. CIT v. UMIL Share & Stock Broking Services Ltd. (2018) 171 ITD 713 / 170 DTR 441 / 196 TTJ 91 (Kol.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Income from other sources – Dividend income on investment made in Oman – No disallowances can be made – DTAA-India-Oman. [S. 90(2), Art. 25, R.8D] 337

Dismissing the appeal of the revenue the Tribunal held that ; Dividend income earned from investment made in Oman is chargeable to tax in India under head 'Income from other sources' and would form part of total income; rebate of taxes had to be allowed from total taxes in terms of section 90(2), read with article 25 of Indo-Oman DTAA, and, consequently, provisions of S. 14A were not applicable to dividend received. (AY. 2006 07)

ACIT v. Indian Farmers Fertiliser Cooperative Ltd. (2018) 171 ITD 504 (Delhi)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – There was no exempt income earned and interest expense was not related to strategic investments of the company – Disallowance is not justified. [R. 8D] 338

On Revenue's appeal, the Tribunal observed that the CIT(A) rightly relied on the decision of Taikisha ? and negated the stand taken by the AO. The Tribunal observed that, the interest expenditure was on account of non-fulfillment of delivering a constructed area within the timelines stipulated in the agreement and therefore, assessee paid the requisite expenditure. Therefore, the interest expense was not related to the investment made in unquoted shares of its subsidiary company. Further, the Tribunal held that the investments made in subsidiary companies were not meant to generate dividend income but were strategic in nature. Additionally, the Tribunal observed that there was no exempt income credited in the P&L account and the shareholder's funds were in excess of the amount invested and thus logically, the investments had been made out of self-generated funds and not interest bearing funds. Therefore, the disallowance u/s. 14A was rightly deleted. (AY. 2011-12)

ACIT v. Paras Buildtech (India) (P.) Ltd. (2018) 62 ITR 284 (Delhi)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Disallowance cannot made as without bringing basic fact that expenditure actually incurred to earn exempt income – Matter remanded to the AO. [R. 8D(2)(ii)] 339

The Tribunal held that, the AO has mechanically applied the formula without bringing the basic facts i.e. amount of expenditure incurred for earning exempt income. Accordingly the matter remanded to the AO. (AY. 2007-2008)

Oricon Enterprises Ltd. v. ACIT (2018) 171 ITD 231 / 67 ITR 433 (Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Share capital along with reserve and surplus is many times higher than the amount invested in shares – No disallowance can be made. [8D(2)(ii)] 340

It has been held by the appellate Tribunal that if an assessee has interest free funds as well as interest bearing funds at its disposal, then the presumption would be that investments were made from interest free funds at its disposal. Since the assessee's share capital along with reserve and surplus is far in excess of its investment in shares, etc. yielding exempt income, no disallowance can be made. (AY. 2008-09)

DLF Commercial Developers Ltd. v. Dy. CIT (2018) 164 DTR 207 / 192 TTJ 769 (Delhi) (Trib.)

341 **S. 14A : Disallowance of expenditure – Exempt income – Assessing Officer not giving cogent reason for rejecting suo motu disallowance made by Assessee – Assessee need not maintain separate books for expenses incurred in earning exempt income – No disallowances can be made. [R. 8D]**

Allowing the appeal of the assessee the Tribunal held that ; the Assessing Officer had not given any cogent reason as to why he was not satisfied with the suo motu disallowance made by the assessee. The Assessing Officer's comment that the assessee did not maintain separate books of account for the expenses incurred in relation to earning of income not includible in the total income was tantamount to the Assessing Officer being of the opinion that the assessee should maintain separate books for this purpose. This was not required in terms of law. The Assessing Officer committed an error in assuming so. Thus, the disallowance made by the Assessing Officer under rule 8D was deleted. Followed, *Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640 (SC)* (AY.2011-12)

M. Junction Services Ltd. v. (2018) 65 ITR 40 (SN)(Kol.)(Trib.)

342 **S. 14A : Disallowance of expenditure – Exempt income – Sufficient interest free own funds to cover investment in shares and mutual funds etc. – No disallowance can be made. [R.8D(2)(ii)]**

Allowing the appeal of the assessee the Tribunal held that ; where assessee had sufficient interest free own funds to cover investments in shares, mutual funds, etc. which generated exempt dividend, no disallowance can be made. (AY. 2008-09)

Tata Hitachi Construction Machinery Company Ltd. v. DCIT (2018) 170 ITD 720 / 65 ITR 86 (SN)(Bang.)(Trib.)

343 **S. 14A : Disallowance of expenditure – Exempt income – Disallowance has to be made even if the assessee has not earned any tax free income on the investment-Revision was held to be valid. [S. 263, R. 8D]**

Dismissing the appeal of the assessee against the revision order of the Commissioner of Income-tax, the Tribunal held that, Disallowance has to be made even if the assessee has not earned any tax free income on the investment. Tribunal held that *Cheminvest Ltd v. CIT (2015) 378 ITR 33 (Delhi) (HC)* is not binding on the assessee as it is a non-jurisdictional High Court. CBDT 's Circular 5/2/2014 is accordance with *Godrej & Boycee Manufacturing. Co Ltd v. Dy. CIT (2017) 394 ITR 449 (SC)* & *Maxopp Investment Ltd v. CIT (2018) 402 ITR 640 (SC)* (AY. 2012-13)

Lally Motors India (P) Ltd v. PCIT (2018) 170 ITD 370 / 93 taxmann.com 39 / 171 DTR 106 / 195 TTJ 728 / 64 ITR 45 (SN) (Asr.)(Trib.), www.itatonline.org

344 **S. 14A : Disallowance of expenditure – Exempt income – No disallowance can be made if no exempt income is earned. [R. 8D]**

No disallowance can be made if no exempt income is earned. Followed *CIT v. IL&FS Energy Development Corporation Ltd. (2017) 297 CTR 452 (Delhi)* and *Redington (India) P. Ltd. v. CIT (2016) 97 CCH 219 (Mad) (HC)* which also considers the Circular No. 05/2014 dt. 11.02.2014(2014) 361 ITR 94 (St). (AY. 2009-10 to 2011-12)

HLL Lifecare Limited v. ACIT (2018) 191 TTJ 1 (UO) / 66 ITR 361 (Cochin)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – The AO has to first record satisfaction having regard to accounts of the assessee that the claim made by the assessee with regard to non-incurrence of any expenditure for the purpose of earning income is incorrect before proceeding to make any disallowance. [R. 8D] 345

The Tribunal held that the AO had not raised any query with the regard to disallowance under S. 14A in the entire assessment proceedings. It is the duty of the AO to record satisfaction in terms of S. 14A(2) read with Rule 8D(1) of the Rules, before proceeding to make disallowance as per Rule 8D(2) of the Rules. It is the duty of the AO first to disturb the stand of the assessee of not making any disallowance under S. 14A by recording proper satisfaction having regard to the accounts of the assessee in terms of S. 14A (2) of the Act read with Rule 8D(1) of the Rules which was not present in the present case and hence deleted the disallowance made under S. 14A (AY. 2010-11)

IMC Ltd. v. Dy. CIT (2018) 191 TTJ 73 (Kol.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – AO has neither considered contention of the assessee nor recorded the satisfaction, hence disallowance is not justified. [R. 8D] 346

Tribunal held that, AO has neither considered contention of the assessee nor recorded the satisfaction hence disallowance is not justified. (AY. 2007-2008, 2010-2011)

Garuda Imaging & Diagnostics (P) Ltd. v. ACIT (2018) 191 TTJ 765 (Delhi)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Investments in shares and mutual funds from own funds – Interest expenses cannot be disallowed. [R. 8D] 347

Allowing the appeal of the assessee the Tribunal held that the, assessee, had surplus own funds to make investments in shares and mutual funds and it had not used borrowed funds, therefore interest expenses cannot be disallowed. (AY. 2008-09)

Bennett Coleman & Co. Ltd. v. ACIT (2017) 168 ITD 631 / (2018) 192 TTJ 377 / 164 DTR 145 (Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Satisfaction to be recorded by the Assessing Officer, it cannot be substituted by recorded satisfaction of Commissioner of Income tax (Appeals). [S. 251, R. 8D] 348

Allowing the appeal of the assesse, the Tribunal held that; though the power of CIT(A) is co-terminus with that of Assessing officer, it is Assessing Officer who has to record his satisfaction with regard to correctness of assessee's claim before proceeding to disallow expenditure under section 14A and satisfaction to be recorded by Assessing Officer under section 14A(2) cannot be substituted by satisfaction recorded by first appellate authority. (AY. 2010-11)

Arnav Gruh Ltd. v. DCIT (2018) 168 ITD 518 (Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – AO cannot straight way make disallowance without rejecting the disallowance computed by the assessee. [R. 8D] 349

Dismissing the appeal of the appeal of the revenue the Tribunal held that; AO cannot straight way make disallowance without rejecting the disallowance computed by the assessee. (AY. 2010-11)

DCIT v. Vantage Advertising P. LTD. (2018) 61 ITR 564 (Kol.)(Trib.)

350 **S. 14A : Disallowance of expenditure – Exempt income – When there is no exempt income earned during the relevant period, no disallowance can be made. [R. 8D]**
Allowing the appeal of the assessee the Tribunal held that; When there is no exempt income earned during the relevant period, no disallowance can be made. (AY. 2013-14)
Moonrock Hospitality P. Ltd. v. DCIT (2018) 61 ITR 667 (Delhi)(Trib.)

351 **S. 14A : Disallowance of expenditure – Exempt income – When there is no exempt income during the relevant year no disallowance can be made. [R. 8D]**
Tribunal held that, when there is no exempt income during the relevant assessment year, no disallowance can be made, even otherwise the assessee had sufficient surplus interest-free funds to make in vestment in exempt yielding assets. (AY. 2011-12)
ACIT v. Progressive Constructions Ltd. (2018) 161 DTR 289 / 63 ITR 516 / 191 TTJ 549 (SB) (Hyd.)(Trib.)

352 **S. 14A : Disallowance of expenditure – Exempt income – No disallowance can be made for securities held as stock in trade – Interest free funds available with assessee, no disallowance can be made [R. 8D, 36(1)(iii)]**
Tribunal held that, no disallowance can be made for securities held as stock in trade. Interest free funds available with assessee, no disallowance can be made. (AY. 2009-10, 2010-11)
Siddhesh Capital Market Services P. Ltd. v. DCIT (2018) 61 ITR 400 / 52 CCH 3 (Mum.) (Trib.)

353 **S. 14A : Disallowance of expenditure – Exempt income – PSU bonds of NTPC – Disallowance was restricted to 1 percent of exempt income. [R. 8D]**
On facts the Tribunal in respect of exempt income of PSU Bonds of NTPC the disallowance under section 14A was restricted to 1 per cent of exempt income. (AY. 1992-93)
DCIT v. Growmore Leasing & Investment Ltd. (2018) 168 ITD 1 (Mum.)(Trib.)

354 **S. 14A : Disallowance of expenditure – Exempt income – When there is no exempt income disallowance cannot be made. [R. 8D]**
Tribunal held that, when there is no exempt income disallowance cannot be made. (AY. 2009-10, 2010-11)
ACIT v. Claridges Hotels Pvt. Ltd. (2018) 61 ITR 135 (Delhi)(Trib.)

355 **S. 15 : Salaries – The Income-tax Act, 1961 will override the Companies Act – Even the illegal payment or the payment received by the assessee contrary to the provisions of the Companies Act by way of salary has to be assessed as income in the assessee's hands provided the income was not recovered by the company. [S. 5]**
Dismissing the appeal of the assessee the Tribunal held that ; what was paid to the assessee was a salary in the capacity as managing director of the company. Therefore at the time of payment the assessee had all the right to retain the money. Subsequently, the company revised the salary on the basis of the provisions of the Companies Act restricting the salary to 5 per cent of the net profits of the company. The Income-tax

Act, 1961 will override the Companies Act. Even the illegal payment or the payment received by the assessee contrary to the provisions of the Companies Act by way of salary has to be assessed as income in the assessee's hands provided the income was not recovered by the company. (AY. 2009-10)
Nate Nandha v. ACIT (2018) 65 ITR 72(SN) (Chennai)(Trib.)

S. 15 : Salaries – Salary paid to managing Director in excess of ceiling prescribed by as per Companies Act is taxable as salary provided the excess amount paid was not recovered by the Company. [S. 5] 356
Dismissing the appeal of the assessee the Tribunal held that, Salary paid to managing Director in excess of ceiling prescribed by as per Companies Act is taxable as salary provided the excess amount paid was not recovered by the Company. (AY. 2009-10)
Nate Nandha Nee Natarajan Nandagopal v. ACIT (2018) 171 ITD 399 / 170 DTR 81 / 195 TTJ 644 (Chennai)(Trib.)

S. 17 : Perquisite – Salary – Amount received by an employee from redemption of Stock Appreciation Rights (SARs) cannot be assessed as "perquisite" or as "profits of business". [S. 17(2)(iii), 28(iv), 45] 357
Dismissing the appeal of the revenue, the Court held that, Amount received by an employee from redemption of Stock Appreciation Rights (SARs) can not be assessed as "perquisite" u/s 17(2) (iii) or as "profits of business" u/s 28 (iv) or as "capital gains",despite no "cost of acquisition. Circular No 710 dt 24-071995, was considered. The Court also held that; the Respondent got the Stock Appreciation Rights (SARs) and, eventually received an amount on account of its redemption prior to 01.04.2000 on which the amendment of Finance Act, 1999 (27 of 1999) came into force. In the absence of any express statutory provision regarding the applicability of such amendment from retrospective effect, we do not find any force in the argument of the Revenue that such amendment came into force retrospectively. It is well established rule of interpretation that taxing provisions shall be construed strictly so that no person who is otherwise not liable to pay tax, be made liable to pay tax. (*CIT v. Infosys Technologies Ltd (2008) 297 ITR 167 (SC), Sumit Bhattacharya v. ACIT (2008) 112 ITD 1(SB)(Mum.)(Trib.)* (AY. 1998-99)
ACIT v. Bharat V. Patel (2018) 404 ITR 37/ 165 DTR 218 / 302 CTR 110 / 255 Taxman 324 (SC), www.itatonline.org

S. 17 : Perquisite – Salary – Employees deputed abroad – Extra payment to meet costs constitute perquisites – Liable to deduct tax at source. [S. 15, 17(2), 192] 358
Dismissing the appeal of the assessee the Court held that S. 17 of the Income-tax Act, 1961 defines perquisites. It is an inclusive definition which takes within its sweep various things, including any sum paid by the employer in respect of any obligation, which, but for such payment, would have been payable by the assessee. Accordingly extra payment to meet costs constitute perquisites. (AY. 2001-02 to 2003-04)
Sun Outsourcing Solutions P. Ltd. v. CIT (2018) 407 ITR 480 / 171 DTR 358 / 305 CTR 537 (T&AP)(HC)

359 **S. 17 : Perquisite – Salaries – Shares were not allotted by company to assessee in his capacity of being an employee – No benefit was received by assessee – Addition cannot be made as perquisites. [S. 15. (17(2), 56(2) (vii)]**

The revenue contended that provisions of section 17 that there would be a tax liability even if section 56(2)(vii) does not apply, as the assessee being an employee of the company. The Tribunal held that the provisions of section 17 do not apply to the shares allotted by the company to the assessee as the shares were not allotted by the company to the assessee in his capacity of being an employee of the company. The shares were offered and allotted to the assessee by the company by virtue of the assessee being a shareholder of the company. Therefore the provisions of section 17 are not applicable. Circular No. 710 dated 24-7-1995 also supports the assessee's stand that where shares are offered by company to a shareholder, who happens to be an employee of the company at the same price as have been offered to other shareholders or the general public, there will be no perquisite in the shareholder's hands. In the instant case, the shares were offered to the assessee and other shareholders at a uniform rate of ₹ 100 and therefore, the difference between the fair market value and issue price cannot be brought to tax as a perquisite under section 17 of the Act.

ACIT v. Subhodh Menon (2019) 175 ITD 449 / 175 ITD 449 / 198 TTJ 79 (Mum.)(Trib.) www.itatonline.org

ACIT v. P. N. Ramaswamy (2019) 175 ITD 449 / 175 ITD 449 / 198 TTJ 79 (Mum.)(Trib.) www.itatonline.org

360 **S. 17 : Perquisite – Employee Stock Option Plans – Tax arises in hands of employees, on date of allotment of shares and not on date of exercise of option. [S. 15, 17(2), 192, 201(1A)]**

Assessee deducted perquisite tax on ESOP on date of allotment of shares. AO held that perquisite tax on ESOP should have been deducted on date of exercise of option. Allowing the appeal of the assessee the Tribunal held that as per S. 17(2)(vi) obligation for withholding tax accrues only, when shares are allotted after completion of commitments on part of person who exercised option and not on date of exercise of option. (AY. 2012-13)

Bharat Financial Inclusion Ltd. v. DCIT (2018) 172 ITD 198 (Hyd.)(Trib.)

361 **S. 17 : Perquisite – Interest free loan is taxable as perquisites in the hands of employee as per Rule 3 of the IT Rules. [S. 17(2) (viii) R.3(7)(i)]**

Dismissing the appeal of the assessee the Tribunal held that Interest free loan is taxable as perquisites in the hands of employee as per Rule 3 (7)(i) of the IT Rues. (ITA No. 2172 / M /2016 dt. 16-05-2018) (AY. 2011-12)

Neha Saraf v. ITO (Mum.)(Trib.), www.itatonline.org

362 **S. 17 : Perquisite – Purchase of property from a company wherein the assessee is also director can not be assessed as perquisite in lieu of salary as there was no employer and employee relation ship [S. 17(2)(iii), 50C]**

Assessee purchased the property from the Company. The value paid was less than the fair value of property as per the stamp valuation. AO treated the difference as perquisite

in the hands of the assessee. On appeal allowing the appeal of the assessee,the Tribunal held that; to treat any sum as a perquisite in lieu of salary as per S. 17(2) (iii) it is incumbent on part of Assessing Officer to establish on record that a benefit in nature of salary is given by an employer to an employee; establishment of employer-employee relationship between assessee and company is essential. Tribunal also held that, the legal fiction created under S. 50C in so far as it enables the Assessing Officer to adopt the value for stamp duty purpose as the deemed sale consideration cannot be extended to assess the buyer of the immovable properties to tax on the differential amount. Though, the Assessing Officer has consciously not referred to the provisions of S. 50C, however, there is no room for doubt that applying the deeming fiction of S 50C, the Assessing Officer has adopted the stamp duty value as the deemed sale consideration while making the addition. Therefore the addition made of ₹ 1. 95 crores is unsustainable in law. (AY. 2010-11,2012-13)

Keshavji Bhuralal Gala v. ACIT (2018) 169 ITD 23 / 165 DTR 8 / 193 TTJ 227 / 63 ITR 67 (SN)(Mum.)(Trib.)

S. 22 : Income from house property – Business income – Real estate developer – Main object is not acquiring and holding properties – Rental income is held to be assessable as income from house property. [S. 28(i)] 363

Dismissing the appeal of the revenue the Court held that, the assessee is in the business of development of real estate projects and letting of property is not the business of the assessee. Following the ratio in *CIT v. Sane & Doshi Enterprises (2015) 377 ITR 165 (Bom.)(HC)* wherein the Court held that the rental income received from unsold portion of the property constructed by real estate developer is assessable as income from house property. Considered the decision in *Chennai Properties and Investments Ltd Chennai v CIT ((2015) 373 ITR 673 (SC)* and *Rayala Corporation Pvt. Ltd. v ACIT (2016) 386 ITR 500 (SC)* (ITA No. 347 of 2016 dt. 31-07-2018) (Arising ITA No. 4475 / Mum./2011 dt 19-02 2014)

CIT v. Gundecha Builders (2019) 102 taxmann.com 27 (Bom.)(HC), www.iatonline.org

S. 22 : Income from house property – letting out of its permanent structured on regular basis is assessable as income from house property – Receipt of license fee for use of craft stalls organized with object of promoting tourism, is taxable as business income. [S. 28 (i)] 364

Income earned by the assessee from the letting out of its permanent structure on regular basis is assessable as income from house property. Receipt of license fee for use of craft stalls organized with object of promoting tourism, is taxable as business income. (AY. 2004-05 to 2009-10)

Delhi Tourism & Transport Development Corp. Ltd. v. Dy. CIT (2018) 194 TTJ 305 / 170 DTR 129 (Delhi)(Trib.)

S. 22 : Income from house property – Rental income is held to be assessable as income from house property though the land is not owned by the assesse. [S. 24, 27(iiib), 56] 365

Assessee has claimed the lease rent as deduction and rental income was shown as income from other sources. Dismissing the appeal of the assesse the Tribunal held that;

it is not essential that a person who owns a building should be owner of land upon which it stands for assessing rental income under head Income from House Property hence the lower authorities were justified in assessing the income as income form house property and not allowing the lease rent as deduction. (AY. 2011-12)
JG Exports v. ITO (2018) 168 ITD 21 (Chennai)(Trib.)

366 **S. 23 : Income from house property – Annual value – Interest free security deposit – Interest offered as income from other sources – Notional interest on interest free deposit cannot be considered to determine annual letting value of property – Notional addition would amount to double taxation. [S. 22, 23(1)(b)]**
Dismissing the appeal of the revenue the Court held that; once interest on interest free security deposits received by assessee from tenant was offered to tax as income from other sources, adding of notional interest on interest free security deposit to determine 'Annual letting value' of property would amount to double taxation. (AY. 2004-05 to 2007-08)
PCIT v. Karia Can Co. Ltd. (2018) 257 Taxman 189 (Bom.)(HC)

367 **S. 23 : Income from house property – Annual value – Vacancy allowance – Construction business – Some flats constructed by assessee were not let out during year – Properties held as stock-in-trade were not let out for any previous years, vacancy allowance is not available – Liable to pay tax on the sum for which the property might reasonably be expected to let from year to year under S. 23(1)(a) of the Act. [S. 22, 23(1)(a), 23(1)(c)]**
Dismissing the appeal of the assessee the Court held that; where properties held as stock-in-trade were not let out for any previous years, there would be no question of availing vacancy allowance given in S. 23(1)(c) and assessee would be liable to pay tax on the sum for which the property might reasonably be expected to let from year to year under S. 23(1)(a) of the Act. (AY. 2005-06, 2006-07)
Ansal Housing & Construction Ltd. v. ACIT (2018) 89 taxmann.com 238 (Delhi) (HC)
Editorial : SLP is granted to the assessee, Ansal Housing & Construction Ltd. v. ACIT (2018) 256 Taxman 294 (SC)

368 **S. 23 : Income from house property – Annual value – Vacancy allowance – When property had remained let out for a period of 36 months, and thereafter could not be let out and had remained vacant during whole of year under consideration, but had never remained under self – occupation of assessee, 'annual value' of said property was to computed at nil. [S. 23(1)(a), 23(1)(c)]**
Allowing the appeal of the assessee the Tribunal held that, when property of assessee had remained let out for a period of 36 months, and thereafter could not be let out and had remained vacant during whole of year under consideration, but had never remained under self-occupation of assessee, 'annual value' of said property was to be computed at nil by taking recourse to section 23(1)(c) of the Act. (AY.2011-12, 2012-13)
Sonu Realtors (P.) Ltd. v. DCIT (2018) 173 ITD 82 (Mum.)(Trib.)

S. 23 : Income from house property – Annual value – Vacancy allowance – Flat was not in a position to be let out de hors removal of defects and, therefore, benefit of vacancy allowance in respect of period taken for carrying out necessary alterations. [S. 23(1)(c)] 369

Allowing the appeal of the assessee,the Tribunal held that, the flat owned by the assessee which was constructed by the builder was not fully in accordance with sanctioned plan and some alteration was required to bring it under proper plan. Accordingly it could be concluded that flat was not in a position to be let out de hors removal of defects and, therefore, benefit of vacancy allowance in respect of period taken for carrying out necessary alterations under S. 23(1)(c) was to be allowed. (AY. 2012-13)

Saif Ali Khan Pataudi v. ACIT (2018) 172 ITD 345 / 195 TTJ 513 / 169 DTR 305 (Mum.) (Trib.)

S. 23 : Income from house property – Annual value – Stock in trade – Construction completed, Feb 2013 – Income cannot be estimated on ground that said property remained unsold and vacant at end of financial year, since there was no possibility to let out property just after its completion. [S. 23(1)(a)] 370

Allowing the appeal of the assessee the Tribunal held that,provisions of S 23(1)(a) could not be applied in assessee's property due to peculiar reason that completion was completed only in month of Feb, 2013 and it was not possible to let out property just after its completion, i.e., only after one month. (AY. 2013-14)

Raj Landmark (P.) Ltd. v. ITO (2018) 172 ITD 339 (Jaipur)(Trib.)

S. 23 : Income from house property – Annual value – When part of the house is occupied during the year and part is let out only actual rent received by the assessee has to be considered. [S. 22] 371

Dismissing the appeal of the revenue the Tribunal held that ;since assessee had occupied part of house for his residential purposes during year under consideration, Annual value for entire house could not be adopted. Only actual rent received has to be considered. (AY.2013-14)

ACIT v. Satish Kumar Agarwal (2018) 172 ITD 143 (Jaipur)(Trib.)

S. 23 : Income from house property – Annual value – Notional interest on interest – free security deposit cannot be added while computing annual value. [S. 23(1)(b), 23(1)(ii)] 372

Tribunal held that; notional interest on interest-free security deposit cannot be added while computing annual value. (ITA No.4038/Del/2013, dt. 12.10.2018)(AY. 2006-07)

DCIT v. Moni Kumar Subha (Delhi)(Trib.), www.itatoline.org

373 **S. 23 : Income from house property – Annual value – Vacancy allowance – The words 'property is let' does not mean 'property actually let out'. If property is held with an intention to let out in the relevant year coupled with efforts made for letting it out, it could be said that such a property is a let out property and the same would fall within the purview of S. 23 (1)(c) and be eligible for vacancy allowance. A reasonable approach should be taken on the assessee's attempts to let out and infallible proof should not be demanded. [S. 22, 23(1)(c)]**

Allowing the appeal of the assessee the Tribunal held that ; The words 'property is let' does not mean 'property actually let out'. If property is held with an intention to let out in the relevant year coupled with efforts made for letting it out, it could be said that such a property is a let out property and the same would fall within the purview of S. 23 (1)(c) and be eligible for vacancy allowance. A reasonable approach should be taken on the assesse's attempts to let out and infallible proof should not be demanded. (2012-13)

Sachin R. Tendulkar v. DCIT (2018) 172 ITD 266 / 169 DTR 169 / 195 TTJ 241 / 66 ITR 74 (SN) (Mum.)(Trib.), www.itatonline.org

374 **S. 23 : Income from house property – Annual value – Stock in trade – Unsold flats which are held by a builder as stock in trade cannot be brought to tax under the head 'income from house property'. They are only assessable as business profits when sold. [S. 22]**

Dismissing the appeal of the revenue the Tribunal held that, unsold flats which are held by a builder as stock in trade cannot be brought to tax under the head 'income from house property'. They are only assessable as business profits when sold. (Followed *Runwal Constructions v. ACIT ITA No 5408/5409 /Mum./2016 dt. 22-02-2018) (ITA No. 6037/Mum./2016*, dt. 27.06.2018)(AY. 2012-13)

ITO v. Arihant Estate Pvt. Ltd. (Mum.)(Trib.), www.itatonline.org

375 **S. 23 : Income from house property – Annual value – The assessee has the option to claim as self occupied property which is more beneficial to him. [S. 22]**

Allowing the appeal of the assessee the Tribunal held that, the Income-tax Act, nowhere states that option o selecting a self occupied property, once exercised, cannot be changed. Accordingly the tax payer can change his selection during assessment proceedings. (ITA No. 5616/Mum./2015 dt. 23-05-2018, "F") (AY. 2011-12)

Venkatavarthan N. Iyengar v. ACIT (UR) (Mum.)(Trib.)

376 **S. 23 : Income from house property – Annual value – Though property remained vacant during relevant previous year benefit of S. 23(1)(c) is available. [S. 23(1)(c)]**

Dismissing the appeal of the revenue the Tribunal held that ;in order to avail benefit of S. 23(1) (c) it is not necessary that property should have been actually let in relevant previous year or during any time prior to relevant previous year, therefore, where properties remained vacant during relevant previous year, the assessee could still avail deduction under S 23(1)(c) of the Act. (AY. 2008-09 to 2013-14)

ITO v. Metaoxide (P.) Ltd. (2018) 170 ITD 235 (Mum.)(Trib.)

S. 23 : Income from house property – Annual value – Deemed rent to be computed on the basis of Municipal rateable value and not on the basis of market rent. [S. 22] 377
AO estimated the rent based on the inspectors report which was based on the local enquiry conducted in the surrounding areas of the building situated. On appeal Tribunal following the ratio in *CIT v. Tip Top Typography (2014) 368 ITR 330 (Bom.) (HC)* directed the AO to compute the deemed rent as per Municipal rateable value. (AY. 2006-07)
Owais M. Husain v. ITO (2018) 194 TTJ 102 / 167 DTR 49 (Mum.)(Trib.)

S. 23 : Income from house property – Annual value – Assessee has the option to claim as self occupied property which is more beneficial – Though the option was exercised while filing the return the assessee which can changed in appellate proceedings before CIT (A) if it is beneficial to assessee. [S. 22] 378
Allowing the appeal of the assessee the Tribunal held that, Assessee has the option to claim as self occupied property which is more beneficial to him. Following the ratio in *Balmukund Acharya v. DCIT (2009) 310 ITR 310 (Bom.) (HC)* the Tribunal held that AO should not take advantage of assessee's ignorance of law. On facts though the option was exercised while filing the return the assessee changed the option in appellate proceedings before CIT (A), which was dismissed by the CIT(A). Tribunal set aside the order of CIT(A) and directed the AO allow the exemption as per the option of the assessee. (ITA NO. 2552 /Mum./2010 'A' dt. 21-09-2011) (AY. 2004-05)
Asha Bhosle v. ITO (UR) (Mum.)(Trib.)

S. 23 : Income from house property – Annual value – Municipal valuation can be a pointer for fetching reasonable rental value, however multiplication factor derived for another property located in different locality, though in same city, cannot be applied blindly. [S. 22, 24] 379
Tribunal held that though the Municipal valuation can be a pointer for fetching reasonable rental value for a given property but in determining reasonable rental value, a multiplication factor derived from one set of data for another property located in different locality, though in same city, cannot be applied blindly, Matter remanded. (AY. 2008-09)
ACIT v. Kamini Sundararam (Smt.) (2018) 168 ITD 513 (Chennai)(Trib.)

S. 24 : Income from house property – Income from other sources – Co-operative society – Deductions – letting out space on terrace for installation of mobile tower/antenna was taxable as income from house property – deduction is available. [S. 22, 24(a), 56] 380
Allowing the appeal of the assessee the Tribunal held that, letting out space on terrace for installation of mobile tower/antenna was taxable as income from house property and not as income from other sources. Deduction is available. (AY. 2013-14)
Kohinoor Industrial Premises Co-operative Society Ltd. v. ITO (2018) 173 ITD 263 / (2019) 174 DTR 349 / 197 TTJ 966 (SMC)(Mum.)(Trib.)

S. 28(i) : Business income – Sub lease of property – Assessable as business income and not as income for other sources. [S. 56] 381
Assessee was engaged in business of development of Bio-Tech Park, construction, leasing and sale of commercial properties. AO assessed the sub lease of property as

income from other sources. Tribunal held that assessee's business of development of Bio-Tech Park had already commenced, and therefore, sub-lease income was assessable as business income. On appeal High Court up held the order of the Appellate Tribunal. (AY. 2010-11)
PCIT v. International Biotech Park Ltd. (2018) 259 Taxman 14 (Bom.)(HC)

382 **S. 28(i) : Business income – Income from house property – Construction of shopping malls-Commercially exploit property by way of complex commercial activities and, it was not a case of letting out property simplicitor – Rental income is assessable as business income. [S. 22]**
Assessee was engaged in construction of various shopping malls. It leased out commercial space in malls and also rendered certain other ancilliary services to occupiers of shops/stalls. AO treated rental income earned by assessee under head 'Income from house property. Tribunal held that intention of assessee-company was to commercially exploit property by way of complex commercial activities and, it was not a case of letting out property simplicitor hence rental income is assessable as business income. High court up held the order of the Tribunal.
PCIT v. E City Real Estate (P.) Ltd. (2018) 100 taxman 93 / 259 Taxman 410 (Bom.)(HC)
Editorial : SLP is granted to the revenue; PCIT v. E City Real Estate (P.) Ltd. (2018) 259 Taxman 409 (SC)

383 **S. 28(i) : Business income – Capital gains – Conversion of agricultural land into residential plots and sale of residential plots – Consideration over fair market value to be assessed as business income-No question of law. [S. 4, 45, 260A]**
Dismissing the appeal of the assessee the Court held that; Conversion of agricultural land into residential plots and sale of residential plots-Consideration over fair market value to be assessed as business income. No question of law. (AY. 2011-12)
Mahaveer Yadav v. ITO (2018) 408 ITR 19 (Raj.)(HC)
Editorial : Order of Tribunal in Mahaveer Yadav v. ITO (2018) 52 CCH 495 / 169 ITD 717 / 194 TTJ 358 (Jaipur) (Trib.) is affirmed.

384 **S. 28(i) : Business income – Engaged in business of leasing, hire purchase and other financial activities – Amount was recognized as a profit on securitization of lease receivables in its profit & loss account – Assessable as business income – Matching concept was never even argued or raised before the Tribunal or raised before the High Court cannot be raised first time while arguing before the High Court. [S. 145, 260A]**
Dismissing the appeal of the assessee the Court held that; assessee NBFC was engaged in business of leasing, hire purchase and other financial activities, which securitized certain amount as rent receivables from April 2002 to March 2004 and adjusted a part of said amount against rent receivable in its books of account and balance amount was recognized as a profit on securitization of lease receivables in its profit & loss account. Amount credited to profit and loss account is held to be assessable as business income. Contention that it was notional gain was rejected. As regards the contention of the assessee that the "matching concept" was not applied by the authorities below. Court held that in fact, on going through the orders passed by the authorities below,

the "matching concept" was never even argued or raised before them. Therefore, this argument can never give rise to a substantial question of law in the facts and circumstances of the present case. (AY. 2002-03, 2003-04)
L & T Finance Ltd. v. Dy. CIT (2018) 258 Taxman 282 (Bom.)(HC)

S. 28(i) : Business income – Business of leasing out of land and getting rental income as land premium – land premium received by assessee was part and parcel of its business receipt and, hence, same was a taxable revenue receipt. [S. 4, 10(20A)] 385
Dismissing the appeal of the assessee the Court held that; assessee was a Government company established with main object to develop industrial area for industrial growth in State land premium received by assessee was part and parcel of its business receipt and, hence, same was a taxable revenue receipt. (AY. 2003-04, 2004-05, 2006-07, 2007-08 to 2010-11)
M.P. Audyogik Kendra Vikas Nigam (Indore) Ltd. v. ACIT (2018) 258 Taxman 372 / 171 DTR 305 / 305 CTR 457 (MP)(HC)

S. 28(i) : Business income – Capital gains-sale of shares – Short period of holding shows that intention of assessee is to earn profit at earliest possible occasion – Assessee is moving as per stock market trend and selling shares at first available opportunity. This type of activity of sale and purchase is rightly termed, not as investment, but as trading. [S. 45] 386
Dismissing the appeal of the assessee the Court held that ; Short period of holding shows that intention of assessee is to earn profit at earliest possible occasion. Assessee is moving as per stock market trend and selling shares at first available opportunity. This type of activity of sale and purchase is rightly termed, not as investment, but as trading. (AY. 2007-08)
Ramilaben D. Jain v. ACIT (2018) 407 ITR 589 / 258 Taxman 97 (Bom.)(HC), www.itatonlne.org

S. 28(i) : Business income – Capital gains-Buying and selling of shares frequently and volume and magnitude being very high assessable as business income and not as capital gains. [S. 45] 387
Dismissing the appeal of the assessee; the Tribunal, after analysing transactions of shares in details including volume of holding, duration of holding, and income derived as dividend to investment made, had rightly held that income arising from sales of shares was assessable as business income. (AY. 2010-11)
Rakesh Kumar Gupta v. CIT (2018) 254 Taxman 394 (Delhi)(HC)

S. 28(i) : Business income – Capital gains-Adventure in the nature of trade – Assessable as business income [S. 2(13), 45, Foreign Exchange Management (Acquisition & Transfer of Immovable Property in India, Regulation 2000) S. 47] 388
Dismissing the appeal of the assessee the Court held that; the assessee purchased the land on 16-8-2006 while he was still a non-resident Indian and thereafter he did not do any agricultural operations on that land. After retaining it for about two years, he sold it. He did not obtain the permission of the RBI under rule 47 of the Foreign Exchange

Management (Acquisition & Transfer of Immovable Property in India) Regulations, 2000, which prohibits acquisition of agricultural land by an NRI. The fact that he had levelled the land and enhanced its saleability was also an indication of his intention to resell the land even when he purchased it. He had made huge profits consequent to the sale and therefore undoubtedly the transaction amounts to 'adventure in the nature of trade'. The profit which he made out of this sale would therefore be chargeable to tax under the head 'income from business'. (AY. 2009-10)
V. A. Jose v. Dy. CIT (2018) 252 Taxman 386 (Ker.)(HC)

389 **S. 28(i) : Business income – Income from house property – License fee to operate hotel for a specified period was held to be assessable as income from business and not as income from house property [S. 22]**
Allowing the appeal of the assessee the Court held that; License fee to operate hotel for a specified period was held to be assessable as income form from business and not as income from house property. (AY. 2005-06)
Palmshore Hotels (P.) Ltd. v. CIT (A)(2018) 252 Taxman 191 (Ker.)(HC)
Editorial : Order in Palmshore Hotels (P.) Ltd. v. CIT (2012) 28 taxmann.com 156 (Cochin) (Trib.) is reversed

390 **S. 28(i) : Business income – Income from house property – ware housing – Exploitation of commercial assets – Assessable as business income. [S. 22]**
Allowing the appeal of the assessee the Tribunal held that ; assessee had not merely leased out 4 walls of warehouse, it had also provided essential and necessary services of supervisory, loading and unloading, handling, security and transporting to all clients including Hindustan Lever Ltd. on daily basis during working hours. Therefore, that was subservient to warehousing activity. Assessee was liable to pay service tax on service of storage and warehousing since service of storage and warehousing had been included as taxable service. Lease income received by assessee on account of let out of warehouses was 'profits and gains from business or profession'. (AY. 2000-01 02-03 to 06-07, 2001-02, 2008-09)
Nutan Warehousing Company Pvt. Ltd. v. Dy. CIT (2018) 170 DTR 377 / 195 TTJ 919 (Pune)(Trib.)

391 **S. 28(i) : Business income – Income from house property – Income from letting out of premises/developed space along with other amenities in industrial park/SEZ is to be charged under head profits and gains of business. [S. 22]**
Dismissing the appeal of the revenue the Tribunal held that ; income from letting out of premises/developed space along with other amenities in industrial park/SEZ is to be charged under head profits and gains of business. Tribunal also referred CBDT Circular No.16/2017 dated 25.04.2017 has clarified that income from letting out of premises/ developed space along with other amenities in an industrial park/SEZ is to be charged under the head 'Profits and Gains of Business'. (AY. 2011-12)
ACIT v. Grew Industries Pvt. Ltd. (2018) 66 ITR 116 (Mum.)(Trib.)

S. 28(i) : Business income – Agricultural income – Contract of growing and transporting grass – Growing and extracting grass – Agricultural Income – Transporting and relaying grass – Service – Business income. [S. 2(1A), 10(1)] 392

The assesse was awarded a contract of growing and delivering grass at the venue of contract. Payment was made on the basis of milestones and not apportioned into agricultural and business activity. Partly allowing the appeal of the assesse the Tribunal held that the activity of growing and extracting grass would be considered as an agricultural activity. The subsequent activity of transporting the grass and relaying it at the fields would be in the nature of service and considered as a business activity which needed to be brought to tax. (AY. 2011-12)

Hortus Consultants Pvt. Ltd. v. ITO (2018) 192 TTJ 465 / 165 DTR 147 (Hyd.)(Trib.)

S. 28(i) : Business income – Capital gains-Conversion in to stock in trade – Development agreement – Project completion method – Advance received equivalent to share cannot be taxed in the year of receipt – As per the agreement, right to collect said amount would crystallize on day when tenements or portion of land would be sold/handed over by developers to prospective buyers in subsequent year – Taxable in subsequent year – Capital gains arising on conversion of land into stock-in-trade prior to development agreement would also be taxed in subsequent year in which the right to collect the amount is crystallized – Conversion of capital asset into stock-in-trade, capital gains had to be worked out on basis of fair market value of property as on date of conversion and not on basis of existing market value of property. [S. 4, 5, 45, 145] 393

Tribunal held that, advance received equivalent to share cannot be taxed in the year of receipt. As per the development agreement right to collect said amount would crystallize on day when tenements or portion of land would be sold/handed over by developers to prospective buyers in subsequent year. Developer had recognized completion and sale of developed portion in subsequent assessment year 2011-12, business profits arising would be taxable in assessment year 2011-12. Capital gains arising on conversion of capital asset into stock-in-trade would also be taxed in subsequent assessment year 2011-12 in which business profits were to be taxed. On conversion of capital asset into stock-in-trade, capital gains had to be worked out on basis of fair market value of property as on date of conversion and not on basis of existing market value of property. (AY. 2009-10)

ITO v. Vilas Babanrao Rukari (HUF) (2018) 171 ITD 532 / 194 TTJ 954 / 167 DTR 353 (Pune)(Trib.)

S. 28(i) : Business income – Agricultural income – Where the agricultural activities were carried out by the farmers mere supervision by the Assessee without carrying basic operation would not qualify as agricultural activities and accordingly income of the Assessee from processing, packing and sale of various seeds procured from farmers was liable to be treated as business income and not agricultural income. [S. 10(1)] 394

Tribunal held that the actual cultivation on the land like tilling, sowing, etc. was being done by the farmers and that the farmers are not the employees of the assessee company. Tribunal held that therefore, mere supervision by the assessee without the carrying of the basic operations would leave no manner of doubt that no agricultural

income arose in the hands of the assessee. The argument of the assessee that the company is an artificial person and could not have conducted the agricultural operations by itself and, therefore, required such kind of an arrangement with the farmers for earning agricultural income was rejected by the Tribunal. The Tribunal also observed that had it been the case where the actual agricultural operations were carried out by the employees of the assessee company, it would have been a different case altogether. Accordingly, the appeal of the Assessee was dismissed by the Tribunal and claim of exemption u/s 10(1) was rejected.
P.H.I. Seeds Pvt. Ltd. v. DCIT (2018) 165 DTR 129 / 192 TTJ 412 (Delhi)(Trib.)

395 **S. 28(i) : Business income – In terms of memorandum of association, main object of assessee company was to acquire properties and to further let out such properties, income earned from such letting out was to be brought to tax as 'business income' and not as 'income from house property'. [S. 22, 27(iiib), 269UA(f)]**
Tribunal held that assessee's main object as stated in its Memorandum of Association was to acquire on license or by purchase, lease, exchange, hire or otherwise lands and property of any tenure, or premises in any part of India and to license or sub-license or lease or sub-lease or let, such lands or property or premises or any part thereof, clearly spells out that the assessee's main business is to carry out systematic and regular activity in the nature of business of letting out property. S. 27(iiib) read with S. 269UA(f) of the Act is not applicable in the instant case as the agreement is only for use of property and not for the transfer of the same. Since the company is neither the owner nor the deemed owner in terms of S. 27(iiib), the 'Contribution from Shops' cannot be assessed under the head 'Income from house property'. Tribunal relied on the decisions in case of *Chennai Properties & Investments Ltd v. CIT (2015) 373 ITR 673) (SC), Rayala Corpn. (P.) Ltd v. ACIT (2016) 386 ITR 500 (SC) and Bombay Plaza (P.) Ltd (2016) 161 ITD 552 (Kol)* and upheld the assessee's claim that the income from granting premises on sub-license was to be assessed under the head income from business.
Oberoi Investments (P) Ltd. v. ACIT (2018) 161 DTR 257 (Kol.)(Trib.)

396 **S. 28(i) : Business income – Hire charges – Activity of the assessee being business activity, hire charges received is assessable as business income and not as income from other sources [S. 56]**
Allowing the appeal of the assessee the Tribunal held that ; since activity carried out by assessee was in nature of business activity, hire charges received is assessable as business income and not as income from other sources. (AY.2010-11)
Nanak Ram Jaisinghani v. ITO (2018) 170 ITD 570 (Delhi)(Trib.)

S. 28(i) : Business income – Providing warehousing services along with other facilities such as security service and other services to keep goods safe and under hygienic conditions, said activity systematically undertaken by assessee is assessable as business income and not as income from house property, wrongly deduction of tax at source would not change character of income to rental income. As regards rejection of books of account and estimation of income was set a side to CIT(A) for re adjudication [S. 22, 194I] 397

Dismissing the appeal of the revenue the Tribunal held that; Providing warehousing services along with other facilities such as security service and other services to keep goods safe and under hygienic conditions, said activity systematically undertaken by assessee is assessable as business income and not as income from house property. Merely because one of contracting parties had wrongly deducted TDS under section 194I, same would not change character of income to rental income. As regards the issue of rejection of books of account and estimation of income was set a side to CIT(A) for re adjudication.

DCIT v. Tewari Warehousing Co. (2018) 170 ITD 339 (Kol.)(Trib.)

S. 28(i) : Business income – Penny stock – Donation – Assessable as business income and not as short-term capital gains, deduction of donation was held to be allowable. [S. 35,45] 398

Allowing the appeal of the assesse the Tribunal that; If the purchase of shares has been made solely and exclusively with the intention to resell at a profit and the purchaser has no intention of holding them, the transaction is an "adventure in the nature of trade" and the gains are assessable as "business profits" and not as "short-term capital gains" accordingly the deduction u/s. 35 was held to be allowable. Tribunal held that the AO was not justified in assessing the sale consideration as short term capital gains. (AY. 2011-12)

Prem Jain (Smt) v. ITO (2018) 63 ITR 52(SN) (Delhi)(Trib.), www.itatonline.org

S. 28(i) : Business income – Income from house property – Manufacturing activities were closed and premises given on lease, rental income is held to be assessable as business income and remuneration paid to directors is held to be allowable deduction. [S. 22, 37(1)] 399

Allowing the appeal of the assessee, the Tribunal held that, though Manufacturing activities were closed and premises given on lease, rental income is held to be assessable as business income since main activity of assessee is letting out the properties. As the rental income is assessed under the head business income remuneration paid to directors is also held to be allowable deduction. Followed *Rayala Corpn. P. Ltd v. ACIT (2016) 386 ITR 500/ 243 Taxman 360 (SC)* (AY. 2011-12)

Bharat Tiles & Marble (P) Ltd v. Dy. CIT (2018) 170 ITD 26 (Mum.)(Trib.)

S. 28(i) : Business loss – Capital or revenue – Investment in shares as Stock-in-trade – Consistency method – Loss is allowable as business loss. [S. 45] 400

Allowing the appeal of the assessee the Court held that, the memorandum of association of the assessee authorised it to deal in shares and services. Further, it stated that as

authorised, the assessee had purchased mutual funds units during the financial year 2000-01 and sold the units during the same year. The trading in such units was done in the ordinary course of its business and the loss was revenue in nature. The assessee consistently followed the same method showing the transactions as trading business. Accordingly, the claim of the assessee with regard to loss that arose from trading in shares was to be allowed as a business loss as claimed by the assessee. (AY. 2001-02)
Calibre Financial Services Ltd. v. ITO (2018) 409 ITR 410 / (2019) 260 Taxman 201 (Mad.) (HC)

401 **S. 28(i) : Business loss – Fertiliser Bonds issued by Central Government in Lieu of subsidy – Sale of Bonds at price Lower than face value – Loss is allowable as business Loss.**
Dismissing the appeal of the revenue the Court held that, the fertilizer bonds were issued by the Central Government in lieu of subsidy. When they were sold at a lower price and the assessee suffered loss, it was required to be allowed as business loss. (AY. 2008-09, 2009-10)
CIT v. Gujarat State Fertilizers And Chemicals Ltd. (2018) 409 ITR 378 (Guj.)(HC)

402 **S. 28(i) : Business loss – Advance written off – Matter was remanded back to Assessing Officer for deciding as to whether there was actual irrecoverability of advances which assessee chose to write off in its account and claimed write off amount as business loss.**
Court held that there was no proper analysis of nature of advances which were sought to be written off, therefore, matter was to be remanded back to Assessing Officer for deciding as to whether there was actual irrecoverability of advances which assessee chose to write off in its account and claimed write off amount as business loss. (AY. 2004-05)
PCIT v. Linde India Ltd. (2018) 254 Taxman 204 / 302 CTR 262 (Cal.)(HC)

403 **S. 28(i) : Business loss – Fluctuation in rate of exchange in case of loans utilised for working capital of the business is held to be allowable expenditure. [S. 37(1)]**
Dismissing the appeal of the revenue the Court held that, Fluctuation in rate of exchange in case of loans utilised for working capital of the business is held to be allowable expenditure. Relied *CIT v. Woodward Governor India Pvt. Ltd. (2009) 312 ITR 254 (SC)* (ITA No. 806 of 2015 dt. 26-02-2018)(AY. 2009-10)
PCIT v. Aloka Exports (Bom.)(HC) (2018) BCAJ-May. 62 (UR)

404 **S. 28(i) : Business loss – Fluctuation in foreign exchange rate was held to be allowable. [S. 37(i)]**
Assessee following Accounting Standard 11 and paying tax on foreign exchange gains of earlier years was held to be allowable. (AY. 2009-10)
PCIT v. Samwon Precision Mould Mfg. India Pvt. Ltd. (2018) 401 ITR 486 (Delhi)(HC)

S. 28(i) : Business Loss – Write off of stores and parts – Imported goods were lying in custody of port authorities in bonded warehouse – Relinquishing its right and title to goods – Goods lost their life for use in its business – loss is incidental to business and allowable as business loss. [S. 37(1)] 405

The expenses incurred when materials were imported, such expenses incurred for such import were for the purpose of business pending capitalisation, i.e. utilisation thereof. However, the assessee relinquished the right and title to those goods in accordance with the Customs Act, 1962 considering the goods so lying with the port authorities had lost their life for use in the assessee's business. Further the payments towards insurance, warehouse rent and other charges would become uneconomic in true commercial sense. It is a business loss which is allowable as deduction. (AY. 2005-06)

ACIT v. Ballarpur Industries Ltd. (2018) 64 ITR 21 (SN) / 168 DTR 225 / 193 TTJ 521 (Nag.)(Trib.)

S. 28(i) : Business loss – Write off of advances made for running and development of business is held to be allowable as deduction. [S. 37(1)] 406

Tribunal held that basic analogy for allowing write-off was to consider real nature of transaction. Advances were made for running of business and Expenditure was not incurred for new project, neither it was totally disconnected with business activities carried out by assessee. Accordingly, Tribunal held that amount was advanced for tractor division of assessee in normal course of business and is allowable. (AY.2002-03, 2003-04)

Mahindra & Mahindra Ltd v. Dy CIT (2018) 193 TTJ 618 (Trib.) (Mum.)(Trib.)

S. 28(i) : Business loss – Litigation and bona fide dispute about goods at Bangladesh border-Foreseeable Loss – Held to be allowable. [S. 37(1), 145] 407

Allowing the appeal of the assessee the Tribunal held that a loss is brought to the books at the point of time when it can be reasonably foreseen. This approach underlies the accountancy principle of conservatism which was duly recognised by the Supreme Court in the case of *Chainrup Sampatram v. CIT(1953) 24 ITR 481 (SC).* (AY.2008-09, 2009-10)

Rasna P. Ltd. v. DCIT (2018) 63 ITR 28 (SN)(Ahd.)(Trib.)

S. 28(i) : Business Loss – Soft drinks – Product having limited shelf Life – Non useable or non saleable which was destroyed – Allowable as business loss. 408

Tribunal held that the product having limited shelf Life which are non useable or non saleable which was destroyed is allowable as business loss. (AY. 2008-09, 2009-10)

Rasna P. Ltd. v. DCIT (2018)63 ITR 28 (SN)(Ahd.)(Trib.)

S. 28(i) : Business loss – Mark to market loss in derivative transactions – derivatives held as stock-in-trade – valued on the principle of cost or market value whichever is lower – Held, allowable. 409

The Tribunal held that when the derivatives are held as stock-in-trade, the mark to market loss on such derivatives is allowable, since such stock is valued on the principle of cost or market value whichever is lower. CBDT Circular no. 3/2010 not binding on the appellate authorities and that the same is going against the judgment of the Apex Court. (AY. 2011-12).

Edel Commodities Ltd. v. Dy. CIT (2018) 194 TTJ 86 (Mum.)(Trib.)

410 **S. 28(i) : Business loss-Value of shares held as stock-Devalued in books to evade tax-Claim being notional loss not allowable as business loss. [S. 145]**
Tribunal held that the assessee purchased the shares at ₹ 155 per share and valued at ₹ 10 per share as on 31-3-2002, so as to claim a notional loss in transaction of purchase of shares, though there was no fall in value of share of company in market. Accordingly the disallowance of loss is held to be justified. (AY. 2002-03 to 2005-06)
Elem Investments (P.) Ltd. v. ACIT (2018) 172 ITD 58 (Hyd.)(Trib.)

411 **S. 28(i) : Business loss – Speculation – Tax planning – The fact that the assessee bought and sold shares of groups concerns with a view to book loss and off-set the capital gains from another transaction does not mean that the loss can be treated as bogus if the documentation is in order. The loss cannot be treated as "speculation loss" under the Explanation to S. 73 because the shares were held as investments.**
Dismissing the appeal of the revenue the Tribunal held that ; The fact that the assessee bought and sold shares of groups concerns with a view to book loss and off-set the capital gains from another transaction does not mean that the loss can be treated as bogus if the documentation is in order. The loss cannot be treated as "speculation loss" under the Explanation to S. 73 because the shares were held as investments. The assessee-company has given scientific reasons for investment in these companies which are supported by documentary evidences. The Revenue has only contended that Ld. CIT(A) has not seen whose shares are sold by the assessee-company. However, complete details of purchase and sales are mentioned in the orders of the authorities below supported by documentary evidenceS. (ITA. No. 3661/Del./2014, dt. 01.10.2018) (AY. 2009-10)
ACIT v. RJ Corp. Ltd. (Delhi) (Trib.), www.itatonline.org

412 **S. 28(i) : Business loss – Forfeiture of security – Capital or revenue – Encashment of bank guarantee for failure to construct bus shelter with in time prescribed in the agreement is allowable as business loss.**
Assessee entered into an agreement with Delhi transport corporation for setting up 400 bus queue shelters under build operate and transfer basis. Assessee was to construct above shelters and operate them for 10 years and thereafter they were to be transferred to Delhi transport Corporation. Assessee was required to pay Delhi transport Corporation monthly revenue of ₹ 4.09 crores in respect of fees for 400 bus shelters and it was free to earn revenue through advertisement etc. to be displayed on those bus shelterS. In terms of assessment, assessee was to give a performance security to Delhi transport Corporation. Since assessee failed to construct bus shelters within time prescribed in agreement, DTC encashed amount of performance security. Assessee debited said amount in profit and loss account and claimed deduction for same. Assessing Officer rejected assessee's claim taking a view that loss was of capital nature. On appeal Tribunal held that,the assessee was engaged in business of constructing bus shelters and loss of bank/ performance guarantee occurred during course of business of assessee, it could not be

regarded as capital expenditure when assessee failed to create requisite bus shelters within prescribed time period. Therefore, impugned order was to be set aside and assessee's claim for deduction was to be allowed. (AY. 2009-10)
Green Delhi BQS Ltd. v. ACIT (2018) 170 ITD 738 / 194 TTJ 909 / (2019) 174 DTR 202 (Delhi)(Trib.)

S. 28(1) : Business loss – Forward and derivative contracts – gains on account of foreign exchange difference – Marked to Market Loss – Matter remanded for actual verification of entries in the books of account. [S. 37(1)] 413
Assessee in instant year passing reversal entry debiting provision and crediting profit and loss account Tribunal held that there is discrepancy between claim in this year and disallowance in earlier year therefore the issue to be examined by reference to actual books of account and entries therein. (AY. 2010-11)
CIT v. Kiran Gems Pvt. Ltd. (2018) 64 ITR 689 (Mum.)(Trib.)

S. 28(i) : Business loss – Fluctuation in foreign exchange loss – Derivative Contracts – Actual contract for sale of Merchandise is not speculative transaction is deductible. [S. 43(5)] 414
Tribunal held that, fluctuation in foreign exchange loss in derivative Contracts is actual contract for sale of Merchandise is not speculative transaction is deductible. (AY. 2008-09)
Toshiba Embedded Software (India) Pvt. Ltd. v. DCIT (2018) 64 ITR 675 (Bang.)(Trib.)

S.28(i) : Business loss – Derivatives – loss at end of year on mark to market basis could not be disallowed on ground that same was contingent in nature [S. 37(1)] 415
Tribunal held that assessee, carrying on trading activities in stock and commodities and held derivatives as stock-in-trade, its claim for loss at end of year on mark to market basis could not be disallowed on ground that same was contingent in nature. (AY. 2011-12)
Edel Commodities Ltd. v. DCIT (2018) 170 ITD 402 / 166 DTR 289 / 194 TTJ 86 (Mum.) (Trib.)

S. 28(i) : Business loss – Advance to purchase of land – loss incurred on account of irrevocable advance paid for purchase of land for construction of office is held to be allowable as business loss. 416
Tribunal held that the, assesse did not acquired any capital asset, it simply paid advance amount to acquisition of capital asset such amount of loss was incidental to the business, hence allowable as business loss. (AY 2006-07 to 2008-09)
Dy. CIT v. Mcnally Bharat Engineering Co. Ltd. (2018) 191 TTJ 822 (Kol.)(Trib.)

S. 28(i) : Business loss – Retention money – Advances to the companies which are in nature of irrevocable which are written off in the books is allowable as business loss. 417
Advance money given as retention to the companies for contract. Neither the interest nor principle amount settled against the same by these companies. Said advances were

in nature of irrevocable and having nexus with the business hence allowable as business loss. (AY. 2006-07 to 2008-09)
Dy. CIT v. Mcnally Bharat Engineering Co. Ltd. (2018) 191 TTJ 822 (Kol.)(Trib.)

418 **S. 28(i) : Business loss – Government deposits written off is held to be allowable as business loss. [S. 37 (i)]**
Government old deposits write of owing smallness of amount in books of accounts are allowed as business loss and the efforts involved in recovering the said amounts is allowable as business expenditure. (AY. 2006-07 to 2008-09)
Dy. CIT v. Mcnally Bharat Engineering Co. Ltd. (2018) 191 TTJ 822 (Kol.)(Trib.)

419 **S. 28(i) : Business loss – Advance made to parties for purchase of goods, consumables which are written off in the books is held to be allowable as business loss.**
Advances given to various parties for purchase of goods, electrical installation, consumable stores which have nexus with business hence allowable as business loss. (AY. 2006-07 to 2008-09)
Dy. CIT v. Mcnally Bharat Engineering Co. Ltd. (2018) 191 TTJ 822 (Kol.)(Trib.)

420 **S. 28(i) : Business loss – Trade advances written off was held to be allowable as business loss.**
Tribunal held that, Trade advances written off was held to be allowable as business loss. (AY. 2009-10, 2010-11)
ACIT v. Claridges Hotels Pvt. Ltd. (2018) 61 ITR 135 (Delhi)(Trib.)

421 **S. 28(iv) : Business income – Waiver of loan – Remission or cessation of trading liability – Loan waiver cannot be assessed as cessation of liability, if the assessee has not claimed any deduction u/s 36(1)(iii) of the Act qua the payment of interests in any previous year and S. 28(iv) does not apply if the receipts are in the nature of cash or money [S. 4, 36(1)(iii), 41(1)]**
Dismissing the appeal of the revenue the Court held that; S. 28(iv) of the IT Act does not apply on the present case since the receipts are in the nature of cash or money and S. 41(1) of the IT Act does not apply since waiver of loan does not amount to cessation of trading liability. It is a matter of record that the Respondent has not claimed any deduction under S. 36 (1) (iii) of the IT Act qua the payment of interest in any previous year.
CIT v. Mahindra and Mahindra Ltd. (2018) 404 ITR 1 / 165 DTR 337 / 302 CTR 213 / 255 Taxman 305 (SC), www.itatonline.org
CIT v. Dholgiri Industries (P) Ltd. (2018) 404 ITR 1 / 165 DTR 337 / 302 CTR 213 / 255 Taxman 305 (SC), www.itatonline.org
CIT v. Jindal Equipments Leasing & Consultancy Services Ltd. (2018) 404 ITR 1 / 165 DTR 337 /302 CTR 213 / 255 Taxman 305 (SC), www.itatonline.org
CIT v. Ramaniyam Homes (P) Ltd. (2018) 404 ITR 1 / 165 DTR 337 (SC) / 302 CTR 213 / 255 Taxman 305 www.itatonline.org
Editorial : Mahindra and Mahindra Ltd. v. CIT (2003) 261 ITR 501 (Bom.) (HC) is affirmed

S. 28(iv) : Business income – Profits chargeable to tax – Remission or cessation of trading liability – Loan waiver cannot be assessed as cessation of liability if the assessee has not claimed any deduction. [S. 41(1)] 422

Dismissing the appeal of the revenue the Court held that, Loan waiver cannot be assessed as cessation of liability if the assessee has not claimed any deduction. High Court observed that the Honourable Supreme Court in *CIT v. Mahindra & Mahindra Ltd. (2018) 404 ITR 1 (SC)* held that, on a plain reading of S. 28(iv) of the Act, it appears that for the applicability of said provision, the income which can be taxed shall arise from the business or profession. Also in order to invoke this provision, the benefit which is received has to be in some other form rather than in the shape of money. Accordingly the Loan waiver cannot be assessed as cessation of liability if the assessee has not claimed any deduction. (ITA No. 431 of 2016 dt. 21-08-2018) (AY. 2008-09) (Arising from, ITA No.6211 / Mum./ 2011 dt. 17-06-2015).

PCIT v. Graviss Hospitality Ltd. (UR) (Bom.)(HC)

S. 28(iv) : Business income – Value of any benefit or perquisites – Converted in to money or not – Non compete fee – Capital or revenue – Compensation of ₹ 40 crores for discontinuing commodity trading business – Commodity trading was transferred entirely to its group concern without there being any impairment to business/profit making apparatus of assessee – company – Taxable as business – However when there was no principal and agent relationship between assessee and parent company, compensation received by assessee for discontinuing commodity trading was not from parent company and was not in lieu of surrender of any agency, compensation did not fall within ambit of taxation under section 28(ii)(c). [S. 28(ii)(c)] 423

Assessee has shown the compensation of ₹ 40 crores received from BNP Paribas for discontinuing commodity trading business shown as towards loss of source of income/ profit earning apparatus and therefore it was a non-taxable capital receipt. AO held that the compensation is taxable as business income. In appeal CIT(A) confirmed the addition and also held that the amount to be taxable under section 28 (ii) (c) of the Act. Dismissing the appeal of the assesssee the Tribunal held that new company GCL was incorporated under same group by common promoters whereby assessee's commodity trading was transferred entirely along with its clientele to new floated company GCL and in eyes of clients, business was carried on in same name. Accordingly the profit making apparatus of assessee-company/group company was not impaired by discontinuance of commodity trade business of assessee per se therefore the amount received as compensation could not be termed as a capital receipt. Tribunal also held that going by plain meaning of section 28(va), amount of compensation received for not carrying any activity in relation to any business (i.e. commodity trading business) would be taxable under section 28(va) of the Act. Tribunal also held that when there was no principal and agent relationship between assessee and parent company, compensation received by assessee for discontinuing commodity trading was not from parent company and was not in lieu of surrender of any agency, compensation did not fall within ambit of taxation under section 28(ii)(c). (AY. 2009-10)

Geojit Investment Services Ltd. v. JCIT (2018) 172 ITD 279 / 196 TTJ 837 / 67 ITR 156 (Cochin)(Trib.)

424 **S. 28(iv) : Business income – Value of any benefit or perquisites – Converted in to money or not – Purchase of shares of a non-related company at a price less than fair value as it was a loss making concern cannot be assessed as benefit or perquisites. [S. 2(24)]**

Dismissing the appeal of the revenue the Tribunal held that ; Purchase of shares of a non-related company at a price less than fair value as it was a loss making concern cannot be assessed as benefit or perquisites. (AY. 2010-11)

ACIT v. Swiftsol (I) (P.) Ltd. (2018) 171 ITD 577 (Nag.)(Trib.)

425 **S. 28(iv) : Business income – Value of any benefit or perquisites – Converted in to money or not – Purchase of property from a company wherein the assessee is also director can not be assessed as profit and gain of business or profession.**

Allowing the appeal of the assessee the Tribunal held that, purchase of property from a company wherein the assessee is also director cannot be assessed as profit and gain of business or profession as the transaction relating to purchase had been shown as an investment activity by assessee in its books which was accepted by the revenue, therefore, if at all there was any benefit or perquisite, it could not be said to be arising from a business or exercise of a profession by assessee and hence could not have been treated as profit and gain of business or profession. (AY. 2010-11, 2012-13)

Keshavji Bhuralal Gala v. ACIT (2018) 169 ITD 23 / 165 DTR 8 / 193 TTJ 227 / 63 ITR 67 (SN) (Mum.)(Trib.)

426 **S. 28(iv) : Business income – Benefit or perquisite – Brand ambassador – Gift of car received for doing promotional activities was held to be taxable as professional income. Gift of watch was also held to be perquisite.**

Dismissing the appeal of the assessee the Tribunal held that the gift of car received for doing promotional activities was held to be taxable as professional income, though there was no written agreement for the promotion. Gift of watch was also held to be perquisite. (AY. 2010-11)

Priyanka Chopra (Ms) v. DCIT (2018) 169 ITD 144 / 163 DTR 122 / 192 TTJ 343 (Mum.) (Trib.)

427 **S. 28(va) : Business income – Non-Resident – Non-compete fee – Negative covenant for three years only and not permanently – Receipts is taxable as business income but not taxable in India in absence of any permanent establishment of non-Resident In India – There was no transfer of any capital asset hence not liable to capital gains tax – DTAA-India-United Kingdom. [S. 45 2(47), Art. 7 (1)]**

AAR held that the receipts arising out of a negative covenant not to carry on a business were taxable as business income under section 28(va). S. 28(va) of the Act nowhere provides that the recipient of non-compete fee must already be carrying on business which he has agreed not to carry on further. The section applies to any person who has received or is entitled to receive a sum in consideration for agreeing not to carry out any activity in relation to any business and is not restricted to only that business which he was already carrying on. Whether the receiver of the non-compete fee was carrying on any business or whether he was carrying on the same business or a different business

than that of the payer of the non-compete fee or the transferor of shares, etc. was totally irrelevant while considering taxability under section 28(va)(a). AAR also held that in the absence of any permanent establishment of the applicant in India, such business income would not be taxable in India by virtue of article 7 of the DTAA. There was no transfer of any capital asset hence not liable to capital gains tax.
HM Publishers Holdings Ltd., In Re (2018) 405 ITR 441 / 303 CTR 775 / 167 DTR 439 (AAR)

S. 30 : Rent rates, taxes, repairs and insurance for buildings – Rent paid – Dispute pending and keys of premises were lying with police – Rent paid is held to be allowable deduction – No question of law. [S. 37(1), 260A] 428
Dismissing the appeal of the revenue the Court held that ; Dispute pending and keys of premises were lying with police. Rent paid is held to be allowable deduction. Court also observe that, it is not within domain of Court exercising jurisdiction under section 260A to enquire into correctness of that Tribunal's finding and return a contrary finding that assessee was not a tenant, and was not using premises for business purposes, overturning ruling of Tribunal.
CIT v. Eveready Industries (India) Ltd. (2018) 258 Taxman 313 (Cal.)(HC)

S. 32 : Depreciation – Public roads treated as building and allowed depreciation – Optical fibres used exclusively for computer configuration were part of computer system and thus eligible for higher rate of depreciation. 429
Dismissing the appeal of the revenue the Court held that the Tribunal is justified in treating Public roads treated as building and allowed depreciation. Optical fibres used exclusively for computer configuration were part of computer system and thus eligible for higher rate of depreciation.
PCIT v. GVK Jaipur Expressway Ltd. (2018) 100 taxmann.com 95 / 259 Taxman 430 (Raj.) (HC)
Editorial : SLP of revenue is dismissed; PCIT v. GVK Jaipur Expressway Ltd. (2018) 259 Taxman 429 (SC)

S. 32 : Depreciation – Unabsorbed depreciation – Set-off – For the AY 1997-98, the claim for set off of unabsorbed depreciation is allowable against the income from other sources – However, in AY 1998-99, set off of carry forward unabsorbed depreciation could be allowed only against the profits and gains arising from business or profession [S. 28(i), 32(2), 56, 263] 430
On appeal, held by the High Court that :
a) Whatever be the intention expressed in the Budget Speech, the law passed by the Parliament alone is relevant and external aid need be resorted to only if there any ambiguity in the provision incorporated; and
From the relevant provisions [S. 32(2)], it is clear that for the AY 1997-98 (i.e., PY 1996-97), assessee is entitled to set-off unabsorbed depreciation against the IFOS also; however, in AY 1998-99, set off of carry forward unabsorbed depreciation could be allowed only against the profits and gains arising from business or profession. Followed *Peerless General Finance and Investment Company Limited v.*

CIT (2017) 11 SCC 482. Appeal of the revenue is partly allowed. (AY. 1997-1998 1998-1999)
CIT v. Cochin Shipyard Ltd. (2018) 305 CTR 439 / 168 DTR 140 (Ker.)(HC)

431 **S. 32 : Depreciation – Capital or revenue expenditure – Technical know how payment – Agreement providing for payment of lump-sum consideration in five instalments – held to be capital in nature – Allowing the miscellaneous application the Court held that the assessee is entitle to depreciation. [S. 37]**
In *Honda Siel Cars India Ltd. v. CIT (2017) 395 ITR 713 (SC)* the Court held that, Technical know how payment as per the agreement providing for payment of lump-sum consideration in five instalments is held to be capital in nature. Allowing the miscellaneous application the Court held that the assessee is entitle to depreciation. (AY. 1999-2000 to 2005-06)
Honda Siel Cars India Ltd. v. CIT (2018) 409 ITR 42 / (2019) 306 CTR 165 / 173 DTR 104 / 260 Taxman 371 (SC)
Editorial : Order in Honda Siel Cars India Ltd. v. CIT (2017) 395 ITR 713 / 249 Taxman 1 (SC)

432 **S. 32 : Depreciation – Charitable Trust – Entitle to depreciation. [S. 11]**
Dismissing the appeal of the revenue the Court held that ; Charitable Trust is entitle to depreciation. (AY. 2011-12)
CIT v. Shushrutha Educational Trust (2018) 408 ITR 536 (Karn.)(HC)

433 **S. 32 : Depreciation – Dumper' and Valvo machines used by assessee for his own mining purposes as well as giving them on hire, were eligible for higher rate of depreciation.**
Dismissing the appeal of the revenue the Court held that,dumper and valvo machines, used by assessee for his own mining purposes as well as giving them on hire, were eligible for higher rate of depreciation. Expression used in sub-clause (ii) of clause 3 of Entry No. III of Appendix-1, namely motor buses, motor lorries and motor taxies is having wide amplitude and term motor lorries used therein, would include dumper and Volvo machines. (AY. 2011-12)
PCIT v. Amar Singh Bhandari (2018) 258 Taxman 227 (Raj.)(HC)

434 **S. 32 : Depreciation – Trade mark – Trademark was advertised for sale promotions of assessee's products – Entitle depreciation.**
Dismissing the appeal of the revenue the Court held that ; Trade mark purchased by assessee used by the assessee for advertising for sale promotion of assesse's products which is entitle to depreciation. Depreciation cannot be disallowed on the ground that the assessee is not engaged in manufacturing activity. (AY. 2010-11)
CIT v. Sinochem India Co. (P.) Ltd. (2018) 258 Taxman 30 / 170 DTR 21 / 304 CTR 822 (Delhi)(HC)

S. 32 : Depreciation – Erection of windmills – Amount paid for Infrastructure – Depreciation is allowable. 435

Allowing the appeal the Court held that ; the Tamil Nadu Electricity Board had nothing to do with the registration of land, much less with its development or processing. Neither did the record reveal nor did the Department assert that the assessee purchased the land from TNEB. In order to install the wind turbine generators, the assessee must have excavated some earth on the land it purchased. Such excavation, did not amount to improving the land ; rather, it amounted to a preparatory step for erecting the wind turbines. Therefore, the land evacuation, if any, must be taken as part of infrastructure development for establishing the windmills. The depreciation is allowable. (AY.2006-07)

Muthoot Finance Ltd. v. JCIT (2018) 408 ITR 491 / 169 DTR 272 / (2019) 306 CTR 396 (Ker.)(HC)

S. 32 : Depreciation – Rate of depreciation – All equipment formed part of Life Saving Equipment – Denial of depreciation on computer is held to be not proper [IT Rules 1962, Appex. I, Part A iii 3(Xia)(D)] 436

Dismissing the appeal of the revenue the Court held that, all equipment formed part of Life Saving Equipment. Denial of depreciation on computer is held to be not proper. Accordingly depreciation @ 40 % is allowed on computer. (AY. 2012-13)

CIT v. Vasantha Subramanian Hospitals Pvt. Ltd (2018) 408 ITR 176 / 258 Taxman 396 / 172 DTR 423 / (2019) 307 CTR 569 (Mad.)(HC)

S. 32 : Depreciation – Plant and machinery put to use in April 1992 – Depreciation is not allowable for the assessment Year. 437

Allowing the appeal of the revenue the Court held that; the actual business of printing and publishing commenced at the Palakkad unit only in April, 1992 and therefore the plant and machinery was not put to use during the assessment year under consideration. The Tribunal was therefore, not justified in allowing the depreciation on that account to the assessee. (AY. 1992-93)

CIT v. Malayala Manorama Co. Ltd. (2018) 405 ITR 249 / 171 DTR 254 (Ker.)(HC)

S. 32 : Depreciation – Leasing of vehicles – Asset utilized for the purposes of business – Entitle to depreciation 438

Dismissing the appeal of the revenue the Court held that ; when the assessee is in the business of leasing as long as asset is utilized for purpose of business, the depreciation is allowable. Followed *I.C.D.S Ltd. v. CIT (2013) 350 ITR 527 (SC)*(AY. 1997-98)

CIT v. Shriram Chits & Investments (P.) Ltd. (2018) 257 Taxman 395 / (2019) 410 ITR 10 (Mad.)(HC)

S. 32 : Depreciation – Actual cost – Customs duty paid could be capitalised with retrospective effect and depreciation was to be calculated by including the said amount. [S. 43(1)] 439

Court held that ; Customs duty paid could be capitalised with retrospective effect and depreciation was to be calculated by including the said amount. (AY.1999-2000)

CIT v. Maruti Udyog Ltd. (2018) 407 ITR 159 / (2019) 308 CTR 682 (Delhi)(HC)

440 **S. 32 : Depreciation – Charitable Trust – Depreciation is allowable Computation provision did not discriminate between a charitable Trust and other assesses. [S. 11, 12A, 263]**

Dismissing the appeal of the revenue the Court held that, charitable trust is entitle to claim depreciation. Computation provision did not discriminate between a charitable Trust and other assesses. (AY.2005-06)

CIT v. Agricultural Produce Market Committee (2018) 408 ITR 231 / 257 Taxman 234 (Karn.)(HC)

441 **S. 32 : Depreciation – Stay order from Court – Factory could not run due to stay order of Court – Depreciation cannot be disallowed.**

Dismissing the appeal of the revenue the Court held that ; as the Factory could not run due to stay order of Court, depreciation cannot be disallowed. Business is not closed permanently. (AY. 2009-10)

PCIT v. Babul Products (P.) Ltd. (2018) 257 Taxman 100 (Guj.)(HC)

Editorial : Order in Babul Products (P.) Ltd v. ACIT (2017) 167 ITD 402 (Ahd.) (Trib.) is affirmed.

442 **S. 32 : Depreciation – Preoperative expenses – Capital expenditure – Entitle to depreciation.**

Dismissing the appeal of the revenue the Court held that, the amounts expended by an assessee, which are preoperative in nature and are in fact made prior to coming in or the existence of the business itself would be a capital expenditure and entitle to depreciation. (AY. 1993-94)

CIT v. Phonex Lamps India Ltd. (2018) 406 ITR 550 (All.)(HC)

443 **S. 32 : Depreciation – Additional depreciation – Manufacture – Ready mix concrete is an article which has been manufactured – Entitled to additional depreciation on plant and machinery used in manufacture of ready mix concrete. Transit Mixer and Trucks used to transport ready mix concrete whether plant and machinery involved in manufacture of ready mix concrete is question to be decided by Tribunal – Matter remanded. [S.32(1)(iia)]**

Court held that; considering the high degree of precision and stringent quality control observed in the selection and processing of ingredients as also the specific entry in the Central Excise Tariff First Schedule, heading 3824 50 10 which deals with "Concretes ready to use known as "Ready mix concrete", though the ready mix concrete did not have a shelf-life, the final mixture of stone, sand, cement and water in a semi-fluid state, transported to the construction site to be poured into the structure and allowed to set and harden into concrete was a thing or article manufactured. Court also held that the assessee, though engaged principally in the business of construction, was entitled to additional depreciation under section 32(1)(iia) for the plant and machinery used in the manufacturing activity being the production of ready mix concrete. Court further observed that the question whether additional depreciation was permissible on the actual cost of transit vehicles acquired by the assessee in the previous year, had to be

considered by the Tribunal. Whether the subject vehicles, in the nature of the process involved, qualified to be treated as plant and machinery was to be decided by the Tribunal. Matter remanded. (AY. 2006-07)
Cherian Varkey Construction Co. (P.) Ltd. v. UOI (2018) 406 ITR 262 / 169 DTR 456 / 304 CTR 601 (Ker.)(HC)

S. 32 : Depreciation – Carry forward and set-off of unabsorbed depreciation of Assessment Year 1999-2000 and Assessment Year 2000-2001 against the profits of Assessment Year 2009-2010 without appreciating that as per the provisions of S. 32(2) as they stood prior to the amendment by Finance Act, 2001 w.e.f. 01.04.2002, such unabsorbed depreciation was eligible for carry forward and set-off. [S. 32(2)] 444
Department relied upon the orders in the case of *CIT v. Milton Pvt. Ltd (ITA No. 2301 of 2013)* and *CIT v. Confidence Petroleum India Ltd. (ITA No. 582 of 2014)*, both of which were admitted on similar questions of law on 24th February, 2017 and 3rd April, 2017 respectively accordingly the matter may be referred to larger Bench. Dismissing the appeal of the revenue the Court held that, there is no conflict between *CIT v. Hindustan Unilever Ltd (2017) 394 ITR 73 (Bom.)* & *CIT v. Milton Pvt Ltd*, *CIT v. Confidence Petroleum India Ltd*, because while the former is at the stage of final hearing, the latter is at the stage of admission. Accordingly, the request for reference to a larger Bench is not acceptable. Merely filing of an SLP would not make the order of this Court bad in law or give a license to the Revenue to proceed on the basis that the order is stayed and/or in abeyance. Unabsorbed depreciation is allowed to be set off. Followed *Dy. CIT v. General Motors India P. Ltd (2013) 354 ITR 244 (Guj) (HC), Motor and General Fine Ltd. v. ITO (2017) 393 ITR 60 (Delhi)(HC),* and the CBDT Circular No. 14 of 2001 dt. 22-11-2001. Court also observed appeals filed by the Revenue on identical question of law were not entertained by following the decisions, *Hindustan Unilever Ltd.* (supra) *CIT v. Arch Fine Chemicals Pvt. Ltd.* (ITA No. 1037 of 2016 dt. 6-12-2016) *CIT v. Bajaj Hindustan Ltd.* (ITA No. 134 of 2016, 135 of 2016, 136 of 2016, 140 of 2016, 141 of 2016 and 148 of 2016) on on 13th June, 2018. *PCIT v. Hindustan Antibiotics Ltd*, ITA No. 1042 of 2015 dt. 20-02-2018. Court also held that merely filing of an SLP from the order of Hindustan Unilever Ltd. (supra) would not make the order of this Court bad in law or give a license to the Revenue to proceed on the basis that the order is stayed and/or in abeyance. (ITXA No 293 of 2016 dt. 03.08.2018)
PCIT v. Associated Cable Pvt. Ltd. (Bom.)(HC), www.itatonline.org

S. 32 : Depreciation – Higher rate – Transportation – Motor lorries used for providing specialized equipments and trained manpower for mining and transportation of excavated minerals on hire is eligible for higher rate of depreciation. 445
The High Court held that the terms of the tender suggested that, essentially, the assessee was awarded contract for providing specialized equipments and trained manpower for mining and transportation of excavated minerals on hire and hence there is no error in the view taken by the Tribunal of confirming the claim of assessee for higher depreciation on motor lorries used in assessee's business of transportation of goods on hire. (AY. 2012-2013)
PCIT v. Durga Construction Co. (2018) 255 Taxman 449 (Guj.)(HC)

446 **S. 32 : Depreciation – Tribunal's observation that transaction lacks bonafides – No material to dislodge factual findings recorded by Tribunal – Matter remanded to AO by Tribunal justified.**

Court held that there is absolutely no reason to dislodge the factual findings of Tribunal as there are serious doubts on the *bona fides* of the transaction ie the dates and events were not clear and user of machinery between 22-7-1994 and 22-9-1995 had not been verified by AO, and hence matter rightly remanded by Tribunal to the file of AO to ascertain complete facts of the case. (AY. 1996-1997)

Sterling Holiday Financial Services Ltd. v. ACIT (2018) 255 Taxman 184 (Mad.)(HC)

447 **S. 32 : Depreciation – Printer being a part of computer, is eligible for depreciation at higher rate of 60 per cent.**

Dismissing the appeal of the revenue the Court held that, printer being a part of computer, is eligible for depreciation at higher rate of 60 per cent. (AY. 2003-04, 2004-05)

CIT v. Cactus Imaging India (P.) Ltd. (2018) 406 ITR 406 / 256 Taxman 32 (Mad.)(HC)

448 **S. 32 : Depreciation – Hospital equipments – Since assessee could neither sell said hospital equipments as scrap nor it could use them and same were also written off in its books of account, written down value of hospital equipments was to be allowed as depreciation. [S. 32(1)(iii)]**

Dismissing the appeal of the revenue the court held that; as per principle laid down in S. 32(1)(iii) where a plant and machinery is discarded/destroyed in previous year, amount of money received on sale as such or as scrap or any insurance amount received to extent it falls short of written down value is allowed as depreciation, provided same is written off in books of account. Since assessee could neither sell said hospital equipments as scrap nor it could use them and same were also written off in its books of account, written down value of hospital equipments was to be allowed as depreciation. (AY. 2007-08)

CIT (E) v. Bhatia General Hospital (2018) 405 ITR 24 / 254 Taxman 285 (Bom.)(HC)

449 **S. 32 : Depreciation – Machinery utilised for trial runs is entitle to depreciation.**

Dismissing the appeal of the revenue the Court held that Machinery utilised for trial runs is entitle to depreciation. Once a plant commences operation, even if the product is substandard and not marketable, the business can be said to have been set up. Mere breakdown of machinery or technical snags that may have developed after the trial run which had interrupted the continuation of further production for a period of time cannot be held to be a ground to deprive the assessee of the benefit of depreciation. (AY. 1997-98)

PCIT v. Larsen And Toubro Ltd. (2018) 403 ITR 248 /89 taxmann.com 186 (Bom.)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Larsen and Toubro Ltd. (2018) 259 Taxman 79 (SC)

S. 32 : Depreciation – Option – Newly established industrial undertakings – Back ward areas – Additional question was admitted and the matter was remanded to the Tribunal to consider factual aspect. [S. 80HH, 260A(4)] 450

On appeal by the revenue, the Court has admitted additional question, whether the assesse can disclaim depreciation when it claimed deduction u/s 80HH. The matter was remanded to the Tribunal to consider factual aspect. (AY. 1989-90)

CIT v. Auto Mobile Corporation of Goa Ltd (2018) 405 ITR 310 / 164 DTR 168 (Bom.)(HC)

S. 32 : Depreciation – For the prior period the revenue cannot thrust upon the depreciation on the basis of written down value, in the preceding years, if the assessee had not claimed it. [S. 32, Expl. 5, 43(6)] 451

Dismissing the appeal of the Revenue the Court held that; The Tribunal has given the finding that, going by the wording of the ground it is not permissible to apply the Expln. 5 to S. 32(1) and therefore, the claim of depreciation, which was optional could not be thrust on the assessee for the prior period and the AO was not justified in allowing depreciation on the basis of written down value after allowing depreciation to the assessee in the preceding years. (AY. 2003-04 to 2006-07)

CIT v. Reliance Industries Ltd (2018) 161 DTR 420 / (2019) 410 ITR 468 (Bom.)(HC)

Editorial : Matter remanded to High Court, CIT v. Reliance Industries Ltd (2019) 410 ITR 466 /175 DTR 1/ 307 CTR 121 (SC)

S. 32 : Depreciation – Unabsorbed depreciation – Effect of amendment to Section 32(2) by Finance Act, 2001 – Unabsorbed depreciation or part thereof not set off till assessment year was allowed to be set off and carry forward – Provision to be construed in its own terms, benefit or advantages not to be restricted. [S. 32(2)] 452

Dismissing the appeal of the revenue the Court held that; the rationale for the amendment of section 32(2) that the restriction against set off and carry forward limited to eight years, beyond which the benefit could not be claimed under the provisions of the 1961 Act, was for the reasons deemed appropriate by Parliament. The limit was imposed in the year 1996 through the Finance (No. 2) Act, 1996. Had the intention of Parliament been really to restrict the benefit, of unlimited carry forward prospectively, there were more decisive ways of doing so, such as, an expressed provision or an exception or proviso. The absence of any such legislative device meant that the provision had to be construed in its own terms and not so as to restrict the benefit or advantage it sought to confirm. No question of law arose. Provision to be construed in its own terms, benefit or advantages not to be restricted (AY. 2010-11)

PCIT v. British Motor Car Co. (1934) LTD (2018) 400 ITR 569 / 162 DTR 1 / 300 CTR 337 (Delhi)(HC)

S. 32 : Depreciation – Charitable trust – Depreciation is allowable on assets whose cost of acquisition allowed as application to charitable purpose. [S. 12AA, 13(3)] 453

Dismissing the appeal of the revenue, the Court held that, Depreciation is allowable on assets whose cost of acquisition allowed as application to charitable purpose.

CIT v. Shyam Lal Panwar Anandi Devi Memorial Charitable Trust (2018) 400 ITR 393 (Raj.)(HC)

454 **S. 32 : Depreciation – Application of income as cost of assets – Disallowance of depreciation – Amendment applies prospectively [S. 11 (6)]**
Dismissing the appeal of the revenue, the Court held that; provision disallowance of depreciation on assets whose cost allowed as application of income applies prospectively (AY. 2010-11, 2011-12)
CIT v. Institute for Development and Research in Banking Technology. (2018) 400 ITR 66 / 165 DTR 104 / 302 CTR 332 (T&AP)(HC)
Editorial : Institute for Development and Research in Banking Technology v. ADIT (E) (2015) 42 ITR 219 (Hyd) (Trib.) is affirmed

455 **S. 32 : Depreciation – Block of assets – Sale of bottles and crates was not revenue receipts, sale proceeds to be reduced from block of assets [S. 2(11), 43(5)]**
Dismissing the appeal of the revenue the Court held that; Sale of bottles and crates was not revenue receipts, sale proceeds to be reduced from block of assets. (AY. 1998-99)
CIT v. Parle Soft Drinks (Bangalore Pvt. Ltd. (2018) 400 ITR 108 / 161 DTR 86 / 252 Taxman 147/ 161 DTR 86 / 300 CTR 415/ (2017) 88 Taxmann.com 61 (Bom.)(HC)
CIT v. Parle Bottling Pvt Ltd (2018) 400 ITR 108 / 161 DTR 86 / 252 Taxman 147 / 300 CTR 415 (Bom.) (HC)
Editorial; Order in Parle Soft Drinks P. Ltd. v. JCIT (2013) 27 ITR 663 (Mum.) (Trib.) is affirmed
Editorial : SLP of revenue is dismissed; CIT v. Parle Soft Drinks (Bangalore Pvt. Ltd. (2018) 256 Taxman 61 (SC)

456 **S. 32 : Depreciation – Improvements on leasehold premises – Capital expenditure – Entitle to depreciation.**
Tribunal held that; Spirit and text of Explanation 1 to section 32 was that any capital expenditure by assessee on a building not owned by him in which he carried on business, should be considered as building owned by him for purposes of section 32, to extent of amounts spent on construction of structure or doing of any work in or in relation to and by way of renovation or extension or improvement to building. Accordingly entitle to depreciation. (AY. 2005-06, 2009-10 to 2013-14)
Carrier Air-Conditioning & Refrigeration Ltd. v. ACIT (2018) 172 DTR 49 / 195 TTJ 777 (Delhi)(Trib.)

457 **S. 32 : Depreciation – Film and serial broadcasting rights – Intangible assets – Entitle to depreciation [S. 37(1)]**
Dismissing the appeal of the revenue the Tribunal held that Film and serial broadcasting rights are intangible assets which is entitle to depreciation. (AY. 2009-10)
Sun TV Network Ltd v. ACIT (2018) 196 TTJ 944 / 172 DTR 345 (Chennai)(Trib.)

458 **S. 32 : Depreciation – Pollution control equipment – Failure of the authorities to examine the nature of equipment – Matter remanded.**
Assessee claimed depreciation on pollution control equipment. AO held that description of assets as stated by assessee did not fall in category of 100% depreciation, therefore, AO allowed only 15% depreciation on Plant & Machinery as applicable to general

Plant & Machinery and made disallowance. DRP confirmed disallowance on reason that assessee did not prove that pollution control equipment was required for purpose of business and such equipment was used in controlling pollution-emanating from manufacturing operations of tax payer. Tribunal held that, the assessee had purchased Plant & Machinery which was categorized by him as pollution control equipment. What sort of evidence was required to establish that these were used in controlling pollution was not specified by DRP. Use of machinery in business had not been doubted even by AO as he allowed depreciation at 15%. Assessee categorized certain equipment as pollution control equipment, nature of equipment was to be examined in context of business operations of assessee, the aspect of the assessee had not correctly appreciated by AO or DRP, therefore issue was set as side for re-examination of nature of equipment purchased and its utilization in business. (AY. 2008-09 to 2011-12)
Bartronics India Ltd. v. Dy.CIT (2018) 65 ITR 540 (Hyd.)(Trib.)

S. 32 : Depreciation – Paper Brand – Trade marks – Intangible assets – Eligible depreciation. [S. 32(1) (ii)] 459
Relying on the order dt. 11.5.2017 in ITA No. 2263/Del/2012 (AY 2008-09) in case of ABC Paper Ltd, Tribunal held that the definition of "intangible assets" under S. 32(1) (ii) is an inclusive definition which not only includes know-how, patents, copyrights, trademarks, licences, franchises but also any other business or commercial rights of similar nature. Therefore, the interpretation of the AO, that since "brand" is not specifically mentioned in S. 32(1) (ii), it cannot be equated with "trade mark" and hence, depreciation on the same is not admissible is not proper. (AY. 2006-07 to 2013-14)
DCIT v. Kuantum Papers Ltd. (2018) 62 ITR 439 (Delhi)(Trib.)

S. 32 : Depreciation-Charitable trust – Amendment in S. 11(6) is prospective and applicable for and from 2015-16 onwards – Depreciation is allowable on assets even though cost of same was allowed as application. [S. 11(6)] 460
Tribunal held that, Amendment in S. 11(6) is prospective and applicable for and from 2015-16 onwards – Depreciation is allowable on assets even though cost of same was allowed as application. Followed *CIT v. Rajasthan & Gujarati Charitable Foundation (2018) 402 ITR 441 (SC)* (AY. 2011-12)
MAJ Hospital v. DCIT (2018) 173 ITD 554 / (2019) 173 DTR 236 / 196 TTJ 1149 (Cochin) (Trib.)

S. 32 : Depreciation – Building – Partly used for business – Depreciation on Building is disallowable in proportion of let out to total constructed area of the building. [S. 38] 461
Assessee company had two building structures at one location. It had let-out only a part of one such structure of the building. The rent received from the said letting was offered as "Income from House Property". The AO disallowed depreciation on both the structures. Appeal of the assessee was dismissed by CIT(A). The Tribunal held that the depreciation was disallowable in proportion of let out constructed area to the total constructed area of the building. (AY. 2012-13)
Gold Seal Engineering Products P. Ltd. v. ACIT (2018) 66 ITR 37 (SN)(Mum.)(Trib.)

462 **S. 32: Depreciation – Set-off of Unabsorbed depreciation – Any unabsorbed depreciation available on 01.04.2002 i.e. AY 2002-03 would be carried forward as per amended provisions of 32(2) of the Act without any time limit. [S. 32(2)]**
Dismissing the appeal of the revenue the Tribunal held that unabsorbed depreciation for earlier years upto AY 2001-02 would become the depreciation for AY 2002-03. And as per the amendment to section 32(2) of the Act by FA, 2001, this unabsorbed depreciation for AY 2002-03 would be carried forward for subsequent years and be set-off against income of the future years without any time limit instead of the alleged time limit of 8 years. Followed *General Motors India Pvt. Ltd v. DCIT (2013) 354 ITR 244 (Guj.)(HC)* (AY. 2006-07)
ACIT v. Panchmahal Steel Ltd. (2018) 64 ITR 49 (Ahd.)(Trib.)

463 **S. 32 : Depreciation – Injection moulding machine falls under the category of 'Moulds' and therefore shall qualify for higher rate of depreciation.**
The Tribunal held that since the appellant was engaged in the manufacture and printing of laminated pouches and plastic bags, the injection moulding used in such manufacturing could only be termed as moulding machine which shall qualify for higher depreciation @ 30% instead of 15%. Further, assessee's contention that the entire plant and machinery including office equipment, lab equipment etc. should also fall under the block of 'moulds' was dismissed by the Tribunal since they formed a part of separate block of assets.
DCIT v. SB Packaging Ltd. (2018) 63 ITR 569 / 52 CCH 511 (Delhi)(Trib.)

464 **S. 32 : Depreciation – UPS and Date drive part of computer system and eligible for higher rate of depreciation**
UPS and Data drive are to be treated as part and parcel of computer system and depreciation has to be allowed at higher rate of 60 per cent on such items as applicable to computer. (AY. 2008-09)
Eastman Industries Ltd. v. ACIT (2018) 63 ITR 181 (Delhi) (Trib.)

465 **S. 32 : Depreciation – Computer peripherals – Eligible higher rate of depreciation.**
The Tribunal directed to allow depreciation on the computer printers at the higher rate as claimed by the assessee by following the judgement of Hon'ble Delhi High Court in *CIT v. BSES Yamuna Powers Ltd. (2010) TIOL 636 (Delhi)* (AY. 2006-07)
CEVA Freight India (P) Ltd. v. Dy. CIT (2018) 192 TTJ 887 / 172 DTR 55 (Delhi)(Trib.)

466 **S. 32 : Depreciation – Non compete fee – Depreciation is held to be not allowable.**
The Tribunal held that depreciation is not allowable on the amount of non compete fee. (AY. 2007-08)
Dy. CIT v. Excelax Bio Polymers (P) Ltd. (2018) 192 TTJ 49 (UO)(Delhi)(Trib.)

S. 32 : Depreciation – Goodwill – Goodwill in books of assessee on account of rounding off of decimal in share exchange ratio not an artificial one – Entitle depreciation. 467

Tribunal held that goodwill in books of assessee on account of rounding off of decimal in share exchange ratio not an artificial one accordingly entitle to depreciation. (AY. 2014-15)

Mtandt Rentals Ltd. v. ITO (2018) 65 ITR 63 (SN) (Chennai)(Trib.)

S. 32 : Depreciation – Goodwill – Intangible asset – Goodwill will fall under the expression 'or any other business or commercial rights of similar nature' hence depreciation is available on genuine goodwill. Whether there is transfer of goodwill and valuation done by the assessee is erroneous has to be decided by division Bench, accordingly the matter is sent back to division Bench. 468

Special bench of the ITAT held that,goodwill will fall under the expression 'or any other business or commercial rights of similar nature' hence depreciation is available on genuine goodwill. Followed *CIT v. Smifs Securities Ltd. (2012) 348 ITR 302 (SC)*. However the question whether when a firm has been succeeded by a company and net assets of the firm have vested in the company, there is any transfer of goodwill in the real sense and whether the valuation of goodwill done by the assessee is erroneous has to be decided by the Division Bench. Accordingly the matter is sent back to division Bench for disposing off the appeal in above terms. (AY. 2001-02)

CLC & Sons Pvt. Ltd. v. ACIT (2018) 168 DTR 157 / 171 ITD 139 / 194 TTJ 700 (SB) (Delhi)(Trib.), www.itatonline.org

S. 32 : Depreciation – Motor Car – Company purchasing car in name of its manager which is used for the purpose of its business is entitle to depreciation. 469

Tribunal held that, Company purchasing car in name of its manager which is used for the purpose of its business is entitle to depreciation. (AY. 2010-11, 2011-12)

CIT v. Ahmedabad Strips P. Ltd. (2018) 64 ITR 683 (Ahd)(Trib.)

S. 32 : Depreciation – Additional depreciation – Lab Equipment and Electrical Items is essential for manufacturing process which is entitled to additional depreciation [S. 32(1)(iii)] 470

Tribunal held that, Lab Equipment and Electrical Items is essential for manufacturing process which is entitled to additional depreciation (AY. 2010-11, 2011-12)

CIT v. Ahmedabad Strips P. Ltd. (2018) 64 ITR 683 (Ahd.)(Trib.)

S. 32 : Depreciation – Lease premises-Notionally estimated cost and capitalised for restoration of office spaces for setting up of cell site towers – Depreciation is held to be not allowable. [S. 43(1)] 471

Assessee entered into lease agreement with owners of various office spaces for setting up of cell site towers. Assessee, was obliged to restore site to its original condition at expiry of lease period. Assessee estimated a sum to be incurred on restoration of sites and capitalized same to cost of cell site towers at very threshold of entering into lease

agreements and claimed depreciation on such estimated restoration cost Tribunal held that depreciation is not allowable on notionally estimated the cost and capitalised for restoration of office spaces for setting up of cell site towers. (AY. 2009-10)
DCIT v. Vodafone Essar Digilink Ltd. (2018) 170 ITD 430 / 193 TTJ 150 / 166 DTR 233/ 64 ITR 392 (Delhi)(Trib.)

472 **S. 32 : Depreciation – Toll bridge – BOT basis – Intangible asset, depreciation is allowable.**
As per Circular no. 9 of 2014 issued by the Board, the assessee can claim amortisation of the expenditure also shows that the expenditure incurred by the assessee has to be treated as a capital expenditure by treating it as intangible asset. The expenditure has to be allowed as deduction in each year, so as to arrive at real profit. The provisions of depreciation or amortisation are only aimed at arriving at the true profit, though the methodology is different. The claim of depreciation was consistently being allowed, in which event, it may not be proper, for the interregnum period to disallow the claim of depreciation. (AY. 2007-08 to 2009-10)
Godavari Toll Bridge (P) Ltd. v. ACIT (2018) 163 DTR 17 / 191 TTJ 568 (Vishakha)(Trib.)

473 **S. 32 : Depreciation – Computer – Film projector cannot be said to be computer eligible for higher rate of depreciation @ 60%.**
Dismissing the appeal of the assessee, the Tribunal held that, the Film projector is eligible depreciation at 15% and cannot be said to be computer which is eligible for higher rate of depreciation @ 60%. (AY. 2013-14)
Cinetech Entertainment India (P) Ltd. v. ITO (2018) 169 ITD 218 (Mum.)(Trib.)

474 **S. 32 : Depreciation – Batteries used along with Ups and forming system for power back up in case of power failure was entitled to depreciation at 60%.**
Dismissing the appeal of the revenue the Tribunal held that; the batteries which were used along with UPS and which formed a system for power back up in case of power failure qualified for depreciation at 60 per cent. (AY. 2010-11)
DCIT v. Lotwin Online Lottery P. Ltd. (2018) 61 ITR 661 (Mum.)(Trib.)

475 **S. 32 : Depreciation – Advertising Company – Hoardings is entitled to 100 Per Cent depreciation.**
Dismissing the appeal of the revenue the Tribunal held that; hoardings is entitled to 100 Per Cent depreciation. (AY. 2010-11)
DCIT v. Vantage Advertising P. LTD. (2018) 61 ITR 564 (Kol.)(Trib.)

476 **S. 32 : Depreciation – Leasehold rights of coal bearing Land – Intangible Assets – Not entitled to depreciation [S. 32(1)(iii)]**
Tribunal held that; the depreciation was not allowable under section 32(1)(iii) in respect of intangible assets. (AY. 2008-09)
Mahanadi Coalfields Ltd. v. DCIT (2018) 61 ITR 585 (Ctk)(Trib.)

S. 32 : Depreciation – Unabsorbed depreciation allowance available in assessment years 1995-96 to 2001-02, to be carried forward to succeeding years. [S. 32(2)] 477
Allowing the appeal of the assessee the Tribunal held that; the provisions of S. 32(2) as amended by Finance Act, 2001 would allow unabsorbed depreciation allowance available in assessment years 1995-96 to 2001-02, to be carried forward to succeeding years, and if any unabsorbed depreciation or part thereof could not be set off till assessment year 2002-03, then it would be carried forward till time it is set off against profits and gains of subsequent years. (AY. 2009-10)
RB Polymers Ltd. v. CIT (2018) 168 ITD 463 (Kol.)(Trib.)

S. 32 : Depreciation – Right to operate the toll road /bridge – Commercial rights which is entitle to deprecation. [S. 32(1)(ii)] 478
Tribunal held that; right to operate the toll road/bridge and collect toll charges in lieu of investment made by it in implementing the project is an intangible asset in the nature of license or akin to license as well as a business or commercial rights, which is entitle to depreciation. (AY. 2011-12)
ACIT v. Progressive Constructions Ltd (2018) 161 DTR 289 / 63 ITR 516 / 191 TTJ 549 (SB)(Hyd.)(Trib.)

S. 32 : Depreciation – Block of assets – Loss on sale of motor car debited in Profit and loss account was held to be not allowable, however depreciation was held to be allowable after reducing sale proceeds from remaining block of assets [S. 2(11)] 479
Tribunal held that; Loss on sale of motor car debited in Profit and loss account was held to be not allowable, however depreciation was held to be allowable after reducing sale proceeds from remaining block of assets. Matter remanded. (AY. 2009-10)
Pearl Freight Services P. Ltd. v. ACIT (2018) 61 ITR 390 (Mum.)(Trib.)

S. 32 : Depreciation – Catalyst is entitle to depreciation. 480
The Tribunal held that the assessee was entitled to depreciation on catalyst. (AY. 2009-10)
ACIT v. Chambal Fertilisers And Chemicals Limited (2018) 61 ITR 33 (Jaipur)(Trib.)

S. 32 : Depreciation – Depreciation cannot be disallowed on motor car only on the reason that cars were parked on promoter's premises. 481
Tribunal held that, Depreciation cannot be disallowed on motor car only on the reason that cars were parked on promoter's premises. (AY. 2009-10, 2010-11)
ACIT v. Claridges Hotels Pvt. Ltd. (2018) 61 ITR 135 (Delhi)(Trib.)

S. 32 : Depreciation – Gym equipment installed in premises of assessee's Managing Director was held to be allowable. [S. 2(11)] 482
Tribunal held that asset acquired during running of Hotel business was held to allowable though the Gym equipment installed in premises of assessee's Managing Director was held to be allowable. (AY. 2009-10, 2010-11)
ACIT v. Claridges Hotels Pvt. Ltd. (2018) 61 ITR 135 (Delhi)(Trib.)

483 **S. 32A : Investment allowance – Development rebate – Transfer of asset within 8 years to the retiring partner, denial of benefit of investment allowance/development rebate was justified. [S. 2(47), 34(3), 35A, 155(4A)]**

Dismissing the appeal of the assessee the Court held that, Transfer of asset within 8 years to the retiring partner, denial of benefit of investment allowance/development rebate was justified, since there is neither any evidence or material available on record nor it is the claim of the assessee that the said machinery was utilized by the retiring partner for the balance period to satisfy the mandate of S. 35A of the Act. (AY. 1986-87, 1987-88)

Jupiter Radios (Regd.) v. Dy. CIT (2017) 88 Taxmann. com 93 / (2018) 163 DTR 233 (Delhi) (HC)

484 **S. 32AB : Tea development account – Amount withdrawn from NABARD deposit account accordance with tea development Scheme 2007 was not utilised the entire amount with in year in which withdrawal was made but utilised partly after the end of said year amount cannot be taxed by deeming fiction [S. 33AB(7), 139(1)]**

Allowing the appeal of the assessee the Tribunal held that, Amount withdrawn from NABARD deposit account accordance with tea development Scheme 2007 was not utilised the entire amount with in year in which withdrawal was made but utilised partly after the end of said year amount cannot be taxed by deeming fiction. (AY. 2011-12)

Stewart Holl (India) Ltd. v. Dy. CIT (2018) 170 ITD 1 / 193 TTJ 878 / 166 DTR 143 (Kol.) (Trib.)

485 **S. 35 : Scientific research – Weighted deduction – Date of approval is not relevant – Application for approval in December 2006 and approval was granted in October 2008 – Entitle to weighted deduction. [S. 35(2AB)]**

Allowing the appeal of the assessee the Court held that ; once an application is filed by the assessee to the prescribed authority, the assessee would have no control over when such application is processed and decided. Even if therefore, the application is complete in all respects and the assessee is otherwise eligible for grant of such approval, approval may take some time to come by. The claim for deduction cannot be defeated on the ground that such approval was granted in the year subsequent to the financial year in which the expenditure was incurred. In order to avail of the deduction under section 35(2AB) what is relevant is not the date of recognition or the cut-off date mentioned in the certificate of the prescribed authority or even the date of approval, but the existence of recognition. On appeal High Court held that ; the Assessing Officer was not right in restricting the deduction to expenditure incurred prior to April 1, 2008. He had to recompute such deduction and give its effect to the assessee for the relevant assessment year. (AY. 2008-09)

Banco Products (India) Ltd. v. DCIT (2018) 405 ITR 318 / 205 Taxman 244 (Guj.)(HC)

S. 35 : Scientific research expenditure – Retrospective cancellation of approval, donor's claim of deduction could not be denied as at the time of receipt of donation institute was benefitted by the approval as per S. 35(1)(ii). [S. 35(1)(ii)] 486

Allowing the appeal of the asssessee the Tribunal held that ; retrospective cancellation of approval, donor's claim of deduction could not be denied as at the time of receipt of donation institute was benefitted by the approval as per S. 35(1)(ii).(AY. 2014-15)

P.R. Rolling Mills (P.) Ltd. v. DCIT (2018) 171 ITD 683 / 196 TTJ 494 (Jaipur)(Trib.)

S. 35 : Scientific research – When recognition to facility given by prescribed authority is maintained, the deduction to be allowed – Non-receipt of Form No. 3CM is a procedural lapse and is not fatal for denial of claim of deduction [S. 35(2AB] 487

Tribunal held that prescribed authority till 1-4-2016 has no authority to look into nature and quantum of expenditure except in first year to see investment in land and building and after recognition of facility and approval by DSIR, Assessing Officer is to allow claim of assessee after verifying same. under amended provisions of section 35(2AB) by Finance Act, 2015 with effect from 1-4-2016, besides maintaining separate accounts of R & D facility, copy of audited accounts have to be submitted to prescribed authority. If recognition to facility given by prescribed authority which is mandate of S. 35(2AB) is maintained, assessee has to be accorded deduction under S. 35(2AB); non-receipt of Form No. 3CM is a procedural lapse and is not fatal for denial of claim of deduction under S. 35(2AB) of the Act. (AY.2010-11)

Minilec India (P.) Ltd. v. ACIT (2018) 171 ITD 124 (Pune)(Trib.)

S. 35 : Scientific research – Rejection of weighted deduction in respect of donation cannot be denied when the institution was enjoying approval within the meaning of S. 35(1)(ii) as on date of receipt of donation, no matter that the approval was cancelled subsequently with retrospective effect. 488

Allowing the appeal of the assessee the Tribunal held that, rejection of weighted deduction in respect of donation cannot be denied when the institution was enjoying approval within the meaning of S. 35(1)(ii) as on date of receipt of donation, no matter that the approval was cancelled subsequently with retrospective effect. (AY.2014-15)

Vora Financial Service P. Ltd. v. ACIT (2018) 171 ITD 646 / 194 TTJ 746 / 65 ITR 77 (SN) / (2019) 178 DTR 58 (Mum.)(Trib.), www.itatonline.org

S. 35 : Scientific research – Deduction on account of purchase of 'assets' for its in-house R&D facility is allowable as deduction. Objective behind exclusion clause in S. 43(4)(ii) is to be that expenditure on scientific research should be incurred on research actually carried out by assessee in-house and assessee should not spend money in acquiring rights in or arising out of scientific research carried on by some other person. [S. 35(1)(iv), 43(4)(ii)] 489

Allowing the appeal of the assessee the Tribunal held that, deduction on account of purchase of 'assets' for its in-house R&D facility is allowable as deduction. Objective behind exclusion clause in S. 43(4)(ii) is to be that expenditure on scientific research should be incurred on research actually carried out by assessee in-house and assessee

should not spend money in acquiring rights in or arising out of scientific research carried on by some other person. Tribunal also held that if interpretation sought to be urged by revenue was to be accepted, then benefit sought to be conferred by provisions of section 35(1)(iv) would virtually be denied in all cases by invoking exclusion clause in section 43(4)(ii). (AY. 2008-09)
Tata Hitachi Construction Machinery Company Ltd. v. DCIT (2018) 170 ITD 720 / 65 ITR 86 (SN) (Bang.)(Trib.)

490 **S. 35 : Scientific research – Approval of competent authority is mandatory to claim weighted deduction. [S. 35(2AB)]**
Dismissing the appeal of the assesssee, the Court held that; Approval of competent authority is mandatory to claim weighted deduction. As per certificate issued by competent authority in Form 3CM, assessee's R&D facility had been approved for period from 1-4-2011 to 31-3-2013 on basis of application filed by assessee in prescribed Form 3CK on 12-8-2011, for the AY. 2008-09 weighted deduction was held to be not allowable. (AY. 2008-09)
PCP Chemicals (P.) Ltd. v. ITO (2018) 168 ITD 26 (Mum.)(Trib.)

491 **S. 35AB : Know-how – Acquiring know how means acquiring on ownership basis or on lease deduction can not be allowed as revenue expenditure. [S. 37(1)]**
Question for consideration was "Whether on the facts and the circumstances of the case and in law, the Tribunal was right in law to hold that the assessee had acquired the ownership rights in the technical knowhow included in the agreement in contradistinction to lease of rights in such knowhow and accordingly the assessee was entitled to deduction under Section 35AB as against under Section 37(1) of the Act ?
Court held that; on the application of law to the facts in the present facts, the expenditure on account of technical knowhow incurred under the Agreement dated 19th June, 1984 is classifiable under S. 35AB of the Act and not under S. 37 (1) of the Act. Therefore, question is answered in the affirmative in favour of the respondent Revenue and against the applicant assessee. (*Dy. CIT v. Anil Starch Products Ltd (2015) 232 Taxman 129 (Guj)(HC)* and *Diffusion Engineers Ltd v. Dy. CIT (2015) 376 ITR 487 (Karn)(HC)* (based on *CIT v. Swaraj Engines Ltd (2008) 301 ITR 284 (P& H)(HC)* dissented from) (ITR No. 13 of 2001, dt. 27. 04. 2018) (AY. 1986-87)
Standard Batteries Ltd. v. CIT (2018) 166 DTR 289 / 255 Taxman 380 / 304 CTR 1 (Bom.) (HC), www.itatonline.org

492 **S. 35AD : Deduction in respect of expenditure on specified business – Hotel business – Certification of Hotel as three-Star Category Hotel in subsequent year – Deduction cannot be denied on the ground that Certification was in later year. [S 35D(5)(aa)]**
Dismissing the appeal of the revenue the Court held that, the application filed by the assessee for classification was made on April 19, 2010 and thereafter certain procedures were to be followed and an inspection was required to be conducted for such purpose. The manner in which the inspection was conducted and the time frame taken by the competent authority were beyond the control of the assessee. The Department had not disputed the operation of the new hotel from the financial year 2010-11 as it

had accepted the income, which was offered to tax from the newly established hotel which became fully operational in the year 2010. Nowhere in the clause (aa) to sub-section (5) of section 35AD was it mandated that the date of the certificate was to be with effect from a particular date. Therefore, the provision which was to encourage the establishment of hotels of a particular category, should be read as a beneficial provision and therefore, the interpretation given by the Tribunal were valid and justified. Therefore, the Tribunal was right in concluding that the assessee is entitled to claim deduction under section 35AD(5)(aa) for the assessment year 2011-12. (AY.2011-12)
CIT v. Ceebros Hotels Pvt. Ltd. (2018) 409 ITR 423 / (2019) 261 Taxman 41 (Mad.)(HC)

S. 35AD : Deduction in respect of expenditure on specified business – Hotel business – Granted certification for categorization of its hotel as three star hotel – Entire capital expenditure is allowable as deduction. 493
Dismissing the appeal of the revenue the Tribunal held that once the certificate is issued by the competent authority for categorization of its hotel as three star hotel, entire capital expenditure is allowable as deduction. (AY. 2012-13)
ACIT v. River View Hotels. (2018) 171 ITD 404 (Ahd.)(Trib.)

S. 35B : Export markets development allowance – Agent – Expenditure incurred in the promotion of the sale outside India – Not discharged the onus of establishing that the expenditure was wholly or exclusively incurred for the purposes mentioned in S. 35-B(1)(b)(iv) of the Act – Not entitle to weighted deduction. [S. 35B(1)(b) (iv)] 494
Court held that in the present case, the assessee has not discharged the onus of establishing that the expenditure was wholly or exclusively incurred for the purposes mentioned in S. 35B(1)(b)(iv) of the Act. The Tribunal fell in error in holding otherwise. This question is answered in the negative, in favour of the Revenue, and against the assessee. (C. No. 71 of 1993, dt. 01.05.2018) (AY. 1984-85)
CIT v. the K.C.P Ltd (2018) 409 ITR 436 (AP)(HC), www.itatonlin.org

S. 35D : Amortisation of preliminary expenses – Expenses incurred on issue of public subscription of shares or of debentures of the company, any payment made against commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus would be eligible for benefit. 495
Dismissing the appeal of the revenue the court held that; expenses incurred on issue of public subscription of shares or of debentures of the company, any payment made against commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus would be eligible for benefit. (AY. 1993-94)
CIT v. Phonex Lamps India Ltd. (2018) 406 ITR 550 (All.)(HC)

S. 35D : Amortization of preliminary expenses – Fees paid for increasing the authorize share capital of the assessee company which has been registered in an earlier year is not allowable as a preliminary expense. [S. 40(a)(ia), 194J] 496
Fees paid for increasing the authorize share capital of the assessee company which has been registered in an earlier year is not allowable as a preliminary expense (AY. 2011-12)
Campbell Shipping (P) Ltd. v. ITO (2018) 192 TTJ 24 (Mum.)(UO)(Trib.)

497 **S. 35D : Amortisation of preliminary expenses – No disallowances can be made as there was no material to show that the business income of shipping division was offered on basis of tonnage tax scheme. [S. 37(1)]**

Dismissing the appeal of the revenue the Tribunal held that; No disallowances can be made as there was no material to show that the business income of shipping division was offered on basis of tonnage tax scheme. (AY. 2009-10)

ACIT v. Chambal Fertilisers and Chemicals Limited (2018) 61 ITR 33 (Jaipur)(Trib.)

498 **S. 35DD : Amortisation of expenditure – Amalgamation – Demerger – Travelling expenses incurred wholly and exclusively for purpose of scheme of demerger is entitled for deduction.**

Dismissing the appeal of the revenue the, Tribunal held that any expenditure wholly and exclusively in relation to scheme of demerger could not be allowed as deduction from profits of business in one go but same had to be amortized for income tax purposes over a period of five years and deduction would be allowed accordingly. There was no pre-condition set out in section 35DD mandating any certification from auditor. Tax auditor indeed did not report this claim u/s. 35DD but tax auditor's non-report could not disentitle assessee from making a claim which was otherwise legally permissible. (AY. 2012-13)

Onprocess Technology India Pvt. Ltd. v. DCIT (2018) 195 TTJ 292 (Kol.)(Trib.)

499 **S. 35DDA : Amortisation of expenditure – Voluntary retirement scheme-Deduction relating to Financial Year 2000-01, Being Fifth Year deduction is available.**

Dismissing the appeal of the revenue the Court held that, any deduction claimed for the financial year 2000-01 under S. 35DDA was to be considered for the assessment year 2001-02, when the section was incorporated with effect from April 1, 2001. Moreover, the Assessing Officer had allowed the voluntary retirement scheme payments in the earlier years and deduction claimed, in the assessment year in question, was only a consequential relief for the fifth year. S. 35DDA did not preclude the assessing authority to consider the voluntary retirement scheme payment as revenue expenditure. The Tribunal rightly upheld the findings recorded by the Commissioner (Appeals). No question of law arose. (AY. 2005-06)

CIT v. Eco Auto Components Pvt. Ltd. (2018) 409 ITR 202 (P&H)(HC)

500 **S. 35E : Expenditure on prospecting – Minerals – Amortisation – 10% of expenses was held to be allowable.**

Tribunal held that; 10% of expenses was held to be allowable. (AY. 2008-09)

Mahanadi Coalfields Ltd. v. DCIT (2018) 61 ITR 585 (Ctk.)(Trib.)

501 **S. 36(1)(ii) : Bonus or commission – Directors and employees – Payment of bonus was part of employment agreement and it was a performance based payment – Allowable as deduction.**

Dismissing the appeal of the revenue the Court held that, all the four employee directors own identical number of shares i.e. 12.20% aggregating to 49% shares in respect of company. Nevertheless the bonus which has been paid to each of them is different. This

is evidence of the fact that the payment of bonus was a performance based payment and entirely dependent on the performance of the employee. This also explains the fact that employee directors were paid at a much higher rate than the other employees of the company as the payment of the bonus is performance based and not designation based. In the above view, it is clear that the payment made to the four employee directors of the company is not a payment made in lieu of dividend as in fact found on facts by the ITAT. When bonus payment made by assessee was entirely dependent on performance basis of its employees, benefit of deduction u/s 36(1)(ii) can be claimed by assessee. Followed *CIT v. Shahzada Nand and Sons (1977)108 ITR 358(SC)* (AY. 2009-10)
PCIT v. New Silk Route Advisors P. Ltd. (2018) 170 DTR 257 (Bom.)(HC)

S. 36(1)(ii) : Bonus or commission – Restriction of allowance would apply only to an employee who is also share in company – Payment made to agent who was an MD of company in earlier years and in the relevant year he was not an employee – Disallowance cannot be made. 502
Allowing the appeal of the assessee the Tribunal held that ; restriction of allowance would apply only to an employee who is also share in company. Payment made to agent who is not an employee during the relevant year. Disallowance cannot be made. (AY. 2009-10)
Nat Steel Equipment (P.) Ltd. v. DCIT (2018) 171 ITD 482 / 171 DTR 49 / 195 TTJ 796 (Mum.) (Trib.)

S. 36(1)(iii) : Interest on borrowed capital – loan was used for acquiring or construction of assets that were used for earning taxable income – Interest expenditure is held to be allowable. 503
AO held that interest paid by assessee on capital borrowed could not be allowed as deduction. Tribunal held that since interest was paid by assessee on loan used for acquiring or construction of assets that were used for earning taxable income, its claim for interest expenditure had to be allowed. On appeal High Court up held the order of the Tribunal. (AY. 2010-11)
PCIT v. International Biotech Park Ltd. (2018) 259 Taxman 14 (Bom.)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Interest free loans to subsidiaries – Advance to sister concern for business purposes – Allowable as deduction. 504
Dismissing the appeal of the revenue the Court held that money borrowed by assessee even when advanced to its subsidiary for some business purpose would qualify for deduction of interest paid on such borrowings. (AY. 1988-89)
PCIT v. Reebok India Company (2018) 259 Taxman 100 (Delhi)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Commercial expediency – Interest free advance to third parties – Interest paid is held to be allowable as deduction. 505
Dismissing the appeal of the revenue the Court held that, merely because non-interest bearing advances were given to third parties, that would not justify a finding that the test of "commercial expediency" was not satisfied. Interest-free advances were advanced to the parties connected with the business of the assessee. Money taken on loan was

not diverted for non-business purpose. The unsecured loans were not used for personal purpose. According the interest paid on capital borrowed for the purpose of business had to be allowed as a deduction. (AY. 2011-12)
CIT v. Reebok India Company (2018) 409 ITR 587 (Delhi)(HC)
Editorial : Reebok India Company v. Dy CIT (2017) 56 ITR 211 (Delhi) (Trib.) is affirmed.

506 **S. 36(1)(iii) : Interest on borrowed capital – Development and construction of residential building – Followed Accounting Standard – Disallowance of interest is not justified on the ground that interest on borrowings was included in closing work in progress. [S. 145]**
Dismissing the appeal of the revenue the Court held that, when the assessee has followed the accounting standard, interest on borrowed capital cannot be disallowed on the ground that, interest on borrowings was included in closing work in progress. (AY. 2012-13)
PCIT v. Milroc Good Earth Property & Developers LLP (2018) 256 Taxman 257 (Bom.)(HC)

507 **S. 36(1)(iii) : Interest on borrowed capital – loan amount was used for acquiring or construction of assets that were used for earning taxable income – Interest expenditure is allowable as deduction.**
Dismissing the appeal of the revenue the Court held that, Interest paid on borrowed capital which was used for acquiring or construction of assets that were used for earning taxable income. Interest expenditure is held to be allowable as deduction. (AY. 2010-11)
PCIT v. International Biotech Park Ltd. (2018) 259 Taxman 14 (Bom.)(HC)

508 **S. 36(1)(iii) : Interest on borrowed capital – New line of business-Amount must have been used for acquisition of asset and asset must have been used – Interest is not allowable.**
Dismissing the appeal of the assessee the Court held that; the assessee did enter a new line of business, unconnected to its existing business, and it had not by then commenced that new business. Accordingly the interest paid on borrowed amount for acquisition of asset which was not put to use during the relevant year, therefore interest is not allowable.(AY.2006-07)
Muthoot Finance Ltd. v. JCIT (2018) 408 ITR 491 / 169 DTR 272 / (2019) 306 CTR 396 (Ker.)(HC)

509 **S. 36(1)(iii) : Interest on borrowed capital – Advances made to sister concerns from own funds – No disallowances can be made. [S. 37(1)]**
Dismissing the appeal of the revenue the Court held that, Advances made to sister concerns from own funds accordingly, no disallowances can be made. Followed *S. A. Builders Ltd v. CIT (2007) 288 ITR 1 (SC)* (AY. 1999-2000)
CIT v. Basti Sugar Mills Co. Ltd. (2018) 408 ITR 184 / 259 Taxman 97 (Delhi)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Amount borrowed utilised for purchase of capital assets – Interest is deductible. 510

Dismissing the appeal of the revenue the Court held that ; amount borrowed was utilised for purchase of capital assets. Interest is deductible.

CIT v. Kanoria Sugar And General Manufacturing Co. Ltd. (2018) 407 ITR 737 (Raj.)(HC)

Editorial : SLP of revenue is dismissed; CIT v. Kanoria Sugar And General Manufacturing Co. Ltd. (2018) 405 ITR 1 (St)

S. 36(1)(iii) : Interest on borrowed capital – 15% rate of interest was paid on borrowed capital – Allowable as deduction on principle of commercial expediency. [S. 37(1)] 511

Dismissing the appeal of the revenue the Court held that the Tribunal was right in deleting the addition made on account of interest expenditure at the rate of 15 per cent. Looking to the commercial expediency, it could not be said that the Tribunal had committed any error in deleting the addition. (AY. 2008-09)

CIT v. Shree Benzophen Industries Ltd. (2018) 405 ITR 185 (Guj.)(HC)

Editorial : SLP of revenue is dismissed ; CIT v. Shree Benzophen Industries Ltd. (2018) 401 ITR 170 (St)

S. 36(1)(iii) : Interest on borrowed capital – Capital can be used for acquisition of capital asset – Premature redemption of premium notes – Liability for interest is not contingent – Interest is deductible. 512

Allowing the appeal of the assessee the Court held that ;the non-convertible debentures and secured premium notes were both freely transferable. If the promoters' secured premium notes holders and the banks and financial institutions therefore, traded in such secured premium notes, that would not indicate any colourable device of tax planning. Mere early redemption also would not be enough to hold that from the inception there was a device created by the company to defeat the Revenue's interests. The interest was deductible. In order to claim deduction under section 36(1)(iii) of the Income-tax Act, 1961, all that is necessary is that the money, i. e., capital, must have been borrowed by the assessee, that it must have been borrowed for the purpose of business and lastly, that the assessee must have paid interest on the borrowed amount. All that is germane is whether the borrowing was, or was not, for the purpose of the business. The provision makes no distinction between money borrowed to acquire a capital asset or a revenue asset. (AY. 1999-2000)

Nirma Ltd. v. ACIT (2018) 405 ITR 277 (Guj.)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Advances were made out of interest free funds available with assessee – Allowable as deduction. 513

Dismissing the appeal of the revenue, the Court held that, when advances were out of interest free funds available with assessee, expenditure on borrowed amount is allowable as deduction. (AY. 2012-13)

PCIT v. Holy Faith International P. Ltd. (2018) 407 ITR 445 (P&H)(HC)

514 **S. 36(1)(iii) : Interest on borrowed capital – Construction business – Stock in trade – Interest paid on borrowings for purchase land – Allowable as revenue expenditure.**
Court held that; plot of land was purchased in course of business of assessee, same formed part of stock-in-trade of assessee, therefore, interest paid on loan taken for purchase of said plot of land is to be allowed as revenue expenditure. (AY. 1998-99)
Jayantilal Investments v. ACIT (2018) 257 Taxman 103 / 170 DTR 220 (Bom.)(HC)

515 **S. 36(1)(iii) : Interest on borrowed capital – Manufacture and sale of fruit juice and like products – Joint venture company for production of milk – Interest borrowed for setting up of joint venture is held to be allowable as deduction.**
Dismissing the appeal of the revenue the Court held that ; company engaged in business of manufacture and sale of fruit juice and like products entered into an agreement for setting-up of joint venture company with a Central Government agency and a State Government entity was well within purview of business operations of assessee. Accordingly interest paid on funds borrowed by assessee had to be regarded as a payment made for purpose of business of assessee and a permissible deduction. (AY. 2001-01, 2003-04)
CIT v. Keventer Agro Ltd. (2018) 256 Taxman 437 (Cal.)(HC)

516 **S. 36(1)(iii) : Interest on borrowed capital – Firm – Exempt income – Capital assets received in form of shares in names of partners and not firm – Failure to establish shares forming part of capital account of firm – Disallowance was held to be justified. [S. 14A, 263]**
Dismissing the appeal of the assesse the Court held that; since the assessee had failed to establish that the capital assets received were ever part of the firm's capital account, the deduction claimed under section 14A could not have been allowed and had rightly been disallowed. The Tribunal had recorded a finding that the assessee was a firm and was assessed as a firm. The assessee was not trading in shares and its business was different in nature. The amount which was received as capital assets in the shape of shares were in the names of the partners and did not form part of the capital account of the firm, and therefore, the claim made by the assessee under section 36(1)(iii) read with section 14A was not allowable in favour of the partners as, such a deduction could have only been granted to a firm. (AY. 2001-02)
Shiva Auto Mobiles (Auto Division) v. CIT (2018) 402 ITR 427 (All.)(HC)

517 **S. 36(1)(iii) : Interest on borrowed capital – Advance to subsidiaries – Presumption is that the advance was from the interest free generated or available with the company – Disallowance of interest was held to be not valid.**
Dismissing the appeal of the revenue the Court held that; when the advance made to subsidiaries the presumption is that the advance was from the interest free generated or available with the company hence disallowance of interest was held to be not valid. (AY. 2003-04 to 2006-07)
CIT v. Reliance Industries Ltd. (2018) 161 DTR 420 / (2019) 410 ITR 468 (Bom.)(HC)
Editorial : Affirmed, CIT v. Reliance Industries Ltd (2019) 410 ITR 466 /175 DTR 1/ 307 CTR 121 (SC)

S. 36(1)(iii) : Interest on borrowed capital – Interest free advances out of surplus funds hence interest was held to be allowable. 518

Tribunal held that; the assessee had advanced interest-free loans out of its surplus funds, the question of disallowing the expenditure in respect of interest incurred on the borrowed funds did not arise, inasmuch as, no part of the borrowed funds had been advanced by the assessee to the concerned parties. The Tribunal was justified in upholding the deletion of disallowance of interest expenses. (AY. 2007-08)

PCIT v. Sahjanand Laser Technology Ltd. (2018) 401 ITR 478 (Guj.)(HC)

S. 36(1)(iii) : Interest on borrowed capital-Borrowings for expansion of business, interest was held to be allowable as deduction – Amendment to S. 36, with effect From 1-4-2004 is prospective and not retrospective. [S. 37(1)] 519

Dismissing the appeal of the revenue the Court held that the expenditure claimed under section 36(1)(iii) of the Income-tax Act, 1961 on account of interest paid on borrowed capital for expansion of business was allowable revenue expenditure. The Explanation to the proviso to section 36(1)(iii) had not made the amendment retrospective but only prospective.

CIT v. Modern Threads (I) Ltd. (2018) 400 ITR 381 (Raj.)(HC)
CIT v. Modern Syntex (2018) 400 ITR 381 (Raj.)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Advance to director for the purpose of business-Disallowance of interest cannot be made. 520

Dismissing the appeal of the revenue, the Court held that; advance was paid to director to acquire guest house for the business purposes, disallowance of interest was held to be not justified. (AY. 2009-10)

CIT v. Mira Exim Ltd. (2018) 400 ITR 28 (Delhi)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Finance cost – Advertising agency – Held to be not allowable as revenue expenditure as no business income was earned from advertising business or real estate business during the year. [S. 37(1)] 521

AO held that finance cost could not be allowed as business expenses as there was no business activity during year under consideration which was up held by the CIT(A). Tribunal held that merely because revenue accepted said claim of interest as business expenses in earlier years in summary proceedings u/s. 143(1) did not create res-judicata as revenue had never gone into details of said claim as return of income was accepted in summary manner u/s 143(1) without scrutiny. Tribunal also held that when there is no income earned by assessee from advertising business as well from real estate business then finance cost incurred as interest on Bank Overdraft could be disallowed. (AY. 2012-13)

Dheeraj Consultancy (P) Ltd. v. ACIT (2018) 168 DTR 52 / 193 TTJ 638 (Mum.)(Trib.)

522 **S. 36(1)(iii) : Interest on borrowed capital – Utilized for purchase of shares – Allowable as deduction.**
The Tribunal allowed the cross objection filed by the assessee and held that once the department has accepted that the borrowings were used for business purposes in the earlier year, it cannot take a different stand in the relevant year and therefore, interest paid on the said borrowings is allowable as deduction. (AY. 2004-05)
Abhinand Investment Ltd. v. ITO (2018) 192 TTJ 51 (UO) (Kol.)(Trib.)

523 **S. 36(1)(iii) : Interest on borrowed capital – Advance to group concerns out of its own funds – Commercial needs – Disallowance of interest is held to be not justified.**
Tribunal held that the assessee had demonstrated with evidence that loans to group companies were out of its own funds and also such loans had been given in commercial interest, therefore, AO was incorrect in disallowing proportionate interest on loans given to group companies. Assessee was holding more than 33% equity stake in company for which loans have been given and also derived commercial benefit Therefore, AO was incorrect in holding that assessee had diverted interest bearing funds to give loans to group companies. (AY. 2011-12)
Scrabble Entertainment Ltd. v. ACIT (2018) 169 DTR 51 / 193 TTJ 418 (Mum.)(Trib.)

524 **S. 36(1)(iii) : Interest on borrowed capital – Provision for interest on funds provided by government – Held to be allowable, subject to verification of payments in the subsequent years.**
Tribunal held that, where provision was made on a reasonable and scientific basis, the same had to be allowed as a deduction after verification of the fact that the assesse actually paid the said amount in the subsequent years. (AY. 2008-09)
M. P. Police Housing Corporation Ltd. v. ACIT (2018) 68 ITR 53 (Indore)(Trib.)

525 **S. 36(1)(iii) : Interest on borrowed capital – No proportionate disallowance of interest can be made unless the department establishes that the borrowed funds were utlilised for advancing interest free funds to relatives.**
Tribunal held that where Department failed to establish nexus between interest bearing funds borrowed and interest free advances given to relatives of Assessee, no proportionate disallowance can be made for interest on borrowed funds (AY. 2010-11)
ACIT v. Rohit Kochar (2018) 68 ITR 67 (SN) (Delhi)(Trib.)

526 **S. 36(1)(iii) : Interest on borrowed capital – Loan taken for purchase of shares – Shares held as stock in trade – Business expenditure – Accepted in earlier year – Allowable as deduction – Department cannot take a different stand. [S. 37(1)]**
The assesse is engaged in the business of dealing in shares. It had paid interest on borrowed funds utilized for advance towards share application money. These shares were held as stock in trade by the assesse. Hence, it could be safely concluded that the assesse had utilized the borrowed funds for business purposes. The department had accepted borrowing being used for business purposes in the earlier year. Thus, allowing the appeal of the assesse the Tribunal held that the department cannot take a different

stand during the year and directed the AO to delete the disallowance made towards interest paid on borrowed funds. (AY. 2004-05)
ITO v. Abhinand Investment Ltd. (2018) 192 TTJ 51 (UO)(Kol.)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Interest paid on loan borrowed for renovation and modernization in assessee's factory premises – Allowable as deduction. 527
Tribunal held that loan was taken for the purpose of renovation carried out in the factory hence allowable as deduction. (AY. 2011-12)
Laboratories Griffon (P) Ltd. v. Dy. CIT (2018) 170 ITD 387 / 65 ITR 317 / 193 TTJ 855 (2019) 178 DTR 355 (Kol.)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Mixed funds – Presumption is that the advance to sister concern is made from own funds-Dept's argument that *Maxopp Investment Ltd v. CIT (2018) 402 ITR 640 (SC) /Avon Cycles Ltd v. CIT (P&H (HC) (ITA No 277 of 13)* overrules the presumption that advances to sister concerns are made from own funds and not borrowed funds is not correct – No disallowances can be made. 528
Dismissing the appeal of the revenue the Tribunal held that, presumption is that the advance to sister concern is made from own funds is good law. Dept's argument that M*axopp Investment Ltd v. CIT (2018) 402 ITR 640 (SC) /Avon Cycles Ltd v. CIT (P&H (HC)* (ITA No 277 of 13) overrules the presumption that advances to sister concerns are made from own funds and not borrowed funds is not correct hence no disallowances can be made. (ITA No. 470/Chd/2018, dt. 16.10.2018) (AY. 2014-15)
ACIT v. Janak Global Resources Pvt. Ltd. (Chd.)(Trib.), www.itatonline.org

S. 36(1)(iii) : Interest on borrowed capital – Finance charges shall not be deductible where the activity carried out by assessee was as investment activity. [S. 37(1)] 529
Tribunal held that ; assessee itself admitted that it was in activity of investment in group companies for acquiring controlling interest and such investment had been treated as long term investment in its financial statements. Statutory auditors of company reported that company was not engaged in carrying on any business or as part of its business activity of acquisition of shares except making long term investments. Accordingly the AO and CIT(A) were right in treating activity carried out by assessee as investment activity and accordingly finance charges was not deductible u/s 36(1)(iii). (AY. 2003-2004)
Asia Investments Private Limited v. ACIT (2018) 167 DTR 59 / 63 ITR 535 / 193 TTJ 214 (Mum.)(Trib.)

S. 36(1)(iii) Interest on borrowed capital – Where capital was borrowed for acquisition of fixed assets and only a part of assets were put to use, then interest was to be allowed only to the extent the assets were operational during the current year. 530
Tribunal held that only one unit commenced in the preceding year and the other unit was set up and commenced in the subsequent year. Accordingly, in view of proviso to section 36(1)(iii) of the Act, only those assets which were put to use in the current

year, was operational in nature and only to that extent interest on borrowed capital for acquisition of assets was to be allowed as a deduction. (AY. 2005-06)
ACIT v. Pasadensa Foods Ltd. (2018) 163 DTR 243 / 192 TTJ 645 (Delhi)(Trib.)

531 **S. 36(1)(iii) : Interest on borrowed capital – Disallowance cannot be made as Assessee established that loan advanced at interest lower than interest paid on unsecured loans out of interest free funds.**
Assessee advanced loan for interest @ 6% and paid interest on most of the unsecured loans @ 18%. Assessee established that the loan was given out of interest free funds. The AO could not bring on record any evidence to show that the interest free funds were used for any other purposes. Tribunal held that if the interest free surplus funds are available to the assessee, assessee is free to use the funds at his option and deleted the disallowance so made. (AY. 2014-15)
Grandhi Sri Venkata Amarendra v. ACIT (2018) 66 ITR 66 (SN)(Vishakha.)(Trib.)

532 **S. 36(1)(iii) : Interest on borrowed capital – AO cannot step into the shoes of the businessmen – Interest is allowable on borrowed funds used for the purpose of business.**
The AO had made the disallowance u/s 36(1)(iii) of the Act on the premise that the assessee could have repaid the borrowed funds out of sale proceed of the land and could have reduced the interest burden. The ITAT reiterating the favourable CIT(A) order held that the AO cannot step into the shoes of the businessmen and decide as to how the mange the affairs. For making disallowance u/s 36(1)(iii), the AO has to demonstrate that borrowed funds were diverted for non-business purpose and as in the present case the AO has not gathered any evidence to prove the same, therefore the disallowance made by the AO u/s. 36(1)(iii) was deleted by the ITAT.
DCIT v. Rajendra Bansilal Raisoni (2018) 66 ITR 655 / 53 CCH 606 (Pune)(Trib.)

533 **S. 36(1)(iii) : Interest on borrowed capital – Interest in share capital of other companies – Held, for business purpose therefore, no disallowance u/s 36(1)(iii). Such investment as well as such interest cannot be considered for computing disallowance u/s 14A. [S. 14A, R. 8D(2)(ii)]**
AO disallowed interest in respect of investment made in shares of companies out of interest bearing funds u/s 36(1)(iii) on the ground of non-business purpose. CIT(A) held that investments are for business purpose therefore, no disallowance u/s 36(1)(iii) required. However, he made disallowance u/s 14A of the Act. The Tribunal held that investment in the companies were for business purpose and therefore, interest was allowable u/s 36(1)(iii) of the Act. Further, it was held that such investment cannot be considered for the purpose of Rule 8D(2)(ii). Also, interest attributable to such investment cannot be considered for the purpose of Rule 8D(2)(ii) as such interest is allowable as business expenditure u/s 36(1)(iii). (AY. 2009-10)
CIT v. VBC Ferro Alloys Ltd. (2018) 63 ITR 633 (Hyd.)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Business expenditure – Advance to subsidiary companies out of borrowed funds who further gave said advances to SPVs of assessee who utilised for carrying on business activities of construction and development of airports – No business activities under taken – Expenditure incurred on finance charges is held to be not allowable as deduction- there is evidence of nexus of borrowing funds being invested in sister concern and assessee sources of income can only be earning dividend income, the entire interest income has to be considered for disallowance under section 14A under rule 8D2(i)/(ii) for the impugned assessment year. [S. 14A, 37(1), R.8D(1)(ii)] 534

Dismissing the appeal of the assessee the Tribunal held that ; advance to subsidiary companies out of borrowed funds who further gave said advances to SPVs of assessee who utilised for carrying on business activities of construction and development of airports. As no business activities under taken, expenditure incurred on finance charges is held to be not allowable as deduction. Tribunal also held that there is evidence of nexus of borrowing funds being invested in sister concern and assessee sources of income can only be earning dividend income, the entire interest income has to be considered for disallowance under section 14A under rule 8D2(i)/(ii) for the impugned assessment year. (AY.2012-13)

GVK Airport Developers Ltd. v. ITO (2018) 172 ITD 109/ 195 TTJ 246 / 66 ITR 9 (SN) / 169 DTR 209 (Hyd.)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Captive power plant for expansion of existing business – Allowable as deduction irrespective of fact whether such power plant had commenced production or not in year under consideration. 535

Dismissing the appeal of the revenue the Tribunal held that; interest incurred on power plant was incidental to pharma unit, irrespective of fact whether such power plant had commenced production or not in year under consideration assessee's claim was to be allowed. (AY. 1998-99 to 2002-03)

DCIT v. Core Health Care Ltd. (2018) 171 ITD 455 (Ahd.)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Finance Charges – Not deductible as these expenses were not relatable to the main business activity of the assessee. [S. 57(iii)] 536

Tribunal held that finance charges was not deductible u/s 36(1)(iii) as these expenses were not related to the main business activities of the assessee. An alternate plea was made by the assessee to allow finance charges under S. 57(iii) of the Act. So far as alternate plea of the assessee that dividend income earned for the year under consideration is taxable, the corresponding expenditure incurred including interest was allowed on proportionate basis considering the total dividend income earned by the assessee. (AY. 2003-04)

Asia Investments Pvt. Ltd. v. ACIT (2018) 63 ITR 535 / 193 TTJ 214 (Mum.)(Trib.)

537 **S. 36(1)(iii) : Interest on borrowed capital – Disallowance on interest debited to profit and loss account as attributable to amounts invested in capital work-in-progress is justified.**

Disallowance on interest debited to profit and loss account as attributable to amounts invested in capital work-in-progress is justified. (AY. 2010-11)

Joy Alukkas (India) Ltd. v. ACIT (2018) 65 ITR 409 (Cochin)(Trib.)

538 **S. 36(1)(iii) : Interest on borrowed capital – Own funds more than investment-Disallowance of interest cannot be made.**

Tribunal held that investment had been done out of mixed source of funds. The assessee had sufficient own funds which covered more than the investment made. Moreover, the Commissioner (Appeals) had given a finding that the loan funds were for a specific purpose and there had been no dilution of the funds. Therefore no disallowance could be made. (AY. 2010-11)

CIT v. Kiran Gems Pvt. Ltd. (2018) 64 ITR 689 (Mum.)(Trib.)

539 **S. 36(1)(iii) : Interest on borrowed capital-Interest on loan taken for renovation and modernisation of factory premises is allowable as deduction.**

Dismissing the appeal of the revenue the Tribunal held that, Interest on loan taken for renovation and modernisation of factory premises is allowable as deduction. (AY. 2011-12)

DCIT v. Laboratories Griffon (P.) Ltd. (2018) 170 ITD 387 / 65 ITR 317 / 193 TTJ 855 / 178 DTR 355 (Kol.)(Trib.)

540 **S. 36(1)(iii) : Interest on borrowed capital – Work in progress – Expansion of existing business – interest on capital work-in-progress representing amount incurred on installation of new towers, is held to be not allowable as deduction. Matter was setaside to AO to verify if investment was made from interest free funds no disallowances can be made.**

Tribunal held that since process of installation of towers was still going on at end of year interest on capital work-in-progress representing amount incurred on installation of new towers, is held to be not allowable as deduction. The contention advanced by the assessee a business in existence and capital is borrowed for acquisition of asset for extension of such existing business. Is also rejected. The contention that the investment in CWIP was made out of own interest free funds and hence no interest can be attributed to any capital borrowed for the purpose of making such an investment. The matter was set aside for verification. It is made clear that if there is some direct borrowing for investing in CWIP, then interest paid on such borrowing has to be disallowed. If, on the other hand, there is no specific borrowing, the financing of CWIP has to be treated as out of interest free shareholders' fund. In such a scenario, no disallowance of interest can be made as the interest free shareholders' fund would be higher than the amount of investment in CWIP. (AY. 2009-10)

DCIT v. Vodafone Essar Digilink Ltd. (2018) 170 ITD 430 / 193 TTJ 150 / 166 DTR 233 / 64 ITR 392 (Delhi)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Having its own capital at end of financial year relevant assessment year for advancing money for not charging interest, interest payment cannot be disallowed. 541

Dismissing the appeal of the revenue the Tribunal held that, when the assesee is having, Having its own capital at end of financial year relevant assessment year for advancing money for not charging interest, interest payment cannot be disallowed. (AY. 2010-11)

DCIT v. Narayani Ispat Pvt. Ltd. (2018) 61 ITR 371 (Kol.)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Investment in subsidiaries – Nexus was established – Interest was held to be allowable deduction. 542

Tribunal held that, interest paid on borrowed money was held to be allowable as deduction as nexus was established. (AY. 2009-10)

ACIT v. Chambal Fertilisers And Chemicals Limited (2018) 61 ITR 33 (Jaipur)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Interest free fund was used for purchase of land and construction of godown hence interest paid on borrowed capital was held to be allowable. 543

Tribunal held that; interest free fund was used for purchase of land and construction of godown hence interest paid on borrowed capital was held to be allowable. (AY. 2013-14)

DCIT v. Incite Homecare Products (P.) Ltd. (2018) 61 ITR 94 (Chd.)(Trib.)

S. 36(1)(iv) : Contribution to recognized provident fund – Amalgamated company – Matter remanded. [S. 37(1)] 544

The assessee made payment on account of contribution to a superannuation fund relating to the erstwhile amalgamated company. Since that company was amalgamated with effect from the AY 2003-04, the AO held that the assessee was not eligible for deduction u/s. 36(1)(iv) because this particular fund was not recognised as per rule 2, Part B of Schedule 6 to the Act. Tribunal remanded the matter for verification. (AY. 2005-06)

ACIT v. Ballarpur Industries Ltd. (2018) 64 ITR 21 (SN) / 168 DTR 225 / 193 TTJ 521 (Nag.)(Trib.)

S. 36(1)(iv) : Contribution to recognized provident fund – Contribution to provident fund which is constituted under Gujarat Co-Operative Societies Act, 1961 is eligible deduction. [S. 2(38) 40A(9), Gujarat Co-operative Societies Act, 1961, S. 71, 72] 545

Contribution to a provident fund which has been constituted under section 72 of Gujarat Co-operative Societies Act, 1961 and administered under section 71 of said Act would be treated as a fund contemplated in definition of section 2(38) and provisions of sections 36(1)(iv) and 40A(9) would apply to such a fund. Contribution is eligible for deduction. (AY. 2010-11)

Shree Kadodara Vibhag Nagrik Bachat Ane Dhiran Karnari Sahkari Mandli Ltd. v. ITO (2018) 171 ITD 431 (Ahd.)(Trib.)

546 **S. 36(1)(v) : Contribution approved gratuity fund – Contributions paid to LIC as premium for policy obtained for indemnification of gratuity liability towards employees, even for prior years, when employees were in employment of company taken over by assessee would be eligible for deduction. [S. 37(1)]**
Allowing the appeal of the assessee the Court held that; contributions paid by the assessee to the LIC as premium for the policy obtained for indemnification of the gratuity liability towards the employees even for the prior years, when the employees were in the employment of the Company taken over would be eligible for deduction.
Nortrans Marine Services (P.) Ltd. v. ACIT (2018) 258 Taxman 115 / 305 CTR 321 / 170 DTR 108 (Ker.)(HC)

547 **S. 36(1)(v) : Contribution approved gratuity fund – Payment to a gratuity fund on a date prior to date of approval of a gratuity fund – Deduction cannot be denied.**
Tribunal held that, payment to a gratuity fund on a date prior to date of approval of a gratuity fund. Deduction cannot be denied. Followed, *CIT v. Jaipur Thar Grameen Bank (2016) 388 ITR 228 (Raj) (HC)*. Tribunal observed that, notwithstanding the effective date of approval set out by the Commissioner in his approval order, the approval granted to the employees' gratuity trust must be treated as effective from date of set-up of trust and, on that basis, the contribution made by the assessee to the said trust was held to be admissible as deduction under S. 36(1)(v) of the Act.
Prakash Software Solution (P) Ltd. v. ITO (2018) 161 DTR 9 / 191 TTJ 64 (Ahd.)(Trib.)

548 **S. 36(1)(va) : Any sum received from employees – Employer's contribution is allowable as deduction if the payment is made before due date of filing of return u/s 139(1) – Deduction in respect of employees' contribution to ESI and EPF is available only if same is paid within due date as specified under relevant statutes. [S. 2(24)(x), 43B, 139(1)]**
Court held that payments of employer's contribution to provident fund and ESI made on or before due date for filing return of income under S. 139(1), has to be allowed as deduction under S. 43B of the Act. As regards employee's contribution is concerned, assessee is entitled to get deduction of amount as provided under S. 36(1)(va) only if amounts so received from employee is credited in specified account within due date as provided under relevant statutes. (AY. 2008-09)
Popular Vehicles & Services (P.) Ltd. CIT (2018) 406 ITR 150 / 257 Taxman 120 / 304 CTR 407 / 169 DTR 303 (Ker.)(HC)

549 **S. 36(1)(va) : Any sum received from employees – EPF-ESI – Contribution from employees has to be paid with in due date as per particular enactment – Disallowance is held to be justified. [S. (2924)(x), 43B]**
Dismissing the appeal of the assessee the Court held that, the belated payment made by the assessee in this case was not the "employer's contribution "but on the other hand, it was the "employees' contribution ", which it had received already. Therefore, the Assessing Officer was justified in disallowing the payment on the ground that the payment was made beyond the due date. (AY.2015-16)
Unifac Management Services (India) Pvt. Ltd. v. DCIT (2018) 409 ITR 225 / (2019) 260 Taxman 60 / 175 DTR 5 / 307 CTR 168 (Mad.)(HC)

S. 36(1)(va) : Any sum received from employees – Provident fund and employees State Insurance – Allowable as deduction though the amount was deposited after the due date but before the due date of filing of return. [S. 43B, 139(1)] 550
Provident fund and employees State Insurance,amount deposited after due date but before the due date of filing of return allowable as deduction. (AY. 2011-12)
DCIT v. Godawari Power & Ispat Ltd. (2018) 68 ITR 19 (SN)(Raipur)(Trib.)

S. 36(1)(va) : Any sum received from employees – Employees' contribution to PF and ESIC – Amounts not deposited in relevant fund before due date as prescribed in Explanation to section 36(1)(va) – No deduction is allowable even though same was deposited before due date as stipulated under section 43B of the Act. [S. 43B, 139(1)] 551
Tribunal held that ; the amounts not deposited in relevant fund before due date as prescribed in Explanation to section 36(1)(va) of the Act. Accordingly no deduction is allowable even though same was deposited before due date as stipulated under section 43B of the Act. (AY. 2013-14)
Ocean Agro (India) Ltd. v. DCIT (2018) 172 ITD 157 (Ahd.)(Trib.)

S. 36(1)(va) : Any sum received from employees – Employees contribution to PF and ESI was allowable deduction to the assessee if deposited before due date of filing of return u/s 139(1) of the Act. [S. 139(1)] 552
Tribunal held that the employees contribution to PF and ESI was allowable deduction to the assessee if deposited before due date of filing of return u/s 139(1) of the Act.
Powerware India P. Ltd. v. ITO (2018) 61 ITR 746 (Cuttack)(Trib.)

S. 36(1)(vii) : Bad debt – Mere write off is sufficient and it is not necessary to establish that debt had become irrecoverable. 553
Dismissing the appeal of the revenue the Court held that ; Mere write off is sufficient and it is not necessary to establish that debt had become irrecoverable. (AY. 2007-08)
CIT v. Vishal Transformers And Switchgears Pvt. Ltd. (2018) 405 ITR 266 (All.)(HC)

S. 36(1)(vii) : Bad debt – Sums written off in books of assessee is sufficient to claim the bad debt and assessee is not required to prove the recoverability of debt. 554
Dismissing the appeal of the revenue the Court held that, Sums written off in books of assessee ia sufficient to claim the bad debt and assessee is not required to prove the recoverability of debt. Circular No. 551, dt. 23-01-1990 (1990) 183 ITR 7 (St) (AY. 2005-06)
CIT v. Eco Auto Components Pvt. Ltd. (2018) 409 ITR 202 (P&H)(HC)

S. 36(1)(vii) : Bad debt – Failure of subscribers of chit fund to make payment of their instalments is allowable as bad debt. 555
Dismissing the appeal of the revenue the Court held that ; in view of decision in case of *Sriram Chits & Investments (P.) Ltd. v. UOI AIR 1993 SC 2063*/(1994) 79 Comp Cas 298 (SC) where prize chit winner defaulted in his payments of installments, same was to be allowed as bad debt. (AY. 1997-98)
CIT v. Shriram Chits & Investments (P.) Ltd. (2018) 257 Taxman 395 / (2019) 410 ITR 10 (Mad.)(HC)

556 **S. 36(1)(vii) : Bad debt – Business loss – Finance company – Advances in form of equity participation to derive income- Investment written off is allowable as bad debt. [S. 28(i)]**

Dismissing the appeal of the revenue the Court held that, where monies were advanced through the mechanism of equity participation, the intention of the assessee was to derive income rather than to increase its investment on the capital side. If it were profits with the assessee from the investment it would have been on the revenue side of income and since it was the converse, the losses were properly and rightly claimed as bad debts by the assessee. *Referred Badridas Daga v. CIT (1958) 34 ITR 10 (SC)* and *Associated Banking Corporation of India Ltd v. CIT (1956) 56 ITR 1 (SC)*

CIT v. Industrial Finance Corporation Of India Ltd. (2018) 404 ITR 629 (Delhi)(HC)

Editorial : SLP of revenue is dismissed, CIT v. Industrial Finance Corporation of India Ltd. (2018) 401 ITR 171 (St.)(SC)

557 **S. 36(1)(vii) : Bad debt – Unrealizable subscription dues from the cable operators written off by the assessee in the books of accounts is allowable as bad debt.**

Unrealizable subscription dues from the cable operators written off by the Assessee in the books of accounts is allowable as bad debts. Followed, *TRF Ltd v. CIT (2010) 323 ITR 397 (SC)* (AY. 2008-09)

Sun TV Network Ltd v. ACIT (2018) 196 TTJ 944 / 172 DTR 345 (Chennai)(Trib.)

558 **S. 36(1)(vii) : Bad Debt – Write-off in books of account sufficient compliance, no further requirement to prove debt has become bad.**

In respect to trade debtors, write-off of bad debts in the books of account was sufficient for claiming deduction under the amended provisions of S.36(1)(vii) and the assessee was not further required to prove that the debt had become bad. (AY. 2005-06)

ACIT v. Ballarpur Industries Ltd. (2018) 64 ITR 21 (SN) / 168 DTR 225 / 193 TTJ 521 (Nag.)(Trib.)

559 **S. 36(1)(vii) : Bad debts – Provision for bad and doubtful debts which was not written off cannot be allowable as deduction.**

Tribunal held that provision for bad and doubtful debts which was not written off cannot be allowable as deduction.(AY. 2007-08, 2009-10)

Shalom Charitable Ministries of India v. ACIT (2018) 171 ITD 338 / 195 TTJ 340 (Cochin) (Trib.)

560 **S. 36(1)(vii) : Bad debt – Amount written in books of account although the entry was back dated was held to be allowable as deduction.**

Dismissing the appeal of the revenue the Tribunal held that; Amount written in books of account although the entry was back dated was held to be allowable as deduction. (AY. 2011-12)

DCIT v. Associated Pigments Ltd. (2018) 61 ITR 553 (Kol.)(Trib.)

S. 36(1)(vii) : Bad debt – Amounts written off was held to be allowable as deduction. 561
Tribunal held that the amount written off was held to be allowable as deduction. (AY. 2009-10, 2010-11)
ACIT v. Claridges Hotels Pvt. Ltd. (2018) 61 ITR 135 (Delhi)(Trib.)

S. 36(1)(viia) : Bad debt – Provision for bad and doubtful debts – Schedule bank – Aggregate average advance made by rural branches of scheduled bank would be computed by taking amount of advances made by each rural branch as outstanding at end of last day of each month comprised in previous year which had to be aggregated separately. [R. 6ABA] 562
Dismissing the appeal of the revenue the Court held that; for purpose of S. 36(1)(viia), aggregate average advance made by the rural branches of scheduled bank would be computed by taking amount of advances made by each rural branch as outstanding at the end of the last day of each month comprised in the previous year which had to be aggregated separately. (AY. 2008-09, 2009-10)
PCIT v. UttarBanga Kshetriya Gramin Bank (2018) 408 ITR 393 / 256 Taxman 72 (Cal.) (HC)

S. 36(1)(viia) : Bad debt – Provision for bad and doubtful debts – Schedule bank – Claim which is disallowed as bad debt can not be allowed in the absence of provision made for the same in profit and loss account under bad debt. [S. 36(1)(viii)] 563
Tribunal held that, claim which is disallowed as bad debt can not be allowed in the absence of provision made for the same in profit and loss account under bad debt. (AY. 2012-13)
Jila Sahakari Kendriya Bank Maryadit v. DCIT (2018) 173 ITD 211 / 66 ITR 73 (SN)(2019) 197 TTJ 851 (Indore)(Trib.)

S. 36(1)(viia) : Bad debt – Provision for bad and doubtful debts – Schedule bank – Provision for standard assets is purely contingent hence cannot be allowed as deduction. 564
Allowing the appeal of the revenue, the Tribunal held that, provision for standard asset is purely contingent and cannot be allowed as deduction. (AY. 2010-11, 2011, 12]
ACIT v. Chaitanya Godavari Grameena Bank (2018) 170 ITD 668 / 66 ITR 31 (SN) (Vishakha)(Trib.)

S. 36(1)(viia) : Bad debt – Provision for bad and doubtful debts – Schedule bank – Rural or Non Rural advances – Entitled for deduction subject to upper limit of deduction laid down in said section – Matter remanded. 565
Tribunal held that provision for bad and doubtful debts is created, in respect of rural or non-rural advances by debiting profit and loss account is entitled for deduction subject to upper limit of deduction laid down in said section. Matter remanded for verification. (AY. 2010-11, 2011-12)
ACIT v. Chaitanya Godavari Grameena Bank (2018) 170 ITD 668 / 66 ITR 31 (SN) (Vishakha)(Trib.)

566 **S. 36(1)(viii) : Eligible business – Special reserve – Artificial increase of profit by assessee by adding back amortization and depreciation in SLR investment so as to arrive higher amount of profit for claiming deduction under section 36(1)(viii) was unjustified.**

Dismissing the appeal of the assessee the Court held that ; Artificial increase of profit by assessee by adding back amortization and depreciation in SLR investment so as to arrive higher amount of profit for claiming deduction under section 36(1)(viii) was unjustified. (AY. 2012-13)

Pragathi Krishna Gramin Bank v. JCIT (2018) 256 Taxman 349 (Karn.)(HC)

567 **S. 37(1) : Business expenditure – Pendency of constitutional validity of proviso to Rule 9A – Matter remanded to CIT(A) to decide on merits. [R. 9A]**

During pendency of appeal against assessment order passed under section 143(3), assessee filed a petition challenging constitutional validity of proviso to rule 9A, since assessee's appeal was pending before Commissioner (Appeals) on merits, interest of justice would be served by not examining presently issue of constitutional validity and legality of proviso to rule 9A. Matter remanded.

Satish Yashwant Kulkarni v. UOI (2018) 259 Taxman 489 (Bom.)(HC)

568 **S. 37 (1) : Business expenditure – Travelling expenditure of wife of Company's senior executive accompanying him abroad for his medical treatment – Expenditure is held to be not allowable. [S. 264]**

Court held that, travelling expenditure of wife of Company's Senior Executive accompanying him abroad for his medical treatment is not allowable as business expenditure. Accordingly dismissal of revision application is valid.

Harrisons Malayalam Ltd. v. CIT (2018) 409 ITR 621 (Ker.)(HC)

569 **S. 37(1) : Business expenditure – Granting monetary benefit to legal heir of a former employee on the basis of resolution passed by the company is allowable as business expenditure.**

Dismissing the appeal of the revenue the Court held that, granting monetary benefit to legal heir of a former employee on the basis of resolution passed by the company is allowable as business expenditure,though the company did not have any pension scheme. (AY. 2003-04)

CIT v. India Motor Parts & Accessories Ltd. (2018) 255 Taxman 132 (Mad.)(HC)

570 **S. 37(1) : Business expenditure – Capital or revenue – Product development expenses – Expenditure incurred improving quality of existing products – Held to be allowable as revenue expenditure.**

Dismissing the appeal of the revenue the Court held that, product development expenses which is incurred improving quality of existing products and not involve development of new product is held a to be allowable as revenue expenditure. (AY. 2001-02)

CIT v. Arvind Products Ltd. (2018) 255 Taxman 472 (Guj.)(HC)

S. 37(1) : Business expenditure – Ad hoc disallowance of 10% claim – Bricks, machinery repairs, cartage, labour expenses – No *ad hoc* disallowances can be made without rejecting the books of account and also allowed in the past consistently such expenses in scrutiny assessments. [S. 143(3), 144] 571

Dismissing the appeal of the revenue the Court held that the Tribunal was justified in holding that no *ad hoc* disallowances of 10% of claim in respect of bricks, machinery repairs, cartage, labour expenses etc can be made without rejecting the books of account and also in the past, consistently such expenses were allowed in scrutiny assessments. (AY. 2010-11)

PCIT v. R. G. Buildwell Engineers Ltd. (2018) 99 taxmann.com 283 / 259 Taxman 371 (Delhi) (HC)

Editorial : SLP of revenue is dismissed, PCIT v. R. G. Buildwell Engineers Ltd. (2018) 259 Taxman 370 (SC)

S. 37(1) : Business expenditure – *Ad hoc* disallowance of 5% – Tribunal is justified in holding that where the assessee had furnished names and PAN numbers of all vendors to whom it had paid repair and maintenance charges for their services disallowance of ad-hoc disallowance of 5% of expenses is held to be not justified. 572

Dismissing the appeal of the revenue the Court held that, Tribunal is justified in holding that where the assessee had furnished names and PAN numbers of all vendors to whom it had paid repair and maintenance charges for their services disallowance of *ad hoc* disallowance of 5% of expenses is held to be not justified. (AY. 2005-06)

PCIT v. Rambagh Palace Hotels (P.) Ltd. (2018) 259 Taxman 31 (Delhi)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Encashment of bank guarantee – Failure to perform its part of concessionaire agreement, DTC encashed bank guarantee – Allowable as revenue expenditure. 573

Dismissing the appeal of the revenue the Court held that ; since property constructed was not owned by assessee but by third party i.e. DTC, expenditure incurred in question by assessee was not capital expenditure but revenue expenditure. Even otherwise, since payment made by assessee was on account of failure to perform its part of agreement including operation and maintenance of bus shelters, same was necessarily revenue in character. (AY. 2009-10)

PCIT v. Green Delhi BQS Ltd. (2018) 259 Taxman 153 / (2019) 175 DTR 131 / 307 CTR 809 (Delhi)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Assessee did not purchase and acquire title in the trademark or retain any rights in the mark – Lump-sum payment was for obtaining an advantage in carrying on its business as it merely facilitated the assessee's business in India and hence of revenue nature. 574

Held by the High Court, that assessee was not the owner of the trademark and it only had permission / approval to use such trademark and any benefit of the use of the trade mark during the period when it stood licensed to the assessee inures to the owner of

trademark. The use of trademark thus merely facilitated the assessee's business and the lump-sum payment was for the purpose of obtaining an advantage in carrying on its business hence of revenue nature. (AY. 1996-1997)
Hilton Roulunds Ltd. v. CIT (2018) 304 CTR 721 / 167 DTR 131 / 255 Taxman 209 / (2019) 412 ITR 436 (Delhi)(HC)

575 **S. 37(1) : Business expenditure – Publicity expenses – Donations to support educational and social activities is held to be allowable as business expenditure.**
Dismissing the appeal of the revenue the Court held that ; donations to support educational and social activities is held to be allowable as business expenditure.
PCIT v. Lord Chloro Alkali Ltd. (2018) 97 taxmann.com 513 / 258 Taxman 131 (Raj.)(HC)
Editorial : SLP of revenue is dismissed. PCIT v. Lord Chloro Alkali Ltd. (2018) 258 Taxman 130 (SC)

576 **S. 37(1) : Business expenditure – Salary paid to a sweeper for cleaning premises and hall which is in the name of founder of the company is held to be not allowable as deduction.**
Allowing the appeal of the revenue the Court held that; salary paid to a sweeper for cleaning premises and hall which is in the name of founder of the company is held to be not allowable as deduction. (AY. 1999-2000)
CIT v. Malayala Manorama Co. Ltd. (2018) 258 Taxman 238 / (2019) 410 ITR 423 (Ker.)(HC)

577 **S. 37(1) : Business expenditure – Software development – Provision towards liability for warranty for goods supplied was not crystalised during relevant year and it was merely provisional in nature – Not allowable as deduction. [S. 145]**
Dismissing the appeal of the assessee the Court held that ;on a perusal of working submitted by assessee, it is found that there is absolutely no historical trend based on which, the assessee has made such a deduction. In fact, everything appears only to be a provision and nothing has been substantiated and as rightly pointed out by the Assessing Officer, the assessee has failed to crystalise the said provision at the end of the previous year. (AY. 2001-02)
Laser Soft Infosystems Ltd. v. ITO (2018) 258 Taxman 308 (Mad.)(HC)

578 **S. 37(1) : Business expenditure – Commission payments made to agents who procured orders and themselves were made liable to recover price of goods sold by them – Held to be allowable as deduction.**
Allowing the appeal of the assessee the Court held that ; since agents of assessee made themselves liable to recover price of goods sold by them, they were del cedere agents, therefore, commission payment made to these two agents would be allowed as business expenditure. (AY. 2003-04)
Landis + GYR Ltd. v. CIT (2017) 77 taxmann.com 253 (Cal.)(HC)
Editorial : SLP of revenue is accepted ; CIT v. Landis + GYR Ltd. (2018) 258 Taxman 60 (SC)

S. 37(1) : Business expenditure – Capital or revenue – In view of fact that advanced technology software become obsolete within short intervals – Expenditure incurred on software expenses is held to be revenue expenditure. 579

Dismissing the appeal of the revenue the Court held that, in view of fact that advanced technology software become obsolete within short intervals. Expenditure incurred on software expenses is held to be revenue expenditure. (AY. 2000-01, 2001-02)

CIT v. Lakshmi Vilas Bank Ltd. (2018) 258 Taxman 193 / 304 CTR 798 / 170 DTR 270 (Mad.)(HC)

S. 37(1) : Business expenditure – Security charges – merely for non filing of confirmation disallowances cannot be made – Order of Tribunal is affirmed. 580

Dismissing the appeal of the revenue the Court held that, security charges paid cannot be disallowed merely because for non filing of confirmation only when small portion was allowed by the Tribunal.

CIT v. Eveready Industries (India) Ltd. (2018) 258 Taxman 313 (Cal.)(HC)

S. 37(1) : Business expenditure – Provision for medical benefit of its employees post retirement – Held to be allowable. 581

Dismissing the appeal of the revenue the Court held that, provision for medical benefit of its employees post retirement is held to be allowable, it is not contingent liability.

CIT v. Eveready Industries (India) Ltd. (2018) 258 Taxman 313 (Cal.)(HC)

S. 37(1) : Business expenditure – Sales incentive was payable only after and when dealers had met sales figures from 1-4-2003 to 30-6-2004 in this period – Expenditure cannot be disallowed on the ground that it pertaining to earlier year. [S. 145] 582

Dismissing the appeal of the revenue the Court held that Sales incentive was payable only after and when dealers had met sales figures from 1-4-2003 to 30-6-2004 in this period. Accordingly the expenditure cannot be disallowed on the ground that it pertaining to earlier year when complete details on account of incentive etc. were furnished. (AY. 2005-06)

PCIT v. Escorts Ltd. (2018) 258 Taxman 402 (Delhi)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Manufacture of PVC and caustic soda and business of shipping, starting textile business – Abandoned project – Manufacture of New venture was managed from common funds, control over all business units and there was unity of control, it could not be said that pre-operative expenditure was incurred on a new line of business – Held to be allowable as revenue expenditure. 583

Allowing the appeal of the assessee the Court held that ; assessee which is engaged in business of manufacture of PVC, caustic soda and business of shipping, started a textile business. As the project did not materialize abandoned the project and expenditure incurred on abandoned project is held to be as revenue expenditure,since new venture was managed from common funds, control over all business units was in hands of assessee and there was unity of control, it could not be said that pre-operative expenditure was incurred by assessee on a new line of business. (AY. 2000-01)

Chemplast Sanmar Ltd. v. ACIT (2018) 258 Taxman 297 / (2019) 412 ITR 323 (Mad.)(HC)

584 **S. 37(1) : Business expenditure – Foreign education and training expenses of a partner – Held to be allowable as business expenditure as the post graduate course underwent was directly related to profession carried on by firm – Professional fee received by firm had substantially increased after completion of post graduate degree by said partner, several important contracts were secured by firm, which firm attributed to educational qualification and expertise acquired by said partner abroad.**

Allowing the appeal of the assessee the Court held that; the expenditure incurred on foreign education and training expenses of a partner is held to be allowable as business expenditure as the post graduate course underwent was directly related to profession carried on by firm and professional fee received by firm had substantially increased after completion of post graduate degree by said partner, several important contracts were secured by firm, which firm attributed to educational qualification and expertise acquired by said partner abroad. (AY. 2001-02)

Aswathanarayana & Eswara v. Dy. CIT (2018) 258 Taxman 210 (Mad.)(HC)

585 **S. 37(1) : Business expenditure – Marketing expenses – Multi-Speciality Hospital – Gifts to doctors – Matter Remitted To Assessing Officer for verification to find out whether for canvasing for patients.**

Allowing the appeal of the revenue the Court held that ; whether gifts to doctors for canvasing for patients or the gifts were given to the doctors who were employed by it. Accordingly the matter was remitted to the AO for verification. The AO was to redo the assessment on consideration of the materials that were to be placed by the assessee to establish its stand that the gifts were given to its doctors, that it was not a prohibited practice and that it was not for the purpose of referring or canvassing patients. (AY. 2012-13)

CIT v. Vasantha Subramanian Hospitals Pvt. Ltd. (2018) 408 ITR 176 / 258 Taxman 396/ 172 DTR 423 / (2019) 307 CTR 569 (Mad.)(HC)

586 **S. 37(1) : Business expenditure – Provision for warranty which is made on scientific basis is deductible. [S. 145]**

Dismissing the appeal of the assessee the Court held that ; the practice of making a provision for warranty claims had been found to be consistent, scientific and regular, accordingly the provision for warranty was deductible. (AY. 2009-10)

CIT v. Acer India Pvt. Ltd. (2018) 408 ITR 24 (Karn.)(HC)

587 **S. 37(1) : Business expenditure – Expenditure on acquisition of distribution rights of feature films – Film must be commercially exploited and income received and credited in books – Feature films never exhibited and no amount credited in profit and loss account – Deduction is not allowable. [R. 9B]**

Dismissing the appeal of the assessee the Court held that; there could be no deduction permissible on the cost of acquisition without generation of income credited in the books of account. The films in question were never commercially exploited and generated no income. The assessee was required to credit the amount realised by it by exhibiting the film in the profit and loss account. The feature films were never exhibited

and there was no amount credited in the profit and loss account as amount received on exhibition of films. The finding of the Appellate Tribunal is up held.
Malayala Manorama Co. Ltd. v. ACIT (2018) 408 ITR 125 (Ker.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – No distinction between feature films and TV Serials – Write off of expenditure incurred on abandoned Tele serial is held to be revenue expenditure – CBDT Circular No 16 of 2015 dt. 6-10-2015 is applied. [R.9A]. 588
Dismissing the appeal of the revenue the Court held that ; write off of expenditure incurred on abandoned Tele serial is held to be revenue expenditure. CBDT Circular No 16 of 2015 dt. 6-10-2015 is applied. Though the circular pertained to a feature film, there could not be any distinction between tele serial and feature film as the circular dealt with the aspect in respect to the cost of production of a film. (AY. 2002-03)
CIT v. Prasad Productions (2018) 407 ITR 541 (Mad.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Payment of non-Compete fees for retention of expertise – Expenditure incurred on account of non-compete fees is held to be revenue expenditure. 589
Allowing the appeal of the assessee the Court held that ; the advantage of restraining the individuals from engaging in competition was in the field of facilitating its own business and rendering it more profitable. Since there was no increase in the fixed capital, the payment did not encroach in the capital field. The payments made towards restrictive covenants ensured the continued presence and support of the individuals in its business operations. It also ensured the credibility in public perception and reassured the potential investors that the performance of the assessee would remain optimum through such continued association. The test of enduring benefit could not be applied blindly without regard to the facts and circumstances that arose in a given case. The conclusion of the Tribunal that the payment of non-compete fees had an enduring benefit and was capital in nature did not take into account the commercial benefit received by the assessee. (AY. 1996-97)
Hatsun Agro Products Ltd. v. JCIT (2018) 407 ITR 674 (Mad.)(HC)

S. 37(1) : Business expenditure – Amount spent on construction of houses for poor in Centenary Year – Expenditure not for purposes of business hence not allowable as deduction. 590
Allowing the appeal of the revenue the Court held that; it was the assessee's own initiative to provide houses for the poor, an act of charity, done in connection with its centenary celebrations. Although the assessee may have got popularity in carrying out the noble cause, with considerable expenditure, resulting in enhanced circulation, it could not be termed as an expenditure incurred wholly or exclusively for the business of the assessee under S. 37. The benefit derived by the business was only incidental and the assessee never intended it as a business promotion. The expenditure hence could not be allowed under S. 37, being not one "wholly or exclusively laid out or expended for the business" of the assessee. (AY.1992-93)
CIT v. Malayala Manorama Co. Ltd. (2018) 405 ITR 249 / 171 DTR 254 (Ker.)(HC)

591 **S. 37(1) : Business expenditure – Capital or revenue – Non-compete fee for five years – Allowable as revenue expenditure.**
Allowing the appeal of the assessee the Court held that ; since payment made as non-compete fee did not entail any enduring benefits to assessee in its business, same was to be allowed as revenue expenditure. Followed, *Empire Jute Co. Ltd. v. CIT (1980) 124 ITR 1 (SC)*. (AY. 2000-01)
Asianet Communications Ltd. v. CIT (2018) 407 ITR 706 / 257 Taxman 473 / (2019) 175 DTR 202 (Mad.)(HC)

592 **S. 37(1) : Business expenditure – Capital or revenue – Amount paid to associate company, (G4S) for providing expert advisory and other security related services and knowhow *inter alia* including use of trademarks – Not allowable as business expenditure as the amount was not incurred for wholly and exclusively for business purposes,as the assessee has not led any evidence to establish the manner in which the technical know-how as acquired from G4S had been used in its business.**
Dismissing the appeal of the assessee the Court held that ; the assessee has not led any evidence to establish the manner in which the technical know-how as acquired from G4S had been used in its business. The authorities have also held that the Incident Report Format produced on account of ERP obtained from an Associate Enterprise to whom the payment was made, was in fact being carried out by the assessee even prior to entering into an agreement dated 27-12-2007 with G4S. The concurrent finding recorded is that the assessee had offered no explanation as to the manner in which the agreement had helped the assessee to carry out its business. These are findings of facts. Thus, mere entering into an agreement with it being actually put to use, cannot lead to the conclusion that the payment made under the agreement was for knowledge to be used in its business. (AY. 2008-09, 2009-10)
Monitron Security (P.) Ltd. v. CIT (2018) 257 Taxman 351 (Bom.)(HC)

593 **S. 37(1) : Business expenditure – Real income theory – application of income – diversion of income by overriding title – Distributable Surplus paid is application of income and not allowable as business expenditure. [S. 4, 28(i), 29, 145]**
Allowing the appeal of the revenue, the Court held that ; Distributable surplus paid is application of income and not allowable as business expenditure. Payment made did not amount to "diversion of income at source by overriding title". Income from business of manufacture and sale of Liquor will be taxable in the hands of the Assessee by applying the principle of real income theory. (AY. 2008-09 to 2012-13)
PCIT v. Chamundi Winery and Distillery (2018) 408 ITR 402 / 171 DTR 1 / 305 CTR 337 (Karn.)(HC), www.itatonline.org

594 **S. 37(1) : Business expenditure – Capital or revenue – Business carried on leased premises – Expenditure on repairs and refurbishing is revenue expenditure – Expenditure on erecting structures – Matter remanded – The court also directed that since the lease deeds produced before the court were not registered the Deputy**

Commissioner was to impound the documents and refer them to the District Registrar for proper stamping and the assessee would also be obliged to register the deeds. [S. 32(1)]

Court held that the expenses incurred for repairs, refurbishing and making improvements to the buildings taken on lease were deductible. If it were found that the investments made in the property spread over the period of lease, together with the lease rent payable as per the agreement, would constitute the ostensible lease rent for the building, the investment made for constructing superstructures, has to be deemed to be revenue expenditure, otherwise it should be treated as capital expenditure and in the latter event allowable as depreciation. Matter remanded. The court directed that since the lease deeds produced before the court were not registered the Deputy Commissioner was to impound the documents and refer them to the District Registrar for proper stamping and the assessee would also be obliged to register the deeds. (AY. 2007-08 to 2010-11)

Indus Motor Company Pvt. Ltd. v. DCIT (2018) 407 ITR 112 / 253 Taxman 97 / 161 DTR 377 / 301 CTR 715 (Ker.)(HC)

Editorial : SLP is granted to revenue, Dy. CIT v. Indus Motor Co. (P) Ltd (2018) 257 ITR 259/ 406 ITR 19 (St.) / 257 Taxman 559 (SC)

S. 37(1) : Business expenditure – Capital or revenue – Payment of a one-time fee to continue the business of mining constitutes revenue expenditure. 595

Dismissing the appeal of the revenue the Court held payment of a one-time fee to continue the business of mining constitutes revenue expenditure explained with reference to *R. B. Seth Moolchand Sugachand v. CIT (1972) 86 ITR 647 (SC)* and *Bikaner Gypsums Ltd v. CIT (1991) 187 ITR 39 (SC)*(GA 2977 of 2015 in ITAT 133 of 2015, dt. 21.06.2018)

PCIT v. Rungta Mines Ltd (2018) 96 taxmann.com 166 (Cal.)(HC), www.itatonlin.org

S. 37(1) : Business expenditure – Education expenses of director's son – No direct nexus with the business of the company – Not allowable as deduction. 596

Dismissing the appeal of the assessee the Court held that the, expenditure incurred on the education expenses of director's son is allowable expenditure as the expenses has no direct nexus with the business of the company. Appellants did not place better particulars on record like, basic qualification of Harsh Kumar; subjects in which he did his administration course; how such subjects has-had nexus to business activities of appellant and so on. Though a contract was placed on record whereby Harsh Kumar had agreed to render his services after completing his education and training, but that itself was not sufficient to hold that the appellants-assessee has proved nexus between the expenditure and its business activities. (AY.1997-98)

Indian Galvanics Cyrium Foils Ltd. v. DCIT (2018) 257 Taxman 32 / 303 CTR 800 / 168 DTR 241 (Bom.)(HC)

597 **S. 37(1) : Business expenditure – Capital or revenue – Abandoned projects – State Government ordered closure of implementation of said project – Same line of existing business – Allowable as business expenditure.**

Allowing the appeal of the assessee the Court held that ;expenditure incurred for implementation of new project in same line of business which was abandoned as per the order of State Govt., since said project was in same line of existing business of assessee and there was no creation of any new asset of enduring nature, entire exp. incurred on said project was to be allowed as revenue expenditure.(AY. 1998-99, 1999-2000)

Tamilnadu Magnesite Ltd. v. ACIT (2018) 407 ITR 543 / 257 Taxman 79 / 171 DTR 151 / 305 CTR 269 (Mad.)(HC)

598 **S. 37(1) : Business expenditure – Capital or revenue – Purchase of computer software for up-gradation of existing computer software – Revenue expenditure even though it provides enduring benefit – Expenses for employees welfare – foster safe working environment is revenue expenditure – The test of one-time payment or not is not the sole test to determine nature of expenditure.**

Court held that (i) he expenses incurred on purchase of computer software for upgrading existing software for solving specific problems of users was to bring greater efficiency in the functioning of assessee's business and hence was of revenue nature. Following Supreme Court decision in case of *Empire Jute Co. Ltd. v. CIT (1980) 124 ITR 1 (SC)* the High Court further held that the test of enduring benefit is not conclusive test and cannot be applied blindly and mechanically without regards to particular facts of a given case. (ii) : The expenses incurred to ensure good health and safety of its employees and to provide accident free environment are of revenue nature and the test of one-time payment or not is not the sole test to determine nature of expenditure. (AY. 2008-2009)

PCIT v. Holcim Services (South Asia) Ltd. (2018) 255 Taxman 392 (Bom.)(HC)

599 **S. 37(1) : Business expenditure – Sales commission paid to agent in Iraq in relation to sale of trucks and particular person to be treated as allowable business expenditure – Capital or revenue – Drawings and designing charges related to computer software – Cannot be treated as capital asset.**

Court held that,(i)he allowability of commission paid to Mr 'M', an Iraqi agent, on sale of fork lift trucks and spares and whether such person is an agent or not is a pure question of fact and the Tribunal's finding of fact on this cannot be interfered (ii) Computer software is a capital asset and eligible for depreciation, however, any payment made for drawings and designs in relation to such computer software cannot be considered as capital asset.

PCIT v. TIL Ltd (2018) 255 Taxman 373 (Cal.)(HC)

600 **S. 37(1) : Business expenditure – Expenditure incurred on Freebies provided to medical consultants, consultancy or honorarium fee, registration, sponsorship and training – Matter remanded to Tribunal to reconsider the issue. [S. 254(1)**

Allowing the appeal of the assessee the Court held that as regards expenditure incurred on Freebies provided to medical consultants, consultancy or honorarium fee, registration,

sponsorship and training the assessee discharged the burden by placing all relevant details thereby discharging initial onus. Burden is on department to prove contrary. Tribunal has dealt with only one issue. Matter remanded to Tribunal to consider the applicability of Circular No 5 of 2012 dt 1-08-2012 (2012) 346 ITR 95 (St), and decide according to law. (AY.2011-12)
Boston Scientific India P. Ltd. v. ACIT (2018) 405 ITR 412 (Delhi)(HC)

S. 37(1) : Business expenditure – Amount paid to cane growers in excess of price determined in Sugarcane Control order, to be allowed as deduction. 601
Dismissing the appeal of the revenue the Court held that, amount paid to cane growers in excess of price determined in Sugarcane Control order, to be allowed as deduction in view of business expediency, as entire business of assessee was dependent upon supplies of sugarcane. (AY. 1990-91)
CIT v. Aruna Sunrise Hotels Ltd. (2018) 256 Taxman 43 (Mad.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Software – Expenditure incurred on acquiring licences to use software which did not confer any enduring benefit hence allowable as revenue expenditure. 602
Allowing the appeal of the assessee the Court held that,nature of articles acquired were licences to use software which did not confer any enduring right on assessee. Moreover, assessee's objective was not to carry on software business, rather it used computer software as a tool to maximize its performance and streamline its efficiency. Accordingly expenditure incurred by assessee on acquiring licences to use software which did not confer any enduring benefit on assessee, hence allowable as revenue expenditure.
Oriental Bank of Commerce v. ACIT (2018) 256 Taxman 24 / 168 DTR 345 / 304 CTR 981 (Delhi)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Expenses on restructuring of business is held to be allowable as revenue expenditure – Sale of one of unit – Expenditure is allowable 603
Dismissing the appeal of the revenue the Court held that, Expenses on restructuring of business is held to be allowable as revenue expenditure. Expenses of sale of one unit is held to be allowable business expenditure.
PCIT v. Akzo Noble India Ltd. (2018) 256 Taxman 1 / (2019) 413 ITR 79 (Cal.)(HC)

S. 37(1) : Business expenditure – Accrued or contingent Liability – Enhanced Licence fee payable to Railways is held to be allowable as deduction. [S. 36, 145] 604
Dismissing the appeals of the revenue the Court held that, the assessee's liability to pay the enhanced licence fee to the Railways for the assessment year in question was an accrued liability that arose in the year in which the payment was made.
CIT v. Jagdish Prasad Gupta (2018) 405 ITR 29 (Delhi)(HC)

605 **S. 37(1) : Business expenditure – Allocation of expenses – Difference between "Res Judicata" and "Consistency Principle" – If the Revenue has accepted a practice and consistently applied and followed it, the Revenue is bound by it. The Revenue can change the practice only if there is a change in law or change in facts and not otherwise. [S. 143(3)]**

Allocation of expenses Difference between "Res Judicata" and "Consistency Principle" "res judicate" does not apply to income-tax matters, the principles of consistency does. If the Revenue has accepted a practice and consistently applied and followed it, the Revenue is bound by it. The Revenue can change the practice only if there is a change in law or change in facts and not otherwise. (AY. 2008-09)

PCIT v. Quest investment Advisors Pvt. Ltd. (2018) 409 ITR 545 / 257 Taxman 211 / 169 DTR 216 / 304 CTR 637 (Bom.)(HC), www.itatonlineorg

606 **S. 37(1) : Business expenditure – Club expenses – Payment made for acquiring membership in a social club is not allowable as business expenditure, in the absence of any evidence to effect that membership was acquired for entertaining customer.**

Dismissing the appeal of the assessee the Court held that, Payment made for acquiring membership in a social club is not allowable as business expenditure, in the absence of any evidence to effect that membership was acquired for entertaining customer.

L. Jairam Parwani v. Dy. CIT (2018) 225 Taxman 362 (Mad.)(HC)

607 **S. 37(1) : Business expenditure – Acceptance of deposits prohibited by law – Interest paid on deposits is held to be not allowable as deduction in view of Explanation to S. 37(1) of the Act. [Kerala Money Lenders Act, 1958,S. 4, 17, RBI Act, 1934 S. 45S]**

Allowing the appeal of the revenue the Court held that, interest paid on deposits in violation of S. 4 of the Kerala Money Lenders Act and S. 45S of the RBI Act, is held to be not allowable as deduction, since the acceptance of deposits being prohibited by law, Explanation to S. 37(1) of the Act is applicable. (AY. 2007-08 to 2012-13)

CIT v. Arun Thomas (2018) 161 DTR 161 / 300 CTR 276 (Ker.)(HC)

608 **S. 37(1) : Business expenditure – Expenses incurred prior to setting up of business is held to be not allowable as business loss. [S. 28(i)]**

Dismissing the appeal of the assessee the Court held that; since assessee failed to produce necessary evidence in support of its claim that business was set up and it was ready to commence, expenditure incurred by assessee prior to setting up of business could not be allowed. (AY. 2005-06)

ALD Automotive (P.) Ltd. v. Dy. CIT (2018) 254 Taxman 233 (Bom.)(HC)

609 **S. 37(1) : Business expenditure – Capital or revenue – Fees paid for Licence to use copy right was held to be allowable as revenue expenditure.**

Dismissing the appeal of the revenue the Court held that the assessee was granted only licence to use copy right therefore the fees paid was allowable as revenue expenditure. (AY. 2009-10)

PCIT v. Mobisoft Tele Solutions (P) Ltd. (2018) 404 ITR 203 / 163 DTR 289 / 301 CTR 582 / 90 taxmann. com 383 (P&H)(HC)

S. 37(1) : Business expenditure – Commission paid to related directors of the assessee company is held to be allowable as business expenditure. 610

Dismissing the appeal of the revenue the Court held that; Commission paid to related directors of the assessee company is held to be allowable as business expenditure as the assessee had been paying commission to Agents regularly year after year; that it was not doubted by revenue and same was accepted; further, that receipts of same were duly shown by commission agents in their balance sheet and profit and loss accounts and that they had paid tax thereon, which was also accepted by revenue. (AY. 1994 – 95, 1996-97, 1997-98)

CIT v. Hind Nihon Proteins (P.) Ltd. (2018) 404 ITR 193 / 254 Taxman 210 (Delhi)(HC)

S. 37(1) : Business expenditure – Lease rent paid for shed taken on lease was held to be allowable as business expenditure considering the business expediency. 611

Dismissing the appeal of the revenue the Court held that; Lease rent paid for shed taken on lease was held to be allowable as business expenditure considering the business expediency. (AY. 2010-11)

PCIT v. SRBS Entertainment (2018) 254 Taxman 193 (P&H)(HC)

S. 37(1) : Business Expenditure – Commission – Expenditure incurred was reasonably linked with its business which was confirmed by the parties hence allowable as business expenditure. 612

Dismissing the appeal of the revenue the Court held that; Commission expenditure incurred was reasonably linked with its business which was confirmed by the parties hence allowable as business expenditure. (AY. 2006-07)

CIT v. Mohan Export India Pvt. Ltd. (2018) 403 ITR 207 / 162 DTR 247 / 253 Taxman 386 (Delhi)(HC)

S. 37(1) : Business expenditure – Provision for deficiency in service – Ascertained liability – Profits chargeable to tax – Remission or cessation – Addition cannot be made. [S. 145] 613

Dismissing the appeal of the revenue the Court held that,the Assessee has accepted and admitted their liability to pay the principal. The deduction towards provision made on account of claim by the principal contractor due to deficiency in contract cannot be disallowed where the documents filed by assessee to prove the claim remained undisputed. (AY. 1997-98)

CIT v. Narinderjit Singh (2018) 161 DTR 200 / 300 CTR 217 (Delhi)(HC)

S. 37(1) : Business expenditure – Bank – Provision for interest on over due deposits being ascertained liabilities which is crystallised during the relevant previous year is held to be allowable as deduction. [S. 145] 614

Allowing the appeal of the assessee the Tribunal held that; Provision for interest on over due deposits being ascertained liabilities which is crystallised during the relevant previous year is held to be allowable as deduction. (AY. 2009-10)

Oriental Bank of Commerce v. Addl. CIT (2018) 401 ITR 65 / 162 DTR 257 / 254 Taxman 197 / 304 CTR 363 (Delhi)(HC)

615 **S. 37(1) : Business expenditure – Expenditure on levelling of land was held to be allowable – Presumption applies only to the extent of documents seized. [S. 132(4A)]**
That the allowance of expenditure for levelling the land was to be confined to the amounts revealed from the seized documents, whether it was cash or cheque payments. Presumption applies only to the extent of documents seized (AY. 2007-08, 2008-09)
CIT v. Damac Holdings Pvt. Ltd. (2018) 401 ITR 495 / 253 Taxman 123 (Ker.)(HC)

616 **S. 37(1) : Business expenditure – Expenditure incurred for acquisition of application software which was subsequently abandoned would be allowable in year of writeoff as revenue expenditure. [S. 145]**
Allowing the appeal of the assessee the Court held that, expenditure incureed for acquisition of application software which was subsequently abandoned would be allowable in year of writeoff as revenue expenditure. (AY. 1999-00)
Maruti Udyog Ltd. v. CIT (2018) 406 ITR 562 / 253 Taxman 60 / 161 DTR 1 (Delhi)(HC)

617 **S. 37(1) : Business expenditure – Capital or revenue – Membership fee paid to National Stock Exchange for procurement of permanent right in form of licence to carry on trade was held to be capital in nature.**
Dismissing the appeal of the assessee the Court held that; the membership fee paid by the assessee represented money paid to procure a permanent right in the form of a licence to carry on trade and the expenditure incurred was not revenue but capital in nature. (AY. 1996-97)
Abhipra Capital Ltd. v. DCIT (2018) 402 ITR 1 / 254 Taxman 19 / 164 DTR 250 / 303 CTR 534 (Delhi)(HC)

618 **S. 37(1) : Business expenditure – Expenditure in excess of 6 Per cent of initial issue expenses of asset management company was held to be deductible. Expenditure relating to Information Technology Infrastructure was also held to be allowable. [Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 R. 52]**
Reading the proviso to regulation 52 of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, it is manifest that any excess over the 6 per cent initial issue expense shall be borne by the asset management company, therefore expenditure in excess of 6 Per cent of initial issue expenses of asset management company was held to be deductible. Expenditure relating to Information Technology infrastructure was held to be allowable. (AY. 2006-07)
CIT v. Ing Investment Management (India) P. Ltd. (2018) 401 ITR 405 (Bom.)(HC)

619 **S. 37(1) : Business expenditure – Capital or revenue – Non compete fee was held to be capital in nature**
Dismissing the appeal of the asessee the Court held that the payment was made by assessee to SML towards non-compete fee and for other obligation and recitals imposed upon SML, i.e., obtaining permissions from financial institutions, obtaining approvals from governmental authorities, income tax authorities, indemnity towards other losses, if any, and maintenance of confidentiality about agreement as also all intellectual property

and other data and information,hence the payment was clearly for an enduring benefit and not just towards non-compete obligation and, thus, capital in nature. (AY. 1994-95)
GKN Driveline India Ltd. v. CIT (2018) 252 Taxman 297 / 169 DTR 360 (Delhi)(HC)

S. 37(1) : Business expenditure – Accrual – Enhancement of Licence fee payable to Railways in the year in which payment was issued. 620
Dismissing the appeal of the revenue the Court held that ;the assessee's liability to pay enhanced licence fee to the Railways was an accrued liability that arose in the year in which the payment was issued.
CIT v. Jagdish Prasad Gupta (2018) 400 ITR 583 (Delhi)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Expenditure on issue of debentures was held to be allowable as revenue expenditure irrespective of nature of debenture. 621
Dismissing the appeal of the revenue the Court held that; Expenditure on issue of debentures was held to be allowable as revenue expenditure irrespective of nature of debenture.
CIT v. Modern Threads (I) Ltd. (2018) 400 ITR 381 (Raj.)(HC)
CIT v. Modern Syntex (2018) 400 ITR 381 (Raj.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Sub-lease – Payment made to vacate the premises – Through negotiation assessee acquired some kind of an enduring right of possession over occupied area of said premises surrendered to them by those occupants – It had incidents of permanence – Expenditure is capital in nature. 622
Court held that in the present case, it is just not established how the business of the assessee was perceived to grow out of the property acquired by them by negotiating the eviction of the said occupants. In fact, through the negotiation the assessee acquired some kind of an enduring right of possession over the occupied area of the said premises surrendered to them by those occupants. It had the incidents of permanence. If an expenditure is incurred for possession of an asset or for right of a permanent character, then expenditure can be considered as capital in nature.
United Spirits Ltd v. CIT (2018) 257 Taxman 458 / (2019) 173 DTR 315 / 306 CTR 484 (Cal.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Royalty payment for use of licensed information – Revenue expenditure. 623
Royalty payment for use of licensed information is held to be revenue expenditure. (AY.2008-09)
Maruti Suzuki India Ltd. v. ACIT (2018) 191 TTJ 148 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Sharing resources expenditure with other group companies – Held to be revenue expenditure. 624
Company transformed it's dealerships to one-stop shop for sale of its products and providing all related facilities of financing, insurance, auto-card, purchase and sale of

used cars, etc. AO made ad-hoc disallowances holding same to be relatable to/ towards sharing of Assessee's resources with other group companies. CIT(A) upheld order of AO. Allowing the appeal of the assessee, the Tribunal held that there was no material brought on record to controvert plea of assessee that they have provided support to Insurance subsidiaries due to its business exigency rather than supporting said companies and it was in best interests of MSIL to do so for maximizing their profits, as such related cost was allowable business expenditure for company. Accordingly expenditure being business expenditure would have to be allowed as deduction. (AY. 2008-09)

Maruti Suzuki India Ltd. v. ACIT (2018) 191 TTJ 148 (Delhi)(Trib.)

625 **S. 37(1) : Business expenditure – Club and Membership subscription – Held to be allowable deduction.**

Dismissing the appeal of the revenue the Tribunal held that club and membership fee of director is held to be allowable as business expenditure. Followed United Glass Manufacturing Co. Ltd. Followed *CIT v. United Glass Manufacturing Co. Ltd.* (AY. 2008-09, 2010-11, 2011-12)

Dy.CIT v. Deloitte Touche Tohmatsu India (P) Ltd. (2018) 193 TTJ 65 (UO) (Mum.)(Trib.)

626 **S. 37(1) : Business expenditure – Compensation payable – Unascertainable liability – Not allowable as deduction. [S. 145]**

Tribunal held that,Liability to make payment of insurance claim accrued only in year in which loss or damage was ascertained and compensation payable to insured person was determined. Since in instant case amount of compensation payable to insured person was not determined during year, same could not be allowed merely because incident happened during year. (AY. 2003-04 to 2010-11)

ACIT v. United India Insurance Co. Ltd. (2018) 67 ITR 191 /195 TTJ 65 (UO) (Chennai) (Trib.)

627 **S. 37(1) : Business expenditure – Provision towards Employees Short term benefits – Held to be not allowable as deduction.**

Provisions made for Employees short term benefit could not be allowed as deduction. Accounting Standard issued by the ICAI cannot override the provisions of Rule 5 of First Schedule to the Income-tax Act, and therefore, provisions made for Employees short term benefit cannot be allowed as deduction. (AY. 2003-04 to 2010-11)

ACIT v. United India Insurance Co. Ltd. (2018) 67 ITR 191 /195 TTJ 65 (UO) (Chennai) (Trib.)

628 **S. 37(1) : Business expenditure – Payment to motor car dealers – Genuineness of payment was not in doubt-Disallowances cannot be made.**

Dismissing the appeal of the revenue the Tribunal held that the Assessee had filed copies of invoice, confirmation letters from service providers and details of premium collected by motor vehicle dealers from customers as there was no doubt about

genuineness of service rendered by car dealers. Deletion of addition is held to be justified. (AY. 2003-04 to 2010-11)
ACIT v. United India Insurance Co. Ltd. (2018) 67 ITR 191 / 195 TTJ 65 (UO) (Chennai) (Trib.)

S. 37(1) : Business expenditure – Demurrage charges – Held to be allowable – Corporate responsibility and expenditure commission-Held to be not allowable as no details were filed. 629
Tribunal held that allowability of expenditure of port charges as well as demurrage charges had to be determined having regard to clauses of agreement. Appellant had to bear expenditure of port charges relating to export of cargo and demurrage charges. Accordingly the expenditure is held to be allowable business expenditure. No details of corporate responsibility expenditure was filed, accordingly held to be not allowable. As regards the commission payment no details were filed hence held to be not allowable. (AY.2012-13)
NMDC Ltd v. Dy. CIT (2017) 190 TTJ 757 / (2018) 162 DTR 114 (Hyd.)(Trib.)

S. 37(1) : Business expenditure – Apportionment of expenses – STP unit and non-STP unit – Matter remanded. 630
Allowing the appeal of the assessee the Tribunal held that ; there must be direct nexus between profits and gains of industrial undertaking and expenses which were sought to be apportioned/attributable to it. Neither AO nor CIT(A) had examined nature of expenses and its nexus between STP unit or non-STP unit. Under these set of facts, issue required fresh examination at end of AO referred Zandu Pharmaceutical Works Ltd . (AY. 2004-05, 2005-06)
Firstsource Solutions Ltd v. Dy.CIT (2018) 168 DTR 161 / (2019) 197 TTJ 486 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Provision of various expenses – Following the rule of consistency and accounting principle – Addition was deleted. [S. 145] 631
AO held that mere provision made by assessee for expenses was not allowable unless it was shown that liability had accrued during year under consideration accordingly AO disallowed said claim which was affirmed by CIT(A). Allowing the appeal of the assessee the Tribunal held that these provisions related to expenses of routine nature and such kind of provisions were made year after year and actual payments made against these provisions were usually debited to concerned Provision account and balance, if any, should be transferred to Profit and Loss account. as same was in accordance with accounting principles and requirements. Addition was deleted. (AY. 2004-05, 2005-06)
Firstsource Solutions Ltd v. Dy.CIT (2018) 168 DTR 161 / (2019) 197 TTJ 486 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Compensation payable – Unascertainable liability – Not allowable as deduction. [S. 145] 632
Assessee made provision of certain amount on account of insurance claim incurred but not reported and claim incurred but not enough reported. Hence, a provision was made

for all unsettled claims on basis of claim lodged by insured persons. AO disallowed the provision. On appeal CIT(A) allowed the claim. On appeal by the revenue the Tribunal held that liability to make payment of insurance claim accrued only in year in which loss or damage was ascertained and compensation payable to insured person was determined. Since in instant case amount of compensation payable to insured person was not determined during year, same could not be allowed merely because incident happened during year. Provision is held to be not allowable. (AY. 2003-04 to 2007-08)
Cholamandalam Ms General Insurance Company Ltd. v. ACIT (2018) 170 DTR 22 / 195 TTJ 166 (Chennai)(Trib.)

633 **S. 37(1) : Business expenditure – Commission expenses – Documentary evidences to prove genuineness of commission transaction was produced – Statement recorded cannot be used against the asseessee without giving an opportunity of cross examination. [S. 131]**
Allowing the appeal of the assessee the Tribunal held that the assessee has produced documentary evidence to prove the genuineness of commission payment. Tribunal also held that Statement recorded cannot be used against the asseessee without giving an opportunity of cross examination. (AY. 2008-09)
Shree Bishandas Iron v. DCIT (2018) 162 DTR 209 / 191 TTJ 624 (Kol.)(Trib.)

634 **S. 37(1) : Business expenditure – Purchase cost of programs and film rights – Amortisation of inventories – Consistent method of accounting – AO is not justified in treating programs and film rights as intangible assets and allowing deprecation @25%. [S. 32(2)(ii)]**
Assessee amortized the "inventories" as per the method of accounting consistently followed by him over the years. AO made on account of expenditure in respect of programs and film rights by treating purchase cost of programs and film rights as intangible assets and allowing deprecation @25%. CIT(A) deleted addition. Dismissing the appeal of the revenue the Tribunal held that assessee amortized "inventories" as per method of accounting consistently followed by him over years. Appeal of revenue was dismissed. (AY.2011-12)
ACIT v. Zee Media Corporation Ltd. (2018) 193 TTJ 36 (UO) (Mum.)(Trib.)

635 **S. 37(1) : Business expenditure – Capital or revenue – Franchise fee – For participation in league – Held to be revenue expenditure – When no match of IPL Season-2 was played till 31.03.2009, no expenditure in respect of Franchise fee accrued at all during year under consideration – Thus, it could not be held as revenue expenditure in hands of assessee during year under consideration. [S. 145]**
Franchise fee would be in the nature of revenue expenditure where payment of Franchise fee facilitated participation in league and operating team is restricted only to year to which payment pertained, and there is neither creation of asset or generation of benefit of enduring nature in hands of assessee. When no match of IPL Season-2 was played till 31.03.2009, no expenditure in respect of Franchise fee accrued at all during

year under consideration – Thus, it could not be held as revenue expenditure in hands of assessee during year under consideration. (AY. 2009-10)
Knight Riders Sports PVT. LTD. v. ACIT (2017) 51 CCH 591 / (2018) 193 TTTJ 313 Mum.) (Trib.)

S. 37(1) : Business expenditure – Security services for stadium – Payment of ₹ 75 lac was made by assessee to Kolkata Police Welfare fund, not by its choice, but as per directions of CAB who was responsible to arrange for security in stadium at time of staging of matches by assessee – Held to be allowable business expenditure. 636
Security charges for stadium and payment made by assessee to Kolkata Police Welfare fund as per the directions of Cricket Association Board who is responsible to arrange for security in stadium at time of staging of matches by assessee, is an allowable expenditure. (AY.2009-10)
Knight Riders Sports P. Ltd. v. ACIT (2017) 51 CCH 591 / (2018) 193 TTTJ 313 Mum.) (Trib.)

S. 37(1) : Business expenditure – Coaching services – Held to be allowable as business expenditure. 637
Mr. John Buchanan provided coaching services to assessee team, viz. Kolkata Knight Riders in IPL Season-1. Revenue failed to place on record any irrefutable documentary evidence to conclude that no coaching services were provided by Mr. John Buchanan to assesse's cricket team for IPL Season-1. Accordingly the claim of assessee as regards expenditure incurred in respect of coaching fees paid to Mr. John Buchanan for IPL Season-1 was found to be in order. (AY.2009-10)
Knight Riders Sports P. Ltd v. ACIT (2017) 51 CCH 591 / (2018) 193 TTTJ 313 Mum.) (Trib.)

S. 37(1) : Business expenditure – Security charges – Visits of actors, celebrities and VIPs was part of strategic planning by assessee for generating higher revenues – Held to be allowable business expenditure. 638
Presence of celebrities at matches staged by assessee was in interest of business of assessee. When actors, celebrities and VIPs would be invited by assessee, same would be keeping in view their popularity and to avoid any untoward incident carrying heavy burden and obligation of providing necessary security cover to them. Thus assessee remained under obligation of providing requisite security cover to such actors, celebrities and VIPs. Claim of assessee incurred for security for VIPs and celebrities who attended matches at Eden Garden was well in order. Held to be allowable as business expenditure. (AY. 2009-10)
Knight Riders Sports P. Ltd v. ACIT (2017) 51 CCH 591 / (2018) 193 TTTJ 313 Mum.) (Trib.)

S. 37(1) : Business expenditure – Designing and exhibition of player outfits – Held to be revenue expenditure. 639
Assessee following mercantile method of accounting, therefore, expense which was incurred during year under consideration was recognized and claimed as a deduction.

Followed *Mysore Spinning and Manufacturing Co. Ltd. v. CIT (1966) 61 ITR 572 (Bom.) (HC)*. (AY.2009-10)
Knight Riders Sports P. Ltd v. ACIT (2017) 51 CCH 591 / (2018) 193 TTTJ 313 Mum.) (Trib.).

640 **S. 37(1) : Business expenditure – Expenditure incurred by assessee for providing training to persons through Apparel Training & Development Centre in form of assistance of ₹ 2,000/- per trainee was in category of corporate social responsibility (CSR) was held not allowable unless and until expenditure was incurred wholly and exclusively for purpose of business of assessee.**
Tribunal held that, Corporate social responsibility provision had been brought in companies Act 2013 and consequential amendment was brought to Income-tax Act u/s 37(1) by way of insertion of explanation w.e.f. 01.04.2015. When specific provision had been brought into statute for allowing such expenditure w.e.f. 01.04.2015 then prior to said provisions deduction in respect of expenditure incurred under Corporate Social Responsibility was not allowable unless and until expenditure was incurred wholly and exclusively for purpose of business of assessee .Accordingly the expenditure incurred by assessee for providing training to persons through Apparel Training & Development Centre in form of assistance of ₹ 2,000/- per trainee was in category of corporate social responsibility (CSR) had no direct connection/nexus with business activity of assessee. In absence of any provisions in Income-tax Act same could not be allowed prior to insertion of explanation 2 to section 37(1) w.e.f. 01.04.2015. (AY. 2009-10, 2010-11, 2011-12, 2012-13)
Rajasthan State Industrial Development & Investment Corp. Ltd. (2018) 195 TTJ 35 (Jaipur)(Trib.)

641 **S. 37(1)) : Business expenditure – Rural development expenses – Held to be allowable as business expenditure – Leave encashment scheme – Held to be allowable.**
Expenditure has been incurred by the assessee in vicinity of its mining areas and its workers and its employees are also benefited by incurrence of such expenditure, and also, assessee has established the necessary nexus of such expenditure for the purpose of smooth running of its business operation, such expenditure should be held as allowable deduction. Payment made by assessee is within the framework of the leave encashment scheme, same is an allowable deduction, even though claim for the same is not made in the return of income but during the assessment proceedings. (AY. 2014-15)
Rajasthan State Mines & Minerals Ltd. v. ACIT (2018) 196 TTJ 768 / (2019) 174 DTR 383 (Jaipur)(Trib.)

642 **S. 37(1) : Business expenditure – Preliminary and preoperative expenses – Branch office at UAE – Existing business in UAE – Disallowance of expenditure is held to be not justified.**
Assessee had incurred various expenditure including registration charges, rent of premises, travelling expenses of its personnel and other miscellaneous expenses to set up a branch office in UAE in connection with its existing business. Assessee was already

in business of sales in UAE and only for facilitation of its business had set up a branch office. Therefore, expenditure incurred by assessee was a revenue expenditure which cannot be considered as preliminary and preoperative expenses. (AY.2011-12)
Scrabble Entertainment Ltd. v. ACIT (2018) 169 DTR 51 / 193 TTJ 418 (Mum.) (Trib.)

S. 37(1) : Business expenditure – Disproportionate increase in expenses – Disallowance of 10% of the business promotion expenses is held to be justified. 643
Tribunal held that,when there is a disproportionate increase in expenses vis-à-vis the increase in gross receipts, personal element to the tune of 10% of business promotion expenses could not be ruled out and therefore, the same was disallowable (AY.2010-11)
ACIT v. Rohit Kochar (2018) 68 ITR 67 (SN) (Delhi)(Trib.)

S. 37(1) : Business expenditure – Penalty – Fine – Illegal mining – Compensation is not penalty – Allowable as deduction. 644
Tribunal held that the compensation paid by Assessee company to Government, as per directions of Supreme Court, to conduct mining in area beyond its sanctioned lease area would be allowed as business expenditure; it was compensatory in nature and not a penalty. (AY. 2013-14, 2014-15)
NMDC v. ACIT (2018) 68 ITR 532 / (2019) 175 ITD 332 / 177 DTR 385 / 199 TTJ 772 (Hyd.)(Trib.)

S. 37(1) : Business expenditure – Capitalised in the books of account as work in progress – Revised return claiming as allowable revenue expenditure – Held to be allowable. [S. 145] 645
Tribunal held that though the expenditure is capitalised in the books of account, if the expenditure is held to be allowable as revenue, on the basis of revised return the same is allowable as deduction. (AY 2009-2010)
Dy.CIT v. BCH Electric Ltd. (2018) 63 ITR 58 (SN) (Kol.)(Trib.)

S. 37(1) : Business expenditure – Provision for warranty expenses – provision made based on transactions carried out in preceding three years on scientific basis and method consistently followed in past such expenditure is allowable. [S. 145] 646
The provision for warranty was being made on the basis of the past experience and had been computed in a systematic and scientific manner, these warranty expenses were towards expenses which had been incurred or were likely to be incurred within the period for which the warranty had been assured to the customers against the sale of products and as such, such expenses were deductible as business expenditure. Such expenditure having been incurred wholly for the purpose of business was fully allowable as business expenditure. (AY.2009-10)
Dy.CIT v. BCH Electric Ltd. (2018) 63 ITR 58 (SN) (Kol.)(Trib.)

647 **S. 37(1) : Business expenditure – Provision for non-moving inventory – consistent treatment from year to year in return, allowable for deduction. [S. 145]**
The assessee made provision for non-moving inventory and claimed the provision as deduction in the return. The AO observed that the provision represented un-crystallised and unascertained liability debited to the profit and loss account not allowable as expenses under the provisions of the Act. The ITAT held, that the consistent treatment given by the assessee from year to year with regard to the treatment of provision for non-moving inventory in the return therefore the said disallowance is not sustainable. (AY. 2009-10)
Dy.CIT v. BCH Electric Ltd. (2018) 63 ITR 58 (SN)(Kol.)(Trib.)

648 **S. 37(1) : Business expenditure – Brand building – Advertisement expenses – Held to be revenue expenditure**
Expenditure incurred in making advertisement of the products by the assessee is in the course of earning of profit without touching the capital asset. Therefore, the expenditure incurred by the assessee is revenue. (AY. 2009-10, 2010-11, 2012-13)
ACIT v. Jansons Industries Ltd. (2018) 194 TTJ 19 (UO)(Chennai)(Trib.)

649 **S. 37(1) : Business expenditure – Capital or revenue – Software – License fee connectivity charges and coordination charges is allowable as revenue expenditure**
Tribunal held that, license fee, connectivity charges and co-ordination charges were paid for the limited right to use of software and there was no vesting of enduring benefit or irrevocable transfer of rights. Thus, the charges paid are revenue in nature and allowable. (AY.2010-11)
DCIT v. G.E. Capital Business Process Management Services Pvt. Ltd. (2017) 51 CCH 0158 / 63 ITR 337 (Delhi)(Trib.)

650 **S. 37(1) : Business expenditure – Capital or revenue – Royalty and logo fees are allowable as revenue expenditure.**
Tribunal held that, payment made for use of technical know-how and trademark and not for transferring the full ownership of know-how and thus the expenditure is revenue in nature.(AY. 2011-12)
GKN Driveline (India) Ltd. v. DCIT (2018) 62 ITR 784 (Delhi) (Trib.)

651 **S. 37(1) : Business expenditure – Provision for warranty claims is allowable expenditure.**
Provision for warranty on the basis of technical estimation is a provision for ascertained liability hence allowable as deduction. Followed, Rotork Controls India (P.) Ltd. (2009) 314 ITR 62 (SC). (AY. 2011-12)
GKN Driveline (India) Ltd. v. DCIT (2018) 62 ITR 784 (Delhi) (Trib.)

S. 37(1) : Business expenditure – Corporate Social responsibility (CSR) expenses are allowable as business expenditure – Amendment in S. 37(1) for disallowing CSR expenses referred to in S. 135 of Companies Act, 2013 would not apply to earlier years. 652

Expenditure incurred on social responsibility is incurred wholly and exclusively for the purpose of business or profession and also the amendment in S. 37(1) for disallowing CSR expenses referred to in section 135 of Companies Act, 2013 would not apply to earlier years. (AY. 2011-12)

DCIT v. Godawari Power & Ispat Ltd. (2018) 68 ITR 19(SN) (Raipur)(Trib.)

S. 37(1) : Business expenditure – Charity/ Pooja and festival expenses are allowable as deduction. 653

Expenses on charity /pooja and festival is held to be allowable as business expenditure. (AY. 2011-12)

DCIT v. Godawari Power & Ispat Ltd. (2018) 68 ITR 19 (SN) (Raipur)(Trib.)

S. 37(1) : Business expenditure – Payment made to doctors Convention fees is allowable expenditure – Not prohibited by law. 654

Tribunal held that, Medical Council of India guidelines apply only to doctors and do not govern other entities and thus the guidelines cannot decide the allowability or otherwise of an expenditure under the Income-tax Act. Payment made to doctors Convention fees is allowable expenditure. (AY. 2011-12)

India Medtronic P. Ltd v. DCIT (2018) 64 ITR 9 (SN) / 95 taxmann.com 21 (Mum.) Trib.)

S. 37(1) : Business expenditure – Legal and professional charges – Retainership fees – Held to be allowable as deduction. 655

Tribunal held that the professionals appointed were experts in their respective fields, and that their services were retained to groom and train the new recruits as no suitable replacement was readily available. Accordingly allowable as deduction. (AY. 2011-12)

Laboratories Griffon (P) Ltd v. Dy CIT (2018) 170 ITD 387 / 65 ITR 317 / 193 TTJ 855 (2019) 178 DTR 355 (Kol.)(Trib.)

S. 37(1) : Business expenditure – Foreign tour expenses – Research manager – Only 20% of expenditure is held to be personal in nature by the CIT(A)is upheld. 656

Assessee deputed its Research Manager to visit China, Paris & Hongkong/Bangkok with objective of promoting export of company and for exploring new source of raw materials, packing materials, manufacturing machines etc. and claimed deduction on account of same. Before the Tribunal, assessee had submitted a chart showing the increase in export turnover over the years pursuant to the visit of the Manager abroad. Tribunal upheld the order of the CIT(A) disallowing 20% of the amount as personal in nature. (AY. 2011-12)

Laboratories Griffon (P) Ltd. (2018) 170 ITD 387 / 65 ITR 317 / 193 TTJ 855 (2019) 178 DTR 355 (Kol.)(Trib.)

657 **S. 37(1) : Business expenditure – Capital or revenue – Expenses on electric repairs and maintenance – consumable expenses – Fabrication charges – Revenue in nature**
Tribunal held that considering the nature of business of the assessee, the expenses incurred on electrical repairs and maintenance were in nature of consumable expenses are revenue in nature. The Assessing Officer had not pointed out which capital had been generated by the assessee for purchasing tube rods and electrical wires. Fabrication charges is held to be allowable as deduction. (AY. 2012-13)
ITO v. Jaidka Woolen and Hosiery Mills P. Ltd. (2018) 68 ITR 216 (Delhi)(Trib.)

658 **S. 37(1) : Business expenditure – Adhoc expenditure – Company – No personal expenses-car running and telephone expenses – Disallowances cannot be made.**
Tribunal held that in case of company there is company and as such there might not be any personal expenses incurred by the assessee on account of car running and telephone expenses. The ad hoc addition made by the Assessing Officer without pointing out any specific inadmissible expenses incurred by the assessee was wholly unjustified and it was to be deleted. (AY. 2012-13)
ITO v. Jaidka Woolen and Hosiery Mills P. Ltd. (2018) 68 ITR 216 (Delhi)(Trib.)

659 **S. 37(1) : Business expenditure – Provision for damaged goods – Held to be allowable.**
Following the earlier order, the Tribunal held that, provision for damaged goods is held to be allowable. (AY. 2008-09, 2009-10)
Rasna P. Ltd. v. DCIT (2018) 63 ITR 28 (SN)(Ahd.)(Trib.)

660 **S. 37(1) : Business expenditure – Travel expenses – Adhoc disallowance – Company – Directors – No *ad hoc* disallowance can be made in respect of use of vehicles by directors of company disallowance unjustified.**
Tribunal held that in the case of company no ad hoc disallowance could be made from total travel and conveyance expenses incurred by assessee company on ground that expenses were in respect of use of vehicles by directors of assessee company was personal in nature. Followed Sayaji Iron & Engg. *Company Ltd. v. CIT (2002) 253 ITR 749 (Guj) (HC)* (AY.2011-12)
Seal For Life India (P.) Ltd. v. DCIT (2018) 173 ITD 229 / (2019) 197 TTJ 742 / 174 DTR 281 (Ahd)(Trib.)

661 **S. 37(1) : Business expenditure – Company – Corporate status – Employee benefits, finance costs and administrative and other expenses can not be disallowed as the said expenditure were necessary to maintain its corporate status.**
Tribunal held that, Employee benefits, finance costs and administrative and other expenses can not be disallowed as the said expenditure were necessary to maintain its corporate status. (AY. 2012-13)
T.A. Taylor (P.) Ltd. ACIT (2018) 173 ITD 237 / 66 ITR 146 (Chennai)(Trib.)

S. 37(1) : Business expenditure – Dormant – Society which was engaged in business of electricity distribution under license issued by State Government – License granted to assessee was expired – licence was not renewed – No intention to discontinue of business-temporary phenomenon and assessee would resume business soon after license was renewed – Expenditure claimed by assessee were allowable business expenditure. [S. 28(i), 70, 72] 662

AO held that business of assessee was closed down due to non-renewal of license accordingly disallowed the expenditure. Assessee contended that handing over business to MSEDCL by MERC was a temporary phenomenon and assessee would resume business soon after license was renewed. Tribunal held that, ongoing litigation for grant of license ever since 2011 till 2018 demonstrated assessee's strong intention to continue business. Decision of assessee of giving VRS to 1522 employees was a prudent commercial decision and same could not be interpreted against assessee as lack of intention to resume business. Assessee received compensation of ₹ 1 crore every month from MSEDCL and reported same to income tax office every year. Accordingly the assessee could be said to have intention to resume its business, thus, expenditure claimed by assessee were allowable business expenditure. The set off of carry forward of the unabsorbed loss issue needs to be decided as per the provisions of section 70 to 72. Thus, the Assessing Officer is directed to pass a speaking order. (AY. 2012-13)

Mula Pravara Electric Co-op. Society Ltd. v. DCIT (2018) 173 ITD 313 / (2019) 175 DTR 273 (Pune)(Trib.)

S. 37(1) : Business expenditure – Setting up of business – Service industry for managing mutual funds – Upon its incorporation, assessee took various steps to commence its business such as hiring of people application to SEBI, organizing for space etc, and this amounted to setting up business – Expenses are allowable. 663

Allowing the appeal of the assessee the Tribunal held that, upon its incorporation, assessee took various steps to commence its business such as hiring of people application to SEBI, organizing for space etc, and this amounted to setting up business and the entire expenses are allowable. (AY. 2007-08)

Pinebridge India (P.) Ltd. v. ACIT (2018) 173 ITD 341 / 196 TTJ 1 (UO) / 67 ITR 74 (SN) (Mum.)(Trib.)

S. 37(1) : Business expenditure – Provision for development expenses – Consistent accounting pattern – Held to be allowable. [S. 145] 664

Tribunal held that the assessee had maintained books of account on same accounting pattern in earlier years as well and same was accepted by Tribunal. Accordingly, the claim of development expenses is held to be allowable. (AY.2010-11)

Saamag Developers (P.) Ltd. v. ACIT (2018) 173 ITD 350 (Delhi)(Trib.)

665 **S. 37(1) : Business expenditure – Commission – Prior period expenditure – Expenditure for earlier year in its ledger account in respect of commission pertaining to current year – Merely on the basis of entries in books of account disallowance cannot be made. [S. 145]**

Tribunal held that, merely on the ground that in ledge account the expenditure of commission was debited for earlier year, though the commission pertaining to current year, disallowance cannot be made (AY. 2003-04)

ACIT v. Overseas Trading and Shipping Co. (P.) Ltd. (2018) 173 ITD 446 (Rajkot)(Trib.)

666 **S. 37(1) : Business expenditure – Sales promotion expenses – When all relevant details for sales promotion expenses was filed, without verifying veracity of said expenses under S. 133(6) and 131, disallowance cannot be made. [S. 131, 133(6)]**

Tribunal held that the assessee has filed all relevant details, addresses of all parties were available in relevant bills filed by the assessee. As the AO failed to verify the genuineness of expenses by calling information u/s 133(6) and 131 od the Act, deletion of addition by CIT(A) is held to be justified. (AY. 2003-04)

ACIT v. Overseas Trading and Shipping Co. (P.) Ltd. (2018) 173 ITD 446 (Rajkot)(Trib.)

667 **S. 37(1) : Business expenditure – Warranty expenses – In terms of tripartite agreement entered into between assessee, a Russian company and Indian Air Force, assessee had to supply engines of aircrafts to Indian Air Force manufactured by Rusian company – warranty in respect of engines so supplied was responsibility of assessee for a specified period – Warranty expenses is held to be allowable.**

Tribunal held that, in terms of tripartite agreement entered into between assessee, a Russian company and Indian Air Force, assessee had to supply engines of aircrafts to Indian Air Force manufactured by Rusian company-warranty in respect of engines so supplied was responsibility of assessee for a specified period-Warranty expenses is held to be allowable. (AY. 2006-07)

Indo Russian Aviation Ltd. v. ACIT (2018) 173 ITD 597 / 171 DTR 409 / 196 TTJ 656 (Pune)(Trib.)

668 **S. 37(1) : Business expenditure – Expenditure incurred prior to setting up its business is held to be not allowable – Just because the Assessing Officer had accepted the contention of the assessee in the earlier year on a wrong footing that would not be a reason to accept the claim that rule of res judicata would apply, when the facts showed a totally different scenario.**

Allowing the appeal of the assessee the Tribunal held that, the assessee was yet to start commercial production and no revenue was generated by it. The assessee had just completed the process of registering the lease of the land and started the setting up of its plant, in such land during relevant previous year. The sale of a bus which was given free of cost by a company abroad could not be construed as the start of commercial operations. Just because the Assessing Officer had accepted the contention of the assessee in the earlier year on a wrong footing that would not be a reason to accept the claim that rule of res judicata would apply, when the facts showed a totally different

scenario. The expenditure claimed by the assessee was incurred prior to setting up its business and was not allowable.(AY. 2010-11)
DCIT v. Daimler India Commercial Vehicles (P.) Ltd. (2018) 65 ITR 610 (Chennai)(Trib.)

S. 37(1) : Business expenditure – Ad hoc disllaowance – Entertainment expenditure – Disallowance on ad hoc basis is held to be not proper. 669
Tribunal held that when the assessee has produced sufficient documentary evidence to prove genuineness of the transaction, Disallowance on ad hoc basis is held to be not proper. (AY. 2007-08)
Exxon Mobil Company India P. Ltd. v. ACIT (2018) 65 ITR 583 / 196 TTJ 1070 / 97 taxmann.com 43 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Penal interest – Service tax – Payment of interest on delayed remittances of services tax is only compensatory in nature and would not be in nature of penalty which would be hit by Explanation to S. 37(1). 670
Allowing the appeal of the assessee the Tribunal held that, payment of interest was only compensatory in nature and would not be in nature of penalty which would be hit by Explanation to S. 37(1). Accordingly no disallowance can be made. (AY. 2012-13)
Velankani Information Systems Ltd. v. DCIT (2018) 173 ITD 19 / 172 DTR 356 / 196 TTJ 1128 (Bang.)(Trib.)

S. 37(1) : Business expenditure – Income-tax – Delay in payment of tax deduction at source-Interest paid under S. 201(1A) is in nature of tax and not allowable as business expenditure. [S. 2(43), 40(ii), 201(IA)] 671
Dismissing the appeal of the assessee, the Tribunal held that, interest paid under S. 201(1A) for delay in depositing tax deducted at source, is in nature of tax and same cannot be allowed as a deduction. Followed *CIT v. Chennai Properties & Investment Ltd. (1999) 239 ITR 435 (Mad) (HC)*, *Dy.CIT v. Narayani Ispact (P) Ltd.* (ITA No. 2127(Kol) of 2014 dt 30-8-2017 is not followed. (AY.2012-13)
Velankani Information Systems Ltd. v. DCIT (2018) 173 ITD 19 / 172 DTR 356 / 196 TTJ 1128 (Bang.)(Trib.)

S. 37(1) : Business expenditure – Illegal payments – Interest – Bogus purchases – Survey by Maharashtra VAT Authorities – Interest paid under S. 30(2) of MVAT Act, 2002 was not penal in nature hence allowable ; however, interest paid under S. 30(4) of MVAT Act, 2002 which was in addition to interest payable under section 30(2) was penal in nature and could not be allowed in view of provision of Explanation 1 to S. 37(1) [MVAT Act, 2002, S. 25, 29(3), 30(2) 30(4)] 672
During course of search and survey operations conducted by Maharashtra VAT Authorities, sales tax authorities have found that the assessee was indulged in bogus purchases by way of accommodation entries where in assessee had wrongly claimed input tax credits on these alleged bogus purchases. The assessee has claimed input tax credits were set off by assessee against its output VAT liabilities. In order to buy peace and end litigation under MVAT Act, 2002, assessee paid additional tax along with

payment of interest under S. 30(2) and 30(4) of MVAT Act, 2002 of the Act. Interests paid was claimed as business expenditure deduction. Tribunal held that interest paid under S. 30(2) of MVAT Act, 2002 was not penal in nature hence allowable ; however, interest paid under S. 30(4) of MVAT Act, 2002 which was in addition to interest payable under section 30(2) was penal in nature and could not be allowed in view of provision of Explanation 1 to S. 37(1) of the Act. (AY. 2009-10, 2012-13)
ACIT v. Gini & Jony Ltd. (2018) 172 ITD 472 / 67 ITR 45 (SN)(2019) 197 TTJ 322 / 178 DTR 114 (Mum.)(Trib.)

673 **S. 37(1) : Business expenditure – Provision for warranty – Marketing of software products – Authorities were justified in restricting amount of allowable provision at 2.14 per cent of sale as adopted in earlier years, as there was no reversal after expiry of relevant period based on actual utilisation. [S. 145]**
Tribunal held that Revenue Authorities were justified in restricting amount of allowable provision at 2.14 per cent of sale as adopted in earlier years, as there was no reversal after expiry of relevant period based on actual utilisation. (AY. 2013-14, 2014-15)
Apple India (P.) Ltd. v. DCIT (2018) 172 ITD 553 / 172 DTR 367 / 196 TTJ 1139 (Bang.) (Trib.)

674 **S. 37(1) : Business expenditure – Vehicle expenses and insurance on vehicle – Personal expenses – Disallowance of 10% of expenses is held to be justified.**
Confirming the order of CIT(A) the Tribunal held that disallowance of 10% of Vehicle expenses and insurance on vehicle being personal expenses is held to be justified. (AY. 2004-05 to 2010-11)
Geeta Dubey (Smt.) v. ITO (2018) 172 ITD 538 (Indore)(Trib.)

675 **S. 37(1) : Business expenditure – Interest paid on loan taken on land for purchase of land, is held to be not allowable as business expenditure as commission is the main source of income and not the sale of land.**
Tribunal held that since sale of land is not main source of income, Interest paid on loan taken on land for purchase of land, is held to be not allowable as business expenditure. (AY. 2007-08)
Geeta Dubey (Smt.) v. ITO (2018) 172 ITD 538 (Indore)(Trib.)

676 **S. 37(1) : Business expenditure – Making charges paid to Goldsmiths allowable as the Assessee offered to tax the making charges collected from customers.**
Assessee paid making charges at different rates depending upon grades and location of Goldsmiths. AO allowed the expenses by applying lowest rate of making charges to total weight of gold and disallowed the excess by pointing out certain deficiencies in the vouchers and that the identity of Goldsmiths could not be verified. Tribunal observed that only amounts involved in defective vouchers should be disallowance. It observed that no specific defect was found other than few unsigned vouchers and non-maintenance of stock register. Since the making charges were collected from customers and offered to tax, the disallowance held unjustified. (AY. 2014-15)
Grandhi Sri Venkata Amarendra v. ACIT (2018) 66 ITR 66 (SN)(Vishakha.)(Trib.)

S. 37(1) : Business expenditure – Actual payments made to Group Gratuity Scheme are allowable as deduction even though the same is not approved by the CIT [S. 36(1)(v)] 677
Dismissing the appeal of the revenue, the Tribunal held that; Actual payments made to Group Gratuity Scheme are allowable as deduction even though the same is not approved by the CIT. Followed District Co-operative Central Bank, Eluru. (AY.2013-14, 2014-15)
ACIT v. Guntur District Co-operative Bank Ltd. (2018) 66 ITR 61 (SN)(Vishakha)(Trib.)

S. 37(1) : Business expenditure – Provision for standard asset being required only to meet the unexpected eventuality is purely contingent in nature and hence is not allowable as a deduction. 678
Allowing the appeal of the revenue the Tribunal held that; Provision for standard asset being required only to meet the unexpected eventuality is purely contingent in nature and hence is not allowable as a deduction. Followed Chaitanya Godavari Grammena Bank. (AY. 2013-14 2014-15)
ACIT v. Guntur District Co-operative Bank Ltd. (2018) 66 ITR 61 (SN)(Vishakha)(Trib.)

S. 37(1) : Business expenditure – Provision for fall in the value of investment held as stock-in-trade by bank is allowable as a deduction. 679
Dismissing the appeal of the revenue the Tribunal held that ; provision for fall in the value of investment held as stock-in-trade by bank is allowable as a deduction. Followed *Canara Bank v. JCIT (2016) 68* taxmann.com 128 wherein it was held that the directions of the RBI are only disclosed norms and they have nothing to do with computation of taxable income. It was also held that where investments are forming part of stock-in-trade, loss arising on account of fall in value of securities should be recognized and allowed as a deduction. (AY. 2008-09 to 2011-12)
ACIT v. Karnataka Bank Ltd. (2018) 63 ITR 433 (Bang.)(Trib.)

S. 37(1) : Business expenditure – Corporate entity – Even if no business was carried out during the year, expenditure incurred by it has to be allowed. 680
During assessment proceedings, AO found that assessee had claimed expenditure towards business expenses but assessee had not carried out any business during year under consideration. Therefore, AO disallowed the said amount and added back the same to income of assessee. CIT(A) set aside the order of the AO. The Tribunal held that in case of Preimus Investment And Finance Ltd. (ITA 4879/M/12) dt. 13 May 2015, it was held that expenditure incurred for retaining status of company, namely miscellaneous expenses, salary, legal expenses, travel expenses, would be expenditure wholly and exclusively for purpose of making and earning income. There was no doubt that assessee was a corporate entity and even if it did not carry any business activity it had to incur some expenditure to keep up its corporate entity. Therefore expenditure incurred had to be allowed and thereby Revenue's appeal was dismissed.
Ozoneland Agro Pvt. Ltd v. DCIT (2018) 53 CCH 427 / 64 ITR 6 (SN)(Mum.)(Trib.), www.itatonline.org

681 **S. 37(1) : Business expenditure – Capital or revenue – Expenses on renovation and refurbishing of a leased property – Held, expenses incurred to facilitate carrying out of catering / canteen services at the leased premises and formed integral part of profit earning process of assessee's business – Held, revenue expenditure.**

Expenditure incurred on a leased property in the nature of construction of working slabs / counters for various purposes, teakwood partitions, stainless steel shutters, pipelines, purchase of tables, chairs, centrifugal blowers and fresh air inlets, duct fabrication, Stainless steel Hoods, POP ceilings, electrical works, water connections, paintings etc. & various other items of similar nature were mainly to facilitate carrying out of catering / canteen services at the leased premises and formed part and parcel of assessee's trading operations and constitute an integral part of profit earning process of assessee's business. Same was held by the Tribunal to be revenue in nature. (AY. 2002-03, 2003-04, 2009-10)

Dy. CIT v. Sodexo Food Solutions India P. Ltd. (2018) 66 ITR 52 (SN)(Mum.)(Trib.)

682 **S. 37(1) : Business expenditure – Compounding fees paid to RBI for post-facto approval from FIPB – Held, amount compensatory in nature and therefore, allowable as deduction. [Explanation.]**

Assessee paid aforesaid sum of ₹ 18 Lacs to Reserve Bank of India [RBI] as compounding fees under the provisions of Foreign Exchange Management Act, 1999. Assessee was categorized as operating company for the purposes of FIPB and FEMA. Subsequently, the assessee made investment in shares of its wholly owned subsidiary companies and accordingly its category changed from operating company to operating-cum-holding company, which required prior approval of FIPB. However, the said approval was not obtained and the assessee applied for post-facto approval of the same from FIPB which was granted subject to compounding of the same by RBI. Held, such compounding fees was compensatory in nature and therefore, allowable. (AY.2002-03, 2003-04, 2009-10)

Dy. CIT v. Sodexo Food Solutions India P. Ltd. (2018) 66 ITR 52 (SN))(Mum.)(Trib.)

683 **S. 37(1) : Business expenditure – Capital or revenue – Royalty paid in the nature of spectrum charges to Government of India as a percentage of revenue on regular basis – Also, license fee paid for telecommunication services to Government of India based on revenue share and on regular basis – Held, both are revenue expenditure – S. 35ABB is not applicable. [S. 35ABB]**

The Tribunal held that royalty paid by the assessee in the nature of spectrum charges to Government of India as a percentage of revenue on regular basis as also the license fee paid for telecommunication services to Government of India based on revenue share on regular basis were revenue expenditure allowable as deduction and that section 35ABB was not applicable. (AY.2009-10)

Dy. CIT v. Vodafone Essar Digilink Ltd. (2018) 193 TTJ 150 / 64 ITR 392 / 170 ITD 430 / 166 DTR 233 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Commission to directors against personal guarantee – Matter remitted to the AO to verify whether as per the bank documentation, director eligible for commission. 684

Assessee claimed deduction of guarantee commission paid to directors for personal guaranty for availing loan facility. It was held that, unless it was ascertained from original bank documentations that said bank documents/ agreements contained terms and conditions, as stipulated by RBI in its guidelines, it was not possible to decide whether commission paid by assessee company to its directors in lieu of their personal guarantee was lawful/justified or not. Accordingly, matter was to be remanded back for disposal afresh. (AY. 2008-09)

Eastman Industries Ltd. v. ACIT (2018) 63 ITR 181 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Foreign exchange fluctuation loss – Advance of loan to Indian Permanent Establishment – loss is allowable as deduction – DTAA-India-Spain [S. 9(1)(i), Art.7] 685

Spanish company, advanced loan to its Indian Permanent Establishment in foreign currency for execution of project in India, which incurred foreign exchange fluctuation loss on account of differential value in INR, such fluctuation loss was allowable as deduction in hands of Indian Permanent Establishment.(AY.2014-15)

Cobra Instalaciones Y Servicios SA v. DCIT (2018) 65 ITR 714 / 172 ITD 18 / 171 DTR 198 / 195 TTJ 1038 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Sales promotion expenses – Supply of certain products free of cost to Government hospitals and other hospitals in pursuance of purchase order placed by such hospitals – Allowable as business expenditure – Circular No 5/2012 dt. 1-8-2012 (2012) 346 ITR 95 (St) is prospective in nature. 686

AO held that goods supplied to doctors and other professional association free of cost were prohibited in terms of CBDT Circular No. 5/2012 dated 1-8-2012, accordingly disallowed the expenditure. Dismissing the appeal of the revenue the Tribunal held that ; CBDT circular no. 5/2012 dated 1-8-2012 (2012) 346 ITR 95 (St) is prospective in nature and, thus, not applicable to case of assessee. Tribunal also held that. since goods were supplied to hospitals in pursuance to purchase order, it could not be concluded that products were supplied free of cost; thus, claim of assessee of expenditure under head sales promotion expenses was to be allowed. (AY. 2012-13)

DCIT v. Esaote India (NS) Ltd. (2018) 172 ITD 299 / 172 DTR 427 / 196 TTJ 1091 (Ahd.) (Trib.)

S. 37(1) : Business expenditure – Insurance premiums of employees' family members in terms of employment rules framed by assessee – company – Allowable as business expenditure. [S. 17(2)(iv)] 687

Allowing the appeal of the assessee the Tribunal held that ; insurance premiums of employees' family members in terms of employment rules framed by assessee-company is allowable as business expenditure. (AY. 2009-10)

Loesche India (P.) Ltd. v. ACIT (2018) 172 ITD 176 / 195 TTJ 33 (UO) (Delhi)(Trib.)

688 **S. 37(1) : Business expenditure – Service charges paid to SRSR Advisory Services Pvt. Ltd for advisory services in assessee business area, accounting services, collection of interest and dividend, taxation, ROC related matters and maintenance of its land properties etc. – Allowable as business expenditure.**
Tribunal held that ; service charges paid to SRSR Advisory Services Pvt. Ltd. for advisory services in assessee business area, accounting services, collection of interest and dividend, taxation, ROC related matters and maintenance of its land properties etc. is held to be allowable as business expenditure. (AY.2005-06)
Fincity Investments (P.) Ltd. v. ACIT (2018) 172 ITD 204 / 172 DTR 396 (Hyd.)(Trib.)
Veeyes Investments (P) Ltd v. ACIT (2018) 172 ITD 218 / (2019) 197 TTJ 261 / 175 DTR 109 (Hyd.)(Trib.)

689 **S. 37(1) : Business expenditure – Payment of ₹ 20,000/- made as per direction of Inspector of Legal Metrology as compensation/damages to avoid any future litigation – Allowable as business expenditure.**
Payment of ₹ 20,000/- made as per direction of Inspector of Legal Metrology as compensation/damages to avoid any future litigation is held to be allowable as business expenditure. (AY. 2013-14)
Ocean Agro (India) Ltd. v. DCIT (2018) 172 ITD 157 (Ahd.)(Trib.)

690 **S. 37(1) : Business expenditure – Commercial expediency – Business man's point of view – Service charges were paid to company SRSR for providing advisory services in assessee's business area, accounting services, collection of interest and dividend, taxation, ROC related matters and maintenance of its land, properties, etc. – There being no dispute that services was rendered to assessee, Assessing Officer cannot step into shoes of assessee to-re fix amount that should have been paid. S. 37(1) does not have any restriction to amount paid so long expenditure is incurred for business.**
Assessee has paid service charges of ₹ 3 lakhs per month to company SRSR for providing advisory services in assessee's business area, accounting services, collection of interest and dividend, taxation, ROC related matters and maintenance of its land, properties, etc. Assessing officer estimated at ₹ 25,000 per month. On appeal the Tribunal held that, there being no dispute that services was rendered to assessee, Assessing Officer cannot step into shoes of assessee to-re fix amount that should have been paid. S. 37(1) does not have any restriction to amount paid so long expenditure is incurred for business. (referred, *CIT v. Bharat Carbon & Ribbon Mfg. Co. (P.) Ltd. [1999] 239 ITR 505 (SC), Sasson J. David & Co. (P.) Ltd. v. CIT [1979] 118 ITR 261 (SC). Birla Cotton Spinning & Weaving Mills Ltd. v. CIT [1967] 64 ITR 568 (Cal.) (HC). CIT v. Dhanrajgiri Raja Narasingiri [1973] 91 ITR 544 (SC) Jamshedpur Motor Accessories Stores v. CIT [1974] 95 ITR 664 (Pat.) (HC) J. K. Woollen Mfgr. v. CIT [1969] 72 ITR 612 (SC). I CIT v. Chandulal Keshavlal & Co. [1960] 38 ITR 601 (SC),* (AY. 2005-06)
Elem Investments (P.) Ltd. v. ACIT (2018) 172 ITD 58 (Hyd)(Trib.)

S. 37(1) : Business expenditure – Travelling expenditure – Fringe benefit tax on travelling expenses incurred by it during year, travelling expenses could not be disallowed on account of personal expenditure. [S. 115JB] 691

Tribunal held that ; once Fringe benefit tax (FBT) was paid, no disallowance could be made on account of personal expenditure; thus, travelling expenditure was to be allowed. (AY.2007-08)

Second Leasing (P.) Ltd. v. ACIT (2018) 171 ITD 508 / 171 DTR 97 / 196 TTJ 117 (Delhi) (Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Depreciation – One time consolidated fee paid to holding company – Held to be capital in nature – Depreciation is allowable. [S. 32(1)(ii)] 692

Dismissing the appeal of the assessee the Tribunal held that, onetime consolidated fees paid to its holding company, GRM, for use of trademark is held to be capital in nature,an enduring benefit and was applicable till assessee ceased to be subsidiary of GRM however one time consolidated amount being in nature of intangible asset, depreciation is allowable. (AY. 2010-11)

GMR Airport Developers Ltd. v. ITO (2018) 171 ITD 595 (Hyd)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Annual licence fee payable on the basis of turnover achieved is held to be allowable as revenue expenditure. 693

Allowing the appeal of the assessee the Tribunal held that; annual licence fee payable on the basis of turnover achieved is held to be allowable as revenue expenditure. (AY. 2010-11)

GMR Airport Developers Ltd. v. ITO (2018) 171 ITD 595 (Hyd.)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Trade mark expenses for use allowable as revenue expenses. 694

Where payment was made by assessee for 'use of' trademarks and not for acquiring trademarks as an owner, and ownership in trademarks would remain intellectual property of licensor, said payment was to be treated as a revenue expenditure (AY. 2007-08)

GKN Driveline (India) Ltd. v. Dy. CIT (2018) 62 ITR 784 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Renovation of leased office premises is revenue expenses allowable. [S. 31] 695

Expenditure incurred on renovation of leased office premises is revenue expenses allowable u/s 37 of the Act. (AY. 2011-2012)

Genesisi Datacomp P. Ltd. v. ITO (2018) 63 ITR 699 (Mum.)(Trib.)

696 **S. 37(1) : Business expenditure – Discount and commission – In absence of full details, entire payment cannot be allowed – cash discount of 1% to keep the buyer in good humor allowable in the interest of justice.**
The assessee had claimed deception under the head commission and discount. AO disallowed the same on the ground that sales were already offered net of discount and therefore, there cannot be any further allowance in absence of evidence of any further discount. Before the Tribunal, assessee argued that the issue was covered by earlier year's Tribunal order. Held, the basis of earlier years order was different and therefore, that judgment would not apply. Further, in so far as additional discount is concerned, the claim of the assessee that the same was allowed to keep the buyers in good humour merits acceptance, however, in absence of full details, cash discount at 1% to be allowed. (AY. 2013-14)
Purnima Sahoo (Smt.) v. ITO (2018) 62 ITR 54 (Cuttack)(Trib.)

697 **S. 37(1) : Business expenditure – Corporate social responsibility – Peripheral development expenses and community development expenses allowable.**
Assessee obligated to spend certain sums towards corporate social responsibility. There is obligation on the part of the assessee to give support to the people displaced due to setting up of industry on their lands. Such community development expenses and peripheral development expenses are allowable deduction. (AY. 2004-05, 2008-09, 2011-12)
Rashtriya Ispat Nigam Ltd. v. Jt. CIT (OSD) (2018) 62 ITR 696 (Vishakha)(Trib.)

698 **S. 37(1) : Business expenditure – Accrued or contingent liability – provision towards expenditure for closure of mines being merely a statutory provision relating to operation of mine, no deduction for proportionate expenditure to the period for which mines operated allowable.**
Provision towards expenditure for closure of mines being merely a statutory provision relating to operation of mine, no deduction for proportionate expenditure to the period for which mines operated allowable. (AY. 2004-05, 2008-09, 2011-12)
Rashtriya Ispat Nigam Ltd. v. Jt. CIT (OSD) (2018) 62 ITR 696 (Vishakha)(Trib.)

699 **S. 37(1) : Business expenditure – Accrued or contingent liability – provision for post-retirement medical benefits, future encashment leave and long service award based on actuarial valuation is allowable.**
Provision for post-retirement medical benefits, future encashment leave and long service award based on actuarial valuation is allowable. (AY.2004-05, 2008-09, 2011-12)
Rashtriya Ispat Nigam Ltd. v. Jt. CIT (OSD) (2018) 62 ITR 696 (Vishakha)(Trib.)

700 **S. 37(1) : Business expenditure – Subsidiary company – Gratuity and leave wages of employees-Deduction cannot be allowed in two entities-Matter remanded to the AO.**
Tribunal held that statutory, deduction cannot be allowed in two entities. Matter remanded to the AO. (AY. 2007-2008)
Oricon Enterprises Ltd. v. ACIT (2018) 171 ITD 231 / 67 ITR 433 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Trust – No authorization in trust deed to pay remuneration – Remuneration paid by trust to its employees is not allowable. 701

Tribunal held that since there was no authorization in trust deed about the payment of remuneration, so remunerations paid by trust to employees was not sanctioned in trust deed, same was not correct as per law, hence is same is not allowed for deduction. (AY. 2007-08, 2009-10)

Shalom Charitable Ministries of India v. ACIT (2018) 171 ITD 338 / 195 TTJ 340 (Cochin) (Trib.)

S. 37(1) : Business expenditure – Self made vouchers – Disallowance of 20% amount towards self made vouchers is justified. 702

The Tribunal held that in a normal trade practice, it is not possible to prove 100 per cent bills and receipts from recipients and there is chance of making payments by way of self-made vouchers, and chance of inflating expenditure by way of self-made vouchers, therefore, 20 per cent disallowance of self made voucher is justified. (AY. 2007-08)

Shalom Charitable Ministries of India v. ACIT (2018) 171 ITD 338 / 195 TTJ 340 (Cochin) (Trib.)

S. 37(1) : Business expenditure – AO disallowed expenses on account of business promotion and vehicle maintenance on estimate basis without bringing any cogent material on record for disallowing expenses. 703

On appeal before the Tribunal, it was held that the department could not controvert the finding of the CIT(A) and AO failed to bring any documentary evidence on record to establish that business promotion expenses were incurred for personal use. In result the revenue appeal was dismissed. (ITA No. 5254/Del/2014) (AY. 2011-12)

ACIT v. Mohinder Kumar Jain (2017) 62 ITR 176 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Compelled to make cash payments to labourers at work sites in remote areas, genuineness of expenditure could not be doubted. However, where no proper documentation or bills or vouchers were maintained, disallowance was to be restricted to 10 percent of the total claim. 704

On appeal, the Tribunal observed that the AO did not doubt the genuineness of the expense but disallowed the claim for want of original bills and vouchers. Further, it observed that the payments were made to labourers at work sites mainly in the remote areas. The Tribunal also observed that, there was increase in turnover and investments in fixed assets of the company, whereas the wage expenses were one third of the wage expenses of the earlier assessment years. On the aforesaid basis, the Tribunal concluded that the expenses were incurred in the course of business operation of the assessee. However, as proper bills and vouchers were not maintained, the disallowance was restricted to 10 per cent of the claim. (AY. 2012-13)

Anil Contractors P. Ltd. v. DCIT (2018) 63 ITR 4(SN) (Cuttack)(Trib.)

705 **S. 37(1) : Business expenditure – Dinner expenses and gift expenses were incurred while holding meetings in hotel with senior doctors, for upgradation of skills and discussion of latest techniques and methods, such expenses were to be allowed as business expenditure.**
On appeal, the Tribunal held that these expenses were incurred for updation of knowledge and for the profession of the assessee. The gift items were presented to doctors in lieu of their professional fees and likewise the dinner expenses were supported by adequate bills and vouchers and therefore, these were to be allowed as a business expenditure. (AY. 2010-11)
Amit Ghose v. DCIT (2018) 63 ITR 44 (SN)(Kol.)(Trib.)

706 **S. 37(1) : Business expenditure – Advertisement and publicity expenses were incurred for dissemination of knowledge for public at large, such expenses were to be allowed as business expenditure.**
On appeal, the Tribunal held that the expenses were incurred for the general welfare of the public at large. Further, it held that the guidelines issued by the Indian Medical Council were for the purpose of compliance with professional ethics. Such guidelines could not be equated to any legal provision having a statutory force and thus the expense was to be allowed as a business expenditure. (AY. 2010-11)
Amit Ghose v. DCIT (2018) 63 ITR 44 (SN) (Kol.)(Trib.)

707 **S. 37(1) : Business expenditure – Growing tea – The expenditure relating to the maintenance of cattle owned by the employees was considered as expenditure of tea operation-The recoveries from employees against such expenditure were disclosed under other income.-Since expenditure incurred on cattle keepers was purely labour welfare measure which was approved by Plantation Labour Committee, expenditure incurred was directly relatable to tea business of assessee, therefore, same should be treated as expenditure under Rule 8 of the I.T. Rules. [R.8]**
Tribunal held that, the expenditure relating to the maintenance of cattle owned by the employees was considered as expenditure of tea operation. The recoveries from employees against such expenditure were disclosed under other income. Since expenditure incurred on cattle keepers was purely labour welfare measure which was approved by Plantation Labour Committee, expenditure incurred was directly relatable to tea business of assessee, therefore, same should be treated as expenditure under Rule 8 of the I.T. Rules. (AY. 2010-11, 2011-12 2012-13)
Kannan Devan Hills Plantations Co. Pvt. Ltd. v. ACIT (2018) 62 ITR 451 (Cochin)(Trib.)

708 **S. 37(1) : Business expenditure – Capital or revenue – Amortization of premium paid on leasehold land – Premium in nature of rent – Allowable as revenue expenditure.**
Tribunal held that the assessee had entered into an agreement with various parties for the purchase of leasehold lands at various places, which were to be used for its business operations, for establishing retail outlets, liquid petroleum gas bottling plants and refineries. The leasehold premium amortised by the assessee was in the nature of compensation paid to the landlords, in addition to the rent. Since the leasehold

premium amortised by the assessee was in the nature of rent, it was to be allowed as a revenue expenditure in the hands of the assessee. (AY. 2006-07, 2007-08)
Bharat Petroleum Corporation Ltd. v. ACIT (OSD) (2018) 63 ITR 244 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Collaboration agreement for expansion of existing business – Project abandoned without acquiring any new asset for enduring benefit – Expenses allowable as revenue expenditure. 709
Tribunal held that, when project is abandoned without acquiring any new asset for enduring benefit. Expenses is allowable as revenue expenditure. (AY. 2009 10 to 2013-14)
Manipal Health Systems P. Ltd. v. ACIT (2018) 65 ITR 51 (SN)(Bang.)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Expenditure incurred on renovation of leasehold building is revenue expenditure. 710
Held that the expenditure incurred by the assessee on renovation of leasehold building was revenue expenditure and not a capital expenditure though it was of enduring benefit or advantage unless at the end of the term of lease, the items on which expenditure was spent could be retrieved by the assessee. (AY. 2010-11)
Joy Alukkas (India) Ltd. v. ACIT (2018) 65 ITR 409 (Cochin)(Trib.)

S. 37(1) : Business Expenditure – Bogus purchases – Disallowance of 15% of unverifiable purchases is held to be justified. 711
Tribunal held that, disallowance of 15% of unverifiable purchases is held to be justified (AY. 2012-13)
ACIT v. Sharma East India Hospitals And Medical Research Ltd. (2018) 65 ITR 46 (SN) (Jaipur)(Trib.)

S. 37(1) : Business expenditure – Settlement charges paid to SEBI without admitting or denying guilt and was paid just to settle dispute, said settlement charges/consent fee could not be equated with penalty for violation of law under Explanation 1 to S. 37(1) of the Act and is allowable as business expenditure. [Securities and Exchange Board of India Act, 1992, S. 11, 1B and of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 R.11] 712
Dismissing the appeal of the revenue the Tribunal held that ; payment to SEBI without admitting or denying guilt and was paid just to settle dispute, said settlement charges/ consent fee could not be equated with penalty for violation of law under Explanation 1 to S. 37(1) of the Act and is allowable as business expenditure. Referred ITO v. Reliance Shares & Stock Brokers (P.) Ltd. (2015) 67 SOT 73 (Mum.)(Trib.). (AY. 2011-12)
DCIT v. Anil Dhirajlal Ambani (2018) 171 ITD 144 / 66 ITR 607 / 172 DTR 17 / 195 TTJ 867 (Mum.)(Trib.)

713 **S. 37(1) : Business expenditure – Warranty provision – Following consistent method in creating similar warranty provision year after year, no *ad hoc* addition could be made. Stores and spares expenses pertained to normal repairs and maintenance of manufacturing facility and salary, wages and staff welfare were related to normal business expenditure, no ad hoc disallowance could be made. [S. 145]**

Allowing the appeal of the assessee, the Tribunal held that ; since assessee had been following consistent method in creating similar warranty provision in other assessment years as well and no disallowance was made at revenue's behest, assessee's claim of warranty provision being computed on scientific basis, was to be accepted. Tribunal also held that stores and spares expenses pertained to normal repairs and maintenance of manufacturing facility and salary, wages and staff welfare were related to normal business expenditure, no *ad hoc* disallowance could be made. (AY. 2000-01, 2001-02)

Hitachi Home & Life Solutions (I) Ltd. v. ACIT (2018) 171 ITD 65 (Ahd.)(Trib.)

714 **S. 37(1) : Business expenditure – Warranty provision – Services by way of repair and replacement for a pre-defined period, said provision was eligible for deduction. [S. 145]**

Tribunal held that where assessee, engaged in providing marketing, technical support installation and Commissioning services to telecommunication sector, made a provision for warranty services by way of repair and replacement for a pre-defined period, said provision was eligible for deduction. (AY. 2008-09)

Huawei Telecommunication (India) Company (P.) Ltd. v. ACIT (2018) 171 ITD 19 (Delhi) (Trib.)

715 **S. 37(1) : Business expenditure – Notional addition – Sale at discounted price to retailers was to increase volume of sales through e-commerce – Where a trader transfers his goods to another trader at a price less than market price and transaction is a bona fide one, taxing authority cannot take into account market price of those goods, ignoring real price fetched to ascertain profit from transaction – Revenue cannot bring to tax hypothetical income accordingly the addition was deleted. [S. 2(24), 4, 28(1), 40(A)(2)(a), 145]**

Assessee company is engaged in business of wholesale trader/distributor of books, mobiles, computers and related accessories. Assessee sold the goods to retailers at a price less than their cost price to increase volume of sales through e-commerce. AO rejected the explanation of assessee and made addition on notional basis which was confirmed by the CIT(A). On appeal allowing the appeal of the assessee the Tribunal held that when a trader transfers his goods to another trader at a price less than market price and transaction is a bona fide one, taxing authority cannot take into account market price of those goods, ignoring real price fetched to ascertain profit from transaction. The Tribunal also held that even otherwise, since assessee had not incurred any expenditure to acquire marketing intangibles or for creation of goodwill, impugned order passed by Assessing Officer was not sustainable. Revenue cannot bring to tax hypothetical income accordingly the addition was deleted. (Referred, *CIT v. Shoorji Vallabhdas & Co (1962) 46 ITR 144 (SC) CIT v. Calcutta Discount Ltd. (1973) 91 ITR*

8(SC) CIT v. A. Raman & Co. (1968) 67 ITR 11 (SC) and A. Khader Basha v. ACIT (2015) 232 Taxman 434(Karn) (HC)). (AY.2015-16)
Flipkart India (P.) Ltd. v. ACIT (2018) 170 ITD 751 /166 DTR 305 / 64 ITR 358 / 193 TTJ 685 (Bang.)(Trib.)

S. 37(1) : Business expenditure – Lease hold premises – Repairs and maintenance – Order of CIT(A) lacked quasi – Judicial investigation and analysis fair to both the assessee as well as the department – Repair and maintenance expenses and business promotion expenses-Matter was remanded to CIT(A) for fresh adjudication. 716
Tribunal held that the order of CIT(A) lacked quasi-Judicial investigation and analysis fair to both the assessee as well as the department. Accordingly the matter was remanded to CIT(A) for fresh adjudication and to consider whether Repair and maintenance expenses and business promotion expenses allowable as deduction by bringing out facts and verification. (AY. 2011-12)
Dy CIT v. Amar Brothers Global P. Ltd. (2018) 64 ITR 69 (SN)(Luck.)(Trib.)

S. 37(1) : Business expenditure – Keyman insurance policy in the name of directors is held to be allowable as business expenditure. 717
Allowing the appeal of the assessee the Tribunal held that ; Keyman insurance policy in the name of directors is held to be allowable as business expenditure though it is referred as life insurance policies. (AY. 2011-12, 2012-13)
Arcadia Share & Stock Brokers (P.) Ltd. v. ACIT (2018) 170 ITD 616 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Right to use technical know is held to be revenue expenditure. 718
Allowing the appeal of the assessee the Tribunal held that the ; assessee acquired merely right to draw upon technical knowledge of foreign companies for a limited purpose of carrying on its business, and that foreign companies did not part with any of their assets absolutely, therefore the,assessee had not, acquired any asset or advantage of an enduring nature for benefit of its business and that payments were, revenue in nature. (AY. 2005-06 – 2006-07)
Moser Baer India Ltd. v. DCIT (2018) 170 ITD 522 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Capital revenue – Opening of new stores /outlets expenditure on salaries, machinery and other repairs, travelling conveyance professional fees, electricity expenses telephone expenses etc is held to be revenue expenditure. 719
Dismissing the appeal of the revenue the Tribunal held that, expenses incurred on opening of new stores /outlets expenditure on salaries, machinery and other repairs, travelling conveyance professional fees, electricity expenses telephone expenses etc is held to be revenue expenditure. (AY. 2010-11)
ACIT v. Reliance Digital Retail Ltd. (2018) 166 DTR 194 / 194 TTJ 113 (Mum.)(Trib.)
ACIT v. Reliance Fresh Reality Ltd. (2018) 166 DTR 194 / 194 TTJ 113 (Mum.)(Trib.)
ACIT v. Reliance Hyper Reality Ltd. (2018) 166 DTR 194 / 194 TTJ 113 (Mum.)(Trib.)

720 **S. 37(1) : Business expenditure – Interest under Jharkhand VAT Act, 2005 being compensatory nature is allowable as deduction. Penalties being not compensatory nature is held to be not allowable [Jharkhand VAT Act, 2005 S. 30(1), 30(3), 30(4)(d), 63(3)]**

Interest paid under S. 30(1) of Jharkhand VAT Act 2005 being compensatory in nature, is allowable deduction as business expenditure Penalties imposed is not allowable deduction. (AY. 2010-11)

Bokaro Power Supply Co. Ltd. v. Dy. CIT (2018) 191 TTJ 22 / 163 DTR 259 (Delhi)(Trib.)

721 **S. 37(1) : Business expenditure – Amortisation of expenses – Development of roads and highways in build operate and transfer agreements – Benefit of circular cannot be thrust upon the assessee if it has not claimed.**

Tribunal held that the assessee neither in the preceding assessment years nor in the instant assessment year had claimed it as deferred revenue expenditure hence there was no scope to examine whether the expenditure could have been amortised over the concession period in terms of CBDT circular No. 9 of 2014 dt. 23-04 2014 (2014) 364 ITR 1 (St). More over the CBDT Circular was for the benefit of the assessee. Therefore,the benefit in terms of Circular could be granted, provided the assessee makes a claim in terms of it. The benefit of the Circular could not be thrust upon the assessee if it was not claimed. (AY. 2011-12)

ACIT v. Progressive Constructions Ltd. (2018) 161 DTR 289 / 63 ITR 516 / 191 TTJ 549 (SB) (Hyd.)(Trib.)

722 **S. 37(1) : Business expenditure – Legal expenses – Merely because the payment was made cheque and TDS was deducted expenses cannot be allowed, in the absence of any documentary evidence connecting expenditure incurred for business auxiliary service with business of assessee.**

Allowing the appeal of the revenue the Tribunal held that, merely because the payment was made cheque and TDS was deducted expenses cannot be allowed, in the absence of any documentary evidence connecting expenditure incurred for business auxiliary service with business of assessee. (AY. 2011-12)

DCIT v. Anjali Hardikar (Smt.) (2018) 170 ITD 398 (Pune)(Trib.)

723 **S. 37(1) : Business expenditure – Foreign tour expenses of Research manager of export is held to be allowable as the turnover has increased in succeeding years.**

Dismissing the appeal of the revenue the Tribunal held that ; Foreign tour expenses of Research manager of export is held to be allowable as the turnover has increased in succeeding years (AY. 2011-12)

DCIT v. Laboratories Griffon (P.) Ltd. (2018) 170 ITD 387 / 65 ITR 317 / 193 TTJ 855 (Kol.) (Trib.)

S. 37(1) : Business expenditure – Distribution of gift articles – Accommodation entries – Bogus purchases – Disallowance was restricted to 30 % of the claim. 724

Tribunal held that, assessee had produced bills and invoices for purchase of Dinner set and had made payment through banking channel but assessee had failed to give list of recipients of gift material or confirmation,therefore the assessee's claim should be restricted to 30 per cent of its claim and assessee would get partial relief. (AY. 2011-12)

DCIT v. Laboratories Griffon (P.) Ltd. (2018) 170 ITD 387 / 65 ITR 317 / 193 TTJ 855 / (2019) 178 DTR 355 (Kol.)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Payment of spectrum charges to Department of Telecommunications on quarterly basis is held to be revenue expenditure. [S. 35BB] 725

Tribunal held that payment of spectrum charges was not meant for obtaining a license to use spectrum, but for actual use of it on regular basis which is allowable as revenue expenditure. (AY. 2009-10)

DCIT v. Vodafone Essar Digilink Ltd. (2018) 170 ITD 430 / 193 TTJ 150 / 166 DTR 233 / 64 ITR 392 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Professional fees paid to retired employees of assessee who were expert in this field is held to be allowable as deduction. 726

Dismissing the appeal of the revenue the Tribunal held that ; professional fees paid to retired employees of assessee who were expert in this field is held to be allowable as deduction. (AY. 2011-12)

DCIT v. Laboratories Griffon (P.) Ltd. (2018) 170 ITD 387 / 65 ITR 317 / 193 TTJ 855 / (2019) 178 DTR 355 (Kol.)(Trib.)

S. 37(1) : Business expenditure – Circular No. 5/2012 dated 01-8-2012 (2012) 346 ITR 95(St) prohibiting pharmaceutical companies from giving any monetary benefits to doctors, was applicable from assessment year 2013-14 onwards – As the addition was deleted consequently penalty levied was also deleted. [S. 271(1)(c)] 727

The assessee, a pharmaceutical company paid certain commission to doctors. The AO relying on Circular No. 5/2012 dated 01-08-2012 (2012) 346 ITR 95(St). which prohibits pharmaceutical companies from giving any monetary benefits to doctors disallowed said payments of commission. The AO also passed a penalty order under section 271(1)(c) in respect of said disallowance. On further appeal, it was noted that Co-ordinate Bench of Tribunal in a case involving similar issue had held that Circular dated 01-08-2012 was applicable from assessment year 2013-14 onwards and, hence, disallowance made in relevant year on basis of said circular was not justified. Thus, in view of order passed by Co-ordinate Bench, impugned disallowance made by Assessing Officer was to be deleted and consequently penalty levied under S. 271(1)(c) was also deleted. (AY. 2011-12).

ITO v. Sunflower Pharmacy (2018) 62 ITR 275 (Ahd.)(Trib.)

728 **S. 37(1) : Business expenditure – Bogus purchases – The assessee was doing major works for Govt. Departments and the said Departments also confirmed the authenticity of work and merely because the assessee could not produce the parties, purchases could be held as non-genuine. Disallowance was confirmed of only ₹ 5 lakhs. [S. 131, 145]**

Tribunal held that the assessee had done major works for the Government departments and they confirmed the authenticity of the work. The assessee continuously declared a net profit in the range of 1.71% to 4. 65% and the disallowance made by the AO if accepted would increase the net profit to the tune of 25. 15% which was abnormal. The suppliers of these goods had no permanent place for carrying on the business. There were no defects in the books of account of the assessee. The disallowance confirmed by the CIT(A) of ₹ 15 lakhs was to be reduced to ₹ 5 lakhs. (AY. 2011-12)

IHR Associates v. Dy. CIT (2018) 61 ITR 70 (Chd.)(Trib.)

729 **S. 37(1) : Business expenditure – Advertisement expenditure on project is held to be allowable though no income was offered during the year. [S. 145]**

Advertisement expenditure on project is held to be allowable though no income was offered during the year. (AY. 2013-2014)

Dy. CIT v. Ramkay Wavoo Developers P. Ltd. (2018) 62 ITR 376 (Chennai)(Trib.)

730 **S. 37(1) : Business expenditure – Freebies to Doctors – Advertisement and sales promotion expenses incurred by the Pharmaceutical company cannot be disallowed, on the basis circulars by Medical Council of India.**

The Circular issued by the CBDT enlarging the scope of disallowance to the pharmaceutical companies was without any enabling notification or Circular of the Medical Council of India. Therefore a pharmaceutical company is outside the scope of the circular by the Medical Council of India or the CBDT, therefore expenditure on advertisement and sale promotion is allowable as business expenditure. (AY. 2010-11).

Emcure Pharmaceuticals Ltd. v. Dy. CIT (2018) 62 ITR 744 (Pune)(Trib.)

731 **S. 37(1) : Business expenditure – Capital or revenue – Debenture whether convertible or non convertible are in nature of loan at the time of issuance therefore expenditure incurred are allowable as business expenditure.**

Expenditure incurred on issue of foreign currency convertible bonds debentures at the time of issuance, expenditure are allowable as revenue expenditure. (AY. 2006-07 to 2008-09)

Dy. CIT v. Mcnally Bharat Engineering Co. Ltd. (2018) 191 TTJ 822 (Kol.)(Trib.)

732 **S. 37(1) : Business expenditure – Damages – Expenses on repair of goods returned back on account of low quality was held to be allowable as business expenditure.**

Dismissing the appeal of the revenue the Tribunal held that; Expenses on repair of goods returned back on account of low quality was held to be allowable as business expenditure. (AY. 2008-09 to 2010-11)

EPCOS India (P.) Ltd. v. ITO (2018) 169 ITD 541 / 65 ITR 20 (SN)(Kol.)(Trib.)

S. 37(1) : Business expenditure – Entry tax – e-challan containing all relevant details including name of assessee, impugned disallowance was to be deleted, matter was set aside for verification. 733

Tribunal held that the assessee had brought on record e-challan containing all relevant details including name of assessee, accordingly the matter was remanded for verification and allow. (AY. 2014-15)

ACIT v. Safe Decore (P.) Ltd. (2018) 169 ITD 328 / 165 DTR 339 / 193 TTJ 898 (Jaipur) (Trib.)

S. 37(1) : Business expenditure – Corporate entity – Administrative expenditure to maintain status of the company, is held to be allowable though the manufacturing activity of fragrance and flavours was discontinued. [S. 57(iii)] 734

Allowing the appeal of the assessee, the Tribunal held that, Administrative expenditure to maintain the status of the company and for said purposes it was necessary to maintain clerical staff and secretary or accountant and incur incidental expensed is held to be allowable though the manufacturing activity of fragrance and flavours was discontinued. Tribunal also held that so long as the company is in operation and its name is not struck off from Registrar of Companies the administrative expenses will be allowable as deduction. (Referred, *CIT v. Ganga Properties Ltd. (1993) 199 ITR 94 (Cal) (HC))* (AY. 2008-09, 2009-10)

Sai Fragrance & Flavours (P.) Ltd. v. ACIT (2018) 169 ITD 235 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Bank – Amortisation of premium paid for purchase of securities was to be allowed as deduction. 735

Allowing the appeal of the assessee, the Tribunal held that, Amortisation of premium paid for purchase of securities was to be allowed as deduction. (AY. 2009-10)

Allahabad Bank v. DCIT (2018) 169 ITD 189 (Kol.)(Trib.)

S. 37(1) : Business expenditure – Advertisement, Marketing and business promotion expenses (AMP) by pharmaceutical company for promoting sale and brand was held to be allowable business expenditure. Revision was held to be not valid. [S. 263] 736

Allowing the appeal of the assessee the Tribunal held that, Advertisement, Marketing and business promotion expenses (AMP) by pharmaceutical company for promoting sale and brand, where through conferences and seminars, doctors were updated about latest developments in medical field was held to be allowable business expenditure. Revision was held to be not valid. (AY. 2011-12)

Solvay Pharma India Ltd. v. PCIT (2018) 169 ITD 13 / 192 TTJ 394 / 163 DTR 249 / 62 ITR 643 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Development rights – Payment to its shareholders for withdrawal of winding up petition against company in order to clear title of property is held to be allowable as business expenditure. 737

Dismissing the appeal of the revenue the Tribunal held that; Payment to its shareholders for withdrawal of winding up petition against company in order to clear title of property

is held to be allowable as business expenditure as the payment was made to protect business interest and to safe guard from losses. (AY. 2008-09)
DCIT v. Cowtown Land Development (P.) Ltd. (2018) 168 ITD 705 (Mum.)(Trib.)

738 **S. 37(1) : Business expenditure – Expenses to keep its status of the Company active was held to be allowable as business expenditure as business loss. [S. 28(i)]**
Allowing the appeal of the assessee the Tribunal held that, expenses to keep its status of the Company active was held to be allowable as business expenditure and as business loss. (AY. 2012-13)
Kesha Appliances Pvt. Ltd v. ITO (2018) 63 ITR 294 (Delhi)(Trib.)

739 **S. 37(1) : Business expenditure – Commission agents – Confirmation and tax was deducted at source – Disallowance on the basis of presumption was held to be not valid.**
Dismissing the appeal of the revenue the Tribunal held that; The assessee had discharged its onus by filing all possible details including confirmations and certificates of tax deduction at source and successfully established that the genuine expenditure had been expended for the business purposes. On the other hand, the Assessing Officer could not gather the positive evidence for the Department and had taken a decision based on presumptions and not on the facts on record. It was not the case of the Assessing Officer that the commission had been paid to bogus parties which had come indirectly to the assessee through cash. In the absence of any proof the Assessing Officer should not have given such finding. (AY. 2009-10)
ACIT v. Kiwifx Solutions (2018) 61 ITR 780 (Ahd.)(Trib.)

740 **S. 37(1) : Business expenditure – Capital or revenue – Annual lease premium paid for acquiring mining rights on a land was capital expenditure.**
Allowing the appeal of the revenue, the Tribunal held that; Annual lease premium paid for acquiring mining rights on a land was capital expenditure. Tribunal also held that if the payment is capital in nature, expenditure cannot be allowed on staggered basis. Even for the purpose of spreading over period of lease, it is essential that the expenditure should be in the nature of revenue expenditure. (AY. 2008-09 to 2012-13)
ACIT v. K. R. Kaviraj (2018) 168 ITD 491 (Bang.)(Trib.)

741 **S. 37(1) : Business expenditure – Premium paid for Keyman Insurance was allowable in year in which premium was paid.**
Allowing the appeal of the revenue the Tribunal held that, Premium paid for Keyman Insurance was allowable in year in which premium was paid. (AY. 2008-09 to 2012-13)
ACIT v. K. R. Kaviraj (2018) 168 ITD 491 (Bang.)(Trib.)

742 **S. 37(1) : Business expenditure – Discount on shares allotted by assessee to its employees under ESOP scheme out of its share capital is an allowable deduction.**
Dismissing the appeal of the revenue the Tribunal held that; Discount on shares allotted by assessee to its employees under ESOP scheme out of its share capital is an allowable

deduction. Followed *Biocon Ltd. v. Dy. CIT (LTU)(2013) 144 ITD 21 (Bang.) (SB) (Trib.) (AY. 2009-10)*
DCIT v. Kotak Mahindra Bank Ltd. (2018) 168 ITD 529 (Mum.)(Trib.)

S. 37(1) : Business expenditure – Contribution to staff welfare fund was held to be allowable expenditure. 743
Dismissing the appeal of the revenue the Tribunal held that; Contribution to staff welfare fund was held to be allowable expenditure. (AY. 2004-05, 2005-06, 2008-09)
ITO v. West Bengal Tourism Development Corporation Ltd. (2018) 61 ITR 728 (Kol.)(Trib.)

S. 37(1) : Business expenditure – Commission crystallised relevant year, therefore allowable as deduction. 744
Dismissing the appeal of the revenue the Tribunal held that, commission payable to managing director in respect of profit for earlier year determined during the year was held to be allowable as deduction. (AY. 2011-12)
DCIT v. Associated Pigments Ltd. (2018) 61 ITR 553 (Kol.)(Trib.)

S. 37(1) : Business expenditure – Advertising company – Purchase of Angles and channels was held to be allowable as deduction. 745
Tribunal held that, Purchase of Angles and channels was held to be allowable as deduction. (AY. 2010-11)
DCIT v. Vantage Advertising P. LTD. (2018) 61 ITR 564 (Kol.)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Development expenditure – Depreciation was held to be allowable at 10% and balance was held to be disallowable. [S. 32] 746
Tribunal held that on development expenditure 10% depreciation was held to be allowable and balance was held to be not allowable. (AY. 2008-09)
Mahanadi Coalfields Ltd. v. DCIT (2018) 61 ITR 585 (Cuttack)(Trib.)

S. 37(1) : Business expenditure – Subscriptions in the nature of annual membership was held to be allowable. 747
Subscriptions in the nature of annual membership was held to be allowable. (AY. 2008-09)
Mahanadi Coalfields Ltd. v. DCIT (2018) 61 ITR 585 (Cuttack)(Trib.)

S. 37(1) : Business expenditure – Interest for delay in making payment of Service tax and Tax deducted at source being compensatory in nature and not penalty in nature was held to be allowable deduction. 748
Dismissing the appeal of the revenue, the Tribunal held that; Interest for delay in making payment of Service tax and Tax deducted at source being compensatory in nature and not in the nature of penalty hence allowable deduction. (AY. 2010-11)
DCIT v. Narayani Ispat Pvt. Ltd. (2018) 61 ITR 371 (Kol.)(Trib.)

749 **S. 37(1) : Business expenditure – Freight expenses cannot be disallowed on the ground that no subsidiary ledger was maintained.**
Dismissing the appeal of the revenue the Tribunal held that; Freight expenses cannot be disallowed on the ground that no subsidiary ledger was maintained. (AY. 2010-11)
DCIT v. Narayani Ispat Pvt. Ltd. (2018) 61 ITR 371 (Kol.)(Trib.)

750 **S. 37(1) : Business expenditure – Goods destroyed by order of Court order in terms of provisions of prevention of Food Adulteration Act cannot be allowable as business expenditure in view of Explanation to S. 37(1) [Prevention of Food Adulteration Act, 1954]**
Allowing the appeal of the revenue, the Tribunal held that; amount spent by assessee in respect of manufacturing goods which were ordered to be destroyed by court in terms of provisions of Prevention of Food Adulteration Act, 1954 cannot be allowed as deduction in view of applicability of Explanation to S. 37(1) of the Act. (AY. 2012-13)
ACIT v. Vishnu Packaging (2018) 168 ITD 103 / 191 TTJ 468 / 161 DTR 201 (Ahd.)(Trib.)

751 **S. 37(1) : Business expenditure – When income is assessed as from profits of business, then expenses incurred by assessee for purpose of earning such income is allowable.**
Allowing the appeal of the assessee, the Tribunal held that; when income is assessed as from profits of business, then expenses incurred by assessee for purpose of earning such income is allowable. On facts since the assessee has agreed to disallowance of 25% of expenses before the AO, balance 75% was allowed. (AY. 2011-12)
G. Chella Krishna v. (2018) 168 ITD 117 (Chennai)(Trib.)

752 **S. 37(1) : Business expenditure – Club expenses of employees was held to be allowable as business expenditure.**
The Tribunal held that the Club expenses of employees was held to be allowable as business expenditure. (AY. 2009-10)
ACIT v. Chambal Fertilisers And Chemicals Limited (2018) 61 ITR 33 (Jaipur)(Trib.)

753 **S. 37(1) : Business expenditure – Donation to trust was held to be allowable as deduction.**
Tribunal held that the donation made by the assessee to the trust for welfare of the employees was expenditure wholly and exclusively for the purpose of the assessee's business and the expenses allowable deduction.
(AY. 2009-10)
ACIT v. Chambal Fertilisers And Chemicals Limited (2018) 61 ITR 33 (Jaipur)(Trib.)

754 **S. 37(1) : Business expenditure – Reversal of excess income booked earlier year was held to be allowable as deduction.**
Tribunal held that Reversal of excess income booked earlier year was held to be allowable as deduction. (AY. 2009-10)
ACIT v. Chambal Fertilisers And Chemicals Limited (2018) 61 ITR 33 (Jaipur)(Trib.)

S. 37(1) : Business expenditure – Godown rent, travelling expenses was held to be allowable as deduction. 755

Amount crystallised during the year and travelling expenses was held to be allowable as deduction. (AY. 2009-10)

ACIT v. Chambal Fertilisers And Chemicals Limited (2018) 61 ITR 33 (Jaipur)(Trib.)

S. 37(1) : Business expenditure – Deep excavation and road work related to mining operation was held to be allowable deduction. Miscellaneous capital expenditure was held to be not allowable. 756

Tribunal held that deep excavation and road work relating to mining operation was held to be allowable as deduction. The Tribunal also held that, Miscellaneous capital expenditure was held to be not allowable. (AY. 2009-10)

ACIT v. Chambal Fertilisers And Chemicals Limited (2018) 61 ITR 33 (Jaipur)(Trib.)

S. 37(1) : Business expenditure – Adhoc disallowance was held to be not sustainable. 757

The Tribunal held that, *ad hoc* disallowance was held to be not sustainable, therefore expenses of running and maintenance of cars was held to be not disallowable unless the AO pin point specific nature of expenditure incurred was not for the purpose of business. (AY. 2009-10, 2010-11)

ACIT v. Claridges Hotels Pvt. Ltd. (2018) 61 ITR 135 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Civil contractor – Purchases – No defects was found in the books of account – No disallowance can be made. [S. 145] 758

Tribunal held that; the assessee had done major works for the Government departments and they confirmed the authenticity of the work. The assessee continuously declared a net profit in the range of 1.71 per cent to 4.65 per cent and the disallowance made by the Assessing Officer if accepted would increase the net profit to the tune of 25.15 per cent which was abnormal. The suppliers of these goods had no permanent place for carrying on the business. There were no defects in the books of account of the assessee. The disallowance confirmed by the CIT(A) of ₹ 15 lakhs was to be reduced to ₹ 5 lakhs. (AY. 2011-12)

DCIT v. IHR Associates (2018) 61 ITR 70 (Chd.)(Trib.)

S. 37(1) : Business expenditure – Bogus purchases – Civil contractor – Merely on the basis of information form sales tax department purchases cannot be disallowed without giving an opportunity of cross examination. 759

Tribunal held that, Merely on the basis of information form sales tax department purchases cannot be disallowed without giving an opportunity of cross examination when the payments were through banking channel and the quantity and quality of the material, duly certified by the engineer of the Municipal Corporation, that too subject to tax deduction at source, retention amount, etc. (AY. 2009-10)

ACIT v. Pinaki D. Panani (Smt.) (2018) 61 ITR 7 (Mum.)(Trib.)

760 **S. 37(1) : Business expenditure – Bogus purchase – Restriction of profit rate of 12.5% per cent of bogus purchases was held to be proper.**
Dismissing the appeal of the revenue the Tribunal held that; admittedly, it was a bogus purchase but the assessee had produced complete reconciliation of purchase and sales and stock tally. Even the payments were by account payee cheque to the party. Even the Assessing Officer had not doubted the consumption of material purchased and it meant that the assessee had obtained bogus bill from the party and actually purchased material from grey market at a lesser price and also to avoid value added tax payment. The CIT(A) had rightly applied the profit rate at the rate of 12.5 per cent of bogus purchases. (AY. 2009-10)
CIT v. Shekhar M. Kharote (2018) 61 ITR 182 (Mum.)(Trib.)

761 **S. 37(1) : Business expenditure – Real estate developer – Advertising and business promotion – Corporate brand identity exercise, logo design etc is allowable as deduction as it is not attributable to any particular project – Amount spent on Liaisoning work in relation to a particular project has to be capitalised to concerned project – Method of accounting – AS-7 or AS 9 or ICAI guidance note on accounting for real estate transactions, 2006 cannot be said to be either cash system of accounting or mercantile system of accounting, only up to AY. 2012-13. [S. 145]**
Tribunal held that assessee being a real estate developer amount spent on advertising and business promotion, corporate brand identity exercise, logo design etc is allowable as deduction as it is not attributable to any particular project. Amount spent on Liaisoning work in relation to a particular project has to be capitalised to concerned project. Tribunal also held that as regards method of accounting is concerned AS-7 or AS 9 or ICAI guidance note on accounting for real estate transactions, 2006 cannot be said to be either cash system of accounting or mercantile system of accounting, only up to AY. 2012-13, because S. 145 of the Act has undergone some statutory amendments. (AY. 2012-13)
Indiabuild Villas Development (P.) Ltd. v. DCIT (2018) 196 TTJ 386 / (2019) 174 ITD 497/ 175 DTR 226 (Bang.)(Trib.)

762 **S. 37(1) : Business expenditure – Claim for gifts given to distributors/dealers for promotion where in assessee failed to give list of recipients to be disallowed to the extent of 30%.**
Tribunal held that since the assessee had failed to give list of recipients of gift material or confirmation, directed to disallow 30% of the claim of the assessee. (AY. 2011-12)
Laboratories Griffon (P) Ltd (2018) 170 ITD 387 / 65 ITR 317 / 193 TTJ 855 (2019) 178 DTR 355 (Kol.)(Trib.)

763 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Operated outside India – Not liable to deduct tax at source. [S. 195]**
Dismissing the appeal of the revenue the Court held that; there was no factual determination that the non-resident agent who operated outside India had any income which arose in India. Without these foundational facts, the question of applying section 195 of the Act would not arise. (AY.2001-02)
CIT v. Maruti Suzuki India Ltd. (2018) 407 ITR 165 (Delhi)(HC)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Fes for technical services – Service of market survey rendered by foreign agents is only incidental to function of commission agent, it cannot be regarded as FTS – Not liable to deduct tax at source. [S. 9(1)(vii), 40(a)(ia), 195] 764

Allowing the appeal of the assessee the Court held that service of market survey rendered by foreign agents is only incidental to function of commission agent, it cannot be regarded as FTS. Accordingly the assessee is not liable to deduct tax at source. (AY. 2009-10)

Evolv Clothing Co. (P.) Ltd. v. ACIT (2018) 407 ITR 72 / 257 Taxman 171 / 168 DTR 1 (Mad) (HC)

Editorial : Order in ACIT v. Evolv Clothing Co. (P.) Ltd (2013) 142 ITD 618 (Chennai) (Trib.) is reversed

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – No business connection in India – Reimbursement of expenses – Matter remanded – DTAA-India-Bangladesh-Nepal. 765

Tribunal held that DRP has not considered the assessee's claim for non-deduction of tax at source with regard to payments made to non-residents in the light of the respective DTAAs and also assessee failed to furnish the copies of the Agreements with the payees. Accordingly the disallowance made u/s 40 (a) was set aside. (AY. 2010-11)

Philip Morris Services India S. A. v. ACIT (2018) 172 DTR 192 / 66 ITR 97 / (2019) 197 TTJ 128 (Delhi)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Re-insurance Premium – Liable to deduct tax at source – Disallowance is held to be justified. 766

Tribunal held that unless a branch was established in India, non-resident insurance company could not do any business after 2014. Thus, profit of non-resident re-insurance company was taxable in India and hence, assessee was liable to deduct tax u/s 40(a)(i). AO rightly disallowed re-insurance premium. (AY. 2003-04 to 2010-11)

ACIT v. United India Insurance Co. Ltd. (2018) 67 ITR 191 / 195 TTJ 65 (UO) (Chennai) (Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Reimbursement of expenses – Not liable to deduct tax at sources. 767

Tribunal held that reimbursement of expenditure incurred by non-resident surveyors who were engaged by assessee to estimate and quantify damages occurred outside country. Entire services of surveyors were rendered outside country, therefore, income of surveyors was not liable for taxation in India in respect of service rendered to assessee. Not liable to deduct tax at source. (AY. 2003-04 to 2010-11)

ACIT v. United India Insurance Co. Ltd. (2018) 67 ITR 191 / 195 TTJ 65 (UO) (Chennai) (Trib.)

768 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Re-insurance Premium – Profit of non-resident re-insurance company was taxable in India – liable to deduct tax. [Insurance Act 1938, S. 2(9), 114A]**

The assessee was an insurance company and paid re-insurance premium to non-resident re-insurance company. AO disallowed claim on ground that TDS was not deducted before making such payment. On appeal, CIT(A) confirmed decision. Tribunal unless a branch was established in India, non-resident insurance company could not do any business after 2014. Thus, profit of non-resident re-insurance company was taxable in India and hence, assessee was liable to deduct tax at source. (AY. 2003-04 to 2007-08)

Cholamandalam Ms. General Insurance Company Ltd. v. ACIT (2018) 170 DTR 22 / 195 TTJ 166 (Chennai)(Trib.)

769 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Amount not claimed as expenditure – No disallowance can be made – Exemption certificate for non deduction of tax at source – Once certificate has been issued no disallowances can be made – If income is not chargeable to tax in India – No disallowance can be made – Once it is held that income is not chargeable to tax in India, no disallowance can be made. [S. 195, 197]**

Tribunal held that; if no deduction is claimed for an expenditure, there can be no question of disallowance. Once the department has issued certificate for non-deduction of tax at source, there can be no disallowance. Once it is held that income is not chargeable to tax in India, no disallowance (AY. 2004-05 to 2009-10)

Delhi Tourism & Transport Development Corp. Ltd. v. Dy. CIT (2018) 194 TTJ 305 (Delhi) (Trib.)

770 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Airfreight – Payments on behalf of its clients as Clearing and Forwarding Agent which were reimbursed – Expenditure was not claimed as deduction – No disallowance can be made. [S. 44B, 172]**

Tribunal held that the assessee made payments on behalf of its clients as Clearing and Forwarding Agent which were reimbursed to assessee. Assessee did not make claim of deduction in P & L A/c. Since, under domestic Law as well as under DTAA, income received by non-resident airline/shipping companies or their Agents, were not taxable in India, therefore, assessee was not liable to deduct TDS.

KGL Network (P) Ltd. v. ACIT (2018) 195 TTJ 265 / (2019) 176 DTR 102 (Delhi)(Trib.)

771 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Providing services of AMC and installation, commissioning services, for equipment supplied by its group entities to customers in India – Not liable to deduct ta at source – DTAA-India-USA [S. 195, Art. 12 (4)]**

Tribunal held that service rendered by AE to assessee was as per agreement according to which services provided by AE to assessee were in nature of assistance in troubleshooting, isolating problem and diagnosing related trouble and alarms and equipment repair services wherein, equipments would be shipped to US by assessee

as and when required. It was agreed between parties that AE would be providing such services remotely and noon-site support services would be provided to customers of assessee. Services rendered by AE does not satisfy 'make available' requirement as per Article 12(4). Hence, revenue received by AE in view of services rendered to assessee's customer was not taxable in India as per Article 12(4) of India-US DTAA, applicability of S. 195 was not applicable hence no disallowances can be made. (AY. 2012-13, 2013-14, 2014-15)
Ciena Communications India Pvt. Ltd. v. ACIT (2018) 196 TTJ 425 / (2019) 176 DTR 262 / 98 taxmann.com 458 (Delhi)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Marketing expenses – Payment made by assessee to foreign entities towards marketing and sale support services were not chargeable to tax in India and assessee was right in law in not deducting any tax thereon – DTAA-India-USA. [S. 195, Art.24(1)] 772
Tribunal held that, foreign payees rendered only marketing and sales support services for canvassing assessee's BPO business in foreign countries and, therefore, no technical service was either rendered nor any technical know-how, drawings and designs were made available by them to assessee in India to enable it to carry on its BPO business. Payments were made to entities based in USA and, therefore, provisions of DTAA between India and USA came into play. Payment made by assessee to foreign companies for receiving marketing and support service should come within ambit of "fees for technical services" as defined in DTAA and hence not taxable in India. Almost 70% of total payment was made by assessee to its wholly owned subsidiary which was incorporated in USA and assessee itself directly owned 100% of its issued equity capital. In assessee's case, shares of B company that incorporated in USA were 100% owned by Indian Tax Resident and, therefore, conditions of Article 24(1)(a) were clearly fulfilled. Payment made by assessee to foreign entities towards marketing and sale support services were not chargeable to tax in India and assessee was right in law in not deducting any tax thereon. (AY. 2012-13).
Onprocess Technology India Pvt. Ltd. v. DCIT (2018) 195 TTJ 292 (Kol.)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Engaged in distribution of recharge pens of various DTH providers via online network – Servers of USA based company Amazon for which it paid web hosting charges – No control over server or severs space being deployed by Amazon, while providing e-services as per agreement-Not royalty-Not liable to deduct tax at source – Amendment, if any, to scope of royalty by an amendment in 2012 by Finance Act with retrospective effect cannot fasten assessee with liability to withhold tax for the years which have already been closed prior to insertion of amendment – DTAA-India-USA. [S. 9(1)(vi), Art.12] 773
AO held that web hosting charges for use of severs, was nothing but charges paid for use of commercial equipments within meaning of section 9(1)(vi), read with Explanation 2 and Explanation 5 of the said clause, thereby, assuming character of royalty hence liable to deduct tax at source. On appeal the Tribunal held that since assessee did not possess and did not have any control over server or severs space being deployed by Amazon, while providing e-services as per agreement, then there was no scope

to construe that e-service charges paid to Amazon could be described as royalty. Accordingly the assessee is not liable to deduct tax at source hence no disallowances can be made. Amendment, if any, to scope of royalty by an amendment in 2012 by Finance Act with retrospective effect cannot fasten assessee with liability to withhold tax for the years which have already been closed prior to insertion of amendment. (AY. 2011-12)
EPRSS Prepaid Recharge Services India (P.) Ltd. v. ITO (2018) 196 TTJ 529 / 100 taxmann.com 52 / (2019) 173 DTR 308 (Pune)(Trib.)

774 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Business possibilities in the field of energy sector – Expenses incurred for the purpose of PE are to be allowed – DTAA-India-USA – Mauritius. [S. 9(1)(i), 195 Art. 5, 7. 15]**
Dismissing the appeal of the revenue the Tribunal held that ; expenses incurred for the purpose of PE are to be allowed, there is no restriction on allowability of such expenses. Tribunal also held that, if employee has spent only a part of their time in India and his staying in India was much less than period of 180 days and even if the employees were sent by the US AE, then also in terms of article 15 of India US DTAA, the employees could not be taxed in India, because they have stayed in India for a period of less than 183 days. Accordingly the Tribunal held that disallowance cannot be made by invoking the provision of S. 40(a)(i) cannot be made. (AY. 1998-99)
Dy. CIT (IT) v. Unocol Bharat Ltd. (2018) 171 DTR 329 / 196 TTJ 646 / 68 ITR 24 (SN)/ 99 taxmann.com 158 (Delhi)(Trib.)

775 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Payment for providing global support services – No technical Knowledge, experience, skill, know-how, or process made available to the assesessee – Payment is not for technical services – Not liable to deduct tax at Source – No Disallowance – DTAA-India-Singapore. [S. 9(1)(vii), 195]**
Allowing the appeal of the assessee, the Tribunal held that, payment for providing global support services and no technical Knowledge, experience, skill, know-how, or process made available to the assesessee, hence payment is not for technical services. Accordingly the assessee is not liable to deduct tax at source hence no disallowance can be made. (AY. 2007-08)
Exxon Mobil Company India P. Ltd. v. ACIT (2018) 65 ITR 583 / 196 TTJ 1070 / 97 taxmann.com 43 (Mum.)(Trib.)

776 **S. 40(a)(i); Amounts not deductible – Deduction at source – TDS deposited beyond the due date but before the due date of filing the Return of income is an allowable expenditure. [S. 139(1)]**
Tribunal held that, TDS deposited beyond the due date but before the due date of filing the return of income is an allowable expenditure. Relied in *CIT v. Naresh Kumar (2014)362 ITR 256 (Delhi) (HC)* where it has been held that the provisions of S. 40(a)(ia) were to be interpreted liberally and equitably keeping in mind the object and purpose behind the same so that the assessee do not suffer unintended and deleterious

consequences and therefore the amendment to S. 40(a)(ia) as made by Finance Act, 2010 was retrospective in nature and therefore the amount of TDS which is deposited late but before due date of filing of return of income enables the assessee to claim the deduction of the expenditure in the concerned year itself. Accordingly, Tribunal deleted the disallowance. (AY. 2005-06, 2007-08)
L&T Finance Ltd. (2018) 62 ITR 298 / 192 TTJ 9(UO) (Mum.)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Testing fee to Kema, Netherlands – Payment made to non-resident – Where knowledge of testing is not made available to assessee, same could not be considered as fee for technical services and assessee is not liable to deduct tax at source. [S. 195] 777
Tribunal held that ;transformers manufactured by assessee were sent to Netherlands for testing and Netherlands Company sent only report. Therefore, knowledge of testing was not made available to assessee. Hence, it could not be considered as fee for technical services. In view thereof payment made to Kema, Netherlands was not liable to deduct tax at source. (AY. 2007-2008)
ACIT v. Areva T&D India Ltd. (2018) 193 TTJ 11 (UO) (Chennai)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Interest – Royalty-Fees for technical services – foreign agency commission – services rendered outside India – Held, no tax to be deducted at source – Held, no disallowance can be made. [S. 195] 778
Commission paid to foreign agents for services rendered outside India was not fees for technical services and was not taxable in India. Accordingly, it was held that there was no liability to deduct tax at source and no disallowance can be made u/s. 40(a)(i). (AY.2011-12)
Dy. CIT v. Sterling Ornament (P.) Ltd. (2018) 65 ITR 492 (Delhi)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Royalty – Fees for technical services – Income deemed to accrue or arise in India – Affiliation fee – One time payment to US. company, which did not provide for transfer of technology cannot be assessed as royalty – Not liable to deduct tax at source – No disallowance can be made-DTAA-India-USA. [S. 9(1)(vi), 195, Art. 12] 779
Allowing the appeal of the assessee the Tribunal held that, one time payment of affiliation fee to US company which did not provide technical knowledge or use of technical knowledge cannot be assessed as royalty either under the Act as well as under DTAA. Not liable to deduct tax at source, hence no disallowance can be made. (AY.2006-07)
Customer Lab Solutions (P.) Ltd. v. ITO (2018) 171 ITD 552 / 170 DTR 225 / 195 TTJ 841 (Hyd.)(Trib.)

780 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – The administrative fee paid to EGC of US and EGC of Singapore – Not liable to deduct tax at source – DTAA-India [Art. 12]**

The Tribunal following the earlier year held that the amount paid by the assessee is not chargeable under article 12 of DTAA because no service were 'made available' to the assessee by the service providers. The Tribunal deleted the disallowances. (AY. 2006-07)

CEVA Freight India (P) Ltd. v. Dy. CIT (2018) 192 TTJ 887 / 172 DTR 55 (Delhi)(Trib.)

781 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Expenses on maintenance of aircraft contract to foreign company – payments business receipts not taxable in India – Not liable to deduct tax at source. [S. 195]**

Tribunal held that the expenditure had been incurred by the assessee in pursuance of a maintenance contract. The payment made towards annual maintenance contracts would fall under the category of works contract. The payment given by the assessee would constitute business receipts in the hands of the recipient and it was not taxable in India as the recipient has not permanent establishment in India. Hence, the assessee was not required to deduct TDS under S. 195 of the Act, as no part of the amount is chargeable in India in the hands of recipient. The expenditure is allowable. (AY. 2012-13)

DHL Air Limited v. Dy. CIT(IT) (2018) 63 ITR 149 (Mum.)(Trib.)

782 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – legal and professional services – Not liable to deduct tax at source – DTAA-India-USA. [S. 195, Art.15]**

On appeal to Tribunal, it was observed that the service provider i.e. non-residents neither did have any permanent establishment in India nor any of its personnel stayed for more than 90 days in India during the relevant previous year. Thus, it was held that such payment of ₹ 1.46 crores as legal and professional charges to non-resident could not be disallowed u/s. 40(a)(i) of the Act as such payments did not fulfil the conditions specified in Article 15 (Independent Personnel Service) of DTAA between India and USA and therefore, were not taxable in India. Further, it was held that the payment of ₹ 43 lakhs for obtaining assessment report from non-resident service provider does not fulfil the condition of Article 12 (Fees for technical services) of DTAA between India and Singapore and therefore not taxable in India. Thus, Tribunal upheld the order of CIT(A) in deleting the disallowances made by the AO u/s. 40(a)(i) for non deduction of tax u/s. 195 of the Act. (AY. 2007-08)

DLF Limited v. Addl. CIT (2018) 63 ITR 22 (Delhi)(Trib.)

783 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Professional fees paid to foreign company to know about tax law applicable in that Country could not be taxed in India as per Art 14 of the OECD Model Tax Convention hence not liable to deduct tax at source.**

Dismissing the appeal of the revenue the Tribunal held that; Professional fees paid to foreign company to know about tax law applicable in that Country could not be taxed

in India as per Art 14 of the OECD Model Tax Convention hence not liable to deduct tax at source. (AY. 2006-07 to 2008-09)
ACIT v. Deloitte Haskins & Sells (2018) 170 ITD 267 / 196 TTJ 355 / (2019) 174 DTR 289 (Mum.)(Trib.)

S. 40(a)(i) : Amounts not deductible – Payment to non-resident – Proviso amended by Finance (No. 2) Act, 2004 is not applicable for year 2002-03, hence not liable to deduct tax at source. [S. 9(1)(i), 195] 784
Dismissing the appeal of the revenue the Tribunal held that; proviso to section 40(a)(i) (substituted by Finance (No. 2) Act, 2004) is not having retrospective effect and is not applicable for year 2002-03, hence not liable to deduct tax at source. (AY. 2002-03
DCIT v. Hazaria Cryogenic Engineering & Construction Management (P.) Ltd. (2018) 168 ITD 568 (Mum.)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – The amendment made by the Finance Act, 2010 in Section 40(a)(ia) of the IT Act is retrospective in nature i.e. from the date of insertion of the said provision w.e.f. AY. 2005-06. 785
Dismissing the appeal of the revenue the Court held that; The amendment to S. 40(a)(ia) by the Finance Act, 2010 w.e.f. 01.04.2010 to provide that all TDS made during the previous year can be deposited with the Government by the due date of filing the return of income should be interpreted liberally and equitably and applied retrospectively from the date when S. 40(a)(ia) was inserted i.e., with effect from the AY 2005-2006 so that an assessee should not suffer unintended and deleterious consequences beyond what the object and purpose of the provision mandates. The amendment is curative in nature and should be given retrospective operation as if the amended provision existed even at the time of its insertion. i.e. from the date of insertion of the said provision w.e.f. AY. 2005-06) (AY. 2005-06)
CIT v. Calcutta Export Company (2018) 404 ITR 654 / 165 DTR 321 / 302 CTR 201 / 255 Taxman 293 (SC), www.itatonline.org
CIT v. Rajendra Kumar (2018) 165 DTR 321 / 302 CTR 201 / 255 Taxman 293 (SC), www.itatonline.org
CIT v. Harish Chand Ahuja (2018) 165 DTR 321 / 302 CTR 201 / 255 Taxman 293 (SC), www.itatonline.org

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Reimbursement of "shared services cost" to holding company – Reading of relevant clauses of agreement do not lead to inference that amount is paid on estimation – Not liable to deduct tax at source [S. 194C] 786
Dismissing the Departmental appeal, the High Court held that the Tribunal was justified in holding that the payment / reimbursement of "shared services cost" to holding company was genuinely incurred by the assessee, wholly and exclusively for the purpose of its business and is paid based on actual expenditure incurred, hence allowable as business expenditure. Not liable to deduct tax at source. (AY. 2008-2009)
CIT v. ASK Wealth Advisors (P) Ltd. (2018) 168 DTR 349 (Bom.)(HC)

787 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Insertion of second proviso by the Finance Act, 2012, with effect from April 1, 2003, is declaratory and curative and applicable retrospectively with effect from 1-4-2005 – Payee offering to tax sum received in its return – No disallowance can be made. [S. 37(1), 201(1)]**

Dismissing the appeal of the revenue the Court held that,the rationale behind the insertion of the second proviso to section 40(a)(ia) was declaratory and curative and thus, applicable retrospectively with effect from April 1, 2005. However under the first proviso to section 201(1) inserted with effect from July 1, 2012, an exception had been carved out which showed the intention of the Legislature not to treat the assessee as a person in default subject to fulfilment of the conditions as stipulated thereunder. No different view could be taken regarding the introduction of the second proviso to section 40(a)(ia), which was intended to benefit the assessee, with effect from April 1, 2013 by creating a legal fiction in the assessee's favour and not to treat him in default of deducting tax at source under certain contingencies and that it should be presumed that the assessee had deducted and paid tax on such sum on the date of furnishing of the return by the resident payee. (AY. 2012-13)

CIT v. Shivpal Singh Chaudhary (2018) 409 ITR 87 (P&H)(HC)

788 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Fees for professional or technical services – third party administrator for insurance companies – Payment through assessee – Not liable to deduct tax at source – No disallowances can be made. [S. 194J, 260A]**

Dismissing the appeals of the revenue the Court held that; the Tribunal had found that the assessee only facilitated the payments by the insurer to the insured for availing of the medical facilities. The assessee did not render any professional services to the insurer or the insured and only collected the amount from the insurer and passed it on to the various hospitals which provided medical services to the insured. Accordingly no disallowances can be made. (AY. 2009-10)

CIT v. Health India TPA Services P. Ltd. (2018) 408 ITR 34 (Bom.)(HC)

Editorial : Decision in ACIT v. Health India TPA Services P. Ltd. (2014) 31 ITR 407 (Mum.)(Trib.) is affirmed.

789 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Fees for professional or technical services – third party administrator for insurance companies – Payment through assessee – Not liable to deduct tax at source – No disallowances can be made. [S. 194J, 260A]**

Dismissing the appeals of the revenue the Court held that ; the Tribunal had found that the assessee only facilitated the payments by the insurer to the insured for availing of the medical facilities. The assessee did not render any professional services to the insurer or the insured and only collected the amount from the insurer and passed it on to the various hospitals which provided medical services to the insured. Accordingly no disallowances can be made. Court also held that the Department could not be permitted to raise the same questions as had been earlier dealt with in the Division Bench judgments and orders of the court. (AY.2008-09)

CIT v. Dedicated Healthcare Services (TPA) India Pvt. Ltd. (2018) 408 ITR 36 / 304 CTR 937 / 259 Taxman 192 / 170 DTR 345 (Bom.)(HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Interest – Payment for delayed allotment of land by Housing Corp. is not interest since there was neither any borrowing of money nor was there incurring of debt on part of assessee hence not liable to deduct tax at source – No disallowance can be made. [S. 2(28A), 194A] 790
Dismissing the appeal of the revenue the Court held that ; payment for delayed allotment of land by Housing Corp. is not interest since there was neither any borrowing of money nor was there incurring of debt on part of assessee hence not liable to deduct tax at source. Accordingly no disallowance can be made. (AY. 2005-06, 2006-07))
PCIT v. West Bengal Housing Infrastructure Development Corporation Ltd. (2018) 257 Taxman 570 / (2019) 306 CTR 601 / 173 DTR 377 / 413 ITR 82 (Cal.)(HC)
Editorial: SLP of revenue is dismissed, PCIT v. West Bengal Housing Infrastructure Development Corporation Ltd. (2019) 263 Taxman 237 (SC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Reimbursement of lease rent charges – Not liable to deduct tax at source – Provision for contingent liability for which bills were not received during year under consideration and TDS was deducted as and when final bills were received – No disallowance can be made. [S. 194I] 791
Dismissing the appeal of the revenue the Court held that; reimbursement of lease rent charges, not liable to deduct tax at source. Similarly provision for contingent liability for which bills were not received during year under consideration and TDS was deducted as and when final bills were received. No disallowance can be made. (AY. 2009-10)
PCIT v. Sanghi Infrastructure Ltd. (2018) 257 Taxman 371 (Guj.)(HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Contractors – Purchase of packing material – Right of ownership of packing material was only transferred to assessee only when it was purchased from suppliers – Not liable to deduct tax at source – No disallowance can be made. [S. 194C] 792
Dismissing the appeal of the revenue the Court held that; when purchasing the packing material; right of ownership of packing material was only transferred to assessee only when it was purchased from suppliers. Accordingly not liable to deduct tax at source. (AY. 2008-09)
PCIT v. Shalimar Chemical Works Ltd. (2018) 257 Taxman 590 (Cal.)(HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Commission or brokerage – Selling expenses which consisted of target incentives to distributors – Not liable to deduct tax at source – No disallowance can be made.[S. 194H] 793
Dismissing the appeal of the revenue the Court held that; the assessee did not have any right or control over goods sold to dealers and distributors and all stocks belonged to buyers. Moreover, assessee paid target incentives to dealers only for increasing its sales volume. Accordingly not liable to deduct tax at source. (AY. 2008-09)
PCIT v. Shalimar Chemical Works Ltd. (2018) 257 Taxman 590 (Cal.)(HC)

794 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Commission – Principal to principal – Discount to advertisement agency – Not liable to deduct tax at source –No disallowance can be made. [S. 194H]**

Dismissing the appeal of the revenue the Court held that ; Tribunal was right in concluding that the payment was on the basis of principal to principal and did not constitute commission and deleting the disallowance made by the assessing authority for non-deduction of tax at source from the commission or discount paid by the assessees to the advertising agency under section 194H.

PCIT v. Bhim Sain Garg Through Legal Heir Shailendra Garg (2018) 407 ITR 388 (Raj.) (HC)

PCIT v. Shailendra Garg (2018) 407 ITR 388 (Raj.)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Bhim Sain Garg Through Legal Heir Shailendra Garg. (2018) 406 ITR 9 (St).

795 **S. 40(a)(ia) : Amounts not deductible-Deduction at source – Payment of labour charges through labour contractor – No contract between assessee and sub-contractor – Not liable to deduct tax at source – No disallowance can be made. [S. 194C]**

Dismissing the appeal of the revenue the Court held that; payment of labour charges through labour contractor as there was no contract between assessee and sub-contractor therefore the assessee is not liable to deduct tax at source hence no disallowance can be made. (AY. 2007-08)

PCIT v. Swastik Construction (2018) 407 ITR 42 / 254 Taxman 163 (Guj.)(HC)

796 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – No contract between assessee and parties of hired Vehicles on freight basis for transportation on behalf of principal – Not liable to deduct tax at source. [S. 194C]**

Dismissing the appeal of the revenue the Court held that, there was no contract between assessee and parties of hired Vehicles on freight basis for transportation on behalf of principal, accordingly the assessee is not liable to deduct tax at source. (AY.2008-09)

CIT v. Shark Roadways Pvt. Ltd. (2018) 405 ITR 78 (All.)(HC)

797 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Professional fees – Failure to deduct tax at source – Disallowance was held to be justified.**

Dismissing the appeal of the assessee the Court held that failure to deduct tax at source on professional fees, the disallowance was held to be justified. (AY.2009-10)

Ravi Mallick, Prop. of Sunkraft designs v. DCIT (2018) 404 ITR 250 (P&H)(HC)

798 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – A co-operative society formed for the welfare of the employee of the life insurance corporation and all members of assessee is not liable to deduct tax at source – Decision of jurisdictional High Court is binding on the AO. [S. 194A.]**

Allowing the petition the Court held that; a co-operative society formed for the welfare of the employee of the life insurance corporation and all members of assessee is not liable to deduct tax at source. Court also observed that; Coimbatore District *Central*

Bank Ltd. v. ITO (2016) 382 ITR 266 (Mad) (HC) which the respondent has not gone through the decision, copy of which was filed by the petitioner along with their reply to the show-cause notice. The Assessing Officer was bound by the decision rendered by the jurisdictional High Court. It is stated that as on date there is no appeal by the revenue as against the decision. That apart, in the assessee's own case for the previous assessment years, the Tribunal has held in favour of the petitioner assessee. Mere pendency of an appeal would not amount to an order of stay. Therefore, even assuming appeals have been presented as long as orders passed by the Tribunal has not been stayed or set aside, it is binding upon the Assessing Officer. (AY. 2015-16)
LIC Employees Co-operative Bank Ltd. v. ACIT (2018) 408 ITR 287 / 254 Taxman 119 (Mad.)(HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Recipient has filed belated return hence conditions not satisfied – Liable to deduct tax at source – Liable to pay tax with interest. [S. 201(1).] 799
Dismissing the appeal of the revenue the Court held that, to avail of the benefit of the second proviso to S. 40(a)(ia) of the Act, 1961 introduced by the Finance Act, 2012 read with the first proviso to S. 201(1), there should be a return filed under S. 139 with computation of income including such amounts received as also the payment of tax on such income. Only if all the three conditions are satisfied, would the beneficial provision be applicable to an assessee who had failed to deduct tax at source. When an assessee has failed to deduct tax by virtue of the proviso to S. 201(1), he would be treated as not an "assessee-in-default" only when the person from whom tax was to be deducted has paid the tax. On facts the recipient has filed belated return hence conditions not satisfied. Accordingly the assessee is liable to deduct tax at source-Liable to pay tax with interest. *Hindustan Coca Cola Beverage (P) Ltd. v. CIT (2007) 293 ITR 226 (SC)* is distinguished. (AY. 2007-08, 2008-09, 2009-10)
Academy Of Medical Sciences v. CIT (2018) 403 ITR 74 / 254 Taxman 419 / 170 DTR 388 / 305 CTR 659 (Ker.)(HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Proviso excepting assessee from disallowance where payee has declared payment in his return and paid tax thereon has retrospectively applicable, hence no disallowance can be made. [S. 201(1)] 800
Dismissing the appeal of the revenue the Court held that; The second proviso to S. 40(a)(ia) of the Income-tax Act, 1961 introduced by the Finance Act, 2012 (which provides that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B but is not deemed to be an assessee-in-default under the first proviso to S. 201(1), i.e., the payee has filed a return taking into account such sum for computing his income, has paid the tax due on such income declared and furnishes a certificate to this effect from an accountant, the assessee shall not be subject to disallowance in respect of such sum) has retrospective application. (AY. 2009-10)
CIT v. Manoj Kumar Singh. (2018) 402 ITR 238 / 303 CTR 294 / 167 DTR 179 (All.)(HC)

801 **S. 40(a)(ia) : Amount not deductible – Deduction at source – Purchase made from different group companies – Difference of opinion – Matter was referred to Chief Justice for appropriate order – DTAA-India-Japan-USA. [S. 9(1)(i), 90, 195, Art 24]**
Mitsubishi group company engaged in Sogo Shosha activities did not deduct TDS from payments for purchases made to different group companies incorporated in Japan, Singapore, US, Thailand, in view of difference of opinion between Judges in respect of assessee's TDS obligations, matter was placed before Chief Justice for appropriate order. (AY. 2006-07)
CIT v. Mitsubishi Corporation India (P.) Ltd. (2018) 252 Taxman 31 (Delhi)(HC)
Editorial : Mitsubishi Corporation India (P.) Ltd. v. ACIT (2014) 62 SOT 58 (URO) / 41 taxmann. com 162 (Delhi) (Trib.)

802 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – A party cannot be called upon to perform an impossible Act i.e. to comply with a provision not in force at the relevant time but introduced later by retrospective amendment. S. 40(a)(i) disallowance can be made only, if the royalty falls under Explanation 2 to S. 9(1)(vi) but not if it falls under Explanation 6 to S. 9(1)(vi). [S. 9(1)(vi), 194C, 194J, 195]**
Dismissing the appeal of the revenue the Court held that; A party cannot be called upon to perform an impossible Act i.e. to comply with a provision not in force at the relevant time but introduced later by retrospective amendment. S. 40(a)(i) disallowance can be made only if the royalty falls under Explanation 2 to S. 9(1)(vi) but not if it falls under Explanation 6 to S. 9(1)(vi). (AY. 2009-10)
CIT v. NGC Networks (India) Pvt. Ltd. (2018) 167 DTR 245 / 304 CTR 306 (Bom.)(HC), www.itatonline.org

803 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Compensation paid to joint venture – Not liable to o deduct tax at source – Disallowance was held to be not justified. [S. 194H, 194J]**
Dismissing the appeal of the revenue the Court held that; whether the transaction is genuine of sham is a question of fact transaction being purchase and sale transaction and dispute was only in [respect of sharing of profit the, no disallowance can be made for failure to deduct tax at source on the compensation paid to joint venture. (AY. 2006-07)
Entrepreneurs (Calcutta) Pvt. Ltd. v. CIT (2018) 400 ITR 521 (Cal.)(HC)

804 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payment being not fees for technical services, not liable to deduct tax at source – DTAA-India-Canada. [S. 9(2), Art 12]**
Dismissing the appeal of the revenue the Court held that, payment being not fees for technical services the assesse is not liable to deduct tax at source. (AY. 2009-10)
CIT v. Mira Exim Ltd. (2018) 400 ITR 28 (Delhi)(HC)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Non-resident – Commission-Obligation to deduct tax at source arises only if the sum is chargeable to tax in India, even after insertion of Explanation 2 to S. 195(1) by Finance Act 2012 with retrospective effect from 01.04.1962. 805

Dismissing the appeal of the revenue the Court held that; Explanation 2 to S. 195(1) inserted by Finance Act 2012 with retrospective effect from 01.04.1962 has bearing while ascertaining payments made to non-residents is taxable under the Act or not. However, it does not change the fundamental principle that there is an obligation to deduct TDS only if the sum is chargeable to tax under the Act. If the conclusion is arrived that such payment does not entail tax liability of the payee under the Act, S. 195(1) does not apply. Relied *G. E. India Technology Centre P. Ltd v. CIT (2010) 327 ITR 456 (SC)*.
PCIT v. Nova Technocast Pvt. Ltd. (2018) 166 DTR 426 / 304 CTR 670 (Guj.)(HC), www.itatonline.org

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Commission-Incentive to retailers – Not liable to deduct tax at source, [S. 194H] 806

Tribunal held that transaction between assessee and its retailers is on principal to principal basis. Accordingly the incentive paid by assessee to retailers/shopkeepers does not qualify as commission for purpose of TDS u/s 194H of the Act.
Anil Dhawan v. Dy.CIT (2018) 195 TTJ 42 (UO)(Chd.)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Interest – Commission – Brokerage – Insurance commission – Reinsurance premium from various insurance companies – Not liable to deduct tax at source. [S. 194D] 807

Tribunal held that responsibility of paying commission was not on assessee. Commission was deducted by respective insurance companies who were paying re-insurance premium to assessee at time of making payment. Accordingly the assessee is not liable to deduct tax at source. (AY. 2003-04 to 2010-11)
ACIT v. United India Insurance Co. Ltd. (2018) 67 ITR 191 / 195 TTJ 65 (UO)(Chennai) (Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Short deduction of deduction at source – No disallowance can be made. [S. 194C, 194J, S. 201] 808

Tribunal held that,if there was short deduction, revenue was free to proceed to pass an order u/s 201 of Act, but no disallowance can be made. (AY. 2011-12)
Scrabble Entertainment Ltd. v. ACIT (2018) 169 DTR 51 / 193 TTJ 418 (Mum.)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – No part of services had been either rendered or received in India – Not liable to deduct tax at source on payments made to a non-resident company having no PE in India. [S. 195] 809

Tribunal held that all payments related to liaisoning and related services had been paid to non-resident company having no PE in India providing local assistance and local liaisoning services to assessee for its project in Saudi Arabia. No part of services had

been either rendered or received in India. Thus, the AO erred in disallowing liaisoning and other services u/s 40(a)(i). (AY. 2008-09)
Dy.CIT v. Libra Techon Ltd. (2018) 195 TTJ 105 (UO) / 53 CCH 472 / 67 ITR 14 (SN) (Mum.)(Trib.)

810 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Credit card commission-Payments to banks on account of utilization of credit card facilities would be in nature of bank charge and not in nature of commission – Not liable to deduct tax at source. [S. 194H]**
Allowing the appeal of the assessee the Tribunal held that, sale made on basis of a credit card is clearly a transaction of merchant establishment only and credit card company only facilitates electronic payment, for a certain charge and, thus, commission retained by credit card company is in nature of normal bank charges and not in nature of commission/brokerage for acting on behalf of merchant establishment. Accordingly payments to banks on account of utilization of credit card facilities would be in nature of bank charge and not in nature of commission within meaning of S. 194H. (AY. 2012-13)
Velankani Information Systems Ltd. v. DCIT (2018) 173 ITD 19 / 172 DTR 356 / 196 TTJ 1128 (Bang.)(Trib.)

811 **S. 40(a)(ia) : Amounts not deductible-Deduction at source – Payment of Honorarium to directors – Company director is different from director of Co operative Society – Not liable to deduct tax at source – Recipient has offered the honorarium as income – No disallowance can be made.[S. 2(7) 2,(19), 192, 194J(1)(ba), 201.]**
AO held that the assessee has failed to deduct tax at source in respect of honorarium paid to directors. Accordingly he disallowed the honorarium paid to directors, which was affirmed by CIT(A.). Allowing the appeal of the assessee the Tribunal held that, honorarium paid was not 'professional fee' to be covered under provisions of S. 194J of the Act. Even if it was to be considered as payment to director, provisions of S. 194J(1)(ba) specified that any remuneration or fees or commission by whatever name called other than those on which tax was deductible u/s 192 to director of 'company' were covered by definition of fees for professional or technical services. Director referred to therein was not equivalent to 'director' of assessee. Company was different from co-operative society as they were defined u/s 2(17) and 2(19) separately. Just because person administering society was also referred to as director, provisions of S. 194J could not be attracted to payment of honorarium made to director of assessee-society. Accordingly, there was no violation of S. 194J of the Act. Tribunal also held that the assessee had produced evidence showing that respective persons have paid/filing returns of income and AO had not initiated any proceedings u/s 201 for violation of TDS provisions under any other provisions of Act, disallowance u/s 40(a)(ia) could not be sustained. (AY. 2013-14)
Sai Datta Mutual Aided Co-Operative Credit Society v. ACIT (2018) 169 DTR 65 / 194 TTJ 970 (Hyd.)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Clearing and forwarding charges – Reimbursement of expenses – Agreement was not furnished – Matter remanded. [S. 172, 194C] 812

Appeal by revenue the Tribunal held that, the Commissioner (Appeals) had not afforded any opportunity to Assessing Officer to verify bills and nature of expenses and also since assessee had not furnished C&F agreement and material with regard to payment made towards reimbursement of expenses, matter was to remanded back to file of Assessing Officer for necessary verification. (AY. 2011-12)

ACIT v. Best India Tobacco Suppliers (P.) Ltd. (2018) 173 ITD 222 / 66 ITR 84 (SN) (Vishakha)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – MIS Services, Cost Allocation, Corporate Allocation Charges and Legal Expenses – Since services could not be said to have made available technical skill, knowledge and know-how in legal sense of 'make available' clause – Not liable to deduct tax bat source – DTAA-India-USA. [S. 9(1)(vii), 195, Art. 12] 813

Allowing the appeal of the assessee the Tribunal held, MIS Services, Cost Allocation, Corporate Allocation Charges and Legal Expenses. Since services could not be said to have made available technical skill, knowledge and know-how in legal sense of 'make available' clause, the assessee is not liable to deduct tax at source. No disallowance can be made. (AY. 2011-12)

Seal For Life India (P.) Ltd. v. DCIT (2018) 173 ITD 229 / (2019) 197 TTJ 742 / 174 DTR 281 (Ahd.)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Maistries – leaders of shipping labour groups – Payment to shipping labour group leaders is not liable to deduct tax at source – No disallowances can be made. [S. 194C] 814

Tribunal held that,merely handing over labour payments to one or two persons on site for distributing amount among labours does not partake character of availing service of labour contractor and, hence not liable to deduct tax at source. Accordingly no disallowances can be made. (AY. 2012-13, 2014-15)

ACIT v. A. Kasiviswanadham (2018) 173 ITD 478 / 66 ITR 525 (Visakha)(Trib.)

A. K. V. Logistics Pvt. Ltd. v. ACIT (2018) 66 ITR 525 / 173 ITD 478 (Vishakha)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payment to charitable organisation – Exemption was granted to charitable organisation and no tax was to be paid – Disallowance cannot be made in view of second proviso with retrospective operation. [S. 11, 12, 197(1), 201] 815

Allowing the appeal of the assessee the Tribunal held that charitable organisation to which payment was made without deduction of tax at source has shown the receipt and claimed exemption which was allowed. As no tax is to be paid by charitable organisation disallowance cannot be made in view of second proviso with retrospective effect. Accordingly the assessee could not be treated as assessee in default. Accordingly no disallowance can be made. (AY. 2009-10)

Peerless Hospitex Hospital And Research Centre Ltd. v. ITO (2018) 65 ITR 67 (SN)(Kol.) (Trib.)

816 **S. 40(a)(ia) : Amounts not deductible-Deduction at source – Contractors – No Express or implied contract between assessee and maistries – No contract between assessee and maistries and payments to labour through maistries does not attract tax deduction at source. [S. 194C]**

Tribunal held that there must be a contract for deduction of tax at source including supply of labour for carrying out any work. The payment was genuine. The assessee had got the work done by the labourers under their supervision. The Department could not establish that there was an express or implied contract between the assessee and maistries. Therefore the payment made to the labour through maistries could not be construed as made under a contract between the assessee and the maistries and did not attract the tax deduction at source under section 194C and consequently no disallowance was called for under S. 40 (a)(ia). (AY. 2011-2012 to 2014-2015)

ACIT v A. Kasiviswanadham and A. K. V. Logistics Pvt. Ltd. (2018) 66 ITR 525 (Vishakha) (Trib.)

817 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Short deduction – Precedent – Deducted the tax applying the provision of S. 194C @2% instead of 194J @ 10% – No disallowances can be made. [S. 194C, 194J]**

Dismissing the appeal of the revenue the Tribunal held for short deduction of tax no disallowance can be made. Followed, *CIT v. S. K. Tekriwal (2014 361 ITR 432 (Cal)(HC), CIT v. Kishor Rao (HUF) (2016) 387 ITR 196 (Karn) (HC)(instead CIT v. PVS Memorial Hospital Ltd.(2016) 380 ITR 284/ (60 taxmann.com 69(Ker) (HC)*. Tribunal held that in the absence of any decision by jurisdictional High Court, decision of non-jurisdictional High Court which is favorable to the assessee had to be accepted. (AY. 2010-11)

ACIT v. Dish TV India Ltd. (2018) 194 TTJ 897 / 169 DTR 253 (Mum.)(Trib.)

818 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Contractor – In absence of express or implicit contract between the assessee and the maistries, payments made to the labourers through maistries / group leaders did not attract deduction at source hence no disallowances can be made. [S. 194C]**

Dismissing the appeal of the revenue the Tribunal held that n absence of express or implicit contract between the assessee and the maistries, payments made to the laborers through masteries / group leaders did not attract deduction at source hence no disallowances can be made.(AY. 2012-13)

ACIT v. Kasiviswanadham (A) (2018) 66 ITR 525 (Vishakha)(Trib.)

819 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Word 'payable' occurring in section 40(a)(ia) not only covers cases where amount is yet to be paid but also those cases where amount has actually been paid.**

Allowing the appeal of the revenue the Tribunal held that ; Word 'payable' occurring in section 40(a)(ia) not only covers cases where amount is yet to be paid but also those cases where amount has actually been paid. (AY. 2008-09)

ACIT v. Guntur District Co-operative Bank Ltd. (2018) 66 ITR 61 (SN)(Vishakha)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Interest – Where recipient/deductee had already paid tax on impugned amount of interest under section 194A received from assessee by filing return of income, such interest payment could not be disallowed – Second Proviso to section 40(a)(ia) has retrospective effect from 1-4-2005. [S. 194A, 195(3), 201(1)] 820

Dismissing the appeal of the revenue the Tribunal held that ;where recipient/deductee had already paid tax on impugned amount of interest under section 194A received from assessee by filing return of income, such interest payment could not be disallowed. (AY. 2012-13)

DCIT v. Esaote India (NS) Ltd. (2018) 172 ITD 299 / 172 DTR 427 / 196 TTJ 1091 (Ahd.) (Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Supplier transported goods to assessee through their own transport agency – there was no contract between assessee and transporter – Not liable to deduct tax at source. [S. 194C] 821

Allowing the appeal of the assessee the Tribunal held that ; when supplier transported goods to assessee through their own transport agency, there was no contract between assessee and transporter. Accordingly the assessee is not liable to deduct tax at source. (AY. 2006-07)

K. V. Satyanarayana Murthy v. ITO (2018) 172 ITD 7 (Vishakha)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Certain income and expenditure are merely pass through entries and there is no case of any adverse revenue implication, no disallowance can be made. 822

On appeal to Tribunal, it was observed that the assessee had neither credited rental income nor claimed any expenditure on account of payment made to the trust in profit and loss account. Tribunal further observed that such entries were merely pass through entries without any adverse revenue implication and thus upheld the order of CIT(A) deleting the disallowance. (AY. 2007-08)

DLF Limited v. Addl. CIT (2018) 63 ITR 22 (Delhi)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payee has offered income in their return – No disallowance can be made – Matter remanded to CIT(A) to pass a speaking order. [S. 194J] 823

When payee has offered the alleged amount as income in their return of income and paid the required tax thereon, the assessee should not be treated as assessee in default and no disallowance u/s. 40(a)(ia) is required. Matter remanded to the CIT(A) to consider and pass a speaking order after giving the assessee proper opportunity of being heard. (AY. 2011-12)

Campbell Shipping (P) Ltd. v. ITO (2018) 192 TTJ 24 (UO)(Mum.)(Trib.)

824 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Cash payments to temporary data entry operators below prescribed limit for deduction of tax at source – Disallowance was held to be not justified.**
Dismissing the appeal of the revenue the Tribunal held that ; cash payments to temporary data entry operators below prescribed limit for deduction of tax at source, disallowance was held to be not justified as the professional charges was incurred wholly and exclusively for the purpose of business. (AY. 2009-10)
ACIT v. Shruti Nanda (Smt) (2018) 65 ITR 189 (Delhi)(Trib.)

825 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Tax on payment duly paid by recipient and receipt reflected in return – AO was directed to decide a fresh – Shipping expenses and freight and forwarding charges – AO was directed to decide a fresh. [S. 172, 201(IA)]**
Tribunal held that the recipients of the amount had deposited the tax due on the sums and reflected the receipts in their returns. Therefore the matter was remanded to the Assessing Officer to decide afresh in view of the proviso to S. 40(a)(ia) read with S. 201(1A) of the Act. The AO was also directed to decide afresh the addition of shipping expenses and freight and forwarding charges, in view of the parameters as prescribed under section 172 as well as the other disallowances qua legal expenses, advertising and publicity expenses, freight and forwarding expenses and IHC/THC/C & F expenses in accordance with law. The onus to show that the section 40(a)(i) or 40(a)(ia) was not attracted in the facts and circumstances of the case, was on the assessee. (AY. 2005-06)
PMS Diesels. v. ACIT (2018) 65 ITR 19 (SN) (Amritsar)(Trib.)

826 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payee in its return disclosing payment received, no disallowance can be made for failure to deduct tax at source – Second proviso to S. 40(a) of the Act is to be read as applicable with retrospective effect.**
Tribunal held that when the payee in its return disclosing payment received, no disallowance can be made for failure to deduct tax at source. Second proviso to S. 40(a) of the Act is to be read as applicable with retrospective effect. (AY. 2010-11, 2011-12)
CIT v. Ahmedabad Strips P. Ltd. (2018) 64 ITR 683 (Ahd)(Trib.)

827 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Labour charges-Payee had shown the amount as income in his hand hence no disallowance could be made. [S. 194C, 201 (1)]**
Allowing the appeal of the assessee the Tribunal held that ; when the Payee had shown the amount as income in his hand hence no disallowance could be made. (AY.2012-13)
Jashojit Mukherjee v. ACIT (2018) 170 ITD 701/195 TTJ 697 (Kol.)(Trib.)

828 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Professional fees-Failure to deduct tax at source – Disallowance was held to be justified. [S. 194J]**
Tribunal held that, professional fees paid without deduction of tax at source, disallowance is held to be justified. (AY. 2010-11)
Nanak Ram Jaisinghani v. ITO (2018) 170 ITD 570 (Delhi)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Purchase of raw materials – Not liable to deduct tax at source [S. 194C] 829

The Tribunal held that the CIT(A) was right in holding that the provisions of section 194C are not applicable to the transactions of purchase of goods and accordingly deleted the disallowance made by the AO under section 40(a)(ia) in respect of the payments made for purchase of raw materials, no interference is warranted. (AY. 2010-11)

Eshan Minerals (P) Ltd. v. Dy. CIT (2018) 191 TTJ 753 (Pune)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payment of commission to foreign agent – Not liable to deduct tax at source, hence, no disallowances can be made. [S. 5(2)(b), 9(1)(i), 195] 830

Dismissing the appeal of the revenue the Tribunal held that; Payment of commission to foreign agent, the tax was not liable to be deducted hence no disallowances can be made. CBDT Circulars Nos. 7 dated 22. 10. 2009, 23 dated 23 July 1969, 163 dated 29th May 1975 and 786 dated 7th February 2000 considered. (ITA No. 434 & 446/Agra/2015, dt. 11. 04. 2018)(AY. 2010-11, 2011-12)

ACIT v. Manufax (India) S. B. (Agra)(Trib.), www.itatonline.org

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Contractor – The matter was restored back to the AO to verify as to whether tax was deposited by the parties or not. [S. 194C(6), 194C(7)] 831

On appeal the assessee contend that since the payee had a permanent account number, no tax was required to be deducted at source under S. 194C(6) of the Act, that there was no reference in the Act as to which form or which time was referred to in S. 194C(7), and that this was purely procedural, which should not be a cause for disallowance and hence the matter was remitted to the AO who would verify the details whether parties had deposited the tax or not. (AY. 2012-13)

Indo Swiss Anti-Shock Ltd. v. ITO(2018) 62 ITR 280 (Ahd.)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – payment to purchase of raw materials is not liable to deduct tax at source. [S. 194C] 832

Provision of S. 194C is not applicable to the payment made for purchase of raw materials for the business hence no disallowance can be made for failure to deduct tax at source. (AY. 2010-2011)

Eshan Minerals (P) Ltd. v. Dy. CIT (2018) 161 DTR 369 / 191 TTJ 753 (Pune)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Retrospective operation – If the recipients had paid due taxes on the amount received from the assessee no disallowance can be made. AO was directed to verify whether the recipient has paid the taxes on amount received from the assessee. [S. 194A, 194C] 833

Tribunal held that; If the recipients had paid due taxes on the amount received from the assessee no disallowance can be made. AO was directed to verify whether the recipient has paid the taxes on amount received from the assesse. Followed *CIT v. Ansal Land Mark Township Pvt. Ltd. (2015) 377 ITR 635 (Delhi) (HC)*. (AY. 2012-13)

Powerware India P. Ltd. v. ITO (2018) 61 ITR 746 (Cuttack) (Trib.)

834 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payment to foreign shipping companies, S. 172 is applicable hence not liable to deduct tax at source [S. 172, 194C, 195.]**

Dismissing the appeal of the revenue, the Tribunal held that; Payment to foreign shipping companies, S. 172 is applicable hence not liable to deduct tax at source, u/s 194C or u/s 195 of the Act. (AY. 2011-12)

DCIT v. Associated Pigments Ltd. (2018) 61 ITR 553 (Kol.)(Trib.)

835 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Advertisement on hoardings – Short deduction of tax at source applying wrong section, no disallowance can be made. [S. 194C, 194I]**

The Commissioner (Appeals) deleted disallowance made by the Assessing Officer following the decision of the hon'ble Calcutta High Court in *CIT v S. K. Tekriwal (2014) 361 ITR 432 (Cal) (HC)* wherein it was held that section 40(a)(ia) could not be invoked where there was a short deduction and could be invoked only when there was non-deduction. He did not go into the question as to whether the payment fell within the ambit of section 194C or section 194-I. On appeal by the revenue the Tribunal held that; the decision of the Calcutta High Court was binding on the Tribunal being on the decision of the jurisdictional High Court. Therefore the order of the Commissioner (Appeals) on this issue did not call for any interference. (AY. 2010-11)

DCIT v. Vantage Advertising P. LTD. (2018) 61 ITR 564 (Kol.)(Trib.)

836 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Recipients had offered the income, hence no disallowance can be made. The AO was directed to verify said aspects.**

Allowing the appeal of the assessee the Tribunal held that; the assessee had furnished documentary evidence to demonstrate that recipient of finance charges paid by assessee had offered it as income in return of income hence no disallowances can be made. The AO was directed to verify the aspects. (AY. 2012-13)

Vardhvinayak Township Development (P.) Ltd. v. DCIT (2018) 168 ITD 456 (Mum.)(Trib.)

837 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Reimbursement of expenses – Not liable to deduct tax at source – No disallowance can be made for failure to deduct tax at source. [S. 194I]**

Dismissing the appeal of the revenue the Tribunal held that, reimbursed actual cost incurred by KPMG on various services such as premises taken on rent, communication expenses, office space charges etc., since there was no profit element involved in payments in question, assessee was not required to deduct tax at source while making said payments. (AY. 2005-06 to 2006-07)

DCIT v. KPMG Advisory Services (P.) Ltd. (2018) 168 ITD 34 (Mum.)(Trib.)

838 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Gas Transmission charges cannot be treated as fees for technical services hence the assessee was not liable to deduction of tax at source u/s 194J. [S. 194C, 194J]**

Dismissing the appeal of the revenue the Tribunal held that, Gas Transmission charges cannot be treated as fees for technical services hence the assessee was not liable to

deduction of tax at source u/s 194J. Deduction of tax at source u/s 194C was held to be justified. (AY. 2009-10)
ACIT v. Chambal Fertilisers And Chemicals Ltd (2018) 61 ITR 33 (Jaipur)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Interest paid to head office abroad – Income received on account of interest from Indian branches – Indian Branches are not required to deduct tax at source [S. 195] 839
Allowing the appeal of the assessee the Tribunal held that; Interest paid to head office abroad and income received on account of interest from Indian branches, Indian branches are not required to deduct tax at source. (AY. 2005-06)
Bank of Tokyo-Mitsubishi, UFJ Ltd. v. DCIT (2018) 61 ITR 272 (Delhi)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payment to web hosting charges to Amazon Web Services LLC (USA) (AWS) is not liable to deduct tax at source – Web hosting charges cannot constitute "royalty" under Explanation 2 to S. 9(1)(vi) read with the India USA DTAA – Not liable to deduct tax at source – DTAA-India-USA. [S. 9(1)(vi), 195] 840
Allowing the appeal of the assessee the Tribunal held that,the assessee in the present case did not use or acquire any right to use any industrial, commercial or scientific equipment while using the technology services provided by Amazon and hence, the payment made by assessee cannot be said to be covered under clause (iva) to Explanation 2 of section 9(1)(vi) of the Act. In other words, even if the retrospective amendment is held to be applicable, the case of assessee of payment to Amazon being outside the scope of said Explanation 2(iva) to section 9(1)(vi) of the Act, cannot make the assessee liable to deduct tax at source. In other words, the assessee is not liable to deduct withholding tax and such non deduction of withholding tax does not render the assessee in default and consequently, no disallowance of amount paid as web hosting charges is to be made in the hands of assessee for such non deduction of withholding tax and hence, provisions of section 40(a)(i)of the Act are not attracted. (ITA No. 828/PUN/2016 ITA No. 1204/PUN/2016, dt. 24.10.2018)(AY. 2010-11, 2011-12)
EPRESS Prepaid Recharge Services India P. Ltd. v. ITO (Pune)(Trib.), www.itatonline.org

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Handling charges paid to shipping agents of non-resident shipping companies was held to be not liable to deduct tax at source, and also the department had already granted exemption certificate to non-resident ship owners. [S. 194C] 841
Tribunal held that,as per CBDT Circular No. 723 dated 19-9-1995, payment made to shipping agents of non-resident shipowners did not require deduction of tax at source Tribunal also held that the department had already granted exemption certificate to non-resident ship owners that there was no obligation on assessee to deduct tax at source in respect of payments made to their shipping agents accordingly no disallowances can be made. (AY. 2014-15)
ACIT v. Safe Decore (P.) Ltd. (2018) 169 ITD 328 / 165 DTR 339 / 193 TTJ 898 (Jaipur) (Trib.)

842 **S. 40(a)(ia) : Amounts not deductible – Deduction at source Commission paid to foreign agents abroad for rendering services in their respective countries is not taxable in India hence not liable to deduct tax at source – DTAA-India-Hong Kong – Art. 7 OECD Model tax Convention. [S. 9(1)(i), 195]**
Allowing the appeal of the assessee the Tribunal held that; commission paid to foreign agents abroad for rendering services in their respective countries is not taxable in India hence not liable to deduct tax at source. (AY. 2012-13)
Bengal Tea & Fabrics Ltd. v. DCIT (2018) 169 ITD 665 (Kol.)(Trib.)

843 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Transaction charges paid by stock broker cannot be held to be fees for technical services hence not liable to deduct tax at source. No disallowance can be made. [S. 194J]**
Tribunal held that, transaction charges' paid by stock broker to stock exchange were not for 'technical services' provided by stock exchange, but for facilities provided by stock exchange to its members, therefore, no tax on such payments was required to be deducted at source as fees for technical services hence no disallowance can be made for failure to deduct tax at source u/s. 194J. (AY. 2009-10)
DCIT v. Vibrant Securities (P.) Ltd. (2018) 168 ITD 47 (Mum.)(Trib.)

844 **S. 40(a)(ii) : Amounts not deductible – Rates or tax – Education cess is not part of tax. Accordingly, the same is allowable as a deduction and disallowance cannot be made. CBDT Circular referred.**
Court held that ; education cess is not part of tax. Accordingly, the same is allowable as a deduction and disallowance cannot be made. CBDT Circular referred. (ITA No. 52/2018, dt. 31.07.2018) (AY.2004-05)
Chambal Fertilisers and Chemicals Ltd. v. JCIT (Raj.)(HC), www.itatonline.org

845 **S. 40(a)(ii) : Amounts not deductible – Rates or tax – Education Cess was held to be not allowable as business expenditure. [S. 37(1)]**
Tribunal held that the education cess was a disallowable expenditure under S. 40(a)(ii) and not allowable expenditure under S. 37(1) of the Act. (AY. 2009-10)
ACIT v. Chambal Fertilisers and Chemicals Limited. (2018) 61 ITR 33 (Jaipur)(Trib.)

846 **S. 40(a)(iib) : Amounts not deductible – Gallonage fee, licence fee, shop rental and surcharge on sales tax – Issue being debatable matter was remanded to CIT (A).**
Court held where deductions claimed by assessee towards gallonage fee, licence fee, shop rental and surcharge on sales tax were allowed in all earlier year, however, in relevant assessment year same was disallowed in view of introduction of new provision in section 40(a)(iib), since same was a debatable issue, matter was to be remanded to CIT(A). (AY. 2015-16)
Kerala State Beverages v. ACIT (2018) 257 Taxman 216 (Ker.)(HC)

S. 40(b)(i) : Amounts not deductible – Partner – Book profit – Once cash advances was assessed as business income the same has to be taken in to consideration for the purpose of book profit. [S. 28(i), 133A] 847

Allowing the appeal of the assessee the Court held that; Once cash advances was assessed as business income the same has to be taken in to consideration for the purpose of book profit. It was not open to the Department to contend that the amount of ₹ 1,55,289 was part of business income while computing the tax payable but not so for the purposes of section 40(b) of the Act. The character of the income would not change depending upon the section to be applied.

National Sales Corporation v. ITO (2018) 400 ITR 463 (Bom.)(HC)

S. 40(b)(i) : Amounts not deductible – Working partner – Remuneration – Supplementary partnership deed mentioning that amended provisions of S. 40(b) is applicable – Deduction is available. 848

Allowing the appeal the Tribunal held that, the assessee in its supplementary partnership deed mentioned that the amended provisions of S. 40(b) would be applied as applicable for the year 2013-14. Remuneration paid to partners is held to be allowable. (AY. 2013-14)

S. K. Diamonds v. DCIT (2018) 65 ITR 80 (SN)(Ahd.)(Trib.)

S. 40(ba) : Amounts not deductible – Association of persons – Amount paid to member as reimbursement – In order to invoke provisions payments should constitute share income from AOP in hands of recipient member. [S. 67A] 849

In the instant case, the employees of 'I' Ltd. were deputed to the assessee – AOP. The 'I' Ltd. has directly paid salaries and other related expenses to its employees and since the assessee has used the services of those employees, it has recovered the same from the assessee. Hence, in the hands of the assessee, what was paid to 'I' Ltd. was reimbursement of expenses. Allowing the appeal of the assessee the Tribunal held that ;there is considerable force in the arguments of the assessee. A combined reading of sections 40(ba) and 67A would make it very clear that the payments contemplated in section 40(ba) should constitute "Share income from AOP in the hands of the recipient member. In the instant case, the payments made by the assessee to 'I' Ltd. did not constitute 'Share income' in the hands of 'I' Ltd., but it merely offsets the expenditure incurred by it, i.e., the money had been received by 'I' Ltd. towards reimbursement of expenses incurred by it on its employees on behalf of the assessee. (AY. 2008-09)

ITD Cem India JV v. ACIT (2018) 172 ITD 313 (Mum.)(Trib.)

S. 40(b)(v) : Amounts not deductible – Partner – Remuneration – Interest earned on investment of surplus money is not part of business income for computing the remuneration to partners – Disallowance was held to be justified. [S. 56] 850

Allowing the appeal of the revenue the Court held that; interest earned on investment of surplus money is not part of business income for computing the remuneration to partners. Disallowance was held to be justified.

CIT v. Allen Career Institute (2018) 403 ITR 375 / 161 DTR 321 (Raj.)(HC)

851 **S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Rent – No written agreement – Both are paying same rate of taxes – Revenue neutral- No disallowance can be made – Rent paid to sister concern – Matter remanded for verification.**

Assessee made payments to Bank and rental payments made to Customer Assets India P Ltd. AO held that these two entities did not have any written agreement for sharing of facilities and since Bank was related to assessee, AO disallowed 50% of said expenses by invoking provisions 40A(2)(a) of the Act which was confirmed by CIT (A). Tribunal held that both are paying same rate of taxes hence no disallowances can be made. Referred Indo Saudi Services (Travel) P. Ltd. AO should also consider claim of assessee that amount disallowed would be eligible for deduction u/s. 10A, if he was not satisfied with original claim. AO also disallowed 20% of rent paid to sister concern which was confirmed by CIT(A). Tribunal held that, If AO was satisfied that there was no excess payment, then no disallowance out of rental expenditure was called for. Matter remanded. Followed *CIT v. Indo Saudi Services (Travel) P. Ltd (2009) 310 ITR 306 (Bom.) (HC)* (AY. 2004-05, 2005-06)

Firstsource Solutions Ltd v. Dy. CIT (2018) 168 DTR 161 / (2019) 197 TTJ 486 (Mum.) (Trib.)

852 **S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Commission – Disallowance of 30% of commission – Without placing on record any material to prove that payments made by assessee were excessive or unreasonable considering fair market value of services – No disallowance can be made.**

Allowing the appeal of the assessee the Tribunal held that; AO is not justified in disallowing 30% of commission, without placing on record any material to prove that payments made by assessee were excessive or unreasonable considering fair market value of services. (AY. 2009-10)

Nat Steel Equipment (P.) Ltd. v. DCIT (2018) 171 ITD 482 / 171 DTR 49 / 195 TTJ 796 (Mum.)(Trib.)

853 **S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Onus on assessing officer to bring on record comparable cases Assessee as well as holding company assessed to Income-tax at maximum marginal rate – Disallowance is not justified.**

Tribunal held that, the onus was on the Assessing Officer to bring on record comparable cases to prove that the payment made by the assessee was in excess of the fair market value and that the payment in his opinion was excessive or unreasonable. The provisions of section 40A(2) are not automatic and can be called into play only if the Assessing Officer establishes that the expenditure incurred is in fact in excess of the fair market value. The Assessing Officer had not doubted the payment made by the assessee to the holding company on account of services rendered by it or brought any comparable case to demonstrate that the payment made by the assessee was excessive. Therefore no disallowance could be made especially in the light of the fact that both the companies were assessed to Income-tax at the maxiMum marginal rate. The disallowance made by the Assessing Officer was not proper. (AY. 2009 10 to 2013-14)

Manipal Health Systems P. Ltd. v. ACIT (2018) 65 ITR 51 (SN)(Bang.)(Trib.)

S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Payment of interest on unsecured loans at rates between 15 % an 18% can not be held to be excessive. 854

Tribunal held that, payment of interest on unsecured loans at rates between 15 % an 18% can not be held to be excessive, hence no disallowance can be made. (AY. 2010-11, 2011-12)

CIT v. Ahmedabad Strips P. Ltd. (2018) 64 ITR 683 (Ahd.)(Trib.)

S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable-Salaries paid to Doctors who were reputed professionals in their fields could not be held to be excessive and unreasonable hence disallowance of 15% of salaries was deleted. 855

Allowing the appeal of the assessee the Tribunal held that ; Salaries paid to Doctors who were reputed professionals in their fields could not be held to be excessive and unreasonable hence disallowance of 15% of salaries was deleted. (AY. 2012-13)

Hemato Oncology Clinic (Ahmedabad) (P.) Ltd. (2018) 170 ITD 621 / 169 DTR 315 / 194 TTJ 885 (Ahd.)(Trib.)

S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Firm – Partner – When partners of the firm contribute land as stock in trade though provision of S. 45(3) would not be applicable, AO can examine reasonableness of payment to partners. [S. 45(3)] 856

On appeal by the revenue the Tribunal held that when the partners of assessee-firm made capital contribution in form of land which was treated as stock-in-trade, provisions S. 45(3) would not apply rather case would be governed by provisions of S 28 to 43A and, thus, AO was entitled to examine reasonableness of payments made to partners for their contribution of land in terms of S 40A(2)(a) accordingly the matter was set aside to examine the issue in terms of S. 40A(2)(a) of the Act. (AY. 2007-08)

ACIT v. Karuna Estates & Developers. (2018) 170 ITD 249 (Vishakha)(Trib.)

S. 40A(2) : Expenses or payments not deductible – Excessive or unreasonable – Rent paid to guest house – Payment being comparable no disallowance can be made. 857

Tribunal held that the department had not brought on record any material evidence to suggest that the rent paid was excessive vis-a-vis an accommodation of the same size and facility in the same locality. Therefore the rent payment as incurred for the purposes of the assessee's business and was allowable. (AY. 2009-10)

ACIT v. Chambal Fertilisers And Chemicals Limited (2018) 61 ITR 33 (Jaipur)(Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Where the income is computed applying the gross profit rate, no disallowances can be made by applying provisions of S. 40A(3). [S. 36, R.6DD(j)] 858

Dismissing appeal of the revenue the Court held that, where the income is computed applying the gross profit rate, no disallowances can be made by applying provisions of S. 40A(3).

CIT v. Jadau Jewellers And Manufactures (P) Ltd. (2018) 409 ITR 85 (Raj.)(HC)

Editorial : SLP is granted to the revenue, CIT v. Jadau Jewellers And Manufactures (P) Ltd. (2016) 406 ITR 4 (St.)

859 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Payment made to notified dealer – District Supply Officer's order did not mandate any mode of payment either in cash or by cheque, and, moreover, there were banking channels available even when supplies had been effected, impugned disallowance was rightly made by authorities. [S. 260A, R.6DD]**

Dismissing the appeal of the assessee the Court held that, District Supply Officer's order did not mandate any mode of payment either in cash or by cheque, and, moreover, there were banking channels available even when supplies had been effected, accordingly order passed by Tribunal confirming disallowance of cash payments did not require any interference. (AY. 2009-10)

Madhav Govind Dhulshete v. ITO (2018) 259 Taxman 149 (Bom.)(HC)

860 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Factory was situated in backward area and payments to transporters had to be made in cash because such persons were not having banking facility around factory area Freight and cartage payments to drivers – Held to be allowable as deduction. [R. 6DD]**

Dismissing the appeal of the revenue the Court held that ; Cash payments exceeding prescribed limits in respect of freight and cartage to drivers is held to be allowable as deduction as the factory is situated in backward area and payments to transporters had to be made in cash because such persons were not having banking facility around factory area.

PCIT v. Lord Chloro Alkali Ltd. (2018) 97 taxmann.com 513 / 258 Taxman 131 (Raj.)(HC)

Editorial : SLP of revenue is dismissed. PCIT v. Lord Chloro Alkali Ltd. (2018) 258 Taxman 130 (SC)

861 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Deletion of addition by Tribunal on ground that expenditure negligible considering turnover of assessee – Matter Remitted to AO to redo assessment on consideration of related documents.**

Allowing the appeal of the revenue the Court held that ; deletion of addition by Tribunal on ground that expenditure negligible considering turnover of assessee is not justified. Matter remitted to AO to redo assessment on consideration of related documents. (AY. 2012-13)

CIT v. Vasantha Subramanian Hospitals Pvt. Ltd. (2018) 408 ITR 176 / 258 Taxman 396 / 172 DTR 423 / (2019) 307 CTR 569 (Mad.)(HC)

862 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Payments to farmers is covered by exception – No disallowance can be made. [R. 6DD(e)(i)]**

Dismissing the appeal of the revenue, the Court held that, cash payments exceeding prescribed limits to farmers is covered by exception hence no disallowance can be made. (AY. 2008-09)

PCIT v. Keshvalal Mangaldas (2018) 257 Taxman 133 (Guj.)(HC)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Agricultural produce – Paddy from farmers-No disallowance can be made. [R. 6DD] 863

Dismissing the appeal of the revenue the Court held that ; Agricultural produce ie. Paddy purchased from the famers by making cash payments exceeding prescribed limits, no disallowance can be made. S. 40A(3) is a deeming provision and rule 6DD exempts agricultural produce. (AY. 2001-02)

CIT v. Keerthi Agro Mills (P.) Ltd. (2017) 405 ITR 192 / 87 taxmann.com 31 (Ker.)(HC)

Editorial : SLP of revenue is dismissed; PCIT v. Keerthi Agro Mills (P.) Ltd. (2018) 257 Taxman 1 (SC)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits of ₹ 20,000 – Inflated purchase expenditure by raising bogus claims – Only profit element embedded there in should be brought to tax and not the entire expenditure. [S. 37(1), 145] 864

Dismissing the appeal of the revenue the Court held that ;when Assessing Officer had doubted genuineness of expenditure, he would require bringing to tax profit element so avoided by assessee and not the entire expenditure. (AY. 2009-10)

PCIT v. Juned B. Memon (2018) 256 Taxman 380 (Guj.)(HC)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Evidence in the form of bills etc. was not produced. Disallowance was confirmed. [R. 6DD(h),(j)] 865

Dismissing the appeal of the assessee the Court held that the assessee was not able to satisfy the Assessing Officer with regard to the genuineness of the payment made to the transporters, contractors etc. inasmuch as the evidence in the form of bills etc. was not produced. Accordingly disallowance was confirmed. (AY. 1991-92)

Ellora Paper Mills Ltd. v. CIT (2018) 163 DTR 42 / 301 CTR 252 (Bom.)(HC)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – 20% expenditure – Purchase of land as stock in trade – Villagers paid the amount in cash in the absence of banking facilities deletion of addition was held to be justified. [R. 6DD(h)] 866

Dismissing the appeal of the revenue the Court held that the payment of cash was made to villagers for purchase of land as stock in trade. Villagers were paid the amount in cash in the absence of banking facilities deletion of addition was held to be justified.

CIT v. Ace India Abodes Ltd. (2018) 162 DTR 118 (Raj.)(HC)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Exporter of frozen buffalo meat – Payment made to producer of meat in cash in excess of ₹ 20,000/- disallowance cannot be made – Circular No. 8 of 2016 dt 6-10-2016 issued by CBDT cannot impose additional condition in the Act or Rules adverse to an assessee. [R. 6DD(e)] 867

Dismissing the appeal of the revenue the Court held that, Assessee exporter of frozen buffalo meat. Payment made to producer of meat in cash in excess of ₹ 20,000/-

disallowance cannot be made. Circular No. 8 of 2016 dt 6-10-2016 issued by CBDT cannot impose additional condition in the Act or Rules adverse to an assessee. Relied *UCO Bank v. CIT (1999) 237 ITR 889 (SC)* (AY. 2009-10)
PCIT v. Gee Square Exports (2018) 100 taxmann.com 461 / (2019) 411 ITR 661 (Bom.) (HC)
Editorial : SLP of revenue is dismissed, PCIT v. Gee Square Exports (2018) 100 taxmann.com 462/(2019) 260 Taxman 175 (SC)

868 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Amount being small and genuineness of payment was not doubted no disallowance can be made.**
Dismissing the appeal of the revenue the Court held that; amount being small and genuineness of payment was not doubted no disallowance can be made. (AY. 2009-10)
ITO v. Samwon Precision Mould Mfg. India Pvt. Ltd. (2018) 401 ITR 486 (Delhi)(HC)

869 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Logistic solutions – Airline companies – Identity of payee and genuineness of transaction is not doubted – Disallowance was deleted.**
Tribunal held that for business expediency in line of business of assessee, sometimes cash payments were made to complete work on behalf of Principal. Assessee, under such compelling reasons, had to make payments in cash on account of urgent need. As the identity and genuineness of transaction is not in doubt, disallowance was deleted.
KGL Network (P) Ltd. v. ACIT (2018) 195 TTJ 265 / (2019) 176 DTR 102 (Delhi)(Trib.)

870 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Survey-cash purchases reported in the financial statements, i.e., notional entries made for the purpose of matching the unaccounted sales discovered during the search actions – No disallowance can be made by applying the provision of S. 40A(3). [S. 133A]**
Tribunal held that only notional entries were made for purpose of matching unaccounted sales discovered during search. Disallowance is held to be not justified. (AY. 2005-06, 2006-07)
Floorings v. ITO (2018) 64 ITR 34 (SN) (Pune)(Trib.)
Bhikshu Granimart v. Dy.CIT (2018) 64 ITR 34 (SN)(Pune)(Trib.)

871 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – payment exceeding ₹ 20,000 – payment to truck driver who generally insist payment in cash – Held, AO did not doubt genuineness of the payment – Disallowance cannot be made.**
Assessee had made payment to truck drivers who generally insist payment in cash. Cash payment was above ₹ 20,000/- only on three occasions and that the amount was nominally above the threshold limit. The AO did not doubt the genuineness of the payment. The Tribunal held that, no disallowance can be made as laid down in Circular No. 220 dt. 31.5.1977(1977) 108 ITR 8 (St).
Royal Wood Industries v. Jt. CIT (2018) 62 ITR 321 (Amritsar)(Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Purchase of land – Capital expenditure is not charged to profit and loss account – Disallowance cannot be made. 872

The assessee trust had paid certain amount in cash for purchase of land for development. The AO disallowed 20 per cent of the said sum u/s. 40A(3) of the Act. The Tribunal held that, the payment was towards purchase of land, capital expenditure is not charged to profit & loss account hence disallowance was held to be not justified. (AY. 2007-08, 2009-10)

Shalom Charitable Ministries of India v. ACIT (2018) 171 ITD 338 / 195 TTJ 340 (Cochin) (Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – No disallowance can be made for cash payments if the transaction is genuine and the identity of the payee is known. Rule 6DD is not exhaustive. The fact that the transaction does not fall with Rule 6DD does not mean that a disallowance has to be per force made. [R. 6DD] 873

Allowing the appeal of the assessee the Tribunal held that,no disallowance can be made for cash payments if the transaction is genuine and the identity of the payee is known. Rule 6DD is not exhaustive. The fact that the transaction does not fall with Rule 6DD does not mean that a disallowance has to be per force made. (AY. 2013-14)

A Daga Royal Arts v. ITO (2018) 196 TTJ 541 / 64 ITR 55 (SN)(Jaipur)(Trib.), www.itatonline.org

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Repayment of debt to group concern and expenditure was not debited in profit and loss account, addition cannot be made. 874

Allowing the appeal of the assessee the Tribunal held that; transactions between assessee and its group concerns for repayment of debt to group concern and not for any expenditure incurred and same had not been debited in profit and loss account therefore addition was held to be not justified. (AY. 2008-09)

Saamag Developers (P.) Ltd. v. ACIT (2018) 168 ITD 649 (Delhi)(Trib.)

S. 40A(3) : Amounts not deductible – Hotel and restaurant bills – Each payment is less than ₹ 20,000/- hence disallowance was held to be not valid. 875

Dismissing the appeal of the revenue the Tribunal held that, each payment was less than ₹ 20,000 hence no disallowances can be made.

ACIT v. Kiwifx Solutions (2018) 61 ITR 780 (Ahd.)(Trib.)

S. 40A(7) : Expenses or payments not deductible – Gratuity – Delay in granting approval – As the condition was satisfied, no disallowances can be made. 876

Dismissing the appeal of the revenue the Court held that where conditions of approval as seen from clause (3) of Part-C of Schedule IV had been satisfied, its claim for deduction would be allowable though there was delay in granting approval. (AY. 2010-11)

PCIT v. English Indian Clays Ltd. (2018) 253 Taxman 208 (Ker.)(HC)

877 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Deferral sales tax Scheme – Premature payment in terms of net present value (NPV) of same cannot be assessed as remission or cessation of liability. [S. 43B]**
Dismissing the appeal of the revenue the Court held that; Premature payment in terms of net present value (NPV) of same cannot be assessed as remission or cessation of liability . What assessee was required to pay after 12 years in 6 equal instalments was paid by assessee prematurely in terms of net present value (NPV) of same. (AY. 2003-04)
CIT v. Balkrishna Industries Ltd. (2018) 252 Taxman 375 / 300 CTR 209 / 161 DTR 185 (SC)
Editorial : CIT v. Sulzer India Ltd (2014) 369 ITR 717/ (2015) 229 Taxman 264 (Bom.) (HC) is affirmed.

878 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Banking business – Amount transferred to statutory reserve out of carried forward account of provision for expenses was treated as taxable. [S. 80P(2)]**
Assessee was an apex co-operative bank of Rajasthan deriving income from banking business. Income of assessee co-operative bank was exempt under section 80P(2) in all earlier year(s). However, from assessment year in question i.e. 2007-08, entire income from banking business of assessee became taxable on withdrawal of exemption by insertion of section 80P(4) by Finance Act, 2006 with effect from 1-4-2007. AO treated the amount transferred to statutory reserve out of carried forward account of provision for expenses was treated as taxable under section 41(1). Tribunal and High Court up held the order of the AO. (AY. 2007-08)
Rajasthan State Co-Operative Bank Ltd. v. ACIT (2018) 100 taxmann.com 152 / 259 taxman 512 (Raj.)(HC)
Editorial : SLP is granted to the assessee and stay of operation of the impugned judgement and order of the High Court, Rajasthan State Co-Operative Bank Ltd. v. ACIT (2018) 259 Taxman 511 (SC).

879 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Liability continued to be shown in balance – sheet – Addition cannot be made as deemed income.**
Dismissing the appeal of the revenue the Court held that ; when the liability qua the amount which was still standing in the balance-sheet of the assessee, which fact had not been disputed by the Assessing Officer, the liability could not be said to have ceased in terms of S. 41(1) of the Act. (AY. 2005-06)
CIT v. Eco Auto Components Pvt. Ltd. (2018) 409 ITR 202 (P&H)(HC)

880 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Provision for doubtful debt – Burden is revenue to prove that excess provision for bad and doubtful debt written back in profit and loss account was allowed as deduction in previous years – Deletion of addition is held to be justified. [S. 36(1)(viia)]**
Dismissing the appeal of the revenue the Court held that, burden is revenue to prove that excess provision for bad and doubtful debt written back in profit and loss account

was allowed as deduction in previous years. Accordingly the-deletion of addition is held to be justified. (AY. 2008-09)
CIT v. Pragathi Gramina Bank (2018) 91 taxmann.com 343 (Karn.)(HC)
Editorial : SLP of revenue is dismissed, CIT v. Pragathi Gramina Bank (2018) 259 Taxman 219 (SC)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Non-payment of outstanding liability which is admitted and acknowledged as due and payable cannot be assessed as remission or cessation of liability. 881
Dismissing the appeal of the revenue, the Court held that ; non-payment of outstanding liability which is admitted and acknowledged as due and payable cannot be assessed as remission or cessation of liability.
PCIT v. New World Synthetics Ltd. (2018) 258 Taxman 189 (Delhi)(HC)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – The mere fact that the assessee has made an entry of transfer in his accounts unilaterally will not enable the Department to say that section 41 would apply and the amount should be included in the total income of the assessee-Deletion of addition was held to be justified. 882
Dismissing the appeal of the revenue the Court held that ;Section 41 of the Income-tax Act, 1961 contemplates the obtaining by the assessee of an amount either in cash or in any other manner whatsoever or a benefit by way of remission or cessation and it should be of a particular amount obtained by him. Thus, the obtaining by the assessee of a benefit by virtue of remission or cessation is sine qua non for the application of this section. The mere fact that the assessee has made an entry of transfer in his accounts unilaterally will not enable the Department to say that section 41 would apply and the amount should be included in the total income of the assessee. Accordingly the Tribunal was justified in deleting the addition of ₹ 1,27,76,000 and ₹ 2,28,08,000, being liabilities in respect of interest on sugar and cane price difference respectively, written back by the assessee.
CIT v. Kanoria Sugar And General Manufacturing Co. Ltd. (2018) 407 ITR 737 (Raj.)(HC)
Editorial : SLP of revenue is dismissed; CIT v. Kanoria Sugar And General Manufacturing Co. Ltd. (2018) 405 ITR 1 (St)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Amounts remaining unrecoverable as creditors untraceable cannot be the ground to conclude that there was cessation of liability. 883
Dismissing the appeal of the revenue the Court held that ; amounts remaining unrecoverable as creditors untraceable cannot be the ground to conclude that there was cessation of liability. (AY. 2007-08)
CIT v. Vishal Transformers And Switchgears Pvt. Ltd. (2018) 405 ITR 266 (All.)(HC)

884 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Liability is not written of in books of account – Addition cannot be made as cessation of liability.**
Court held that as the assessee had not written of liability in books of account with respect to debtors and had carried forward and continued same liability addition cannot be made as cessation of liability (AY. 2009-10)
PCIT v. Babul Products (P.) Ltd. (2018) 257 Taxman 100 (Guj.)(HC)
Editorial : Order in Babul Products (P.) Ltd v. ACIT (2017) 167 ITD 402 (Ahd) (Trib.) is affirmed.

885 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Assets and liabilities were transferred to special purpose vehicle – Tribunal failed to give independent finding, accordingly the matter was remanded to Tribunal .**
Allowing the appeal of the assessee the Court held that, Tribunal held finding of CIT (A) was not proper but it did not render an independent finding; rather it was guided by finding rendered by it in its earlier order. Accordingly the matter was to be remanded back to Tribunal.
India Cements Capital & Finance Ltd. v. ACIT (2018) 254 Taxman 180 (Mad.)(HC)

886 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Share application money from holding company which was adjusted against goods sold by assessee cannot be assessed as cessation or remission of liability.**
Dismissing the appeal of the revenue the Court held that; Share application money from holding company which was adjusted against goods sold by assessee cannot be assessed as cessation or remission of liability. (AY. 2007-08)
CIT v. Indo Widecom International Ltd. (2018) 409 ITR 144 / 253 Taxman 117 / 300 CTR 437 / 161 DTR 345 (All.)(HC)

887 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Creditors were paid in subsequent years hence addition was held to be not justified.**
Dismissing the appeal of the revenue, the Court held that, Creditors were paid in subsequent years hence addition was held to be not justified. (AY. 1996-97)
CIT v. Banaras House Ltd. (2018) 402 ITR 88 (Delhi)(HC)

888 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Students who could not pass the examination would get 50 percent of fees as refund within two months from the declaration of results of examination – Contract between parties clear and Tribunal is right is holding that the unclaimed amounts were assessable to tax as deposit changed its character into income.**
On appeal, the High Court upheld the decision of Tribunal on the ground that contract between the parties are clear that refund must be claimed within two months of declaration of results and any refund application there-after would not be granted. In view of the clear finding of fact, the parties would be governed by the contract and the

principle laid down in T. V. Sundaram Iyengar and Sons Ltd. (1999) 222 ITR 344 (SC) would be relevant in the present case. (AY. 1989-90)
E. K. Thakur (Deceased) Through LR Gautam E Thakur v. CIT (2018) 163 DTR 380 (Bom.) (HC)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Sundry creditors – Produced details of court cases at Kuwait and correspondences with its overseas buyers/agents its efforts for making recovery to justify that these payments were still due from customers albeit same was produced before Tribunal for first time – No justification in confirming additions. 889
It was incumbent on the learned AO as well learned CIT(A) to have gone into greater scrutiny and examination to disprove the contentions of the assessee and merely making bald statement is not sufficient. The assessee has also produced details of court cases at Kuwait and correspondences with its overseas buyers/agents w.r.t. its efforts for making recovery etc to justify that these payments are still due from the customers albeit the same was produced before the Tribunal for the first time. The Revenue has not brought on record any incriminating material to support its stand despite having sufficient opportunity to had made necessary enquiries and verification at level of AO as well learned CIT(A) whose powers are coterminous with that of the AO which unfortunately the Revenue did not do so while the assessee placed all the facts before the authorities below. Accordingly the addition was deleted. (AY. 2011-12)
Pyramid Consulting Engineers Pvt. Ltd. v. DCIT (2018) 195 TTJ 229 / (2019) 176 DTR 302 (Mum.)(Trib.)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Sundry creditors were paid in subsequent year – Deletion of addition is held to be justified. 890
Tribunal held that CIT(A) had recorded a categorical finding that assessee had paid all sundry creditors in subsequent financial year and proof for such payment had been furnished. AO had made addition towards sundry creditors without bringing on record any evidence to prove that there was cessation of liability in impugned financial year and also, assessee had derived benefit out of such cessation of liability. (AY. 2011-12)
Scrabble Entertainment Ltd. v. ACIT (2018) 169 DTR 51 / 193 TTJ 418 (Mum.)(Trib.)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Outstanding sundry creditors for several years – Failure to produce correct address, PAN Numbers, or confirmations – Merely because liabilities were shown in books of account and not written back, could not be held to be subsisting liability. [S. 133(6)] 891
Allowing the appeal of the revenue the Tribunal held that; outstanding sundry creditors for several years assesses failure to produce correct address, PAN Numbers, or confirmations. Merely because liabilities were shown in books of account and not written back, could not be held to be subsisting liability. (AY. 2010-11)
ACIT v. Dattatray Poultry Breeding Farm (P.) Ltd. (2018) 171 ITD 615 (Ahd.)(Trib.)

892 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Amount not written back sundry creditors in his profit and loss account and had shown balance outstanding towards those creditors cannot be added as income.**
Allowing the appeal of the assessee the Tribunal held that; Amount not written back sundry creditors in his profit and loss account and had shown balance outstanding towards those creditors cannot be added as income,since assessee had duly acknowledged his debt by accepting creditors liability to be discharged in future, there could not be any cessation of liability. (AY. 2012-13)
Jashojit Mukherjee v. ACIT (2018) 170 ITD 701 / 195 TTJ 697 (Kol.)(Trib.)

893 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Benefit from Pre-payment of deferred Sales Tax Liability cannot be assessed u/s 41(1).**
Dismissing the appeal of the revenue the Tribunal held that; Benefit from Pre-payment of deferred Sales Tax Liability cannot be assesses u/s 41(1). Board Circular No. 496 dated September 25, 1987 stated that statutory liability was to be treated as paid in case the State Government made an amendment that sales tax deferred under the scheme was to be treated as actually paid, therefore the order of the Commissioner (Appeals) for the assessment year 2009-10 was upheld. (AY. 2009-10)
ACIT v. Chambal Fertilisers And Chemicals Ltd. (2018) 61 ITR 33 (Jaipur)(Trib.)

894 **S. 43(1) : Actual cost – Depreciation – Grants towards capital fund-contribution in the form of grants could not be considered as a payment directly or indirectly to meet any portion of the actual cost and, thus, did not fall within the ambit of Explanation 10 to section 43(1). [S. 32.]**
Tribunal held that ;where three Governments coming together and doing business by themselves by constituting a society. Its main objects related to providing technical, advisory and consultancy services for small and medium scale industries across the State of Gujarat, besides for improving skills and knowledge of the personnel of the tool room. To achieve these objects, the promoters provided funds in the form of grants towards capital fund. Such contribution in the form of grants could not be considered as a payment directly or indirectly to meet any portion of the actual cost and, thus, did not fall within the ambit of Explanation 10 to section 43(1).(AY. 2013-14)
ITO v. Indo German Tool Room (2018) 64 ITR 58 (SN)(Ahd)(Trib.)

895 **S. 43(5) : Speculative transaction – Hedging – High sea sales – Not speculative – Allowable as business loss. [S. 28(i)]**
The assessee entered into contracts for purchase of raw materials, mainly crude oil, which was the raw material for refined oil on "high seas sale" basis and many times, looking to the market trend, the assessee had to cancel such contracts for sale of raw materials (crude oil). In the present assessment year it had resulted in a loss which the assessee claimed as a business losS. The Assessing Officer and the Commissioner (Appeals) rejected the claim of the assessee in its entirety, but the Tribunal recorded findings with respect of 32 transactions in favour of the assessee. On appeal dismissing

the appeal of the revenue the Court held that the Tribunal was correct in allowing the claim of the assessee in respect of 32 transactions. (AY. 2009-10)
ACIT v. Surya International (P.) Ltd. (2018) 406 ITR 274 / 258 Taxman 172 (All.)(HC)

S. 43(5) : Speculative transaction – Derivatives – Losses – Set off from one source against income from other source under same head of income – Loss incurred on account of derivatives would be deemed business loss under proviso to S. 43(5) and not speculation loss, Explanation to S. 73 would not be applicable – Interpretation – Two non jurisdictional High Court taking different view – View favourable to the assessee is followed. [S. 70, 73(4)] 896
Dismissing the appeal of the revenue the Tribunal held that ;loss incurred on account of derivatives would be deemed business loss under proviso to S. 43(5) and not speculation loss and, accordingly Explanation to S. 73 could not be applied and as such, loss would be set off against income from business. When two non jurisdictional High Courts have taken different view, in favour of the assessee may be followed. (Referred, *Taj International (P) Ltd v. Dy. CIT (2011) 118 Taxman 59 (Mag) (Delhi) (HC), Asian Financial Services Ltd v. CIT (2016) 240 Taxman 192 (Cal) (HC)) favour, CIT v. DLF Commercial Developers Ltd. (2013) 218 Taxman 45 (Delhi) (HC)* against) (AY.2011-12)
ITO v. Upkar Retail (P.) Ltd. (2018) 171 ITD 626 / 170 DTR 233 / 195 TTJ 743 (Ahd.)(Trib.)

S. 43(5) : Speculative transaction – Derivative – Both delivery based transaction and derivative transactions are non-speculative as far as S. 43(5) is concerned and, thus, they will have same treatment as regards application of Explanation to S. 73 of the Act, matter was remanded back to Assessing Officer to bifurcate speculative loss and normal business loss. [S. 43(5) (d), 73] 897
Tribunal held that both delivery based transaction and derivative transactions are non-speculative as far as S. 43(5) is concerned and, thus, they will have same treatment as regards application of Explanation to S. 73 of the Act, matter was remanded back to Assessing Officer to bifurcate speculative loss and normal business loss. (AY. 2007-08)
Dewa Projects (P.) Ltd. v. ACIT (2018) 170 ITD 326 / 166 DTR 105 / 193 TTJ 755 (Cochin) (Trib.)

S. 43(5) : Speculative transaction – Currency derivatives – Transactions through a recognised stock broker on recognised stock exchange, could not be termed as speculative transaction. [S. 73] 898
Allowing the appeal of the assessee the Tribunal held that; transactions of currency derivatives were conducted through a recognised stock broker, on a recognised stock exchange and which were duly supported by time stamped contract notes, same could not be termed as speculative transaction (AY. 2013-14, 2014-15)
Nand Nandan Agrawal v. DCIT (2018) 169 ITD 161 (Agra)(Trib.)

S. 43(6) : Written down value – For computing WDV depreciation allowed under the State enactment cannot be reduced. [S. 32. Kerala Agricultural Income-tax Act, 1991] 899
HELD by the High Court that the depreciation allowed with respect to the income assessed to tax under any other enactments (Kerala Agricultural Income-tax Act, 1991)

having not been specifically excluded from S. 43(6) of Act, there is no reason to reduce the amount of depreciation claimed under the State Act, while computing WDV as per the IT Act as if the Government wanted to ensure that no double benefit is conferred on assessee, then it ought to have brought such specific provision on depreciation to prevent double benefit to assessee. (AY. 2002-2003)
Rehabilitation Plantations Ltd v. CIT (2018) 253 Taxman 522 / 166 DTR 433 (Ker.)(HC)

900 **S. 43A : Rate of exchange – Actual cost – Depreciation – Notional fluctuation – Imported assets acquired in foreign currency – Fluctuation in rate of exchange – Adjustment can be made at each date of balance – sheet pending actual payment. [S. 32]**
Dismissing the appeal of the revenue the Court held that, the Tribunal was justified in allowing the claim of depreciation on foreign exchange fluctuation which showed notional fluctuation. Adjustment can be made at each date of balance – sheet pending actual payment. (AY. 1993-94)
CIT v. Phonex Lamps India Ltd. (2018) 406 ITR 550 (All.)(HC)

901 **S. 43A : Rate of exchange – Foreign currency – Foreign exchange fluctuation on loan liability on fixed asset being notional and no actual payment was made would not require any adjustment in the cost of the fixed assets on accrual basis, as the S. 43A is amended w.e.f 1st April, 2003. [S. 37(1)]**
Dismissing the appeal of the revenue the Court held Foreign exchange fluctuation on loan liability on fixed asset being notional and no actual payment was made would not require any adjustment in the cost of the fixed assets on accrual basis as the S. 43A is amended w.e.f 1 st April, 2003. Referred *CIT v. Woodward Governor India P. Ltd (2009) 312 ITR 254 (SC)* (AY. 2003-04) (ITA No. 1129 of 2015 dt. 18-04-2018)
PCIT v. Spicer India Ltd. (Bom.)(HC) www.itatonline.org

902 **S. 43A : Rate of exchange – Foreign currency – Capital advance made to subsidiary – Notional Loss – Restatement of foreign currency loan is capital in nature and not allowable as deduction. [Accounting Standard, Para 11]**
Tribunal held that capital advance made to subsidiary, restatement of foreign currency loan is capital in nature and not allowable as deduction in view of Accounting Standard, Para 11. (AY. 2009 10 to 2013-14)
Manipal Health Systems P. Ltd. v. ACIT (2018) 65 ITR 51 (SN)(Bang.)(Trib.)

903 **S. 43B : Deductions on actual payment – Service tax payable – Since services were rendered, liability to pay service tax in respect of consideration would arise only upon assessee receiving funds and not otherwise-liability claimed by assessee could not be disallowed.**
Dismissing the appeal of the revenue the Court held that ; since services were rendered, liability to pay service tax in respect of consideration would arise only upon assessee receiving funds and not otherwise, thus, liability claimed by assessee could not be disallowed. (AY. 2006-07)
PCIT v. Tops Security Ltd. (2018) 258 Taxman 161 / (2019) 415 ITR 212 (Bom.)(HC)
Editorial: SLP of revenue is dismissed, PCIT v. Tops Security Ltd. (2019) 262 Taxman 355 (SC)

S. 43B : Deductions on actual payment – Excise duty – Unutilised modvat credit of earlier years, which is adjusted in current Assessment Year, cannot be treated as actual payment. Customs duty and sales tax of earlier years is allowable as deductions. [S. 145A] 904

Court held that (i) that the Tribunal was not right in holding that the unutilised Modvat credit amounts of earlier years adjusted in the assessment year 1999-2000, could be treated as actual payment of excise duty under section 43B. (ii) That the sales tax paid on raw material in the preceding assessment year was rightly allowed as a deduction in the current assessment year under section 43B. (iii) That the customs duty paid on imports, claimed as a deduction under section 43B, was directly paid by the assessee to the customs authorities during the assessment year in question. The Tribunal had rightly allowed the deduction. (AY. 1999-2000)

CIT v. Maruti Udyog Ltd. (2018) 407 ITR 159 / (2019) 308 CTR 682 (Delhi)(HC)

S. 43B : Deductions on actual payment – Unutilised MODVAT credit representing excise duty paid of raw material/input at the end of year cannot be allowable as deduction. 905

Dismissing the appeal of the assessee the, High Court held that S. 43B shall apply only in cases of 'statutory liability'. In the present case primary liability to pay excise duty is essentially on the manufacturers of the raw materials and inputs. As far as the Assessee is concerned, the liability to pay the said amount is only contractual. Therefore High Court held that the assessee would not be allowed to claim deduction of unutilized MODVAT credit u/s. 43B of the Act. However, High Court agreed with the ITAT's acceptance of the assessee's alternate contention that unutilized MODVAT credit of the earlier year is allowable as a deduction in the relevant assessment year, to the extent that it has been adjusted by treating as actual payment of the credit for the assessment year in question. (AY. 1999-00)

Maruti Udyog Ltd. v. CIT (2018) 406 ITR 562 / 253 taxman 60 / 161 DTR 1 (Delhi)(HC)

S. 43B : Deductions on actual payment – Employees provident fund – No disallowance can be made, if deposited prior to due date of filing of return. [S. 139(1)] 906

Allowing the appeal of the assessee the Court held that; no disallowance can be made if employees provident fund is deposited prior to due date of filing of return. Followed, *CIT v. Alom Extrusions Ltd. (2009) 319 ITR 306 (SC).* (AY. 2001-02)

Kashmir Tubes v. ITO (2017) 85 taxmann.com 299 (2018) 300 CTR 541 (J&K)(HC)

S. 43B : Deductions on actual payment – Provision for leave encashment – Not allowable unless the amount is actually paid. 907

Deduction cannot be allowed under section 43B on the making of a mere provision for leave encashment unless the amount is actually paid. (AY. 2004-05 to 2009-10)

Delhi Tourism & Transport Development Corp. Ltd. v. Dy. CIT (2018) 194 TTJ 305 (Delhi) (Trib.)

908 **S. 43B : Deductions on actual payment – Contribution to provident fund and employees' state insurance – Contribution deposited beyond prescribed time limit provided in respective Acts but before due date of filing return under income tax Act is allowable.**

Dismissing the Department's appeal, the Tribunal held that the payment or contribution made to the provident fund authority any time before the due date of filing of the return for the year in which the liability to pay accrued was an allowable expenditure. Admittedly, the employees' contribution to the provident fund was deposited by the assessee before the due date of filing of return. There was no any error or illegality in the order of the CIT(A).

DCIT v. Rajasthan Rajya Vidyut Utpadan Nigam Ltd. (2018) 63 ITR 685 / 52 CCH 520 (Jaipur)(Trib.)

909 **S. 43B : Deductions on actual payment – Service tax – Not deposited with Government before due date of filing of return – Disallowance was held to be justified. [S. 139(1)]**

Tribunal held that since the assessee has not deposited with Government before due date of filing of return,disallowance was held to be justified. (AY. 2013-14)

Hemkunt Infratech (P.) Ltd. v. DCIT (2018) 170 ITD 419 / 170 DTR 1 / 195 TTJ 598 (Delhi) (Trib.)

910 **S. 43B : Deductions on actual payment – Payment of Leave encashment made before due date of filling of return of income is allowable as deduction. [S. 139(1)]**

The AO disallowed the payment of leave encashment made before due date of filling of return of income, on the ground that, no evidence was filed. Tribunal held that the requirement of furnishing evidence of details of payment of leave encashment is only a directory and not mandatory, therefore no disallowance can be made. (AY. 2006-2007 to 2008-2009)

Dy. CIT v. Mcnally Bharat Engineering Co. Ltd. (2018) 191 TTJ 822 (Kol.)(Trib.)

911 **S. 43B : Deductions on actual payment – Employees' contribution to provident fund and employees' state insurance, deposited before due date for filing of return is allowable as deduction. [S. 139(1)]**

Payment made to employees' contribution to provident fund and employees' state insurance, deposited before due date for filing of return is allowable as deduction. (AY. 2012-13)

Powerware India P. Ltd. v. ITO (2018) 61 ITR 746 (SMC) (Cuttack)(Trib.)

912 **S. 43CA : Transfer of assets – other than capital assets – Full value of consideration – stock in trade – Agreement value – Stamp valuation – Provision of S. 43CA have been inserted with effect from 1-4-2014 to relevant assessment year 2014-15 – Agreement to sell was entered much prior to that date, i.e. in the year 2007 – Provision of S. 43CA(4) cannot be applied – Matter remanded to CIT(A) to determine valuation as on 9-4-2007 and if it is higher than the sale consideration, same can be brought to tax in the year under consideration. [S. 50C]**

Allowing the appeal of the assessee the Tribunal held that, provision of S. 43CA have been inserted with effect from 1-4-2014 to relevant assessment year 2014-15. Agreement

to sell was entered much prior to that date, i.e. in the year 2007 in the instant case agreement to sell was entered in to much prior to that date i.e. in 2007. Accordingly the provision of S. 43CA(4) cannot be applied. Matter remanded to CIT(A) to determine valuation as on 9-4-2007 and if it is higher than the sale consideration, same can be brought to tax in the year under consideration. (AY.2014-15)
Indexone Tradecone (P) Ltd v. Dy. CIT (2018) 172 ITD 396 (Jaipur)(Trib.)

S. 43D : Public financial institutions – Real income – Co-Operative Bank – Interest on non-performing assets – Shown in books as per RBI guidelines – Interest not accrued-Not assessable. [S. 4, 5, 145, RBI Act, 1934, S. 45Q] 913
Dismissing the appeal of the revenue the Court held that, interest on non-performing assets though shown in books as per RBI guidelines, interest which has not accrued is held to be not assessable. (AY. 2009-10)
PCIT v. Ludhiana Central Co-Op. Bank Ltd (2018) 305 CTR 868 / 172 DTR 1 (2019) 410 ITR 72 (P&H)(HC)

S. 43D : Public financial institutions – Interest income on loans categorised as NPA/ sticky loans – Taxable on receipt basis and not on accrual basis. [S. 145] 914
The Tribunal relying on the decision of co-ordinate in case of Ludhiana Central Co-op Bank Ltd. (ITA No. 526/Chd/2013) dt. 3 January 2017 wherein the Tribunal considering the decisions of High Court and Supreme Court and taking account of RBI guidelines and AS-9 and following the real income theory, held that the interest on NPA loans are to be taxed on receipt basis. (AY. 2012-13, 2013-14).
DCIT v. Kangra Central Co-operative Bank Ltd. (2018) 63 ITR 231 (Chd.)(Trib.)

S. 44 : Insurance business – Sale of investments – Held to be taxable [S. 14A] 915
AO also made a disallowance u/s 14A. On appeal, CIT(A) deleted addition on ground that provisions of S. 14A were not applicable to insurance company. Allowing the appeal of the revenue the Tribunal held due to deletion of rule 5(b) of first Schedule by Finance Act,1988, there was no provision for any adjustment for profit on sale of investment by Insurance company. Accordingly the AO has rightly taken the view that sale of investments as taxable income of assessee. (AY. 2003-04 to 2007-08)
Cholamandalam Ms General Insurance Company Ltd v. ACIT (2018) 170 DTR 22 / 195 TTJ 166 (Chennai)(Trib.)

S. 44 : Insurance business – The profit disclosed in the shareholder's profit and loss account (Form A-PL) is the profit derived from life Insurance business for computing the insurance business income and also on the principle of consistency. [S. 115JB] 916
The Tribunal held that The profit disclosed in the shareholder's profit and loss account (Form A-PL) is the profit derived from life Insurance business for computing the insurance business income and also on the principle of consistency. (AY. 2010-2011)
Max New York Life Insurance Co. Ltd. v. Dy. CIT (2018) 191 TTJ 897 / 171 DTR 209 (Delhi)(Trib.)

917 **S. 44 : Insurance business – Bonus declared for policy holders, it became a part of ascertained liability and, thus, same could not be treated as a part of actuarial surplus being liable to tax.**

During assessment, the AO made enhancement to the taxable income by treating the amount declared and allocated as bonus for policyholders as part of the actuarial surplus being liable to tax u/s. 44 read with rule 2 of the First Schedule of the Act. On appeal Tribunal held that the assessee, declared bonus for policy holders, it became a part of ascertained liability and same could not be treated as a part of actuarial surplus being liable to tax u/s. 44 r. w. rule 2 of First Schedule to Act. (AY. 2010-2011)

Max New York Life Insurance Co. Ltd. v. Dy. CIT (2018) 191 TTJ 897 / 171 DTR 209 (Delhi)(Trib.)

918 **S. 44 : Insurance business – Funds for Future Appropriation (FFA) represents provision of definite and ascertained liability, same cannot be considered as part of actuarial surplus being liable to tax**

During assessment, AO made addition to by considering the amount appropriated as Funds for Future Appropriation ('FFA') as part of the actuarial surplus being liable to tax u/s. 44, read with rule 2 of the First Schedule of the Act. Tribunal held that in case of insurance business, Funds for Future Appropriation (FFA) represents provision of definite and ascertained liability and therefore same cannot be considered as part of actuarial surplus being liable to tax u/s. 44, read with rule 2 of First Schedule of Act. (AY. 2010-2011)

Max New York Life Insurance Co. Ltd. v. Dy. CIT (2018) 191 TTJ 897 / 171 DTR 209 (Delhi)(Trib.)

919 **S. 44 : Insurance business – While computing profit and gains from an insurance company enhancement made by revenue in respect of provision for doubtful debts in shareholders profit and loss account, is to be deleted.**

The AO made addition to assessee's income for the provision for doubtful debts in shareholders' profit and loss account. Tribunal held that S. 44 debars department to apply provisions of S. 28 to 43B while computing profit and gains from an insurance company therefore enhancement made in respect of provision for doubtful debts in shareholders profit and loss account is deleted. (AY. 2010-2011)

Max New York Life Insurance Co. Ltd. v. Dy. CIT (2018) 191 TTJ 897 / 171 DTR 209 (Delhi)(Trib.)

920 **S. 44 : Insurance business – Insurance company is entitle o exemption u/s 10(34), however S. 14A cannot be invoked to disallow the expenditure. [S. 10(34), 14A]**

A specific exception to applicability of S. 28 to S. 43B in insurance business, purpose therefore though insurance company is entitle to exemption u/s 10(34), however S. 14A cannot be invoked to disallow the expenditure. (AY. 2010-2011)

Max New York Life Insurance Co. Ltd. v. Dy. CIT (2018) 191 TTJ 897 / 171 DTR 209 (Delhi)(Trib.)

S. 44AD : Civil construction – Computation – Even while passing order u/s 144 the AO cannot go beyond the provision – Addition on account of interest and VAT payable is held to be not valid. [S. 144 154] 921

Tribunal held that once the return is computed on presumptive basis no further additions are called for in accordance to the provisions of S. 28 to 43C of the Act. Accordingly addition made on account of interest and VAT was deleted. (AY. 2011-12)

Simranpal Singh v. ITO (2018) 167 DTR 337 / 194 TTJ 380 (Chd.)(Trib.)

S. 44B : Shipping business – Non-residents – Inland Haulage Charges (IHC) – Income derived from operation of ship in international traffic-Not taxable in India-DTAA-India-France [Art.9] 922

Allowing the appeal of the assessee the Tribunal held that ; Inland Haulage Charges (IHC) being part of income derived from operation of ship in international traffic is exempt under article 9 of India-France DTAA; hence, not taxable in India.(AY.2013-14)

Delmas S. A.S. v. DCIT (2018) 171 ITD 373 / (2019) 197 TTJ 1 (UO) / 67 ITR 44 (SN) (Mum.)(Trib.)

S. 44BB : Mineral oils – Computation – Non-residents – The activity of hiring Ships by the user for transporting men/machines to locations where it was doing exploration/ production of mineral oil is directly and closely related with 'services 'rendered by plant and machinery and the income arising out of such activities has to be assessed u/s. section 44BB and not u/s. 44B of the Act – Amount of service tax being in nature of statutory payment could not be included in gross receipts for the purpose of computing presumptive income of assessee u/s. 44BB. [S. 44B] 923

Dismissing the appeal of the assessee the Tribunal held that The activity of hiring Ships by the user for transporting men/machines to locations where it was doing exploration/ production of mineral oil is directly and closely related with 'services' rendered by plant and machinery and the income arising out of such activities has to be assessed u/s. section 44BB and not u/s. 44B of the Act. Amount of service tax being in nature of statutory payment could not be included in gross receipts for the purpose of computing presumptive income of assessee u/s 44BB. (AY. 2008-09, 2009-10, 2010-11)

Swiwar Offshore Pte. Ltd. v. Add. CIT (IT) (2018) 167 DTR 341 / 193 TTJ 951 (Mum.) (Trib.)

S. 44BB : Mineral oils – Computation – imparting any services in relation to exploration of mineral oil then royalties/FTS would be taxable under S. 44BB of the Act – Specific provision prevail over other provisions dealing with royalties and FTS. [S. 9(1)(vi), 9(1) (vii), 44DA, 115A] 924

Dismissing the appeal of the revenue the Tribunal held that ; where assessee is imparting any services in relation to exploration of mineral oil then royalties/FTS would be taxable under S 44BB. S 44BB being specific provisions in relation to specific services, it would prevail over other provisions dealing with royalties/FTS. (AY. 2011-12)

DIT v. RPS Energy Pty Ltd. (2018) 170 ITD 468 (Delhi)(Trib.)

925 **S. 44BB : Mineral oils – Computation – Income deemed to accrue or arise in India – Royalties and fees for technical services – Specific provision is applicable and provision of S. 44DA is not applicable – Article 12 of OECD Model Convention. [S. 9(1)(vii), 44DA]**

Allowing the appeal of the assessee, the Tribunal held that; consideration for provision of comprehensive cementing services in respect of explonatory and development wells planned to be drilled through equipment, material and personnel will qualify for exclusion from fee for technical services under Explanation 2 to section 9(1)(vii), and, in such a case, provisions of section 44BB being more specific, shall be applicable and provisions of section 44DA are not applicable. (AY. 2012-13)

National Oil Well Maintenance Company v. DCIT IT (2018) 168 ITD 385 (Jaipur)(Trib.)

926 **S. 44BB : Mineral oils – Computation – Consideration received under contract is not fees for technical fees or royalty – Consideration received was held to be taxable as business income – DTAA-India United Arab Emirates – Duration of operation of less than 120 days is not material. [S. 9(1) (vi), 9(1)(vii), Art.5(1), 12]**

AAR held that; Consideration received under contract is not fees for technical fees or royalty. Consideration received was held to be taxable as business income. Duration of operation of less than 120 days is not material. The income arising from the permanent establishment shall be subject to tax in India as business income of the applicant. That the income derived by the applicant from its permanent establishment would be computed in accordance with the provisions of S. 44BB of the Act. (AAR No. 1295 of 2012 dt. 28-03-2018)

Seabird Exploration Fz Llc, In Re (2018) 403 ITR 82 / 302 CTR 19 / 165 DTR 33 (AAR)

927 **S. 44BBB : Foreign companies – Civil construction – Presumptive taxation – Percentage completion method – Rejection of books account and assessment at presumptive rate of tax was held to be not justified [S. 44AA(2)]**

Dismissing the appeal of the revenue the Court held that; Rejection of books account and assessment at presumptive rate of tax was held to be not justified.

CIT v. Shandong Tiejun Electric Power Engineering Co. Ltd. (2018) 400 ITR 371 (Guj.)(HC)

928 **S. 44BBB : Foreign companies – Civil construction – Turnkey power projects – Books of account maintained – Applicability of presumptive taxation cannot be thrust upon the assessee. [S. 44AA, 44AB, 44BBB,145 (3)]**

Dismissing the appeal of the revenue the Tribunal held that when assessee maintained proper books of accounts audited u/s. 44AA and 44AB, tax is to be levied in conformity of harmonious reading of S. 2(45), 4, 5 rwss 28 to 43A by way of regular assessment like any other Indian company. AO cannot thrust upon the assessee applicability of presumptive taxation. (AY. 2009-10)

ADIT(IT) v. Shandong Tiejun Electric Power Engineering Co. Ltd. (2018) 193 TTJ 483 (Ahd.)(Trib.)

S. 44C : Non-residents – Head office expenditure – salary paid to expatriates who were stationed in India working exclusively for the business operations of the Indian PE of the assessee – Held allowance and that provision of S. 44C is not applicable. 929

The Tribunal held that salary paid to expatriates who were stationed in India working exclusively for the business operations of the Indian PE of the assessee, was allowable as business expenditure Bang. incurred wholly and exclusively for the Indian branch. It also held that no part of these expenses could be allocated to other branches. Accordingly, it was held that section 44C was not applicable.

Dy. DIT (IT) v. Bank of Tokyo-Mitsubishi, UFG Ltd. (2018) 61 ITR 272 (Delhi)(Trib.)

S. 44C : Non-residents – Head office expenditure – A non-resident assessee is entitled to claim deduction of an amount equal to 5% of the adjusted total income as expenditure in the nature of Head Office (HO) Expenses. The fact that the expenses are not debited in the Profit & loss account or the books of account is irrelevant. The entries in the books of account are not conclusive. [S. 145] 930

Allowing the appeal of the assessee the Tribunal held that a non-resident assessee is entitled to claim deduction of an amount equal to 5% of the adjusted total income as expenditure in the nature of Head Office (HO) Expenses. The fact that the expenses are not debited in the Profit & loss account or the books of account is irrelevant. The entries in the books of account are not conclusive. (ITA Nos. 6561 & 6562/Del/2016, dt. 31.05.2018) (AY. 2012-12, 2013-14)

Ernst & Young Ltd. v. ACIT (IT) (2018) 94 taxmann.com 227 (Mum.)(Trib.), www.itatonline.org

S. 44C : Non-residents – Head office expenditure – Salary paid to expatriates stationed in India working exclusively for business operations In India, provision was held to be not applicable. 931

Allowing the appeal of the assessee the Tribunal held that ; salary paid to expatriates stationed in India working exclusively for business operations In India and Indian tax was paid by head office expenses being wholly and exclusively by Indian Branch, S. 44C was held to be not applicable That the Dispute Resolution Panel allowed deduction on account of head office expenditure under section 44C. Since the facts were identical to that the Department could not deviate from its own stand in subsequent years. (AY. 2005-06)

Bank of Tokyo-Mitsubishi, UFJ Ltd. v. DCIT (2018) 61 ITR 272 (Delhi)(Trib.)

S. 45 : Capital gains – Long term capital gains – Firm – Retirement – Amount received by retiring partner as good will is held to be not taxable as capital gains. 932

Dismissing the appeal of the revenue the Court held that the amount received by retiring partner on account of good will is held to be not taxable. Followed *CIT v. Riyaz A. Sheik (2014) 221 Taxman 118 (Bom.) (HC)*. (AY. 2009-10)

PCIT v. R. F. Nangrani (HUF) (2018) 167 DTR 28 / 304 CTR 12 (Bom.)(HC)

933 **S. 45 : Capital gains – Business income – Merely holding shares for a short period will not convert capital gain into business income. This would be contrary to be legislative mandate which itself provides that investment held for less than 12 months is to be termed as short term capital gain – If the assessee has two portfolios, one for "Investment" and other for "Trading" and if the investments are out of own funds and not borrowed funds, the gains have to be assessed as short term capital gains. [S. 28 (i)]**

Dismissing the appeal of the revenue the Court held that, merely holding shares for a short period will not convert capital gain into business income. This would be contrary to be legislative mandate which itself provides that investment held for less than 12 months is to be termed as short term capital gain. If the assessee has two portfolios, one for "Investment" and other for "Trading" and if the investments are out of own funds and not borrowed funds, the gains have to be assessed as short term capital gains. (CBDT Circular No. 4 of 2007 dt. 15-06-2007 (2007) 291 ITR 384 (St) *CIT v. Gopal Purohit (2011) 336 ITR 287 (Bom.)* SLP of department rejected (2011) 334 ITR 308 (St) (AY. 2008-09) (ITA No. 485 of 2016, dt. 26.11.2018)

CIT v. Viksit Engineering Ltd (2018) 100 taxmann.com 436 (Bom.)(HC), www.itatonline.org

934 **S. 45 : Capital gains – Transfer – Possession was handed over – Subsequent termination of contract by mutual consent and returned back the sale consideration received – Liable to capital gains tax in the year of handing over of possession of property. [S. 2(47)(v), Transfer of Property Act,1929, S. 53A, Registration Act 1908, 17(1A)]**

Assessee had entered into an agreement to sell a property to MAPL. Though the possession was handed over the Capital gain was not offered for taxation on the ground that, subsequent termination of contract by mutual consent and returned back the sale consideration received. Tribunal deleted the addition. On appeal by the Revenue the Tribunal held that assessee is Liable to capital gains tax in the year of handing over of possession of property. (Referred Balbir Singh Maini (2017) 398 ITR 531 (SC)).(AY. 1999-2000)

CIT v. Harbour View (2018) 409 ITR 599 / (2019) 261 Taxman 330 (Ker.)(HC)

935 **S. 45 : Capital gains – Business income – Sale of shares – Only 10 scripts – Assessable as capital gains. [S. 28(i)]**

Dismissing the appeal of the revenue the Court held that; Tribunal gave finding that only ten scrips were traded and it was not a case of frequent buying and selling to make quick money. Accordingly the income is assessable as capital gains and not as business income. (AY. 2008-09)

CIT v. Hiren Dand (2018) 259 Taxman 82 / 98 taxmann.com 427 (Bom.)(HC)

Editorial : SLP of revenue is dismissed; CIT v. Hiren Dand (2018) 259 Taxman 81 (SC)

936 **S. 45 : Capital gains – Transfer – Vendor in possession till total consideration is paid – Transfer is not complete though the agreement is registered. [S. 2(47)]**

Dismissing the appeal of the revenue the Court held that the sale or transfer was not complete on the date of the execution of the agreement. Merely because it

was registered, it did not partake of the character of a conveyance or a sale deed automatically. Possession was not handed over but was to be handed over on compliance with certain obligations by the vendor. The total consideration was received on June 16, 2011 and the vendor was in possession of the premises from February to June 2011 and carried on its business from those premises up to April 2011. Accordingly not liable to capital gains tax during the relevant year. (AY. 2011-12)
PCIT v. Talwalkars Fitness Club. (2018) 409 ITR 37 (Bom.)(HC)

S. 45 : Capital gains – Dissolution of firm – Land was introduced as capital in one of the partner – Revaluation – Land was sold before dissolution – Capital gains is assessable in the hands of firm. [S. 45(4)] 937

Dismissing the appeal of the assessee the Court held that ; the contention that it was only a family arrangement and the land and building were offered on licence for the business of the firm, could not be accepted. The clear terms in the partnership deed spoke otherwise. The sale effected was of the land and building. The partnership was dissolved only on December 31, 2006, that too by volition of the partners and not evidenced by any deed. The sale deed of December 20, 2006 was of a sale of the land and building to a third party. Hence, the sale was prior to the dissolution of the partnership, as claimed by the parties. Hence, the property having been brought into the common stock of the firm, short-term capital gains were assessable on its sale, when the partnership was subsisting. Even if the partner had been allotted the share, prior to dissolution, as was revealed from the facts, capital gains would arise to the firm. The firm was assessable on the capital gains.
Ahammedkutty v. ITO (2018) 405 ITR 239 (Ker.)(HC)

S. 45 : Capital gains – Transfer – Development agreement not registered – General Power of attorney – Possession of property was given to the developer for specific purposes to develop the property – The development agreement clearly provides that nothing contained in the agreement shall be construed as grant of possession in part performance of the agreement under S. 2(47)(v), and 2(47)(vi) of the Act. Accordingly addition of ₹ 55 crores as full value of consideration for computing the capital gains is rightly deleted by the Tribunal – Taxability will be examined in the year in which the transfer of land as stock in trade has taken place and also value at that point of time will be examined independently. [S. 2(47)(v), 2(47)(vi) 45(2)] 938

Dismissing the appeal of the revenue the Court held that, possession of property was given to the developer for specific purposes to develop the property. The amount received by the Godrej Properties Ltd shown as deposit. As per the agreement makes it clear that Godrej Properties Ltd has been granted license to enter the upon and develop the property and the possession of the land continued with the assessee. Further the development agreement clearly provides that nothing contained in the agreement shall be construed as grant of possession in part performance of the agreement under S. 2(47)(v), and 2(47)(vi) of the Act. Accordingly addition of ₹ 55 crores as full value of consideration for computing the capital gains is rightly deleted by the Tribunal. However taxability will be examined in the year in which the transfer of land as stock in trade has taken place and also value at that point of time will be examined independently.

(AY. 2008-09) (Note. *Fardeen Khan L/H Late Firoz Khan v ACIT (2015) 169 TTJ 398 (Mum.) (Trib.)* is affirmed. *Chaturbhuj Kapadia v. CIT (2003) 260 ITR 491 (Bom.)(HC) is dintigushed. Ratio in CIT v. Balbir Singh maini (2017) 398 ITR 531 (SC)* is followed.)
PCIT v. Fardeen Khan L/H Late Firoz Khan (2018) 169 DTR 209 / 304 CTR 299 / 258 Taxman 348 / (2019) 411 ITR 533 (Bom.)(HC)

939 **S. 45 : Capital gains – Individual or HUF – Sale deed was executed in individual capacity and PAN of the individual – Sale consideration was also not deposited in the HUF' Bank account – Assessing the capital gains in the assessment of the assessee is held to be justified. [S. 4]**
Dismissing the appeal of the assessee the Court held that ; Tribunal held that sale deed was executed by assessee in his individual capacity and not as 'karta' of HUF. Moreover, in sale deed, PAN of assessee in his individual capacity had been given and not PAN of HUF. It was also found that in earlier years, property in question had not been shown as owned by HUF and even sale consideration had also not been deposited in HUF's bank account. Accordingly the order of Tribunal is affirmed. (AY. 2009-10)
Janak Kanakbhai Trivedi v. ITO (2018) 257 Taxman 367 (Guj.)(HC)

940 **S. 45 : Capital gains – Business income – Investment in shares – Intention of assessee at time of purchase of shares is paramount – Gain arising on sale of shares which was held as investment is assessable as capital gain and not as business income. [S. 28(i)]**
Dismissing the appeal of the revenue the Court held that ; intention of assessee at time of purchase of shares is paramount; if assessee had clear intention of being an investor and held shares by way of investment, assessee is investor and, any gain arising out of transfer of shares should be treated as 'capital gains' and not 'business income'. (AY. 2005-06)
PCIT v. Bhanuprasad D. Trivedi (HUF) (2017) 87 Taxmann.com 137 (Guj.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Bhanuprasad D. Trivedi (HUF) (2018) 256 Taxman 66 / 256 Taxman 292 (SC)

941 **S. 45 : Capital gains – Sale of agricultural Land – Land should be agricultural at the time of sale – Purchase of agricultural land for building factory and subsequent sale as residential plots – Profits is not exempt from capital gains tax. [S. 2(14)(iii)]**
Dismissing the appeal of the assessee the Court held that ; though the property was once an agricultural land, its acquisition was for non-agricultural purposes, the assessee did not carry on any agricultural activity in the land and at the relevant date, viz., the date of sale, the land had ceased to be agricultural. The assessee did not have a case that the land was not treated as stock-in-trade. Its business also included real estate development. Therefore, the Tribunal was justified in its conclusion that there was transfer of the asset. The gains from the transfer were not exempt from capital gains tax. (AY. 2007-08 to 2010-11)
Synthite Industries Ltd. v. CIT (2018) 404 ITR 605 (Ker)(HC)

S. 45 : Capital gains – Business – Income earned on sale of floor of building was held to be assessable as capital gains and not as business income – The assessee was not a property dealer but a member of the Indian revenue Service, working with the department itself. Only a portion of the property was sold. Profit on sale of land is held to be assessable as capital gains. [S. 2(13)] 942

Dismissing the appeal of the revenue the Court held that; Income earned on sale of floor of building was held to be assessable as capital gains and not as business income. Major portion of the developed building was to remain with the assessee after construction. Sale of one unit therefrom per se would not have constituted an adventure in the nature of trade. There is substantial gap in time between the day of acquisition of the asset and its development and part-sale. The assessee was not a property dealer but a member of the Indian revenue Service, working with the department itself. Only a portion of the property was sold. Ratio in *G. Venkataswami Naidu & Co. v. CIT [1959] 35 ITR 549 (SC)* has followed. (AY. 2003-04)

CIT v. Surjeet Kaur (2018) 254 Taxman 214 / 166 DTR 350 / (2019) 308 CTR 847 (Cal.) (HC)

S. 45 : Capital gains – Shares purchased was pledged with bank – Actual date of transfer is when shares were delivered by bank to entity in subsequent assessment year. [S. 48] 943

Held that the Tribunal was correct in holding that the shares owned by the assessee were not transferred in the assessment year 1998-99, but were transferred on May 5, 1998, in the assessment year 1999-2000, when the shares were delivered by the bank to the purchasers. (AY. 1998-99, 1999-2000)

Arjun Malhotra v. CIT (2018) 403 ITR 354 / 166 DTR 235 / 255 Taxman 399 / 304 CTR 454 (Delhi)(HC)

S. 45 : Capital gains – Agricultural land – Mere categorization of land as Nilam (Paddy land) in revenue records is not sufficient to treat land as agricultural land – Land not being used for agricultural purposes assessable as capital gains. [S. 2(14)(iii)] 944

On appeal, the High Court, upheld Tribunal's finding that Assessee is not an agriculturist but a proprietor of Management Institute and there is no evidence to indicate that the land has been put to agricultural use and hence gains on sale of agricultural land treated as taxable gains. Mere categorization of land as Nilam (Paddy land) in revenue records is not sufficient to treat land as agricultural land. (AY. 2008-2009)

Sreedhar Asok Kumar v. CIT (2018) 253 Taxman 204 (Ker.)(HC).

S. 45 : Capital gains – Business income – Profit on sale of shares was held to be assessable as capital gains and not as business income. [S. 28(i)] 945

Dismissing the appeal of the revenue the Court held that; Profit on sale of shares was held to be assessable as capital gains and not as business income (AY. 2008-09)

CIT v. Tejas J. Amin (2018) 402 ITR 431 (Guj.)(HC)

946 **S. 45 : Capital gains – Business income – Profit earned on sale of Shares or Units of Mutual Funds was held to be assessable as capital gains. [S. 28(i)]**

Dismissing the appeal of the revenue the Court held that; The five tests whether the income bears the character of business income or capital gains are : (1) whether the company or concern is authorised in its memorandum of constituting documents to deal with shares; (2) whether the entity had shown the shares under the head "investment"; (3) whether the assessee utilised its own funds and had not shown borrowed funds for the purpose of acquiring shares; (4) the nature of infrastructure, whether it is small represents investment activity rather than the trading activity that would require larger infrastructure; (5) whether the behaviour of the assessee is such as to disclose income/ earning has objective, i. e., "obtaining dividend" rather than trading. Applying the above tests the Court held that; Profit earned on sale of Shares or Units of Mutual Funds was held to be assessable as capital gains. (AY. 2005-06)

CIT v. Pavitra Commercial Ltd. (2018) 402 ITR 66 (Delhi)(HC)

947 **S. 45 : Capital gains – Search – Additions cannot be made on the basis of statement of third parties, when no incriminating documents were found in the course of search action on the assessee. [S. 132(4), 158BA]**

Dismissing the appeal of the revenue the Court held that; the Tribunal held that the search action had not resulted in recovery of incriminating evidence or undisclosed investment in any form including deposits in bank accounts and that an unsigned agreement which was disowned by both parties, not supported by any evidence could not be relied upon to make addition. It further held that an addition could not be made solely on the basis of surrender made during the course of search or survey in the absence of corroborative evidence in support and deleted the addition.

CIT v. Prabhati Lal Saini (2018) 401 ITR 228 (Raj.)(HC)

948 **S. 45 : Capital gains – Transfer – Power of attorney was executed in the year 1993-94 but actual possession was given in the year AY. 2003-04, capital gain was held to be taxable in the year of handing over of possession. [S. 27(v), Transfer of Property Act, 1882, S. 53A]**

Dismissing the appeal of the assessee the Court held that; the agreement dated April 30, 2001 referred to some oral agreement and powers of attorney executed between the assessees and the developer, but the fact remained that the agreement dated April 30, 2001 recorded that the assessees were the owners and in possession of the property. The power of attorney of the year 1993-94 did not disclose that possession was given to the developer in pursuance of the power of attorney. Moreover, the assessees in their reply to the notice stated that the assessees had not given possession to the developer but had given only access to enable him to do certain jobs on their behalf. It had also been stated in the reply that the assessees continued to be full owner of the property and there was no transfer. Therefore, the transfer within the meaning of section 2(47)(v) had taken place only in the assessment year 2002-03, since, by agreement dated April 30, 2001, actual possession was given to the developer and it was not given on the basis

of the powers of attorney and oral agreements entered into between the assessees and the developer in the year 1993-94. (AY. 2002-03)
Dr. Joao Souza Proenca. v. ITO (2018) 401 ITR 105/ 253 Taxman 275 / 301 CTR 653 / 164 DTR 80 (Bom.)(HC)
Sara Proenca (Mrs) v. ITO (2018) 401 ITR 105/ 253 Taxman 275 / 301 CTR 653 / 164 DTR 80 (Bom.)(HC)

S. 45 : Capital gains – Penny stocks – Merely because of appreciation in value the capital gains cannot be assessed as income from undisclosed sources. [S. 69] 949
Dismissing the appeal of the revenue the Court held that; the fact that the appreciation in the value of the shares is high does not justify the transactions being treated as fictitious and the capital gains being assessed as undisclosed income if (a) the shares are traded on the Stock Exchange, (b) the payments and receipts are routed through the bank, (c) there is no evidence to indicate it is a closely held company and (d) the trading on the Stock Exchange was manipulated in any manner. (AY. 2008-09)
PCIT v. Prem Pal Gandhi (2018) 401 ITR 253 / 94 taxmann.com 156 (P&H)(HC)

S. 45 : Capital gains – Suspicious transaction in shares – Penny stocks – Chain of transactions have been proved by evidence such as contract notes, DEMAT account, and payments through banking channel – Addition cannot be made as cash credits. [S. 68] 950
Dismissing the appeal of the revenue the Court held that, it was found that Chain of transactions have been proved by evidence such as contract notes, DEMAT account, and payments through banking channel. Order of the Tribunal is affirmed. (ITA No. 22 of 2009 dt. 29-04-2009)
CIT v. Bhagwati Prasad Agarwal (Cal.)(HC), (www.itatonline.org)

S. 45 : Capital gains – Share of sale consideration of agricultural land – Relinquishment of shares – Family arrangement – Matter remanded to verification of shares of each members and decide in accordance with law. 951
AO assessed capital gain arising from sale of agricultural land in hands of Smt. Dapu Devi and income on account of deposits made in bank accounts of sons and daughter-in-law of Smt. Dapu Devi. CIT(A) confirmed order of AO. On appeal the Tribunal held that the AO and CIT (A) have not properly appreciate the fact accordingly Matter remanded to verification of shares of each members and decide accordance with law. (AY 2006-07)
Sushila Devi Meena v. ITO (2018) 194 TTJ 68 (UO) (Jaipur)(Trib.)

S. 45 : Capital gains – Transfer – Development agreement – Under a development agreement, assessee authorizes developer for construction of apartments, it can be said that assessee has handed over possession of its plot to developer and, thus, the same constitutes transfer and same is taxable as capital gain in year in which agreement was entered into – Reassessment is held to be valid – Matter remanded. [S. 2(47), 54F 147, 148] 952
Assessee did hand over possession, therefore, stand of AO that capital gains did arise during year under consideration as agreement was entered on 12-05-2008 was justified.

Accordingly, issue of bringing to tax capital gains during the year was to be upheld. Whether land was short term capital asset or long term capital asset and value for considering capital gains computation was restored to file of AO for fresh examination. In case property was held to be long term capital asset, assessee may be eligible for consequent benefit u/s 54/54F, which should be considered on facts of case. Matter remanded. (AY. 2009-10)

K. Vijaya Lakshmi v. ACIT (2018) 167 DTR 270 / 169 ITD 597 / 195 TTJ 114 (SMC)(Hyd.) (Trib.)

Sireesha N. (Smt) v. ACIT (208) 167 DTR 270 / 169 ITD 597 / 195 TTJ 114 (Hyd.)(Trib.)

953 **S. 45 : Capital gains – Gift – Notional addition – Transfer of equity shares to sister concern – Genuineness and validity of transaction – Matter remanded. [S. 2(47), 56(2)(viia)]**

Assessee transferred major equity share of JSPL without any consideration to its sister concern, namely, Giebe. AO held that by transferring shares of JSPL without any consideration, assessee only avoided payment of taxes and, in fact, it was a sham transaction arranged by assessee to avoid taxes and transfer of shares to Giebe was a transfer within meaning of section 2(47) and, taxed it under section 45. Tribunal held that though the AO A had rightly raised question regarding reality and genuineness of transaction, in addition to its validity, since assessee had not demonstrated by way of documentary evidence genuineness and validity of transaction, assessee was directed to provide all necessary and relevant information/details to assist Assessing Officer, in determining correct nature of alleged transaction as per law. (AY. 2014-15)

Gagan Infraenergy Ltd. v. Dy. CIT (2018) 65 ITR 514 (Delhi)(Trib.) www.itatonline.org

954 **S. 45 : Capital gains – Business income – Investment in shares – Consistently valuing investment at cost – Profits on sale of sale of investment is assessable as capital gains. [S. 28(i)]**

Allowing the appeal of the assessee the Tribunal held that, whether income is to be assessed under the head "capital gains" or "income from business" the assessee should demonstrate the intention and treatment in that books of account, whether he holds these shares and securities as an "investment" or as a "stock-in-trade". The intention can be judged by the entries made by the assessee in his books of account, i. e., the treatment in his books of account of the assessee. The motive of the assessee was to earn the dividend not to trade in shares and the motive was reflected with the intention of the assessee. The board of directors of the assessee had passed the resolution stating that the motive of the assessee was to keep the shares as an investment not as stock-in-trade. The income of the assessee should be assessed under the head "capital gains" instead of "business income".(AY. 2010-11)

DPJ Viniyog P. Ltd. v. DCIT (2018) 65 ITR 74 (SN)(Kol.) (Trib.)

S. 45 : Capital gains – Business income – Investment in shares – Earlier years the transactions of sale of shares were accepted as capital gains – Current year short – term capital gains arising from share transaction could not be assessed as business income. [S. 28(i)] 955

Tribunal held that volume of transactions in current year matched with earlier years, and earlier years the transactions of sale of shares were accepted as capital gains. Current year short-term capital gains arising from share transaction could not be assessed as business income. (AY. 2008-09)

Satish Madanlal Gupta v. ACIT (2018) 173 ITD 169 (Pune)(Trib.)

S. 45 : Capital gains – Transfer of development right – Handing over possession of Land – Unregistered agreement-No valid transfer – Not liable to capital gains tax. [S. 2(47(v)] 956

Following the decision in assesses own case own case for assessment year 2008-09, i.e., *Saamag Developers (P.) Ltd. v. ACIT (2018) 168 ITD 649 (Delhi) (Trib.)* wherein the Tribunal held that when an agreement entered into between assessee and its group company was not registered, there was no valid transfer in terms of section 2(47)(v) and, accordingly, no liability of tax could be fastened upon assessee merely on basis that possession of land was handed over by assessee to Sare Saamag Reality Pvt. Ltd (SSRPL). (AY. 2010-11)

Saamag Developers (P.) Ltd. v. ACIT (2018) 173 ITD 350 (Delhi)(Trib.)

S. 45 : Capital gains – Business income – Sale of shares – Principle of consistency – Preceding and subsequent years department, accepting income on account of sale of investments as short term capital gains – Sale consideration is assessable as capital gains. [S. 28(i)] 957

Dismissing the appeal of the revenue the Tribunal held that, preceding and subsequent years department, accepting income on account of sale of investments as short term capital gainS. Sale consideration is assessable as capital gains .Circular No. 6 of 2016 dt.29-03-206 (2016) 382 ITR 14 (St) Followed *Radhasoami Satsang v. CIT (1992) 193 ITR 321* (SC) (AY.2010-11)

ITO v. Divyam TIE-UP Pvt. Ltd. (2018) 65 ITR 75 (SN) (Kol.)(Trib.)

S. 45 : Capital gains – Business income – Shares and securities – Conversion of stock-in-trade into investment – Held to be valid – Gains assessable as capital gains. [S. 28(i)] 958

Allowing the appeal the Tribunal held that, AO has not brought any justifiable reason to reject the claim of the assessee except assuming that it was a colourable device. After the conversion of stock-in-trade into investment no share was held as stock-in-trade. Therefore the claim of the assessee could not be rejected. Followed CIT v. Express Securities P. Ltd. (2014) 364 ITR 488 (Delhi) (HC) (AY. 2005-06)

M. P. Mehrotra (HUF) v. DCIT (2018) 65 ITR 71 (SN) (Delhi)(Trib.)

959 **S. 45 : Capital gains – transfer Accrual – Development agreement – As per terms of development agreement with builder the assessee would not be paid any monetary consideration but would receive built-up residential area on completion of project – Capital gains cannot be taxed on accrual basis in the year of agreement. [S. 2(47) (v), 48]**
Allowing the appeal of the assessee the Tribunal held that ; As per terms of development agreement with builder the assessee would not be paid any monetary consideration but would receive built-up residential area on completion of project. Capital gains cannot be taxed on accrual basis in the year of agreement. (AY. 2014-15)
Aarti Sanjay Kadam (Mrs.) v. ITO (2018) 172 ITD 362 (Mum.)(Trib.)

960 **S. 45 : Capial gains – Penny Stocks – Assuming brokers may have done manipulation, assessee cannot be held liable when the entire transaction is done through banking channels duly recorded in Demat accounts with Govt depository and traded on stock exchange – Nothing on record to suggest assessee gave cash and purchased cheque from broker – (Sanjay Bimalchand Jain ITA No 18 of 2017) dt. 10-4-2017 (Bom.) HC) is distinguished). [S. 10(38)]**
Dismissing the appeal of the revenue the Tribunal held that, Assuming brokers may have done manipulation, assessee cannot be held liable when the entire transaction is done through banking channels duly recorded in Demat accounts with Govt depository and traded on stock exchange Nothing on record to suggest assessee gave cash and purchased cheque from broker. (Sanjay Bimalchand Jain ITA No 18 of 2017) dt. 10-4-2017 (Bom.) HC) distinguished). (ITA. Nos. 93 to 99/RPR/2014, dt. 16.04.2018)(AY. 2004-05)
DCIT v. Rakesh Saraogi & Sons (HUF) (Raipur) (Trib.), www.itatonline.org.

961 **S. 45 : Capital gains – Cash credits – Share transaction – Bogus capital gains – Penny stocks – If the holding of shares is D-mat account cannot be disputed then the transaction cannot be held as bogus. [S. 10(38), 68]**
If the holding of shares is D-mat account cannot be disputed then the transaction cannot be held as bogus. The AO has also not disputed the sale of shares from the D-mat account of the assessee and the sale consideration was directly credited to the bank account of the assessee. Once the assessee produced all relevant evidence to substantiate the transaction of purchase, dematerialization and sale of shares then, in the absence of any contrary material brought on record the same cannot be held as bogus transaction merely on the basis of statement of one Anil Agrawal recorded by the Investigation Wing, Kolkata, wherein there is a general statement of providing bogus long term capital gain transaction to the clients without stating anything about the transaction of allotment of shares by the company to the assessee. (AY. 2013-14, 2014-15)
Ramprasad Agarwal v. ITO (2019) 174 ITD 286 / 68 ITR 74 (SN) (Mum.)(Trib.), www.itatonline.org

S. 45 : Capital gains – Salaries – Perquisite – Gains arising to an employee from sale of shares allotted under ESOP (Employees Stock Option Plan) by foreign parent company cannot be assessed as "salaries" – It is assessable as "capital gains". Fact that employer has shown the gains as "perquisite" in Form 16 is irrelevant. [S. 15, 17(2)(v)] 962

Allowing the appeal of the assessee the Tribunal held that ; Gains arising to an employee from sale of shares allotted under ESOP (Employees Stock Option Plan) by foreign parent company cannot be assessed as "salaries". It is assessable as "capital gains". Fact that employer has shown the gains as "perquisite" in Form 16 is irrelevant. (AY. 2011-12)

Dr. Muthian Sivthanu v. ACIT (2018) 173 ITD 585 (Chennai)(Trib.), www,itatonline.org

S. 45 : Capital gains – Capital asset – ESOP options provide valuable right to the assessee to exercise and have allotment of shares – They are thus 'capital asset' held by the assessee from the date of grant- If the assessee transfers the option itself, the capital gains will have to be assessed as long-term capital gains,if the options have been held for more than three years. [S. (2(14), 2(42A), 45, 48] 963

Allowing the appeal of the assessee the Tribunal held that; ESOP options provide valuable right to the assessee to exercise and have allotment of shares. They are thus 'capital asset' held by the assessee from the date of grant. If the assessee transfers the option itself, the capital gains will have to be assessed as long-term capital gains if the options have been held for more than three years . (AY. 2007-08)

N. R. Ravikrishnan v. ACIT (2018) 68 ITR 457 / (2019) 175 ITD 355 / 177 DTR 289 (Bang.) (Trib.), www.itatonline.org

S. 45 : Capital gains – Transfer – Conversion of Cumulative preference shares (CCPS) into equity shares does not constitutes a "transfer" – Not laible to capital gains tax. [S. 2(47), 41(2), 45(4), 48, 55(2)(b)(v) (e)] 964

Tribunal held that conversion of Cumulative preference shares (CCPS) into equity shares does not constitutes a "transfer" hence not laible to capital gais tax. Referred ,Circular dated 12.05.1964., *ITO v. Vijay M. Merchant (1986) 19 ITD 510 (Mum.) (Trib.) CIT v. Motors & General Stores Pvt. Ltd (1967) 66 ITR 692(SC), CIT v. Santosh L. Chowgule and ors (1993) 234 ITR 787 (Bom.) (HC), CIT v. Trustees of H.E.H. Nizam's Second Supplimentary Family Trust (1976) 102 ITR 248 (AP) (HC)*. (AY. 2012-13)

Periar Trading Company Private Ltd. v. ITO(2018) 196 TTJ 989/ (2019) 174 ITD 137 / 173 DTR 108 (Mum.)(Trib.), www.itatonline.org

S. 45 : Capital gains – Long term capital gains on shares – Natural justice – Reliance by the AO on statements of third parties without giving the assessee an opportunity of cross – examination is a gross failure of the principles of natural justice and renders the assessment order a nullity [S. 10 (38), 131, 143(3)] 965

Allowing the appeal of the assessee the Tribunal held that; reliance by the AO on statements of third parties without giving the assessee an opportunity of cross-examination is a gross failure of the principles of natural justice and renders the assessment order a nullity. (ITA No. 4565/DEL/2018, dt. 26.11.2018) (AY. 2014-15)

Anubhav Jain v. ITO (Delhi)(Trib.), www.itatonline.org
Ashis Hain v. ITO (Delhi)(Trib.), www.itatonline.org

966 **S. 45 : Capital gains – Long term capital gains from penny stocks – Tribunal held that it cannot be inferred that the assessee has manipulated the share price merely because it moved up sharply – The AO has to produce material/evidence to show that the assessee/ brokers did price rigging/manipulation of shares – The AO must also show that the relevant evidence produced by the assessee in the form of bills, contract notes, demat statement, bank account etc to prove the genuineness of the transactions are false or fictitious or bogus.[S. 10(38), 68, 115BBE]**

Allowing the appeal of the assessee the Tribunal held that long term capital gains on pennay stocks cannot be assessed as cash credits or undisloced income. it cannot be inferred that the assessee has manipulated the share price merely because it moved up sharply – The AO has to produce material/evidence to show that the assessee/ brokers did price rigging/manipulation of shares-The AO must also show that the relevant evidence produced by the assessee in the form of bills, contract notes, demat statement, bank account etc to prove the genuineness of the transactions are false or fictitious or bogus. (ITA No. 457/Del/2018, dt. 05.11.2018)(AY. 2014-15)

Arun Kumar v. ACIT (Delhi)(Trib.), www.itatonline.org
Manoj Kumar v. ACIT (Delhi)(Trib.), www.itatonline.org
Nitasha Gupta v . ACIT (Delhi)(Trib.), www.itatonline.org

967 **S. 45 : Capital gains – Business income – Trading in shares – Held, in earlier years the same was assessed as capital gains in scrutiny assessments – Held, period of holding and receipt of dividend were not decisive factors – Held, to be assessed as capital gains. [S. 28(i)]**

It was held that the income from dealing in shares was assessed consistently as capital gains in scrutiny assessment. Further, the CIT(A) had given finding of fact on the frequency of the transactions. It was also held that period of holding and receipt of dividend were not decisive factors. Accordingly, the income was held to be taxable as capital gains. (AY. 2008-09)

Eastman Industries Ltd. v. ACIT (2018) 63 ITR 181 (Delhi)(Trib.)

968 **S. 45 : Capital gains – Land – On acquisition of land on which there was a hotel, part of compensation related to land would be subject to Long term capital gains and that on hotel building assessable as short term capital gains. [S. 54]**

Allowing the appeal of the assessee the Tribunal held that, compensation received on acquisition of land is assessable as long term capital gains and on Hotel building as short term capital gains. (AY. 2008-09)

Het Ram Sharma v. ITO (2018) 172 ITD 324 (Chd.)(Trib.)

969 **S. 45 : Capital gains-Business income – Co-owner – land as investment – One of the Co-owner showing the land as stock in trade – Profit on sale of share is assessable as capital gains and not as business income. [S. 28(i), 54F]**

Dismissing the appeal of the revenue ; the Tribunal held that ; profit on sale of share is assessable as capital gains and not as business income, though the other Co-Owener showing the land as stock in trade in their books of account. Entitle to deduction u/s 54F of the Act. (AY. 2006-07)

DCIT v. Arjun Puri (2018) 66 ITR 33 / 172 ITD 29 (Delhi)(Trib.)

S. 45 : Capital gains – Suspicious transaction in shares – Penny stocks – Purchases of earlier years were not doubted – Shares were sold through DEMAT account – Addition cannot be made as cash credits-Burden is on revenue. [S. 68] 970

Dismissing the appeal of the revenue the Tribunal held that ; purchases of shares in earlier years were not doubted. Shares were sold through DEMAT account. Accordingly the addition cannot be made as cash credits. Burden is on revenue to prove that the transaction is not genuine. (ITA No 4077/ Mum./2013 dt. 22-03-2016 (AY. 2006 07 & 2009-10))

DCIT v. Anil Kaniya (Mum.)(Trib.) www.itatonline.org

S. 45 : Capital gains – Suspicious transaction in shares – Penny stocks – Sale through Ahmedabad Stock exchange – Statement of Mukesh Choksi relied without furnishing the same to the assessee – Addition is held to be not valid. 971

Allowing the appeal of the assessee the Tribunal held that, sale of shares through Ahmedabad Stock exchange was not doubted. Addition based on the statement of Mr. Mukesh Choksi without giving copy and opportunity of cross examination addition cannot be made as cash credits. (ITA No. 5185 /Mum./ 2012 dt 05.10.2016, AY. 2004-05)

Sudhanshu Suresh Pandhare v. ITO (Mum.)(Trib.) (www.itatonline.org)

S. 45 : Capital gains – Suspicious transaction in shares – Penny stocks – Copies of the physical share certificates DEMAT account statement confirmation of the transactions of buying and selling of the said shares by the respective stock brokers, receipt of sale proceeds through banking channels, etc. – Addition cannot be made as cash credits. [S. 68] 972

Allowing the appeal of the assessee the Tribunal held that considering the evidences produces such as, Copies of the physical share certificates DEMAT account statement confirmation of the transactions of buying and selling of the said shares by the respective stock brokers, receipt of sale proceeds through banking channels, etc-Addition cannot be made as cash credits.(ITA No. 3803/Mum./2011 dt. 27-04 2016)

Late Roshan Raja Through Legal v ITO (Mum.)(Trib.) www.itatonline.org

S. 45 : Capital gains – Suspicious transaction in shares – Penny stocks – No defect in the papers support of the transactions, the suspension of the broker by SEBI will not hold the transaction invalid – Addition as cash credits is held to be not valid. [S. 68] 973

Allowing the appeal of the assessee the Tribunal held that,when no defect in the papers support of the transactions, the suspension of the broker by SEBI will not hold the transaction invalid. Addition as cash credits is held to be not valid (ITA No. 935/ Kol/2012 dt. 12/08/2016)

Pavillion Commercial Pvt. Ltd. v. ITO (Kol.)(Trib.) www.itatonline.org

S. 45 : Capital gains – Business income – Share investment – All transactions were delivery based, income arising from such investment was to be treated as capital gain when all earlier years revenue assessed the gains as capital gains. [S. 28(i)] 974

Allowing the appeal of the assessee the Tribunal held that ; All transactions were delivery based, income arising from such investment was to be treated as capital gains.

Tribunal also held that when all earlier years revenue assessed the gains as capital gains for the relevant year the AO cannot take different view without showing reason for doing the same. (AY. 2007-08)
Second Leasing (P.) Ltd. v. ACIT (2018) 171 ITD 508 / 171 DTR 97 / 196 TTJ 117 (Delhi) (Trib.)

975 **S. 45 : Capital gains – Business income – Investment in shares – Just because assessee has purchased and sold number of shares does not by itself make it business income when the AO accepted the scripts as investment in the balance sheet and books of account are accepted. [S. 28(i)]**
Tribunal held that mere fact that dividend received being nominal, cannot be the deciding factor as to whether income from sale of investment is to be assessed as business income or capital gain, particularly when long term capital gain is accepted by the AO. In respect of sale of shares of LML Ltd and Oswal Chemicals, it was observed that sale was made on various dates as the sale order sometimes took days to be fully executed. It is not the case that on some days sales are being purchased and sold. It was held that just because assessee has purchased and sold number of shares does not by itself make it business income when the AO accepted the scripts as investment in the balance sheet and books of account are accepted. (AY. 2005-06, 2006-07)
ACIT v. Bulls and Bears Portfolios Ltd. (2018) 62 ITR 685 (Delhi)(Trib.)

976 **S. 45 : Capital gains – For the purpose of computation of capital gains, AO could not substitute full value of sales consideration with any notional or hypothetical value. [S. 48]**
On appeal to Tribunal, it was held that the provisions of u/s. 45 of the Act make reference to the full value of consideration and it is not open to the AO to substitute the value of consideration by any hypothetical or notional value unless there is a case of understatement and non-disclosure of full value of consideration. Thus, Tribunal upheld the order of CIT(A) in deleting the additions made to the total income of the assessee under head Capital Gains. (AY. 2007-08)
DLF Limited v. Addl. CIT (2018) 63 ITR 22 (Delhi)(Trib.)

977 **S. 45 : Capital gains – Allotment letter – Period of holdings – The law laid down in CIT v Suraj Lamps & Industries Pvt. Ltd. (2012) 340 ITR 1 (SC) that transfer of immovable property is effective only on registration of conveyance deed is not applicable for computing the holding period of property. Holding period should be computed from the date of issue of the allotment letter and not from the date of the conveyance deed, ratio in *Rasiklal M. Parikh v. ACIT (2017) 393 ITR 536 (Bom.)(HC)* is explained. [S. 2(42A), 2(47) 54]**
Allowing the appeal of the assessee the Tribunal held that, The law laid down in *Suraj Lamps & Industries (2012) 340 ITR 1 (SC)* that transfer of immovable property is effective only on registration of conveyance deed is not applicable for computing the holding period of property. Holding period should be computed from the date of issue of the allotment letter and not from the date of the conveyance deed, ratio in *Rasiklal*

M. Parikh v. ACIT (2017)393 ITR 536 (Bom.)(HC) is explained. (ITA No. 4853/Mum./2016, dt. 14.08.2018)(AY. 2012-13)
Sanjaykumar Footermal Jain, v. ITO (Mum.)(Trib.), www.itatonline.org

S. 45 : Capital gains – Bogus long – term gains from penny stocks – The transaction cannot be treated as bogus until and unless a finding is given that the shares were acquired by the assessee from the person other than the broker claimed by the assessee. The enquiry conducted by the Investigation Indore is not a conclusive finding of fact in view of the fact that the shares were duly materialized & held in the d-mat account. Merely supplying of statement to the assessee at the fag end of the assessment proceedings is not sufficient to meet the requirement of giving an opportunity to cross examine. The AO cannot proceed on suspicion without any material evidence to controvert or disprove the evidence produced by the assessee. [S. 10(38)] 978
Allowing the appeal of the assessee the Tribunal held that ; the transaction cannot be treated as bogus until and unless a finding is given that the shares were acquired by the assessee from the person other than the broker claimed by the assessee. The enquiry conducted by the Investigation Indore is not a conclusive finding of fact in view of the fact that the shares were duly materialized & held in the d-mat account. Merely supplying of statement to the assessee at the fag end of the assessment proceedings is not sufficient to meet the requirement of giving an opportunity to cross examine. The AO cannot proceed on suspicion without any material evidence to controvert or disprove the evidence produced by the assessee. Accordingly the appeal of the assessee is allowed. (AY. 2010-11)
Pramod Kumar Lodha v. ITO (2018) 195 TTJ 20 (UO) / 66 ITR 4 (SN) (2019) 174 ITD 186 (Jaipur)(Trib.), www.itatonline.org

S. 45 : Capital gains – Bogus capital gains from penny stocks – In order to treat the capital gains from penny stocks as bogus, the Dept has to show that there is a scam and that the assessee is part of the scam. The chain of events and the live link of the assessee's action giving her involvement in the scam should be established. The Dept cannot rely on alleged modus operandi & human behavior and disregard the evidence produced by the assessee. [S. 48] 979
Allowing the appeal of the assessee the Tribunal held that, In order to treat the capital gains from penny stocks as bogus, the Dept has to show that there is a scam and that the assessee is part of the scam. The chain of events and the live link of the assesee's action giving her involvement in the scam should be established. The Dept cannot rely on alleged modus operandi & human behavior and disregard the evidence produced by the assessee. In the result, the appeal of the assessee is allowed. (I.T.A No. 2281/Kol/2017, dt. 20.07.2018)(AY. 2014-15)
Navneet Agarwal v. ITO (Kol.)(Trib.), www.itatonline.org

980 **S. 45 : Capital gains – Capital asset – Report of Tehsildar about exact location of land – Certificate from Gram Panchayat could not take precedence over the report of the Tehsildar who was the appropriate land revenue authority to assess the nature of and location of land – Tehsildar is a Govt official, assessee cannot complain that he was not given an opportunity of cross examination – Land is held to be assessable as capital asset. [S. 2(14)]**

The Tribunal held that the only grievance of the assessee was that he had not been granted a right to cross examine the Tehsildar who had given the report about exact location of the land. The Tehsildar is a government Official and where he had given report and a copy of such report was made available to the assessee, the assessee had the right to examine such report and challenge the contents thereof. Where the assessee had such a report and did not point out any defect in such a report, he could say that his rights had been violated as he had got a right to cross-examine the Tehsildar. Further the certificate of Gram Panchayat could not take precedence over the report of the Tehsildar who was the appropriate land revenue authority to assessee the nature of and location of land. Accordingly the Land is held to be assessable as capital asset. (AY. 2006-07, 2008-09)

Jagdish Narayan Sharma v. ITO (2018) 65 ITR 194 / 194 TTJ 825 / (2019) 174 DTR 25 (Jaipur)(Trib.)

981 **S. 45 : Capital gains – Exchange – Slump sale – A transaction by which an undertaking is transferred in consideration of the allottment of shares is an "exchange" and not a "sale". The fact that the agreement refers to the parties as "seller" and "purchaser" is irrelevant. S. 2(42C) and S. 50B apply only to "sale" and not to "exchange". As there is no estoppel against a statute, an assessee is entitled to raise the claim regarding non-taxability at any stage of the proceedings. [S. 2(42C), 50B]**

Allowing the appeal of the assessee the Tribunal held that, a transaction by which an undertaking is transferred in consideration of the allotment of shares is an "exchange" and not a "sale". The fact that the agreement refers to the parties as "seller" and "purchaser" is irrelevant. S. 2(42C) and S. 50B apply only to "sale" and not to "exchange". As there is no estoppel against a statute, an assessee is entitled to raise the claim regarding non-taxability at any stage of the proceedings. (AY. 2007-08)

Oricon Enterprises Limited v. ACIT (2018) 171 ITD 231 / 67 ITR 433 (Mum.)(Trib.), www.itatonline.org

982 **S. 45 : Capital gains – Penny Stocks – 31000% increase in value of shares over 2 years is highly suspicious but cannot take the place of evidence. The addition cannot be made based on generalizations. Evidence collected from third parties cannot be used against the assessee without giving him a copy and an opportunity to rebut the same. [S. 68]**

Allowing the appeal of the assessee the Tribunal held that, merely because 31000% increase in value of shares over 2 years is highly suspicious but cannot take the place of evidence. The addition cannot be made based on generalizations. Evidence collected from third parties cannot be used against the assessee without giving him a copy and an opportunity to rebut the same. (ITA No. 2394/kol/2017, dt. 27.06.2018)(AY. 2014-15)

Prakash Chand Bhutoria v. ITO (Kol.)(Trib.), www.itatonline.org

S. 45 : Capital gains – Alleged bogus Long-term capital gains – As neither the statement of Mr. Mukhesh Choksi was provided to the assessee nor cross – examination was allowed and it was not even placed on record, the action of the AO in treating the LTCG and STCG as income from other sources was not warranted. [S. 69] 983

Dismissing the appeal of the revenue the Tribunal held that, as neither the statement of Mr. Mukhesh Choksi was provided to the assessee nor cross-examination was allowed and it was not even placed on record, the action of the AO in treating the LTCG and STCG as income from other sources was not warranted. Tribunal also held that view taken was peculiar to the facts of the case and the revenue is always at liberty to in other cases, to challenge the alleged bogus purchases (based on the statement of Mr Mukhesh Choksi). (ITA No. 1614/hyd/2017, dt. 29.05.2018)(AY. 2007-08)

ITO v. K. Ramakrishna Reddy (Hyd.)(Trib.), www.itatonline.org

S. 45 : Capital gains – Amount received on transfer of rights to carry on any business is taxable as capital gain and not as business income. [S. 28(va), 54EC] 984

Allowing the appeal of the assessee the Tribunal held that, the amount received on account of transfer of business is taxable as capital gains and not as business income, consequently deduction u/s 54EC is available in respect of investment made in Govt Bonds. (ITA No 5209/Mum./ 2017 dt 5-2-2018 (AY. 2006-07)

Suklendu A. Baji v. DCIT (Mum.)(Trib.).www.itatonline.org

S. 45 : Capital gains – Argument that the allotment of shares by the assessee's holding co to foreign investors at huge valuation results in a "transfer"/ "indirect transfer" of the assessee's assets to the foreign investors is not correct. Argument that a multi layered holding structure was deliberately created to avoid taxes in India and to conceal the information about the ultimate beneficiaries is also not correct. [S. 2 (47), 48] 985

Allowing the appeal of the assessee the Tribunal held that; the endeavor of the departmental officers to tax the transaction in question as capital gains was not supported by the any legal base. First and foremost there was no transfer of capital asset,which is the basis for invoking the provisions of S. 45 of the Act, in the case under consideration. The AO and FAA have tried to build a house without laying down foundation. Without the existence of capital assets they have tried to tax capital gain. They have nowhere mentioned as to which capital asset was transferred by the assessee, during the year under consideration. Secondly,it is also not known as to whom the assets were transferred. As per the balance sheet of the assessee it had sold some vehicles during the year and no other asset was sold. If no asset other than vehicles was sold,then how the capital gain would arise about shares,is beyond our comprehension. In spite of reading the orders of the AO and FAA many a times carefully,we are not clear as to how the acquisition of shares of SOHM by Act is can be used for determining the alleged taxability of the assessee under the head short term capital gains. Both the entities i.e. Act is and SOHM are not located in India. They are fifth generation holding companies and any transaction between them cannot be imported to tax alleged capital gains of the assessee. As stated earlier, the assessee had acquired businesses two Indian

entities,namely, RCC and VMPL. By linking purchasing of shares of SOHM by Actis with the shares issued by the 6107/M/16. Supermax Personal Care Pvt. Ltd. Assessee to the Singapore entity, the AO and FAA have taxed the alleged capital gains. But, the basic fact of transfer of capital asset/(s)by the assessee to a transferee was never proved. Tribunal also observed that the FAA has mentioned in his order that the assessee had transferred the Interest/(stake)in itself outside India to SSPL. We find that the concept of 'creating of interest in any assets in any manner' and transferring' interest/stake' was not part of the word 'transfer' for the year under consideration and nor it was applicable to that year. (AY. 2011-12)
Supermax Personal Care Private Ltd. v. ACIT (2018) 65 ITR 42 (SN)/ 169 DTR 41 / 194 TTJ 815 (Mum.)(Trib.), www.itatonline.org

986 **S. 45 : Capital gains – Business income – Sale of shares – Following the rule of consistency, the income from sale of shares is assessable as capital gains and not as business income. [S. 28(i)]**
The Tribunal held that the CIT(A) has followed later years on this issue and following the rule of consistency, the income from sale of shares is assessable as capital gains and not as business income. (AY. 1999-2000, 2002-03, 2003-04)
Dy. CIT v. Central Bank of India (2018) 191 TTJ 265 / 161 DTR 1 (Mum.)(Trib.)

987 **S. 45 : Capital gains – Index cost – Family arrangement – Family settlements entered into bona fide to maintain peace and harmony in the family are valid and binding on the authorities-Consideration received as part of family arrangement cannot be assessed as income from other sources. [S. 48, 49, 54, 56]**
Allowing the appeal of the assessee the Tribunal held that; It is not necessary for the validity of a family arrangement that there must be existing legal claims & disputes between the family members. The possibility of future disputes is sufficient. Family settlements entered into bona fide to maintain peace and harmony in the family are valid and binding on the authorities. Consideration received as part of family arrangement cannot be assessed as income from other sources. Indexation was held to be allowable and exemption u/s 54 of the income-tax Act. (ITA No. 5768/Mum./2017. Dt. 28.02.2018)(AY. 2012-13)
Kunal R. Gupta v. ITO (SMC) (Mum.)(Trib.), www.itatonline.org

988 **S. 45 : Capital gains – Set off of capital loss – Sham transaction"/ "Colourable device" – Sale of shares to son cannot be held to held to be colourable device if the transaction is with in the four corners of law and valid.**
Allowing the appeal of the assessee the Tribunal held that; the sale of shares in a Pvt. Ltd. company by the assessee to a relative (son) in order to book losses so as to set-off the capital gains from on sale of property cannot be rejected as a sham transaction / colourable device if the transaction is within the four corners of law and valid. The transactions carried by assessee are valid in law, cannot be treated as non-est merely on the basis of some economic detriment or it may be prejudicial to the interest of revenue. Further, if the period co-existed or permitted the assessee to set off her capital loss against the capital gain earned, would itself not give rise to the presumption that

the transaction was in the nature of colourable device. We notice that the assessee has taken indexed case of acquisition of share at ₹ 30,40,400/-. We notice that the Assessing Officer has not examined the same and accordingly direct him to verify the computation given by the assessee and allow set off of correct amount of Long term capital Loss against Long term capital gain. (ITA No. 7410/Mum./2012, dt. 09.03.2018)(AY. 2006-07)
Madhu Sarda v. ITO (Mum.)(Trib.), www.itatonline.org

S. 45 : Capital gains – Family settlement – As per the will the assessee was not entitled to receive any property. As the assessee had no right title in the property accordingly the sum received towards one time settlement cannot be assessed as capital gains. However the amount received by the assessee requires verification hence the matter was remanded. [S. 2(47)] 989

Tribunal held that, as per the will the assessee was not entitle to receive any property. As the assessee had no right title in the property accordingly the some received towards one time settlement cannot be assessed as capital gains. However the amount received by the assessee requires verification hence the matter was remanded. (AY. 2006-07)
Tarlochan Singh v. ACIT (2018) 170 ITD 171 (Delhi)(Trib.)

S. 45 : Capital gains – Cash credits – Share capital – Shares were issued at premium – Identity and PAN was furnished addition cannot be made as undisclosed income. [S. 68, 133(6)] 990

Dismissing the appeal of the revenue the Tribunal held that; the fact that a Pvt. Ltd co issued shares at an exorbitant premium is irrelevant if the assessee has proved the genuineness of the transaction. If the assessee has furnished necessary evidence to prove the identity of the share applicants and their PAN details, the department is free to proceed to reopen the individual assessments of the share applicants but it cannot be regarded as undisclosed income of the assessee. (AY. 2010-11)
DCIT v. Alcon Biosciences P. Ltd. (2018) 164 DTR 193 / 193 TTJ 1 (Mum.)(Trib.), www.itatonline.org

S. 45 : Capital gains – Cash credits – Penny stocks – When the identity and genuineness of transaction is established, merely because the investigation department has alleged that there is a modus operandi of bogus Long term capital gains scheme is not relevant, if the same is not substantiated. [S. 10(38), 68] 991

Allowing the appeal of the assessee the Tribunal held that; Capital gains from penny stocks cannot be assessed as unexplained cash credit u/s 68 if the assessee has produced documentary evidence to prove the source, identity and genuineness of the transaction and the AO has not found any fault with it. The fact that the investigation dept has alleged that there is a modus operandi of bogus LTCG scheme is not relevant if the same is not substantiated. (ITA No. 6235/Del/2017, dt. 19.03.2018)(AY. 2014-15)
Meenu Goel v. ITO (SMC) (Delhi)(Trib.), www.itatonline.org

992 **S. 45 : Capital gains – Business income – Sale of land in small plots as required by end users is assessable as capital gains. [S. 28(i)]**
Dismissing the appeal of the revenue, the Tribunal held that; Sale of land in small plots as required by end users is assessable as capital gains as the land was held as investment for more than 60 years. (AY. 2008-09)
ACIT v. Narendra J. Bhimani (2018) 169 ITD 245 (Rajkot)(Trib.)

993 **S. 45 : Capital gains – Stock in trade – Transfer of land to developer for construction of commercial complex and letting the flats which it got from developer and offering the income as rental income, subsequent sale of flats was held to be assessable as capital gains and cannot be assessed as business income by applying the provision of S. 45(2) of the Act. [28(i), 45(2)]**
Allowing the appeal of the assessee the Tribunal held that; Transfer of land to developer for construction of commercial complex and letting the flats which it got from developer and offering the income as rental income, subsequent sale of flats was held to be assessable as capital gains and cannot be assessed as business income by applying the provision of S. 45(2) of the Act. (AY. 2006-07 to 2010-11)
Vikas Solvextracts (P.) Ltd. v. DCIT (2018) 168 ITD 692 / 192 TTJ 591 / 164 DTR 161 (Kol.) (Trib.)

994 **S. 45 : Capital gains – Transfer – Development agreement – Capital gains is taxable in the year in which possession was handed over and not in the year in which the project was completed. [S. 54, 54F]**
Allowing the appeal of the revenue, the Tribunal held that, in respect of joint development agreement, Capital gains is taxable in the year in which possession was handed over and not in the year in which the project was completed. As regards the applicability of S. 54F the matter was remanded to CIT(A). (AY. 2009 10, 2010-11)
ITO v. Dr. Arvind Goverdhan (2018) 61 ITR 159 (Bang.)(Trib.)
ITO v. Monica Goverdhan (Mrs) (2018) 61 ITR 159 (Bang.)(Trib.)
ITO v Margrift Goverdhan(Mrs) (2018) 61 ITR 159 (Bang.)(Trib.)
ITO v. Anitha Goverdhn (Mrs) (2018) 61 ITR 159 (Bang.)(Trib.)

995 **S. 45 : Capital gains – Long term capital loss – Shares sold to a group concern in off market transaction at same price as was quoted on stock exchange on relevant date, loss incurred from said sale transactions was to be allowed as long term capital loss. [S. 2(29B)]**
Dismissing the appeal of the revenue the Tribunal held that ; the delivery instructions were issued by assesse to depository participant on date of sale itself. Relevant share transactions were effected at same price as was quoted on stock exchange on said date, therefore loss incurred from said sale transactions was to be allowed as long term capital loss to the assesse. (AY. 2009-2010)
Dy. CIT v. UMIL Share & Stock Broking Services Ltd. (2018) 171 ITD 713 / 170 DTR 441 (Kol.)(Trib.)

S. 45 : Capital gains – Business income – Short term gains on sale of shares and mutual funds – Rule of consistency is directed to be followed – Assessed as capital gains. [S. 28(i), 111A] 996

Tribunal held that assessee was treated as an investor since AY 1998-99 and even in the year under consideration the department has not disturbed the head of Long Term Capital Gains ('LTCG') claimed as 'exempt' by the assessee. Tribunal acknowledged that the profit on sale of investments was only 2% of total revenues generated by the assessee. Further the ratio of average investment (except investment in group concerns) to average total assets was less than 2% and more than 92% of assessee's total assets were deployed in the business of financing. Further, Tribunal noted that in all earlier years, STCG was assessed to tax as capital gains only.

Tribunal relied on the decision of *Gopal Purohit v. JCIT (2009) 29 SOT 117 (Mum.) (Trib.)* as confirmed by Hon'ble Bombay High Court in *CIT v. Gopal Purohit (2011) 336 ITR 287 (Bom.) (HC)*. Further the SLP of the department against the same has been dismissed by Hon'ble Apex Court vide order dt. 15/11/2010. Tribunal held that in the said case, the court directed to follow the rule of consistency if facts are not changed. The said decision was on similar issue as in the present case. Accordingly, Tribunal directed to tax the STCG as income from capital gains. (AY. 2005-06 to 2007-08)

L&T Finance Ltd (2018) 62 ITR 298 / 192 TTJ 9 (UO)(Mum.)(Trib.)

S. 45 : Capital loss – Transfer – The reduction of share capital of a company by way of reducing the face value of each share from ₹ 1,000 to ₹ 500 amounts to "extinguishment of rights" and is a "transfer" u/s. 2(47) of the Act-The assessee is eligible to claim a capital loss therefrom, followed *Kartikeya v. Sarabhai v. CIT (1998) 228 ITR 163 (SC).* [S. 2(47)] 997

Allowing the appeal of the assessee the Tribunal held that ; The reduction of share capital of a company by way of reducing the face value of each share from ₹ 1,000 to ₹ 500 amounts to "extinguishment of rights" and is a "transfer" u/s 2(47) of the Act. The assessee is eligible to claim a capital loss therefrom followed (*Kartikeya V. Sarabhai v. CIT (1998) 228 ITR 163 (SC)* (ITA No. 445/Bang./2018, dt. 29.11.2018)(AY. 2014-15)

Jupiter Capital Pvt. Ltd. v. ACIT (Bang.)(Trib.), www.itatonline.org

S. 45(2) : Capital gains – Conversion of a capital asset in to stock-in-trade – Capital gains to be computed on sale up to date of conversion of Land into stock-in-trade and profit on sale of stock in trade to be assessed as business income or loss. Capital gains to be set off against business loss. [S. 28(i)] 998

Dismissing the appeal of the revenue the Court held that when a capital asset is converted in to stock in trade, capital gains to be computed on sale up to date of conversion of Land into stock-in-trade and profit on sale of stock in trade to be assessed as business income or loss. Capital gains to be set off against business loss. (AY. 2009-10)

CIT v. Essorpe Mills Ltd. (2018) 404 ITR 323 (Mad.)(HC)

999 **S. 45(4) : Capital gains – Distribution of capital asset – Dissolution of firm – Change in constitution of firm – Retirement of some partners and induction of new partners – No revaluation of assets – Businesses continued – Firm reconstituted and not dissolved – Not liable to pay capital gains tax. [S. 45, 187(2)]**

Allowing the appeal of the assessee the Court held that, retirement of some partners and induction of new partners and there was no revaluation of assets. Businesses continued accordingly the Court held that the firm reconstituted and not dissolved. Firm is not liable to pay capital gains tax. Order of Tribunal is reversed and order of CIT(A) is affirmed. (AY. 2002-03)

G. H. Reddy And Associates v. ACIT (2018) 409 ITR 514 (Mad.)(HC)

1000 **S. 45(4) : Capital gains – Distribution of capital asset – Revaluation of assets on retirement – On retirement the accounts are settled of retiring partners without distribution of capital assets, provisions of S. 45(4) cannot be invoked. Capital gains cannot be levied on the firm. [S. 2(47),45]**

Allowing the appeal of the assesse the Tribunal held that; on retirement accounts of retiring partners are settled by revaluing the assets without distribution of capital assets and firm continued to the business, provision of S. 45(4) cannot be invoked. Capital gains cannot be levied on the firm. (AY. 2009-10)

Mahul Construction Corporation v. ITO (2018) 168 ITD 120 / 164 DTR 217 / 193 TTJ 8 (Mum.)(Trib.)

1001 **S. 47(iv) : Capital gains – Transaction not regarded as transfer – Subsidiary – A subsidiary of a subsidiary (step-down subsidiary) is also a subsidiary of the parent. Consequently, transfers between the holding company and the step-down subsidiary are not "transfers" which can give rise to capital gains or loss. [S. 45, 48, Companies Act, S. 4(1)(c), 108]**

The Tribunal held that; The term 'subsidiary company' is not defined under the Income-tax Act and so will have to be given the meaning in S. 4(1)(c) of the Companies Act. A subsidiary of a subsidiary (step-down subsidiary) is also a subsidiary of the parent. Consequently, transfers between the holding company and the step-down subsidiary are not "transfers" which can give rise to capital gains or loss. Accordingly the Tribunal held that; that the transaction of sale of shares of Zandu Realty by the assessee to M/S. Emami Rainbow Niketan Ltd. is not regarded as a transfer in view of S. 47(iv) of the Act. Hence, the question of computing either capital loss or capital gain does not arise. Thus, the assessee is not entitled to carry forward the capital loss of ₹ 25 crores as claimed. (AY. 2010-11)

Emami Infrastructure Ltd. v. ITO (Kol.)(Trib.), www.itatonline.org

1002 **S. 47(xiii) : Capital gains – Transaction not regarded as transfer – Conversion of firm in to company – Allotment of shares to erstwhile partners of the firm after three and half years – Not entitled to exemption. [S. 45, 47A]**

Allowing the appeal of the revenue the Court held that ; the reason assigned by the assessee was that the authorised share capital of the company was not increased suitably

to make the allotment of these shares to the partners and the consideration for their intended allotment of shares in proportion to their share capital was credited in the "shareholders' fund account" in the books of account maintained by the company. This was not a sufficient reason or excuse to delay the process of allotment of shares in the company in favour of the erstwhile partners to an unreasonably long period of about three and half years. The conditions laid down in section 47A were not complied with during the previous year 1999-2000 relevant to assessment year 2000-01. Accordingly the imposition of tax on capital gains on the assessee was valid. (AY. 2000-01)
CIT v. Prakash Electric Company. (2018) 407 ITR 340/ 172 DTR 377 / 305 CTR 954 (Karn.) (HC)

S. 47(xiiib) : Capital gains – Transaction not regarded as transfer – Conversion of firm in to LLP – Transfer – On cumulative satisfaction of conditions (a) to (f) of proviso to section 47(xiiib) would not be chargeable to capital gains. [S. 45] 1003
Transaction involving conversion of a private limited company or unlisted public company to a LLP as contemplated in section 47(xiiib) would though be a transfer on cumulative satisfaction of conditions (a) to (f) of proviso to section 47(xiiib) would not be chargeable to 'capital gains. (AY. 2010-11)
ACIT v. Celerity Power LLP (2019) 174 ITD 433 / 197 TTJ 45 / 174 DTR 68 (Mum.)(Trib.), www.itatonline.org

S. 47A : Capital gains – Withdrawal of exemption – Conversion of proprietary concern in to company – Only licence to use Brand name – When exemption from capital gain was not claimed – Deletion of addition was held to be justified. [S. 47] 1004
Dismissing the appeal of the revenue the Court held that, when proprietary concern was converted in to company only, only licence to use Brand name was allowed and the consideration was received was for use of brand name hence provision of S. 47A was held to be not applicable. Accordingly the order of Tribunal was affirmed. (AY. 2009-10)
PCIT v. Mobisoft Tele Solutions (P) Ltd. (2018) 404 ITR 203 / 163 DTR 289 / 301 CTR 582 / 90 taxmann.com 383 (P&H)(HC)

S. 47A : Capital gains – Withdrawal of exemption – Conversion of firm in to LLP – Provision will apply only for purpose of withdrawing an exemption earlier availed by an assessee and not for determination of exemption under section 47(xiiib) of the Act.[S. 45 47A(4)] 1005
Provision of S. 47A(4) will apply only for purpose of withdrawing an exemption earlier availed by an assessee and could not have been applied for determining whether the assessee is not eligible for claim of exemption under section 47(xiiib) in year of raising of such claim itself. (AY. 2010-11)
ACIT v. Celerity Power LLP (2019) 174 ITD 433 / 197 TTJ 45 / 174 DTR 68 (Mum.)(Trib.) www.itatonline.org

1006 **S. 48 : Capital gains – Computation – Property inherited under Will – Amount paid for discharge of encumbrances – Allowable as deduction. [S. 45, 55]**

Dismissing the appeal of the revenue the Court held that when the property is inherited under Will, amount paid for discharge of encumbrances is allowable as deduction while computing capital gains.

CIT v. Aditya Kumar Jajodia (2018) 407 ITR 107 (Cal.)(HC)

1007 **S. 48 : Capital gains – Computation – Payment of liquidated damages in discharge of liability under earlier agreement to sell is held to be allowable expenditure – The expression "expenditure" used in clause (i) in S 48 should be given the same meaning as used in S. 37(1), except that the expenditure may also be capital in nature. Settlement of a claim and payment made can amount to expenditure. [S. 37(1),45]**

Allowing the appeal of the assessee the Court held that; payment of liquidated damages in discharge of liability under earlier agreement to sell is held to be allowable expenditure-The expression "expenditure" used in clause (i) in S 48 should be given the same meaning as used in S. 37(1), except that the expenditure may also be capital in nature. Settlement of a claim and payment made can amount to expenditure. (AY. 1994-95)

Kaushalya Devi (Dec) Through LR v. CIT (2018) 404 ITR 136 / 166 DTR 258 / 255 Taxman 417 / 304 CTR 961 (Delhi)(HC)

1008 **S. 48 : Capital gains – Computation – Indexed cost – Since property was acquired by father of assessee in year 1945, indexed cost of acquisition was required to be computed by considering cost of acquisition for year beginning on 1-4-1981. [S. 45, 49(1)(iii)]**

Dismissing the appeal of the revenue, the Court held that ;since property was acquired by father of assessee in year 1945, indexed cost of acquisition was required to be computed by considering cost of acquisition for year beginning on 1-4-1981, though the assessee acquired the property on 8-3-2004, under a will, cost of acquisition was deemed to be cost for which previous owner, namely assessee's father, acquired it. (Followed *CIT v. Manjula J. Shah (2016) 355 ITR 474 (Bom.)(HC)*)

PCIT v. Prakash Krishnalal Bhagwati (2018) 254 Taxman 132 (Guj.)(HC)

1009 **S. 48 : Capital gains – Computation – Difference between market value and consideration declared, burden is on the revenue to prove – Addition was deleted. [S. 45, 52(1)]**

Held that the addition cannot be made in respect of difference between market value and consideration declared. Burden is on the revenue to prove that the assessee has received more consideration than the actual consideration received. Addition was deleted. (AY. 1998-99, 1999-2000)

Arjun Malhotra v. CIT (2018) 403 ITR 354 / 166 DTR 235 / 255 Taxman 399 / 304 CTR 454 (Delhi)(HC)

S. 48 : Capital gains – Computation – Long term capital gains – Indexation – Once factum of construction was accepted then claim of cost of construction could not be rejected outrightly without examining correctness of amount of claim. [S. 45] 1010

The Appellate Tribunal has held that before CIT(A), assessee supported its claim by valuation report as well as sale deed. Assessee had also supported his claim with site plan sanctioned by U.P. Avas Avam Vikas Parishad, Bareily. CIT(A) called for a remand report, where AO accepted fact of construction carried out by assessee at first floor in 1994-95, however in absence of documentary evidence of expenditure, claim was not accepted by AO. CIT(A) also confirmed rejection of claim on similar reasoning. Once factum of construction of first floor and a multi at second floor was accepted then claim of cost of construction could not be rejected out rightly without examining correctness of amount of claim. (AY. 2009-10)

Ghanshyam Das Thakawani v. ITO (2018) 68 ITR 61 (SN)(Jaipur)(Trib.)

S. 48 : Capital gains – Computation – Full value of consideration – Conversion of a private limited company into assessee – LLP-Book value-Book value was to be regarded as full value of consideration for purpose of computation of capital gains. [S. 45, 47] 1011

Upon conversion of a private limited company into assessee **–** LLP entire undertaking of erstwhile company got vested into assessee LLP, no separate cost other than 'book value' would be at Tributable to individual assets and liabilities, hence such 'book value' could only be regarded as full value of consideration for purpose of computation of capital gain. (AY. 2010-11)

ACIT v. Celerity Power LLP (2019) 174 ITD 433 / 197 TTJ 45 / 174 DTR 68 (Mum.)(Trib.) www.itatonline.org

S. 48 : Capital gains – Computation – Indexed cost of improvement – Documentary evidence to prove quantum of expenditure incurred on improvement was not furnished – Disallowance is held to be justified. [S. 45, 54] 1012

Tribunal held that since assessee had not produced any documentary evidence to prove quantum of expenditure on improvement incurred by him, Assessing Officer was justified in disallowing claim of assessee. (AY. 2011-12)

Jagdish Wadhwani v. ITO (2018) 173 ITD 559 (Jaipur)(Trib.)

S. 48 : Capital gains – Computation – Short term capital gain – Performance linked fees and portfolio management fees paid to portfolio manager is not allowable as deduction. [S. 45] 1013

Allowing the appeal of the revenue, the Tribunal held that, the Portfolio Management Fees and Performance Linked Fees were paid by the assessee to his portfolio manager towards service charges for making investments of his funds and managing the portfolio of securities, therefore, the same not being an expenditure incurred wholly and exclusively in connection with the transfer of the shares out of which STCG had arisen to the assessee, is not allowable as a deduction. (Referred, *Devendra Motilal Kothari v. Dy. CIT [2011] 132 ITD 173 (Mum.) (Trib.), Dy. CIT v. KRA Holdings and Trading (P.) Ltd. [2012] 54 SOT 493 (Mum.) (Trib.) CIT v. Shakuntla Kantilal (Smt.) [1991] 190 ITR 56*

(Bom.) (HC) Pradeep Kumar Harlalka v. A CIT [2011] 47 SOT 204 (URO) (Mum.), (Trib., CIT v. Roshanbabu Mohammed Hussein Merchant [2005] 275 ITR 231 (Bom).(HC) Homi K. Bhabha v. ITO (IT) [2011] 48 SOT 102 (Mum.) (Trib.))(AY.2007-08)
ACIT v. Apurva Mahesh Shah (2018) 172 ITD 127 (Mum.)(Trib.)

1014 **S. 48 : Capital gains – Computation – Indexation – Asset acquired under a gift, indexed cost of acquisition of such capital asset has to be computed with reference to year in which previous owner first held asset. [S. 45]**
Dismissing the appeal of the revenue the Tribunal held that ;asset acquired under a gift, indexed cost of acquisition of such capital asset has to be computed with reference to year in which previous owner first held asset. (AY. 2011-12)
ITO v. Nita Narendra Mulani (Smt.) (2018) 172 ITD 169 (Mum.)(Trib.)

1015 **S. 48 : Capital gains – Computation – Property inherited on death of husband – cost of acquisition to be applied from the year when the previous owner first held asset and not when the assessee inherited the property. [S. 55A]**
Appellate Tribunal held that while computing the capital gains arising on transfer of a capital asset inherited by the assessee on the death of her husband, the indexed cost of acquisition had to be computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee became the owner of the asset. (AY. 2007-08)
Bhoote Meenakshi (Smt.) v. ACIT (2018) 62 ITR 754 (Bang.)(Trib.)

1016 **S. 48 : Capital gains – Computation – Portfolio Management Scheme (PMS) – Deduction of PMS fee is not allowable as it is not a transfer fee, nor cost of acquisition/improvement. [S. 45]**
Tribunal held that, PMS fees paid by assessee neither fell under category of transfer fees, nor cost of acquisition/improvement, therefore, same is not allowed for deduction while computing capital gain on sale of shares kept under Portfolio Management Scheme. (AY. 2010 – 2011)
Mateen Pyarali Dholkia v. DCIT (2018) 171 ITD 294 (Mum.) (Trib.) www.itatonline.org

1017 **S. 48 : Capital gains – Computation – Shares held as investment – brokerage is held to be allowable as deduction – Demat charges is held to be not allowable as deduction while computing capital gains.[S. 45]**
The Tribunal held that brokerage was paid in connection with shares, the same has to be allowed as deduction in the computation of the capital gain in terms of S. 48 of the Act. The payment of demat charges cannot be allowed as deduction as the investment activity in shares carried on by the assessee is not of the trading nature. (AY. 2008-09)
DLF Commercial Developers Ltd. v. Dy. CIT (2018) 192 TTJ 769 (Delhi)(Trib.)

1018 **S. 48 : Capital gains – Computation – While computing the capital gains the benefit of indexation should be given on basis of date of acquisition of asset and not on basis of actual payment. [S. 45,55(2)]**
Allowing the appeal of the assessee the Tribunal held that, while computing the capital gains the benefit of indexation should be given on basis of date of acquisition of asset

and not on basis of actual payment. Relied on *Lata G. Rohra v DCIT (2008) 21 SOT 541 (Mum.) (Trib.), Charanbir Singh Jolly v ITO (2006) 5 SOT 89(Mum.) (Trib.) (ITA No.1244 /Mum./2016 dt 27-02-2018* (AY. 2011-12)
Shishir Gorle v. DCIT (Mum.)(Trib.) www.itatonline.org

S. 48 : Capital gains – Computation – Tenancy rights – Value of tenancy rights to be considered for determination of cost of acquisition. [S. 45, 49, 50C] 1019
Dismissing the appeal of the revenue the Tribunal held that, value of tenancy rights to be considered for determination of cost of acquisition. The builder has given alternative flat to the assessee only by way of surrender of tenancy rights. Had there been no tenancy rights the builder would not have offered any flat to the assessee on ownership basis. Thus it is valuable right on which cost of acquisition has to be determined. Followed *CIT v. Abrar Alvi (2001) 247 ITR 312 (Bom.) (HC)*. (ITA No 3947/Mum./2016 dt 19-04-2018 "H")(AY. 2007-08)
ACIT v. Shree Krishna Pharmacy (Mum.)(Trib.)(UR)

S. 48 : Capital gains – Computation – Expenses incurred towards fees for computerization of share certificates in order to transfer them to escrow account is allowable as deduction. [S. 45, 112] 1020
AAR held that, expenses incurred towards fees for computerization of share certificates in order to transfer them to escrow account is allowable as deduction.
Honda Motors Co. Ltd., In re (2018) 401 ITR 382/ 253 Taxman 402 / 301 CTR 159 / 163 DTR 113 (AAR)

S. 49 : Capital gains – Previous owner – Cost of acquisition – Conversion of Private Limited Company to LLP – Capital assets become property of assessee by succession, inheritance or devolution, cost of acquisition of assets shall be deemed to be cost for which previous owner of property had acquired same. [S. 2(42A)45, 49(1)(iii)] 1021
Conversion of Private Limited Company to LLP, capital assets become property of assessee by succession, inheritance or devolution, cost of acquisition of assets shall be deemed to be cost for which previous owner of property had acquired same. (AY. 2010-11)
ACIT v. Celerity Power LLP (2019) 174 ITD 433 / 197 TTJ 45 / 174 DTR 68 (Mum.)(Trib.), www.itatonline.org

S. 49 : Capital gains-Previous owner – Firm – Partner – Period of holding – Dissolution of firm with effect from 1-4-1988. S. 49(1)(iii)(b), period of holding of an asset by an erstwhile partner of a dissolved firm was not to include period of holding of such asset by firm – Period to be reckoned from date of distribution to partner-Asset held was only for one year and two months-Not entitle to exemption in respect of investment in certain bonds. [S. 29A), 2(31), 2(42A), 45, 50, 54EC] 1022
Tribunal held that up to AY. 1986-87, S. 2(42A), Explanation 1(b) read with S. 49(1) (iii)(b) provided that where a capital asset had became a property of assessee on any distribution of assets on dissolution of a firm, before 1st day of April, 1987, period for which asset was held by previous owner would be included for working out period of

holding of asset by assessee and after amendment vide Finance Act, 1987, with effect from 1-4-1988 to S. 49(1)(iii)(b), period of holding of an asset by an erstwhile partner of a dissolved firm was not to include period of holding of such asset by firm. Accordingly period to be reckoned from date of distribution to partner. On facts the assessee had taken over assets from the partnership firm on 15-05 2003 and sold the same on 4-07-2004 ie one year two months, the same could not be held to be a long term capital asset and not entitle exemption on investment in certain bonds. (AY. 2005-06)
Amar Kanayalal Nagpal v. ITO (2018) 171 ITD 518/ 195 TTJ 523 (2019) 174 DTR 403 (Mum.)(Trib.)

1023 **S. 50 : Capital gains – Depreciable assets – Block of assets – Sale of land with building – Demolition of building – Land alone subject to development – Consideration is only for land S. 50 is not applicable. [S. 45]**
Allowing the appeal of the assessee the Court held that ; building was demolished and land alone was subject to development was transferred. Accordingly the provision of S. 50 cannot be applied. (*CIT v. Union Co. (Motors) Ltd. (2006) 283 ITR 445 (Mad.) (HC)* followed. *Meena v. Pamnani (Smt.) v. CIT (2018) 404 ITR 548 (Bom.)(HC)* is distinguished.) (AY. 2004-05)
Jaidayal Prannath Kapur v. CIT (2018) 408 ITR 315 / 172 DTR 103 / (2019) 307 CTR 757 (Mad.)(HC)

1024 **S. 50 : Capital gains – Depreciable assets – Block of assets – Land on which staff quarters were situated – Staff quarters depreciation was claimed – No depreciation was claimed on land – Profit on sale of land is assessable as long term capital gains. [S. 2(11), 45]**
Tribunal held that, asset transferred was land and not staff quarters, land is not a depreciable asset and it was not a part of block of assets. In absence of a rate of depreciation having been prescribed, provisions of S. 50 could not be invoked. Therefore profit on sale of land is assessable as long term capital gains. (AY. 2009-10, 2011-12)
ACIT v. Seth Industries (P.) Ltd. (2018) 171 ITD 326 (Mum.)(Trib.)

1025 **S. 50B : Capital gains – Slump sale – Sale of hotel premises along with licences is held to be slump sale [S. 45]**
Dismissing the appeal of the revenue the Tribunal held that, Sale of hotel premises along with licences for boarding, lodging bar etc as a going concern is held to be slump sale. (AY. 2013-14)
ACIT v. Ooty Gate Hotel (2018) 67 ITR 322 / (2019) 174 ITD 513 (Cochin)(Trib.)

S. 50B : Capital gains – Slump sale – Full value of consideration – Conditional sale – Part consideration would be paid on obtaining waiver of Minimum. Guarantee Throughput (MGT) from Port Trust till transfer of terminal undertaking by assessee to KCPL – Amount retained by KCPL was never paid to the assessee as the assessee was not able to get waiver of Minimum. Guarantee Throughput (MGT) from Port Trust. Consideration which was not received cannot be assessed as consideration received for sale – AO was directed to verify and decide in accordance with law. [S. 45, 48] 1026

Tribunal held that part consideration was to be paid, on obtaining waiver of Minimum. Guarantee Throughput (MGT) from Port Trust till transfer of terminal undertaking by assessee to KCPL. Part consideration retained by KCPL was never paid to the assessee as the assessee was not able to get waiver of Minimum. Guarantee Throughput (MGT) from Port Trust-Consideration which was not received cannot be assessed as consideration received for sale.AO was directed to verify and decide in accordance with law. (AY. 2007-08)

Konkan Storage Systems (P.) Ltd. v. ACIT (2018) 173 ITD 248 (Bang.)(Trib.)

S. 50B : Capital gains – Slump sale – Part consideration was kept in Escrow account which was received in subsequent year – segregation of consideration in to two parts is held to be not justified – Depositing a part of the consideration in an escrow account will not be, equivalent to a deferred consideration. Entire consideration is taxable in the year of sale. [S. 45] 1027

Assessee computed capital gains excluding the amount kept in Escrow account and contended that unless and until escrow amount was released by escrow agent,amount lying in escrow account could not be considered for computing capital gains. AO considered entire consideration as per agreement is liable to capital gains which was affirmed by the CIT(A). On appeal Tribunal held that since consideration was mentioned in slump sale agreement, segregating such consideration into two parts cannot be done and entire consideration was to be considered as capital gain arose during year. (AY. 2012-13)

T.A. Taylor (P.) Ltd. ACIT (2018) 173 ITD 237 / 66 ITR 146 (Chennai)(Trib.)

S. 50B : Capital gains – Slump sale – Transfer of Hospital business – No Transfer of Land and building of Hospital – Not slump sale – Receipt on account of transfer of Hospital business taxable. [S. 2(42C)] 1028

Tribunal held that though the Hospital business was transferred as a going concern, land and building of Hospital was not transferred accordingly the Transfer of business could not be called slump sale as envisaged under S. 2(42C) of the Act. Thus the capital gains could not be computed in terms of S. 50B. The receipt of ₹ 10 Lakhs was to be taxed in accordance with law. (AY. 2009 10 to 2013-14)

Manipal Health Systems P. Ltd. v. ACIT (2018) 65 ITR 51 (SN)(Bang.)(Trib.)

S. 50B : Capital gains – Slump sale – Cost of acquisition – Transfer of its business division to its subsidiary against shares and debentures is not a slump sale but exchange hence provision would not be applied. [S. 2(42C), 45] 1029

Allowing the appeal of the assessee the Tribunal held that, transfer of its business division to its subsidiary against shares and debentures is not a slump sale but exchange

hence provision would not be applied, as the Transfer of undertaking was not for money. (AY. 2008-09)
Bennett Coleman & Co. Ltd. v. ACIT (2017) 168 ITD 631 (2018) / 192 TTJ 377 / 164 DTR 145 (Mum.)(Trib.)

1030 **S. 50B : Capital gains – Slump sale – Transfer of individual assets to sister concern without transfer of undertaking or business activity as a whole cannot be considered as slump sale [S. 2(19AA), 2(42C)]**
Allowing the appeal of the assesse, the Tribunal held that; since assessee had neither transferred an undertaking or any part of an undertaking, or a unit or division of undertaking or a business activity taken as a whole, but what had been transferred was an individual asset, viz. business leads, which did not constitute a business activity on its own, view taken by Assessing Officer that amount received by assessee was liable to be characterized as a consideration received pursuant to a slump sale as per provisions of S. 50B, could not be upheld. (AY. 2003-04)
L & T Finance Ltd. v. DCIT (2018) 168 ITD 52 (Mum.)(Trib.)

1031 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Lease hold rights – Transfer of capital asset for a consideration – Provision is applicable – Order of Tribunal is affirmed. [S. 2(14) 45, 48]**
Assessee sold lease sold land under a registered sale deed. The property was leasehold land and ownership vested with the state government. AO made addition under the head capital gains and invoked S. 50C. CIT(A) and Tribunal confirmed the addition. High Court held that if analogy is taken from referring to the decision of *CIT v. Greenfield Hotels & Estates Pvt. Ltd. (2016) 389 ITR 68)(Bom.) (HC)* section 50C would not be applicable in majority of cases. The High Court cannot re-write the provision. Accordingly the view of the Tribunal is affirmed.
Ram Ji Lal Meena v. ITO (2018) 168 DTR 245 / 303 CTR 821 / 102 CCH 316 (Raj.)(HC)

1032 **S. 50C : Capital gains-Full value of consideration – Stamp valuation – The valuation of the stamp authority cannot be adopted for the purpose of collecting capital gain tax in the hands of the assessee, if there is a long gap between the date of execution of the MOU and the execution of a formal development agreement. [S. 45, 269UL(3)]**
Question raised by the revenue is as under, "Whether on the facts and circumstances of the case and in law, the Tribunal was justified in dismissing the appeal filed by the Revenue by accepting the sale consideration at ₹ 2,51,00,000/, accepted by the Revenue in order u/s 269 UL(3) in place of ₹ 4,63,73,500/considered by the Assessing Officer on the basis of valuation made by the Stamp Duty Authority?"
Dismissing the appeal of the revenue the Court held that, the valuation of the stamp authority cannot be adopted for the purpose of collecting capital gain tax in the hands of the assessee if there is a long gap between the date of execution of the MOU and the execution of a formal development agreement. The appropriate authority (Income Tax Department) gave no objection to grant of development rights at the agreed consideration of ₹ 2,51,00,000/- u/s 269UL(3) dated 12.06.2001. The said MOU was converted into a formal development agreement in September, 2004 on the same terms and conditions.

The stamp duty authorities stamped / assessed the value at ₹ 4,63,73,500/. (ITA No. 859 of 2016, dt. 11.12.2018) (AY. 2005-06)
PCIT v. The Executor of Estate of Late Smt. Manjula A. Shah (Bom.)(HC), www.itatonline.org

S. 50C : Capital gains-Full value of consideration – Stamp valuation Property not freehold property but occupied by tenants and court cases to get premises vacated pending – Kanpur Development Authority issuing letters to assessee proposing to take over certain portion of his property in connection with road widening – Addition on account of difference in stamp duty and sale deed is not justified. [S. 45] 1033
Allowing the appeal of the assessee the Tribunal held that ; the property was not freehold property but was occupied by tenants and there were court cases going on to get the premises vacated. The assessee objected that the Kanpur Development Authority had issued letters to him to take over a certain portion of his property in connection with road widening. The property deed mentioned that it was occupied by tenants and it was proved since court cases were going on against them. The Valuation Officer had not dealt with the issue as to why benefit should not be given to the assessee when the Kanpur Development Authority took away some portion of the property for road widening. The Valuation Officer had also not dealt with the impact on the valuation of the property already being occupied by tenants and court cases going on. The Valuation Officer had simply applied the circle rate available and made the report. As the case wherein the sale deed value was declared and independent valuation done by the authorised valuer but the subordinate authorities had not categorically dealt with the submissions of the assessee nor had brought out any material on record to support why the Valuation Officer's report should be taken into consideration. Accordingly the addition is deleted. (AY. 2008-2009)
Atul Kumar Garg, HUF v. ITO (2018) 64 ITR 72 (SN) (Luck.)(Trib.)
Pawn Kumar Garg, HUF v. ITO (2018) 64 ITR 72 (SN) (Luck.)(Trib.)
Rakesh Kumar Garg, HUF v. ITO (2018) 64 ITR 72 (SN) (Luck.)(Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – When a specific request is made by the assessee to refer the matter to valuation officer, it was statutory duty laid down upon the Assessing Officer to obtain the valuation report by referring the matter to the District Valuation Officer – Reference to the District Valuation Officer is mandatory and the Assessing Officer having failed to follow the provisions of the Act, he could not be given one more chance to refer the matter to the District Valuation Officer-no addition could me made on the basis of value of property at circle rate of State Government. [S. 45] 1034
Allowing the appeal of the assessee the Tribunal held that, it was statutory duty laid down upon the Assessing Officer to obtain the valuation report by referring the matter to the District Valuation Officer. Reference to the District Valuation Officer is mandatory and the Assessing Officer having failed to follow the provisions of the Act, he could not be given one more chance to refer the matter to the District Valuation Officer. The authorities passed the order in a summary manner without going into the merits of the case and analysing the legal issue involved, the applicability of section 50C(2)

(a) in particular. The Assessing Officer had not found any adverse material evidence to indicate that the assessee had received any excess money over and above the sale consideration, in the return. Accordingly the addition was deleted. (AY. 2013-14)
Dr. Sanjay Chobey (HUF) v. ACIT (2018) 65 ITR 68 (SN) / 194 TTJ 891 (Agra)(Trib.)

1035 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – An agreement to sell was executed by assessee on 8-2-2010 and Sale deed was executed and registered on 5-6-2012 – In view of proviso to S. 50C capital gain was to be computed on basis of stamp duty valuation rate prevailing on date of agreement to sell – Matter was to be remanded to Assessing officer to determine sale value of property on basis of circle rate applicable on property on 8-2-2010, and thereafter compute long-term capital gain assessable in assessment year 2013-14. [S. 45]**
Tribunal held that, an agreement to sell was executed by assessee on 8-2-2010 and Sale deed was executed and registered on 5-6-2012. In view of proviso to S. 50C capital gain was to be computed on basis of stamp duty valuation rate prevailing on date of agreement to sell-Matter was to be remanded to Assessing officer to determine sale value of property on basis of circle rate applicable on property on 8-2-2010, and thereafter compute long-term capital gain assessable in assessment year 2013-14. (AY. 2013-14)
Rahul G. Patel v. DCIT (2018) 173 ITD 1 / 171 DTR 1 / 195 TTJ 1027 / 67 ITR 280 (Ahd.) (Trib.)

1036 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Stamp valuation was disputed before the AO – It is the duty of AO to refer the matter to Valuation Officer – The department cannot be allowed a second inning, by sending the matter back to Assessing Officer, enabling it to fill the lacunae and shortcomings and putting the assessee virtually to face a re-trial for no fault of him and to again prove before the Assessing Officer that the sale consideration was the fair market value of the property sold by him. [S. 45]**
Dismissing the appeal of the revenue the Tribunal held that, when the Assessee objected the valuation adopted by the stamp authority, the AO ought to have referred the matter to the Valuation Officer. The department cannot be allowed a second inning, by sending the matter back to Assessing Officer, enabling it to fill the lacunae and shortcomings and putting the assessee virtually to face a re-trial for no fault of him and to again prove before the Assessing Officer that the sale consideration was the fair market value of the property sold by him. This would amount to giving a lease of life to an order which on the basis of facts on records is unsustainable in law. Therefore, in the light of these facts and the failure of the Assessing Officer to follow the procedure as prescribed under section 50C(2) in particular, there is no find infirmity in the order of the CIT (A) in quashing the addition made by the AO. (AY. 2013-14)
ACIT v. Tarun Agarwal (2018) 173 ITD 107 / (2019) 175 DTR 299 / 198 TTJ 484 (Agra) (Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – Property sold for ₹ 50 lakhs – Stamp valuation was ₹ 90.20 lakhs – DVO estimated at ₹ 81.68 lakhs – location of property, potential development in near future, availability and accessibility to infrastructure facility such as road, airport, educational institutions, etc. were not properly considered either by Approved Valuer or by Departmental Valuation Officer, while valuing property sold by assessee – Tribunal estimated the value at ₹ 69 lakhs. [S. 45] 1037

Property sold for ₹ 50 lakhs. Stamp valuation was ₹ 90.20 lakhs. DVO estimated at ₹ 81.68 lakhs Tribunal held that location of property, potential development in near future, availability and accessibility to infrastructure facility such as road, airport, educational institutions, etc. were not properly considered either by Approved Valuer or by Departmental Valuation Officer, while valuing property sold by assessee. Accordingly the Tribunal estimated the value at ₹ 69 lakhs. (AY. 2011-12)

Kalavathy Sundaram. (Smt.) v. ITO (2018) 172 ITD 597 (Chennai)(Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – Disputed valuation adopted by stamp duty authorities before AO – AO is required to refer the matter of valuation to Valuation Officer. [S. 45] 1038

Tribunal held that in terms of section 50C(2)(a) of the Act, where the Assessee has objected that the stamp duty valuation exceeds the FMV of the property on date of transfer, AO is required to refer the matter to Valuation Officer. Accordingly, the Tribunal remanded the matter to AO for referring the matter to Valuation Officer and recomputes the capital gains. (AY. 2008-09)

Harphool Jat v. ITO (2018) 66 ITR 7 (SN)(Jaipur)(Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp Duty Valuation – Where the assessee explained the reasons for fetching a lesser rate on sale of immovable property as compared to the Stamp Duty Valuation, the. AO should have remitted the matter to the DVO for determination of the FMV of the immovable property. [S. 45] 1039

On Revenue's appeal, the Tribunal held that the assessee brought on record the complexities involved in the sale of property and the reasons for getting a lesser rate and therefore, the Ld. AO should have referred the valuation of the property to the DVO as per section 50C(2) of the Act. Since proper procedure has not been followed, the Tribunal remitted the matter back to the Ld. AO to make a reference to the DVO for determination of FMV of the property. (AY. 2012-13)

ACIT v. Kishore Kumar (2018) 66 ITR 158 (Vishakha)(Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – Charitable Trust – Price approved by Charity Commissioner has to be followed, where the Assessee is a public charitable trust [S. 45] 1040

Tribunal held that the consideration for sale of land has been approved by the Charity Commissioner which has passed order as per Bombay Trust Act and assessee being a public trust has to follow the same and include the same in sale's deed and it does not require any interference on account of understatement of consideration.

Dy.CIT v. Saifee Jubiee High School and Madressa Yusufiyan Society (2018) 63 ITR 89 (SN) (Ahd.)(Trib.)

1041 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Form v/s Substance-Security deposit was rightly apportioned between short term and long term capital gains – Interest-free security deposit cannot be treated as 'full value of consideration – The amendment to include assessable value as full value consideration was inserted w.e.f. 01/10/2009 and, thus, the value assessable as per stamp value authority cannot be applied for taking full value consideration of the property for the year under consideration. Accordingly the question of referring the matter to the Valuation Officer in terms of section 50C(2) also does not arise. [S. 2(14, 45]**

Tribunal held that S. 45 and 48 unlike the provisions of wealth-tax, do not make provision, providing for any deemed profit or gain to be taxable as a capital gain the mere fact that the Assessing Officer was of the view that the prevalent market interest rate was 18 per cent, or was at any amount above 9 per cent, could not render the assessee liable for being taxed on the difference amount as capital gain. According to Assessing Officer, the amount of security deposit received of ₹ 35 crore is sale consideration received and he apportioned the sale consideration for computation of short-term capital gain and long-term capital gain. In case of Siliguri land, the Assessing Officer computed long-term capital gain of ₹ 78,81,841/-and short-term capital gains of ₹ 13,67,67,379/-. In case of Darjiling land, the short-term capital gain of ₹ 18,60,30,515/- was computed by the Assessing Officer. Tribunal held that during the relevant period, section 50C of the Act could be invoked only, if the property was registered before the Stamp Duty Authorities and in that case amount adopted by the Stamp Valuation Authority could be treated as full value consideration received. The amendment to include assessable value as full value consideration was inserted w.e.f. 01/10/2009 and, thus, the value assessable as per stamp value authority cannot be applied for taking full value consideration of the property. Once, we have held that provisions of section 50C are not applicable in the instant case, the question of referring the matter to the Valuation Officer in terms of section 50C(2) also does not arise. In the instant case, the assessee has received so-called security deposits as interest-free amount for the properties leased. This is the amount, which is actually received by the assessee for transfer of rights in the property. In our opinion, in the given circumstances of the case, for the purpose of computation of the capital gain as laid down in section 48 of the Act, the security deposit received has been rightly treated by the Assessing Officer as full value consideration received as a result of transfer of the capital asset. (ITA No. 4038/Del/2013, dt. 12.10.2018)(AY. 2006-07)

DCIT v. Moni Kumar Subha (Delhi)(Trib.), www.itatoline.org

1042 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Conversion of agricultural land into residential plots – AO applied S. 50C – CIT(A) held that income in the nature of business income therefore, S. 50C not applicable – Held, S. 45(2) not taken into consideration and therefore, matter remanded back to CIT(A). [S. 45(2)]**

Assessee developed agricultural land into 23 plots and sold them to different persons for residential purposes. AO estimated capital gains by applying S. 50C. CIT(A) held that the income was in the nature of business income as the activity came under the ambit of 'adventure in the nature of trade'. Tribunal held that conclusion of taxation as

business income was justified however, the CIT(A) did not take into consideration the provision of S. 50C. Accordingly, the matter was remanded back to CIT(A). (AY. 2007-08)
Ramswaroop Saudagar v. ITO (2018) 63 ITR 262 (Jaipur)(Trib.)

S. 50C : Capital gains – Full value of consideration-Stamp valuation – Agricultural land – Land situated within 8 km. of local Municipal limits-Addition under head capital gain applying the provision of S. 50C is justified. [S. 2(14)(iii), 45] 1043
Tribunal held that as the agricultural land was situated within 8 km. of local municipal limits, addition under head Capital gain applying the provision of S. 50C is justified.
Girdhari Lal v. ITO (2018) 171 ITD 176 (Delhi)(Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – If the assessee has invested the entire sale consideration in new house property, the capital gains are exempt u/s 54F. The AO cannot apply S. 50C and treat the stamp duty valuation as the consideration and assess the difference between the stamp duty valuation and the actual valuation to capital gains. [S. 54F] 1044
Dismissing the appeal of the revenue the Tribunal held that ; If the assessee has invested the entire sale consideration in new house property, the capital gains are exempt u/s 54F. The AO cannot apply S. 50C and treat the stamp duty valuation as the consideration and assess the difference between the stamp duty valuation and the actual valuation to capital gains. (AY.2011-12)
ITO v. Raj Kumar Parashar (2018) 195 TTJ 212 / 169 DTR 142 (Jaipur)(Trib.), www.itatonline.org

S. 50C : Capital gains – Full value of consideration-Stamp valuation – Assessee neither objected to value determined by Sub-Registrar nor requested the AO for referring to Valuation Officer – AO was justified in bringing to tax deemed sale consideration as per the Stamp duty authority instead of the actual sale consideration claimed by assessee – AO can not invoke provisions of S. 50C(2) suo motu. [S. 45, 50C(2)] 1045
Tribunal held that, assessee neither objected to value determined by Sub-Registrar nor requested the AO for referring to Valuation Officer. Accordingly the AO was justified in bringing to tax deemed sale consideration as per the Stamp duty authority instead of the actual sale consideration claimed by assessee. Tribunal also held that AO can not invoke provisions of S. 50C(2) suo motu. (AY. 2006-07, 2008-09)
Jagdish Narayan Sharma v. ITO (2018) 65 ITR 194 / 194 TTJ 825 / (2019) 174 DTR 25 (Jaipur)(Trib.)

S. 50C : Capital gains – Full value of consideration – stamp valuation – Provision being a deeming provision and applies only to the transfer of land or building. It does not apply to the transfer of "booking rights" and to right to purchase flats in a building. [S. 45] 1046
Allowing the appeal of the assessee the Tribunal held that, S. 50C being a deeming provision and applies only to the transfer of land or building. It does not apply to the transfer of "booking rights" and to right to purchase flats in a building. (ITA No. 635/Kol/2018, dt. 04.07.2018)(AY. 2013-14)
Baniara Engineers Pvt. Ltd. v. ITO (SMC) (Kol.)(Trib.), www.itatonline.org

1047 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Even after applying provisions of S. 50C, difference in capital gain declared by assessee and figure adopted by AO did not even exceed 10 per cent of stamp duty valuation, addition was deleted. [S. 45]**

Tribunal held that even after applying provisions of S. 50C, difference in capital gain declared by assessee and figure adopted by Assessing Officer did not even exceed 10 per cent of stamp duty valuation, accordingly the addition was deleted. (AY. 2010-11)

Surendra S. Gupta v. ACIT (2018) 170 ITD 732 (Mum.)(Trib.)

1048 **S. 50C : Capital gains – Full value of consideration-Stamp valuation – Property was tenanted and Court cases were pending, certain portion to be taken over by authority for road widening – Objections of the assessee was not dealt with authorities – Addition on account of difference in stamp valuation and sale deed is held to be not valid.[S. 45]**

Tribunal held that the authorities have not dealt with the objections of the assessee, such as property was tenanted and Court cases were pending, certain portion to be taken over by authority for road widening. Accordingly addition on account of difference in stamp valuation and sale deed is held to be not valid. (AY. 2008-09)

Atul Kumar Garg HUF and Ors (2018) 64 ITR 72 (SN) (Luck.)(Trib.)

1049 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – When the assessee is protesting the valuation by Stamp authority and requesting to refer to Department valuation Officer, the AO is bound to make the reference to Department Valuation Officer, accordingly the deletion of addition was held to be justified. [S. 45]**

Dismissing the appeal of the revenue the Tribunal held that, When the assessee is protesting the valuation by Stamp authority and requesting the refer to Department volition Officer, the AO is bound to make the reference to Department Valuation Officer. Deletion of addition was held to be justified.(AY. 2011-12)

ITO v. Estate of Maharaja Karni Singh Bikaner (2018) 64 ITR 21 / 166 DTR 29 / 193 TTJ 751 (Jodhpur)(Trib.)

1050 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Assessee could raise objection to valuation through his return of income, only in the assessment proceedings. No universal principle with regard to being heard in the matter can be laid down and it all depends upon the language of provision and object and purpose of it. [S. 45]**

The Commissioner (Appeals) upheld the addition of ₹ 1,00,000 made by Assessing Officer by invoking S. 50C, by substituting apparent consideration of ₹ 11 lakhs by that of ₹ 12 lakhs adopted for stamp duty. On appeal by the assessee, dismissing the appeal the Tribunal held that; Assessee could raise objection to valuation through his return of income, only in the assessment proceedings. No universal principle with regard to being heard in the matter can be laid down and it all depends upon the language of provision and object and purpose of it. (AY. 2006-07)

Jasvinder Hans v. ACIT (2018) 170 ITD 241 / 164 DTR 249 (Asr.)(Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – Agreement to sell for property was entered on September 1966 though registered on 29-11-2010, stamp valuation on the date of registration cannot be applied as the provision of S. 50C was not in the statute when the agreement to sell for property was entered. [S. 45, 48] 1051

Assessee entered in to an agreement to sell between assessee – HUF and purchaser in September, 1966, whereby, purchaser agreed to purchase property for ₹ 1 lakh and paid earnest money of ₹ 5000 but due to litigation in Civil Court, sale deed was executed later on 29-11-2010. AO applied the stamp duty valuation. Tribunal held that when the sale deed of September 1966 for calculating long-term capital gains would have to be considered and, thus, provisions of S. 50C which were not applicable in that year could not be invoked. (AY. 2011-12)

Hari Mohan Das Tandon (HUF) v. PCIT (2018) 169 ITD 639 (All.)(Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – Assessee was not a real owner of property and he transferred same on representative basis, provisions of section 50C could not be applied to assessee's case in order to compute capital gain arising from sale of said property. [S. 45] 1052

Dismissing the appeal of the revenue the Tribunal held that ;since, the assessee was not a real owner of the said property and transferred the property on the representative basis and transfer took place between co-owners and NDL, it can be concluded that there is no transfer made by the assessee. The Assessing Officer has not considered the subsequent developments. Further, S. 50C cannot be applied in the given case. (AY. 2007-08)

JCIT v. D. Sesha Giri Rao (2018) 168 ITD 287 (Hyd.)(Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – Distress sale – Transactions between Government entities, provision cannot be applied. [S. 45] 1053

Dismissing the appeal of the revenue the Tribunal held that; when the sale was distress sale and transactions between Government entities S. 50C provision cannot be applied. (AY. 2012-13)

ITO v. Southern Steel Ltd. (2018) 61 ITR 126 (Hyd.)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Consideration that arose in hands of HUF on sale of capital asset had been invested for purchase of new residential house in name of some of its members instead of assessee (HUF) – Entitle to exemption. [S. 45] 1054

Dismissing the appeal of the revenue the Court held that, the materials on record would suggest that there was no dispute at the hands of the revenue that the sale consideration arising out of the sale of the capital asset was used for acquisition of a new asset and that such newly acquired asset was also shown in the accounts of the HUF. Revenue's sole objection is that the sale deed was not executed in the name of the HUF but was in the name of two of the members of the HUF. The Tribunal was right in coming to the conclusion that this was substantial compliance with the requirement of section

54F when neither the source of acquisition of the new capital asset nor the account of such new asset in the name of the HUF are doubted. Mere technicality that the sale deed was executed in the name of member of the HUF rather not HUF, would not be sufficient to defeat the claim of deduction. By mere names of the purchasers in the sale deed, the rights of the HUF and other members of the HUF do not get defeated. If at all, the persons' named in the sale deed hold the property of the trust for and on behalf of HUF and the other members of the HUF. In the present case, the capital asset was sold by the HUF and purchased by the HUF as reflected in the accounts. The names of two members of the HUF shown in the sale deed was only a cosmetic in nature. (AY. 2009-10)
PCIT v. Vaidya Panalalmanilal (HUF) (2018) 259 Taxman 19 (Guj.)(HC)

1055 **S. 54 : Capital gains – Profit on sale of property used for residence – Construction of residential house – Cost of land is also form cost of residential house – Not necessary that same money from sale of residential asset must be used. [S. 45]**
Allowing the appeal of the assessee the Court held that, cost of land is also form cost of residential house and it is not necessary that same money from sale of residential asset must be used for claiming exemption. (AY. 2010-11)
C. Aryama Sundaram v. CIT (2018) 407 ITR 1/ 258 Taxman 10 / 171 DTR 295 / 305 CTR 567 (Mad.)(HC)

1056 **S. 54 : Capital gains – Profit on sale of property used for residence – More than one house-Amendment brought in S. 54 to limit the exemption to one Residential unit is applicable from AY. 2015-16 onwards. [S. 45]**
In this case the Appellate Tribunal held that the assessee is holding more than one property which was not disputed by either of the party. The Tribunal in case of Laxman Singh Rawat ITA nos. 1668 & 2256/Del/2013 held that the expression "a residential house" would mean more than one residential house after taking into account the amendment to S. 54 which is apt in the present case. Further, the amendment has been brought in S. 54 to limit the exemption u/s 54 to one Residential unit, which is applicable from AY. 2015-16. (AY. 2012-13)
Harbinder Singh Chimni v. Dy. CIT (2018) 68 ITR 73 (SN) (Delhi)(Trib.)

1057 **S. 54 : Capital gains – Profit on sale of property used for residence – Purchase new house property within stipulated period of two years from date of transfer of original asset – Exemption cannot be denied on the ground that housing loan was utilised for purchase of new house property. [S. 45]**
Allowing the appeal of the assessee the Tribunal held that if the assessee had purchased new house property within stipulated period of two years from date of transfer of original asset. Exemption cannot be denied on the ground that housing loan was utilised for purchase of new house property. (AY. 2011-12)
Hansa Shah v. ITO (2018) 173 ITD 260 / (2019) 69 ITR 334 / 175 DTR 212 (SMC)(Mum.) (Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – An advance given to a developer for booking of a flat in a residential project to be developed – booked flat prior to sale of existing immovable property – Neither on date of payment of advance nor till expiry of time period prescribed under S. 54 alleged new flat was in existence – Denial of exemption is held to be justified. [S. 45] 1058

Assessee had sold an immovable property in February 2010 and claimed deduction under S. 54 on account of an advance given to OSPL for booking of a flat. AO had conducted enquiry and found that builder had presented plans for approval only in month of October, 2013 and plans were expected to be approved only by month of may, 2014. Accordingly, AO denied claim of deduction by holding that payment to OSPL was made prior to date of sale of property and, further, assessee had failed to acquire allotment of new flat within a period of 2 years from transfer of original asset. Tribunal held that project in which assessee had booked flat was neither on site nor plan was in existence. Builder had also expressed possibility of refunding of amount due to delay in launching of project. Tribunal held that neither on date of payment of advance nor till expiry of time period prescribed under S. 54 alleged new flat was in existence and at most assessee acquired a right to purchase a flat, in upcoming project to be developed in future. Accordingly on facts, investment made by assessee was not in accordance with scheme of provisions of S. 54 hence not eligible for deduction. (AY.2011-12)

Jagdish Wadhwani v. ITO (2018) 173 ITD 559 (Jaipur)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Purchased new residential house before sale of another residential house owned – Investment is made within the stipulated period and the investment was more than the capital gains earned – Entitle to exemption. [S. 45, 54F] 1059

Allowing the appeal of the assessee the Tribunal held that ; the assessee has made investment within the stipulated period and the investment was more than the capital gains earned. Accordingly the assessee is entitle to exemption though the assessee has purchased a new residential house before sale of another residential house owned by him. (AY. 2012-13)

Yatin Prakash Telang v. ITO (2018) 171 ITD 705 / 170 DTR 329 / 195 TTJ 892 (Mum.) (Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Unregistered document – Though an unregistered agreement to sell does not entitle the parties to seek part performance u/s. 53A of the Transfer of Property Act, 1882, it can be a basis for a suit for specific performance in view of S. 49 of the Registration Act. Consequently, even an unregistered agreement creates a right in favour of the buyer and constitutes a "transfer" of the old property u/s 2(47) for purposes of determining whether the purchase of the new property is within one year of the date of "transfer" of the old property. [S. 2(47), 45, Transfer of Property Act, 1882, S. 53A, Registration Act, 1908, 17(1)(a), 49] 1060

Allowing the appeal of the assessee the Tribunal held that, though an unregistered agreement to sell does not entitle the parties to seek part performance u/s. 53A of the Transfer of Property Act, 1882, it can be a basis for a suit for specific performance in view of S. 49 of the Registration Act. Consequently, even an unregistered agreement

creates a right in favour of the buyer and constitutes a "transfer" of the old property u/s 2(47) for purposes of determining whether the purchase of the new property is within one year of the date of "transfer" of the old property. (Followed *K. B. Saha and Sons Pvt. Ltd v. Development Consultant Ltd (2008) 8 SCC 564)* (AY. 2012-13)
Gautam Jhunjhunwala v. ITO (2018) 173 ITD 93 / 170 DTR 153 / 195 TTJ 753 (Kol.)(Trib.), www.itatonline.org

1061 **S. 54 : Capital gains – Profit on sale of property used for residence – Where the construction of new house was commenced before sale of the original asset the Assessee was eligible to claim deduction in respect of payments made before such sale – Assessee was eligible to claim deduction in respect of amount deposited in capital gain scheme beyond due date of filing return u/s 139(1) but before time limit allowed u/s 139(4). [S. 45, 139(1), 139(4)]**
Referring to the decision of Hon'ble Delhi HC in *CIT v. Bharti Mishra (2014) 98 DTR 1 (Delhi) (HC))* the ITAT observed that for the satisfaction of condition u/s 54, it was not necessary that the construction of new house must begin after the date of sale of the original/old asset and that there was no condition or reason for ambiguity and confusion which would require moderation or reading the words of the said section in a different manner. Further reference was also made in this regards by the Tribunal to the decision of Allahabad HC in *CIT v. H. K. Kapoor (1998) 234 ITR 753 (All) (HC))*. Relying on the decision of Hon'ble SC in *CCE v. Favourite Industries (2012)7 SCC 153* the Tribunal noted that the beneficial provisions must be liberally interpreted. Accordingly, the Tribunal allowed the claim of deduction u/s 54 in respect of payments made before the date of sale of original house.
Further, in regard to the deposit made in the capital gain scheme beyond the due date of filing return u/s 139(1), relying on the decision of P&H HC in *CIT v. Jagrati Aggarwal (Ms) (2011)339 ITR 610 (P& H) (HC)* the Tribunal held that the assessee, having deposited the amount in the capital gain scheme within the extended period allowed by section 139(4) was eligible to claim deduction u/s 54. In result appeal of the assessee was allowed by the Tribunal.
Paramjit Kaur (Mrs) v. ITO (2017) 190 TTJ 772 / (2018) 162 DTR 1 (Chd)(Trib.)

1062 **S. 54 : Capital gains – Profit on sale of property used for residence – Entire capital gains paid to developer of Flat – Assessee is entitled to exemption [S. 45]**
Dismissing the appeal of the revenue the Tribunal held that ; The entire capital gains were paid to the developer of the flat. In other words, the assessee had utilised the entire capital gains by way of making payment to the developer of the flat. The requirement of section 54 is that the capital gain shall be utilised or appropriated as specified in S. 54(2). The assessee had complied with the conditions stipulated in S. 54(2). Therefore the assessee was entitled to exemption under S. 54 of the Act. (AY. 2013-14)
DCIT v. M. Raghuraman. (2018) 169 ITD 315 / 65 ITR 17(SN) (Chennai)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Return – There is no bar / restriction that an assessee cannot file a revised return of income after issuance of notice u/s 143(2). A revised return of income can be filed even in course of the assessment proceedings provided the time limit prescribed u/s 139(5) is available. The Departmental Authorities are not expected to deny assessee's legitimate claim of deduction by raising technical objection – Exemption claimed in revised return was directed to be allowed. [S. 139(5) 143(2)] 1063

Assessee filed the revised return u/s 139(5), offering the capital gain and claiming exemption u/s. 54 of the Act. AO held that the revised return being invalid the assessee is not entitle to exemption u/s 54 of the Act which was confirmed by the CIT(A). On appeal allowing the appeal the Tribunal held that ; there is no bar / restriction that an assessee cannot file a revised return of income after issuance of notice u/s 143(2). A revised return of income can be filed even in course of the assessment proceedings provided the time limit prescribed u/s 139(5) is available. The Departmental Authorities are not expected to deny assessee's legitimate claim by raising technical objection. (AY. 2011-12)

Mahesh H. Hinduja v. ITO (2018) 171 ITD 471 / 171 DTR 12 / 195 TTJ 1068 (Mum.) (Trib.), www.itatonline.org

S. 54 : Capital gains – Profit on sale of property used for residence – Basement was used as part and parcel of residential house hence capital gains invested in two residential house properties would be entitle to exemption. [S. 45] 1064

Dismissing the appeal of the revenue the Tribunal held that; Basement was used as part and parcel of residential house hence capital gains invested in two residential house properties would be entitle to exemption. (AY. 2009-10)

ACIT v. Shrey Sharma Guleri Prime Channel Software Communications (P.) Ltd. (2018) 170 ITD 295 / 64 ITR 67 (SN) / 169 DTR 121 / 195 TTJ 196 (Mum.)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Purchase of four flats merged in to one residential house – Entitle to exemption. [S. 45] 1065

Dismissing the appeal of the revenue, the Tribunal held that, though the assessee has purchased four flats, merged in to one unit the exemption is held to be available. The Inspector carried out spot verification and reported that though there are four flats but the same has been merged in to one composite flat having a common entrance door, and was used as a residence. Followed *CIT v Devdas Naik (2014) 366 ITR 12 (Bom.) (HC), ITO v. Sushila M. Jhaveri (2007) 107 ITD 327 (SB)(Mum.)(Trib.) (ITA NO. 6884/Mum./2014 dt. 11-04 2018* (AY. 2009-10)

ITO v. Kavita Gupta (Mum.)(Trib.) www.itat.nic

S. 54 : Capital gains – Profit on sale of property used for residence – Garage is also part of the house and eligible for exemption [S. 45] 1066

The Tribunal held that, garage is also part of the house and entitle to exemption. Tribunal also observed that it is an universally accepted fact that car parking in a society cannot be separately purchased. Therefore, when any flat in the society is purchased along with car parking, then the investment in the flat and car parking

will be considered as investment in the residential house. (ITA No. 4258/M/2011 dt. 13-06-2012) (AY. 2008-09)(ITA No 7928/Mum./2010 "C" dt. 6-09-2013 (AY. 2006-07) (ITA No. 8797/Mum./2010 "F" dt. 27-02 2015) (AY. 2007-08)
ACIT v. Usha B. Madan (Smt) (Mum.)(Trib.), www.itat.nic
Penelope AnnDos v. ITO (Mum.)(Trib.), www.itat.nic
Vilma Marry Pereira v. ITO (Mum.)(Trib.), www.itat.nic

1067 **S. 54 : Capital gains – Profit on sale of property used for residence – Mere availment of house building loan by assessee from bank for purchasing a new residential unit could not act as a disqualification for claim of exemption. [S. 45]**
Allowing the appeal of the assessee the Tribunal held that; Mere availment of house building loan by assessee from bank for purchasing a new residential unit could not act as a disqualification for claim of exemption, when all other conditions are satisfied. (AY. 2010-11)
Amit Parekh v. ITO (2018) 170 ITD 213 (Kol.)(Trib.)

1068 **S. 54 : Capital gains – Profit on sale of property used for residence – If entire consideration was paid with in three years the assessee is entitle to exemption. [S. 45, 54F]**
Allowing the appeal of the assessee the Tribunal held that; If agreement for purchase of new residential house is made and entire purchase price is paid within three years from the date of transfer of the old asset, exemption u/s 54 is available. It is not required that the house must be completed within 3 years. The requirement in S. 54(2) that the capital gains should be deposited in the CGAS scheme is merely an enabling provision. If the assessee shows during assessment proceedings that the capital gains have been reinvested in the new residential house, exemption cannot be denied merely the amount was not deposited in the Capital gains scheme. (AY. 2013-14)
Seema Sabharwal v. ITO (2018) 169 ITD 319 / 193 TTJ 128 / 163 DTR 253 (Chd.)(Trib.), www.itatonline.org

1069 **S. 54 : Capital gains – Profit on sale of property used for residence – When entire capital gain is invested in a flat under construction, exemption cannot be denied on the ground that possession was not given. [S. 45]**
Dismissing the appeal of the revenue, the Tribunal held that; When entire capital gain is invested in a flat under construction exemption cannot be denied on the ground that possession was not given. S. 54(2) does not specify any such condition. (AY. 2013-14)
ACIT v. M. Raghuraman (2018) 169 ITD 315 (Chennai)(Trib.)

1070 **S. 54 : Capital gains – Profit on sale of property used for residence – Cost included furniture and fixtures – Exemption cannot be denied only on the ground that no claim was made in the return, if he is otherwise entitle to it. [S. 45]**
Allowing the appeal of the assessee the Tribunal held that; The expression "cost of the residential house so purchased" in S. 54 is not confined to the cost of civil construction but includes furniture and fixtures if they are an integral part of the purchase. The

fact that the assessee did not make the claim is no reason to deny the claim if he is otherwise entitled to it. (AY. 2011-12)
Rajat B. Mehta v. ITO (2018) 169 DTR 178 / 163 DTR 49 / 192 TTJ 307 / 62 ITR 334 (Ahd.) (Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Investment in residential house outside India was held eligible for exemption (Prior to amendment with effect from 1-4-2015 by Finance (No. 2) ACT, 2014). [S. 45, 54F] 1071
Allowing the application AAR held that, Investment in residential house outside India was held eligible for exemption (Prior to amendment with effect from 1-4-2015 by Finance (No. 2) ACT, 2014). Amendment is not retrospective. As regards the period of holding would be determined from the period from which property was held by the applicant's father, indexation was to be allowed on 1-4-1981.
Dipankar Mohan Ghosh, In Re (2018) 401 ITR 129 / 301 CTR 42 / 163 DTR 21 (AAR)

S. 54B : Capital gains – Land used for agricultural purposes – Sale deed for purchase and sale of land, found that assessee sold this land within two years from date of its purchase and not used land for agricultural purposes for a minimum period of two years before its sale – Not entitle to exemption – Moreover, from expenses incurred, it could be proved that said land was never used for agricultural purposes after it was purchased by assessee as assessee was concentrating on its improvement rather than cultivation. [S. 45] 1072
Dismissing the appeal of the assessee the Court held that ; the assessee had not used land for agricultural purposes for a minimum period of two years before its sale. Moreover, from expenses incurred, it could be proved that said land was never used for agricultural purposes after it was purchased by assessee as assessee was concentrating on its improvement rather than cultivation. As the assessee had not used this property for agricultural purposes accordingly the assessee was not entitled to benefit of deduction under S. 54B (BP. 2005-06 to 2009-10)
Gopal S. Pandit v. CIT (2018) 408 ITR 346 / 257 Taxman 50 / 172 DTR 23 / (2019) 307 CTR 112 (Karn.)(HC)

S. 54B : Capital gains – Land used for agricultural purposes – Investment in the name of wife was held to be entitle to exemption. The word used are the assessee has to invest, it is not specified that it is to be in the name of assessee. Expenditure on bore wells and stamp duty to be taken in to consideration while considering the exemption. [S. 45, 263] 1073
Allowing the appeal of the assessee the Court held that; investment in the name of wife was held to be entitle to exemption. The word used are the assessee has to invest, it is not specified that it is to be in the name of assessee. Expenditure on bore wells and stamp duty to be taken in to consideration while considering the exemption. (AY. 2008-09)
Laxmi Narayan v. CIT (2018) 402 ITR 117 / (2019) 306 CTR 361 (Raj.)(HC)
Shravan lal Meena L/H of Late Bhagwanta Meena v. ITO (2018) 402 ITR 117 / (2019) 306 CTR 361 (Raj.)(HC)
Mahadev Balaji v. ITO (2018) 402 ITR 117 / (2019) 306 CTR 361 (Raj.)(HC)

1074 **S. 54B : Capital gains – Land used for agricultural purposes – Capital gain utilized towards purchase of new asset before furnishing of return of income belatedly under section 139(4) would be entitle to deduction. [S. 45, 139(4)]**
Allowing the appeal of the assessee, the Tribunal held that, Capital gain utilized towards purchase of new asset before furnishing of return of income belatedly under section 139(4) would be entitle to deduction. (AY. 2012-13)
Manilal Dasbhai Makwana v. ITO (2018) 172 ITD 1 (Ahd.)(Trib.)

1075 **S. 54EC : Capital gains – Investment in bonds – Investment made from advance received on sale of capital asset before date of transfer of asset will qualify for exemption. [S. 45]**
Tribunal held that, investment made from advance received on sale of capital asset before date of transfer of asset will qualify for exemption. (AY. 2013-14)
Rahul G. Patel v. DCIT (2018) 173 ITD 1 / 171 DTR 1 / 195 TTJ 1027 (Ahd.)(Trib.)

1076 **S. 54F : Capital gains – Investment in a residential house – Construction of house – Deduction available only if construction is completed within a period of three years after date of transfer – Even within extended definition of S. 2(47) of the Act no transfer takes place on mere execution of agreement to sale. [S. 2(47), 45]**
Court held that, (1)there can be a wide gap between an agreement to sale and an actual instance of sale being evidenced under a sale deed. Hence, upon mere execution of an agreement to sale, it cannot be said that such immovable property gets transferred to the purchaser even within the extended definition of Section 2(47) of the Act.(ii) Provisions of S. 54F of the Act clearly provide that construction of the residential unit should be done after the date of transfer but within three years from transfer date and hence if construction is prior to the date of transfer, the case of the assessee would not fall within the parameters of these provisions. (AY. 2009-2010)
Ushaben Jayantilal Sodhan v. CIT (2018) 407 ITR 276 / 255 Taxman 454 / 169 DTR 31 / 304 CTR 201 (Guj.)(HC)

1077 **S. 54F : Capital gains – Investment in a residential house – Relief is available if unutilized sale consideration in capital gain account scheme within due date of filing belated tax return under S. 139(4). [S. 45, 54B]**
For claiming exemption under S. 54B and 54F it is not necessary that investment should have been made within original due date of filing return under S. 139(1), even belated return u/s 139(4) is also eligible for exemption.
PCIT v. Shankar Lal Saini (2018) 253 Taxman 308 / 168 DTR 226 (Raj.)(HC)

1078 **S. 54F : Capital gains – Investment in a residential house – Assessee owning a house on date of transfer is not entitle to benefit under S. 54F. [S. 45]**
Held that the assessee was owning house on date of transfer is not entitle to benefit under S. 54F. (AY. 1998-99, 1999-2000)
Arjun Malhotra v. CIT (2018) 403 ITR 354 / 166 DTR 235 / 255 Taxman 399 / 304 CTR 454 (Delhi)(HC)

S. 54F : Capital gains – Investment in a residential house – Property purchased in the name of wife – Loan was sanctioned in the name of wife – Not entitle to exemption. [S. 45] 1079

Property purchased in the name of wife. Loan was sanctioned in the name of wife. Not entitle to exemption. (AY. 2009-10)

Kaushal Kishore Maheshwari v. ACIT (2017) 190 TTJ 811 / (2018) 162 DTR 41 (Delhi) (Trib.)

S. 54F : Capital gains – Investment in a residential house – Capital gains arising from sale of basement of a building which was used for habitable purposes was within purview of a residential flat – Entitle to exemption. [S. 45 54] 1080

Dismissing the appeal of the revenue, The Tribunal held that the evidence on record was sufficient to show that the basement was a habitable unit and the expression used in S. 54F is "a residential unit". It was further held that, there was nothing in the section which requires that residential house should be built in a particular manner, a person may construct a house according to his plans and requirements. Most of the houses were constructed according to the needs and requirements and even compulsions. The assessee was entitled to exemption u/s. 54 and 54F of the Act. (AY. 2009-10)

ACIT v. Shri Shrey Sharma Guleri Prime Chhanel Software Communications P. Ltd. (2018) 64 ITR 67 (SN)(Mum.)(Trib.)

S. 54F : Capital gains – Investment in a residential house – two residential units purchased at two different localities. Exemption was restricted to only investment in one residential house property. [S. 45] 1081

Tribunal held that, exemption was restricted to only investment in one house property. Assessee was not entitled to exemption with regard to two residential units purchased at two different localities. (AY. 2013-14)

ACIT v. N. S. Viswanathan (2018) 67 ITR 307 (Cochin)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Investment in new asset is greater than capital gains – Partly out of sale proceeds and partly with bank Loan – Exemption is available [S. 45] 1082

Investment in new asset is greater than capital gains – Partly out of sale proceeds and partly with bank Loan. Exemption is available. (AY.2012-13)

Kayvanbhai Surendrabhai Huttheesingh v. ITO (2018) 63 ITR 17 (SN) (SMC)(Ahd.)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Commercial property – Held more than thirty six months – Depreciation was claimed – Purchase of residential flat – Eligible deduction. [S. 45, 50] 1083

Dismissing the appeal of the revenue the Tribunal held that, sale of commercial property which was held for more than thirty six months on which depreciation was claimed and consideration was invested in a residential flat is eligible for deduction. (AY. 2012-13)

DCIT v. Hrishikesh D. Pai (2018) 173 ITD 272 / (2019) 197 TTJ 583 (Mum.)(Trib.)

1084 **S. 54F : Capital gains – Investment in a residential house – Purchase of three different properties – Exemption was allowed only in respect of one constructed house – Prior to 1-4-2015. [S. 45]**

Tribunal held that, n absence of any material to show that three different properties were purchased to meet residential requirement of family of assessee the deduction was allowed only in respect of one constructed house. Position prior to 1-4-2015. (AY. 2011-12)

Rakesh Garg v. ITO (2018) 173 ITD 302 / (2019) 197 TTJ 632 (Jaipur)(Trib.)

1085 **S. 54F : Capital gains – Investment in a residential house – Capital gains account scheme – Part of sale consideration received in cash was taken over by department before due date of filing of return – Exemption cannot be denied on the ground that capital gain was not deposited in capital gains account with in prescribed time – S. 54, 54F being beneficial provision, non-reference about specific section under which assessee is making claim exemption cannot be denied. [S. 45, 54]**

AO rejected assessee's claim for deduction on ground that amount was not deposited in Capital gains account. Tribunal held that as the amount received in cash was taken over by department before due date of filing return of income and, thus, assessee was prevented from depositing said money in Capital gains account. On facts it was found that remaining amount of capital gain had been duly deposited in Capital gain account. Accordingly the assessee is eligible for deduction. Tribunal also held that, S. 54, 54F being beneficial provision, non-reference about specific section under which assessee is making claim exemption cannot be denied. (AY. 2012-13)

ACIT v. Dr. S. Sankaralingam (2018) 173 ITD 413 / (2019) 174 DTR 438 / 197 TTJ 749 (Chennai)(Trib.)

1086 **S. 54F : Capital gains – Investment in a residential house – Depreciable asset – Exemption is available even on short-term capital gains calculated on sale of depreciable assets held for more than 36 months. [S. 2, 42A), 45 50]**

Tribunal held that the period of holding of factory shed was exceeding more than 36 months, therefore, even if sale of factory shed is subject to short-term capital gain on basis of deeming provision as specified under S. 50, inherently factory shed being long-term capital asset, exemption is available. (AY. 2011-12)

Shrawankumar G. Jain v. ITO (2018) 173 ITD 417 (Ahd.)(Trib.)

1087 **S. 54F : Capital gains – Investment in a residential house – Purchase of new residential house within due date specified under S. 139(4) from date of transfer of original asset – Entitle to exemption. [S. 45, 54F(4), 139(4)]**

Tribunal held that, purchase of new residential house within due date specified under S. 139(4) from date of transfer of original asset is entitle to exemption. (AY. 2011-12)

Shrawankumar G. Jain v. ITO (2018) 173 ITD 417 (Ahd.)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Entire net consideration had been invested – Entitle to exemption in respect of whole of capital gains – Valuation determined by stamp authority is relevant for determination u/s 50C however it cannot be considered as consideration received or accrued to the assessee for the purpose of S. 54F of the Act. [S. 45, 48, 50C] 1088

Tribunal held that for purpose of S. 54F, what is relevant is investment of net consideration. Valuation determined by Stamp authority is relevant for the purpose of S. 50C, however the said valuation, is not a consideration which has been received by or has accrued to assessee. Accordingly when an assessee invested entire net consideration had been invested is entitle to exemption in respect of whole of capital gains.

Anant Chetan Agarwal v. DCIT (2018) 172 ITD 525 (Luck.)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Invested in reconstruction of house another house property belong to husband where she was residing – Entitle to exemption – Development expenditure was not allowed on facts. [S. 45] 1089

Tribunal held that part of sale consideration which is invested re construction of house belong to husband where she is residing is held to be entitle to exemption. However development expenditure of ₹ 3.20 lakhs, it is not in dispute that the property was sold on 22-01-2010 but, the quotation for so-called development was obtained from TC only on 20-03-2010 therefore, after the sale of property. Accordingly,the assessee would not have incurred the expenditure. (AY. 2011-12)

Kalavathy Sundaram (Smt.) v. ITO (2018) 172 ITD 597 (Chennai)(Trib.)

S. 54F : Capital gains – Investment in a residential house – Exemption cannot be denied on the ground that residential building was used for business purpose. [S. 54] 1090

AO and CIT(A) restricted the claim of deduction u/s 54F of the Act by excluding the portion of the residential building which was used for business purpose. It was held by Hon'ble Tribunal that, there was no bar on the assessee on the usage of the new residential property for business purpose. Section 54F of the Act only stipulates that the assessee should have constructed / purchased a residential house within the stipulated time in order to claim the benefit of deduction. It is not necessary that a person should reside in the house to call it a residential house. (AY. 2013-14)

Dy. CIT v. Subramanian (A.M.) (2018) 63 ITR 24 (SN) (Chennai)(Trib.)

S. 54F : Capital gains – Capital gains on sale of house properties can be invested in construction of house property more than once for same new property, if cost of property is within capital gains that arose to the assessee. [S. 45] 1091

On appeal before the Tribunal, it was held that the new asset was under construction and cannot be said residential house owned by the assessee. The Tribunal also held that, there was no bar in the u/s. 54F of the Act for claiming deduction more than once for the same house property (new property), if the cost of the new property is within the capital gain that arose to the assessee. (AY. 2011-12)

ACIT v. Mohinder Kumar Jain (2017) 62 ITR 176 (Delhi)(Trib.)

1092 **S. 54F : Capital gains – Investment in a residential house – Sale is not concluded or agreement of sale is not certain to be honoured, assessee cannot claim deduction in respect of purchase or construction of property. [S. 45, 54F(4)]**
Dismissing the appeal of the assessee the Tribunal held that, when the sale is not concluded or agreement of sale is not certain to be honoured, assessee cannot claim deduction in respect of purchase or construction of property within one year before or within two years after sale of original asset or to have constructed property within three years after sale of property for purposes of claiming deduction. (AY. 2014-15)
Mahesh Malneedi v. ITO (2018) 169 ITD 154 (Hyd.)(Trib.)

1093 **S. 55 : Capital gains – Cost of improvement – Cost of acquisition – Tenancy rights – Acquired tenancy rights by inheritance i.e. from his father before 1-4-1981, in view of provisions of section 49(1)(iii), benefit of indexation of cost of acquisition could not be granted while computing capital gain arising from sale of said rights – Cost to be taken as nil, as the assessee has not paid any purchase price for acquisition of the same. [S. 48, 49(1)(iii), 55 (2)(b), 55(3)]**
Dismissing the appeal of the assessee Court held that ;held though the assessee has acquired tenancy rights by inheritance i.e. from his father before 1-4-1981 as the assessee had acquired tenancy rights by inheritance, cost of acquisition would be computed in terms of section 49(1)(iii)(a) of the Act. In view of fact that S. 49(1)(iii)(a) provides that cost of acquisition of capital asset would deemed to be cost incurred by previous owner of property, benefit of indexation of cost of acquisition is not eligible. Cost to be taken as nil, as the assessee has not paid any purchase price for acquisition of the same. (AY. 2007-08)
Dharmakumar C. Kapadia v. ACIT (2018) 257 Taxman 239 (Bom.)(HC)
Editorial : Order in Dharmakumar C. Kapadia v. ACIT (2016) 65 taxmann.com 61 (Mum.) (Trib.) is affirmed

1094 **S. 55 : Capital gains – Cost of improvement – Cost of acquisition – Approved valuer's report itself is a piece of evidence and Act does not require that opinion of approved valuer should have been supported with further evidence in shape of circle rate or exemplar sale deeds etc, value as on 1-4-1981 on the basis of approved valuer was held to be valid. [S. 45, 55(2)(b)(ii)]**
Dismissing the appeal of the revenue the Court held that; Approved valuer's report itself is a piece of evidence and Act does not require that opinion of approved valuer should have been supported with further evidence in shape of circle rate or exemplar sale deeds etc, value as on 1-4-1981 on the basis of approved valuer was held to be valid. (AY. 2009-10)
PCIT v. Vidhi Agarwal (Smt.) (2018) 252 Taxman 395 (All.)(HC)

1095 **S. 56 : Income from other sources – Gifts from relatives – Maternal aunt – Gift need not be on a particular occasion – Addition cannot be made as income from other sources. [S. 56 (2)(v), 68]**
Allowing the appeal of the assessee Court held that ;S. 56(2)(v) of the Income-tax Act, 1961 was inserted by the Finance (No. 2) Act, 2004 with effect from April 1, 2005. As

could be seen from the language of sub-clauses (a) and (b) of clause (v) of sub-section (2) of section 56, while under clause (a) which deals with a gift from any relative no occasion is envisaged, clause (b) dealing with money received from any other person, specifies the occasion of marriage. Accordingly the gift received form maternal aunt cannot be assessed as income from other sources or as cash credits for the reason that the assessee had offered an explanation supported by uncontroverted material showing transfer of the amount. (AY. 2005-06 to 2008-09).
Pendurthi Chandrasekhar v. DCIT (2018) 407 ITR 179 / (2019) 175 DTR 73 / 307 CTR 249 (T&AP) (HC)

S. 56 : Income from other sources – Business income – Setting up business – Interest on fixed deposits – Assessable as income from other sources. [S. 28(i)] 1096
Allowing the appeal of the revenue the court held that ; interest on fixed deposits earned before commencement of the business on sums borrowed for setting up the business and placed in fixed deposit pending their utilisation in the project, is an "income from other sources". (AY. 2011-12, 2012-13)
CIT v. Sangam Power Generation Co. Ltd. (2018) 405 ITR 390 (All.)(HC)

S. 56 : Income from other sources – Fair market value – Shares price was determined as per R. 11UA Book value of assets and liabilities declared by company at ₹ 5 per share – AO determined at ₹ 45.72 per share and made addition of ₹ 40.72 per share as income from other sources – Tribunal held that addition made by the AO was held to be not justified. [S. 56(2)(viia), R.11UA] 1097
Shares price was determined as per R. 11UA Book value of assets and liabilities declared by company at ₹ 5 per share. AO determined fair market value at ₹ 45.72 per share and made addition of ₹ 40.72 per share as income from other sources. Allowing the appeal of the assessee the Tribunal held that, there is nothing under the provision of rule 11UA to refer to fair market value of the land as taken by the Assessing Officer as applicable to the year 2014-15. Therefore, the share price calculated by the assessee for ₹ 5 per share had been directed to be accepted. (AY.2014-15)
Minda S M Technocast P. Ltd. v. ACIT (2018) 65 ITR 84 (SN) (Delhi) (Trib.)

S. 56 : Income from other sources – S. 56(2)(vii), is a counter evasion mechanism to prevent money laundering of unaccounted income & does not apply to bona fide business transaction done out of business exigency. The difference between alleged fair market value of share and the subscribed value of shares cannot be assessed as income u/s 56(2)(vii)(c). [S. 56(2)(vii)(c)] 1098
Department has raised following grounds before the Tribunal "On the facts and in the circumstances of the case, and in law, the Learned CJT (A) erred in deleting the addition made u/s 56(2)(vii)(c) of the Act of ₹ 3,01,25,58,196/-being the difference between alleged fair market value of share (₹ 1538.64 per share) of Dorf Ketal Chemicals India Pvt. Ltd. and the subscribed value of shares (₹ 100 per share) without appreciating the fact that the valuation of shares is to be done prior to allotment of shares."
Dismissing the appeal of the revenue the Tribunal held that ; S. 56(2)(vii),is a counter evasion mechanism to prevent money laundering of unaccounted income & does not

apply to bona fide business transaction done out of business exigency. The difference between alleged fair market value of share and the subscribed value of shares cannot be assessed as income u/s 56(2)(vii)(c). (AY. 2010-11)
ACIT v. Subhodh Menon (2019) 174 DTR 417 / 175 ITD 449 / 198 TTJ 79 (Mum.)(Trib.), www.itatonline.org
ACIT v. P. N. Ramaswamy (2019) 174 DTR 417 / 198 TTJ 79 (Mum.)(Trib.), www.itatonline.Org

1099 **S. 56 : Income from other sources – Interest is received under S. 28 of Land Acquisition Act, then same is not taxable in hands of assessee and in case interest is received under section 34 of Land Acquisition Act, same is taxable in hands of assessee – Matter remanded. [S. 56 (2) (vii), 57, Land Acquisition Act, 1894 S. 28, 34]]**
Tribunal held that,interest is received under S. 28 of Land Acquisition Act, is not taxable however, interest is received under S. 34 of Land Acquisition Act, is taxable. Matter remanded. (AY. 2012-13)
Jyoti Jayantrao Indurkar v. ITO (2018) 172 ITD 439 / 68 ITR 39 (SN)(Pune)(Trib.)

1100 **S. 56 : Income from other sources – Fair market value (FMV) of shares issued at premium – Discount cash flow method (DCF) – Net valuation method – Option to choose the method of valuation is with assesses-Determined Fair Market Value of shares issued at premium on basis of Discount Cash Flow method as per guidelines given by ICAI – Assessing Officer cannot change the method of valuation of shares at premium to Net Asset Value method. (NAV) [S. 56(2)(Viib), R. 11UA(2) (b)]**
Tribunal held that,when law had given an option to assessee to choose any of method of valuation of his choice and assessee exercised an option by choosing a particular method (DCF), changing method or adopting a different method would be beyond powers of revenue authorities. Accordingly determined Fair Market Value of shares issued at premium on basis of Discount Cash Flow method as per guidelines given by ICAI, Assessing Officer cannot change the method of valuation of shares at premium to Net Asset Value method. (NAV) (AY. 2013-14)
Rameshwaram Strong Glass (P.) Ltd. v. ITO (2018) 172 ITD 571 / 170 DTR 415 / 195 TTJ 465 (Jaipur)(Trib.)

1101 **S. 56 : Income from other sources – Only two share holders husband and wife – lifting corporate veil – On demises of husband shares devolved on daughter – Unrealistic premium paid by mother for allotment of shares – Benefit only passed on to daughter – Provisions of S. 56(2)(viib) cannot be invoked in the hands of the company when cash or asset is transferred by a mother to her daughter. [S. 56(2) (vi), 56(2)(viib), 56 (2) (x)]**
The assessee company had only two share holders husband and wife On demises of husband shares devolved on daughter. Unrealistic premium paid by mother for allotment of shares. Tribunal held that, here was no possibility of generation and use of unaccounted money resulting from transaction as investor's source of investment was genuine Lifting corporate veil could not be invoked in case of assessee-company because by virtue of said transaction benefit had only passed on to her daughter and

said transaction would not benefit any further shareholder in future benefit only passed on to daughter. Accordingly the provisions of S. 56(2)(viib) cannot be invoked in the hands of the company when cash or asset is transferred by a mother to her daughter.
Vaani Estates (P.) Ltd. v. ITO (2018) 172 ITD 629 (Chennai)(Trib.)

S. 56 : Income from other sources – No addition should be made where satisfactory explanation with necessary evidences is provided in case of sums received from relatives. [S. 56 (2)(v)] 1102

The Tribunal noted that the assessee had explained in detail different amount received from different persons and all the entries were verified by the Department from the bank statements. Therefore the Tribunal held that since the assessee had provided satisfactory explanation for each and every amount received along with necessary evidences and also the fact that the assessee has returned the money to the persons in subsequent years, there was no logic in the addition made by the AO under section 56(2)(v) of the Act and the same was unwarranted. Accordingly the Tribunal deleted the addition.
Dy.CIT v. Rohit Kumar (2018) 66 ITR 666 (Chd.)(Trib.)

S. 56 : Income from other sources – Fair market value of shares – Direct Cash Flow Method (DCF) – No evidence was produced for verifying the correctness of data supplied by the assessee. AO was justified in rejecting DCF method and adopting Net Asset value method. [R. 11UA] 1103

Assesee valued the equity value of shares of ₹ 10 each at premium of ₹ 40 per share, accordingly the fair value was determined by a Merchant banker only on basis of Direct Cash Flow Method (DCF), only depending on data supplied by assessee. AO rejected valuation report and independently determined FMV of shares at ₹ 9.60 each on basis of NAV method. FMV of shares over ₹ 9.60 i.e. ₹ 40.40 was disallowed by AO under S. 56(2)(vii) of the Act and added to assessee's income. On appeal by the assessee the Tribunal held that as no evidence was produced for verifying correctness of data supplied by assessee, AO was justified in rejecting DCF method and adopting Net Asset Value method. (AY. 2014-15)
Agro Portfolio (P.) Ltd (2018) 171 ITD 74 (Delhi) (Trib.)

S. 56 : Income from other sources – Share premium – Addition cannot be made in respect of share premium received by assessee from its holding companies as said share premium was on account of capital transaction and was not an income within charging sections of Act. S 56(2)(viib) read with section 2(24)(xvi) are not made applicable to shares issued to non-residents mainly to encourage foreign investments. [S. 2(24)(xvi), 56(1), 56 (2)(viib), 68, Companies Act, 2013, S. 52, Companies Act, 1956 S. 78] 1104

Dismissing the appeal of the revenue, Tribunal held that, addition cannot be made in respect of share premium received by assessee from its holding companies as said share premium was on account of capital transaction and was not an income within charging sections of Act. Assessee also supported the fair value of equity shares with a certificate issued by a chartered accountant using DCF method which was approved method as

prescribed by RBI and assessee had filed its bank statements as well as FIRC issued by its bankers as evidence and thus, no fault lay with assessee in issuing equity shares. Therefore, no addition was warranted towards share premium received by assessee from its holding companies as said share premium was on account of capital transaction and was not an income within charging sections of Act. S 56(2)(viib) read with S. 2(24)(xvi) are not made applicable to shares issued to non-residents mainly to encourage foreign investments. Addition also cannot be u/s 68 of the Act as the assessee has filed bank statements as well as FIRC issued by its bankers as evidence. The Tribunal also held that the,assessee did utilize proceeds of funds raised towards share premium for setting up manufacturing unit for manufacturing soles for footwear for which business purposes funds were stated to be entrusted by shareholders, therefore addition can not be made as income from other sources. (AY. 2012-13)

DCIT v. Finproject India (P.) Ltd. (2018) 171 ITD 82 / 194 TTJ 277 / 170 DTR 52 / 64 ITR 27 (SN) (Mum.)(Trib.)

1105 **S. 56 : Income from other sources – Gift – Provisions of section 56(2)(vii)(b) are applicable to only those transactions which are entered into after 1-10-2009. [S. 56(2)(vii)(b)]**

AO held that the assessee had received a property worth ₹ 48.57 lakhs without any consideration. Accordingly he added said amount to assessee's income under section 56(2)(vii)(b) of the Act. Tribunal held that, since the impugned transaction was entered into on 6-6-2009, as per registered sale deed, same would not be hit by provisions of section 56(2)(vii)(b). Accordingly the addition was deleted. (AY. 2010-11)

Shailendra Kamalkishore Jaiswal v. ACIT (2018) 171 ITD 6 (Nag.)(Trib.)

1106 **S. 56 : Income from other sources – buy back of shares – S. 56(2)(viia) is a counter evasion mechanism to prevent laundering of unaccounted income under the garb of gifts The primary condition for invoking S. 56(2)(viia) is that the asset gifted should become a "capital asset" and property in the hands of recipient. If the assessee – company has purchased shares under a buyback scheme and the said shares are extinguished by writing down the share capital, the shares do not become capital asset of the assessee – company and hence S. 56(2)(viia) cannot be invoked in the hands of the assessee company. [S. 56(2)(viia)]**

Allowing the appeal of the assessee the Tribunal held that, S. 56(2)(viia) is a counter evasion mechanism to prevent laundering of unaccounted income under the garb of gifts. The primary condition for invoking S. 56(2)(viia) is that the asset gifted should become a "capital asset" and property in the hands of recipient. If the assessee-company has purchased shares under a buyback scheme and the said shares are extinguished by writing down the share capital, the shares do not become capital asset of the assessee-company and hence S. 56(2)(viia) cannot be invoked in the hands of the assessee company. (AY. 2014-15)

Vora Financial Service P. Ltd. v. ACIT (2018) 171 ITD 646 / 194 TTJ 746 / 65 ITR 77 (SN) / (2019) 178 DTR 58 (Mum.)(Trib.), www.itatonline.org

S. 56 : Income from other sources – Receipt of shares without adequate consideration or for inadequate consideration – Assessee Filing Reply Before Assessing Officer supported by documentary evidence with certificate of Chartered Accountant and report of registered Valuer – AO was directed to decide issue a fresh. [S. 56(2) viib)] 1107

Assessee issued 50,000 shares of the face value of ₹ 100 at share premium of ₹ 150. The book value of the shares fair market value was ₹ 240.89 as per the computation furnished by the assessee, whereas the shares were issued at ₹ 250. The AO made an addition ₹ 4,55,500 which was confirmed by the CIT(A). On appeal the Tribunal held that income of the assessee. The Commissioner (Appeals) confirmed the addition. On appeal the Tribunal held that Assessee has filed certificate of Chartered Accountant and report of registered valuer. The Explanation to section 56(2)(viib) of the Income-tax Act, 1961 had not been considered by the authorities. Therefore the matter was restored to the Assessing Officer with a direction to re decide this issue in the light of the reply and the material filed by the assessee on record in the light of the Explanation to section 56(2)(viib). (AY.2013-14)

Meenu Paper Mills P. Ltd. v. ACIT (2018) 64 ITR 709 (Delhi)(Trib.)

S. 56 : Income from other sources – Interest from GIDA on cancellation of auction plots under direction of Supreme Court, since interest was emanating from amount paid by assessee and not directly from its business activities, it could not be considered as business income. [S. 28(i)] 1108

Dismissing the appeal of the assessee the Tribunal held that; since interest was emanating from amount paid by assessee and not directly from its business activities, it could not be considered as business income of assessee. (AY. 2007-08)

Dewa Projects (P.) Ltd. v. ACIT (2018) 170 ITD 326 /166 DTR 105 / 193 TTJ 755 (Cochin) (Trib.)

S. 56 : Income from other sources – Interest received by assessee from deposits given for obtaining bank guarantee was to be assessed as income from other sources. [S. 28(i)] 1109

Tribunal held that; Interest received by assessee from deposits given for obtaining bank guarantee was to be assessed as income from other sources. (AY. 2007-08)

Dewa Projects (P.) Ltd. v. ACIT (2018) 170 ITD 326 / 166 DTR 105 / 193 TTJ 755 (Cochin) (Trib.)

S. 56 : Income from other sources – Fair Market value of shares sold – Choice of method of valuation is with the assessee – AO has no jurisdiction to insist that the assessee should adopt only a particular method for determining the value of shares – Rule of consistency must be followed. [S. 56(2)(viib), [R. 11UA] 1110

Dismissing the appeal of the revenue the Tribunal held that; for determining the fair market value of shares sold, choice of method of valuation is with the assessee. Rule 11UA allows the assessee the right to adopt the method of his choice for valuing shares (DCF, NAV etc). The AO has no jurisdiction to insist that the assessee should adopt only a particular method for determining the value of the shares. Until and unless

the legislature amends the provision of the Act and prescribes only one method for valuation of shares, the assessees are free to adopt any one method of their choice. AO should not deviate from earlier years' decisions without assigning any concrete and justifiable reasons. Tax determination cannot be left to whims and fancies of a person. It is a serious task and has to be accomplished in a disciplined manner. If an assessee has been allowed a certain concession in earlier year/(s) it cannot be withdrawn in subsequent years without plausible reasons. (AY. 2013-14)

DCIT v. Ozoneland Agro Pvt. Ltd. (2018) 53 CCH 427 / 64 ITR 6 (SN) (Mum.)(Trib.), www.itatonline.org

1111 **S. 56 : Income from other sources – Under valuation of shares – The "fair market value" of shares acquired has to be determined by the taking the book values of the underlying assets and not their market values. [S. 56(2)(viia), R. 11UA]**

Allowing the appeal of the assessee the Tribunal held that; on the plain reading of above Rule, it is revealed that while valuing the shares the book value of the assets and liabilities declared by the TEPL should be taken into consideration. There is no whisper under the provision of 11UA of the Rules to refer the fair market value of the land as taken by the Assessing Officer as applicable to the year under consideration. Therefore, we are of the view that the share price calculated by the assessee of TEPL for ₹ 5 per shares has been determined in accordance with the provision of Rule 11UA. (AY. 2014-15)

Minda SM Tecnocast Pvt. Ltd. v. ACIT (2018) 170 ITD 12 (Delhi)(Trib.), www.itatonline.org

1112 **S. 56 : Income from other sources – Unquoted equity shares – Discounted cash flow method – Net asset value method – Option to adopt the method of valuation is with assessee-When no defect is found in valuation of shares arrived on basis of discounted cash flow method addition made by the AO on basis of net asset value method was to be set aside. [S. 56(2)(vii)(b), R. 11UA]**

The assessee submitted valuation per equity share computed on the discounted cash flow method as per the certificate of Chartered Accountants wherein the value per shares was arrived at ₹ 54. 98 per share. The AO did not accept said valuation and applied Net Asset Value method as per which value of share came to ₹ 26. 69 per share. Applying the said value, the Assessing Officer made addition under S. 56(2)(vii)(b) of the Act. Tribunal held that the provisions of S. 56(2)(vii)(b) gives an options to assessee to adopt any of methods which can be compared with Net Asset Value Method and Assessing Officer shall adopt value whichever is higher. Accordingly the since discounted cash flow method is one of prescribed method and, moreover, Assessing Officer had not found any serious defect in facts and details used in determining fair market value under said method, impugned addition made by him was deleted. (AY. 2014-15)

ACIT v. Safe Decore (P.) Ltd. (2018) 169 ITD 328 / 165 DTR 339 / 193 TTJ 898 (Jaipur) (Trib.)

S. 56 : Income from other sources – Business income-Business discontinued – Interest earned on inter – corporate deposit was held to be assessable as income from other sources and not as business income. [S. 28(i)] 1113

Dismissing the appeal of the assessee the Tribunal held that, when the manufacturing business was discontinued, interest earned on inter-corporate deposit was held to be assessable as income from other sources and not as business income. (AY. 2008-09, 2010-11)

Sai Fragrance & Flavours (P.) Ltd. v. ACIT (2018) 169 ITD 235 (Mum.)(Trib.)

S. 56 : Income from other sources – Relative – Hindu Undivided Family (HUF) – Gift by the mother of the Karta of the HUF, to the HUF is liable to be taxed as the mother can not be considered as member of HUF – Revision was held to be justified – Assessee was directed to produce valuation report as per rule 11UA. [S. 2(31), 56(2)(vii), 263] 1114

Dismissing the appeal of the assessee the Tribunal held that; Proviso to section 56 (2) (vii) provides definition of "relatives" in case of individual and HUF separately. It provides that above clause for taxability shall not apply to any sum of money or property received from any "relative". The "relative" have been mentioned separately with respect to an individual, and with respect to a Hindu undivided family. Therefore, in case of Hindu undivided family, if the gift is not received from member of such HUF then such sum is chargeable to tax. The "relatives" mentioned with respect to an individual cannot be considered when the recipient of the property is an HUF. Further, it substitutes the earlier definition of the "relative" when there was no reference about what constitutes "relatives" with respect to the HUF. It only talks about "relatives" with respect to an individual. Therefore, earlier the issue was that if the gift is received by an HUF from its members, probably it was taxable. To remove that lacuna and to give benefit to the HUF, the above amendment was made. The amendment also speaks through "notes on clauses" that now the definition of "relative" shall also include any sum or property received by an Hindu undivided family from its members apart from the persons referred to in the explanation with respect to an individual. It does not provide that if gift is made to an HUF by any of the "relatives" of those individuals comprising the HUF, who is not the member of the HUF, then such gift is not chargeable to tax. If such a view were accepted, then gift to HUF would never be chargeable to tax if it were received from the "relatives" of the members of such HUF. We are afraid that is not the language as well as the intention of the legislature. Even otherwise, When the language of the law is clear, support of the "notes on clauses" to the amendment does not help the assessee. Revision was held to be justified, however the assessee was directed to produce valuation report as per rule 11UA. (AY. 2013-14)

Subodh Gupta (HUF) v. PCIT (2018) 169 ITD 60 / 166 DTR 153 / 193 TTJ 442 (Delhi) (Trib.), www.itatonline.org

1115 **S. 56 : Income from other sources – Agricultural income – Consideration was not shown to avoid payment of stamp duty – Consideration was held to be assessable as income from other sources and not as agricultural income, however levy of concealment penalty was held to be not justified. [S. 271(1) (c)]**
Tribunal held that; an assessee who understates the consideration received for sale of agricultural land to avoid payment of stamp duty is defrauding the exchequer. He cannot take advantage of his own wrong and is estopped from contending that the amount received from the purchaser is a higher amount than was stated in the agreement. The incremental amount is assessable as 'income from other sources' and not as 'agricultural income'. However, penalty u/s 271(1)(c) cannot be levied for the said wrong claim. (ITA No. 665/Chd/2016 dt. 18-1-2018 (AY. 2013-14)
ACIT v. Mohinder Singh (Chd.)(Trib.) www.itatonline.org
Malkit Singh v. ITO (Chd.)(Trib.) www.itatonline.org

1116 **S. 56 : Income from other sources – Purchase of property from a company wherein the assessee is also director can not be assessed as income from other sources, as the amendment to assess difference arising out of stamp duty value and actual sale consideration as income in case of sale of property for a consideration less than stamp duty value of property was incorporated into statute by Finance Act, 2013 with effect from 1-4-2014. [S. 56(2)(vii)]**
Allowing the appeal of the assessee the Tribunal held that, Purchase of property from a company wherein the assessee is also director can not be assessed as income from other sources, as the amendment to assess difference arising out of stamp duty value and actual sale consideration as income in case of sale of property for a consideration less than stamp duty value of property was incorporated into statute by Finance Act, 2013 with effect from 1-4-2014. (AY. 2010-11, 2012-13)
Keshavji Bhuralal Gala v. ACIT (2018) 169 ITD 23 / 165 DTR 8 / 193 TTJ 227 / 63 ITR 67 (SN)(Mum.) (Trib.)

1117 **S. 56 : Income from other sources – Redeemable non-cumulative preference shares (RNCPS) cannot be excluded from ambit of section 56(2)(viib) – In case of issue of redeemable non-cumulative preference shares (RNCPS) at premium, conclusion of valuer that 10 per cent discount factor was appropriate, was to be upheld as it was based on proper comparable for bench marking [S. 56(2)(viib), Rule 11UA(c)(c)]**
Tribunal held that, S. 56(2)(viib) shares that all types of shares are covered by this section. The argument of the assessee that RNCPS is a quasi-debt and that it was not the intention of the legislature to bring such instruments within the ambit of this section, is devoid of merit. There is no dispute on the method of valuation of these RNCPS. The valuer has adopted "discounted cash flow" method of valuation and the Assessing Officer has accepted the same. Considering the valuation report where the Valuer has considered 10% as discount factor where as the CIT(A) has considered at 12. 5% rate of discount. The valuation adopted by the valuer was based on proper comparable

and bench mark, the addition made under section 56(2)(viib), by the AO to the extent sustained by the CIT(A) was deleted. (AY. 2013-14)
Microfirm Capital (P.) Ltd. v. DCIT (2018) 168 ITD 301 / 62 ITR 109 / 192 TTJ 431 / 164 DTR 35 (Kol.)(Trib.)

S. 56 : Income from other sources – Interest income on fixed deposit is held to be assessable as income from other sources. [S. 28(i)] 1118
Dismissing the appeal of the assessee the Tribunal held that; since interest on FD was not generated from core business activity of assessee, Assessing Officer was right in treating interest on fixed deposit under head Income from other sources.
Nilesh Janardan Thakur v. ITO (2018) 168 ITD 143 / 192 TTJ 786 (Mum.)(Trib.)

S. 56 : Income from other sources – Amount received at the time of retirement from partnership firm after surrendering her right, title and interest, same was said to be received for consideration and, thus, same could not be taxable in hands of the assessee, as capital gains or income from other sources. [S. 2(47)(i), 2(47)(ii), 4,45, 56(2)(vi)] 1119
Allowing the appeal of the assessee the Tribunal held that; Amount received at the time of retirement from partnership firm after surrendering her right, title and interest, same was said to be received for consideration and, thus, same could not be taxable in hands of the assessee, as capital gains or income from other sources. (AY. 2008-09)
Vasumati Prafullachand Sanghavi (Smt.) v. DCIT (2018) 168 ITD 585 / 193 TTJ 101 / 169 DTR 227 (Pune)(Trib.)

S. 57 : Income from other sources – Deductions – Interest from fixed deposits – D-mat charges, legal expenses and medical relief expenses – Not allowable as deduction as the expenditure is not incurred for earning interest from fixed deposit. [S. 56, 57(iii)] 1120
Tribunal held that since assessee failed to establish that expenditures under several heads claimed against said interest income were incurred wholly and exclusively for purpose of earning of interest income accordingly the D-mat charges, legal expenses and medical relief expenses is not allowable as deduction against income from other sources. (AY. 2012-13)
Bank of India Retired Employees Medical Assistance Trust v. ITO (2018) 172 ITD 78 / 172 DTR 140 / 196 TTJ 706 (Mum.)(Trib.)

S. 57 : Income from other sources – Where assessee received membership fee from various members which were kept in FDRs and interest earned thereon was brought to tax under section 56, in view of fact that assessee failed to establish nexus between expenditure incurred under various heads and earning of said interest income, its claim for deduction under S. 57 was to be rejected. [S. 56, 57(iii)] 1121
Tribunal held that, Where assessee received membership fee from various members which were kept in FDRs and interest earned thereon was brought to tax under section 56, in view of fact that assessee failed to establish nexus between expenditure incurred

under various heads and earning of said interest income, its claim for deduction under S. 57 was to be rejected.
Poona Club Ltd. v. ACIT (2018) 63 ITR 3 (SN)(Pune)(Trib.)

1122 **S. 57 : Income from other sources – Deductions – Dividend income – taxable under head 'Income from other sources' – Any expenditure incurred to earn dividend income including finance charges allowable as deduction. [S. 57(iii)]**
Where dividend income earned by assessee was taxable under head 'Income from other sources', any expenditure incurred to earn dividend income including finance charges was to be allowable under S. 57(iii) of the Act. (AY. 2003-04)
Asia Investments P. Ltd. v. ACIT (2018) 63 ITR 535 / 193 TTJ 214 (Mum.)(Trib.)

1123 **S. 57 : Income from other sources – Deductions – Failure to establish the nexus between interest earned on fixed deposits and the expenditure incurred, claim of deduction was held to be not allowable. [S. 56, 57(iii)]**
Dismissing the appeal of the assessee, the Tribunal held that, Failure to establish the nexus between interest earned on fixed deposits and the expenditure incurred, claim of deduction was held to be not allowable. (AY. 2008-09, 2009-10)
Poona Club Ltd. v. ACIT (2018) 169 ITD 557 / 63 ITR 3 (SN) (Pune)(Trib.)

1124 **S. 68 : Cash credits – Share capital – Most of the address of share holders are identical – They could not be traced despite issue of notice u/s 131 of the Act – Affidavits are similarly worded – Addition is held to be justified. [S. 131]**
Dismissing the appeal of the revenue the Court held that,The balance-sheets or the accounts of the applicants for shares were not furnished by the assessee. On the contrary, the assessee purported to rely on similarly-worded affidavits apparently produced from the persons whose existence was doubted at every stage by the authorities. It is curious that 21 share applicants would write identical letters to the two proprietorship concerns of the principal person in control of the assessee and his wife on the same date and such persons would require the amounts standing to their credit in the proprietorship concern to be made over as share application money to the assessee company and all such 21 applicants would leave Calcutta within a few years of applying for such shares. The lower authorities drew the appropriate conclusions from the facts.
DRB Exports Pvt. Ltd. v. CIT (2018) 169 DTR 193 / 305 CTR 95 (Cal.)(HC)

1125 **S. 68 : Cash credits – Share Capital – Survey – Bogus accommodation bills to various concerns including assessee and its sister companies – PAN no – Affidavit of investors – Acknowledgement of filing of return – Deletion of addition by the Tribunal is held to be justified.**
Dismissing the appeal of the revenue the Court held that the assessee has filed PAN no, Affidavit of investors, Acknowledgement of filing of return. Entire basis of revenue's case was based on surmise that assessee was taking bogus purchase bills and cash was

introduced in form of share capital without any evidence in support. Accordingly the deletion of addition by Tribunal is held to be justified. (AY. 2005-06 to 2011-12)
PCIT v. Acquatic Remedies Pvt. Ltd. (2018) 171 DTR 426 (Bom.)(HC)

S. 68 : Cash credits – Variation in closing balance in bank statement and debit balance in books Income – Advance received – Not proved satisfactorily – Addition is held to be justified. 1126
Dismissing the appeal of the assessee the Court held that genuineness and capacity of the parties who have given advance was not proved. Accordingly the addition by Tribunal is held to be justified. (AY. 2003-04)
R. Natvarlal Parekh v. ITO (2018) 172 DTR 397 (Bom.)(HC)

S. 68 : Cash credits – Trade advances – Adjusted against sales made in subsequent years – Deletion of addition is held to be justified. 1127
Dismissing the appeal of the revenue the Court held that the Tribunal is justified in deleting trade advances received by assessee were adjusted against sales made in subsequent years.
PCIT v. Montage Enterprises (P.) Ltd. (2018) 100 taxmann.com 99 / 259 Taxman 418 (Delhi)(HC)
Editorial : SLP of revenue is dismissed; PCIT v. Montage Enterprises (P.) Ltd. (2018) 259 Taxman 417 (SC)

S. 68 : Cash credits – Unexplained cash sales of ₹ 3.12 crores only one month – Not explained satisfactorily – Addition is held to be justified. 1128
Dismissing the appeal the Court held that the assessee could not explain satisfactorily cash sales of ₹ 3.12 crores only one month. Court applied the ratio in *Roshan Di Hatti v. CIT [1977] 2 SCC 378*, the Apex Court has held that "The burden of accounting for the receipt of these assets was clearly on the assessee and if the assessee failed to prove satisfactorily the nature and source of these assets, the revenue could legitimately hold that these assets represented the undisclosed income of the assessee", which in the instant case the assessee not to have explained to the satisfaction of the Assessing Officer. Court also held that, it is not the case of the assessee that the product was manufactured or sold for seasonal consumption or that such sales could have been affected only in the particular months of the respective years. The satisfaction of the officer no doubt has to be based on the material so placed by the parties, which in the instant case is there. Formation of opinion has to be after accounting for all the factors and that too on objective consideration of which we have no doubt. As such, the questions of law answered accordingly and there is no merit in the present appeals which are disposed of in the aforesaid terms. (AY. 2007-08,2008-09)
J.M.J. Essential Oil Company v. CIT (2018) 259 Taxman 546 / (2019) 307 CTR 88 / 415 ITR 17 / 174 DTR 361 (HP)(HC)

1129 **S. 68 : Cash credits – Share application money – AO has not conducted any enquiry – Addition on surmises is held to be not justified.**
Dismissing the appeal of the revenue the Court held that identity of share holders were established, however the AO has made addition merely on surmises and without making any enquiry. Accordingly, addition made by Assessing Officer was deleted.
PCIT v. Himachal Fibers Ltd. (2018) 98 taxmann.com 172 / 259 Taxman 4 (Delhi)(HC)
Editorial : SLP of revenue is dismissed. PCIT v. Himachal Fibers Ltd. (2018) 259 Taxman 3 (SC)

1130 **S. 68 : Cash credits – Share capital – Documents were not produced – Addition is held to be justified.**
Assessee received the amount as share capital. Documents pertaining to share applicants produced by assessee did not demonstrate that such alleged applicants had invested in share capital of assessee. Addition was confirmed by the Tribunal. High Court also affirmed the order of Tribunal.
J. J. Development (P.) Ltd. v. CIT (2018) 100 taxmann.com 101/ 259 Taxman 415 (Cal.)(HC)
Editorial : SLP of assessee is dismissed, J. J. Development (P.) Ltd. v. CIT (2018) 259 Taxman 414 (SC)

1131 **S. 68 : Cash credits – Amount received from various depositors – Necessary enquiry relating to identity and creditworthiness of depositors not done by AO – Addition deleted – Confirmed by High Court .**
AO made an addition to the income of the assessee in respect of unconfirmed trade creditors and expenses. On appeal, CIT(A) noticed that AO in his order did not refer to or elucidate whether assessee had produced invoices, bills, manner and mode of payment to trade creditors. CIT(A) deleted the addition as details and nature of expenses were not elucidated. Tribunal confirmed the order of the CIT(A). The High Court did not interfere with the findings recorded by the lower authorities being finding of facts and dismissed the revenue appeal. (AY. 2010-11)
PCIT v. Rajesh Kumar (2018) 260 Taxman 216 (Delhi)(HC)

1132 **S. 68 : Cash credits – Identity of the depositor, genuineness of the transaction – Onus discharged – Deletion of addition is held to be justified.**
Dismissing the appeal of the revenue the Court held that the assessee established the identity of the depositor, genuineness of the transaction and submitted sufficient material. Accordingly affirmed the order of the Tribunal. (AY. 2010-11)
PCIT v. Reliable Express (2018) 168 DTR 337 / 101 CCH 402 (MP.)(HC)

1133 **S. 68 : Cash credits – Advance received back – Source of money was sufficiently explained – Addition is held to be not justified.**
Cash was advanced to certain agriculturists for purchase of their land. Since the agreement did not fructify, the advances were received back. The AO considered such receipt as not explained and added the same as cash credits. The CIT(A) allowed the appeal of the assessee by considering the evidence on record, including the confirmations of the agriculturists and holding that the entire sum of money was explained. ITAT held that only a part of the sum was explained and confirmed the

addition of the balance portion of the sum. On appeal, the High Court held that when the CIT(A) had considered the detailed evidence on record to come to the conclusion that the entire sum was explained, the Tribunal, if it was not agreeable with the same, should have brought sufficient material on record. Having not done so, the order of the CIT(A) was confirmed and the entire addition was deleted. (AY. 2010-11)
Shubha Devi G. v. ITO (2018) 171 DTR 51 / (2019) 307 CTR 536 (Karn.)(HC)

S. 68 : Cash credits – Credit entries in bank account is not explained satisfactorily – Genuineness of transaction is not proved – Order of Tribunal confirming the addition is held to be justified. [S. 69A] 1134
Dismissing the appeal of the assessee the Court held that, the Credit entries in bank account is not explained satisfactorily. Genuineness of transaction is not proved-Order of Tribunal confirming the addition is held to be justified.
Kailash Swaroop Agarwal v. CIT (2018) 409 ITR 210 (Raj.)(HC)

S. 68 : Cash credits – Bank details and other particulars were furnished – Merely on the basis of report addition cannot be made – Deletion of addition is held to be justified. [S. 260A] 1135
Dismissing the appeal of the revenue the Court held that,the assessee has filed Bank details and other particulars were furnished. Merely on the basis of report addition cannot be made. Deletion of addition is held to be justified.
PCIT v. Adamine Construction (P.) Ltd. (2018) 99 taxmann.com 44 / 259 Taxman 132 (Delhi)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Adamine Construction (P.) Ltd. (2018) 259 Taxman 131 (SC)

S. 68 : Cash credits – Share capital – Identity of the share applicant was established – Additions cannot be made on surmises without conducting any further inquiry. 1136
Dismissing the appeal of the revenue the Court held that, when identity of the share applicant was established, additions cannot be made on surmises without conducting any further inquiry. (AY. 2007-08)
PCIT v. Himachal Fibers Ltd. (2018) 259 Taxman 4 (Delhi)(HC)
Editorial : SLP of revenue is dismissed; PCIT v. Himachal Fibers Ltd. (2018) 259 Taxman 3 (SC)

S. 68 : Cash credits – Share application and share premium – Identity of creditors, creditworthiness and genuineness of transactions established – Addition cannot be made. 1137
Dismissing the appeal of the revenue the Court held that, the assessee has established, identity of creditors, creditworthiness and genuineness of transactions. Accordingly the deletion of addition by the Tribunal is held to be justified. (AY. 2012-13 to 2013-14)
PCIT v. Chain House International (P.) Ltd. (2018) 408 ITR 561 / (2019) 307 CTR 19 / 174 DTR 97 (MP)(HC)
PCIT v. Rohtak Chain Co (P) Ltd. (2018) 408 ITR 561 / (2019) 307 CTR 19 / 174 DTR 97 (MP)(HC)
PCIT v. Bhrat Securities Ltd. (2018) 408 ITR 561 / (2019) 307 CTR 19 / 174 DTR 97 (MP) (HC)

1138 **S. 68 : Cash credits – Share capital – Books of account, bank accounts etc were not produced – Dummies or stooges of directors of the assessee company-Failure to offer reasonable explanation – Addition is held to be justified.**

Dismissing the appeal of the assessee the Court held that ; the assessee had failed to discharge its initial burden to prove that the money of ₹ 48,58,000 was collected through share capital. Books of account, bank accounts etc were not produced. Dummies or stooges of directors of the assessee company. Therefore, the Assessing Officer was wholly justified in rejecting the stand of the assessee and treating the sum of ₹ 48,58,000 as the income from undisclosed sources and accordingly charging it to tax. (AY. 1996-97)

Sriman Sai Securities Inv. Fin. Ltd. v. DCIT (2018) 408 ITR 397 (T&AP)(HC)

1139 **S. 68 : Cash credits – Share capital – The assessee being a private limited company the burden of proof was on a higher pedestal even though the assessee had furnished the particulars of the bank accounts, passport, permanent account number card, addresses and earnings by the shareholder-cum-director and the money had been invested through banking channels-the share subscribers did not have their own profit making apparatus and were not involved in business activity – Money was routed through – Profit motive normal in the case of investment was entirely absent-No profit or dividend was declared – Genuineness of transactions were doubted – Addition was held to be justified – No question of law arose. [S. 260A]**

Dismissing the appeal of the assessee the Court held, that the assessee being a private limited company the burden of proof was on a higher pedestal even though the assessee had furnished the particulars of the bank accounts, passport, permanent account number card, addresses and earnings by the shareholder-cum-director and the money had been invested through banking channels. On facts it was found that the share subscribers did not have their own profit making apparatus and were not involved in business activity. Money was routed through. Profit motive normal in the case of investment was entirely absent. No profit or dividend was declared. Accordingly the genuineness of transactions were doubted. Appeal was dismissed holding that no substantial question of law. (AY. 2011-12)

Shreenath Heritage Liquor Pvt. Ltd. v. CIT (2018) 408 ITR 198 (Raj.)(HC)

1140 **S. 68 : Cash credits – Loan – Produced details like copies of permanent account number cards, returns, balance – sheets with all the annexure and bank accounts before the Assessing Officer, that two of the creditors not only appeared before the Assessing Officer, but had also admitted giving loan and that there was nothing suspicious or doubtful in the version of those persons – Deletion of addition was held to be justified – Transportation charges-tax deducted at source, payments through account payee cheques, proper addresses and confirmation of account with permanent account numbers and gross receipts from the Municipal Corporation of Greater Mumbai on account of supply of vehicles in the financial year – Merely because the parties were not physically present before the Assessing Officer, such an addition could not have been made – Deletion of addition was held to be justified. [S. 133(6), 260A]**

Dismissing the appeal of the revenue the Court held that ; the assesee has produced details like copies of permanent account number cards, returns, balance-sheets with all

the annexure and bank accounts before the Assessing Officer, that two of the creditors not only appeared before the Assessing Officer, but had also admitted giving loan and that there was nothing suspicious or doubtful in the version of those persons. Accordingly the deletion of addition was held to be justified. As regards transportation charges paid to various parties, the tax was deducted at source, payments through account payee cheques, proper addresses and confirmation of account with permanent account numbers and gross receipts from the Municipal Corporation of Greater Mumbai on account of supply of vehicles in the financial year was furnished, therefore merely because the parties were not physically present before the Assessing Officer, such an addition could not have been made. Accordingly the deletion of addition was held to be justified. (AY. 2007-08)

CIT v. Haresh D. Mehta (2018) 407 ITR 492 (Bom.)(HC)

Editorial : SLP of revenue is dismissed ; CIT v. Haresh D. Mehta (2018) 406 ITR 494 (SC)

S. 68 : Cash credits – Interest – Deletion of addition is held to be justified – Provision for forward contract – Question of fact. [S. 37(1), 260A] 1141

Dismissing the appeal of the revenue the Court held that ; deletion of cash credits and interest thereon is a question of fact. Similarly deletion of the disallowances of provision of forward contract payable is also question of fact and no question of law arise.

CIT v. Veer Gems (2018) 407 ITR 639 (Guj.)(HC)

Editorial : SLP of revenue is dismissed ; CIT v. Veer Gems (2018) 406 ITR 37 (St)

S. 68 : Cash credits – Share capital – Genuineness of investors in shares were not satisfactorily explained – Order of Tribunal is affirmed. [S. 260A] 1142

Dismissing the appeal of the assessee the Court held that ; the entire issue was based on appreciation of evidence and material on record. The Assessing Officer after giving reasonable opportunity to the assessee and on the basis of materials collected came to the conclusion that the investors were not genuine and gave detailed reasons for making the addition of the sum under section 68 as unexplained credits in the form of share capital and this was confirmed by the Tribunal being the final fact finding authority. No question of law arose. (AY. 1996-97)

Gopal Iron And Steel Co. (Guj) Ltd. v. ITO (2018) 407 ITR 533 (Guj.)(HC)

Editorial : SLP is granted to the assessee; Gopal Iron And Steel Co. (Guj) Ltd. v. ITO (2018) 402 ITR 29 (St)

S. 68 : Cash credits – Shares – Unsecured loans – Assessee had discharged its onus of establishing identity, genuineness and creditworthiness of both investors as well as lenders – Deletion of addition is held to be justified. 1143

Dismissing the appeal of the revenue the Court held that, assessee had discharged its onus of establishing identity, genuineness and creditworthiness of both investors as well as lenders. Deletion of addition is held to be justified. (AY. 2009-10)

PCIT v. Hi-Tech Residency (P.) Ltd. (2018) 257 Taxman 390 (Delhi)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Hi-Tech Residency (P.) Ltd. (2018) 257 Taxman 335 (SC)

1144 **S. 68 : Cash credits – Deposit from dealers and agents – Merely because there was a permission granted under Companies Act to accept deposits from public, it did not necessarily follow that deposits shown by assessee were really those received from members of public or from agents – Matter remanded.**

Allowing the appeal of the revenue the Court held that ; the Tribunal acted erroneously and in a perverse manner insofar as directing deletion of the addition not proved before the Assessing Officer; applying the rule of probability, which is alien to the Act. There is absolutely no proof offered with respect to the additions made. However, before the first appellate authority, the assessee had produced proof of four depositors and four agents for the year 1999-2000 and six depositors and four agents for the year 2001-02, the same shall be produced before the Assessing Officer, who shall consider its veracity and enter a finding on the same. The remand is confined to that aspect, and with respect to the other, the assessee would have to satisfy the tax due. The Income-tax appeals are allowed with the limited remand. (AY. 1999-2000 2001-02)

CIT v. Mathrubhumi Printing & Publishing Co. Ltd. (2018) 409 ITR 624 / 257 Taxman 566 (Ker.)(HC)

1145 **S. 68 : Cash credits – Evidence of loan and creditworthiness of lenders were furnished – Amount not assessable as cash credits.**

Allowing the appeal of the assessee the Court held that the assessee has established the lender's identity and capacity. Accordingly addition cannot be made as cash credits (AY. 2005-06 to 2008-09).

Pendurthi Chandrasekhar v. DCIT (2018) 407 ITR 179 / (2019) 175 DTR 73 (T&AP)(HC)

1146 **S. 68 : Cash credits – Accommodation entries – Peak credit – In order to avail of the theory of "peak credit", the assessee has to make a clean breast of all facts. He has to explain each of the sources of the deposits and the corresponding destination of the payment without squaring them off. The ITAT cannot proceed merely on the basis of accountancy and overlook the settled legal position – Addition of peak credit under S. 68 is held to be justified. [S. 145]**

Allowing the appeal of the revenue the Court held that ; in order to avail of the theory of "peak credit", the assessee has to make a clean breast of all facts. He has to explain each of the sources of the deposits and the corresponding destination of the payment without squaring them off. The ITAT cannot proceed merely on the basis of accountancy and overlook the settled legal position. Accordingly the addition of Peak credit under S. 68 is held to be justified. Appeal of revenue is allowed partly.

CIT v. JRD Stock Brokers Pvt. Ltd. (2018) 409 ITR 346 / 173 DTR 118 / 307 CTR 292 (Delhi)(HC), www.itatonline.org

S. 68 : Cash credits – Capital gains – Penny stocks – Share transaction is supported by contract notes, bills, were carried out through recognized stockbroker of the Stock Exchange and all payments made to, and received from, the stockbroker, were through account payee instruments – A transaction fully supported by documentary evidences cannot be brushed aside on suspicion and surmises – Statement given earlier was retracted in cross examination – Brokers statement was recorded – Deletion of addition by the Tribunal is held to be justified. [S. 45, 132(4)] 1147

Dismissing the appeal of the revenue the Court held that, Share transaction is supported by contract notes, bills, were carried out through recognized stockbroker of the Stock Exchange and all payments made to, and received from, the stockbroker, were through account payee instruments. A transaction fully supported by documentary evidences cannot be brushed aside on suspicion and surmises. Statement given by the partner earlier was retracted in cross examination. The stockbrokers asserted that these transactions were genuine. Deletion of addition by the Tribunal is held to be justified. (ITA No. 620 of 2008 GA No. 2589 of 2008, dt. 26.08.2008)

CIT v. Alpine Investment (Cal.)(HC), www.itatonline.org

S. 68 : Cash credits – Capital gains – Penny Stocks – If the transaction is supported by documents like contract notes, demat statements etc and is routed through the stock exchange and if the payments are by account – payee cheques and there is no evidence that the cash has gone back to the assessee's account, it has to be treated as a genuine transaction and cannot be assessed as unexplained credit, simply because in the sham transactions bank a/c were opened with HDFC bank and the appellant has also received short term capital gain in his account with HDFC bank does not establish that the transaction made by the appellant were non genuine. [S. 45] 1148

Dismissing the appeal of the revenue the Court held that ;if the transaction is supported by documents like contract notes, demat statements etc and is routed through the stock exchange and if the payments are by account – payee cheques and there is no evidence that the cash has gone back to the assessee's account, it has to be treated as a genuine transaction and cannot be assessed as unexplained credit,simply because in the sham transactions bank a/c were opened with HDFC bank and the appellant has also received short term capital gain in his account with HDFC bank does not establish that the transaction made by the appellant were non genuine. Considering all these facts the share transactions made through Shri P.K. Agarwal cannot be held as non-genuine. Consequently denying the claim of short term capital gain made by the appellant before the AO is not approved. (ITA No. 385/2011,& 603 of 2011 dt. 11.09.2017)

CIT v. Pooja Agarwal (Smt) (Raj.)(HC), www.itatonline.org

CIT v. Jitendra Kumar Agarwal (Raj.)(HC), www.itatonline.org

S. 68 : Cash credits – Share application money – Persons of insignificant means – Neither the creditworthiness of the creditors nor the genuineness of the transaction stood explained – Order of Tribunal upholding addition is confirmed. 1149

Dismissing the appeal of the assessee the Court held that ; neither the creditworthiness nor the genuineness of the parties had been established by the assessee. The

detailed investigations carried out by the Assessing Officer established the position that the contributors to share capital were persons of insignificant means and their creditworthiness to have made the contributions had not been established. The assessing authority had put the result of his enquiries to the assessee and had granted opportunity to offer its explanations. The assessee, however, failed to establish the genuineness of the cash contributions as well as the capacity of the persons to have made such contributions. (AY. 2001-02)
B. R. Petrochem Pvt. Ltd. v. ITO (2018) 407 ITR 87 / (2019) 306 CTR 668 (Mad.)(HC)

1150 **S. 68 : Cash credits – Receipt towards payment for Contract cannot be assessed as unexplained cash – simply because notices could not be served upon the sub-contractor, the transactions could not be held non-genuine.**
Dismissing the appeal of the revenue the Court held that simply because notices could not be served upon the sub-contractor, the transactions could not be held non-genuine. If the Assessing Officer had disbelieved that the sub-contractor had executed the contract, he could have disbelieved the payment made to it and held that it was the assessee, who had executed the contract and worked out the profit accordingly. But when the entire amount received by the assessee was towards the payment for the contract, there was no question of considering any part thereof as unexplained cash credit. (AY. 2007-08)
PCIT v. Swastik Construction (2018) 407 ITR 42 / 254 Taxman 163 (Guj.)(HC)

1151 **S. 68 : Cash credits – Share capital – If no cash is involved in the transaction of allotment of shares and it is a case of book adjustment, provisions of S. 68 treating it as unexplained cash credit are not attracted. Even if it were to be assumed that the subscribers to the increased share capital are not genuine, the amount of share capital would in no circumstances be regard as undisclosed income of the company.**
Allowing the appeal of the assessee the Court held that ; If no cash is involved in the transaction of allotment of shares and it is a case of book adjustment, provisions of S. 68 treating it as unexplained cash credit are not attracted. Even if it were to be assumed that the subscribers to the increased share capital are not genuine, the amount of share capital would in no circumstances be regard as undisclosed income of the company. (AY. 2012-13)
V. R. Global Energy Pvt. Ltd. v. ITO (2018) 407 ITR 145 / 170 DTR 412 / 305 CTR 228 / 258 Taxman 5 (Mad.)(HC), www.itatonline.org

1152 **S. 68 : Cash credits – Share application – Inability to produce share application – Addition cannot be made as cash credits.**
Dismissing the appeal of the revenue the Court held that; inability to produce share application, addition cannot be made as cash credits.
CIT v. Jalan Hard Coke Ltd. (2018) 95 taxmann.com 330 (Raj.)(HC)
Editorial : SLP of revenue is dismissed; CIT v. Jalan Hard Coke Ltd. (2018) 257 Taxman 91 (SC)

S. 68 : Cash credits – Authorities entitled to look into surrounding circumstances to find out reality – Unable to state exact purpose for which loan of ₹ 1 Crore taken and stating her husband looked after all finances – No personal or business relationship of assessee with that party – Transaction squared in next financial year would not establish genuineness of transaction – Addition is held to be justified (Relied, *CIT v. Durga Prasad More (1971) 82 ITR 540 (SC)* / *Sumati Dayal v. CIT (1995) 214 ITR 801 (SC)*) [S. 131] 1153

Dismissing the appeal, that on the facts, the Tribunal was justified in relying on the judgments of the Supreme Court (*CIT v. Durga Prasad More (1971) 82 ITR 540 (SC)* / *Sumati Dayal v. CIT (1995) 214 ITR 801 (SC)* to reject mere paper work and look at the reality. The assessee in her statement under section 131, could not give the exact purpose for which the loan was taken. She replied that the finances were managed by her husband and she had no idea about them. On being questioned whether she operated her bank account or had any ATM card or debit card and credit card, she had replied in the negative. Therefore, the assessee had no idea of any loan taken from PTPL, one of the 24 parties that appeared in her balance-sheet from whom loans were taken. The loan of ₹ 1 crore was allegedly repaid after nearly one year without any interest. It was not the case of the assessee that she had a personal or business relationship with PTPL or its directors. Merely because the transaction was squared in the next financial year that would not establish that the transaction was genuine and not bogus. The addition made under S. 68 was proper. (AY. 2014-15)

Seema Jain v. ACIT (2018) 406 ITR 411 / 257 Taxman 380 / 169 DTR 257 / 304 CTR 472 (Delhi)(HC)

S. 68 : Cash credits – Loan from relative – Cash deposit in to Bank account – Cash deposited from sale of property – Failure to produce sale deed – Cash was deposited even before date of alleged sale agreement-Addition is held to be justified. 1154

Dismissing the appeal of the assessee the Court held that; failure of assessee to produce sale deed and cash was deposited in to Bank account even before date of alleged sale agreement. Addition is held to be justified (AY. 2009-10)

J. Stephen v. ITO (2018) 256 Taxman 172 (Mad.)(HC)

S. 68 : Cash credits – Only on the ground that loan was not found to be reflected in balance sheet of donor – Addition cannot be made as cash credit. Assessee had demonstrated genuineness of transaction as well as reliability and creditworthiness of donor, said addition was unjustified. 1155

Dismissing the appeal of the revenue the Court held that ; when the assessee had demonstrated genuineness of transaction as well as reliability and creditworthiness of donor, therefore merely on the ground that loan was not found to be reflected in balance sheet of donor addition cannot be made as cash credit. (AY. 2005-06)

PCIT v. Bhanuprasad D. Trivedi (HUF) (2017) 87 Taxmann.com 137 (Guj.)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Bhanuprasad D. Trivedi (HUF) (2018) 256 Taxman 66/ 256 Taxman 292 (SC)

1156 **S. 68 : Cash credits – Survey – Addition of undisclosed income cannot be made on the basis of (a) entries in dairy found during survey & (b) admission of director in S. 133A survey if assessee has filed a retraction and alleged that the entries/ statement were recorded under pressure. Statement u/s 133A is merely information simplicitor and not evidence per se. Addition cannot be sustained if the Dept has not investigated the matter and found material to support the addition. [S. 133A]**

Dismissing the appeal of the revenue the Court held that ; Addition of undisclosed income cannot be made on the basis of (a) entries in dairy found during survey & (b) admission of director in S. 133A survey if assessee has filed a retraction and alleged that the entries/ statement were recorded under pressure. Statement u/s 133A is merely information simplicitor and not evidence per se. Addition cannot be sustained if the Dept has not investigated the matter and find material to support the addition. (TA No. 612/2018, dt. 12.06.2018) (AY. 2011-12)

PCIT v. Texraj Realty P. Ltd (2018) 95 taxmann.com 102 (Guj.)(HC), www.itatonline.org

1157 **S. 68 : Cash credits – Burden of proof – Mere confirmation is not sufficient, identity, creditworthiness and genuineness was not proved – Addition was held to be justified.**

Dismissing the appeal of the assessee the Court held that Mere confirmation is not sufficient, identity, creditworthiness and genuineness was not proved. Addition was held to be justified. (AY. 2007-08)

Ram Baboo Agrawal v. CIT (2018) 404 ITR 198 (All.)(HC)

1158 **S. 68 : Cash credits – Source of cash deposit was not explained satisfactorily – Addition was held to be justified.**

Dismissing the appeal of the assessee the Court held that; source of cash deposit was not explained satisfactorily. Accordingly the addition was held to be justified. (AY. 2009-10)

Ravi Mallick, prop. of Sunkraft designs v. DCIT (2018) 404 ITR 250 (P&H)(HC)

1159 **S. 68 : Cash credits – Cash withdrawn from Bank was redeposited after seven months, addition cannot be made as cash credits.**

Allowing the appeal of the assessee the Court held that; Cash withdrawn from Bank was redeposited after seven months, addition cannot be made as cash credits. Explanation given by assessee that deposit was made out of sum withdrawn earlier was not fanciful and sham story and it was perfectly plausible. (AY. 1998-99)

Jaya Aggarwal v. ITO (2018) 254 Taxman 398 / 165 DTR 97 / 302 CTR 241 (Delhi)(HC)

1160 **S. 68 : Cash credits – Share capital – Builder and developer – Failed to prove identity and creditworthiness of shareholders – Summons served were retuned back with remark the addressees were not available – Addition was held to be justified. [S. 131]**

Dismissing the appeal of the assessee the Court held that the assessee failed to prove identity and creditworthiness of share holders. Summons served were retuned back with remark the addressees were not available. It was also found that shareholders were

first time assessees and were not earning enough income to make deposits in question. Accordingly the addition was confirmed. (AY. 2007-08)
Konark Structural Engineering (P.) Ltd. v. Dy. CIT (2018) 254 Taxman 184 (Bom.)(HC)
Editorial : SLP of assessee is dismissed, Konark Structural Engineering (P.) Ltd. v. Dy. CIT (2018) 257 Taxman 262 (SC)

S. 68 : Cash credits – Firm – Partner – Capital introduced by the partner was duly reflected in the books of account maintained by him, addition cannot be made in the assessment of the firm. 1161
Dismissing the appeal of the revenue the Court held that; Capital introduced by the partner was duly reflected in the books of account maintained by him, addition cannot be made in the assessment of the firm. (AY. 2010-11)
PCIT v. Vaishnodevi Refoils & Solvex (2018) 253 Taxman 135 (Guj.)(HC)

S. 68 : Cash credits – Deposit in Bank – Failure to explain the source satisfactorily addition was held to be justified. 1162
Dismissing the appeal of the assessee the Court held that; Failure to explain the source satisfactorily addition was held to be justified. (AY. 2005-06)
Krishan Kumar Sethi v. CIT (2018) 403 ITR 189 / 255 Taxman 193 (Delhi)(HC)

S. 68 : Cash credits – Not required to explain source of source – Confirmation letters, affidavits, PAN no was filed, deletion of addition was held to be justified – There was no obligation to explain the source of source prior to April 1 2013, assessment year 2013-14. 1163
Dismissing the appeal of the revenue the Court held that; the assessee is not required to explain the "source of source" prior to insertion of the proviso to S. 68. If the assessee has discharged the primary onus placed upon it u/s 68 by filing confirmation letters, the Affidavits, the full address and pan numbers of the creditors, the Revenue has to proceed against the persons whose source of funds are alleged to be not genuine. There was no obligation to explain the source of source prior to April 1, 2013, assessment year 2013-14. (AY. 2010-11)
PCIT v. Veedhata Tower Pvt. Ltd. (2018) 403 ITR 415 / 166 DTR 218 / 302 CTR 490 (Bom.) (HC), www.itatonline.org

S. 68 : Cash credits – Share application – The assessees has filed balance sheet, confirmation etc, addition cannot be made merely on suspicion, if AO has any doubt he should make enquiry with lenders bank etc. 1164
Dismissing the appeal of the revenue the Court held that, the assessees has filed balance sheet confirmation etc, it could not be expected to prove the negative that the monies received by it were suspicious or not genuine infusion of capital etc. The assessee had discharged its burden of proof in terms of the settled dicta. It was only logical to expect that if the AO was not convinced about the genuineness of the said documents, he would have inquired into their veracity from the bank(s) to ascertain the truth of the assessee's claims. Having not done so, he was not justified in disregarding the assessee's contentions that the infusion of monies into its accounts was legitimate. The AO was

not justified in making additions of the various sums u/s 68 of the Act. (AY. 2002-03, 2003-04, 2005-06, 2007-08)
CIT v. Russian Technology Centre Pvt. Ltd. (2018) 300 CTR 501 (Delhi)(HC)
PCIT v. Claridges Hotels (P) Ltd. (2018) 300 CTR 501 (Delhi)(HC)

1165 **S. 68 : Cash credits – Gift – Failure to produce evidence of credit worthiness and genuineness of gifts – Addition as unexplained deposits was held to be justified.**
Dismissing the appeal of the assessee the Court held that; Failure to produce evidence of credit worthiness and genuineness of gifts addition as unexplained deposits was held to be justified. (AY. 2001-02)
Pandit Vijay Kant Sharma v. CIT (2018) 402 ITR 358 / 169 DTR 108 / 304 CTR 102 (All.) (HC)

1166 **S. 68 : Cash credits – Gifts – Creditworthiness of donors was proved – Deletion of addition was held to be justified – Finding of fact. [S. 69A]**
Dismissing the appeal of the revenue the Court held that; Tribunal had arrived at the factual finding that the assessee had sufficiently been able to explain that the sums of cash credits were received by her by way of gifts from her mother and her husband. The materials on record revealed that the gift from her mother was to fund for the admission of her grandson to a private medical college. No question of law arises. Deletion of addition u/s 69A was held to be justified. (AY. 2011-12)
CIT v. Latha Rajee Mathew (2018) 402 ITR 78 (Mad.)(HC)

1167 **S. 68 : Cash credits – Cash deposits were supported by registered sale deeds of flats sold and materials purchased was supported by duly signed Vouchers hence deletion was held to be justified. [S. 69]**
Dismissing the appeal of the revenue the Court held that; Cash deposits were supported by registered sale deeds of flats sold and materials purchased was supported by duly signed Vouchers hence deletion was held to be justified. (AY. 2005-06)
CIT v. Mohd. Sahid Prop. M/s. Azim Builders (2018) 402 ITR 110 (All.)(HC)

1168 **S. 68 : Cash credits – Share application money – Merely on the basis of statement given by Directors of investing companies additions cannot be made when the assessee has provided all necessary evidences – Burden is on revenue to prove otherwise.**
Dismissing the appeal of the revenue the Court held that; the lone circumstance of a director disowning the document itself could not have constituted fresh material to reject the documentary evidence. The existence of the company as an Income-tax assessee and that it had furnished audited accounts was not in dispute. Furthermore, its bank details too were furnished to the Assessing Officer. If the Assessing Officer were to conduct his task diligently, he ought to have at least sought the material by way of bank statements, etc., to discern whether in fact the amounts were infused into the shareholder's account in cash at any point of time or that the amount were such as to

be beyond their means. The Assessing Officer failed to do so. The Tribunal rightly set aside the addition made under section 68 of the Act.
CIT v. Oriental International Co. P. Ltd. (2018) 401 ITR 83 / 301 CTR 145 / 162 DTR 170 (Delhi)(HC)

S. 68 : Cash credits – Shell companies – Failure to produce lenders – Addition was held to be justified – Transaction was held to be non genuine. 1169
Dismissing the appeal of the assesse the Court held that; The Tribunal held that the assessee has not been able to produce the alleged lenders for verification and could not rebut the allegation of revenue authorities that the said lenders are shell entities, the loans cannot be accepted as genuine transactions and therefore the addition under S. 68 is upheld and consequently, deduction of interest on alleged borrowings is disallowed. (AY. 2007-08)
Pavankumar M. Sanghvi v. ITO (2018) 404 ITR 601 / 301 CTR 265 / 163 DTR 209 (Guj.) (HC)
Editorial : Order in Pavankumar M. Sanghvi v. ITO (2017) 165 ITD 260 / 187 TTJ 32 /152 DTR 201 / 59 ITR 189 (SMC)(Ahd.)(Trib.) is affirmed
Editorial : SLP of assessee is dismissed Pavankumar M. Sanghvi v. ITO (2018) 258 taxman 160 (SC)

S. 68 : Cash credits – Gift – Credit worthiness of the donor was not established hence addition was held to be justified. 1170
Dismissing the appeal of the revenue the Court held that, the assessee has not established the creditworthiness of the donor hence addition was held to be justified. (AY. 2000-01)
Sheela Ahuja Alias Lata Ahuja (Smt.) v. CIT (2018) 400 ITR 56 (All.)(HC)

S. 68 : Cash credits – Firm or AOP – Entry pertaining to first day of business – No scope for assuming that income was generated – No addition can be made – Provided PAN/GIR and income tax return of members sufficient to establish the creditworthiness and also discharge the onus. 1171
Dismissing the appeal of the revenue the Court held that; since it was first year of business of AOP and no business activity having been shown to have been conducted by it that could lead to generation of unaccounted income on first day of relevant accounting period itself, Tribunal had not committed any error in deleting impugned addition. Provided PAN/GIR and income tax return of members sufficient to establish the creditworthiness and also discharge the onus.(AY. 2001-02)
CIT v. Lal Mohar (2017) 252 Taxman 401 / (2018) 409 ITR 95 (All.)(HC)
CIT v. Rajendra Kumar (2017) 252 Taxman 401 / (2018) 409 ITR 95 (All.)(HC)
Editorial : SLP of revenue is dismissed, CIT v. Lal Mohar (2018) 409 ITR 2(St), CIT v. Rajendra Kumar (2018) 409 ITR 2 (St)

1172 **S. 68 : Cash credits – Long term capital gains – Evidence of contract and payment through Banks – Addition cannot be made solely on the basis that late recording in Demat Pass book – Order of Tribunal set aside. [S. 45]**

Allowing the appeal of the assessee the Court held that, evidence of contract and payment through Banks hence addition cannot be made solely on the basis that late recording in Demat Pass book – Order of Tribunal set aside as it has considered only part of evidence and not entire evidence. (AY. 2005-06)

Amita Bansal (MS.) v. CIT (2018) 400 ITR 324 (All.)(HC)

1173 **S. 68 : Cash credits – Bogus share capital – If the alleged share applicants do not appear before the AO pursuant to the S. 131 summons and the documentation is inadequate, it is a "completely bogus claim". The assessee cannot argue that the AO should have made inquiries from the AO of the share applicants as to their credit – worthiness. [S. 131]**

Dismissing the appeal of the assessee the Court held that ; If the alleged share applicants do not appear before the AO pursuant to the S. 131 summons and the documentation is inadequate, it is a "completely bogus claim". The assessee cannot argue that the AO should have made inquiries from the AO of the share applicants as to their credit-worthiness .(ITA No. 329 of 2016, dt. 27.06.2018)

J. J. Development Pvt. Ltd. v. CIT (Cal.)(HC), www.itatonline.org

1174 **S. 68 : Cash credits – Share Application amount – Pvt company – Burden is not discharged – Additions held to be justified.**

Dismissing the appeal of the assessee the Tribunal held that burden of proof was clearly on higher pedestal as compared to public limited companies which it had failed to discharge in instant case in terms of creditworthiness and genuineness of transaction and till such time, initial burden was not satisfied, burden could not be said to have been shifted on Revenue to conduct further enquiries. Addition is held to be justified. (AY. 2012-13)

Shreenath Heritage Liquor (P) Ltd. v. ACIT (2018) 162 DTR 265 / 191 TTJ 706 (Jaipur) (Trib.)

1175 **S. 68 : Cash credits – Share application money – Natural justice violated – Examining persons in Kolkata at back of assessee would be clear violation of principles of natural justice – Matter remanded. [S. 131]**

Tribunal held that AO was not barred from obtaining any adverse evidence that might come into his procession in course of re assessment. However, if he proposes to use such adverse evidences, if any, against assessee, he should give assessee adequate opportunity to rebut same Balance sheet showed no fixed assets. None of cases PAN of directors were available. Financial statement as filed with ROC also did not show any share application money having been given nor received. Bank accounts shows that in all cases, transactions were with identical companies, from where, money was coming and it was received either on same day or immediately previous day to date of transfer of funds through RTGS. Evidences had been produced before AO had sent to Kolkata

for examination as share applicants were based in Kolkata. Examining such persons in Kolkata at back of assessee would be clear violation of principles of natural justice. (AY. 2013-14)
PNN Steel (P) Ltd. v. ITO (2018) 166 DTR 217 / 193 TTJ 515 (Chennai)(Trib.)

S. 68 : Cash credits – Share capital and premium – issue of share premium is not relevant for cash credits – Identity, genuineness of transaction and creditworthiness of parties established – Deletion of addition is held to be justified. 1176
Tribunal held that there was no reason for AO to doubt genuineness of transaction only on basis of issue of shares at a premium when issue of shares at a premium was not at all relevant for purpose of addition made u/s 68 of Act. What needs to be considered for purpose of unexplained cash credit was, identity, genuineness of transaction and creditworthiness of parties. In this case, assessee had proved all 3 ingredients by filing necessary evidences and hence, re was no reason for AO to make addition towards share premium when share premium cannot be considered as unexplained credit. (AY. 2011-12)
Scrabble Entertainment Ltd. v. ACIT (2018) 169 DTR 51 / 193 TTJ 418 (Mum.)(Trib.)

S. 68 : Cash credits – Share application – Non – resident – Having meagre income – Credit worthiness not proved – Addition is held to be justified. 1177
Allowing the appeal of the revenue the Tribunal held that, the assessee has not furnished the bank statement of the person who has invested in shares. Reluctance on the part of the assessee and the said person to give proper evidence of the creditworthiness and also the failure to submit the copy of the bank statement clearly proves that the assessee has not discharged the onus of proving the creditworthiness. It is clear that the said Ms. Rashna Fali Press has not given proper details to justify the creditworthiness to grant the said advance of ₹ 6.64 crores. On facts the assessee has not discharged onus of proving creditworthiness and NRI had not given proper details to justify creditworthiness to grant advance on Share application money then addition made u/s 68 towards share application money should be sustained. (AY. 2010-11)
ITO v. Spartacus Farms (P) Ltd. (2018) 166 DTR 49 / 193 TTJ 409 (Mum.)(Trib.)

S. 68 : Cash credits – No return was filed by the lenders – Matter is remanded to prove creditworthiness of lender. 1178
Allowing the appeal of the revenue the Tribunal held that the Assessee has not proved the creditworthiness of the creditors. Accordingly the matter is remanded to the AO for further verification. (AY. 2008-09)
JCIT v. Sardar Patel Institute Of Management Society (2017) 51 CCH 727 / (2018) 191 TTJ 41 (UO) (Delhi)(Trib.)

S. 68 : Cash credits – Amount transferred from Pakistan – Source properly explained – Deletion of addition is held to be justified. 1179
Tribunal held that the assessee has explained the source and very clearly establishes its case of having transferred the properties in the name of persons to whom it claims to have sold the same and it cannot be the case of Revenue that the said transfers

in the name of purchasers was made without taking consideration due for the said transfers. Accordingly the order of CIT (A) deletion of addition is held to be justified. (AY. 2010-11)
ITO v. Sangeeta Kotoomal Esrani (2017) 51 CCH 782 / (2018) 196 TTJ 1002 (Pune)(Trib.)

1180 **S. 68 : Cash credits – Loan – Received by account payee cheque – Repaid by account payee cheque – Established genuineness of the transaction and creditworthiness of the lenders – Additions can not be made.**
Dismissing the appeal of the revenue the Tribunal held that ; Loan was received by account payee cheque. Repaid by account payee cheque. The assessee has established genuineness of the transaction and creditworthiness of the lenders. Deletion of addition is held to be justified. (AY. 2008-09)
ACIT v. Shree Ganesh Developers (2018) 68 ITR 47 (SN)(Mum.)(Trib.)

1181 **S. 68 : Cash credits – Deposit in bank account – Not maintaining books of account – Presumptive taxation – Return was accepted – Addition as cash credit is held to be not valid. [S. 44AF]**
Tribunal held that since the assessee has not maintained the books of account and return filed under presumptive taxation has been accepted For mismatch in the gross receipt and net income, amount deposited in the bank account, addition cannot be made as cash credits. (AY. 2010-11 to 2012-13)
Babbal Bhatia (Smt.) v. ITO (2018) 65 ITR 532 (Delhi)(Trib.)

1182 **S. 68 : Cash credits – Sale of car – Resale of car – Purchase was not doubted – On resale to from whom the car was purchased – Addition is held to be not justified. [S. 32]**
Tribunal held that since the AO had not challenged the veracity of the documents during the remand proceedings, there was a full disclosure of income and cash amounting to ₹ 2.30 was deleted. The assessee had purchased a car and when it sought to register the car in its favour with the appropriate authority, the registration was refused as the seller had violated custom duties and the Government imposed a blanket ban on transfer of all cars imported by the seller. To avoid any legal complications, the assessee resold the car to the seller for ₹ 25,00,000 which was held by the AO to be unexplained cash credit. The ITAT observed that since the AO had accepted the purchase of the car and granted depreciation during preceding years, the deletion of the same by CIT(A) had to be confirmed. (AY. 2009-10)
ACIT v. Crayons Advertising Ltd. (2018) 68 ITR 77 (SN) (Delhi)(Trib.)

1183 **S. 68 : Cash credits – Interest-free loan – Confirmation, return, balance – sheet and bank statement – Identity, creditworthiness and genuineness of transaction is proved – Deletion of addition is held to be justified.**
Dismissing the appeal of the revenue the Tribunal held that; the assessee has filed, confirmation, return, balance-sheet and bank statement. Identity,creditworthiness and

genuineness of transaction is proved – Deletion of addition is held to be justified. (AY. 2012-13)
ITO v. Jaidka Woolen and Hosiery Mills P. Ltd. (2018) 68 ITR 216 (Delhi) (Trib.)

S. 68 : Cash credits – Share premium – Equity shares and preference shares stand on different footing and, thus, net asset value method could not be used in case of preference shares to compute excess share premium charged on those shares so as to make addition as cash credits 1184

The assessee issued non-convertible redeemable preference shares to its holding company at rate of ₹ 500 per preference share against the face value of ₹ 10 per share. The shares so issued were redeemable at the price of ₹ 750 per share after a period of five years. Assessing Officer worked out value of shares at ₹ 38 per share. Accordingly, the Assessing Officer added differential share premium to assessee's taxable income. CIT(A) deleted the addition. On appeal by the revenue the Tribunal held that, equity shares and preference shares stand on different footing and, thus, net asset value method could not be used in case of preference shares to compute excess share premium charged on those shares so as to make addition as cash credits. (AY. 2011-12)
ACIT v. Golden Line Studio (P.) Ltd. (2018) 173 ITD 200 (Mum.)(Trib.)

S. 68 : Cash credits – Credit entry in capital account – Maintenance of one set of accounts for himself, as an individual, and other set of accounts for his sole proprietorship concern is valid – Capital introduced cannot be added as cash credit when proper explanation is furnished. 1185

Tribunal held that, maintenance of one set of accounts for himself, as an individual, and other set of accounts for his sole proprietorship concern is valid. Capital introduced cannot be added as cash credit when proper explanation is furnished. (AY. 2009-10)
Ajay Jaysukhlal Mehta v. ACIT (2018) 173 ITD 430 / (2019) 197 TTJ 861 (Ahd.)(Trib.)

S. 68 : Cash credits – Gift from father – Failure to bring on record any material evidence to prove creditworthiness and capacity of his father to advance huge amount of cash gift from any known source of income – Addition is held to be justified [S. 56(2)(viic)] 1186

Tribunal held that, the assessee was not able to bring on record any material evidence to prove creditworthiness and capacity of his father to advance such a huge cash gift from any known or established sources of income and, moreover, he did not even operate even a regular bank account, impugned addition was to be confirmed. (AY. 2015-16)
Sunil Ramakrishna v. DCIT (2018) 173 ITD 468 (SMC)(Bang.)(Trib.)

1187 **S. 68 : Cash credits – Share capital – Loans – Furnished several documentary evidences to prove genuineness of unsecured loans and share capital investment and creditworthiness of parties – Addition cannot be made merely relying upon order of SEBI that some of shareholders of assessee were part of several entities who were linked to money laundering – Assessee is not required to prove source of the source – Deletion of addition by CIT(A) is held to be justified.**

Dismissing the appeal of the revenue the Tribunal held that, assessee has Furnished several documentary evidences to prove genuineness of unsecured loans and share capital investment and creditworthiness of parties. Accordingly the addition cannot be made merely relying upon order of SEBI that some of shareholders of assessee were part of several entities who were linked to money laundering. Assessee is not required to prove source of the source. Deletion of addition by CIT(A) is held to be justified. (AY. 2007-08)

ITO v. Iraisaa Hotels (P.) Ltd. (2018) 173 ITD 30 (Mum.)(Trib.)

1188 **S. 68 : Cash credits – Share premium – If the overwhelming evidence in the form of audited accounts, ROC Form 2 & ROC Form 20B shows the 'nature' of receipt to be share premium, it has to be taken to be so-If the Department wants to contend that what is apparent is not real, the onus is on it to prove that it was the assessee's own money which was routed through a third party. S. 68 does not (before & after the 2012 amendment) envisage the valuation of share premium – Consequently, the AO has no jurisdiction to determine whether the share premium is reasonable or not.**

Dismissing the appeal of the revenue the Tribunal held that ; If the overwhelming evidence in the form of audited accounts, ROC Form 2 & ROC Form 20B shows the 'nature' of receipt to be share premium, it has to be taken to be so. If the Department wants to contend that what is apparent is not real, the onus is on it to prove that it was the assessee's own money which was routed through a third party. S. 68 does not (before & after the 2012 amendment) envisage the valuation of share premium. Consequently, the AO has no jurisdiction to determine whether the share premium is reasonable or not.(ITA No. 2317/Mum./2017, dt. 16.11.2018)(AY. 2012-13)

DCIT v. Pirmal Realty Pvt. Ltd. (Mum.)(Trib.), www.itatonline.org

1189 **S. 68 : Cash credits – Black Money in HSBC Bank Account (i) Non-residents are not required to disclose their foreign bank accounts and assets to Indian income-tax authorities (ii) The assessee cannot be asked to prove the negative that the credits found in HSBC Bank is not sourced out of income derived from India (iii) the Govt / legislature never intended to tax foreign accounts of non residents (iv) mere holding of an account outside India does not have led to the conclusion that the amount is tax evaded. [S. 5, 69A]**

Dismissing the appeal of the revenue the Tribunal held that ; (i) Non-residents are not required to disclose their foreign bank accounts and assets to Indian income-tax authorities (ii) The assessee cannot be asked to prove the negative that the credits found in HSBC Bank is not sourced out of income derived from India (iii) the Govt /

legislature never intended to tax foreign accounts of non residents (iv) mere holding of an account outside India does not have led to the conclusion that the amount is tax evaded. (AY. 2007-08)
DCIT v. Hemant Mansukhlal Pandya (2019) 174 ITD 101 / 197 TTJ 161 (Mum.)(Trib.), www.itatonline.org

S. 68 : Cash credits – Gifts from father and sister in law – Need not prove the occasion – Addition cannot be made. [S. 56(2)(v)] 1190
Tribunal held that ; gifts were received through proper banking channel and identity of donors was well established both donors i.e., father and sister-in-law, fell under category of relatives provided in Explanation (e) of section 56 of section (2) Accordingly as per S. 56(2)(v), for accepting a gift from any relative, no occasion needs to be proved. Addition was deleted.
Geeta Dubey (Smt.) v. ITO (2018) 172 ITD 538 (Indore)(Trib.)

S. 68 : Cash credits – Bogus purchase – Liability pursuant to purchase and corresponding stock declared in books – No case of under assessment and no bogus liability to make addition. [S. 143(3)] 1191
Assessee purchased gold jewellery from one 'V' and recorded amount payable to him. AO called assessee's ledger in books of 'V', which did not show purchase in question. Assessee explained that the purchase so made was subsequently returned and was immediately recorded by 'V' but recorded by Assessee in a subsequent year. Tribunal held that since the liability as well as stock were declared and continued in the books of accounts, there was no under assessment, and there was no bogus liability to make the addition. (AY. 2014-15)
Grandhi Sri Venkata Amarendra v. ACIT (2018) 66 ITR 66 (SN)(Vishakha.)(Trib.)

S. 68 : Cash credits – Unsecured loans – Assessee furnished confirmation of account, copies of bank statement, acknowledgment of returns and financial statements of the creditors – Held no addition can be made. 1192
Assessee had taken unsecured loans during the year under consideration. It furnished confirmation of account, copies of bank statements, acknowledgment of returns and financial statements of all the creditors. The Tribunal held that, unlike share capital and share premium, which are irreversible receipts, unsecured loan was not an irreversible receipts and therefore, the angle of inquiry would be little different. Held, assessee discharged the onus and no additions can be made. (AY. 2011-12)
Dy. CIT v. Torque Holdings LLP (2018) 66 ITR 63 (SN) (Ahd.)(Trib.)

1193 **S. 68 : Cash credits – Share premium – The AO cannot assess the share premium as income on the ground that it is "excessive". The share premium worked out in the Valuation Certificate is the minimum amount that can be collected by the assessee under RBI regulations – There is no bar on collecting higher amount as share premium – There are several factors that are taken into consideration while issuing the equity shares to shareholders/investors, such as Venture capital funds and Private Equity funds – The premium is determined between the parties on the basis of commercial considerations and cannot be questioned by the tax authorities – The AO is not entitled to sit on the arm chair of a businessman and regulate the manner of conducting business.**

Dismissing the appeal of the revenue, Tribunal held that; The AO cannot assess the share premium as income on the ground that it is "excessive". The share premium worked out in the Valuation Certificate is the minimum amount that can be collected by the assessee under RBI regulations. There is no bar on collecting higher amount as share premium. There are several factors that are taken into consideration while issuing the equity shares to shareholders/investors, such as Venture capital funds and Private Equity funds. The premium is determined between the parties on the basis of commercial considerations and cannot be questioned by the tax authorities. The AO is not entitled to sit on the arm chair of a businessman and regulate the manner of conducting business.(ITA. No. 6991/Mum./2016, dt. 24.10.2018)(AY. 2012-13)

DCIT v. Varsity Education Management Pvt. Ltd. (Mum.)(Trib.), www.itatonline.org

1194 **S. 68 : Cash credits – Mere non-production of directors of Creditor Company cannot justify addition when detailed evidences filed.**

AO made addition u/S. 68 for the reason of non-production of directors of company. Assessee filed detailed documentary evidences to justify its claim. Tribunal held that mere non production of directors of Shareholder Company cannot justify adverse inference of detailed evidences filed. (AY. 2008-09)

Gopal Forex Pvt. Ltd. v. ITO (2018) 66 ITR 226 (Delhi)(Trib.)

1195 **S. 68 : Cash credits – Sale of furniture – Cost was very less-Amount shown more for sale of furniture to evade stamp duty – Parties admitted that exchange of some furniture was involved but cost involved was much lesser than amount shown by assessee – Excess amount shown on sale of furniture is held to be assessable as cash credits. [S. 2(14)(ii),45, 54, 131]**

Dismissing the appeal of the assessee the Tribunal held that ; all parties admitted that exchange of some furniture was involved but cost involved was much lesser than amount shown by assessee persons also admitted that main purpose of agreement for sale of furniture was to reduce stamp duty involved in transaction and the assessee did not dispute statement of these persons with whom agreement to sale was executed. Accordingly the excess amount shown on sale of furniture is held to be assessable as cash credits. (AY. 2013-14)

Devinder Kumar v. ITO (2018) 172 ITD 103 (Delhi)(Trib.)

S. 68 : Cash credits – Bogus share capital – If (a) the assessee has furnished the Name, Address, PAN no and Share Application Form to prove that the shares were allotted to the applicants and (b) the bank statement show that money was received through banking channels and there were no immediate withdrawals to suggest that the share application amounts have been returned back to these parties in cash, it means the assessee has discharged the primary onus cast upon it to prove the identity, capacity and genuineness of transactions – Additions can not be made as cash credits. 1196

Allowing the appeal of the assessee the Tribunal held that ; If (a) the assessee has furnished the Name, Address, PAN no and Share Application Form to prove that the shares were allotted to the applicants and (b) the bank statement show that money was received through banking channels and there were no immediate withdrawals to suggest that the share application amounts have been returned back to these parties in cash, it means the assessee has discharged the primary onus cast upon it to prove the identity, capacity and genuineness of transactions. Additions can not be made as cash credits. (ITA No. 3212/Mum./2014, dt. 12.10.2018)(AY. 2008-09)

Sunshine Metal & Alloys v. ITO (Mum.)(Trib.), www.itatonline.org

S. 68 : Cash credits – Bogus share capital – Failure by the AO to offer cross – examination of the persons whose statements are relied upon means that no adverse inference can be drawn against the assessee. Dept's plea for a remand is not acceptable if the assessee has discharged primary onus. 1197

Allowing the appeal of the assessee the Tribunal held that; failure by the AO to offer cross-examination of the persons whose statements are relied upon means that no adverse inference can be drawn against the assessee. Dept's plea for a remand is not acceptable if the assessee has discharged primary onus. (ITA No. 5637/Del/2013, dt. 01.10.2018)(AY. 2004-05)

Rajat Export Import (India) Pvt. Ltd. v. ITO (Delhi)(Trib.), www.itatonline.org

S. 68 : Cash credits – Capital gains – Penny stocks – Reliance by AO on statements recorded by the Investigation Wing to conclude that the capital gains are bogus without giving an opportunity of cross examination is a complete violation of principles of natural justice as held in *CCE v. Andaman Timber Industries (2015) 127 DTR 241 (SC)*. The AO has not controverted the evidence of purchase bills, payment of consideration through bank, DEMAT account, allotment of amalgamated shares, sale of shares through stock exchange at prevailing price, payment of STT etc – Addition cannot be made as cash credits. [S. 10 (38), 45, 115BBE] 1198

Dismissing the appeal of the revenue, reliance by AO on statements recorded by the Investigation Wing to conclude that the capital gains are bogus without giving an opportunity of cross examination is a complete violation of principles of natural justice as held in *CCE v. Andaman Timber Industries (2015) 127 DTR 241 (SC)*. The AO has not controverted the evidence of purchase bills, payment of consideration through bank, DEMAT account, allotment of amalgamated shares, sale of shares through stock exchange at prevailing price, payment of STT etc. Addition cannot be made as cash credits. (AY. 2014-15)

DCIT v. Saurabh Mittal (2018) 172 DTR 369 / 196 TTJ 61 (Jaipur)(Trib.), www.itatonline.org

1199 **S. 68 : Cash credits – Share capital – Share premium – Share capital and share premium received from investing companies cannot be assessed as cash credits merely because it failed to produce directors of investing companies personally for confirmation, when other evidence such as their address, PAN, confirmation letters etc. was produced. [S. 131]**

Dismissing the appeal of the revenue the Tribunal held that, Share capital and share premium received from investing companies cannot be assessed as cash credits merely because it failed to produce directors of investing companies personally for confirmation, when other evidence such as their address, PAN, confirmation letters etc. was produced. (AY. 2010-11)

ACIT v. Swiftsol (I) (P.) Ltd. (2018) 171 ITD 577 (Nag.)(Trib.)

1200 **S. 68 : Cash credits – Bogus share capital – A private limited co cannot say that it has no clue about the subscribers to its share capital. The genuineness of the transaction has to be determined by ground realities and not by documents like PAN cards, board resolutions, share certificates etc. Even shell cos have these documents. If the assessee is not able to produce the brains behind these companies and the documents with respect to their financials, the transaction cannot be regarded as genuine – Reassessment is held to be valid and addition is confirmed on merit. [S. 147, 148, 151]**

Dismissing the appeal of the assessee the Tribunal held that ; A private limited co cannot say that it has no clue about the subscribers to its share capital. The genuineness of the transaction has to be determined by ground realities and not by documents like PAN cards, board resolutions, share certificates etc. Even shell cos have these documents. If the assessee is not able to produce the brains behind these companies and the documents with respect to their financials, the transaction cannot be regarded as genuine. Reassessment is held to be valid and addition is confirmed on merit. (AY. 2005-06)

Pee Aar Securities Ltd. v. DCIT (2019) 169 DTR 340 / 195 TTJ 542 / 67 ITR 29 (SN) (Delhi)(Trib.), www.itatonline.org

1201 **S. 68 : Cash credits – Share application money – In the absence of any falsity having been found in the documents submitted by the assessee to prove the identity, creditworthiness and genuineness of the share transaction, these documents could not be summarily rejected as had been done by the Assessing Officer – Deletion of addition is held to be justified.**

Tribunal held that the assessee had again furnished complete particulars of all these companies in terms of name, address, permanent account number, copy of their confirmation, copy of their Income-tax returns, copy of their balance-sheet and bank statements through which the cheque payment had been made. Further, the Commissioner (Appeals) had returned a finding that the balance-sheet and the bank statement of these companies proved their creditworthiness for making further investment during the year 2010-11. Even the Assessing Officer had not taken any effort to examine these documents and had gone by the so-called prima facie view of the Deputy Director and such a prima facie view without further examination could not be a basis for forming a final view. If the Assessing Officer failed to unearth any

wrong or illegal dealings, he could not obdurately adhere to his suspicions and treat the subscribed capital as the undisclosed income of the company. In the absence of any falsity having been found in the documents submitted by the assessee to prove the identity, creditworthiness and genuineness of the share transaction, these documents could not be summarily rejected as had been done by the Assessing Officer. (AY. 2010-2011)
ITO v. Dhanlaxmi Equipment P. Ltd. (2018) 63 ITR 33(SN) / 193 TTJ 236 (Jaipur)(Trib.)

S. 68 : Cash credits – cash deposited in bank – Held, opening balance was not doubted – Held, nothing to show that opening cash balance was utilized somewhere else – Held, accepted part deposit out of the said balance and only part not accepted. Held, addition not justified. 1202
The AO taxed cash deposited in bank as undisclosed income of the assessee. The Tribunal held that, the AO did not doubt the availability of the opening balance with the assessee. He had not brought anything on record to show that opening balance was utilized somewhere else. In fact he himself accepted the cash deposit of ₹ 15 lakh from the opening balance and doubted the balance deposit of ₹ 26.55. Additions were made only on the ground that wealth tax returns were not filed. The Tribunal held, that no addition can be sustained. (AY. 2011-12)
Rajinder Singh v. ACIT (2018) 63 ITR 550 (Delhi)(Trib.)

S. 68 : Cash credits – Unsecured loan – Furnished names and addresses of concerned parties, their PAN and confirmation with bank account and their Income tax returns, and AO had not carried out any investigation to show that those companies did not exist but were paper companies – Addition cannot be made. [S. 131] 1203
Tribunal held that though the assessee has submitted details and documents, the AO failed to carry out any further investigation to show that companies who provided loans and share application money were just paper companies. Tribunal further observed that the AO failed to call for details from the investor/lending companies which could be by way of summons u/s. 131. The Tribunal provided with list of ways and means through which AO could have called for various details with regarding to the existence of investor/lending companies viz. details from MCA website or details of Directors of such companies, details from bankers with respect to any unusual transactions, etc. However, the AO failed to investigate the correct facts and concluded that such investor/lending companies are just paper companies. Thus, Tribunal concluded that the assessee has discharged the initial onus as per S. 68 of the Act with respect to loan and share application money and that AO does not have any evidence to allege that such monies taken by the assessee are bogus in nature. Thus, Tribunal upheld the order of CIT(A) and deleted the whole addition made by the AO. (AY. 2012-13, 2013-14)
ACIT v. Shyam Indus Power Solutions (P) Ltd. (2018) 62 ITR 512 (Delhi)(Trib.)

S. 68 : Cash credits – Income from undisclosed sources – Amount received in cash in respect of sale of immovable property – Sale deed registered in the name of buyer company – Addition if at all to be made in the hands of buyer and not in the hands of the assessee. 1204
It has been held by the Appellate Tribunal that when undisputedly, the sale deed of the property had been registered in the name of buyer company and some part of

consideration has been paid by the buyer company in cash, the addition if any should be made in the hands of the buyer company and not the assessee. Moreover, when the assessee had not been confronted with the statement relied upon by the AO for framing the assessment, the statement could not be utilized against the assessee. (AY. 2010-11)
Dy.CIT v. Ajay Enterprises Pvt. Ltd. (2018) 63 ITR 479 (Delhi)(Trib.)

1205 **S. 68 : Cash credits – Produced sufficient documentary evidence before AO, at the assessment as well as appellate stage to prove the genuineness of the transaction-Share capital, share premium received by a Company from investors can not be assessed as unexplained cash credit – The valuation report filed by the assessee support explanation of assessee that shares were issued at premium which were below the fair market value – Addition cannot be made as income from other sources. [S. 56(2)(viib), R. 11UA(2)(a)]**

Allowing the appeal of the assessee the Tribunal held that, failure to produce the assessment record by the revenue adverse inference against the Revenue and held that all the documents were filed before AO even at assessment stage. Considering the facts of the case, in the light of material on record and the decisions referred it is clear that assessee produced sufficient documentary evidence before AO, at the assessment as well as appellate stage to prove ingredients of S. 68 of the Act. The AO however, did not make any further enquiry on the documents filed by the assessee. Thus, the AO failed to conduct scrutiny of the documents at assessment stage and merely suspected the transactions in question on the irrelevant reasons. The AO did not make any enquiry from the Banker of the Investor and Income Tax record of the Investor Company. The assessee, thus, proved the identity of the Investor, its creditworthiness and genuineness of the transaction in the matter. Accordingly the addition was deleted. The valuation report filed by the assessee support explanation of assessee that shares were issued at premium which were below the fair market value per share of ₹ 1221/-. Accordingly the addition cannot be made as income from other sources. (AY. 2014-2015)
Priyatam Plaschem Pvt. Ltd. v. ITO (2018) 67 ITR 649 (Delhi)(Trib.), www.itatonline.org

1206 **S. 68 : Cash credits – Presumptive taxation – Retail business – Not maintain books of account – Return filed under presumptive taxation – Cash deposits in bank accounts of assessee – Returned income not matching presumptive rate of tax on gross turnover – Department to treat return as invalid – Addition cannot be made as cash credits. [S. 44AF]**

Tribunal held that the cash was deposited in the bank accounts of the assessee. The returned income did not match the presumptive rate of tax on the gross turnover of the assessee. In the returns of income itself the assessee made it very clear that she was not maintaining books of account. If the Department was of the view that the returns had not been filed in terms of the provisions of section 44AF nothing prevented the Department from treating the return of income as invalid. The Assessing Officer straightaway applied the provisions of section 68 to the cash found deposited in the bank accounts knowing fully well that the assessee was not maintaining any books of account. An addition under S. 68 can only be made where any sum is credited in the books of the assessee maintained for any previous year. Thus, the very sine qua non

for making of an addition under section 68 presupposes a credit of the amount in the books of the assessee. Therefore since no books of account were maintained in the ordinary course of business of the assessee, no such addition under S. 68 was tenable. The Assessing Officer was to delete the additions so made under S. 68 in the respective assessment years. Referred *CIT v. Bhaichand H. Gandhi (1983) 141 ITR 67 (Bom.) (HC), Anand Ram Raitani v. CIT (1977) 223 ITR 544 (Gauhati)(HC)* (AY. 2010-11 to 2012-13)
Babbal Bhatia (Smt) v. ITO (2018) 65 ITR 532 (Delhi)(Trib.)

S. 68 : Cash credits – Gift from relatives-Depositors mostly labourers – Failure to prove creditworthiness – Addition is held to be justified. 1207
Dismissing the appeal the Tribunal held that ;the assessee had failed to prove his case as neither he nor his relatives and friend had been maintaining any bank account and they were labourers or farmers. Therefore, their creditworthiness was in doubt. There was no reason to interfere in the orders passed by the authorities. (AY. 2006-07)
Sitaram Ramchanddas Patel v. ITO (2018) 65 ITR 185 (Ahd.)(Trib.)

S. 68 : Cash credits – Deposit of cash in bank – Advance received for sale of land which was deposited in bank and which was returned back due to cancellation of deal-Addition cannot be made as income from undisclosed sources. 1208
Tribunal held that, deposit of cash in bank-was in respect of advance received for sale of land which was deposited in bank and which was returned back due to cancellation of deal. Assessee has filed the affidavit of the persons who have paid the deposit of cash. Accordingly addition cannot be made as income from undisclosed sources. (AY. 2006-07, 2008-09)
Jagdish Narayan Sharma v. ITO (2018) 65 ITR 194 / 194 TTJ 825 / (2019) 174 DTR 25 (Jaipur)(Trib.)

S. 68 : Cash credits – Bogus share capital – If the AO has remained silent with folded hands and has not made any independent inquiry from the concerned AO of share holder company and has not controverted the evidence produced by the assessee, that itself is sufficient to knock off the addition made. The fact that there is no personal appearance from director of said cash creditor (share holder) does not mean that an adverse inference u/s. 68 can be drawn by the AO without the AO discharging the secondary burden lying upon him. 1209
Allowing the appeal of the assessee the Tribunal held that, If the AO has remained silent with folded hands and has not made any independent inquiry from the concerned AO of share holder company and has not controverted the evidence produced by the assessee, that itself is sufficient to knock off the addition made. The fact that there is no personal appearance from director of said cash creditor (share holder) does not mean that an adverse inference u/s 68 can be drawn by the AO without the AO discharging the secondary burden lying upon him. (ITA No. 3133/Del/2018, dt. 25.06.2018) (AY. 2009-10)
Moti Adhesives Pvt. Ltd. v. ITO (Delhi)(Trib.), www.itatonline.org

1210 **S. 68 : Cash credits – Bogus share premium – Addition cannot be made on the ground that the directors of the share subscribers did not turn up before the AO. The assessee can be required to prove only such facts which are in his knowledge. Creditworthiness of the subscriber cannot be disputed by the AO of the assessee but by the AO of the subscriber. If the assessee has discharged its onus to prove identity, creditworthiness & genuineness of the share applicants, the onus shifts to AO to disprove the documents furnished by assessee. In absence of any investigation, much less gathering of evidence by the AO, an addition cannot be sustained merely based on inferences drawn by circumstance.**

Dismissing the appeal of the revenue the Tribunal held that on account of alleged bogus share premium, addition cannot be made on the ground that the directors of the share subscribers did not turn up before the AO. The assessee can be required to prove only such facts which are in his knowledge. Creditworthiness of the subscriber cannot be disputed by the AO of the assessee but by the AO of the subscriber. If the assessee has discharged its onus to prove identity, creditworthiness & genuineness of the share applicants, the onus shifts to AO to disprove the documents furnished by assessee. In absence of any investigation, much less gathering of evidence by the AO, an addition cannot be sustained merely based on inferences drawn by circumstance. Tribunal also held that, S. 68 of the Act provides that if any sum found credited in the year in respect of which the assessee fails to explain the nature and source shall be assessed as its undisclosed income. In the facts of the present case, both the nature & source of the share application received was fully explained by the assessee. The assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants. The PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed on AO's record. Accordingly all the three conditions as required u/S. 68 of the Act i.e. the identity, creditworthiness and genuineness of the transaction was placed before the AO and the onus shifted to AO to disprove the materials placed before him. Without doing so, the addition made by the AO is based on conjectures and surmises cannot be justified. In the facts and circumstances of the case as discussed above, no addition was warranted under S. 68 of the Act. (ITA. No. 1162/Kol/2015, dt. 14.06.2018) (AY. 2012-13)

ITO v. Wiz-Tech Solutions Pvt. Ltd. (Kol.)(Trib.), www.itatonline.org

1211 **S. 68 : Cash credits – Share capital – Mere submission of name & address, Balance Sheet & bank statement of the subscribers is not sufficient to discharge the onus. The assessee has to justify the allotment of shares to outsiders at exorbitant premium with cogent material and not bald statements. Addition is held to be justified. [S. 56(2)(viib), 2(24)(xvi)]**

Dismissing the appeal of the assessee the Tribunal held that, mere submission of name & address, Balance Sheet & bank statement of the subscribers is not sufficient to discharge the onus. The assessee has to justify the allotment of shares to outsiders at exorbitant premium with cogent material and not bald statements The fact that S. 56(2)(viib) r. w. S. 2(24)(xvi) comes into effect from AY 2013-14 does not mean that for earlier years the assessee is not required to justify the identity, genuineness and creditworthiness of the transaction. (AY. 2012-13)

Pratik Syntex Private Ltd. v. ITO (2018) 64 ITR 77 (SN) (Mum.)(Trib.), www.itatonline.org

S. 68 : Cash credits – Share capital – Shell companies – Accommodation entries were routed through shell companies hence addition was held to be justified. [S. 131, 133(6)] 1212
Dismissing the appeal of the assessee the Tribunal held that; The assessee set up a devise to introduce unaccounted money through various shell companies in the form of share capital at a premium. The manner of issue of the shares through these companies, the manner of providing confirmation on the letter pad, the manner of maintaining the annual accounts and the manner of submitting the bank accounts on the letter pad or on a computerized print out to give it a semblance of originality to defraud the revenue shows the whole picture how the accommodation entries are routed through shell companies as share capital to evade taxes. (ITA No. 4520/Del/2009 and 613/Del/2013, dt. 28.04.2018)(AY. 2006-07)
Shaan Construction P. Ltd. v. ITO (Delhi)(Trib.), www.itatonline.org

S. 68 : Cash credits – Share capital – Share holders did not respond to summons can not be the basis to treat the share capital as bogus. [S. 133(6)] 1213
Allowing the appeal of the assessee the Court held that; If the assessee has discharged the initial onus regarding the identity, creditworthiness and genuineness, the onus shifts to the AO to bring material or evidence to discredit the same. The fact that the shareholders did not respond to S. 133(6) summons is not sufficient to draw an adverse inference. There must be material to implicate the assessee in a collusive arrangement with person who are accommodation entry providers. (ITA No. 5955/Del/2014, dt. 23.02.2018)(AY. 2010-11)
Umbrella Project Pvt. Ltd. v. ITO (Delhi)(Trib.), www.itatonline.org

S. 68 : Cash credits – Share application – Investors have complied with details u/s. 133(6) and the summons was not issued to the investors though request was made by the assessee, addition was held to be not justified. [S. 131, 133(6)] 1214
Allowing the appeal of the assessee the Tribunal held that; Investors have complied with details u/s 133(6) and the summons was not issued to the investors though request was made by the assessee, addition was held to be not justified. (AY. 2008-09)
Prinku landfin (P.) Ltd. v. ITO (2018) 170 ITD 139 (Delhi)(Trib.)

S. 68 : Cash credits – Share premium can be assessed as undisclosed income if directors are allotted the shares at par and others at premium without any justification. Addition was held to be justified. Issue of second notice for reassessment was held to be valid. [S. 69, 147, 148] 1215
Dismissing the appeal of the assessee the Tribunal held that; Share premium received can be assessed as undisclosed income if (a) directors are allotted shares at par while others are allotted at premium, (b) the high premium is not justified by a valuation report, (c) the high premium is not supported by the financials, (d) based on financials the value of shares is less and no genuine investor would invest at the premium, (e) there are discrepancies & abnormal features which show transaction as "made up" to camouflage real purpose. As regards reassessment is concern, the issue of second notice for reassessment was held to be valid. (AY. 2008-09)
Cornerstone Property Investments Pvt. Ltd. v. ITO (2018) 193 TTJ 58 (Bang.)(Trib.), www.itatonline.org

1216 **S. 68 : Cash credits – Share application money – Addition cannot be made as cash credits unless the AO does not make any investigation on the documentary evidence filed by the assessee or asking for production of the investors. [S. 131]**
Dismissing the appeal of the revenue, the Tribunal held that; Share application money cannot be treated as unexplained credit if the AO does not make any investigation on the documentary evidences filed by the assessee or ask for the production of the investors for examination u/s 131 or if adverse material is found during search to prove that share application money is bogus or an arranged affair of the assessee. (ITA No. 453/del/2016, dt. 01.01.2018)(AY. 2012-13)
ACIT v. TRN Energy Pvt. Ltd. (Delhi)(Trib.), www.itatonline.org

1217 **S. 68 : Cash credits – Share capital – Identity, genuiness and credit worthiness was provided by filing PAN master data, Return ackowledgement return etc. Deletion of addition was held to be justified. [S. 133(6)]**
Dismissing the appeal of the revenue, the Tribunal held that ;when all the details vis-à-vis issue of share capital were submitted to the AO and the assessee had proved the identity, genuineness of transaction and creditworthiness of the parties by filing various documents including, PAN, CIN master data, share application form, Board Resolution, share certificate, confirmation of account, I.T. Acknowledgement receipt of subscribers, balancesheets, bank statements, reply to the notice issued u/S. 133(6) of shareholders, affidavit filed by the directors of shareholder companies, sales-tax returns and share capital and reserves of shareholders, addition was not justified. (AY. 2010-11)
ITO v. Sringeri Technologies (P) Ltd. (2018) 191 TTJ 803 / 169 DTR 321 (Mum.)(Trib.)

1218 **S. 68 : Cash credits – Shell companies – Share premium – AO has not investigated the financial activity of companies which have invested in shares hence the matter was remanded to the file of AO.**
Tribunal held that, enquiries made by the AO did not indicate that he has examined all the directors of the all the invested companies. The AO failed to bring out the facts that the said companies were Shell Companies, therefore the matter was remanded back to AO. (AY. 2010 – 2011)
Eshan Minerals (P) Ltd. v. Dy. CIT (2018) 161 DTR 369 / 191 TTJ 753 (Pune)(Trib.)

1219 **S. 68 : Cash credits : Share application money – No adverse material was found in the course of search proceedings, hence addition was held to be not justified. [S. 153A]**
Tribunal held that, during the course of search, no adverse material found to prove that the share application money received was bogus or non-genuine. As the assessee filed details in the form of bank statements books of account, PAN, confirmation etc. addition made by the AO was without any basis, deleted the addition. (AY. 2007-08, 2009-10, 2010-11)
Garuda Imaging & Diagnostics (P) Ltd. v. ACIT (2018) 191 TTJ 765 (Delhi)(Trib.)
ACIT v. Sindhu Holding Ltd. (2018) 191 TTJ 765 (Delhi)(Trib.)

S. 68 : Cash credits – Deposit of sale consideration of agricultural land in savings bank account can not be assessed as cash credits. [S. 2(14)(iii)] 1220

Dismissing the appeal of the revenue, the Tribunal held that, Deposit of sale consideration of agricultural land in savings bank account can not be assessed as cash credits, as the assessee has demonstrated that the population of the village in which the land is situated is less than 10000 people. (AY. 2009-10)

ITO v. Kulwinder Singh (2018) 169 ITD 577 / 192 TTJ 61 / 163 DTR 23 (SMC)(Chd.)(Trib.)

S. 68 : Cash credits – Share application – The assessee explained the source of money received and was not answerable for source of the money in the hands of investors. 1221

Allowing the appeal of the assessee the Tribunal held that, the assessee explained the source of money received and was not answerable for source of the money in the hands of investors. Addition if any can be made in the hands of the investors and not in the assessment of the assessee. (AY. 2012-13)

Prachan Fashion House P. Ltd v. ITO (2018) 63 ITR 54 (SN) (SMC)(Delhi)(Trib.)

S. 68 : Cash credits – Sale of shares – Offline transactions – Merely on the ground that six companies failed to reply to notices issued to them, addition was held to be not justified. [S. 133(6)] 1222

Allowing the appeal of the assessee, the Tribunal held that; merely on the ground that six companies failed to reply to notices issued to them, addition was held to be not justified, when the assessee had furnished all the necessary details of six companies along with the permanent account numbers. (AY. 2012-13)

Kesha Appliances Pvt. Ltd v. ITO (2018) 63 ITR 294 (Delhi) (Trib.)

S. 68 : Cash credits – Share application money – Existing share holders – Confirmation and other details were filed – Addition as undisclosed income was held to be not justified. 1223

Dismissing the appeal of the revenue, the Tribunal held that the assesse has furnished complete particulars such as, names address, permanent account numbers confirmation letters income tax returns and balance sheet, and all are existing share holders therefore share application money cannot be assessed as undisclosed income of the assesse. (AY. 2010-11)

ITO v. Dhanalaxmi Equipment P. Ltd (2018) 63 ITR 33 (SN) / 165 DTR 177 (Jaipur)(Trib.)

S. 68 : Cash credits – Share application money – Failure by AO to make inquiry on documentary evidence produced by assessee, deletion of addition was held to be justified. [S. 133(6), 153A] 1224

The AO doubted the genuineness of the transaction because notice under section 133(6) could not be served upon the investors but the assessee had provided correct and updated address of the entity in terms of the MCA web site. The Assessing Officer instead of issuing fresh notice under section 133(6) at the correct address of the investors, merely relied upon the fact that the earlier letter had been returned unserved. Since the Assessing Officer did not issue fresh notice at the correct address provided

by the assessee and no coercive action had been taken for the production of investors, no adverse inference could be drawn against the assessee. The orders of the authorities were to be set aside and the addition was to be deleted. (AY. 2011-12)
Prabhatam Investment Pvt. Ltd. v. ACIT (2018) 61 ITR 352 (Delhi)(Trib.)
Prabhatam Buildtech Ltd. v. ACIT (2018) 61 ITR 352 (Delhi)(Trib.)
Prabhatam Build well Pvt. Ltd. v. ACIT (2018) 61 ITR 352 (Delhi)(Trib.)

1225 **S. 68 : Cash credits – Suspicious transaction in shares – Penny stocks – Capital gains – Off market transactions for which payments were made in cash – Predated contracts – Genuineness was doubted – Addition was held to be justified. [S. 10(38), 45]**
Dismissing the appeal of the assessee the Tribunal held that,the said shares were purchased in off market transactions for which payments were made in cash. The said purchases have been treated as bogus and sham transactions by the Revenue as it is alleged that certain brokers have manipulated and issued pre-dated contract notes which even did not have details such as time of contract, trade number, transaction details etc and payments were also made in cash by the assessee against such sham and bogus purchase with the objective of introducing by manipulating tax free exempt long term capital gains u/s 10(38) of the Act leading to escapement of income from taxation. (ITA. No. 995/Mum./2012 dt 2-8-2016)
Ratnakar M. Pujari v. ITO (Mum.)(Trib.) www.itatonline.org

1226 **S. 68 : Cash credits – Suspicious transaction in shares – Penny stocks – Capital gains – Increase of 432% with in six months without any economic or technical basis – Purchasers could not be located – Transfer deeds did not bear the names or other particulars of the sellers – Prices on exchange was manipulated by two brokers in a systematic manner – Seller, broker, purchasers are located in different cities – Purchase and sale transactions in shares have been executed off market without in fact even fulfilling the reporting requirements in respect thereof under the regulatory frame work – Additions confirmed as cash credits treating the transactions as bogus. [S. 45, 54F]**
Dismissing the appeal of the assessee the Tribunal held that, purchasers could not be located. Transfer deeds did not bear the names or other particulars of the sellers. Prices on exchange was manipulated by two brokers in a systematic manner. Seller, broker, purchasers are located in different cities. Purchase and sale transactions in shares have been executed off market without in fact even fulfilling the reporting requirements in respect thereof under the regulatory frame work. Increase of 432% with in six months without any economic or technical basis. Additions confirmed as cash credits treating the transactions as bogus. (ITA No. 4699 / 4700 /M/ 2011 dt 25-04 2014 (AY. 2004-05, 2005-06)
Ziauddin A. Siddique v. JCIT (Mum.)(Trib.), www.itatonline.org
Editorial. Appeal of assessee is admitted, Zuddin A. Siddique v. JCIT (Bom.)(HC) (ITA No. 287 of 2015 dt 31-10-2017)

S. 69 : Unexplained investments – 'On-money' – Sale of land – Burden is on the department to show that 'on-money' consideration passed to the seller from the purchaser – Opportunity to cross examine the witnesses was not provided to the assessee-Addition was deleted. [S. 131] 1227

Tribunal deleted the addition of 'on-money' said to have been received in respect of the land of the assessee holding that unless it was established by the department, that as a matter of fact, the consideration passed to the seller from the purchaser, the Department had no right to make any additions, especially since none of the witnesses were examines and the assessee was not provided an opportunity to cross – examine them.

Sunita Dhadda v. DCIT [2012] 148 TTJ 719 (Jaipur) (Trib.) [High Court affirmed the order of the Tribunal – D. B. I. T. A. No. 197 of 2012 dt. 31-07-2017. On appeal by the department SLP rejected – S L P. (C) No. 9002 of 2018 dt. 28-03-2018].

CIT v. Sunita Dhadda (2018) 403 ITR 309 (St.)(SC)

Editorial : Order in CIT v. Sunita Dhadda (2018) 406 ITR 220 (Raj.) (HC) / CIT v. Vijay Laxmi Dhadda (Smt) (2018) 406 ITR 220 (Raj) (HC) is affirmed.

S. 69 : Unexplained investments – Undisclosed sales of flats – Sale proceeds never came in to possession of the assessee – Deletion of addition is held to be justified. 1228

Addition was made in respect of undisclosed sales of flats. On appeal Tribunal deleted the addition,on basis of material on record, came to conclusion that sale was in fact made by one 'L' i.e. developer and, sale proceeds never came into possession of assessee. High Court affirmed the order of the Tribunal.

CIT v. Sadiq Sheikh (2018) 100 taxmann.com 9 / 259 Taxman 423 (Bom.)(HC)

Editorial : SLP of revenue is dismissed; CIT v. Sadiq Sheikh (2018) 259 Taxman 422 (SC)

S. 69 : Unexplained investments – Unable to rebut a statement made against him and failure to explain the source – Statement could not be read in piecemeal depending on what part suits to the assessee and what part does not-Addition is held to be justified. [S. 131] 1229

Assessee purchased certain land and sold it to a third party. Such third party, in his statement accepted that it had paid an advance of ₹ 8 lacs but also stated that the assessee had in turn advanced ₹ 20 lacs to the seller from which it had purchased the land. The agreement between the assessee and the seller also stated that it had paid a sum of ₹ 20 lacs as bayana for the property. Assessee relied on this statement to the extent that ₹ 8 lacs were explained but did not agree with the part of the statement that it had paid ₹ 20 lacs to the seller. The ITAT confirmed the addition to the extent of ₹ 20 lacs under section 69 of the Act. On appeal, High Court held that the statement could not be read in piecemeal depending on what part suits to the assessee and what part does not. It was held that the prima facie evidence was against the assessee and it was unable to explain the nature and source of the money. In view of the findings of fact that the assessee had paid a sum of ₹ 20 lacs, the addition was confirmed. (AY. 2006-07)

Vijay Jain v. CIT(A) (2018) 170 DTR 395 / (2019) 308 CTR 411 (MP)(HC)

1230 **S. 69 : Unexplained investments – Investment in immovable property – Merely on the basis of statement u/s. 132(4) during the course search proceedings additions cannot be made-Order of Tribunal deleting the addition is affirmed. [S. 132(4)]**

Dismissing the appeal of the revenue the Court held that, merely on the basis of statement u/s 132(4) during the course search proceedings additions cannot be made for alleged investment in immoveable property. Order of Tribunal deleting the addition is affirmed.

CIT v. Nirmal Kumar Agarwal (2018) 99 taxmann.com 291 / 259 Taxman 320 (Raj.)(HC)

Editorial : SLP is granted to revenue, CIT v. Nirmal Kumar Agarwal (2018) 259 Taxman 320 (SC)

1231 **S. 69 : Undisclosed investment – Deletion of addition by the Tribunal is held to be on appreciation of evidence – No substantial question of law. [S. 260A]**

Dismissing the appeal of the revenue the Court held that; deletion of addition by the Tribunal is held to be on appreciation of evidence. Accordingly no substantial question of law.

CIT v. Lodha Builders (2018) 259 Taxman 87 (Raj.)(HC)

Editorial : SLP of revenue is dismissed, CIT v. Lodha Builders. (2018) 259 Taxman 86 (SC)

1232 **S. 69 : Unexplained investments – Cash payments – diary seized from sister concern – Since no other evidence was recorded during search nor concerned person against whose name entry in diary appeared was examined, said addition was to be deleted. [S. 132(4)]**

Dismissing the appeal of the revenue the,court held that merely on basis of certain figure appearing in diary seized from sister concern, an addition cannot be made since no other evidence was recorded during search nor concerned person against whose name entry in diary appeared was examined. (AY. 1995-1996)

CIT v. Ansal Properties & Industries (2018) 259 Taxman 103 / 170 DTR 225 / (2019) 308 CTR 510 (Delhi)(HC)

1233 **S. 69 : Unexplained Investments – Unexplained Cash – Construction of building – Withdrawal from bank and redeposit – Explanation was not satisfactory – Addition as unexplained investments is held to be justified. [S. 69A]**

Dismissing the appeal of the assessee the Court held that ; the incongruities in the cash flow statement with reference to the quantum and dates of withdrawal and deposit and failure to produce any bills or vouchers and the accounts relating to construction, to verify and justify the cash withdrawals of ₹ 1,82,00,000 during the entire year for meeting cost of construction and redeposits of ₹ 82,00,000 when money was not required, exposed the concocted explanation. The assessee had claimed that the entire construction was without any bank transaction or bill, vouchers, etc. which was not plausible. The facts on record were glaring and one-sided. It was obvious that the bills of purchases, payments made to contractor, etc., and the accounts relating to

construction were held back, as they would have revealed the truth and would not have supported the already weak and tenuous explanation of the assessee. The reasoning given by the Tribunal was not perverse and was based and founded on the evidence and material on record. (AY. 2011-12)
Dinesh Kumar Jain (Late) (Through Legal Heir Ankit Jain) v. PCIT (2018) 407 ITR 65 / 169 DTR 371 / 304 CTR 817 (Delhi)(HC)

S. 69 : Unexplained investments – Search – Advance receipts – Real estate business – Amounts were received from bulk purchasers as per agreement and, that assessee had also filed cash flow statement and looking to modus operandi of business said sums were verifiable, thus, no addition was required to be made on this account 1234
Dismissing the appeal of the revenue, the Court held that ;amounts were received from bulk purchasers as per agreement and, that assessee had also filed cash flow statement and looking to modus operandi of business said sums were verifiable; thus, no addition was required to be made on this account.
CIT v. Ranjeet Singh Yadav (2018) 257 Taxman 252 (Raj.)(HC)
Editorial : SLP of revenue is dismissed; CIT v. Ranjeet Singh Yadav (2018) 257 Taxman 29 (SC)

S. 69 : Unexplained investment – Undisclosed income – Merely on the basis of AIR information and ITS data addition cannot be made. [S. 131, 133(6), 143(3)] 1235
Dismissing the appeal of the revenue the Tribunal held that, Merely on the basis of AIR information and ITS data addition cannot be made. Minimum AO could have done was to issue notices u/s 133(6) or 131 to concerned parties whose identities were available before AO, to ascertain correct fact. Followed *CIT v. S. Ganesh ITA No 1930 /2011 dt 1-03 2014, A. F. Ferguson & Co v. JCIT ITA no 5037 /Mum./ 2012 dt 17-10-2014 Shreeballabh R. Lohiya v, ITO ITA no 412 /Mum./ 2011 dt. 8-8-2018)* (AY. 2008-09, 2010-11, 2011-12)
Dy.CIT v. Deloitte Touche Tohmatsu India (P) Ltd. (2018) 193 TTJ 65 (UO) (Mum.)(Trib.)

S. 69 : Unexplained investments – Variation in valuation of closing stock – No supporting document is produced – Addition is held to be justified. [S. 133A, 143(3)] 1236
Tribunal held that the assessee has not produced any supporting documents regarding variation in valuation of closing stock accordingly the addition is held to be justified. (AY. 2005-06, 2006-07)
Floorings v. ITO (2018) 64 ITR 34(SN) (Pune)(Trib.)
Bhikshu Granimart v. Dy.CIT (2018) 64 ITR 34 (SN)(Pune)(Trib.)

S. 69 : Unexplained investments – Foreign remittances – From a foreign bank, as a result of disbursements from a family trust – Addition is held to be not justified. 1237
Dismissing the appeal of the revenue the Tribunal held that, sum was received by assessee as a beneficiary of family trust set up by her father in 1974 in UK. Amount received from a foreign bank, as a result of disbursements from a family trust. CIT(A) is justified in deleting the addition. (AY. 2008-09)
DCIT v. Pratibha Pankaj Patel (2018) 173 ITD 593 / (2019) 175 DTR 105 (Ahd.)(Trib.)

1238 **S. 69 : Unexplained investments – Loose papers – Proposal to buy flat – Deal was cancelled – Addition is held to be not justified.**
Tribunal held that, papers seized only reflected a proposal to buy a flat which was later on cancelled. The assessee also submitted documentary evidence showing cancellation of cheques given for purchase of flat in question. Accordingly the loose papers seized in course of search could not be said to be a conclusive proof of cash payment towards purchase of flat. Accordingly the deletion of addition by CIT(A) is held to be justified. (AY. 2011-12)
Priyanka Chopra (Ms). v. DCIT (2018) 171 ITD 437 / 170 DTR 342 / 195 TTJ 900 (Mum.) (Trib.)
Madhu Ashok Chopra v. DCIT (2018) 171 ITD 437 / 170 DTR 342 / 195 TTJ 900 (Mum.) (Trib.)

1239 **S. 69 : Unexplained investments – AIR information – Firm purchasing the land in the name of partner – Addition cannot be made in the hands of the partner on the ground that PAN of partner is shown in the registration deed.**
Dismissing the appeal of the revenue the Tribunal held that addition cannot be made in the assessment of partner only on the basis of AIR information. As per S. 14 of the Indian Partnership Act, partner can hold the property on behalf of the firm.(ITA No.1597/PN/2013 AY. 2009-10. dt 25-03-2015)
ITO v. Amit Vijay Kulkarni (Pune) (Trib.), www.itatonline.org

1240 **S. 69 : Unexplained investments – Books rejected in original proceedings and income estimated at 8 percent of the gross contact receipts – Addition cannot be made u/s. 69 in reassessment proceedings. [S. 147]**
The original assessment was made by the Assessing Officer rejecting the books of account of the assessee and estimating the income of the assessee at 8 per cent. of the gross contract receipts. Once the books of account of the assessee were rejected, the books could not be relied on for making addition under S. 69 in reassessment proceedings. (AY. 2009-2010)
Hemant Kumar Pradhan v. ITO (2018) 62 ITR 57 (Cuttack)(Trib.)

1241 **S. 69 : Unexplained investments – jewellery found during the course of search – Held, jewellery found was within the normal limits of jewellery specified under Board's Circular, no addition justified.**
The Tribunal held that jewellery found during the course of search, if within the normal limits specified in Board Instruction No. 1961 dt. 11.5.1994, then the same cannot be taxed. (AY. 2014-15)
Ritu Bajaj (Smt.) v. Dy. CIT (2018) 63 ITR 594 (Delhi)(Trib.)

1242 **S. 69 : Income from undisclosed sources – Unexplained investments – Gross profit is higher than earlier years – Additions cannot be made.**
Tribunal held that the Assessee had, during the assessment proceeding, given a detailed quantitative reconciliation showing that the undisclosed stock worth ₹ 60,91,883/-which is indeed the semi-furnished goods and hence not recorded in

the books of accounts during the course of assessment proceedings. The AO did not acknowledge this reconciliation provided by the Assessee. This issue was set aside to the file of the AO to examine the reconciliation statement filed before the lower authorities. So far as the issue of sustaining the addition of ₹ 8,04,163/-applying gross profit at 22.82% on difference in stock found as on the date of search is concerned, it was observed that the appellant's profit in earlier year was less than the year under consideration meaning thereby his Gross Profit for the year under consideration was higher than earlier years and thus such an addition cannot be allowed. (AY. 2010-11)
Baroda Moulds and Dies v. ACIT (2018) 62 ITR 168 (Ahd.)(Trib.)

S. 69 : Unexplained investments – On money – No addition can be made on the basis of the documents found from premises of third party neither the name of assessee was mentioned nor any evidence was found for purchase of any property. [S. 132, 153A] 1243
Allowing the appeal of the assessee the Tribunal held that; no addition under S. 69 can be made in case of assessee on basis of documents being found from premises of third party where neither name of assessee was mentioned nor any document was found evidencing fact that assessee had paid any cash as on-money to said party for purchase of any property. (AY. 2007-08, 2010-11)
Regency Mahavir Properties v. ACIT (2018) 169 ITD 35 / 64 ITR 628 (Mum.)(Trib.)

S. 69 : Unexplained investments – Family settlement – Sale deed showed cash consideration was paid therefore addition as unexplained investment was held to be justified. 1244
Dismissing the appeal of the assessee the Tribunal held that, as per family settlement, property was transferred in her name without monetary consideration but sale deed clearly showed that assessee had paid consideration in cash therefore the said investment of assessee was treated as unexplained investment. (AY. 2009-10)
Mahendri Devi v. ITO (2018) 170 ITD 181 (Delhi)(Trib.)

S. 69 : Unexplained investments – Foreign Bank deposits – Information was received from Central Board of Direct Taxes that assessee was beneficiary of a trust in foreign Country, having account in LGT Bank, Liechtenstein, Germany – Addition was held to be justified. 1245
Dismissing the appeal of the assessee the Tribunal held that; on the basis of information received from Central Board of Direct Taxes that assessee was beneficiary of a trust in foreign Country, having account in LGT Bank, Liechtenstein, Germany, addition was held to be justified. The Tribunal also held that; it was on assessee to prove that it had no beneficial interest in said bank account or that said bank account was a fictitious story, which assessee had failed to discharge; therefore, impugned addition in hands of assessee were justified. (AY. 2005-06, 2010-11 to 2012-13)
Ambrish Manoj Dhupelia v. DCIT (2018) 168 ITD 407 (SMC)(Mum.)(Trib.)

S. 69 : Unexplained investments – Investment in shares and bonds – Addition was deleted as the alleged information was not made available to the assesse. 1246
Tribunal deleted the addition as the revenue failed to provide the basis of addition on the basis of information. Similarly the revenue alleged that assessee was holding

shares in addition to number of shares as declared, but revenue failed to prove same, no addition could have been made in hands of assesse. (AY. 1992-93)
DCIT v. Growmore Leasing & Investment Ltd. (2018) 168 ITD 1 (Mum.)(Trib.)

1247 **S. 69A : Unexplained money – Income from undisclosed sources – Merely on the basis of confessional statement made by third party under Maharashtra Central organised Crime Act, 1999 (MOCA) stating that certain payment was made to the assessee,without any corroborative evidence, deletion of addition held to be justified. [S. 132, Maharashtra Central organised Crime Act, 1999 S. 18]**
Dismissing the appeal of the revenue the Court held that, merely on the basis of confessional statement made by third party i.e. Mr. Ansari under Maharashtra Central organised Crime Act, 1999 (MOCA) stating that certain payment was made to the assessee by Mr. Rasiklal Dhariwal,without any corroborative evidence, deletion of addition held to be justified. In the course of search of premises u/s 132 also no incriminating documents were found. (AY. 2000-01)
CIT v. Jagdishprasad Mohanlal Joshi (2018) 99 taxmann.com 287 / 259 Taxman 343 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, CIT v. Jagdishprasad Mohanlal Joshi (2018) 259 Taxman 342 (SC)

1248 **S. 69A : Unexplained money – Income from undisclosed sources – Illegal gains by short supply of contracted articles – Addition as income from undisclosed source is held to be justified.**
Dismissing the appeal of the assessee, the High court held that the finding of fact arrived by the Tribunal holding that, illegal gains by short supply of contracted articles. Accordingly addition as income from undisclosed source is held to be justified. No question of law.(AY. 1995-96, 1996-97)
Mahesh Kumar Agarwal Alias Mahesh Agarwal v. ACIT (2018) 408 ITR 119 / (2019) 173 DTR 299 / 306 CTR 479 (Pat.)(HC)

1249 **S. 69A : Unexplained money – Search and seizure – Block assessment – Statement on oath – Merely on the basis that assessee in course of statement made under S. 132(4) had admitted that said jewellery belonged to him, could not be sustained,when in the course of assessment proceedings established that jewellery seized from him actually belonged to his employer – There is no requirement in law that evidence in support of its case must be produced by assessee only at time when seizure has been made and not during assessment proceedings.[S. 132(4), 158BC]**
Dismissing the appeal of the revenue the Court held that ; merely on the basis that assessee in course of statement made under S. 132, had admitted that said jewellery belonged to him, could not be sustained, when in the course of assessment proceedings established that jewellery seized from him actually belonged to his employer. There is no requirement in law that evidence in support of its case must be produced by assessee only at time when seizure has been made and not during assessment proceedings. Accordingly the order of Tribunal deleting the addition is affirmed. (BP 1-4-1989 to 16-7-1999)
CIT v. Rakesh Ramani (2018) 256 Taxman 299 / 168 DTR 356 (Bom.)(HC)

S. 69A : Unexplained money – Income from undisclosed sources – Export sales – Export was made by assessee in his proprietorship concern and there was no justification for making an addition as undisclosed export proceeds – Statement of third party – Addition is held to be not justified without giving an opportunity of cross examination. [S. 158BC] 1250

Tribunal held that there was no adverse material available on record relating to exports made by assessee. In absence of any material or evidence on record to disprove exports made by assessee, it was held that export was made by assessee in his proprietorship concern and there was no justification for making an addition as undisclosed export proceeds. Addition is held to be not justified without giving an opportunity of cross examination. (BP. 1-4-1989 to 14-07-1999)

Arun Malhotra v. AO (2018) 196 TTJ 719 (2019) 173 DTR 276 (Delhi)(Trib.)

S. 69A : Unexplained money – Discretionary Trust – Black money – If the assessee is a discretionary beneficiary of the HSBC Bank Account and is not the owner, addition u/s 69A cannot be sustained – In the case of a discretionary trust, the income of the trust cannot be added in the hands of the beneficiary. The trustees are the representative assessees who are liable to be taxed for the income of the trust. [S. 5] 1251

Allowing the appeal of the assessee the Tribunal held that ; If the assessee is a discretionary beneficiary of the HSBC Bank Account and is not the owner, addition u/s 69A cannot be sustained – In the case of a discretionary trust, the income of the trust cannot be added in the hands of the beneficiary. The trustees are the representative assessees who are liable to be taxed for the income of the trust. (AY. 2006-2007, 2007-08)

Deepak B. Shah v. ACIT (2019) 174 ITD 237 / 176 DTR 82 (Mum.)(Trib.), www.itatonlie.org

S. 69A : Unexplained money – Performance charges in weddings – No evidence whatsoever or any incriminating documents which indicated attendance of marriage functions by assessee in absence of any corroborative material addition could not be made solely on basis of statement obtained from secretary of assessee. 1252

Tribunal held that addition cannot be made solely on basis of statement obtained from secretary of assessee in respect of performance charges in weddings without having any incriminating documents or evidence to demonstrate that the assessee has performed in weddings. (AY. 2011-12)

Priyanka Chopra (Ms) v. DCIT (2018) 171 ITD 437 / 170 DTR 342 / 195 TTJ 900 (Mum.) (Trib.)

S. 69A : Unexplained money – Cash deposit in the bank account of the assessee – source of such cash deposit was cash withdrawal from the account of one contractor – Held, entire cash deposit cannot be taxed – such cash deposit is part of business receipts – Held, to meet the interest of justice 8% taxable. 1253

The assessee was associated with a contractor K. Such contractor was awarded construction work of road under a Government scheme. There was cash deposits in the bank of the assessee which was explained to be from the cash withdrawal from the bank of K. Owing to failure of K to reply to summons, entire cash deposited added to

total income. The Tribunal held that, source of cash withdrawal in K's account was the business receipts on account of road construction. Thus, cash deposits in the assessees account were his business receipts and such business receipts can be taxed only to the extent of profits earned. In the interest of justice, the Tribunal held that 8% of such receipts were taxable. (AY. 2009-10)
Samar Singh Parihar v. ITO (2018) 62 ITR 61 (Jabalpur)(Trib.)

1254 **S. 69A : Unexplained money – Search – Jewellary – Belonged to a wealthy family and jewellery was received on occasions from relatives, excess jewellery was very much reasonable addition was held to be not justified.**
During search at assessee's residential premises, Jewellery of 2531.5 gms. was found. AO had given assessee benefit of 950 gms. on account of wife and two children and balance was added as unexplained investment. On appeal the Tribunal held that the Assessee belonged to a wealthy family where gifting of jewellery possessed by each of family members was customary and jewellery was gifted to assessee and his wife by their parents and grandparents and other relatives at time of their marriage, and also on several occasions after that, such as birth of their two children, marriage anniversaries, etc. Accordingly in view of Instruction No. 1916, dated 11-5-1994, excess jewellery found in case of assessee, was very nominal, and was very much reasonable and, thus, keeping in mind high status and more customary practices addition was to be deleted. (AY. 2011-12)
Vibhu Aggarwal v. DCIT (2018) 170 ITD 580 (Delhi)(Trib.)

1255 **S. 69A : Unexplained moneys – Gross weight of jewellery disclosed in regular returns was in excess of gross weight of jewellery found in search, no seizure/addition was permissible. [S. 132]**
Allowing the appeal of the assesse the Tribunal held that; if Gross weight of jewellery disclosed in regular returns was in excess of gross weight of jewellery found in search, no seizure/addition was permissible. CBDT Instruction No. 1961, dated 11-5-1994 (AY. 2012-13)
Nawaz Singhania (Mrs.) v. DCIT (2018) 168 ITD 478 / 162 DTR 137 / 191 TTJ 650 (Mum.) (Trib.)

1256 **S. 69A : Unexplained money – Agricultural land – Sale agreement was not doubted, deletion of addition was held to be justified.**
Dismissing the appeal of the revenue the Tribunal held that; when the agreement was not doubted, deletion of addition was held to be justified. (AY. 2012-13)
ITO v. Jagdev Singh (2018) 169 ITD 334 (Chd.)(Trib.)

1257 **S. 69A : Unexplained moneys – Professional services – Only on the basis of AIR information without conducting any further enquiry addition cannot be made. Matter remanded. [S. 133(6)]**
Tribunal held that,only on the basis of AIR information without conducting any further enquiry addition cannot be made. Matter remanded. (AY. 2005-06 to 2006-07)
DCIT v. KPMG Advisory Services (P.) Ltd. (2018) 168 ITD 34 (Mum.)(Trib.)

S. 69B : Amounts of investments not fully disclosed in books of account – Survey – Merely on the basis of statement in the course of survey offering additional income – Addition is held to be not justified. [S. 133A] 1258

Dismissing the appeal of the revenue the Court held that ; except statement of director of assessee-company offering additional income during survey in his premises, there was no other material either in form of cash, bullion, jewellery or document in any other form to justify said statement, accordingly the deletion of addition is held to be valid.

CIT v. Mantri Share Brokers (P.) Ltd. (2018) 96 taxmann.com 279 (Raj.)(HC)

Editorial : SLP of revenue is dismissed ; CIT v. Mantri Share Brokers (P.) Ltd. (2018) 257 Taxman 337 (SC)

S. 69B : Amounts of investments not fully disclosed in books of account – Survey – Suppression of sales – Sale suppression detected during survey was actual price for which liquor was sold, addition made on account of sale suppression is held to be justified. [S. 133A] 1259

A survey was conducted in its premises. During such survey, some incriminating materials were recovered and based on the same, it was found that the assessee had sold Indian Made Foreign Liquor (IMFL) in excess of the price shown, in the books of account and the returns. Allowing the appeal of the revenue the Court held that ;an estimate was made by Assessing Officer from the documents recovered and the books of account and turnover suppression was determined on which the tax was directed to be paid. (AY. 2006-07)

CIT v. Archana Trading Co. (2018) 257 Taxman 386 (Ker.)(HC)

S. 69B : Amounts of investments not fully disclosed in books of account – Receipts of jewellery in the name of assessee which was found in the course of search was from the disclosed income of the wife accordingly deletion of addition was held to be justified. [S. 132B, 158B, 292C] 1260

Dismissing the appeal of the revenue the Court held that, receipts of jewellery in the name of assessee which was found in the course of search was from the disclosed income of the wife accordingly deletion of addition was held to be justified. (BP 1986-87 to 20-08-1995)

CIT v. Dilip Singh (2018) 405 ITR 399 / 253 Taxman 41 / 300 CTR 184 / 161 DTR 97 (Cal.)(HC)

S. 69B : Amounts of investments not fully disclosed in books of account – Purchase of land – Difference between the amount disclosed and estimate by Assessing Officer cannot be treated as undisclosed. [S. 153A] 1261

Dismissing the appeal of the revenue the Court held that the Difference between the amount disclosed and estimate by Assessing Officer cannot be treated as undisclosed. (AY. 2005-06)

PCIT v. Millennium Park Holdings Pvt. Ltd. (2018) 403 ITR 178 (Guj.)(HC)

1262 **S. 69B : Amounts of investments not fully disclosed in books of account – Capital accounts – Books of account – Firm – Partner – Share in partnership was not included in the books of account – Difference was explained – Addition was held to be not justified.**

Dismissing the appeal of the revenue the Tribunal held that,the assessee has explained the difference in capital account and books of account as the share in partnership firm was not included in the books of account. Accordingly the deletion of addition by CIT(A) is held to be justified. (AY. 2012-13)

DCIT v. Hrishikesh D. Pai (2018) 173 ITD 272 / (2019) 197 TTJ 583 (Mum.)(Trib.)

1263 **S. 69B : Amounts of investments not fully disclosed in books of account – Undisclosed investments – Excess stock – Mismatch in quantity of stock – Reconciliation filed with District Supply Officer was accepted – Addition is held to be not justified.**

Tribunal held that, when the assessee has filed reconciliation of stock with District Supply Officer which was accepted, addition cannot be made on the alleged ground of mismatch in quantity of stock. (AY. 2003-04)

ACIT v. Overseas Trading and Shipping Co. (P.) Ltd. (2018) 173 ITD 446 (Rajkot)(Trib.)

1264 **S. 69B : Undisclosed investments – On money – Mere admission of amounts recorded in pen drive as additional unexplained income would not lead to drawing of adverse inference that unexplained investment was made by assessee for purchase of property, particularly when no evidence was produced to justify said payment by assesse. [S. 132(4)]**

Tribunal held that; Mere admission of amounts recorded in pen drive as additional unexplained income would not lead to drawing of adverse inference that unexplained investment was made by assessee for purchase of property, particularly when no evidence was produced to justify said payment by assessee. Ex-employee of Hiranandani in course of his cross-examination had clearly stated that neither he was aware of person who had made entry in pen drive, nor had with him any evidence that assessee had paid any cash towards purchase of flat. (AY. 2007-08)

Anil Jaggi v. CIT (2018) 168 ITD 612 (Mum.)(Trib.)

1265 **S. 69B : Amounts of investments not fully disclosed in books of account – Valuation of closing stock for availing of facilities from bank-Quantity of stock remaining same additions cannot be made.**

Dismissing the appeal of the revenue the Court held that; there was no difference between the quantity of stock as shown in the books of account and in the statement submitted to the bank. The conclusions arrived at by them did not suffer from any legal infirmity. The deletion of addition made, under S. 69B was proper. (AY. 2010-11)

CIT v. Gladder Ceramics Ltd. (2018) 401 ITR 205 (Guj.)(HC)

1266 **S. 69C : Unexplained expenditure – Bogus purchases – Estimate of GP from 15% to 12% by the Tribunal is held to be justified.**

Assessee company derived income from business of manufacturing of jewellery and trading of gemstones. On the basis of information from investigation Wing a search

action was conducted on the assessee and on the basis of material seized income was estimated at 15% of bogus purchases. On appeal the Tribunal reduced the GP from 15% to 12%. On appeal by the assessee, dismissing the appeal of the assessee the Court held that finding recorded by Tribunal was a finding of fact based on material on record, no substantial question of law arose. (AY. 2007-08)
Clarity Gold (P) Ltd. v. PCIT (2018) 170 DTR 369 / (2019) 102 taxmann.com 421 (Raj.) (HC)
Gem Mart India P. Ltd. v. PCIT (2018) 170 DTR 369 (Raj.)(HC)

S. 69C : Unexplained expenditure – Cash payments – Slips found during search – Since there was no material to substantiate assumption that slips denoted amounts outside cash book of assessee, addition was held to be not justified. [S. 132] 1267
Dismissing the appeal of the revenue the court held; merely on the basis slips found during search and since there was no material to substantiate assumption that slips denoted amounts outside cash book of assessee, addition was held to be not justified. (AY0. 1995-96)
CIT v. Ansal Properties & Industries (2018) 259 Taxman 103 / 170 DTR 225 / (2019) 308 CTR 510 (Delhi)(HC)

S. 69C : Unexplained expenditure – Unexplained expenditure on production is deleted as the relevant records produced by the assessee were found to be in order without any serious errors – Regarding packing material, it has been pointed out that the cost of packing material with regard to the assessee unit as well as two other units differs, hence, addition made by AO is justified. [S. 80IB] 1268
On appeal the High Court held, there is no specific material to substantiate the finding that production cost per quintal in case of eligible unit (80IB unit) is erroneous and hence addition under Section 69C for production cost is unjustified. However, in case of packing material, in absence of inventory of packing material and clear explanation from assessee, addition under Section 69C on this count was justified.
Darshan Singh Samyal v. CIT (2018) 303 CTR 2 / 166 DTR 225 / 256 Taxman 224 (J&K) (HC)

S. 69C : Unexplained expenditure – Survey – Undisclosed stock – When undisclosed purchases are discovered – Only profit embedded in transaction can be added as income. [S. 4, 133A, 145] 1269
Dismissing the appeal of the revenue, the Court held that ; when undisclosed purchases are discovered in the course of survey, only profit embedded in transaction can be added as income. Followed *Vijay Trading v. ITO (2016) 388 ITR 377 (Guj.)(HC)*
PCIT v. Subarna Rice Mill (2018) 257 Taxman 509 (Cal.)(HC)

S. 69C : Unexplained expenditure – Search – Work in progress – Valuation report of site engineer higher than work-in-progress recorded in the books of account – Addition is held to be not valid. [S. 69A, 132] 1270
Dismissing the appeal of the revenue, the Court held that, addition cannot be made on the basis of valuation report of site engineer higher than work-in-progress recorded

in the books of account. Moreover, even if assume that the closing stock i.e. work-in-progress is in excess of that recorded/disclosed by the respondent, the same has to be added to the income only under section 69A. No question of law arises. (AY. 2009-10)
CIT v. B. G. Shirke Construction Technology (P.) Ltd. (2018) 257 Taxman 561 / 172 DTR 28 (Bom.)(HC)

1271 **S. 69C : Unexplained expenditure – Bogus Purchases – Purchases cannot be treated as Bogus if (a) they are duly supported by bills, (b) all payments are made by account payee cheques, (c) the supplier has confirmed the transactions, (d) there is no evidence to show that the purchase consideration has come back to the assessee in cash, (e) the sales out of purchases have been accepted & (f) the supplier has accounted for the purchases made by the assessee and paid taxes thereon. [S. 143(3)]**
Dismissing the appeal of the revenue the Court held that, Purchases cannot be treated as Bogus if (a) they are duly supported by bills, (b) all payments are made by account payee cheques, (c) the supplier has confirmed the transactions, (d) there is no evidence to show that the purchase consideration has come back to the assessee in cash, (e) the sales out of purchases have been accepted & (f) the supplier has accounted for the purchases made by the assessee and paid taxes thereon.
PCIT v. Tejua Rohitkumar Kapadia (2018) 94 Taxmann.com 324 (Guj.)(HC)
Editorial : SLP of revenue is dismissed PCIT v. Tejua Rohitkumar Kapadia (2018) 256 Taxman 21 (SC), www.itatonline.org

1272 **S. 69C : Unexplained expenditure – Disallowances cannot be made merely on the ground that parties to whom payments were made not appeared before the AO in response to summons, when the assessee has furnished PAN numbers, TDS was deducted and details of the bank was furnished. [S. 37(1), 131]**
Dismissing the appeal of the revenue the Court held that, Disallowances cannot be made merely on the ground that parties to whom payments were made not appeared before the AO in response to summons, when the assessee has furnished PAN numbers, TDS was deducted and details of the bank was furnished. Court also held that Tribunal correctly held that it is not possible for the assessee to compel the appearance of the parties before the AO. (AY. 2009-10)
PCIT v. Chawla Interbild Construction Co. Pvt. Ltd. (2018) BCAJ-May. 63 (2019) 412 ITR 152 / 263 Taxman 47 (Bom.)(HC)

1273 **S. 69C : Unexplained expenditure – Interest on loan – Since payment of interest was reflected in capital account and same was shown as a part of other withdrawal – Addition cannot be made as unexplained expenditure.**
Tribunal held that, since payment of interest was reflected in capital account and same was shown as a part of other withdrawal-Addition cannot be made as unexplained expenditure. (AY. 2007-08)
Geeta Dubey (Smt.) v. ITO (2018) 172 ITD 538 (Indore)(Trib.)

S. 69C : Unexplained expenditure – Bogus Purchases – Raw material – Survey – Letters were issued to the purchasers after five years of end of assessment year – purchasers are witness of department and did not turn for cross examination – Inspectors report was not confronted to the assessee – Deletion of addition was held to be justified. [S. 133A, 143(3), 145] 1274

Dismissing the appeal of the revenue the Tribunal held that, assessee produced Gate Entry Register, stock register and production records which supported assessee's explanation that whatever material was purchased from three companies were entered into statutory registers and material had been used in production process. AO failed to establish any relation of assessee with seller. Purchases were supported by Form D-3 issued by VAT Department of State Government, bills and gate pass and production register and all purchases were made through banking channel. Without purchases, no production or sales could have done by assessee and production was supported by RG-1 Register and details supplied to Excise Department. Purchaser was witness of department and he did not turn up for cross-examination on behalf of assessee, therefore, his statement was not admissible in evidence against assessee. Parties existed at address given by assessee but enquiry letters were issued after about 5 years of end of assessment year, thus same should not be considered adverse in nature against assessee. AO did not make any efforts to locate seller parties for their appearance to examine issue. (AY. 2006-07, 2007-08, 2008-09)

Dy.CIT v. Padmini Vna Mechatronics Pvt. Ltd. (2018) 171 DTR 83 / 195 TTJ 649 (Delhi) (Trib.)

S. 69C : Unexplained expenditure – Bogus purchases – Business of manufacturing cycle/cycle rims – The item-wise break-up of each and every purchase item along with comparative figures of the previous years was furnished – All the payments have been made by account payee cheque/bank draft- Sample copies of the bills raised by those parties were submitted and it was stated that the bills contained the complete address of the parties, their TIN Nos., etc. Further, the purchases have been made against C Forms which have been duly issued by the assessee company – The fact that the vendors are not available at the given address is not sufficient to treat the purchases as bogus if the assessee has discharged primary onus and substantiated the purchases through documentary evidence and payment is made through banking channels. None of these documents have been proved to be false or untrue and thus the initial burden cast on the assessee was duly discharged-Decision of the CIT(A) in deleting the addition is affirmed. [S. 143(3)] 1275

Dismissing the appeal of the revenue the Tribunal held that,the assessee which is in the business of manufacturing cycle/cycle rims – The item-wise break-up of each and every purchase item along with comparative figures of the previous years was furnished. All the payments have been made by account payee cheque/bank draft-All the payments have been made by account payee cheque. Sample copies of the bills raised by those parties were submitted and it was stated that the bills contained the complete address of the parties, their TIN Nos. etc. Further, the purchases have been made against C Forms which have been duly issued by the assessee company. The fact that the vendors

are not available at the given address is not sufficient to treat the purchases as bogus if the assessee has discharged primary onus and substantiated the purchases through documentary evidence and payment is made through banking channels. None of these documents have been proved to be false or untrue and thus the initial burden cast on the assessee was duly discharged. Deletion of addition by the CIT(A) is affirmed. Referred the decision of *N. K. Proteins Ltd. v. DCIT, (2004) 83 TTJ 904 (Ahd.)(Trib.), N. K. Industries v. Dy.CIT (2016) 292 CTR 354 / 72 taxmann.com 289 (Guj.)(HC), N. K. Protins Ltd v. Dy.CIT (2017) 250 taxman 22 (SC) Vijay Proteins Ltd. v. ACIT (1996) 58 ITD 428 (Ahd) (Trib.)*, affirmed in *Vijay Protins Ltd v. CIT (2015) 58 taxmann.com 44 (Guj.)(HC).* (AY. 2011-12)
ACIT v. Karam Chand Rubber Industries (P) Ltd. (2019) 174 DTR 142 / 197 TTJ 555 (Delhi)(Trib.), www.itatonline.org

1276 **S. 69C : Unexplained expenditure – Cash payments – Amount offered as undisclosed income in return of mother – Deletion of addition is held to be justified.**
Tribunal held that as the cash payment was offered as unexplained income in return of mother, deletion of addition by CIT(A) is held to be justified. (AY. 2011-12)
Priyanka Chopra (Ms). v. DCIT (2018) 171 ITD 437 / 170 DTR 342 / 195 TTJ 900 (Mum.) (Trib.)

1277 **S. 69C : Unexplained expenditure – Bogus purchases – Payments were made to suppliers through banking channels – Paintings were reflected as a part of closing stock – Addition is held to be not justified.**
Tribunal held that, payments were made to suppliers through banking channels. Paintings were reflected as a part of closing stock. Addition is held to be not justified. (AY. 2006-2007, 2007-2008)
ACG Arts & Properties (P.) Ltd. v. DCIT (2018) 171 ITD 184 (Mum.)(Trib.)

1278 **S. 69C : Unexplained expenditure – Bogus purchases – 100% disallowance is confirmed – The right of cross-examination is not absolute. No prejudice is caused to the assessee by non granting of cross examination if the assessee has not discharged the primary onus. The fact that purchase bills are produced and payment is made through banking channels is not sufficient if the other evidence is lacking.**
Dismissing the appeal of the assessee the Tribunal confirmed the 100% of alleged bogus purchases. Tribunal also held that, The right of cross-examination is not absolute. No prejudice is caused to the assessee by non granting of cross examination if the assessee has not discharged the primary onus. The fact that purchase bills are produced and payment is made through banking channels is not sufficient if the other evidence is lacking. (ITA No. 2960/Mum./2016, dt. 23.10.2017)(AY. 2011-12)
Soman Sun Citi v. JCIT (Mum.)(Trib.), www.itatonline.org

1279 **S. 69C : Unexplained expenditure – Bogus purchases – Supplier admitted the supply of goods and genuineness of transaction, therefore purchases cannot be treated as bogus purchases addition of ₹ 12. 5% of the purchases was deleted. [S. 133(6)]**
Allowing the appeal of the assessee the Tribunal held that; the fact that the supplier admitted to issuing bogus bills does not necessarily mean that he had issued

accommodation bills to the assessee. There is subtle but very important difference in issuing bogus bills and issuing accommodation bills to a particular party. The difference becomes very important when a supplier in his affidavit admits supply of goods. As far as sales are concerned there is no doubt about the genuineness of such sales. It is also a fact that suppliers were paying VAT and were filing their returns of income. In response to the notices issued by the AO u/s 133(6) of the Act, the supplier admitted the genuineness of the transaction. Accordingly, the purchases cannot be treated as bogus. Accordingly addition of 12. 5% of purchases was deleted. (ITA No. 1045/Mum./2016, dt. 13.04.2018) (AY. 2011-12)
Shantivijay Jewels Ltd. v. DCIT (Mum.)(Trib.), www.itatonline.org

S. 69C : Unexplained expenditure – Bogus purchases – Non service of notice cannot be the basis to confirm the addition as bogus purchases considering other evidences purchases cannot be assessed as alleged bogus purchases. 1280
Allowing the appeal of the assessee the Tribunal held that; The fact that S. 133(6) notices could not be served upon the alleged vendors and they were not physically available at the given addresses does not falsify the claim of the assessee that the purchases are genuine if the assessee has produced other evidence and made payments through banking channels, addition confirmed by the CIT(A) was deleted. (AY. 2009-10, 2010-11)
Prabhat Gupta v. ITO (Mum.)(Trib.), www.itatonline.org

S. 69C : Unexplained expenditure – Bogus purchases – Estimation of profits embedded in purchases at 12.5% is reasonable when the assessee failed to prove the purchases to be genuine and also failed to produce the selling parties during the course of the assessment proceedings. [S. 133(6), 145] 1281
On appeal the Tribunal held that the purchases existed in the books of account of the assessee and the onus was on the assessee to prove that the purchases were genuine. Under these circumstances, the possibility of the assessee buying the material actually from the grey market at lower rates and obtaining corresponding bills from the parties to reconcile the quantitative records and books of account could not be ruled out. Hence the profits estimated by the CIT(A) at 12.5% was reasonable. (ITA No. 1441 & 3133/ Mum./2016 dt. 01-02-2018) (AY. 2007-08)
ITO v. Prankit Exports (2018) 62 ITR 243 (Mum.)(Trib.)

S. 69C : Unexplained expenditure – Seized papers – Merely on the basis of seized papers addition cannot be made when the assessee has not purchased any land from persons mentioned in the seized documents. [S. 132] 1282
Allowing the appeal of the assessee the Tribunal held that; Merely on the basis of seized papers addition cannot be made when the assessee has not purchased any land from persons mentioned in the seized documents. (AY. 2009-10)
Saamag Developers (P.) Ltd. v. ACIT (2018) 168 ITD 649 (Delhi)(Trib.)

1283 **S. 69C : Unexplained expenditure – CIT(A) applying 40% net profit on account of alleged concealed receipts was set a side to the AO to decide accordance with law.**
Tribunal held that, CIT(A) applying 40% net profit on account of alleged concealed receipts was set a side to the AO to decide accordance with law. (AY. 2009-10)
ITO v. Ravindra Pratap Thareja (2018) 61 ITR 415 (Jabalpur)(Trib.)

1284 **S. 69C : Unexplained expenditure – Service tax paid through banking challans, addition was held to be not justified.**
Dismissing the appeal of the revenue, the Tribunal held that; Service tax paid through banking challans, addition was held to be not justified. (AY. 2009-10)
ITO v. Ravindra Pratap Thareja. (2018) 61 ITR 415 (Jabalpur)(Trib.)

1285 **S. 71 : Set off of loss – One head against income from another – Assessee has the option to set off business loss against capital gains – It is not mandatory. [S. 71(3), 80]**
Tribunal held that assessee has the option to set off business loss against capital gains and, it is not mandatory. (AY. 2016-17)
Ajay Kumar Singhania v. DCIT (2018) 173 ITD 474 (Chd.)(Trib.)

1286 **S. 71 : Set off of loss – One head against income from another – Unabsorbed depreciation and brought forward business loss can be set off against income from other sources. [S. 72]**
Allowing the appeal of the assessee the Tribunal held that ; unabsorbed depreciation and brought forward business loss can be set off against income from other sources. (AY. 2010-11)
Nanak Ram Jaisinghani v. ITO (2018) 170 ITD 570 (Delhi)(Trib.)

1287 **S. 72 : Carry forward and set off of business losses – Dividend – where investments were business investments, carried forward business loss could be set off against dividend income earned from such business investment as even though dividend was classified under separate head, but same was very much part of income from business. [S. 56]**
Dismissing the appeal of the revenue, the Court held that, where investments were business investments, carried forward business loss could be set off against dividend income earned from such business investment as even though dividend was classified under separate head, but same was very much part of income from business. Followed *United Commercial Bank Ltd v. CIT (1957) 32 ITR 688 (SC), CIT v. Cocanada Radhaswami Bank Ltd. (1965) 57 ITR 306 (SC)*. (AY. 1997-98)
CIT v. Shriram Chits & Investments (P.) Ltd. (2018) 257 Taxman 395 / (2019) 410 ITR 10 (Mad.)(HC)

1288 **S. 72 : Carry forward and set off of business losses – Search – Return is filed by assessee within reasonable time permitted by issue of notice under S. 153A(1)(a), such return will be deemed to have been filed within time permitted under S. 139(1) for benefit under S. 139(3) to be availed of by assessee. [S. 80, 139, 153A]**
Allowing the appeal of the assessee the Court held that ; for purpose of carrying forward loss in terms of section 72, read with section 80, in a case where search operations

have been conducted under section 132, time to file return within meaning of section 139(3) has to be regarded as reasonable time afforded by consequent notice issued under section 153A(1)(a), therefore, when return is filed by assessee within reasonable time permitted by such notice under section 153A(1)(a), such return would then be deemed to have been filed within time permitted under section 139(1) for benefit under section 139(3) to be availed of by assessee. (AY. 2004-05)
Shrikant Mohta v. CIT (2018) 257 Taxman 43 / 170 DTR 50 / 304 CTR 650 / (2019) 414 ITR 270 (Cal.)(HC)

S. 72 : Carry forward and set off of business losses – Loss of Current year and carried forward loss off of earlier year from non-speculative business can be set off against profit of speculative business of current year. [S. 72(1)] 1289
Dismissing the appeal of the revenue the Court held that; Loss of Current year and carried forward loss off of earlier year from non-speculative business can be set off against profit of speculative business of current year. (AY. 2005-06)
CIT v. Ramshree Steels Pvt. Ltd. (2018) 400 ITR 61 (All.)(HC)

S. 72 : Carry forward and set off of business losses – Losses from non-speculation business can be set off against profit from speculation business. [S. 73] 1290
The Tribunal held that there is no bar in adjustment of unabsorbed business losses from speculation profit of current year, provided speculation losses for earlier years has been first adjusted from speculation profit. If speculation losses for earlier years are carried forward and if in the year of account a speculation profit is earned by the assessee, then such speculation profits for the current accounting year should be adjusted against carried forward speculation losses of the earlier year, before allowing any other losses to be adjusted against those profits. Hence, it is clear that there is no bar in adjustment of unabsorbed business losses from speculation profit of the current year, provided the speculation losses for earlier years has been first adjusted from speculation profit. (AY. 2011-12)
Edel Commodities Ltd. v. Dy. CIT (2018) 194 TTJ 86 (Mum.)(Trib.)

S. 72 : Carry forward and set off of business losses – Business loss incurred in earlier year could not be set off against income under head income from other sources during relevant year – However, current year's operational expenditure is to be allowed as set-off as per the provisions of the Act. [S. 37(1), 56, 70, 71] 1291
Dismissing the appeal of the assessee the Tribunal held that ; as there was no business income of assessee during year, business losses incurred in earlier year could not be set-off against income under head income from other sources. However, current year's operational expenditure is to be allowed as set-off as per the provisions of the Act. The Assessing Officer is directed to examine this aspect and whatever amount is allowable as operational cost of the company can be set-off to the income from other sources, i.e., interest income earned during the year. The Assessing Officer is directed to examine the provisions of law and facts of the case and directed to do accordingly. (AY. 2012-13)
GVK Airport Developers Ltd. v. ITO (2018) 172 ITD 109 / 195 TTJ 246 / 66 ITR 9 (SN) / 169 DTR 209 (Hyd.)(Trib.)

1292 **S. 72 : Carry forward and set off of business losses – Assessment Order for earlier year pending in appeal – Assessing officer to pass consequential order with regard to set off of brought forward losses keeping in mind outcome of appeal.**
Tribunal held that assessment order for earlier year pending in appeal. Accordingly the Assessing officer to pass consequential order with regard to set off of brought forward losses keeping in mind outcome of appeal. (AY. 2009 10 to 2013-14)
Manipal Health Systems P. Ltd. v. ACIT (2018) 65 ITR 51 (SN)(Bang.)(Trib.)

1293 **S. 72 : Carry forward and set off of business losses – Speculation losses – There is no bar in adjustment of unabsorbed business losses from speculation against profit of current year, provided speculation losses earlier years has been first adjusted from speculation profit. [S. 71, 73]**
AO did not allow set off of unabsorbed non-speculation business loss incurred by assessee against current year's speculation profit. CIT(A) up held that order of AO. On appeal Tribunal held that there is no bar in adjustment of unabsorbed business losses from speculation profit of current year, provided speculation losses for earlier years has been first adjusted from speculation profit. Followed *CIT v. Ramshree Steels (P.) Ltd. (2018) 400 ITR 61 (All.)* (HC)(AY. 2011-12)
Edel Commodities Ltd. v. DCIT (2018) 170 ITD 402 / 166 DTR 289 / 194 TTJ 86 (Mum.) (Trib.)

1294 **S. 72A : Carry forward and set off of accumulated loss and unabsorbed depreciation – Maintenance of separate books of account is not mandatory. [S. 72A(4)(a)]**
Dismissing the appeal of the revenue the Court held that ; the Tribunal noted and correctly, that the statutory provision do not command that in order to avail the benefit of clause (a), separate books of account must be maintained. The Tribunal therefore required the Assessing Officer to examine the explanation of the assessee on merits. It was for this purpose, the Tribunal has remanded the issue back to the Assessing Officer. (AY. 2008-09)
PCIT v. Adani Retail Ltd. (2018) 257 Taxman 68 (Guj.)(HC)

1295 **S. 72A : Carry forward and set off of accumulated loss – Conversion of Private Limited Company to LLP – Failure to satisfy conditions laid down in proviso not entitle to Carry forward of losses of erstwhile company by LLP. [S. 47 xiiib), 72A (6A), Limited Liability Partnership Act, 2008, S. 56, 58(4)]**
Assessee had failed to satisfy conditions laid down in proviso to clause (xiiib) of S 47 carry forward and set off of accumulated losses of erstwhile company by assessee LLP is not entitled. (AY. 2010-11)
ACIT v. Celerity Power LLP (2019) 174 ITD 433 / 197 TTJ 45 / 174 DTR 68 (Mum.)(Trib.), www.itatonline.org

S. 72A : Carry forward and set off of accumulated loss and unabsorbed depreciation – Merger – Non-banking finance company (NBFC) – Merger Scheme approved by High Court having in mind larger public interest, Claim of set off of unabsorbed short – term capital loss and unabsorbed business loss incurred by amalgamating companies cannot be denied on ground that amalgamating companies did not own an 'industrial undertaking' as defined under S. 72A of the Act. [S. 72, 74] 1296

Assessee was a non-banking finance company (NBFC). By virtue of order of High Court, six companies with unabsorbed capital and business losses were merged with assessee-company. Assessee's claim was denied on ground that amalgamating companies did not own an 'industrial undertaking' as defined under S. 72A of the Act. Allowing the appeal of the assessee the Tribunal held that ; on fact, merger scheme duly approved by High Court having in mind larger public interest, could not be disturbed by revenue merely because assessee was not entitled for benefits under S. 72A of the Act. Tribunal also held that,even otherwise, since department had not filed any appeal under section 391(7) of the Companies Act, 1956 against order of amalgamation sanctioned by High Court, by applying doctrine of acquiescence, department would be now barred from raising an objection to scheme. Accordingly the assessee's claim for set off of unabsorbed losses of amalgamating companies was to be allowed. (AY. 2012-13)

Electrocast Sales India Ltd. v. DCIT (2018) 170 ITD 507 (Kol.)(Trib.)

S. 73 : Losses in speculation business – Set-off of Losses – Transaction in shares – No evidence was produced – Loss cannot be set off. [S. 133(6)] 1297

Dismissing the appeal the Court held that ; when the assessee had not been able to prove why the transaction in shares should not be treated as speculative transaction, there was no reason to interfere with the concurrent findings of fact recorded by the Assessing Officer as confirmed by the Commissioner (Appeals) as well as the Tribunal. (AY. 2004-05)

Jaidayal Prannath Kapur v. CIT (2018) 408 ITR 315 / 172 DTR 103 (Mad.)(HC)

S. 73 : Losses in speculation business – Gross total income of assessee company mainly consisted of income from other source', and, consequently, loss incurred by assessee in share transaction could not be said to be a speculative loss. [S. 56] 1298

High Court held that ;since assessee's income mainly consisted of 'income from other source', which constituted 91.68 per cent of gross total income, Tribunal was justified in holding that assessee was an investment company and, consequently, loss incurred by assessee in share transaction was not a speculative loss within meaning of Explanation to S. 73. (AY. 1989-90)

CIT v. Madona Commercial (P.) Ltd. (2018) 257 Taxman 116 (Bom.)(HC)

S. 73 : Losses in speculation business – Loss in investment in shares – Not engaged in business of trading in shares – Explanation to S. 73 is not applicable – loss is allowable. [S. 45] 1299

Tribunal held that, investment in shares already verified by the AO from various investee companies and no abnormal discrepancy in the transaction is found, the

loss arising from the transaction of sale of shares is to be allowed. As the assessee is not engaged in the business trading in shares explanation to S. 73 is not applicable. (AY. 2009-10)
ACIT v. R. J. Corp Ltd. (2018) 67 ITR 339 (Delhi)(Trib.)

1300 **S. 73 : Losses in speculation business – Trading of shares was not primary activity – Solitary transaction of sale of shares could not have been treated as speculative business.**
Allowing the appeal of the assessee the Tribunal held that ; trading of shares was not primary activity of assessee, accordingly the solitary transaction of sale of shares by assessee could not be held to be part of carrying on business of trading in shares, hence, said sale transaction could not have been treated as speculative business of assessee under Explanation to S. 73. (AY. 2003-04)
Moser Baer India Ltd. v. DCIT (2018) 170 ITD 522 (Delhi)(Trib.)

1301 **S. 73 : Losses in speculation business – Gross total income – Income from other sources – Assessee falling within exception carved out in section.**
Tribunal held that, in the present case the gross total income of the assessee was required to be computed inter alia by computing the income under the head of profits and gains of business or profession as well. Both the income from service charges in the amount of ₹ 2.25 Crore and the loss in share trading of ₹ 2.23 crore, would have to be taken in to account in computing the income under the head both being sources under the same head. The assessee had a dividend income od ₹ 4.7 lakhs (Income from other sources). Following the judgement of the Tribunal the appeal of the assessee was allowed. (AY. 2009-10, 2010-11)
Siddhesh Capital Market Services P. Ltd. v. DCIT (2018) 61 ITR 400 / 52 CCH 3 (Mum.) (Trib.)

1302 **S. 74 : Losses-Capital loss – Shares sold at meagre value – sale price disbelieved by AO and accordingly, capital loss disallowed – Held, AO did not point out any discrepancy in the sale consideration – Held, AO did not conduct any enquiry in the hands of the purchaser – Held, loss cannot be disallowed.**
Capital loss was disallowed by disbelieving the sale consideration. The Tribunal held that if the revenue alleges that the assessee has grossly understated the sale consideration, then the onus is on the revenue to prove with cogent materials that the assessee had indeed received higher sale price. Further, it was held that if no enquiries whatsoever were conducted in the hands of the purchaser of shares, the entire disallowance of long term capital loss was made only out of surmises, suspicion and conjectures. It was incumbent on the part of the AO to make further investigations by cross verifying the same from the purchaser of shares. Without doing so, he cannot simply disbelieve the consideration reported by the assessee and disallow the long-term capital loss claimed thereon. (AY. 2011-12)
Electrocast Sales India Ltd. v. Dy. CIT (2018) 64 ITR 14 (Kol.)(Trib.)

S. 74 : Losses – Capital gains – Unquoted shares – Sale of shares at ₹ 2 per share-long-term capital loss on issue of shares cannot be disallowed merely on basis of suspicion and conjectures without making any enquiries in the hands of the purchaser of shares. 1303
Assessee incurred long-term losses on sale of unquoted shares which was disallowed by the AO on the ground that sale consideration of ₹ 2 per share had been grossly understated. Allowing the appeal of the assessee the Tribunal held that ,the onus was on revenue to prove with cogent materials that assessee had indeed received higher sale price. Since no enquiries whatsoever were conducted in hands of purchaser of shares, disallowance made on basis of suspicion and conjectures was to be deleted. (AY. 2012-13)
Electrocast Sales India Ltd. v. DCIT (2018) 170 ITD 507 (Kol.)(Trib.)

S. 79 : Carry forward and set off losses – Change in share holdings – Companies in which public are not substantial interested – Amalgamation – Scheme of amalgamation approved by the High Court – Held, such scheme approved in public interest and cannot be disturbed by the Department merely because assessee was not eligible for the same u/s. 72A – Held, doctrine of acquiescence and estoppel applicable – Held, capital loss and business loss of amalgamating companies available to the amalgamated company. [S. 72A] 1304
Set off of capital loss and business loss of amalgamating companies denied to the amalgamated company by AO by invoking section 79. Same upheld by the CIT(A) u/s 72A. The Tribunal held that merger scheme was duly approved by High Court having in mind larger public interest. It cannot not be disturbed by revenue merely because assessee was not entitled for benefits under section 72A. Further, Department was also bound by the doctrine of acquiescence and estoppel as no objection was raised by the Department before the High Court and no further appeal was filed u/s 391(7) of the Companies Act, 1956 against order of amalgamation sanctioned by High Court. Held, therefore, even if the conditions of section 72A are not fulfilled, losses of amalgamating companies allowable for set off to the amalgamated company. (AY. 2011-12)
Electrocast Sales India Ltd. v. Dy. CIT (2018) 64 ITR 14 (Kol.)(Trib.)

S. 79 : Carry forward and set off losses – Change in share holdings – Companies in which public are not substantial interested – Unabsorbed depreciation – Business loss was not allowed to be carried forward for the AY. 2007-08 to 2010-11 [S. 32] 1305
The Tribunal held that the assessee will be entitled for carry forward and set off of unabsorbed depreciation for A.Y. 2007-08 to 2012-13 and section 79 of the 1961 Act has no applicability so far as carry forward and set off of unabsorbed depreciation is concerned. The decision of Hon'ble Supreme Court is followed by the Tribunal. *CIT v. Shri Shubhlaxmi Mills Ltd (2001) 249 ITR 795 (SC)*. The Tribunal held that no carry forward of losses for A.Y. 2007-08 to 2010-11 shall be allowed. In AY. 2012-13 there was no change in shareholding of the assessee company there will be no difficulty in allowing set off or carry forward further of losses for the assessment year 2011-12 to the succeeding years. (AY. 2012-13)
Dy. CIT v. Credila Financial Services (2018) 192 TTJ 511 / 64 ITR 324 / 166 DTR 58 (Mum.)(Trib.)

1306 **S. 80 : Return for losses – Unabsorbed depreciation and carried forward losses – A return filed u/s. 153A is deemed to be a return filed u/s. 139(1). Accordingly, the restrictive provisions of S. 80 do not apply. The return u/s. 153A, once accepted and assessed, replaces the original return filed u/s. 139. Therefore, the assessee is eligible for carry forward business loss. [S. 139(1), 153A]**

Dismissing the appeal of the revenue the Tribunal held that; A return filed u/s. 153A is deemed to be a return filed u/s. 139(1). Accordingly, the restrictive provisions of S. 80 do not apply. The return u/s. 153A, once accepted and assessed, replaces the original return filed u/s 139. Therefore, the assessee is eligible for carry forward business loss. (ITA No. I.T.A. No. 2461/DEL/2016, dt. 06.06.2018)(AY. 2010-11)

ACIT v. Splendor Landbase Ltd (Delhi)(Trib.), www.itatonline.org

1307 **S. 80C : Life insurance premium – Repayment of housing loan – Eligible for deduction on total investment after excluding such amount towards repayment of loan.**

Tribunal held that where total investment eligible for section 80C included an amount towards repayment of housing loan, assessee was eligible for deduction on total investment after excluding such amount towards repayment of loan. (AY. 2010-11)

Geeta Dubey (Smt.) v. ITO (2018) 172 ITD 538 (Indore)(Trib.)

1308 **S. 80G : Donation – Renewal of certificate – Commissioner is not justified in denying renewal application during relevant assessment year without there being any new circumstances. [S. 11, 12A]**

Dismissing the appeal of the revenue the Court held that ; Commissioner is not justified in denying renewal application during relevant assessment year without there being any new circumstances.

CIT v. Khairabad Eye Hospital (2018) 259 Taxman 2 / 98 taxmann.com 265 (All.)(HC)

Editorial : SLP of revenue is dismissed,CIT v. Khairabad Eye Hospital. 259 Taxman 1 (SC)

1309 **S. 80G : Donation – Recognition of institution – Without finding of fact that the funds utilised for private purposes or charitable purposes – declining approval is not justified. [S. 80G(5)(vi)]**

Held by the High Court that purchase of land and building by itself would not be sufficient to conclude that the assessee – society is involved in non-charitable activities, more particularly when it was granted registration on being satisfied that the aims and objects of the assessee were for charitable purposes, Hence approach of CIT (E) declining approval under Section 80G(5)(vi) is not legally sustainable. (AY. 2016-2017)

CIT (E) v. Seth Vinod Kumar Somani Charitable Trust (2018) 304 CTR 219 / 167 DTR 76 (P&H)(HC)

1310 **S. 80G : Donation – Spending more than 5 percent of income on pooja and telecast – Denial of approval was not justified when the exemption was granted under S. 12AA of the Income-tax Act. [S. 12AA, 80G(5)(vi)]**

Dismissing the appeal of the revenue the Court held that ; the Commissioner (Exemptions) had granted approval to the assessee under section 12AA on the same

date as his order denying the approval to the assessee. Taking note of the objects and aims of the assessee it was recorded by the Tribunal that there was no logic in denying approval under section 80G(5)(vi) and that the assessee had demonstrated that spending more than 5 per cent. of the total receipts for religious purposes as pooja expenses and telecast expenses was justified. If, in subsequent years, the Department was satisfied that the activities of the assessee were not qualified for charitable purposes, it would be open to the Department to initiate action for cancellation of registration under section 12AA of the Act.
CIT v. Sant Girdhar Anand Parmhans Sant Ashram (2018) 408 ITR 79 / 305 CTR 99 / 168 DTR 289 (P&H)(HC)

S. 80G : Donation – Donation to a charitable trust for applying the same for air-conditioning of a town hall owned by local authority – As the charitable trust merely acted as agent of assessee in carrying out air condition of hall and there was no donation made by assessee which could be applied for charitable purposes for which the trust was established – Claim is not allowable as deduction. [S. 37(1)] 1311
Allowing the appeal of the revenue, the Court held that ; the assessee gave donation to a charitable trust for applying the same for air-conditioning of a town hall owned by local authority. As the charitable trust merely acted as agent of assessee in carrying out air condition of hall and there was no donation made by assessee which could be applied for charitable purposes for which the trust was established. Claim is not allowable as deduction. (AY. 2004-05)
CIT v. Malayala Manorama Co. Ltd. (2018) 409 ITR 358 / 257 Taxman 597 (Ker.)(HC)

S. 80G : Donation – Trust was created for the upkeep and maintenance of a museum and also the activity of running the school – Direction of Tribunal to grant the approval was held to be justified. [S. 80G(5)] 1312
Dismissing the appeal of the revenue the court held that, Trust was created for the upkeep and maintenance of a museum and also the activity of running the school. Accordingly the Direction of Tribunal to grant the approval was held to be justified.
CIT v. Maharaja Sawai Man Singh-II, Museum Trust (2018) 405 ITR 478 (Raj)(HC)
Editorial : SLP of revenue is dismissed, CIT v. Maharaja Sawai Man Singh-II, Museum Trust (2018) 404 ITR 3 (St) / 256 Taxman 295 (SC)

S. 80G : Donation – Once registration was granted refusal of exemption for donation was held to be not justified [S. 12AA, 80G(5) (vi)] 1313
Allowing the appeal the Tribunal held that, since the assesse was granted registration u/s 12AA, approval u/s. 80G(5)(vi) cannot be denied.
Anand Incubation Centre v. CIT (E) (2018) 168 ITD 202 (Jaipur)(Trib.)

S. 80GGC : Contribution – Political parties – Payment was made to newspaper for advertisement contending that newspaper was run by political party, matter remanded for verification whether it was donation to political party. 1314
Payment had been made to a newspaper being run by a political party for insertion of some advertisements. AO disallowed the claim on ground that payment had been made

to a newspaper for advertisement and not to a political party or an electoral trust as envisaged under section 80GGC. CIT(A) allowed the claim observing that receipt issued by newspaper had acknowledged donation received by Rashtrawadi Congress Party and, therefore, payment clearly fell under purview of section 80GGC. On appeal by the revenue the Tribunal held that none of receipts mentioned that amount received was donation. Accordingly the matter was remanded for verification. (AY. 2011-12)
DCIT v. Anjali Hardikar (Smt.) (2018) 170 ITD 398 (Pune)(Trib.)

1315 **S. 80HH : Newly established industrial undertakings – Back ward areas – Processing of cashew nuts in own factory and Industrial undertaking of sister concerns in backward areas – Entitle to deduction.**
Dismissing the appeal of the revenue the Court held that ; processing of cashew nuts in own factory and Industrial undertaking of sister concerns in backward areas is entitle to deduction. (AY. 1993-94, 1994-95)
CIT v. R. Prakash, Dhanya Foods (2018) 405 ITR 261 / 304 CTR 333 / 167 DTR 229 (Ker.) (HC)

1316 **S. 80HHC : Export business – Supporting manufacturer – Question whether supporting manufacturer who receives export incentives in the form of duty draw back (DDB), Duty Entitlement Pass Book (DEPB) etc. is entitled for deduction u/s 80HHC is referred to the larger Bench**
Court held that. Law laid down in *CIT v. Baby Marine Exports (2007) 290 ITR 323 (SC) & CIT v. Sushil Kumar Gupta SPLA No 7615 of 2009 & CA No 6437* of 2012 dt. 12-09-2012 (SC) is not correct. Question whether supporting manufacturer who receives export incentives in the form of duty draw back (DDB), Duty Entitlement Pass Book (DEPB) etc. is entitled for deduction u/s 80HHC is referred to the larger Bench. (AY. 2001-02)
CIT v. Carpet India (2018) 405 ITR 469 / 165 DTR 233 / 302 CTR 183 / 255 Taxman 438 (SC), www.itatonline.org

1317 **S. 80HHC : Export business – Income derived – Profits due to exchange fluctuation and provision written back – Entitle to deduction.**
Dismissing the appeal of the revenue the Court held that,the Tribunal was right in holding that exchange fluctuation, provision written back, should be treated as income derived out of business for computation of deduction under S. 80HHC. (AY. 2001-02 2001-02)
CIT v. TTK LIG Ltd. (2018) 409 ITR 390 (Mad.)(HC)

1318 **S. 80HHC : Export business – Profits and gains of business or profession – Rent – Interest – Ninety per cent of such quantum of receipt of rent or interest will not be deducted under clause (a) of Explanation (baa) to section 80HHC. [S. 28, 30 to 44AD]**
Court held that ; if rent or interest is a receipt chargeable as profits and gains of business and chargeable to tax under S. 28, and if any quantum of rent or interest of assessee is allowable as an expense in accordance with S. 30 to 44D and is not to be included in profit of business of assessee as computed under head 'Profits and gains of business or profession', ninety per cent of such quantum of receipt of rent or interest

will not be deducted under clause (a) of Explanation (baa) to section 80HHC. Followed
ACG Associated Capsules (P) Ltd. v. CIT (2012) 343 ITR 89 (SC)
Chambal Fertilizers & Chemicals Ltd. v. CIT (2018) 95 taxmann.com 313 (Raj.)(HC)
Editorial : SLP of revenue is dismissed, CIT v. Chambal Fertilizers & Chemicals Ltd. (2018) 257 Taxman 93 (SC)

S. 80HHC : Export business – Income from job working of machining – Income to be considered as business income. 1319
Dismissing the appeal of the revenue the court held that; Income from job working of machining is to be considered as business income. (AY. 1995-96)
CIT v. Rambal P. Ltd. (2018) 404 ITR 307 (Mad.)(HC)

S. 80HHC : Export business – Ninety per cent of only net interest is to be Included in profits of business as Computed under head "Profits and gains of business. 1320
Dismissing the appeal of the revenue the Court held that; ninety per cent of only the net interest, which had been included in the profits of the business of the assessee as computed under the head "Profits and gains of business or profession", was to be deducted under clause (1) of Explanation (baa) to section 80HHC for determining the profits of the business. (AY. 1996-97)
CIT v. Banaras House Ltd. (2018) 402 ITR 88 (Delhi)(HC)

S. 80HHC : Export business – Generation of profit in export business is irrelevant – Formula to be applied – Income from high sea sales to be included – Loss incurred in export business is eligible deduction [S. 80HHC(3)(c)] 1321
Dismissing the appeals of the revenue the Court held that; though the assessee had incurred a loss in export business it was eligible for deduction under section 80HHC. The provision under sub-section (3) provided for the computation of the benefit at a proportion of the total profits from business, equivalent to the proportion the export turnover bore to the total turnover. According to the provision under sub-section (1), the incentive was a deduction, while computing the total income of the assessee, to the extent of profits, referred to in sub-section (1B), derived by the assessee from the export of such goods or merchandise. The computation of profits derived from export, for an assessee doing both export and domestic business, had to be made by resorting to the formula as available under sub-section (3)(c) of section 80HHC. The proportion, which the export turnover bore to the total turnover, had to be applied to the business profits to elicit the exact amount eligible for exemption under section 80HHC as profits derived from export. The business profits included those derived in the domestic market, those from high sea sales of imported goods, the turnover of which had to be included in the total turnover. It was the incentive permitted by the Legislature, for earning in foreign exchange, whether the export business generated profit or not. In computing the deduction under section 80HHC, the loss incurred in the export business would be of no consequence, since the formula as applied, would take in the total turnover, the export turnover and the total business profit. Loss incurred in export business is eligible deduction.
CIT v. Jameela, J. S. Cashew Exporters (2018) 401 ITR 391 / 165 DTR 287 (Ker.)(HC)

1322 **S. 80HHC : Export business – Amendment with retrospective effect imposing conditions for exporters having turnover above ₹ 10 Crores, was held to be prospective in nature. [S. 28(i)]**

Allowing the petitions the Court held that; Amendment with retrospective effect imposing conditions for exporters having turnover above ₹ 10 Crores, was held to be prospective in nature. The retrospectivity ascribed to the amendments to S. 28 and 80HHC was unconstitutional.

Sarita Handa v. UOI (2018) 400 ITR 567 (Delhi)(HC)
Omsons Worldwide v. UOI (2018) 400 ITR 567 (Delhi)(HC)

1323 **S. 80HHC : Export business – Audit report was filed in the name of proprietorship concern – Disallowance of claim is held to be not valid. [S. 158BC]**

Tribunal held that the Assessee filed return of income u/s 158BC and assessment was completed against him in his proprietorship concern. Exports were made, export proceeds were received through Banking channel and audit report was also filed in name of proprietorship concern before its incorporation. Entitle to deduction. (BP. 1-4-1989 to 14-07-1999)

Arun Malhotra v. AO (2018) 196 TTJ 719 / (2019) 173 DTR 276 (Delhi)(Trib.)

1324 **S. 80HHE : Export business – Computer software – Claim was not made when the return was filed – Claim was made when the amount was received – Entitle to deduction.**

AO disallowed the claim on the ground that, claim was not made when the return was filed. CIT(A) allowed claim of assessee holding that since amount had been received within previous year for which income was being taxed and deduction was being claimed it could not be said that amount had not been received during previous year during which income was disclosed. Tribunal upheld order of CIT(A). On appeal by revenue dismissing the appeal of the revenue the Court held that, for previous year as well assessee's claim u/s. 80HHE for similar receipt of export proceeds for earlier periods, was allowed. Amounts were supposed to be received, but were not received, on account of extraneous political circumstance, i.e. disintegration of Soviet Union. As and when amounts were received, assessee claimed deduction, albeit in course of assessment proceedings. This occurred at a point of time when there was no bar in such claims and restriction was imposed by an amendment in the Finance Act, 2009 with retrospective effect from 01.04.2003. Accordingly the assessee was not barred from claiming deduction, when amounts were in fact received by it. (AY. 1996-97)

CIT v. Techno Exports (2018) 171 DTR 78 (Delhi)(HC)

1325 **S. 80I : Industrial undertakings – Two units – No separate books of account – Division of income between the two units in proportion of their internal publication and circulation of the Ahmedabad edition is held to be proper.**

Allowing the appeal of the revenue the Court held that ; the newspapers, in all respects, were identical. The quality of paper used, the printing material and the cost of each

such newspaper sold in Ahmedabad as well as outside Ahmedabad were the same. Under the circumstances, the most fair and equitable means of dividing the income between the two units would be in the proportion of their internal publication and circulation of the Ahmedabad edition. That was what the Assessing Officer had done. The Assessing Officer's order was justified. (AY. 1989-90)
CIT v. Lok Prakashan Ltd. (2018) 408 ITR 188 / (2019) 174 DTR 344 / 307 CTR 181 (Guj.) (HC)

S. 80IA : Industrial undertakings – Infrastructure development – Inland Container Depots (ICDs) are Inland Ports and income earned out of these Depots are eligible for deduction. However, the actual computation is to be made in accordance with the different Notifications issued by the Customs department with regard to different ICDs located at different places. [S. 80IA(4)] 1326

Dismissing the appeal of the revenue the Court held that; Inland Container Depots (ICDs) are Inland Ports and income earned out of these Depots are eligible for deduction. However, the actual computation is to be made in accordance with the different Notifications issued by the Customs department with regard to different ICDs located at different places. Notification No S.O. 744 (E) dt. 1-9-1998 (1998) 233 ITR 126 (St) (AY. 2003-04 to 2005-06)
CIT v. Container Corporation of India Ltd. (2018) 404 ITR 397 / 165 DTR 353 / 302 CTR 221 / 255 Taxman 334 (SC), www.itatonline.org
CIT v. A. L. Logistics (P) Ltd. (2018) 165 DTR 353 / 302 CTR 221 / 255 Taxman 334 (SC), www.itatonline.org
CIT v. Continental Ware Housing Corporation (2018) 165 DTR 353 / 302 CTR 221 / 255 Taxman 334 (SC), www.itatonline.org

S. 80IA : Industrial undertakings – Infrastructure development – Agreement with nodal agency constituted by State Government for infrastructure development – Entitle to deduction. 1327

Dismissing the appeal of the revenue the Court held that the Gujarat State Road Development Corporation was a wholly Government owned company incorporated pursuant to the State Government's resolution dated February 28, 1999. The members and the board of directors and the memorandum of association would show that the Government enjoyed total control over the Corporation. There was a requirement of four laning of road near GSFC junction, Vadodara. A request for this purpose was made by the Gujarat Industrial Development Board. For the road widening, the Government of Gujarat, Road and Building Development, under its resolution dated August 1, 2002 allotted the land for construction of the road on build, operate and transfer basis. The concession agreement which the Gujarat State Road Development Corporation entered into with the assessee was approved by the State Government in its meeting dated October 24, 2000. The Government of Gujarat passed an order dated March 7, 2003 permitting the assessee to collect toll fee at prescribed rates. The Gujarat State Road Development Corporation was a nodal agency constituted by the State Government for the purpose of executing road development projects through private participation

would be a Government agency as defined in section 2(e) of the Gujarat Infrastructure Development Act, 1999. The assessee was entitled to special deduction under section 80IA. (AY. 2010-11)
CIT v. Ranjit Projects P. Ltd. (2018) 408 ITR 274 / 169 DTR 103 / (2019) 306 CTR 585 (Guj.)(HC)
Editorial: SLP of revenue is dismissed on the ground of delay, CIT v. Ranjit Projects P. Ltd. (2019) 263 Taxman 363 (SC)

1328 **S. 80IA : Industrial undertakings – No requirement that Industrial Park should be operational before stipulated time – Refusal of approval because it was not operational is held to be not valid – The order and notification, withdrawing the earlier notification of 2007 was quashed.**
Allowing the petition the Court held that; there is no requirement that Industrial Park should be operational before stipulated time. Accordingly refusal of approval because it was not operational is held to be not valid. The facts were that the approval was granted to the assessee on July 24, 2006, by the Central Government. The letter stated that the expected date of construction was to be March 15, 2006. The correspondence with the Town Planning Department and other letters disclosed that the construction was completed and that the occupancy certificate was awaited as of February, 2006. The order and notification, withdrawing the earlier notification of 2007 was quashed.
Finest Promoters Pvt. Ltd. v. UOI (2018) 407 ITR 308 (Delhi)(HC)

1329 **S. 80IA : Industrial undertakings – Prior to assessment Year 1999-2000 benefit under Section 80IA is available without exclusion of deduction Under S. 80HHC – Sub -section (9a) with effect from 1-4-1999 is prospective – Circulars binding on revenue – Liberal interpretation – Retrospective operation of provisions. [S. 80HHC, 119]**
Allowing the appeal of the assessee the Court held that; prior to assessment Year 1999-2000 benefit under Section 80IA is available without exclusion of deduction Under S. 80HHC. Sub-section (9A) with effect from 1-4-1999 is prospective. Circulars binding on revenue. Liberal interpretation The amendment by introduction of sub-section 9A to section 80IA is explicitly prospective with effect from April 1, 1999. It is neither declaratory or clarificatory nor is it in the nature of explanation. Thus, a strict reading of fiscal statute would prevent the amendment being read as retrospective in the absence of the statute providing for it. (AY. 1997-98)
Indian Gum Industries Ltd. v. JCIT (2018) 407 ITR 261 / 169 DTR 393 / 304 CTR 877 (Bom.)(HC)

1330 **S. 80IA : Industrial undertakings – Derived – Interest – Compensation – miscellaneous income – Interest earned on short term deposits – Entitle to deduction in respect of interest on deposits, compensation received on machinery breakdown and miscellaneous income – Interest earned on short-term deposits of money kept apart for purpose of business has to be treated as income earned on business and cannot be treated as income from other sources and is deduction. [S. 28((i), 56]**
Court held that the assessee is entitle to deduction in respect of interest on deposits, compensation received on machinery breakdown and miscellaneous income-Interest

earned on short-term deposits of money kept apart for purpose of business has to be treated as income earned on business and cannot be treated as income from other sources and is deduction.
Chambal Fertilizers & Chemicals Ltd. v. CIT (2018) 95 taxmann.com 313 (Raj.)(HC)
Editorial : SLP of revenue is dismissed, CIT v. Chambal Fertilizers & Chemicals Ltd. (2018) 257 Taxman 93 (SC)

S. 80IA : Industrial undertakings – Expenses provision written back will not form a part of income since it was written off deposit which was kept in separate account and is not an income eligible. 1331
Court held that expenses provisions written back will not form a part of income since it was written off deposit which was kept in separate account and is not an income eligible for deduction.
Chambal Fertilizers & Chemicals Ltd v. CIT (2018) 95 taxmann.com 313 (Raj.)(HC)

S. 80IA : Industrial undertaking – Infrastructure facility – Container freight station (CFS) is eligible deduction as an infrastructure facility – Strictures passed against Dept's Advocate for "most unreasonable attitude" of seeking to reargue settled concluded issues and not following the judicial discipline and law of precedents. 1332
Dismissing the appeal of the revenue, the Court held that; the issue involved was whether the Container freight station (CFS) is eligible deduction as infrastructure facility. Though the issue is covered by Jurisdictional High Court in *CIT v. Continental Ware housing Corporation (Nava Sheva) (2015) 374 ITR 646 (Bom)(HC)* and also All *Cargo Logistics Ltd. v. CIT (ITA No 5018 to 5022* and 5059 dt. 6th July 2012, the revenue wanted to argue the matter once again. The Court has also passed,strictures against Department 's Advocate for "most unreasonable attitude" of seeking to reargue settled concluded issues and not following the judicial discipline and law of precedents. (AY. 2008-09, 2009-10)
PCIT v. JWC Logistics Park Pvt. Ltd. (2018) 404 ITR 310 (Bom.)(HC), www.itatonline.org

S. 80IA : Industrial undertakings – Distribution of electricity – Penalty Recovered from suppliers for delay in execution of contracts, unclaimed balances of contractors, rebate from power generators, interest on fixed deposits for opening letter of credit to power grid Corporation is includible in profits – Miscellaneous recovery from employees, difference between written down value and book value of released assets, commission for collection of electricity duty, rental income is not part of profits. 1333
Court held that the penalty recovered from suppliers and contractors for delay in execution of works contract, unclaimed balances outstanding pertaining to security deposits and earnest money deposits of contractor written back in the books of account, rebate from power generators, interest income (fixed deposit for opening of letter of credit to Power Grid Corporation Ltd. had to be taken into account while computing the deduction under S. 80IA(4) of the Act. Court also held that,miscellaneous recovery from employees, the difference between the written down value/book value of released

assets, commission from collection of electricity duty, and rental income could not be taken into account while computing the deduction under S. 80IA(4) of the Act (AY. 2006-07 to 2008-09)
Hubli Electricity Supply Co. v. DCIT (2018) 404 ITR 462 / 170 DTR 332 (Karn.)(HC)

1334 **S. 80IA : Industrial undertakings – Infrastructure development – Ownership of undertaking is not Important – Successor in business can claim deduction. [80IA)(4)]**
Allowing the appeal of the assessee the Court held that; Ownership of undertaking is not Important hence the successor in business can claim deduction (AY. 2008-09)
Kanan Devan Hills Plantations Company P. Ltd. v. ACIT (2018) 400 ITR 43 / 300 CTR 172 (Ker.)(HC)

1335 **S. 80IA : Industrial undertakings – Infrastructure development – while computing deduction loss of one eligible unit shall not be set off or adjusted against profit of another eligible unit.**
The AO in the instant case while computing the deduction u/s. 80-IA held that the loss of the eligible industrial unit is required to be set off against the profit of other eligible industrial unit. CIT(A) rejected the finding of the AO by observing that it has been held in various decisions that while computing the deduction u/s. 80-IA, loss of one eligible unit is not to be set off or adjusted against the profit of another eligible unit. Since the order of the CIT(A) is in consonance with the law laid down by various High Courts and various Benches of the Tribunal, therefore, there is no infirmity in the order of the CIT(A). (AY. 2011-12)
Godawari Power and Ispat Ltd. v. Dy. CIT (2018) 68 ITR 19 (SN)(Raipur)(Trib.)

1336 **S. 80IA : Industrial undertakings – Infrastructure development – Interest, penal interest and miscellaneous income which cannot be separated from the business activity of developing, maintaining and operating industrial parks/ SEZ units are eligible for deduction.**
Interest, penal interest and miscellaneous income which cannot be separated from the business activity of developing, maintaining and operating industrial parks/ SEZ units are eligible for deduction. (AY. 2009-10 to 2012-13)
Rajasthan State Industrial Development & Investment Corporation Ltd. v. DCIT (2018) 195 TTJ 35 (Jaipur)(Trib.)

1337 **S. 80IA : Industrial undertakings – Loss of an eligible industrial unit is not required to be set-off against profit of other eligible unit.**
The Tribunal held that loss of an eligible industrial unit is not required to be set-off against profit of other eligible unit (AY. 2011-12)
DCIT v. Godawari Power & Ispat Ltd. (2018) 68 ITR 19 (SN)(Raipur)(Trib.)

S. 80IA : Industrial undertakings – Captive consumption – Power supplied to its divisions – Market value of power supplied to others to be charged. 1338

Dismissing the appeal of the revenue the Tribunal held that, in respect of captive consumption, power supplied to its divisions,market value of power supplied to others to be considered. (AY. 2011-12)

DCIT v. Godawari Power & Ispat Ltd. (2018) 68 ITR 19 (SN)(Raipur)(Trib.)

S. 80IA : Industrial undertakings – Audit report – Filing of an audit report is procedural and directory in nature – It can also be filed before Appellate Authority. [Form No 10CCB] 1339

Dismissing the appeal of the revenue the Tribunal held that ; filing of an audit report is procedural and directory in nature. It can also be filed before Appellate Authority, CIT(A) has rightly admitted the Audit report filed by the assessee during the course of the appellate proceedings and allowing the claim u/s. 80IA of the Act. (AY. 2011-12)

ACIT v. Celerity Power LLP (2019) 174 ITD 433 / 197 TTJ 45 / 174 DTR 68 (Mum.)(Trib.), www.itatonline.org

S. 80IA : Industrial undertaking – Survey – Bogus purchases – Additional income offered as non genuine purchases-Entitle to deduction . [S. 80IA(4), 133A,147] 1340

Tribunal held that additional income had been assessed in hands of assessee from same nature of business. Hence assessee was eligible to claim deduction u/S. 80IA(4) of the Act. Followed *Sheth Developers 25 taxmann.com 173 (Bom.)(HC)*. (AY. 2007-08 to 2010-11, 2011-12, 2012-13)

ACIT v. Mahalaxmi Infraprojects Ltd. (2018) 63 ITR 671 (Pune)(Trib.)

S. 80IA : Industrial undertakings – Infrastructure Development – Joint venture between two companies Merely because assessee was paid by Government for development work, it could not be denied deduction u/s 80IA(4) when it provided a complete infrastructure required to support the development of infrastructure facility and deployed its various resources and exposed itself to various risks. [S. 80IA(3), 194C] 1341

Assessee is a joint venture between two companies and was engaged in business of development of infrastructure facility. Claimed deduction u/s 80IA. AO invoking provisions of explanation to S. 80IA observed that assessee was merely executing civil construction work in nature of works contracts and held that assessee was not entitled for deduction u/s 80IA. CIT(A) deleted disallowance by holding that assessee was developer and hence explanation to section 80IA(13) did not apply to it. Tribunal held that merely because assessee was paid by Government for development work, it could not be denied deduction u/s 80IA(4) when it provided a complete infrastructure required to support the development of infrastructure facility and deployed its various resources and exposed itself to various risks. (AY. 2010-11)

ACIT v. Ho Hup Simplex JV (2018) 63 ITR 74 (SN)(Kol.)(Trib.)

1342 **S. 80IA : Industrial undertakings – Infrastructure development – Developer – Contractor – Business of construction/development of Infrastructure facilities such as roads and providing necessary and crucial components of Railway system is entitle to deduction as developer. [S. 80IA(4)]**

Tribunal held that the assessee, engaged in business of construction/development of Infrastructure facilities such as roads and providing necessary and crucial components of Railway system is entitle to deduction as developer. (AY.2004-05 to 2009-10)

Bhinmal Contractors Property and Land Developers (P.) Ltd. v. ACIT DCIT (2018) 170 ITD 599 / 169 DTR 75 / 195 TTJ 101 (Mum.)(Trib.)

1343 **S. 80IA : Industrial undertakings – Independent unit – Merely because both units have a common excise registration, common electricity and water connection, exemption as separate unit cannot be denied.**

Allowing the appeal of the assessee the Tribunal held that, Merely because the both units have a common excise registration, common electricity and water connection, exemption as separate unit cannot be denied. On facts the Unit 2. was established investment of fresh funds, employment of separate labour force, manufacturing of different products, earning separate profits at Tributable to its activity and distinct and separate from old units, there is no requirement for obtaining separate registration for each unit for claiming deduction. (ITA No. 1384/Mum./ 2009 dt. 29-06-2016 " B)) (AY. 1999-2000, 2000-01, 2001-02)

Medley Pharmaceuticals Ltd. v. DCIT (Mum.) (Trib.) www.itatonline.org

1344 **S. 80IA : Industrial undertaking – Power generation plant – Manufacturer of yeast setting up plant for generation of steam power from biogas, generation of cooling power from ammonia absorption refrigeration plant for maintaining temperature of yeast is entitled to deduction.**

Tribunal held that,manufacturer of yeast setting up plant for generation of steam power from biogas, generation of cooling power from ammonia absorption refrigeration plant for maintaining temperature of yeast is entitled to deduction. For quantification the matter was set aside. (AY. 2005-06, 2008-09)

Saf Yeast Co. P. Ltd. v. Dy. CIT (2018) 62 ITR 381 / 51 CCH 745 (Mum.)(Trib.)

1345 **S. 80IA : Industrial undertakings – Income from advertisements on foot over bridges and bus shelters is entitle to deduction.**

Dismissing the appeal of the revenue the Tribunal held that; Income from advertisements on foot over bridges and bus shelters is entitle to deduction. (AY. 2010-11)

DCIT v. Vantage Advertising P. Ltd. (2018) 61 ITR 564 (Kol.)(Trib.)

1346 **S. 80IB : Industrial undertakings – Contract for manufacturing of product – Manufacturing activity undertaken by that other entity for and on behalf of Assessee was not under its direct supervision and control – Not entitle to deduction.**

AO rejected claim u/s. 80IB on ground that manufacturing activity undertaken by that other entity for and on behalf of Assessee was not under its direct supervision and

control. Order of the AO was affirmed by the CIT(A) and Appellate Tribunal. On appeal dismissing the appeal of the assessee the Court held that the assessee could not produce particulars like attendance register, qualifications of employees in spite of being asked to do so by AO. In fact, it appeared that even packaging material was supplied to contract manufacturer by Assessee-Company for finished products. The Assessee did not retain control over manufacturing of electronic computers at factory premises of that other entity. Accordingly not eligible for deduction. (AY. 2004-05)
Daman Computers Pvt. Ltd. v. ITO (2018) 170 DTR 103 (Bom.)(HC)

S. 80IB : Industrial undertakings – No deduction is allowable if return of income is not filed within due date of the filing of the return. [80AC, 139(1), 139(4)] 1347
High Court held that when the governing provisions expressly mandates that no deductions shall be allowed unless the assessee filed its return of income under S. 139(1) of the Act, there is no question of referring to the extended period permitted under S. 139(4) to seek benefit of deduction. Further, the Court observed that if the embargo was not as strict, the entirety of S. 139 of the Act would have been mentioned in the relevant provisions of S. 80AC of the Act. Accordingly no deduction is allowable if return of income is not filed within due date of the Act. (IT A. No 385 of 2016; GA No. 3162, 690 of 2016 dt. 04-05-2018)
Suolificio Linea Italia (India) (P.) Ltd. v. JCIT (2018) 407 ITR 16 / 255 Taxman 477 (Cal.) (HC)

S. 80IB : Industrial undertakings – Manufacture – Ayurvedic medical products – Filling of mushroom powder in gelatin capsules after following specified process amounts to manufacture or production of commercially distinct commodity – Entitle to deduction. 1348
Allowing the appeal of the assessee, the Court held that ; assessee which is engaged in manufacture of Aurvedic medical products, filling of mushroom powder in gelatin capsules after following specified process amounts to manufacture or production of commercially distinct commodity. Accordingly entitle to deduction. (AY. 2003-04, 2004-05) (Note : Order in DXN *Herbal Manufacturing (India) (P.) Ltd. v. ITO (2009) 316 ITR (AT) 126 (Chennai)(Trib.)* is partly reversed.)
DXN Herbal Manufacturing (India) (P.) Ltd. v. ITO (2018) 257 Taxman 492 / (2019) 411 ITR 646 / 307 CTR 556 / 174 DTR 203 (Mad.)(HC)

S. 80IB : Industrial undertakings – Splitting up or reconstruction – Printing press – New industrial undertaking of printing press is not the expansion of existing unit, hence entitle to deduction. 1349
Dismissing the appeal of the revenue the Court held that, new printing press is neither formed by splitting up of original news paper business nor it is a case of reconstruction of existing business. An amount of ₹ 44,35,107 was invested in addition to fixed assets on account of acquisition of new machinery, thus it is a new industrial unit and not the expansion of the existing industry, therefore the assessee is entitle to deduction. (AY. 2009-10)
CIT v. Bansi Lal Gupta (2018) 300 CTR 332 (J& K)(HC)

1350 **S. 80IB : Industrial undertakings – Activity of supplying the audio of the background sound to the film already shot by customers is manufacture and entitle to deduction.**
On appeal the High Court held, following the principle laid down in *CIT v. Oracle Software India Ltd (2010) 320 ITR 546 (SC)* and considering the facts that (i) the activity of video software generation has been recognized as small scale industries by Government of India and (ii) providing the audio software to the video already shot makes an article fit for use, it tantamount to manufacture within the meaning of provisions of S. 80IB of the Act. (AY. 2001-02)
Vijay Kumar v. CIT (2018) 161 DTR 278 / 300 CTR 254 (J& K)(HC)

1351 **S. 80IB : Industrial undertakings – Interest Subsidy – Revenue subsidies received by the assessee towards reimbursement of cost could be said to have direct nexus with profits and gains of industrial undertaking and eligible for deduction.**
Allowing the appeal of the assessee the Court held that; revenue subsidies received by the assessee towards reimbursement of cost could be said to have direct nexus with profits and gains of industrial undertaking and eligible for deduction. Followed *CIT v. Meghalaya Steel Ltd. (2016) 383 ITR 217 (SC)* (AY. 2001-02)
Kashmir Tubes v. ITO (2017) 85 taxmann.com 299 (2018) 300 CTR 541 (J&K)(HC)

1352 **S. 80IB : Industrial undertakings – Manufacture – Process of galvanization amounted to 'manufacture' since the resultant product is a different commercial commodity having distinct use and is sold at a higher price.**
Allowing the appeal of the assessee the Court held that; process of galvanization amounted to 'manufacture' since the resultant product is a different commercial commodity having distinct use and is sold at a higher price. (AY. 2001-02)
Kashmir Tubes v. ITO (2017) 85 taxmann.com 299 (2018) 300 CTR 541 (J&K)(HC)

1353 **S. 80IB : Industrial undertakings – Employment of number of workers – Question of fact was examined by the Tribunal, finding of fact.**
Dismissing the appeal of the revenue, the Court held that; the Tribunal had independently formed an opinion, based on correct, complete and proper appreciation of the entire material, that the assessee had in fact employed more than ten workers for substantial part of the year. These findings of fact could not be said to be arbitrary, illegal, erroneous or unreasonable. (AY. 2003-04)
CIT v. Him Knit Feb (2018) 400 ITR 76 (HP)(HC)

1354 **S. 80IB : Industrial undertakings – Manufacture – Conversion of 24 Karat Gold into 22 Karat Gold ornament amounts to manufacturing. [S. 2(29BA)]**
Tribunal held that clause (a) of S. 2(29BA) of the IT Act which defines "manufacture" is clearly satisfied as there is transformation of 24 Kt gold into new and distinct object; an ornament which has a different name, character and usage. (AY. 2013-14)
ACIT v. Deepak Kumar Handa (2018) 62 ITR 140 (Amritsar)(Trib.)

S. 80IB(10) : Housing projects – Stilt parking is part and parcel of housing project – Eligible deduction. 1355

Dismissing the appeal of the revenue the Court held that, tilt parking is part and parcel of housing project accordingly is eligible deduction. Followed *CIT v. Gundecha Builders (ITA Nos 2253 of 2011, 1513 of 2012 dt. 7-03-2012)* (ITA No. 347 of 2016 dt. 31-07-2018) (Arising ITA No. 4475 / Mum./2011 dt 19-02-2014)

CIT v. Gundecha Builders (2019) 102 taxmann.com 27 (Bom.)(HC), www.itatonline.org

S. 80IB(10) : Housing projects – Construction of approach road and permission for user of land for housing project – Entitle to exemption. 1356

Dismissing the appeal of the revenue the Court held that the owner of land who undertook various activities for conversion of land user, tedious activities for approval for development of housing project and constructing the approach road which was mandatory for development permissions. All the approvals, permissions and completion certificates were in the name of the assessee. Accordingly the Tribunal was justified in holding that the assessee was entitled to the deduction.

CIT v. Prem Kumar Sanghi (2018) 408 ITR 632 (Raj.)(HC)

Editorial : SLP of revenue is dismissed CIT v. Prem Kumar Sanghi (2018) 408 ITR 8 (St.)

S. 80IB(10) : Housing projects – Local authorities could approve a housing project along with commercial user to extent permitted under DC Rules/Regulations framed by respective local authority – When local authorities approve the project as housing project – Deduction cannot be denied. 1357

Dismissing the appeal of the revenue the Court held that ; Once local authorities approve a project as housing project along with commercial user to extent permitted under DC Rules/Regulations framed by respective local authorities, it has to be treated as housing project and eligible deduction. Followed *CIT v. Veena Developers (2016) 66 taxmann.com 353 (SC), CIT v. Brahma Associates (2011) 333 ITR 289 (Bom.)(HC) (AY. 2006-07)*

CIT v. Makwana Brothers & Co. (HWP) (2017) 88 taxmann.com 278 (Bom.)(HC)

Editorial : SLP of revenue is dismissed ; CIT v. Suyog Shivalaya (2018) 257 Taxman 334 (SC)

S. 80IB(10) : Housing projects – Sale of flats to related persons – Amendment brought on 1-4-2010 vide clause (f) to section 80IB(10) barring sale of more than one flat in a housing project to related persons, is prospective in nature. [S. 80IB(10)(f)] 1358

Dismissing the appeal of the revenue the Court held that,amendment brought on 1-4-2010 vide clause (f) to section 80IB(10) barring such sale to related persons is prospective in nature. Since sale of flats by assessee took place in 2008 i.e., long before such amendment of section 80IB, deduction was to be allowed to assessee. (AY. 2011-12)

CIT v. Elegant Estates (2018) 407 ITR 425 / 256 Taxman 433 (Mad.)(HC)

1359 **S. 80IB(10) : Housing projects – Date of commencement – Merely securing approval of Local Authority is not step towards development, actual date of construction is relevant. Project completed in year 2001 therefore balconies to be excluded. [S. 80IB(10)(c).**

Dismissing the appeal of the revenue the Court held that, the mere securing of approval from the local authority did not lead to any step towards development and therefore, it was the actual date of construction of the project which was determinative for the purpose of deduction under section 80IB(10)(c). Court also held that the balconies could not be taken into account for calculation of built up area of 1000 sq. feet limit for construction undertaken prior to April 1, 2005.

CIT v. Padmini Infrastructure (P.) Ltd. (2018) 405 ITR 27 (Delhi)(HC)

1360 **S. 80IB(10) : Housing projects – Project containing commercial units to the extent permitted by rules and regulation is allowable as deduction. Tribunal is justified in allowing partial deduction only in respect of building completed.**

Where a project is approved as a housing project without or with commercial user to the extent permitted under the Rules/Regulations, then, deduction under section 80IB(10) would be allowable. Once local authorities have approved a project to be housing project without or with the commercial user to the extent permitted under the DC Rules, then the project approved with the permissible commercial user would be eligible for section 80IB(10) deduction irrespective of the fact that the project is approved as "housing project" or approved as "residential plus commercial". Where a project fulfills the criteria for being approved as a housing project, then deduction cannot be denied under section 80B(10) merely because the project is approved as "residential plus commercial". (AY. 2005-06, 2006-07)

CIT v. Makwana Brothers & Co. (HWP) (2018) 161 DTR 289 (Bom.)(HC)

1361 **S. 80IB(10) : Housing projects – Commencement of construction before 1-10-1998 – If either the development or the construction starts before the specified date, the benefit of deduction is not allowable. [S. 80IA(5)]**

Where the assessee undertakes levelling work so as to develop the land to facilitate the construction of a building over it, the development and construction of the housing project commences with such levelling of the earth. The expression used is "Commences Development and Construction of the Housing Project". The intention of the legislature is clear that the development of the project and the construction which follows such development must start on or before the date specified. If either the development or the construction starts before the specified date, the benefit of deduction is not allowable.

CIT v. Shipra Estate Ltd. (2018) 162 DTR 332 / 301 CTR 34 (All.)(HC)

1362 **S. 80IB(10) : Housing projects – Completion certificate – Time limit prescribed for completion of project prescribed for completion of project and production of completion certificate have to be treated as applicable prospectively to projects approved on or after 1-4-2015.**

Tribunal held that, Time limit prescribed for completion of project prescribed for completion of project and production of completion certificate have to be treated as

applicable prospectively to projects approved on or after 1-4-2015. Amendments made to S. 80IB(10) w.e.f. 1-4-2005 cannot be made applicable to a housing project which has obtained approval before 1-4-2015. (ITA No. 1374/Mum./2017 dt. 16-03-2018 (AY. 2007-08)
Mavani & Sons v. ITO (Mum.)(Trib.) (2018) BCAJ-May-P.46. www.itat.nic.in

S. 80IC : Special category States – An assessee who avails of deduction for a period of 5 years @ 100% of profits and gains is entitled to deduction on 'substantial expansion' for remaining 5 Assessment Years @ 25% (or 30% where the assessee is a company) and not @ 100% [S. 80IA, 80IB] 1363

Allowing the appeal of the revenue the Court held that ; an assessee who avails of deduction for a period of 5 years @ 100% of profits and gains is entitled to deduction on 'substantial expansion' for remaining 5 Assessment Years @ 25% (or 30% where the assessee is a company) and not @ 100% (*Mahabir Industries v. PCIT (2018) 406 ITR 315 (SC)* distinguished). (AY. 2011-12 – 2012-13)
CIT v. Classic Binding Industries (2018) 407 ITR 429 / 257 Taxman 324 / 304 CTR 225 / 169 DTR 185 (SC), www.itatonline.org
Editorial. Decision in Stovekraft India v. CIT (2018) 406 ITR 225 (HP) (HC) is reversed.

S. 80IC : Special category States – Initial year – The fact that the assessee has earlier availed deduction u/s 80IA & 80IB is of no concern because deduction u/s 80IC is available from the "initial year" i.e. the year of completion of substantial expansion. The inclusion of period for the deduction availed u/s 80IA & 80IB, for the purpose of counting ten years, is provided in sub-section (6) of S. 80IC and it is limited to those industrial undertakings or enterprises which are set-up in the North – Eastern Region. [S. 80IA, 80IB] 1364

Assessees claim for the AY. 2008-09, 2009-10 u/s. 80IC of the Act was rejected by the AO on the ground that this was 11th and 12th year of deduction and as per S. 80IC(6), total deductions under S. 80IC and S. 80IB cannot exceed the total period of ten years. Disallowance was affirmed by High Court. On appeal allowing the appeal of the assessee the Court held that; The fact that the assessee has earlier availed deduction u/s 80IA & 80IB is of no concern because deduction u/s. 80IC is available from the "initial year" i.e. the year of completion of substantial expansion. The inclusion of period for the deduction availed u/s. 80IA & 80IB, for the purpose of counting ten years, is provided in sub-section (6) of S. 80IC and it is limited to those industrial undertakings or enterprises which are set-up in the North-Eastern Region. (AY. 2008-09,2009-10)
Mahabir Industries v. PCIT (2018) 406 ITR 315 / 166 DTR 209 / 302 CTR 449 / 256 Taxman 201 (SC), www.itatonline.org
Editorial : Decision in Strovekraft India v. CIT (2018) 400 ITR 225 (HP) (HC) is reversed on this point. Also Refer, PCIT v. Aarham Softronics (2019) 261 Taxman 343 (SC)

1365 **S. 80IC : Special category States – Initial Assessment Year – Substantial expansion – Claimed 100% deduction for five years – Cannot claim deduction at 100 Per Cent beyond period of five years on ground of substantial expansion.**
Dismissing the appeal of the assessee the Tribunal held that,once exemption of 100% deduction is claimed for initial period of five years, the assessee cannot claim deduction at 100% beyond period of five years on ground of substantial expansion. (AY. 2011-12)
Admac Formulations v. CIT (2018) 409 ITR 661 (P&H)(HC)
Editorial : Order in Hycron Electronics v. ITO (2015) 41 ITR 486 (Chd.)(Trib.) is affirmed

1366 **S. 80IC : Special category States – Interest earned on fixed deposit maintained with bank for obtaining bank guarantee is not derived from business hence not entitle to deduction. [S. 2(13), 80HH, 263]**
Dismissing the appeal of the assessee the Court held that; interest earned on fixed deposit maintained with bank for obtaining bank guarantee is not derived from business hence not entitle to deduction. Court also observed that there is material difference between the language used in S. 80HH, 80IB and S. 80IC(2) of the Act. Accordingly revision was held to be justified. (AY. 2009-10)
Conventional Fastners v. CIT (2018) 403 ITR 115 / 301 CTR 625 / 164 DTR 65 (Uttarakhand)(HC)
Editorial : SLP of assessee is dismissed Conventional Fastners v. CIT (2018) 256 Taxman 61 (SC)

1367 **S. 80IC : Special category States – Undertaking job work by providing labour and factory space to manufacturers of medicines is entitle to deduction.**
Dismissing the appeals of the revenue, the court held that, Undertaking job work by providing labour and factory space to manufacturers of medicines, was entitle to deduction. The findings recorded by the Tribunal were based on due appreciation of factual material available on record. The decisions rendered by the Tribunal were based on questions that involved legal principle, approved by various High Courts and a different view was not called for.
CIT v. Aishwarya Health Care (2018) 401 ITR 398 (Patna)(HC)
CIT v. Gunjita Nir Prop. Aishwarya Health Care (2018) 401 ITR 398 (Patna)(HC)

1368 **S. 80IC : Special category States-substantial expansion – Entitle to deduction. [S. 80IB (5), 80IC (7)]**
Tribunal held that on substantial expansion entitle to deduction. Followed *Stovekraft India v. CIT (HP)(HC)*(ITA No. 20 of 2015 dt 7-12-2017) (AY. 2013-14)
Friends Alloys v. ACIT (2018) 163 DTR 273 / 192 TTJ 494 (Chd.)(Trib.)

1369 **S. 80IC : Special category States – Two manufacturing units both are eligible for deduction – One unit earned profit and other unit loss – AO is justified in setting of negative income of one eligible unit against positive income of other eligible unit. [S. 80AB, 80IA(5), 80IC(7)]**
Tribunal held that, where the assessee has, two manufacturing units both are eligible for deduction. One unit earned profit and other unit loss-AO is justified in setting

of negative income of one eligible unit against positive income of other eligible unit. The decision of the CIT (A) considering the setting of the negative income of one priority unit with the positive income of the another priority unit before computing the deduction under S. 80IC is upheld. (AY. 2010-11, 2011-12)
Elin Appliances (P.) Ltd. v. DCIT (2018) 173 ITD 122 / (2019) 198 TTJ 654 / 176 DTR 52 (Chd.)(Trib.)

S. 80IC : Special category States – Manufacture of watches – Assembling will amount to manufacture – Allegation of the Dept. that manufacture is not possible as the assessee has less number of employees, no sophisticated machinery and less electricity consumption cannot be the ground to reject the claim of the assessee. 1370
Dismissing the appeal of the revenue the Tribunal held that ; assembling will amount to manufacture. Allegation of the Dept that manufacture is not possible as the assessee has less number of employees, no sophisticated machinery and less electricity consumption cannot be the ground to reject the claim of the assessee. (ITA No. 2160/Mum./2016, dt. 19.09.2018) (AY. 2011-12)
ITO v. Surendra R. Kharbanda (Mum.)(Trib.), www.itatonline.org

S. 80IC : Special category states – Where no investigations or special exercise was done to show that the amount claimed as deduction was actually incurred, the claim of the assessee could not be disallowed. 1371
On appeal before the Tribunal, it was observed that the assessee has produced all the books and vouchers before the AO during the assessment proceedings. In fact, no show cause query was issued by the AO on this account. It was also observed that the units in the exempted zones were mainly engaged in manufacturing on job work where there was either negligible or no input cost of raw material involved. If the sales were made using its own raw material, there would be substantial difference in the gross profit rate in so far as if the cost of raw material was excluded, the gross profit in all the units would remain the same. The fact that the exempted unit had shown a loss had not been referred by the AO. Therefore, it was clear that no profit has been diverted to this unit. There had been no investigation or specific exercise to show that the amount claimed as deduction was wrong. Relying on the Delhi Tribunal decision in the case of Delhi Press Samachar Patra 103 TTJ (Del) 45 (supra) the Tribunal held that the disallowance of deduction u/s. 80-IC the by the AO could not be sustained. (AY. 2011-12)
ACIT v. Micro Turners (2018) 63 ITR 13 (SN)(Delhi)(Trib.)

S. 80IC : Special category States – Hotel – Eco-tourism – Expansion of unit in hotel building constitutes investment in plant and machinery and entitle to deduction. 1372
Tribunal held that; if original investment mainly consisting of building made for setting up of hotel is eligible for deduction then further investment in same infrastructure for purpose of expansion could not have been denied merely because substantial expansion did not involve setting up/instalment of plant and machinery. Accordingly the assessee engaged in running of a hotel in Himachal Pradesh under Eco-tourism project would be entitled to deduction on account of substantial expansion of unit. Referred, *CIT v. Karnataka Power Corporation (2001) 247 ITR 268 (SC)* (AY. 2007-08, 2008-09, 2012-13)
Sirmour Hotels (P.) Ltd. v. DCIT (2018) 170 ITD 318 / 193 TTJ 306 / 166 DTR 33 (Chd.)(Trib.)

1373 **S. 80IC : Special category States – Undertakings – Manufacture of vibration testing system for the defence, aerospace and automobile industries – Merely on the basis of report of the inspector without giving an opportunity to challenge the same such a report cannot be used as evidence against the assessee – Matter remanded to the AO to re-decide in accordance with law.**

Allowing the appeal of the assessee the Tribunal held that, merely on the basis of report of the inspector without giving an opportunity to challenge the same such a report cannot be used as evidence against the assessee. Matter is remanded to the AO to re-decide in accordance with law whether manufacture of vibration testing system for the defence, aerospace and automobile industries is eligible deduction u/s. 80IC of the Act. (AY. 2011-12, 2012-13)

Aron Hurley Kconcepts Pvt. Ltd. v. ACIT (2018) 64 ITR 722 (Delhi)(Trib.)

1374 **S. 80IC : Special category States – Support services provided to IT companies by the assessee through its own staff is eligible for deduction.**

Assessee was engaged in providing support services to the IT companies through online, onsite and offsite modes and all the work performed at the site of client was through the staff of the assessee. The assessee had its operational unit in Dehradun and was creating jobs in Dehradun, Uttaranchal bringing new IT call centres and BPO companies to Dehradun to deliver IT services. All the facilities to its clients were controlled and provided from Dehradun and activities undertaken by the assessee fell in the category of Information and Communication Technology Industry in clause No. 13 of Part C of Schedule Fourteenth. Hence the assessee fulfilled the conditions to claim deduction under section 80IC. (AY. 2007-08 to 2010-11)

IMSI India (P.) Ltd. v. DCIT (2018) 191 TTJ 662 / 166 DTR 337 (Delhi)(Trib.)

1375 **S. 80IE : Undertakings – North – Eastern States – 'initial assessment year' would be year in which substantial expansion is completed by assessee which would enable it to generate revenue – Denial of exemption is held to be not justified.**

Allowing the appeal of the revenue the Tribunal held that ;'initial assessment year' would be year in which substantial expansion is completed by assessee which would enable it to generate revenues and claim deduction thereon. Tribunal also held that, there is no time limit prescribed in S. 80IE as to when substantial expansion should be completed by assessee. Accordingly the denial of exemption is held to be not justified. (AY. 2009-10)

Jay Shree Industries Ltd. v. JCIT (2018) 170 ITD 479 (Kol.)(Trib.)

1376 **S. 80M : Inter corporate dividends – Only the actual expenses for earning dividend income ought to be taken and not on estimate basis.**

Dismissing the appeal of the revenue the Court held that; Only the actual expenses for earning dividend income ought to be taken and not on estimate basis. (AY. 2003-04 to 2006-07)

CIT v. Reliance Industries Ltd. (2018) 161 DTR 420 / (2019) 410 ITR 468 (Bom.)(HC)

Editorial : set aside CIT v. Reliance Industries Ltd. (2019) 410 ITR 466 / 175 DTR 1/ 307 CTR 121 (SC)

S. 80-O : Royalties – Foreign enterprises – Technical assistance – Principal agent relationship – Information concerning industrial, commercial or scientific knowledge, experience or skill – Major information sent by the appellant to the Sumitomo Corporation was in the form of blue prints for the manufacture of dies for stamping of doors which is not entitle to deduction. 1377

Dismissing the appeal of the assessee, the Court held that; major information sent by the Appellant to the Sumitomo Corporation was in the form of blue prints for the manufacture of dies for stamping of doors. There was principal and agent relationship, accordingly the assessee was not entitle to deduction. Court also observed that,the Appellant failed to prove that he rendered technical services to the Sumitomo Corporation and also the relevant documents to prove the basis for alleged payment by the Corporation to him. The letters exchanged between the parties cannot be claimed for getting deduction under Section 80-O of the IT Act Court also observed that it is settled law that the expressions used in a taxing statute would ordinarily be understood in the sense in which it is harmonious with the object of the Statute to effectuate the legislative animation. (AY. 1997-98)

B. L. Passi v. CIT (2018) 404 ITR 19 / 165 DTR 143 / 302 CTR 81 / 255 Taxman 143 (SC) www.itatonline.org

S. 80-O : Royalties – Foreign enterprises – Fees for technical services rendered to foreign entity – Explanation added with effect from 1-4-1992 – Fees for services rendered in India – Not entitled to deduction – Principle of consistency or doctrine of precedents would not apply when there is change in law. 1378

Dismissing the appeals of the assessee, the Court held that the principle of consistency or doctrine of precedents would not apply in the present facts, as undisputedly there was a change in law. The Tribunal on the facts found that the routine services were rendered in India and not from India. S. 80-O very clearly restricts the benefit of deduction thereunder to the extent technical services are rendered from India. The routine services were undisputedly services such as supervising, loading, unloading, and storage rendered in India and not outside and/or from India. Routine services such as supervising, loading and storage of goods, even if they required a high degree of technical know-how and experience, would still be services rendered in India and not services rendered from India. Consequently, they would be hit by Explanation (iii) to S. 80-O. Accordingly the fees for routine services were not entitled to special deduction under S. 80-O.(AY. 1992-93, 1994-95 to 1997-98)

SGS India Pvt. Ltd. v. JCIT (2018) 409 ITR 550 / 304 CTR 640 / 169 DTR 219 (Bom.)(HC)

S. 80P : Co-operative societies – Providing credit facilities to members – Interest earned by the society in investing in the banks – Activity of carrying on business in the banking or providing credit facilities to its members is eligible for deduction – Matter remanded to Assessing Officer. [S. 80P(2)(a)(i)] 1379

Held by the High Court that :

1. Interest earned by the society in investing in the banks is at Tributable to the activity of carrying on business in the banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act

2. Revenue Authorities mixing up the provisions of Section 80P(2)(a)(i) and Section 80P(2)(d) of the Act cannot reject the claim of assessee under Section 80P(2)(a)(i) without giving a proper finding on the issue. Matter remanded to Assessing Officer. (AY. 2012-2013)

Lalitamba Pattina Souharda Sahakari Niyamita v. ITO (2018) 166 DTR 400 / (2019) 307 CTR 770 (Karn.)(HC)

1380 **S. 80P : Co-operative societies – Agricultural enterprise – Tapping of toddy and vending it through licenced shops, eligible to claim deduction, however deduction cannot be claimed without filing a return by co-operative society. [S. 80A (5), 80P(2)(iii)]**

Court held that regulatory under Abkari Act would not be a relevant factor in deciding as to whether assessee-society would be entitled to exemption as available under S. 80P. Court held that tapping of toddy was a traditional agricultural enterprise within State and, State also encouraged it, as distinguished from foreign liquor trade, accordingly the deduction is available to co-operative society. Court also held that deduction cannot be claimed without filing a return by co-operative society.

Kuthuparamba Range Kalluchethu Vyavasaya Thozhilali Sahakarana Sangham Ltd. v. CIT (2018) 257 Taxman 151 (Ker.)(HC)

1381 **S. 80P : Co-operative societies – Mere inclusion of name originally and object in bye-laws of society is not conclusive, deduction is eligible.**

Allowing the appeal of the assessee the Court held that; without reference to a single transaction that the assessee had with any non-member, the Tribunal upheld the findings of the Assessing Officer merely on the basis of the name of the assessee and one of the objects clauses in the bye-laws of the assessee. Therefore, the finding of the Tribunal was obviously perverse and such a finding could not have been recorded on the basis of the material available on record. The assessee was entitled to the deduction under S. 80P of the Act. (AY. 2007-08, 2008-09, 2009-10)

Eluru Co-Operative House Mortgage Society Ltd. v. ITO (2018) 403 ITR 172 (T&AP)(HC)

1382 **S. 80P : Co-operative societies – Co-Operative Society is not a Credit Co-Operative Bank-Entitle to deduction. [S. 80P(2)(a)(i) (4)]**

Dismissing the appeal of the revenue the Court held that; the exclusion clause of sub-section (4) of section 80P did not apply to the assessee the assessee being Co-operative society is entitle to deduction. (AY. 2010-11)

CIT v. Ekta Co-Op. Credit Society Ltd. (2018) 402 ITR 85 / 254 Taxman 33 (Guj.)(HC)

1383 **S. 80P : Co-operative societies – Mutuality – Nominal member cannot be treated as non-member and so transactions of nominal members cannot be treated as transactions of non-members – Entitle to exemption. [S 4.80P(2)]**

AO held that there were two categories of Members i.e. – Ordinary Members and Nominal Members accordingly the exemption was denied in respect of transactions with nominal embers either r u/s 80P or under concept of mutuality. Tribunal held that AO's distinction or findings that society was transacting with non-members was not correct.

There was no distinction between ordinary members and nominal members and just because categorized as nominal members, they could not be treated as 'non-members. Accordingly the assessee was covered by principle of mutuality and its income would be exempt on that concept. (AY. 2013-14)
Sai Datta Mutual Aided Co-Operative Credit Society v. ACIT (2018) 169 DTR 65 / 194 TTJ 970 (Hyd.)(Trib.)

S. 80P : Co-operative societies – Interest income – FDR with banks – Operational funds – Entitle to deduction – Remanded for verification – Gross or net – Gross interest is held to be taxable. [S. 56, 57 80P(2)(a)(i)] 1384

Tribunal held that if the FDR's in banks were made from operational funds of cooperative society while carrying out its activity of providing credit to its members, interest earned thereon being incidental to carrying out said activity, was attributable to said activity and hence entitled to deduction u/s 80P(2)(a)(i). Matter restored to the file of AO for limited purpose of examining activities carried out by assessee society and whether deposits made by it in banks were done during course of carrying out its stated activities and thereafter decide issue in accordance with law. As regards alternative plea the Tribunal held that gross interest is taxable and not net. (AY. 2009-10 to 2012-13)
Tiara Co-Operative Agricultural Service Society Ltd. v. ITO (2018) 194 TTJ 1 (UO)(Chd.)(Trib.)

S. 80P : Co-operative societies – Interest income earned by assessee was from carrying on its business activities – Entitle to deduction [S. 80P(2)(a))(i)] 1385

Assessee is under statutory obligation of maintaining its status of Co-operative society and as per regulations of Maharashtra State Co-operative Societies Act, was duty bound to transfer 25% of its profits to reserve funds, which it has done. Assessee had received permission of Registrar of Maharashtra Co-operative Societies Act to make such investment with Bank of Maharashtra and also in order to carry on business activities of providing credit facilities to its employees, it was mandatory upon assessee to invest 25% of its profits in reserve funds, which in turn, were parked in FDRs with Bank of Maharashtra, then interest income earned by assessee was from carrying on its business activities. Accordingly the interest income is assessable as income from business and the assessee is entitle to claim deduction u/s. 80P(2)(a)(i) of the Act. (AY. 2007-08, 2008-09, 2010-11)
ITO v. Maharashtra Bank Employees Co-Operative Credit Society Ltd. (2017) 51 CCH 756 / (2018) 167 DTR 1 / 193 TTJ 735 (Pune)(Trib.)

S. 80P : Co-Operative societies – Investments in other co-operative societies – AO is directed to grant exemption if institutions where the assessee has made investments is found to be co-operative society [S. 80P(2)(d)] 1386

Tribunal held that since the authorities had not seen the memorandum of association or any other evidence in respect of the institutions in which the investments were made, it would be appropriate to set aside the issue to the AO to decide the status of the institutions in which the investments were made by the assessee. If found that the

to be co-operative societies, the deduction in terms of S. 80P(2)(d) would be granted. (AY. 2008-09, 2011-12)
Banas Bank Staff Credit Co-Op. Society Ltd. v. ACIT (2018) 64 ITR 68 (Ahd.)(Trib.)

1387 **S. 80P : Co-operative societies – Primary Agricultural Credit Society registered as such under kerala co-operative societies act, 1969 is not a banking company – Entitled to deduction. [S. 80P(2)(a)(i)**
Tribunal held that ; primary Agricultural Credit Society registered as such under Kerala co-operative societies act, 1969 is not a banking company. Accordingly entitled to deduction. The Assessing Officer was not competent and did not possess the jurisdiction to resolve or decide the issue whether the assessee was a primary agricultural credit society or a co-operative bank within the meaning assigned to it under the provisions of the Banking Regulation Act and to take a contrary view especially in view of the Explanation provided after clause (ccvi) of section 5 read with section 56 of the Banking Regulation Act. (AY. 2007-08 to 2009-10, 2011-12 to 2013-14)
ITO v. Edanad Kannur SCB Ltd. (2018) 64 ITR 17 (SN) (Cochin)(Trib.)

1388 **S. 80P : Co-operative societies – Primary agricultural credit society – Interest earned on investments made with Sub-treasuries entitled to benefit of deduction. [S80P(2)(a)(i)]**
Interest earned on investments made with sub-treasuries in the course of its business of banking and provided credit facilities to its members and therefore the assessee was entitled to deduction under section 80P(2)(a)(i) of the Act in respect of interest received on investments made with sub-treasuries. (AY. 2009-10, 2012-13)
Perinthalmanna Service Co-operative Bank Limited. (2018) 65 ITR 419 (Cochin)(Trib.)

1389 **S. 80P : Co-operative societies – Interest earned by a co-operative Society from deposits kept with co-operative bank is deductible. [S. 80P(4)]**
Tribunal held that, interest earned by a co-operative Society from deposits kept with co-operative bank is deductible. (ITA No. 3566/Mum./2014 "A" dt. 15-01 2016(AY. 2009 10), (ITA No 7203/7204/Mum./2013 "B" dt. 24-08-2016 (AY. 2009-10, 2010-2010-11), (ITA No. 1343 /Mum./ 2017 " E" dt. 31-03-2017 (AY. 2013-14), (ITA No. 6139/Mum./2014 dt 27-09-2017 "B", ITA No. 5435 & 5436/Mum./2017 dt 8-12-2017(SMC), (ITA No. 6547/ Mum./ 2017 dt 25-4-2018(AY. 2014-2015) (SMC), (ITA No 6996/Mum./2017 dt. 6-03 2018 "I") (AY. 2014-15)
Land End Co-Operative Housing Society Ltd. www.itat.nic.in
Nutan Laxmi Co-Operative Housing Society Ltd. v. ITO www.itat.nic.in
Sea Grean Co-Operative Housing Society Ltd. www.itat.nic.in
Merwanjee Cama Park Co-op Housing Society Ltd v. ITO (2018) 62 ITR 770 (Mum.)(Trib.) www.itat.nic.in
ITO v. Citiscape Co-operative Housing Society Ltd. www.itatnic.in.
Kaliandas Udyog Bhavan Premises Co-Op Society Ltd. v. ITO www.itat.nic.in
Maratha Era Co-Operative Housing Society Ltd. v. ITO www.itat.nic.in

S. 80P : Co-operative societies – Regional Bank – As per the overriding provisions contained in S. 22 of Regional Rural Bank Act, 1976, the deduction is available. [S. 80P(2)(a)(i)] 1390

Assessee, a Regional Rural Bank, claimed deduction under S. 80P(2)(a)(i) of the Act. AO rejected the claim on ground that assessee was not registered under Cooperative Societies Act, 1912 and that after insertion of section 80P(4) deeming status of Cooperative Society to Regional Rural Bank ('RRB') stood dissolved. On appeal the Tribunal held that, claim of the assessee is based on provisions of S 22 read with S. 32 of 1976 Act which have got overriding effect over provisions of Act. Accordingly the assessee being a cooperative society as per overriding provisions contained in section 22 of RRB Act, 1976, its claim for deduction was to be allowed. (AY. 2009-10, 2011-12)

Baroda Uttar Pradesh Gramin Bank v. DCIT (2018) 169 ITD 656 (All.)(Trib.)

S. 80P : Co-operative societies – Interest on fixed deposits – Interest was held to be deductible. [S. 80P(2)(a)(i)] 1391

Dismissing the appeal of the revenue the Tribunal held that, the assessee was not carrying on any separate business for earning such interest. The income so derived was the amount at Tributable to the activity of carrying on the business of banking or providing credit facilities to its members, accordingly the interest was held to be deductible. (AY. 2013-14)

ACIT v. Central Bank of India Employees Co-Operative Society Ltd. (2018) 63 ITR (Trib.) 283 (Kol.)(Trib.)

S. 89 : Relief for income-tax – Arrears or advance of salary – Relief is available to qua perquisites. [S. 15, 17(1)(v), R.21A (6)] 1392

Tribunal held that relief under S. 8 is available in respect of perquisites. (AY. 2014-15)

Rajesh Kumar v. ACIT (2018) 172 ITD 563 / 172 DTR 441 / 196 TTJ 1153 (SMC)(Agra) (Trib.)

S. 90 : Double taxation relief – Fees for technical services – Applicability of protocol – No separate notification required as protocol itself automatically applies of subsequent treaty with another OECD treaty (Finland) – DTAA-India-Netherland. [Art. 12] 1393

Dismissing Revenue's appeal, the High Court held that the protocol clause between India-Netherlands tax treaty provides for automatic application of subsequent treaty, to the India-Netherland treaty in hand and hence no separate notification was envisaged to be issued for enforcing such subsequent treaty with another OECD country (Finland) to facts of present case. On factual aspect (payment to be treated as FTS or not) matter remanded for re-consideration. (AY. 2015-16, 2016-17)

Apollo Tyres Ltd. v. CIT (IT) (2018) 167 DTR 51 (Karn.)(HC)

1394 **S. 90 : Double taxation relief – Permanent Establishment – Assessee, a US company entered into a master franchise agreement with an Indian company for franchise of Dominos Pizza Stores – It provided certain store/consulting services to the Indian Company – Indian company paid store opening fees-assessee was entitled to charge 3 per cent of sales of store of Indian Company and further 3 per cent on sale of their sub-franchise store – Held, profit/loss from the business of Indian company and sub-franchisee belong to them – Held, none of the conditions or clauses of Permanent Establishment, Article 5 were attracted and therefore, the Indian company did not constitute PE of the assessee in India-DTAA-India-USA. [S. 9(1)(i), Art.5]**

Assessee, a US company entered into a master franchise agreement (MFA) with an Indian company for franchise of Dominos Pizza Stores. It also, provided certain store/ consulting services to the Indian Company and in consideration, Indian company paid store opening fees. Indian company also entered into sub-franchising agreements. Assessee was entitled to charge 3 per cent of sales of store of the Indian Company and further 3 per cent on sale of their sub-franchise store. The Tribunal held that Indian Company could not be said to be the Permanent Establishment of the assessee in India. This was because, the profit/loss from the business of Indian company and sub-franchisee belong to them and not to the assessee. Further, they were not storing goods on behalf of the assessee nor where they carrying out any activities on behalf of the assessee. It was held that none of the conditions or clauses of Art. 5 were attracted. Further, the restrictions in the MFA and the sub-franchising agreements were to safeguard the brand value and to ensure correct receipt of royalty income. (AY. 2012-13)

CIT(IT) v. Dominos Pizza International Franchising Inc. (2018) 171 ITD 321 / 193 TTJ 963 / 166 DTR 201 (Mum.)(Trib.)

1395 **S. 90 : Double taxation relief – If a non-resident assessee derives income from multiple sources in India, it is entitled to adopt the provisions of the Act for one source and the DTAA for the other source, whichever is more beneficial to it, even though the payer is common for both sources – Fees received by the assessee would be taxable under the Act as FTS (fees for technical services) under section 9(1)(vii) r.w.s. 115A(1)(b) @ 10% and not as business income and thus held that the maximum possible taxability in the hands of the assessee could not exceed 10%.-DTAA-India-Singapore. [S. 90(2), 115A(1)(b), Art.5(6)]**

Tribunal held that, If a non-resident assessee derives income from multiple sources in India, it is entitled to adopt the provisions of the Act for one source and the DTAA for the other source, whichever is more beneficial to it, even though the payer is common for both sources – Fees received by the assessee would be taxable under the Act as FTS (fees for technical services) under section 9(1)(vii) r.w.s 115A(1)(b) @ 10% and not as business income and thus held that the maximum possible taxability in the hands of the assessee could not exceed 10%. (ITA Nos 1635 & 1636/Mum./2017, dt. 12.10.2018) (AY. 2013-14)

Dimension Data Asia Pacific Pte. Ltd. v. DCIT (2018) 99 taxmann.com 270 (Mum.)(Trib.), www.itatonline.org

S. 90 : Double taxation relief – The failure to submit a 'Tax Residency Certificate' (TRC) as required by S. 90(4) is not a bar to the grant of benefits under the DTAA. However, the assessee is required to produce reasonable evidence of the entitlement of the foreign entity to benefits under the DTAA-DTAA-India-USA. [S. 90(4), art. 12(4)(b)] 1396

Allowing the appeal of the assessee the Tribunal held that ; the failure to submit a 'Tax Residency Certificate' (TRC) as required by S.90(4) is not a bar to the grant of benefits under the DTAA. However, the assessee is required to produce reasonable evidence of the entitlement of the foreign entity to benefits under the DTAA. (AY. 2013-14, 2014-15)

Skaps Industries India Pvt. Ltd. v. ITO (2018) 167 DTR 321 / 171 ITD 723 / 194 TTJ 730 (Ahd)(Trib.), www.itatonline.org

S. 90 : Double taxation relief – Non-resident – Capital gains, arising from sale of shares in Indian Company to group company in Singapore is not Liable to tax in India -DTAA-India-Mauritius. [S. 195, Art. 13] 1397

Assessee is not a benami of holding Company or set up for tax Avoidance. Transfer of shares in Indian company to Singapore Company as part of business reorganisation. Assessee is entitled to benefits of the Double Taxation Avoidance Agreement Between India and Mauritius. Capital gains arising from sale of shares in Indian company to group company in Singapore is not liable to tax In India. S. 195 is applicable only if income chargeable to tax in payment.

AB Holdings, Mauritius-II, In Re (2018) 402 ITR 37 / 163 DTR 225 / 301 ITR 310 (AAR)

S. 90 : Double taxation relief – Non-resident – Assessee is not operating as independent entity – Assessee is not entitled to benefit of double taxation avoidance agreement between India and Mauritius – Transaction was held to be liable to tax in India and tax to be with held-DTAA-India-Mauritius-USA. [S. 195, Art. 13] 1398

Assessee Incorporated in Mauritius as Investment Company for Investment in particular sector in India. Acquiring Shares in Indian Company from two U.S. sellers under share purchase agreement. Assessee shown as party to agreement but consideration paid and all decisions taken by U. S. holding Company. Assessee is not operating as independent entity. Shares in Indian company to be treated as held benami. Actual owner of shares U. S. holding company. Sale of shares to another non-resident group company. Assessee is not entitled to benefit of double taxation avoidance agreement between India and Mauritius. Transaction was held to be liable to tax in India and tax to be with held.

By the Authority : (i) "The existence of a separate and independent status of a subsidiary in another territory is the core basis and foundation of the application of treaty law across the globe. Tax treaties throughout the world function on the premise that the subsidiary is an independent legal entity, different from its parent, even though controlled by it. However, in a case where the parent acts on behalf of its subsidiary and takes all its decisions, the corporate veil between the company's subsidiary and its parent stands torn, not at the instance of the Revenue, but by the conduct of the group itself."

Authority also held that A mere accounting entry without the actual flow of money or other consideration must be made subservient to the actual transaction.

"AB" Mauritius, In re (2018) 402 ITR 311 / 163 DTR 170 / 301 CTR 271 (AAR)

1399 **S. 90 : Double taxation relief – Income deemed to accrue or arise in India – Capital gains-Transfer of shares by German individuals to German Company – Not liable to deduct tax at source – DTAA-India – Germany. [S. 45, 90, 195, Art, 13]**
AAR held that; Transfer of shares by German individuals to German Company is not chargeable to tax in India hence not liable to deduct tax at source. That the liability to deduct tax at source arises only if the sum paid was chargeable to tax. In cases where income is not chargeable to tax under the Act, as per expressions used in section 195 itself, there will be no obligation to withhold tax. There was no obligation on an applicant to withhold tax in a case, as the one in hand, where the gains arising from the alienation of shares were not chargeable to tax in India.
GEA Refrigeration Technologies Gmbh, In re. (2018) 401 ITR 115 / 163 DTR 145 / 301 CTR 167 (AAR)

1400 **S. 92 : Transfer pricing – International transactions – Arm's length price – Transaction of sale of shares in Indian company to be benchmarked under transfer pricing provisions. [S. 92A to 92F]**
AAR held that; No requirement that transaction should result in income chargeable to tax for transfer pricing provisions to get attracted. Transaction of sale of shares in Indian company to be bench marked under transfer pricing provisions.
"AB" Mauritius, In re (2018) 402 ITR 311 / 163 DTR 170 / 301 CTR 310 (AAR)

1401 **S. 92 : Transfer pricing – International transactions – Arm's length price – Transaction of sale of shares in Indian company to be benchmarked under transfer pricing provisions. [S. 92A to 92F]**
AAR held that, No requirement that transaction should result in income chargeable to tax for transfer pricing provisions to get attracted. Transaction of sale of shares in Indian company to be benchmarked under transfer pricing provisions.
AB Holdings, Mauritius-II, In re (2018) 402 ITR 37 / 163 DTR 225 / 301 CTR 310 (AAR)

1402 **S. 92A : Transfer pricing – Associated enterprises – Supplier of assessee is not manufacturer – Assessee and supplier Partnership is not controlled by individuals – Neither of Firms holding 10 Per Cent interest in each other – Not associated enterprises.[S. 92C]**
Dismissing the appeal of the revenue the Court held that, supplier of assessee is not manufacturer. Assessee and supplier Partnership is not controlled by individuals. Neither of Firms holding 10 per cent interest in each other. Accordingly the supplier cannot be treated as associated enterprises.
CIT v. Veer Gems (2018) 407 ITR 639 (Guj.)(HC)
Editorial : SLP of revenue is dismissed ; CIT v. Veer Gems. (2018) 406 ITR 37 (St)

1403 **S. 92B : Transfer pricing – International transaction – Interest income on loans and advances – Assessee not disputed that transaction is international transaction however disputed only on notional addition on the ground that only real income be taxed. [S. 92C]**
Dismissing the appeal of the assessee the Court held that; Assessee not disputed that transaction is international transaction however disputed only on notional addition on

the ground that only real income be taxed. Therefore, interest income earned on such loans and advances has to be reworked to determine Arms Length Price. (AY. 2009-10)
Tooltech Global Engineering (P.) Ltd. v. ACIT (2018) 254 Taxman 241 (Bom.)(HC)

S. 92B : Transfer pricing – International transaction – Royalty arising out of use of brand name had to be treated as an international transaction. [S. 92C] 1404
Dismissing the appeal of the revenue the Court held that; unless at the entity level there was a complete re-organization so as to result in a complete identity of the two concerns, royalty arising out of the use of the 'Dabur' brand, had to be treated as an international transaction; it was for all previous years. In these circumstances, the conclusions and findings recorded by the Appellate Commissioner and the Tribunal cannot be faulted. The assessee's submission with respect to the applicability of second proviso to S. 92CA(2), i.e. that it is entitled to the benefit of the arithmetical mean-not exceeding 5 per cent, is insubstantial. The assessee, as a matter of fact, did not offer any adjustment claiming that there was indeed no international transaction. In these circumstances, the question of applicability of the said proviso does not arise.
Dabur India Ltd. v. PCIT (2018) 253 Taxman 129 / 301 CTR 367 / 162 DTR 297 (Delhi)

S. 92B : Transfer pricing – International Transaction – Advertising Marketing and Promotion (AMP) expenses is not an international transaction – Adjustment is held to be not justified. [S. 92C] 1405
Tribunal held that Advertising Marketing and Promotion (AMP) expenses is not an international transaction following the order for the AY. 2010-11 (I.T.A./1600/Mum./2015 dtd. 17.01.2018) wherein it had held that AMP is not an international transaction as there was no 'prior arrangement'. (AY. 2011-12)
India Medtronic Private Limited v. DCIT (2018) 64 ITR 9 (SN) / 95 taxmann.com 21 (Mum.)(Trib.)

S. 92B : Transfer pricing – International transaction-Bright line test – AMP expenses – A higher AMP expenses per se cannot be reason enough to infer that there is an international transaction; there has to be something more than mere quantum of expenditure to indicate, even if not established, that said expenditure is incurred on behalf of AE. [S. 92C] 1406
Allowing the appeal of the assessee the Tribunal held that,in the present case, no new facts have emerged and all the facts brought to record, during the course of the assessment proceedings, do not indicate legally sustainable basis for coming to the conclusion that there was an internal transaction in respect of AMP expenses incurred by the assessee. Therefore, the plea of the assessee, on the peculiar facts of this case, does indeed deserve to be upheld that there is no material on record to hold that there was an international transactions, in terms of the provisions of section 92B, nor any material has been brought on record to even remotely suggest so and, therefore, that there is no good reason to remit the matter to the assessment stage for building a case afresh. The impugned ALP adjustment which was made solely on the basis of bright line test is to be deleted. (AY.2009-10)
Moet Hennessy India (P.) Ltd. v. ACIT (2018) 173 ITD 55/ 169 DTR 241 / 195 TTJ 377 / 67 ITR 358 (Delhi)(Trib.)

1407 **S. 92B : Transfer pricing – International transactions – Investment in share capital of subsidiaries outside India – Advancing towards investment and for expansion of business out of interest free funds – No interest can be charged – Not in nature of international transaction – Transfer pricing provisions is not applicable – Adjustment is not required. [S. 92C]**

Allowing the appeal of the assessee, the Tribunal held that investment in share capital of subsidiaries outside India. Advancing towards investment and for expansion of business out of interest free funds interest cannot be charged. Transaction is not in nature of international transaction hence transfer pricing provisions is not applicable. Accordingly adjustment is not required. (AY. 2008-09 to 2011-12)

Bartronics India Ltd. v. DCIT (2018) 65 ITR 540 / 195 TTJ 314 (Hyd.)(Trib.)

1408 **S. 92B : Transfer pricing – International transaction – Termination of option rights under an agreement can be treated as a "deemed international transaction" – Transfer pricing provision was held to be applicable and addition was held to be justified. Transfer of its unexercised call option right to nominate is held to be liable to capital gain tax. [S. 2(47), 92C,92F]**

Tribunal held that ; Foreign AE and parent company of the assessee is not only a party to the agreement but the terms of the agreement, in substance, are being decided by the foreign AE, therefore,termination of option rights under an agreement can be treated as a "deemed international transaction" hence transfer provision is held to be applicable and addition was held to be justified. Right to nominate another group concern for transfer of its unexercised call option right is covered by definition of transfer in terms of Explanation 2 to S. 2(47) accordingly liable to be taxed as capital gain. (AY. 2012-13)

Vodafone India Services Pvt. Ltd. v. DCIT (2018) 169 ITD 345 / 168 DTR 257 / 192 TTJ 105 (Ahd.)(Trib.), www.itatonline.org

1409 **S. 92BA : Domestic transfer pricing – Arms Length price – Specified Domestic Transactions (SDT) – Purchase of loan from HDFC Ltd – Loan could never be termed as an expenditure – Payment made by the petitioner to the global Pvt. Ltd. for rendering services would not fall with in the meaning of a SDT – Payment of interest to HDFB Trust which is a welfare trust for providing general welfare to the employees of the petitioner and not the petitioner – The Trust has been set up exclusively for the welfare of its employees and there is no question of petitioner being entitle to 20% of the profits of such Trust – transaction would not fall with in the meaning of S. 40A(2)(b) of the Act hence is not covered as SDT – Loan cannot be treated as expenditure-Indirect share holding is not covered under S. 40A(2)(b) of the Act – From Revenues contention that a share holder has beneficial interest in the assets of the company is contrary to all cannons of company law – Law does not permit to hold that HDFC Ltd is the beneficial owner of 22.64% of the shares of the petitioner by clubbing the share holding of HDFC investments Ltd with the share holding of HDFC Ltd. – None of the three transactions that form the subject matter of the petition with in the meaning of S. 92BA(1) of the Act, required to be disclosed by the petitioner by filing form 3CEC – Accordingly the petition was allowed. [S. 40A(2)(b), 92CA(1), 271G]**

Petitioner bank filed the writ petition to quash the order dated 29-12-2016, passed by the Respondent to holds certain transactions entered. The petitioner are "Specified

Domestic Transactions " ("SDTs") as per S. 92BA(i) of the Act and the Arms Length Price ("ALP") of the said transactions are required to be determined by making a reference to TPO under S. 92CA(1) of the Act for determination of ALP. Order as well as reference are ex-facie without jurisdiction, illegal, unsustainable, contrary to the principle of natural justice, the Writ petition was admitted. Allowing the petition the Court held that, Revenues contention that a share holder has beneficial interest in the assets of the company is contrary to all cannons of company law. Law does not permit to hold that HDFC Ltd is the beneficial owner of 22.64% of the shares of the petitioner by clubbing the share holding of HDFC Investments Ltd. with the share holding of HDFC Ltd. Payment made by the petitioner to the global Pvt. Ltd. for rendering services would not fall with in the meaning of a SDT – Payment of interest to HDFB Trust which is a welfare trust for providing general welfare to the employees of the petitioner and not the petitioner- The Trust has been set up exclusively for the welfare of its employees and there is no question of petitioner being entitle to 20% of the profits of such Trust – transaction would not fall with in the meaning of S. 40A(2) (b) of the Act hence is not covered as SDT – Loan cannot be treated as expenditure-Indirect share holding is not covered under S. 40A(2)(b) of the Act. The Revenues contention that a share holder has beneficial interest in the assets of the company is contrary to all cannons of company law-Law does not permit to hold that HDFC Ltd. is the beneficial owner of 22.64% of the shares of the petitioner by clubbing the share holding of HDFC investments Ltd with the share holding of HDFC Ltd-None of the three transactions that form the subject matter of the petition with in the meaning of S. 92BA(1) of the Act, required to be disclosed by the petitioner by filing form 3CEC – Accordingly the petition was allowed. (AY. 2014-15) (AY. 2014-15)

HDFC Bank Ltd. v. ACIT (2019) 410 ITR 247 / 306 CTR 189 / 173 DTR 217 / 261 Taxman 297 (Bom.)(HC), www.itatonline.org

S. 92C : Transfer pricing – Release of money in favour of Associated Enterprise with a specific purpose of acquisition of distributorship of the films from Citi Gate Trade FZE is not a case of either financing or lending or advancing of any moneys – Not International Transaction and did not result in to diversion of income of the assessee to the Associated Enterprise. [S. 92, 92B, 92D, 92E] 1410

Dismissing the appeal of the revenue the Court held that, Release of money in favour of Associated Enterprise with a specific purpose of acquisition of distributorship of the films from Citi Gate Trade FZE is not a case of either financing or lending or advancing of any moneys – Not International Transaction did not result in to diversion of income of the assessee to the Associated Enterprise. (AY. 2009-10)

PCIT v. KSS Ltd (2018) 172 DTR 441 / (2019) 306 CTR 172 (Bom.)(HC)

S. 92C : Transfer pricing – Interest chargeable on delayed recovery of export receivables and expenses – LIBOR rates should be taken instead of SBI PLR. [S. 144C] 1411

Assessee was engaged in the business of providing services of EPC in the field of petrochemical, oil and gas, fertilizers, instrumentation and electrical erection amongst others to its AE. TPO made an adjustment by charging notional interest on delayed

recovery of export receivables from its AE. TPO applied interest rate at 12.25% i.e. SBI PLR. Tribunal held that interest chargeable on delayed recovery of export receivables and expenses from AE's should be taken at LIBOR rates thereby relying on *CIT v. Tata Autocomp Systems Ltd. (2015) 374 ITR 516 (Bom.)(HC)*. Appeal of revenue was dismissed. (AY. 2009-10)
PCIT v. Technimont Pvt. Ltd. (2018) 168 DTR 377 / 304 CTR 145 / 102 CCH 305 (Bom.) (HC)

1412 **S. 92C : Transfer pricing – Comparable – Functionally indifferent companies cannot be selected as comparables. [S. 260A]**
Court held that Functionally indifferent companies cannot be selected as comparables. Accordingly the order of Appellate Tribunal is affirmed. Following question of law is admitted "Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in ignoring the comparable company on the ground that the assessee company is functionally not comparable, has accepted Bodhtree Consulting Ltd, as comparable company and also that the said company was selected as a comparable by the assessee itself for the AY. 2008-09? (AY. 2009 10)
PCIT v. PTC Software (I) PVT. Ltd. (2018) 169 DTR 403 / 305 CTR 187 (Bom.)(HC)

1413 **S. 92C : Transfer pricing – Comparable – Functionally different activities cannot be taken for determination of Arm's length price.**
Dismissing the appeal of the revenue the Court held that,Tribunal held that ICSL was engaged in providing advisory and consulting services in the specialized area of mergers and amalgamations, Turnaround Restructuring Advisory Services (TRAS) i.e., in nature of an investment/merchant banker – However, assessee was merely rendering an unbinding investment advisory of its AES. Merchant banking and investment banking was functionally different from activity of investment advisor. ITAT excluded ICSL from list of comparable. (AY. 2009-10)
PCIT v. New Silk Route Advisors P. Ltd. (2018) 170 DTR 257 (Bom.)(HC)

1414 **S. 92C : Transfer pricing – Arms' length price – Tribunal's remand for ALP determination on a combined basis not an academic exercise – Order of Tribunal is affirmed. [S. 254(1)]**
The assessee was operating in two segments, manufacturing and trading. The TPO examined the two segments separately and made a transfer pricing addition. The ITAT held that the two segments should be combined and then analyzed for determining the ALP of the transactions. Accordingly, the matter was remanded to the AO/ TPO. The assessee challenged the order of the ITAT on the ground that the remand was an academic exercise. Rejecting such contention, the High Court noted that the Tribunal has directed the two segments to be analyzed on a combined basis and the same cannot be called an academic exercise. Therefore, assessee's appeal was dismissed. (AY. 2008-09)
Toyota Kirloskar Motor (P) Ltd. v. CIT (2018) 170 DTR 246 / 305 CTR 206 (Karn.)(HC)

S. 92C : Transfer pricing – Arms' length price – Selection of comparables – Remand to the AO – Held to be proper. [S. 254(1)] 1415

The High Court held that where the Tribunal had only remanded the case to the file of the TPO to examine the comparability of a company, no substantial question of law can be said to arise in challenging such a finding. It was further held that KPO was a type of BPO, therefore, under a TNMM analysis, the two could not be said to be completely different. It was further held that selection of comparables is largely a fact driven exercise and the conclusions of the Tribunal in this regard should generally be considered final. (AY. 2011-12)

Swiss RE Global Business Solutions India (P) Ltd. v. ACIT (2018) 169 DTR 313 / 304 CTR 714 (Karn.)(HC)

S. 92C : Transfer pricing – Arm's length price – Comparable – Working capital adjustment – Question of fact – No substantial question of law [S. 260A] 1416

Dismissing the appeal of the revenue the Court held that, Comparable and Working capital adjustment arrived by the Tribunal is based on question of fact hence no substantial question of law arises. (AY. 2010-11)

CIT v. Goldman Sachs Services P. Ltd. (2018) 409 ITR 268 (Karn.)(HC)

S. 92C : Transfer pricing – Arm's length price – Adjustment of interest – Foreign subsidiary – Corporate guarantee – Loan to Associated Enterprises – Delay in realizing sale proceeds from Associated Enterprises – Adjustment should be made at average LIBOR rate existing at that time, i.e., at 0.79 per cent, instead of LIBOR +2 per cent. [S. 92B] 1417

Dismissing the appeal of the revenue the Court held that, where assessee extended loan to its AE, adjustment should be made at average LIBOR rate existing at that time, i.e., at 0.79 per cent, instead of LIBOR +2 per cent.

CIT v. Vaibhav Gems Ltd (2017) 88 taxmann.com 12 (Raj.)(HC)

Editorial : SLP of revenue is dismissed, CIT v. Vaibhav Gems Ltd. (2018) 259 Taxman 130 (SC)

S. 92C : Transfer pricing – Arm's length price – Transactional net margin method – Exclusion of functionally different comparable companies – Finding of fact – No substantial question of law [S. 260A] 1418

Dismissing the appeal of the revenue the Court held that ; exclusion of functionally different comparable companies-Finding of fact and the Department had failed to show how the finding arrived at by the Tribunal was perverse in any manner or that the analysis done by the Tribunal while excluding the four companies from the list of comparables, was in any manner contrary to the settled position in law. (AY. 2008-09)

PCIT v. Barclays Technology Centre India Pvt. Ltd. (2018) 409 ITR 138 / 305 CTR 193 / 171 DTR 58 (Bom.)(HC)

1419 **S. 92C : Transfer pricing – Comparable – Mere dissatisfaction with the findings of facts arrived at by the Tribunal is not a substantial question of law – Appeal was dismissed. [S. 260A]**

Dismissing the appeal of the revenue the Court held that ; Mere dissatisfaction with the findings of facts arrived at by the Tribunal is not a substantial question of law. (AY. 2005-06)

PCIT v. Cypress Semiconductors Technology India Pvt. Ltd. (2018) 408 ITR 531 (Karn.) (HC)

1420 **S. 92C : Transfer pricing – Arms' length price – Selection of comparables – Finding of fact by Tribunal that (i) the activities of the assessee and comparables are functionally different (ii) the extraordinary events such as merger/amalgamation would have an impact/effect on the profitability of comparable (iii) merely because both assessee and the comparable provide ITES services they do not become comparable, cannot be interfered, more particularly in the absence of the same being shown to be perverse – No question of law. [S. 260A]**

On appeal, the High Court held that the following finding of fact by Tribunal cannot be interfered with :

(i) That the activities of the assessee and comparable (AT Ltd) are functionally different and extra-ordinary events like merger / amalgamation would have an impact / effect on the profitability of comparable (AT Ltd);

(ii) Merely because both assessee and comparable provide ITES services, they do not become comparable as the nature of services provided, by use of information technology, is different

(iii) Not considering / excluding a comparable due to the reasons like comparables render different service (hence not a comparable) or adopts a different business model (hence to be excluded as comparable). (AY. 2008-09)

PCIT v. Aptara Technology (P) Ltd. (2018) 303 CTR 805 / 168 DTR 14 / (2019) 410 ITR 100 (Bom.)(HC)

1421 **S. 92C : Transfer pricing – Arms' length price – Comparable – The categorical finding of fact by the ITAT that a comparable (Motilal Oswal) is engaged in a qualitatively different and diversified business than that of the assessee cannot be challenged as a substantial question of law as the finding is not perverse or vitiated by any error apparent on the face of the record. [S. 92CA, 260A]**

Dismissing the appeal of the revenue the Court held that ; The categorical finding of fact by the ITAT that a comparable (Motilal Oswal) is engaged in a qualitatively different and diversified business than that of the assessee cannot be challenged as a substantial question of law as the finding is not perverse or vitiated by any error apparent on the face of the record. (AY. 2010-11)

PCIT v. NVP Venture Capital India Pvt. Ltd. (2018) 170 DTR 417 / 305 CTR 200 / (2019) 412 ITR 335 (Bom.)(HC), www.itatonline.org

S. 92C : Transfer pricing – Arm's length price – Difference between Knowledge process outsourcing and business process outsourcing – The conclusion of the Tribunal was justified and on facts the Tribunal was correct in excluding the comparable companies – Explanation to S. 92B By Finance Act, 2012 – Delay in realisation of trade debt – Transfer pricing provisions is applicable. [S. 92B] 1422

Court held that by a plain reading of the (retrospectively applicable) amendment that introduced the Explanation to section 92B of the Act by the Finance Act, 2012, it is determinable that if there is any delay in the realisation of a trading debt arising from the sale of goods or services rendered in the course of carrying on the business, it is liable to be visited with transfer pricing adjustment on account of interest income short charged/uncharged. Court also held that the Tribunal, based on examination of the master service agreement, sample copies of service requests, as well as the McKinsey India website, concluded that the assessee was providing knowledge-based research and information services. There was clearly a form of knowledge intensive analysis rendered by the assessee which was a more nuanced and involved service than that provided by business process outsourcing. The conclusion of the Tribunal was justified and on facts the Tribunal was correct in excluding the comparable companies. (AY. 2011-12)

PCIT v. Mckinsey Knowledge Centre India P. Ltd. (2018) 407 ITR 450 / 304 CTR 113 / 169 DTR 113 / 96 taxmann.com 237 (Delhi)(HC)

Editorial : SLP of assessee is dismissed Mckinsey Knowledge Centre India P. Ltd. v. PCIT (2019) 261 Taxman 451 (SC)

S. 92C : Transfer pricing – Arms' length price – Mere observation of the Tribunal that the assessee being a newly established undertaking in free trade zone which is claiming deduction under S. 10A, provisions of Chapter X regarding Transfer Pricing ought not to have been applied – Court held that no reversal of finding of Assessing authority by the Tribunal hence appeal is not maintainable. [S. 92C(4), 254(1), 260A] 1423

Dismissing the Tribunal appeal of the revenue the Court held that; Observation of the Tribunal that the assessee being a newly established undertaking in free trade zone which is claiming deduction under S. 10A, provisions of Chapter X regarding Transfer Pricing ought not to have been applied were contrary to second proviso to section 92C(4) which provides that benefit under sections 10A, 10B or 10AA shall not be allowed in respect of TP-adjustment. However, such an obiter/observation, though, appeared to be made in ignorance of proviso to sub-section (4) of section 92C, but there was no binding character of such findings or observations because as far as computation of income of assessee was concerned, Assessing Authority had not given any benefit of section 10A. Further, there was no reversal of findings of Assessing Authority by Tribunal. Accordingly revenue's appeal against Tribunal decision is held to be not maintainable. (AY. 2003-04)

CIT v. Philips Software Centre (P.) Ltd. (2018) 257 Taxman 449 / (2019) 173 DTR 291 / 306 CTR 405 (Karn.)(HC)

1424 **S. 92C : Transfer pricing – Arm's length price – Comparable – Customer profile of comparable is completely different – Incomparable – company engaged in developing software products, development of software services and also engaged in running a training centre for software professional on online projects, was incomparable – Business model of comparable being of outsourcing its service being different from in-house business model of providing services, said company was not a comparable – Data of company was for a financial year, that did not correspond to financial year of assessee, it could not be selected as comparable-Huge difference in turnover between tested party and comparable would necessarily require proposed comparable to be excluded from list of comparables.**

Dismissing the appeal of the revenue the Court held that, Customer profile of comparable is completely different is incomparable. Company engaged in developing software products, development of software services and also engaged in running a training centre for software professional on online projects, was incomparable. Business model of comparable being of outsourcing its service being different from in-house business model of providing services, said company was not was a comparable. Data of company was for a financial year, that did not correspond to financial year of assessee, it could not be selected as comparable-Huge difference in turnover between tested party and comparable would necessarily require proposed comparable to be excluded from list of comparables. (AY. 2009-10)

CIT v. Principal Global Services (P.) Ltd. (2018) 257 Taxman 244 (Bom.)(HC)

Editorial : Order in Principal Global Services (P.) Ltd v. Dy.CIT (2015) 57 taxmann.com 215 (Pune) (Trib.) is affirmed.

1425 **S. 92C : Transfer pricing – Arm's length price – A company in business of clinical trial services is comparable to a company providing contract manufacture, contract research and development of drugs to its Associated Enterprises – Both comparables as well as assessee are situated in India, no adjustment of ALP on account of locational advantage is called for.**

Dismissing the appeal of the revenue the Court held that ; a company engaged in business of clinical trial services is comparable to a company providing contract manufacture, contract research and development of drugs to its Associated Enterprises and also as both comparables as well as assessee are situated in India, no adjustment of ALP on account of locational advantage is called for. (AY. 2009-10)

PCIT v. Watson Pharma (P.) Ltd. (2018) 257 Taxman 65 (Bom.)(HC)

1426 **S. 92C : Transfer pricing – Arm's length price – Alternative remedy – Provision for an appeal by approaching DRP against the order of TPO – Writ is not maintainable. [Art. 226]**

Dismissing the petition the Court held that, when an alternative remedy of an appeal is provided for by approaching DRP against the order of TPO, writ is not maintainable. (AY. 2008-09)

Hyundai Motor India Ltd. v. Dy. CIT (2018) 406 ITR 25 / 96 taxmann.com 497 / 304 CTR 742 / 169 DTR 345 (Mad.)(HC)

S. 92C : Transfer pricing – Arms' length price – company engaged in providing BPO services – Comparable company engaged in KPO and other IT services hence cannot be accepted as valid comparable. 1427

Court held that the activities of assessee-company comprises of BPO (business process outsourcing) services and the comparable company is engaged in the activities such as payroll activity, KPO (knowledge process outsourcing) services, development of products and IT services and not BPO services, hence such company cannot be accepted as comparable. (AY. 2009-2010)

PCIT v. BNY Mellon International Operations (India) (P.) Ltd (2018) 255 Taxman 397 (Bom.)(HC)

S. 92C : Transfer pricing – Arm's length price – Royalty paid was already forming part of operating cost, there is no necessity of separately benchmarking royalty – Matter remanded to Tribunal. [S. 254(1)] 1428

Allowing the appeal of the assessee the Court held that ; as royalty paid was already forming part of operating cost, there was no necessity of separately benchmarking royalty. Matter was to be remanded back for readjudication. (AY. 2011-12, 2012-13)

Kaypee Electronics & Associates (P.) Ltd. v. DCIT (2018) 256 Taxman 163 (Karn.)(HC)

S. 92C : Transfer pricing – Arm's length price – When there is a difference in level of capacity utilization of assessee and level of capacity utilization of comparable, then adjustment would be required to be made to profit margin of comparable on account of difference in capacity utilization in terms of rule 10-B (1)(e)(iii). 1429

Dismissing the appeal of the revenue the Court held that ; when there is a difference in level of capacity utilization of assessee and level of capacity utilization of comparable, then adjustment would be required to be made to profit margin of comparable on account of difference in capacity utilization in terms of rule 10-B (1)(e)(iii). (AY.2005-06)

CIT v. Petro Araldite (P.) Ltd. (2018) 256 Taxman 16 (Bom.)(HC)

S. 92C : Transfer pricing – Arm's length price – Comparable – when the Tribunal accepted the plea that functionally dissimilarity, remanding the matter to TPO was held to be not justified – Tribunal is directed to hear the appeal on merit. [S. 254(1)] 1430

Allowing the appeal of the assessee the Tribunal held that, even though Tribunal had accepted assessee's plea of functional dissimilarity, yet it did not pass order of exclusion of said comparable and remanded matter back to TPO for disposal afresh, order so passed was to be set aside and Tribunal is directed to dispose of case on merit. (AY. 2009-10)

Oriflame India (P.) Ltd. v. ACIT (2018) 256 Taxman 37 / (2019) 173 DTR 285 / 306 CTR 319 (Delhi)(HC)

1431 **S. 92C : Transfer pricing – Arm's length price – Comparability Parameters and Application of Filters – Inappropriate filters had been used by asssessee which would lead to an incorrect choice of comparables. DRP passed order excluding three companies from final set of comparables drawn by TPO – Tribunal partly allowed assessee's appeal, however, upheld inclusion of Thirdware Solutions Limited and exclusion of CG Vak Soft-ware & Exports Ltd. and Quintegra Solutions Ltd. as comparables for benchmarking international transaction under software development services segment – Order of Tribunal is up held. [S.260A]**

Dismissing the appeal of the assessee the Court held that, Inappropriate filters had been used by assessee which would lead to an incorrect choice of comparables. DRP passed order excluding three companies from final set of comparables drawn by TPO. Tribunal partly allowed assessee's appeal, however, upheld inclusion of Thirdware Solutions Limited and exclusion of CG Vak Soft-ware & Exports Ltd. and Quintegra Solutions Ltd. as comparables for benchmarking international transaction under software development services segment. High Court affirmed the order of the Tribunal. (AY. 2010-11)

Steria India Ltd v. DCIT (2018) 165 DTR 89 / 302 CTR 153 / 255 Taxman 110 (Delhi)(HC)

1432 **S. 92C : Transfer pricing – Comparable – While deterring ALP of components and parts exported to AE which are used in manufacturing of two wheelers cannot be compared with sale of finished goods in domestic market.**

Dismissing the appeal of the revenue the Court held that ; while deterring ALP of components and parts exported to AE which are used in manufacturing of two wheelers cannot be compared with sale of finished goods in domestic market. (AY. 2005-06, to 2007-08)

CIT v. Keihin Fie (P) Ltd. (2018) 255 Taxman 191 (Bom.)(HC)

Editorial : Keihin Fie (P) Ltd. v. ACIT (2015) 57 taxmann.com 287 (Pune) (Trib.) is affirmed

1433 **S. 92C : Transfer pricing – Arms' length price – Functionally different – Exclusion of six comparables by the Tribunal by the Tribunal was held to be justified.**

Dismissing the appeal of the revenue the Court held that entities which are functionally different cannot be comparable. Accordingly the exclusion six comparables by the Tribunal was held to be justified.

PCIT v. Evalueserve Sez (Gurgaon) (P) Ltd. (2018) 164 DTR 297 / 302 CTR 172 (Delhi)(HC)

1434 **S. 92C : Transfer pricing – Arms' length price – There was no justification for enhancement of ALP by disallowing allocation of overhead office expenses.**

Dismissing the appeal of the revenue the Court held that; since TPO had not brought anything on record to indicate that debiting of overhead expenses were excessive on basis of comparables, i.e., no benchmarking of expenses and, details of overhead expenses were supported by Auditor's Certificate of JV partners along with detailed working, there was no justification for enhancement of ALP by disallowing allocation of overhead office expenses. (AY. 2008-09)

PCIT v. International Metro Civil Contractors (2018) 408 ITR 136 / 254 Taxman 426 / 164 DTR 310 / 304 CTR 682 (Bom.)(HC)

S. 92C : Transfer pricing – Any inclusion or exclusion of comparables per se cannot be treated as a question of law unless it is demonstrated that the Tribunal has taken irrelevant consideration. [S. 260A] 1435

Dismissing the appeal of the revenue the Court held that, Any inclusion or exclusion of comparables per se cannot be treated as a question of law unless it is demonstrated that the Tribunal has taken irrelevant consideration.

PCIT v. WSP Consultants India (P.) Ltd. (2018) 253 Taxman 58 (Delhi)(HC)

S. 92C : Transfer pricing – Broad threshold figure of 25 per cent RPT in case of comparables is essential – Brand does play its own role in price or cost determination and, they would not be comparable to each other . 1436

Dismissing the appeal of the revenue the Court held that; Broad threshold figure of 25 per cent RPT in case of comparables is essential. Brand does play its own role in price or cost determination and, they would not be comparable to each other. (AY. 2007-08)

PCIT v. Oracle (OFSS) BPO Services (P.) Ltd. (2018) 253 Taxman 498 / 166 DTR 358 / 303 CTR 284 (Delhi)(HC)

S. 92C : Transfer pricing Arm's Length price – Selection of comparables – Functional dissimilarities and distinction in services provided has to be excluded. [S. 92CA] 1437

Dismissing the appeal of the revenue the court held that finding of fact given by the Tribunal that, functional dissimilarities and distinction in services provided has to be excluded. (AY. 2011-12)

CIT v. B. C. Management Services Pvt. Ltd. (2018) 403 ITR 45 / 253 Taxman 128 / 164 DTR 299 / 302 CTR 167 (Delhi)(HC)

S. 92C : Transfer pricing – Arm's length price – It would be impossible to find comparable with all similarities including the similarity of turnover – A functionally similar company cannot be excluded as comparable only on ground that company had a higher turnover. 1438

The Assessee identified comparables and made adjustments on account of idle capacity on comparables adopted in order to arrive at ALP of its purchase transaction. The TPO held that a comparable having turnover of more than twice turnover of assessee could not be considered as comparable. The High Court observing that it would be impossible to find comparables with all similarities including the similarity of turnover. The High Court further observed that the Tribunal found, on facts, that both te comparable and the assessee were in the segment of manufacture of tractors and power tillers and that all the functions of the comparable and the respondent assessee were the same. Accordingly the High Court found that there was no reason to interfere with the Tribunal's decision to include the comparable. (AY. 2006-07)

CIT v. Same Deutz-Fahr India (P) Ltd. (2018) 405 ITR 345 / 163 DTR 456 / 301 CTR 591 / 253 Taxman 32 (Mad.)(HC)

1439 **S. 92C : Transfer pricing – Arm's length price – Unless it is shown that there are important functional dissimilarities or other material facts, exclusion or inclusion of other comparable would not constitute substantial question of law. [S. 260A]**
Dismissing the appeal of the revenue the Court held that, Unless it is shown that there are important functional dissimilarities or other material facts, exclusion or inclusion of other comparable would not constitute substantial question of law.
CIT v. Becton Dickinson India (P) Ltd. (2018) 92 taxmann.com 45 / 254 Taxman 382 (Delhi)(HC)

1440 **S. 92C : Transfer pricing – Arm's length price – Interest on loan to Associated enterprise – Rate of interest being charged in the country where the loan is received or consumed.**
Dismissing the appeal of the revenue, the Court held that,in case of loans advanced to Associated Enterprise would determined on the basis of rate of interest being charged in the Country where the loan is received /consumed. On facts the assesse has got the loan at 4. 79 per cent and has advanced the loan to its AE at 7. 3 percent and the very basis of the order of TPO was on wrong premise, i.e., it has considered the rate as prevailing in India, the Tribunal has considered the facts of the present case in a plausible manner.
CIT v. The Great Eastern Shipping Co. Ltd. (2018) 301 CTR 662 / 163 DTR 510 (Bom.)(HC)

1441 **S. 92C : Transfer pricing – Arm's Length price – Corporate guarantee – When no expenditure was incurred for providing guarantee to bank for the loan given to subsidiaries applying the rate of 2. 5% by the TPO was held to be not justified.**
Dismissing the appeal of the revenue the Court held that; when no expenditure was incurred for providing guarantee to bank for the loan given to subsidiaries applying the rate of 2. 5% by the TPO was held to be not justified. (AY. 2003-04 to 2006-07)
CIT v. Reliance Industries Ltd. (2018) 161 DTR 420 / (2019) 410 ITR 468 (Bom.)(HC)
Editorial : Set a side ; CIT v. Reliance Industries Ltd. (2019) 410 ITR 466 / 175 DTR 1 / 307 CTR 121 (SC)

1442 **S. 92C : Transfer pricing – Arm's Length price – Difference in function performed and risk undertaken – Difference in brokerage charged to related and un related parties – Deletion of addition was held to be justified.**
Dismissing the appeal of the revenue the Court held that, addition deleted by the Tribunal considering the difference in function performed and risk undertaken and also difference in brokerage charged to related and un related parties being question of fact. (AY. 2002-03)
CIT v. J. P. Morgan India (P) Ltd. (2018) 161 DTR 398 / 304 CTR 686 (Bom.)(HC)

1443 **S. 92C : Transfer pricing – Arm's Length price – Unless it is not shown that the selection of TNMM as the Most Appropriate Method is perverse, the same cannot be challenged.**
Dismissing the appeal of the revenue, the Court held that; the Comparable Uncontrolled Price (CUP) method is not the Most Appropriate Method for determining the Arm's Length Price (ALP) in respect of the transactions of (sales of goods and sales

commission) with Associated Enterprises (AEs) if there are geographical differences, volume differences, timing differences, risk differences and functional differences. If it is not shown that the selection of TNMM as the Most Appropriate Method is perverse, the same cannot be challenged. (AY. 2006-07, 2007-08, 2009-10)
PCIT v. Amphenol Interconnect India P. Ltd (2018) 164 DTR 245 / 302 CTR 131 / (2019) 410 ITR 373 (Bom.)(HC), www.itatonline.org

S. 92C : Transfer pricing – Arms length price – Items like spares, accessories, batteries are used by assessee in discharge of its obligation of warranty or replacement of damaged items in transportation then no transfer pricing adjustment required to be made in respect of Purchase of finished goods and spares. 1444
Dismissing the appeal of the revenue the Tribunal held that ; Assessee was providing power solutions to its customers, for which it was not only importing UPS or DP power systems from its associated enterprises but was also attaching various other components, spares, accessories, consumables to it including batteries and racks to provide an end-solution to customers, which was as per business needs of each customer. Items like spares, accessories, batteries, etc. were also used by assessee in discharge its obligation of warranty or replacement of damaged items in transportation, etc. Items like spares, accessories, batteries are used by assessee in discharge its obligation of warranty or replacement of damaged items in transportation then no transfer pricing adjustment required to be made in respect of Purchase of finished goods and spares.
Dy.CIT v. Eaton Power Quality Pvt. Ltd. (2018) 195 TTJ 367 (Pune)(Trib.)

S. 92C : Transfer pricing – TNMM – Once a comparable was found functionally similar and further authentic and reliable financial data were available relevant to accounting period of assessee then merely comparable had different FY, it could not be excluded – TP adjustment made on outstanding receivable beyond 30 days credit period applying interest rate of 14.88% p.a. and computing interest receivable is held to be justified. 1445
Tribunal held that ; once a comparable was found functionally similar and further authentic and reliable financial data were available relevant to accounting period of assessee then merely comparable had different FY, it could not be excluded. Assessee was directed to produce such information and demonstrate before TPO that relevant, authentic and reliable information with respect to comparable was available in public domain and TPO to verify same, if found appropriate, to include said comparable. TP adjustment made on outstanding receivable beyond 30 days credit period applying interest rate of 14.88% p.a. and computing interest receivable is held to be justified. The receivable or any other debt arising during the course of the business is included in the definition of 'capital financing' as an 'international transaction' as per explanation 2 to S. 92B w.e.f 01.04.2002 inserted by the Finance Act 2012.
BT E-Serv (India) P. Ltd v. ITO (2018) 195 TTJ 137 (Delhi)(Trib.)

1446 **S. 92C : Transfer pricing – Functionally Different – Cannot be considered for comparable.**

SISCO manufactured extensive range of surgical instruments from General Surgery, Cardio-Vascular, Neuro, Urology, Plastic, Obstetrics and Gynaecology, Tungsten Carbide, Minimal Invasive Instruments. Tribunal held that relevant details reflected in financial statements and annual report of SISCO were sufficient to established that SISCO was engaged in manufacturing also as a significant activity and in absence of segmental details, same could not be taken as comparable to assessee, which was mainly engaged in trading activity. Tribunal, accordingly directed TPO to exclude SISCO from list of final comparables.

Dy. CIT v. Philips Electronics India Limited (2018) 196 TTJ 1031 (Kol.)(Trib.)

1447 **S. 92C : Transfer Pricing – ALP – Separate segment accounts – rejection of segment on ground that 'weight' was an appropriate allocation key deserves to be rejected and adjustment so made TPO was to be deleted.**

Assessee had maintained separate segment accounts for each of its 4 lines of business (i.e. international Express, International freight Forwarding, Domestic distribution and Logistics) which also formed part of audited financial statements of company. Around 92% of total costs was already allocated to segments by auditor and only 8% were shown as unallocated. Those expenses were in nature of general and administrative expenses and were allocated by assessee to all segments on basis of revenue for TP study purposes. Assessee had benchmarked international transactions in International Express and International Freight Forwarding segments using Transaction Net Margin method (TNMM'). Accordingly rejection of segment on ground that 'weight' was an appropriate allocation key deserves to be rejected and adjustment so made TPO was to be deleted.

Aramex India Pvt. Ltd. v. DCIT (2018) 196 TTJ 1 (Mum.)(Trib.)

1448 **S. 92C : Transfer pricing – Selection of comparables – Functionally different – IT enabled services – TNMM – Software developer could not be functionally comparable with a pure captive service provider-Foreign exchange gain or loss is part of operating expenditure/ income.**

Tribunal directed to exclude, functionally different. Software developer could not be functionally comparable with a pure captive service provider. Company engaged in provision of ITES services carrying on business through its own employees would not be comparable to a company which had outsourced a significant part of its operations. Foreign exchange gain or loss is part of operating expenditure/ income. (dt. 7-06-2017) (AY. 2007-08)

American Express (India) Pvt. Ltd. v. Dy.CIT (2017) 83 taxmann.com 345 / (2018) 196 TTJ 283 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Notional interest – Loan to AE – Estimate of interest at 11% was held to be not valid when the assessee had charged the interest at 8%-Rule of consistency is followed – Bench mark transaction – Cup method – Adjustment made was deleted – Ad hoc method cannot be applied. [S. 92CA]. 1449

Dismissing the appeal of the revenue the Tribunal held that TPO grossly erred in applying notional interest @11% (i.e. cost of procurement of funds by assessee @5% + 600 basis points) whereas cost of procurement of similar funds from third part was LIBOR+ 600 basis points, which came at 7.20%. On facts the revenue had accepted interest of 8% charged on same loan to be at arm's length in earlier as well as succeeding transfer pricing assessments, there was no cogent reason to adopt a contrary view in relevant year.. The Tribunal also held that TPO was failed to take into account profile of consumers, preference amongst consumers and purchasing power. CUP could not be applied without adjustments on account of differences in market and economic conditions of countries in which products had been sold to independent third parties. Considering the fact that the assessee had sold over 250 different products to AEs, but TPO selectively shortlisted only 56 products to conduct benchmarking analysis under CUP Method. CUP requires high degree of comparability and where product mix, material and composition were not identical, application of CUP failed. Tribunal held that such methodology was devoid of any merit, as in FMCG sector pricing of product, as per unit/quantity was never done proportionately. (AY. 2011-12, 2012-13)

DCIT v. Emami Limited (2018) 171 DTR 361 / 196 TTJ 570 (Kol.)(Trib.)

S. 92C : Transfer pricing – Comparables – Functionally indifferent companies cannot be selected as good comparable – Asset management company cannot be compared with market support services. 1450

Tribunal held that, company was mainly providing Asset management services and therefore, same could not be considered as comparable with market support services rendered by assessee. AO was directed to exclude such company from comparable. (AY. 2010-11)

Philip Morris Services India S. A. v. ACIT (2018) 172 DTR 192 / 66 ITR 97 / (2019) 197 TTJ 128 (Delhi)(Trib.)

S. 92C : Transfer Pricing – Transport Segment – Import of raw materials and components – Import of finished goods and Export of finished goods – Additional evidence was filed – Matter remanded. 1451

TPO made transfer pricing adjustment in respect of Transport segment. DRP upheld order of TPO. Tribunal held that findings returned by TPO who found that there was no internal comparable under Segment-A, being, Transport segment and assessee's application of PLI given in Segment-C relating to Refrigeration (non-AE) segment was not acceptable. Assessee's application for additional evidence including expert technical opinion provided by assessee and report of Valuation Officer need to be examined at end of TPO/AO on facts relevant for year under consideration. Accordingly the order was set aside and matter remitted to file of AO/TPO for deciding issue afresh in light of additional evidence. (AY. 2005-06, 2009-10 to 2013-14)

Carrier Air-Conditioning & Refrigeration Ltd. v. ACIT (2018) 172 DTR 49 / 195 TTJ 777 (Delhi)(Trib.)

1452 **S. 92C : Transfer pricing – adjustment – financial advisory solutions in the field of investment banking division – TNMM method entry level – Effective representation was not made before TPO or CIT(A) – Matter remanded to the AO /TPO.**
TPO made addition by applying average margin of 21.18% to total cost keeping in view exceptional circumstances faced by assessee during period when proceedings were under way with Revenue for framing assessments as well during first appellant proceedings, due to collapse of Lehman group worldwide, assessee could not make effective representations before authorities below and interest of justice demand that assessee be given one more opportunity to present all evidences and explanations in its support before authorities below. Accordingly the matter is remanded to the AO. (AY. 2007-08)
Lehman Brothers Securities (P) Ltd. v. DCIT (2018) 192 TTJ 58 (UO) (Mum.)(Trib.)

1453 **S. 92C : Transfer Pricing – Arm's length price – Purchases of cars by assessee from RNAIPL would not come within meaning of international transaction – Marketing expenses – No addition can be made. [S. 92B]**
Shareholding of. Renault S.A.S France in. RNAIPL was only 30% and balance 70% was held by. Nissan Motor Company Ltd, Japan. Accordingly influence that could be exerted by. Renault S.A.S France on. RNAIPL was not such that it could freely decide on pricing of latter's products – M/S. Nissan Motors India Pvt. Ltd was larger shareholder and would not have acceded to such predatory pricing strategy unless it was advantageous to them also. Purchases of cars by assessee from. RNAIPL would not come within meaning of international transaction. Tribunal also held that no Arm's Length Price adjustment could have been carried out on the advertisement and marketing expenditure incurred by the assessee. On the basis of assessee's mention that marketing expenditure incurred by it helps promotion of Renault brand in India, it cannot be presumed that such expenditure results in any "international transaction. (AY. 2012-13)
Renault India (P) Ltd. v. DCIT (2018) 193 TTJ 542 (Chennai)(Trib.)

1454 **S. 92C : Transfer pricing – Arm's Length Price – AMP expenses incurred by MSIL could not be treated and categorized as international transaction-No adjustment can be made. [S. 92B]**
Tribunal held that AMP expenses incurred by MSIL could not be treated and categorised as international transaction under Section 92B of the Act accordingly addition is held Tobe not justified. (AY. 2008-09)
Maruti Suzuki India Ltd. v. ACIT (2018) 191 TTJ 148 (Delhi)(Trib.)

1455 **S. 92C : Transfer pricing – Arm's Length Price – Royalty for use of brand name – Adjustments held to be not justified.**
Tribunal held that there was no separate value of international transaction of royalty for use of licensed trademark and Tribunal held in earlier year that it was payment of inseparable royalty for use of both licensed information and licensed trademarks. Accordingly the addition is held to be not justified. (AY. 2008-09)
Maruti Suzuki India Ltd. v. ACIT (2018) 191 TTJ 148 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's Length Price – Payment of application cost – TNMM method – TPO adopted CUP method and determined nil – Separate bench marking is required – Receipt for services-Addition was made without examining the provision of S. 37(1) – Matter remanded. 1456

Tribunal held that TPO as well as DRP have taken Nil ALP of international transaction of payment of 'Application cost' under CUP method however separate benchmarking of this international transaction was required. As no data for determining ALP of payment of application cost was available, nor it had been discussed by TPO, matter matter remitted to file of AO. As regards receipts of services the AO and TPO made addition without examining applicability of section 37(1) running in contradiction to ratio laid down in *CIT v. Cushman & Wakefield (India) (P) Ltd (2014) 367 ITR 730 (Delhi) (HC)*. Matter remanded to file of AO/TPO for deciding it in conformity with law laid down by High Court. (AY. 2009-10, 2010-11)

Denso India Ltd v. Dy. CIT (2018) 167 DTR 73/ 193 TTJ 432 (Delhi)(Trib.)

S. 92C : Transfer pricing – AMP expenses – No adjustment is required – There cannot be any formula with mathematical precision to determine ALP of international transaction relating to AMP expenses. 1457

Allowing the appeal of the assessee the Tribunal held that ; Since this was first year of business in India, assessee had to advertise aggressively but could not be considered as expenditure incurred for brand building. There cannot be any formula with mathematical precision to determine ALP of international transaction relating to AMP expenses. Accordingly no adjustment is required. (AY. 2008-09)

Soni Mobile Communication (India) Pvt. Ltd. v. Add. CIT (2018) 196 TTJ 100 (2019) 173 DTR 17 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Cup method-Royalty and technical fees – Even if the CUP method is applied to the international transactions of Royalty and Technical know-how fee, still no transfer pricing adjustment would be called for. 1458

Allowing the appeal of the assessee the Tribunal held that approach adopted by TPO, as approved by DRP, did not conform to prescription of rule 10B(1)(a) inasmuch as he sought to compare percentage of expenses to sales rather than price paid under a comparable uncontrolled situation. Accordingly even if CUP method was applied to international transactions of Royalty and Technical know-how fee, still no transfer pricing adjustment would be called for. (AY. 2012-13)

TS Tech Sun India (P) Ltd. v. DCIT (2018) 161 DTR 18 / 191 TTJ 273 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Adjustment of Management Support Service fee – APA with the Board, for the subsequent assessment years – Matter remanded to CIT(A). 1459

Tribunal held that in view of the fact that the assessee has entered into APA with the Board, for the subsequent assessment years, without commenting on the merits of the adjustment made the Tribunal remitted the matter to CIT (A) to re-adjudicate the issue in accordance with the aforesaid directions. (AY. 2010-11)

Tieto It Services India (P) Ltd. v. DCIT (2018) 163 DTR 60 / 196 TTJ 126 (Pune)(Trib.)

1460 **S. 92C : Transfer pricing – Transfer of shares – The company in which shares was transferred was not in the winding up nor was there any reasonable prospect of its going into liquidation, adoption of NAV or book value was not really warranted – Matter remanded. [S. 92CA]**

Tribunal held that role of TPO must remain confined within those parameters. It was not open to TPO to go beyond such role of determining ALP and intrude in exclusive domain of AO to determine income taxable in hands of assessee. A price decided, even if that be so, between AEs as assessee and buyer of shares were, could never be a valid CUP input for simple reason that it was only transaction value for transactions between independent enterprises that transaction value could be considered as a comparable uncontrolled price. Accordingly the adoption of NAV or book value was not really warranted. If it was treated as a going concern, valuation based on future earnings was quite justified. However, since TPO failed to examine that aspect of matter at all and simply proceeded on basis of NAV, matter was remitted for fresh determination of ALP. TPO was directed to discard computations based on NAV and adopt an appropriate method of determining ALP of shares sold by assessee to its AE, and if such an ALP was found to be more than transaction value, ALP adjustments would be required. Matter remanded. (AY. 2012-13)

Topcon Singapore Positioning Pte Ltd. v. Dy. DIT (IT)(2018) 170 DTR 249 / 195 TTJ 849 (Delhi)(Trib.)

1461 **S. 92C : Transfer pricing – Arm's length price – Comparables – software development services, healthcare claim – Inclusion of Company – Companies selected by TPO were functionally dissimilar with assessee then such companies could not be included in list of comparables.**

Allowing the appeal of the assessee the Tribunal held that Companies selected by TPO were functionally dissimilar with assessee then companies could not be included in list of comparables. Company was into development of hardware and software for embedded products, such as, multimedia and some other electronics etc. Apart from that, this company was also engaged in making some programme developing technology intellectual property. As nature of activity carried out by assessee in question was nowhere close to that of Tata Elxsi Ltd., this company could not be included in list of comparables. (AY. 2007-08)

United Health Group Information Services (P) Ltd. v. DCIT (2018) 168 DTR 246 / 192 TTJ 1 (Delhi)(Trib.)

1462 **S. 92C : Transfer pricing – Capital or revenue – Adjustment On account of Advertisement, marketing and promotion (AMP) expenses – Roughly 60% of bills were furnished to AO in original proceedings – Matter remanded to AO for verification.**

Tribunal held that there is a specific direction given by the Tribunal for considering the nature of software expenses of ₹ 1.10 crore as capital or revenue in the light of Special Bench decision in *Amway India Enterprises v. Dy. CIT (2008) 111 ITD 112 (SB) (Delhi) (Trib.)*. This exercise entails going through all the bills and then examining the period during which their benefit would run. This could have been done by the AO only after going through the bills depicting the nature of expenses, which were not filed by the

assessee. The Id. AR contended that roughly 60% of the bills were furnished to the AO in the original proceedings. This clearly proves that the assessee did not furnish complete details of software expenses. We fail to appreciate as to how the AO could have determined the nature of software expenses, being capital or revenue, without going through the relevant bills. In the given situation, we are of the considered view that it would be in the fitness of things if the impugned order is set aside and the matter is remitted to the AO for examining this issue afresh. It is made clear that the assessee will be duty bound to submit any detail as called for by the AO in this regard. If the assessee again fails to produce such bills/details, the AO will be entitled to draw adverse inference against the assessee. (AY. 2007-08)
Motorola Solutions (India) (P) Ltd. v. DCIT (2018) 165 DTR 122 / 193 TTJ 610 (Delhi) (Trib.)

S. 92C : Transfer pricing – Arm's length price – Protective assessment by invoking Brightline method – Concept of 'protective assessment', as known to income tax law, had no application to assessee's case – Merely because a binding judicial precedent from jurisdictional High Court had been challenged by revenue authorities before Supreme Court – Binding nature of a judicial precedent, as long as it hold field i.e. was not overturned, remained unaffected – Addition is deleted. 1463
AO made addition in respect of arm's length price adjustment for advertising promotion and marketing (AMP) expenses by applying bright line test (BLT). Tribunal held that there was no dispute that application of bright line test, for making ALP adjustments in respect of AMP expenses, was held to be unsustainable in law by Hon'ble jurisdictional High Court, and TPO himself stated so in so many words. It was also elementary that it could not be open to disregard binding judicial precedents and uphold application of bright line test, for determining the ALP adjustment in respect of AMP expenses, merely because a binding judicial precedent from jurisdictional High Court had been challenged by revenue authorities before Supreme Court. Binding nature of a judicial precedent, as long as it hold field i.e. was not overturned, remained unaffected. Addition is deleted. Very concept of protective addition was relevant only when an income was to be added in hands of more than one taxpayer, in situation in which there was element of ambiguity as to in whose hands said income could be rightly brought to tax and that's not case here. Concept of 'protective assessment', as known to income tax law, had no application to assessee's case. (AY. 2013-14)
MSD Pharmaceuticals (P) Ltd. v. Add.CIT (2018) 162 DTR 149 / 191 TTJ 702 (Delhi)(Trib.)

S. 92C : Transfer pricing – Functionally different company cannot be selected as a comparable for arriving ALP of an international transaction. 1464
Tribunal held that Functionally different company cannot be selected as a comparable for arriving ALP of an international transaction. (AY. 2002-03)
Philips Medical Systems Private Ltd (now merged with Philips Electronics India Ltd.) v. ITO (2018) 196 TTJ 1031 (Kol.)(Trib.)

1465 **S. 92C : Transfer pricing – Provision of software development services – Net Margin Method (TNMM) for benchmarking its international transaction of Provision of software development services – Working capital adjustment – Matter remanded.**
Tribunal held that non-granting of working capital adjustment was concerned, it was seen that in immediately preceding assessment year, Tribunal had occasion to consider this argument for grant of working capital adjustment. Accordingly the Tribunal directed to grant working capital adjustment and, accordingly, remitted matter to file of TPO/A.O. for doing needful. (AY. 2013-14)
Pitney Bowes Software India (P) Ltd. v. Add.CIT (2018) 165 DTR 81 / 192 TTJ 778 (Delhi) (Trib.)

1466 **S. 92C : Transfer pricing – Selection of Comparables – Turnover filter – Analysis that smaller companies having less turnover could not be considered as comparable with assessee – Similarly, company who had more turnover than assessee could not be compared with assessee.**
Tribunal held that,Turnover filter was one of essential filter in order to select comparables when acted in same atmosphere. While conducting transfer price analysis, an effort was being made to compare related party transactions undertaken by assessee with uncontrolled transactions undertaken by comparable, and thus arrive at conclusion as to whether transaction bench mark was at arm's length or not. Chosen company, though functionally comparable had entered international transactions beyond percentage with related parties, it was quite possible that its overall profit may have distorted due to such transaction rendering it as uncomparable. There were so many other circumstances which were required to be examined under FAR analysis, and due to this, adjudicator was required to apply appropriate filter in order to work out comparables which were not under any influence of related party transactions. CIT(A) rightly made analysis that smaller companies having less turnover could not be considered as comparable with assessee. Similarly, company who had more turnover than assessee could not be compared with assessee. (AY. 2007-08)
Schutz Dishman Biotech P. Ltd. v. DCIT (2018) 196 TTJ 10 (UO)(Ahd.)(Trib.)

1467 **S. 92C : Transfer pricing – Arm's Length price – CUP method – TNMM – International transactions combined by assessee for showing them at ALP cannot be aggregated where assessee fails to show any inextricable link between these transactions as one not surviving without the other and there is no package deal and the international transaction in question is separately valued and there is nothing to show an understanding that the pricing was dependent upon the assessee accepting all of them together – Matter remanded .**
While applying the CUP method, it is always obligatory to bring on record some comparable uncontrolled instance as per the mandate of rule 10B(1)(a)(i). Not even a single comparable instance has been brought on record by the TPO in his order to facilitate comparison between the price paid by the assessee vis-a-vis that paid by other comparables in similar uncontrolled circumstances. In case, the TPO finds that the CUP method cannot be applied either due to non-availability of the relevant data or for some

other genuine reasons, he is free to apply any other appropriate method for a fresh determination of the ALP of the international transaction of 'Management Group cost. Matter remanded (AY. 2008-09, 2009-10, 2012-13)
Atotech India Pvt. Ltd. v. ACIT (2018) 167 DTR 17 / 194 TTJ 1 (Delhi)(Trib.)

S. 92C : Transfer pricing – Inter group services – Payments in accordance with the written agreements – Adjustment is held to be not justified. [S. 92CA] 1468
An agreement entered into between parties cannot be disregarded without assigning cogent reasons. The services, by their very nature, are intangible and therefore, the evidences regarding availing such services and benefits received as a result of availing such services can be best demonstrated by narration and descriptions as evidenced by supportive emails. Practice was accepted since AY. 2007-08. Adjustment is held to be not valid. (AY. 2014-15)
Avery Dennison (India) Pvt. Ltd. v. ACIT (2018) 68 ITR 486 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – CUP method – Interest free loan to subsidiary – Shares were allotted – Adjustment is held to be not justified. 1469
Advancing interest free loans must not necessarily be deemed to be interest earning activity and activity to capitalize opportunity cost for investing in new territories-The funds were raised for the purpose of investment in subsidiaries and on the fact that these funds were interest free and ultimately, shares were allotted, it shows that there is no adjustment need to be made, on the CUP method adopted by the AO/TPO, even if the transaction is considered as one that of international transaction. (AY.2008-09 to 2011-12)
Bartronics India Ltd. v. Dy.CIT (2018) 65 ITR 540 (Hyd.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Comparables – Segmental information is not provided by company in respect of software services, same could not be included as a good comparable – Functionally indifferent companies cannot be selected as good comparable – Fact that a company had a high or low turnover could be no reason to justify its exclusion if it was otherwise functionally comparable. 1470
The Tribunal held the following in case of assessee engaged in providing software development services and information technology enabled services (ITES) :
In absence of any segmental information provided by company in respect of software services, same could not be included as a good comparable. Accordingly, the Tribunal removed the following companies from the list of comparables :
- E-Infochips Bangalore Limited
- Infosys Technology Ltd.
- Persistent Systems Ltd.
- Wipro Technology Services Ltd. :

The following companies were held as functionally indifferent and therefore not a good comparable
- Accentia Technologies Ltd as it was engaged in KPO services.
- ICRA Techno Analytics as it was engaged in software products apart from developing software and ITES

- E-Clerx being engaged in KPO, could not be compared with a company providing BPO services.
- As Microland Ltd. (Seg.) was persistently in losses, the same cannot be considered as comparable.

The Tribunal further held that a company otherwise found to be functionally comparable cannot be excluded either on the ground of higher or lower profit rate or higher or lower turnover. The exclusion of companies on such a rationale would run contrary to the express provisions of the Act and therefore, directed to include Micro Genetics Systems Ltd. and CG-Vak Software and Exports Ltd. in the list of comparables. (AY. 2011-12)

Dy. CIT v. Microsoft India (R&D) (P) Ltd. (2018) 171 DTR 121 / 196 TTJ 137 (Delhi)(Trib.)

1471 **S. 92C : Transfer pricing – Arms' length price – Royalty paid to associated enterprises was same as assessed when it was an independent entity – No adjustment to be made.**

Tribunal held that the two parties were independent at time of signing agreement for payment of royalty and, subsequently, when concern became associated enterprise in a later period, price paid to associated enterprises was same as assessed when it was an independent entity.

Moreover, payment of royalty to AE had been accepted in preceding and succeeding assessment years and payment of royalty had been made to AE at rates approved by RBI and therefore, Tribunal had deleted the adjustment made by the TPO on account on payment of royalty to the AE. (AY. 2003-04, 2005-06)

DCIT v. Kalyani Hayes Lemmerz Ltd. (2018) 193 TTJ 938 / 167 DTR 36 (Pune)(Trib.)

1472 **S. 92C : Transfer pricing – Arms' length price – In order to analyze ALP of international transactions, closely linked transactions were to be adopted as one transaction in order to carry out TP analysis by applying any of the prescribed methods as appropriate method – Matter remanded.**

The Tribunal held that the approach adopted by TPO in comparing margins of controlled transaction i.e. import of spare parts and import of CBUs from associated enterprises and proposing adjustment on account of arm's length price of international transactions was not tenable since the two items could not be said to be functionally comparable. Accordingly, the Tribunal held that under the garb of RPM method, TPO had compared sale of spares with sale of passenger cars and thereby had erred in applying RPM method. Therefore, the Tribunal set aside impugned addition and remanded the matter back to TPO for redetermination of ALP of transactions in question. (AY. 2005-06)

Dy.CIT v. Mercedes-Benz India (P) Ltd. (2018) 196 TTJ 464 (Pune)(Trib.)

S. 92C : Transfer pricing – Arms' length price – Business of developing, modifying and designing of computer software – Doctrine of commercial prudence invoked by assessee so much so it involved billing of software product purchased from parent company on cost to cost basis without any mark-up was to be demonstrated and proved with cogent evidence – Matter remanded. 1473

Tribunal held that the doctrine of commercial prudence invoked by assessee so much so it involved billing of software product purchased from parent company on cost to cost basis without any mark-up was to be demonstrated and proved with cogent evidence. Since complete details in said regard were not placed by assessee before authorities below, matter was to be remanded back for disposal afresh. (AY. 2010-11)

eBaotech India (P.) Ltd. Dy. CIT (2018) 196 TTJ 437 / 102 taxmann.com 169 / 67 ITR 90 (SN)(Mum.)(Trib.)

S. 92C : Transfer pricing – Arms' length price – Fluctuation margins – Rendering ITES services to AE, a company which was showing fluctuating margins, could not be accepted as comparable – Fee for advisory and other services to AE – Matter remanded. 1474

Tribunal held that the assessee rendering ITES services to AE, a company which was showing fluctuating margins, could not be accepted as comparable. Fee for advisory and other services to AE matter remanded. (AY. 2013-14)

Emerson Climate Technologies (India) (P.) Ltd. v. Dy. CIT (2018) 194 TTJ 41 / 100 taxmann.com 478 (Pune)(Trib.)

S. 92C : Transfer pricing – Arms' length price – Resale of goods – RPM method is most appropriate – Foreign exchange gain/loss arising out of revenue transactions is required to be considered as an item of operating revenue/cost, both for assessee as well as comparables – Granting adjustment on account of import duty paid because it incurred higher import duty in comparison with comparable companies-No adjustment on account of separate items resulting into computation of gross profit can be permitted. 1475

Tribunal held that,where assessee imported finished goods from its Associated Enterprises (AEs) and resold same to non-AEs without any value addition, RPM was most appropriate method in respect of distribution activities undertaken by assessee. Foreign exchange gain/loss arising out of revenue transactions is required to be considered as an item of operating revenue/cost, both for assessee as well as comparables. As regards imported finished goods from its Associated enterprises (AEs) and resold same to non-AEs without any value addition. Granting adjustment on account of import duty paid because it incurred higher import duty in comparison with comparable companies. Whether import duty has been paid or not or paid to lower extent by comparables cannot have any effect over computation of gross profit margin of comparables, no adjustment on account of separate items resulting into computation of gross profit can be permitted. (AY. 2011-12)

Fresenius Kabi India (P.) Ltd. v. ACIT (2018) 172 DTR 129 / 196 TTJ 1023 / 68 ITR 27 (SN) / 100 taxmann.com 134 (Pune)(Trib.)

1476 **S. 92C : Transfer pricing – Arms' length price – Selection of comparable – Functionally dissimilar companies cannot be selected as comparables – Foreign head office and Indian Branch – Requires determination of ALP on such transactions – Brightline test – Marketing support services can not be compared with testing services, project of Emergency Transport and Infrastructure development and projects of development and hygiene education development.**

Tribunal held that ; transactions between foreign head office and Indian Branch are not tax neutral; if transactions between foreign head office and Indian branch office are not at ALP, it is certainly going to affect income of non-resident assessee chargeable to tax in India, which definitely requires determination of ALP of such transactions. As per article 9 read with article 7, albeit deduction of AMP expenses is to be allowed, but simultaneously, ALP of AMP expenses for brand promotion is also to be determined and adjustment to profits so determined under article 7(3) to be made accordingly. Where TPO held AMP expenses to be an international transaction and determined ALP by applying bright line test, since he did not have any occasion to consider ratio laid down in several judgments of jurisdictional High Court, that bright line test cannot be applied for determining ALP of international transaction of AMP expenses, it would be in fitness of things if matter was to be restored to file of TPO. Assessee rendered marketing support services to its AE. A company providing services in nature of project management consulting, feasibility studies, micro enterprise development was not comparable to assessee. Assessee rendered marketing support services to its AE. A company engaged in providing testing services for various products and also offering services in field of pollution control, was incomparable. A company awarded with project of Emergency Transport and Infrastructure development and projects of development and hygiene education development could not be selected as comparable. Functionally dissimilar companies cannot be selected as comparables. (AY. 2007-08, 2008-09)

Fujifilm Corporation v. ITO (2018) 193 TTJ 716 / 92 taxmann.com 411 (Delhi)(Trib.)

1477 **S. 92C : Transfer pricing – Arm's length price – Comparables – Providing back office support services – Followed rule of consistency – Different business hence cannot be comparable. [S. 92CA]**

Allowing the appeal the Tribunal has followed the rule of constancy and rejected the comparable adopted by the TPO on the ground that the comparable adopted by the TPO is in different business hence cannot be comparable. (AY. 2007-08)

Exxon Mobil Company India P. Ltd. v. ACIT (2018) 65 ITR 583 / 196 TTJ 1070 / 97 taxmann.com 43 (Mum.)(Trib.)

1478 **S. 92C : Transfer pricing – Arms' length price – Profit Split Method can be adopted as most appropriate method in cases involving multiple inter-related international transactions which cannot be evaluated separately.**

Assessee provided information technology enabled services to its Irish group company which involved evaluation of Google products and tools for efficiency, bugs, performance, failures and other aspects, software development tasks in relation to development of web-based language translator, etc. In study report, Assessee considered

said services as low-end IT services and determined arms' length price using Transaction Net Margin Method. TPO held that Assessee also rendered R & D services which are in nature of product development, product upgrades, product support, testing of products and product improvement and re-characterized activities/functions as Knowledge Processing Unit and applied Profit Split Method. On appeal before the Tribunal, whether it is settled proposition of law that Profit Split Method can be adopted as most appropriate method in cases involving multiple inter-related international transactions which cannot be evaluated separately-Held, yes-Whether since business of AdWords programme of google required deployment of assets and functions of different entities located in different geographical locations in order to ultimately deliver services and revenues was generated through combined efforts in respect of transactions aggregated with AdWords business transaction, TPO should benchmark transaction by adopting Profit Split Method as most appropriate method-Held, yes. (AY. 2009-10)
Google India (P.) Ltd. v. Jt. DIT(IT) (2018) 194 TTJ 385 (Bang.)(Trib.)

S. 92C : Transfer Pricing – Arm's length price – Jurisdiction of TPO and AO – Held, TPO required to simply determined to the ALP irrespective of the benefits accruing to the assessee – Held, TPO cannot determine the ALP at Nil on the ground that no benefit accrued to the assessee – Held, AO to decide on deductibility of expense u/s 37(1) – Matter set aside. [S. 37(1)] 1479

Assessee paid royalty for use of trade name and mark. TPO determined the ALP at Nil on the ground that no benefit was derived by the assessee. The Tribunal held that TPO was required to simply determine the ALP of the international transaction, unconcerned with the fact, if any benefit accrued to the assessee and thereafter, it was for the AO to decide the deductibility of this amount u/S. 37(1) of the Act. Held, matter set aside. (AY. 2009-10)
Dy. CIT v. Vodafone Essar Digilink Ltd. (2018) 193 TTJ 150 / 64 ITR 392 / 170 ITD 430 / 166 DTR 233 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arms' length price – operating profit – liabilities and doubtful debt written back as well as design income and services income form part of operating profit for computing operation profit while calculating OP/OC ratio. 1480

The Tribunal held that liability and doubtful debts written back fall within the ambit of section 28 to 43 and therefore, formed part of operating income. Similarly, it was held that design income and services income are directly linked to the core activities of the assessee and therefore, would form part of operating profits. (AY. 2002-03 2004-05)
Dy. CIT v. Tetra Pak India (P) Ltd. (2018) 191 TTJ 48 (UO) (Pune) Trib.)

1481 **S. 92C: Transfer Pricing – (i) Chapter 10 presupposes the existence of "income" and lays down machinery provision to compute ALP of such income. S. 92 is not an independent charging section to bring in a new head of income or to charge tax on income which is otherwise not chargeable under the Act. If no income has accrued to or received by the assessee u/s. 5, no notional income can be brought to tax u/s 92 of the Act (ii) It is a jurisdictional requirement that the AO has to record satisfaction that there is "income" or potential of income. The recording of 'satisfaction' about the existence of an "international transaction" is also essential. This is only within the jurisdiction of the AO and the CIT(A) cannot substitute his satisfaction for that of the AO. Such substitution of satisfaction is impermissible in law as it amounts to curing a jurisdictional defect. [S. 5, 92]**

Allowing the appeal of the assessee the Tribunal held that ; (i) Chapter 10 presupposes the existence of "income" and lays down machinery provision to compute ALP of such income. S. 92 is not an independent charging section to bring in a new head of income or to charge tax on income which is otherwise not chargeable under the Act. If no income has accrued to or received by the assessee u/s 5, no notional income can be brought to tax u/s 92 of the Act (ii) It is a jurisdictional requirement that the AO has to record satisfaction that there is "income" or potential of income. The recording of 'satisfaction' about the existence of an "international transaction" is also essential. This is only within the jurisdiction of the AO and the CIT(A) cannot substitute his satisfaction for that of the AO. Such substitution of satisfaction is impermissible in law as it amounts to curing a jurisdictional defect. (AY. 2010-11)

Shilpa Shetty v. ACIT (2018) 172 ITD 404 / 195 TTJ 491 / 170 DTR 258 (Mum.)(Trib.), www.itatonline.org

1482 **S. 92C : Transfer pricing – AMP Expenditure – In the absence of material to suggest that there was an "arrangement, understanding or action in concert" with respect of the AMP expenditure incurred by the assessee, the TPO is not justified in coming to the conclusion that there was an international transaction u/s. 92B and that the assessee should have recovered an amount from its AE. The request of the Dept for a remand to the TPO is not acceptable. A remand to the assessment stage cannot be a matter of routine; it has to be so done only when there is anything in the facts and circumstances to so warrant or justify. [S. 92B]**

Allowing the appeal of the assessee the Tribunal held that ; In the absence of material to suggest that there was an "arrangement, understanding or action in concert" with respect of the AMP expenditure incurred by the assessee, the TPO is not justified in coming to the conclusion that there was an international transaction u/s. 92B and that the assessee should have recovered an amount from its AE. The request of the Dept for a remand to the TPO is not acceptable. A remand to the assessment stage cannot be a matter of routine; it has to be so done only when there is anything in the facts and circumstances to so warrant or justify. (AY. 2009-10)

Most Hennessy India Pvt. Ltd. v. ACIT (2018) 173 ITD 55 (Delhi)(Trib.), www.itatonline.org

S. 92C : Transfer pricing – Arms' length price – Extraordinary event occurred in the case of comparable companies is liable to be excluded. [S. 92CA] 1483
Appellate Tribunal held that as there was a specific direction of the Panel that the companies in which there were extraordinary events should be excluded, the AO was to verify the extraordinary event in the case of comparable company and to exclude the same if it is found that any extraordinary event had occurred in its case. (AY. 2010-11)
Conexant Systems Private Ltd. v. Dy. CIT (2018) 63 ITR 320 (Hyd.)(Trib.)

S. 92C : Transfer pricing – Arms' length price – Assessee company processed, bottled and sold liquor in India under two segments Bottled in India Scotch (BIIS) and India Made Foreign Liquor (IMFL) – activities of the assessee are two different segments – assessee's segregation approach for benchmarking these segments justified. 1484
Where assessee was engaged in processing, bottling and sale of liquor in India under two segments Bottled in India Scotch (BIIS) and India Made Foreign Liquor (IMFL), in view of fact that manufacturing of ultimate product, market conditions, price and functions of both segments were completely different and distinct, assessee's segregation approach for benchmarking these segments was justified. (AY. 2005-06)
Dy. CIT v. Allied Domecq Spirits and Wine India Pvt. Ltd. (2018) 63 ITR 376 / 193 TTJ 920 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Matter was remanded. 1485
The Tribunal set aside the order on the issue of addition towards transfer pricing adjustment in the international transaction under dispute and remit the matter to the file of AO/TPO for fresh determination of its ALP in consonance with the observations and directions needless to say the assessee will be allowed a reasonable opportunity of being heard in such fresh proceedings. (AY. 2006-07)
CEVA Freight India (P) Ltd. v. Dy. CIT (2018) 192 TTJ 887 / 172 DTR 55 (Delhi)(Trib.)

S. 92C : Transfer pricing – Non-charging or under – charging of interest on excess period of credit allowed to AE for realization of invoices amounts to an international transaction and ALP of such an international transaction is required to be determined. 1486
Tribunal held that, non-charging or under-charging of interest on excess period of credit allowed to AE for realization of invoices amounts to an international transaction and ALP of such an international transaction is required to be determined.
Pitney Bowes Software India (P) Ltd. v. Addl. CIT (2018) 63 ITR 37 (SN)(Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Procuring and importing lubricants – TNM is appropriate method – Assessee to be given adjustments for extraordinary costs incurred in first year of operations – AO is directed to re compute the arm's length price. 1487
Tribunal held that,for computing arm's length price, in respect of importing lubricants, TNM is appropriate method. Assessee to be given adjustments for extraordinary costs incurred in first year of operations – AO is directed to re compute the arm's length price. (AY. 2011-12)
G. S. Caltex India P. Ltd. v. DCIT (2018) 65 ITR 36 (SN) / 171 DTR 345 / 196 TTJ 612 / 96 taxmann.com 614 (Mum.)(Trib.)

1488 **S. 92C : Transfer Pricing – Arm's Length Price – Outstanding expenses – Interest – Period of 60 days reasonable within which expenses ought to have been recovered – SBI-PLR rates alone should be calculated without any 3 per cent spread. 8.15 Per Cent should be adopted while calculating Arm's Length Price interest – Opportunity cost to assessee's funds to be calculated in relation to interest earning capacity in domestic market. [S. 92B]**

Tribunal held that for recovery of outstanding expenses, interest, period of 60 days reasonable within which expenses ought to have been recovered. SBI-PLR rates alone should be calculated without any 3 per cent spread. 8.15 Per Cent should be adopted while calculating Arm's Length Price interest. Opportunity cost to assessee's funds to be calculated in relation to interest earning capacity in domestic market. (AY. 2012-13)

Allianz Cornhill Information Services P. Ltd. v. DCIT (2018) 65 ITR 33 (SN) (Cochin)(Trib.)

1489 **S. 92C : Transfer pricing – Arm's length price – Exclusion of comparable was held to be justified where ; difference between business model of earning Commission, only providing marketing support services to its head office,company apart from corporate Advisory Practices also establishing two specialised divisions, Viz., Information Technology and Research activities which is not close to assessee in functionality Company dealing in research and survey Services And Products, Company, functionally different from assessee, no similarity between nature of services rendered by Company *vis-a-vis* Assessee,diverse nature of services rendered by Company, difference business model of assessee. As regards working capital adjustment is concerned, in sufficient material is available for calculation of working capital adjustment in respect of comparable, AO was directed to compute working capital adjustment in terms of law.**

Allowing the appeal of the assessee the Tribunal held that, Exclusion of comparable was held to be justified where ; difference between business model of earning Commission, only providing marketing support services to its head office,company apart from corporate Advisory Practices also establishing two specialised divisions, Viz., Information Technology and Research activities which is not close to assessee in functionality Company dealing in research and survey Services And Products, Company, functionally different from assessee, no similarity between nature of services rendered by Company *vis-a-vis* Assessee,diverse nature of services rendered by Company, difference business model of assessee. However there was insufficient material readily available on record for calculating the working capital adjustment in respect of comparables *vis-a-vis* the assessee. It would be more appropriate if this issue was considered and examined by the original authority. The Assessing Officer was directed to compute the working capital adjustment, if any, available to the assessee in terms of law. (AY. 2007-08, 2008-09)

Brown Forman Worldwide LlC India v. DIT (2018) 65 ITR 170 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Margins of assessee with its associated enterprises is higher than margins of assessee with third parties hence no adjustment on account of Arm's length price is warranted. International Transactions of information technology services availed of to be aggregated with other Transactions and to be benchmarked applying internal transactional net margin method. Order of TPO in taking value of International transactions of information technology services availed at nil was to be reversed and the adjustment made was to be deleted. 1490

Tribunal held that ; margins of assessee with its associated enterprises is higher than margins of assessee with third parties hence no adjustment on account of Arm's length price is warranted. As reagrds International Transactions of information technology services availed of to be aggregated with other Transactions and to be benchmarked applying internal transactional net margin method. Order of TPO in taking value of International transactions of information technology services availed at nil was to be reversed and the adjustment made was to be deleted. (AY. 2008-09)

Eaton Fluid Power Limited v. ACIT (2018) 64 ITR 578 (Pune)(Trib.) www.itatonline.org

S. 92C : Transfer pricing – Arm's length price – Management group cost-Some services received from associated enterprises and the applicability of the benefit test could not be countenanced – International transactions should be bench marked separately – Comparable uncontrolled price method most appropriate method – For determination of management group cost, matter was remitted to the AO for a fresh determination of the arm's length price. 1491

Tribunal held that, some services received from associated enterprises and the applicability of the benefit test could not be countenanced. International transactions should be bench marked separately. On facts comparable uncontrolled price method is most appropriate method accordingly for determination of management group cost, matter was remitted to the AO for a fresh determination of the arm's length price. (AY. 2008-09, 2009-10, 2012-13)

Atotech India P. Ltd v. ACIT (2018) 64 ITR 74 (SN) / 167 DTR 17 / 194 TTJ 1 (Delhi)(Trib.)

S. 92C : Transfer pricing – Foreign AE could be a tested party, provided complete financials of said AE along with complete financials of relevant comparables required to benchmark international transaction were made available before TPO, matter remanded. Transaction with AE being higher than ALP, no ALP adjustment could be made matter remanded. 1492

Tribunal held that; Foreign AE could be a tested party, provided complete financials of said AE along with complete financials of relevant comparables required to benchmark international transaction were made available before TPO, matter remanded. Tribunal also held that Transaction with AE being higher than ALP, no ALP adjustment could be made, however, failed to establish by sufficient evidence before TPO regarding actual value of international transaction received by AE, matter was to be remanded back for adjudication afresh. (AY. 2005-06, 2006-07)

Moser Baer India Ltd. v. DCIT (2018) 170 ITD 522 (Delhi)(Trib.)

1493 **S. 92C : Transfer Pricing – Most appropriate method – Back to back transactions and solitary transaction – Matter restored to TPO.**
The Tribunal restored the matter to the TPO for verification of the assessee's claim for correct computation of its margin. (AY. 2007-08)
Dy. CIT v. Calance Software (P) Ltd. (2017) 82 taxmann.com 390 / (2018) 191 TTJ 259 (Delhi)(Trib.)

1494 **S. 92C : Transfer pricing – The "international transaction" as defined in S. 92F(v) has to be a genuine transaction. Transfer pricing provisions do not apply to non-genuine or sham transactions. [S. 92F(v)]**
Tribunal held that; it is elementary that the ALP is determined of an 'international transaction', which has been defined in section 92B of the Act. The term 'transaction', for the purposes of the Chapter-X containing transfer pricing provisions, has been defined in clause (v) of section 92F to include an arrangement, understanding or action in concert. It shows that the ALP is always determined of an international transaction, which is genuine, but may be formal or in writing and whether or not intended to be enforceable by legal proceeding. If a transaction itself is not genuine, there can be no question of applying the transfer pricing provisions to it. In such an eventuality of a supposed genuine transaction turning out to be non-genuine, all the consequences which would have flowed for a real transaction, are reversed. In other words, certain deductions which would have been otherwise allowed in case of a genuine international transaction, are denied. Nitty-gritty of the matter is that only a declared and accepted genuine international transaction can be subjected to the transfer pricing regulations. If an international transaction is proved to be not genuine, the transfer pricing provisions are not triggered. (AY. 2006-07)
Mitchell Drilling India Private Limited v. DCIT (2018) 93 taxmann.com 458 / 66 ITR 126 (Delhi)(Trib.), www.itatonline.org

1495 **S. 92C : Transfer pricing – Arm's length price – The TPO can not sit in judgement over the business model of the assessee and determine the ALP of the transactions with AEs at Nil.**
Allowing the appeal of the assessee the Tribunal held that; international transactions of information technology services availed has to be aggregated with other transactions being intrinsically linked to other international transactions undertaken by the assessee during the year and the same has to be benchmarked applying internal TNMM method as in the case of other international transactions. Further, we also reverse the order of TPO in holding that the assessee has not availed any services in view of various documents filed by the assessee and also certificate of Eaton China, which was filed during the course of TP proceedings evidencing not only the availment of services but also the basis of cost for such services. Similar services were availed by other Eaton group entities from Eaton China and its certificate that the same has also charged at the same rates as charged to the assessee. In the entirety of the above said facts and circumstances, we reverse the order of TPO / Assessing Officer in taking the value of international transactions of Information Technology Services availed at Nil and delete the adjustment made. (AY. 2008-09)
Eaton Fluid Power Ltd v. ACIT (2018) 64 ITR 578 (Pune) (Trib.), www.itatonline.org

S. 92C : Transfer pricing – Arms' length price – A company having a calendar year ending, cannot be compared with the assessee having a financial year ending notwithstanding functional similarity between two companies. 1496

The assessee was engaged in provision of information technology (IT) enabled back office support services in the nature of customized business/financial research support to Copal group. The assessee selected certain companies including Jindal Intellicom Ltd. in connection with the provision of ITES. The Tribunal held that Jindal Intellicom Ltd., having a calendar year ending, cannot be compared with the assessee having a financial year ending notwithstanding the functional similarity between the two. (AY. 2009-10)

ITO v. Copal Research (I)(P.) Ltd. (2018) 162 DTR 129 / 191 TTJ 1000 / 90 taxmann.com 70 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arms' length price – DRP directed the TPO to give working capital adjustment using OECD methodology and to apply SBI Prime Lending rate as interest rate and hence the impugned Order passed did not require any interference. 1497

The TPO refused to give working capital adjustment to the assessee in the transfer pricing proceedings. The assessee had furnished detailed calculation for adjustment on account of working capital before the DRP. The DRP directed the TPO to give working capital adjustment using OECD methodology and to apply SBI Prime Lending rate as interest rate and hence the Final Order passed by the Assessing Officer did not require any interference from the Tribunal. (AY. 2010-11)

ITO v. H & S Software Development & Knowledge Management Centre P. Ltd. (2018) 62 ITR 65 / 90 taxmann.com 333 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Variation in closing stock in order to compute operating cost was not considered hence adjustment was held to be not valid. 1498

Dismissing the appeal of the revenue the Tribunal held that; while determining ALP variation in closing stock in order to compute operating cost was not considered,hence adjustment was held to be not valid. (AY. 2008-09)

PCIT v. Rahman Exports (P.) Ltd. (2018) 169 ITD 10 (All.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Method of accounting – TPO has no jurisdiction to comment on the method of accounting followed by an assessee. [S. 145] 1499

Dismissing the appeal of the revenue, the Tribunal held that, only role assigned to TPO is to find out as to whether international transaction is at arm's length or not and he is not supposed to take decision about accounting policy to be followed by assessee, nor he should comment upon as to how to compute income if an assessee follows a particular method of accounting. (AY. 2002-03)

DCIT v. Hazaria Cryogenic Engineering & Construction Management (P.) Ltd. (2018) 168 ITD 344 (Mum.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Selection of comparables – Various methods explained. 1500

Tribunal held that; high profit or loss alone cannot be a criteria for inclusion or exclusion of an entity. Employee cost at 25 per cent relevant factor for selecting

comparables. Exclusion of companies on ground of diminishing revenue and different financial Year. Companies Engaged In Software Product Development cannot be compared to assessee. Companies owning intangibles or intellectual property rights cannot be compared to one that does not have intangibles, such companies to be excluded from list of comparables. (AY. 2008-09)
DCIT v. Verisign Services India Pvt. Ltd. (2018) 61 ITR 315 (Bang.)(Trib.)

1501 **S. 92CA : Reference to transfer pricing officer – CBDT's Instruction No. 3/2003 is binding on the AO. Consequently, the ALP of international transactions where the quantum is less than ₹ 5 crore has to be determined by the AO and cannot be referred to the TPO. If such reference is made, it is invalid and the extended time for completing the assessment is not available to the AO. The assessment is void as it is time-barred. [S. 119, 144C]**

The Tribunal had to consider the following ground of appeal :

> "The reference to the Transfer Pricing Officer u/s. 92CA of the Income Tax Act, 1961 by the Assessing Officer was illegal being contrary to (i) the binding Instruction No. 3/2003, (ii) the provisions of Section 92CA and the binding decision of the Special Bench in the case of Aztec Software and Technology Services Ltd. 107 ITD 141 (Bang.) (SB). Consequently, the impugned assessment is time barred and, therefore, bad in law."

Tribunal held that; CBDT's Instruction No. 3/2003 is binding on the AO. Consequently, the ALP of international transactions where the quantum is less than ₹ 5 crore has to be determined by the AO and cannot be referred to the TPO. If such reference is made, it is invalid and the extended time for completing the assessment is not available to the AO. The assessment is void as it is time-barred. (ITA No. 4363/del/2010, dt. 23.03.2018) (AY. 2006-07)
Calance Software Pvt. Ltd. v. DCIT (2018) 92 taxmann.com 164 (Delhi)(Trib.), www.itatonline.org

1502 **S. 92CB : Transfer Pricing – Safe Harbour Rules – AO has no authority to make any reference to the TPO to ascertain the arm's length price of the assessee's specified domestic transactions. CBDT's circular dated 10. 3. 2006 could not have and does not lay down anything to the contrary. [S. 92C, 92CA]**

Allowing the petition the Court held that; If the assessee has exercised the safe harbour option under Rule 10THD(1) & the AO has not passed any order under rule 10THD(4) declaring the exercising of option to be invalid, the option is treated as valid. Thereafter, the Transfer Pricing regime does not apply & the AO has no authority to make any reference to the TPO to ascertain the arm's length price of the assessee's specified domestic transactions. CBDT's circular dated 10. 3. 2006 could not have and does not lay down anything to the contrary. Accordingly, Reference made by the Assessing Officer to the TPO in the present case is quashed. Resultantly, the order dated 15. 9. 2017 passed by the TPO on such invalid reference is set aside. (SCA No. 19073 of 2017, dt. 06/03/2018) (AY. 2014-15)
Mehsana District Co-operative v. DCIT (2018) 93 taxmann.com 219 (Guj.)(HC), www.itatonline.org

S. 93 : Transactions resulting in transfer – Non-residents – transfer of shares by wholly owned non-resident subsidiary of the Indian company to unrelated resident company – Held, S. 93 can apply only if transfer by the resident assessee to non-resident subsidiary – Provision is not applicable. 1503

The Tribunal held that S. 93 is a deeming fiction and therefore, has to be construed strictly and that the same can be invoked only if the conditions enshrined therein are fulfilled. In the present case, there was transfer of shares by wholly owned non-resident subsidiary of the assessee company to unrelated resident company. One of the condition of S. 93 is that there should be transfer of property by the resident assessee to non-resident subsidiary. Since, the same was not present, it was held that S. 93 is not applicable. (AY. 2007-08)

Dy. CIT v. Tata Industries Ltd. (2018) 168 ITD 340 / 164 DTR 17 / 192 TTJ 541 (Mum.) (Trib.)

S. 94 : Transaction in securities – Loss on shares – Avoidance of tax by certain transactions in (Purchase and sale of bonds) – Transaction was not in the course of business hence provision of S. 94(1) can not be applied. [S. 94(4)] 1504

Provisions of section 94(1) had not been applied in case of actual owner of securities from whom same were bought by assessee, provisions of section 94(4) could not be invoked in case of assessee transactions of purchase and sale of bonds in question not being carried on during course of business was not a business activity, hence, provisions of section 94(4) would not be applicable. (AY. 1992-93)

DCIT v. Growmore Leasing & Investment Ltd. (2018) 168 ITD 1 (Mum.)(Trib.)

S. 112 : Tax on long term capital gains – Foreign company – Long-term capital gains arising on sale of equity shares of an Indian company being listed in securities, will be 10 per cent (plus surcharge and cess) of amount of capital gains as per proviso to S. 112(1)-DTAA-India-Japan. [S. 45, Art. 4,13] 1505

Question before AAR was whether the tax payable by the Applicant on the long term capital gains arising on the sale of equity shares being listed securities, will be 10% (plus surcharge and cess) of the amount of capital gains as per the proviso to S. 112(1) of the Act.

AAR granted benefit of proviso to S. 112(1) to the Applicant and upheld 10% tax rate for long-term capital gains arising on sale of listed shares pursuant to share transfer agreement with Indian partners in order to sell its stake in HHML by placing reliance upon Delhi High Court ruling in Cairn UK Holding Ltd (2013) 359 ITR 268 (Delhi) (HC) and AAR ruling in Pan-Asia iGate Solutions (2014) 364 ITR 331 (AAR).

Honda Motors Co. Ltd., In re (2018) 401 ITR 382 / 253 Taxman 402 / 301 CTR 159 / 163 DTR 113 (AAR)

S. 112 : Tax on long term capital gains – Non-residents – Concessional rate of tax – Long-term capital gains arising on sale of equity shares in Indian listed company to be taxed at 10. 506 per cent, inclusive of surcharge and cess. [S. 45] 1506

AAR held that; the benefit under the proviso to section 112(1) of the Act could not be denied to the applicant. The tax payable by the applicant on the long-term capital gains

arising on the sale of equity shares in A, an Indian listed company, were to be computed at 10. 506 per cent inclusive of surcharge and cess of the amount of capital gains, in terms of the proviso to section 112(1) of the Act.
Finnish Fund For Industrial Co-operation Ltd., In Re (2018) 402 ITR 373 / 301 CTR 705 / 164 DTR 105 (AAR)

1507 **S. 115BBC : Anonymous donations – Donor denied having given any donation to trust hence addition was held to be justified. [S. 10(23C)]**
Dismissing the appeal of the assessee the Tribunal held that; as most of the donors denied having given any donation the assessee addition was held to be justified. (AY. 2010-11, 2011-12)
ACIT v. Gurudatta Shikshan Sanstha (2018) 168 ITD 191 / 192 TTJ 191 / 165 DTR 70 (Pune)(Trib.)

1508 **S. 115BBE : Tax on income referred in section 69 – Survey – Surrender of excess stock – Prevailing price of gold had fallen as on 31-3-2013 – Unexplained investments – Loss is allowed to be set off against income disclosed in the course of survey – Provision is applicable with effect from 1-4-2017 which is prospective and not prior to that – Remanded for verification whether entire excess stock found in the course of survey remained unsold as on 31-03-2013. [S. 69, 133A]**
During course of survey on 1st March, 2013, the assessee surrendered income on account of excess stock,however, in return of income, assessee showed lower income on account of excess stock by taking a plea that prevailing price of gold had fallen as on 31-3-2013. AO rejected assessee's explanation and made addition under S. 69, read with S.115BBE of the Act. CIT (A) deleted the addition. On appeal by revenue dismissing the appeal, the Tribunal held that, S. 115BBE is applicable with effect from 1-4-2017 and not prior to that. However, in view of fact that question as to whether entire stock which was found excess at time of survey remained as unsold till 31-3-2013 so that assessee could take benefit of reduction in prevailing price of gold against surrendered income on account of unexplained investment in stock, had not been examined by lower authorities, matter was to be remanded back for said limited purpose of verification. Followed, *ACIT v. Sanjay Bairathi Gems Ltd. [2017] 166 ITD 445 (Jaipur)(Trib.)* (AY. 2013-14)
ACIT v. Satish Kumar Agarwal. (2018) 172 ITD 143 (Jaipur)(Trib.)

1509 **S. 115J : Book profit – Explanation (iv) to S. 115J cannot be read or enlarged in the manner so as to allow an impermissible act of reopening of the accounts.**
The High Court, following Supreme Court's view in case of *Apollo Tyres Ltd. v. CIT (2002) 255 ITR 273 (SC)*, held that AO was not justified in disallowing the depreciation of the previous year, while computing book profits under Section 115J, which is already approved through the final audited accounts of the Company and is not subject to be re-scrutinised by AO. (AY. 1988-1989).
JCIT v. South Eastern Coalfields Ltd. (2018) 303 CTR 102 / 166 DTR 321 (Chhattisgarh) (HC)

S. 115JA : Book profit – Adjustment of provision for bad and doubtful debts [under Clause (c) of S. 115JA(1)] is permitted only when such provision is made for an unascertained liability. 1510

The High Court relying on Supreme Court's decisions in case of *State Bank of Patiala v. CIT (1996) 219 ITR 706 (SC)* and *CIT v. HCL Comnet Systems & Services Ltd. (2008) 305 ITR 409 (SC)* held that while computing book profits provision for unascertained liability only could be disallowed by invoking Section 115JA(1)(c) of the Act. (AY. 2000-2001)

L.R.N. Finance Ltd. v. ACIT (2018) 255 Taxman 262 (Mad.)(HC)

S. 115JA : Book profit – Not applicable to Banking company. 1511

Provisions of section 115JA are not applicable to a banking company. (AY. 1999-2000; 2002-03; 2003-04)

Dy. CIT v. Central Bank of India (2018) 191 TTJ 265 (Mum.)(Trib.)

S. 115JAA : Book profit – Deemed income – Tax credit – Amount of MAT tax credit available from earlier year, inclusive of surcharge and education cess etc., should be reduced from amount of tax determined on total income of current year after adding surcharge and education cess, etc. [S. 234B, 234C] 1512

Allowing the appeal of the assessee the Tribunal held that ; the amount of the MAT tax credit, inclusive of surcharge and education cess etc., of any, should be reduced from the amount of tax determined on the total income after adding surcharge and education cess, etc. Only the resultant amount payable will suffer interest under the relevant provisions of the Act. Since the amount of MAT tax credit is uncertain, the impugned order is to be set aside and remit the matter to the file of the Assessing Officer for ascertaining the correct amount of MAT tax credit available with the assessee inclusive of surcharge and education cess etc., if any, and then allow tax credit as indicated above. (AY. 2011-12)

Consolidated Securities Ltd. v. ACIT (2018) 172 ITD 163 (Delhi)(Trib.)

S. 115JB : Book profit – Whether the provision of S. 115JB is applicable to Banking Company is substantial question of law – Appeal of the revenue is admitted. [S. 260A] 1513

Question raised by the revenue is "whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that provisions of Section 115JB of the Act are not applicable to a Baking Company?" Appeal of the revenue is admitted. (AY. 2005-06)

PCIT v. Bank of Maharashtra (2018) 258 Taxman 205 / 98 taxmann.com 581 / (2019) 410 ITR 413 (Bom.)(HC)

Editorial : SLP of revenue is allowed PCIT v. Bank of Maharashtra (2018) 258 Taxman 204 / 406 ITR 32 (St)(SC)

S. 115JB : Book profit – Tariff fixed by Regulatory Body subsequently – The difficulty in estimating did not convert the accrued liability into a conditional one – Accrued liability to be taken in to in computing book profit. 1514

Dismissing the appeal of the revenue the Court held that ; the liability had definitely arisen, although it would have to be quantified and discharged to adjust it at a future

date, i.e., the date on which the Commission determined the tariff. It was not even suggested by the Revenue that the liability was not likely to be incurred. Considering the nature of the assessee's enterprise and the mode of fixation of tariff, it was reasonably certain that the liability would arise. Nor was it suggested that the liability was not capable of being estimated with reasonable certainty. The assessee estimated the liability after taking all the relevant factors into consideration. Indeed, the liability was enhanced on account of the Commission fixing the tariff at a rate lower than that sought by the assessee. The difficulty in estimating did not convert the accrued liability into a conditional one. (AY. 2006-07)
CIT v. NHPC Limited (2018) 408 ITR 237 / 304 CTR 612 / 167 DTR 33 (P&H)(HC)

1515 **S. 115JB : Book profit – lease equalization charges can be deducted while computing book profit – Provisions for non-performing assets are liable to be adjusted while computing book profit. [Companies Act, 1956, S. 211(2)]**
Dismissing the appeal of the revenue the Court held that, lease equalization charges can be deducted while computing book profit and also provisions for non-performing assets are liable to be adjusted while computing book profit. (AY. 1998-99)
CIT v. MGF India Ltd. (2018) 254 Taxman 362 / 171 DTR 434 / 308 CTR 186 (Delhi)(HC)
CIT v. Motor & General Finance Ltd. (2018) 254 Taxman 362 / 171 DTR 434 / 308 CTR 186 (Delhi)(HC)

1516 **S. 115JB : Book profit – Provision towards electricity tariff cannot be added to book profit as it is not a contingent liability.**
Dismissing the appeal of the revenue the Court held that; assessee estimated liability after taking all relevant factors into consideration, thus, addition on account of tariff adjustment was to be deleted as liability was not a contingent liability. (AY. 2006-07)
PCIT v. NHPC Ltd. (2018) 408 ITR 237 / 254 Taxman 438 / 167 DTR 44 / 304 CTR 612 / 304 CTR 623 (P&H)(HC)

1517 **S. 115JB : Book profit – Exempt income – Disallowance under section 14A can be invoked while computing book profit is a question of law. [S. 14A, 260A]**
Court has admitted the following question of law " whether on the facts and in the circumstances of the case and in law, the Honourable Tribunal was right in holding that disallowance under S. 14A cannot be imported in to provisions of S. 115JB in view of cl. (f) to Explanation (1) to the Section ?" (AY. 2003-04 to 2006-07)
CIT v. Reliance Industries Ltd. (2018) 161 DTR 420 / (2019) 410 ITR 468 (Bom.)(HC)

1518 **S. 115JB : Book profit – Not applicable to insurance companies.**
Tribunal held that provisions of S. 115JB, which enables companies to compute book profit, is not applicable to insurance companies. (AY. 2003-04 to 2010-11)
ACIT v. United India Insurance Co. Ltd. (2018) 67 ITR 191 / 195 TTJ 65 (UO) (Chennai) (Trib.)

S. 115JB : Book profit – Insurance Companies – Provision is not applicable. AO made addition while computing book profit u/s 115JB. On appeal, CIT(A) upheld decision. Tribunal held that applicability of provisions of Schedule VI of Companies Act was excluded in respect of insurance companies. Accordingly provisions of S. 115JB, which enables companies to compute book profit, was not applicable to insurance company. (AY. 2003-04 to 2007-08) 1519

Cholamandalam Ms General Insurance Company Ltd v. ACIT (2018) 170 DTR 22 / 195 TTJ 166 (Chennai)(Trib.)

S. 115JB : Book profit – Adjustments towards disallowance of amortization of subsidized cost – Different treatment given in the books of account – Adjustment is held to be not valid. 1520

It was held that merely because a different treatment was given in books of account cannot be a factor which would deprive assessee from claiming entire expenditure as a deduction. Therefore, AO was incorrect in making addition towards amortisation of subsidised cost to book profit computed u/s. 115JB and was to delete addition towards book profit computed u/s. 115JB Followed *Taparia Tools Ltd. v. JCIT (2015) 372 ITR 605 (SC)* (AY. 2011-12)

Scrabble Entertainment Ltd. v. ACIT (2018) 169 DTR 51 / 193 TTJ 418 (Mum.)(Trib.)

S. 115JB : Book profit – Computation under clause (f) of explanation 1 to section 115JB is to be made without resorting to computation as contemplated u/s. 14A of the Act – Only those investments are to be considered for computing average value of investment which yielded exempt income during the year – Matter remanded. [S. 10(35), 14A, R. 8D] 1521

Tribunal held that Computation under clause (f) of explanation 1 to section 115JB is to be made without resorting to computation as contemplated u/S. 14A of the Act-Only those investments are to be considered for computing average value of investment which yielded exempt income during the year and only those investments are to be considered for computing average value of investment which yielded exempt income during the year. Referred *Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640 (SC)* (AY. 2008-09, 2009-10)

Tata Petrodyne Ltd. v. ACIT (2018) 68 ITR 38 / (2019) 197 TTJ 951 / 176 DTR 313 (Mum.) (Trib.)

S. 115JB : Book Profit – Exempt income – No disallowance to be made under S. 14A while computing book profit. [S. 14A] 1522

Following the Special Bench in *ACIT v. Vireet Investment (P.) Ltd. (2017) 58 ITR 313 / 82 Taxmann.com 415 (SB) (Delhi)(Trib.)*. The Tribunal held that no disallowance to be made under S. 14A while computing book profit. (AY. 2005-06 to 2007-08)

L&T Finance Ltd. (2018) 62 ITR 298 / 192 TTJ 9 (UO)(Mum.)(Trib.)

1523 **S. 115JB : Book Profit – Provision for warranty – Followed scientific method and had considered historical data to arrive at correct book profit – Addition of provision for warranty would not be justified.**

The Tribunal held that there should be warranty provisioning policy based on scientific method and if such provisions were made on experience and historical trend and if working was robust, then question of reversal in subsequent years might not arise significantly. Tribunal held that Provision for warranty was not contingent lability as assessee had followed scientific method and had considered historical data to arrive at correct book profit as per provisions of section 115 JB. (AY. 2002-03, 2003-04)

Mahindra & Mahindra Ltd. v. Dy. CIT (2018) 193 TTJ 618 (Mum.)(Trib.)

1524 **S. 115JB : Book profit – Amount debited under P&L a/c towards debenture redemption reserve fund is a known liability and therefore, cannot be added to the book profit.**

Amount debited under P&L a/c towards debenture redemption reserve fund is a known liability and therefore cannot be considered a reserve and it also cannot be considered as unascertained liability. (AY. 1999-00, 2001-02, 2002-03)

Dy. CIT v. Usha Martin Ltd. (2018) 66 ITR 18 (SN)(Ranchi)(Trib.)

1525 **S. 115JB : Book profit – Provision for bad and doubtful debts-Assessee made a provision for bad and doubtful debts – It was maintaining a separate provision account – Certain bad debts were written off in such account – Provision amount lesser than the bad debts written off – Held, assessee eligible for higher deduction – Held, therefore, provision amount cannot be termed as unascertained liability and has to be allowed – Held, Tribunal cannot direct AO to allow greater deduction-Prior period expose cannot be added while computing book profits – Provision for leave encashment ascertained liability and therefore, cannot be added to book profit – Provision for non-moving and obsolete stock not a provision and also not debited to P&L account and therefore, cannot be added to book profit – Provision for fringe benefit tax not similar to provision for income tax and that fringe benefit was a liability of the employer therefore, cannot be added to book profit. [S. 36(1)(vii), 36(1)(viia)]**

The assessee-company was engaged in the business of purchase and distribution of electric power. It had made a provision for bad and doubtful debts. The Assessing Officer had disallowed the said provision made by the assessee as unascertained liability while computing book profit. The Tribunal held that, in the P&L account ₹ 22.89 crore was provided for with the narration 'bad and doubtful debts/ written off'. It was not specified whether it was a provision or a write off. Assessee was maintaining a separate provision account wherein it was shown the bad debts written off was of ₹ 25.43 crore. Such write off was an ascertained liability. It was held that assessee was eligible for deduction of entire ₹ 25.43 crore whereas it had claimed a lower deduction of ₹ 22.89 crore. Held, no addition can be made qua ₹ 22.89 crore and also, no direction can be made to AO to grant higher benefit to the extent of ₹ 25.43 crore.

The Tribunal also held that prior period expose cannot be added while computing book profits as the AO cannot go beyond the accounts maintained in accordance with the Companies Act.

The Tribunal held that provision for leave encashment was an ascertained liability and therefore, cannot be added to the book profit.
The Tribunal held that provision for non-moving and obsolete stock was not a provision and was also not debited to P&L account and therefore, cannot be added to book profit.
The Tribunal also, held that provision for fringe benefit tax was not similar to provision for income tax and that fringe benefit was a liability of the employer therefore, cannot be added to book profit. (AY. 2009-10)
Dy. CIT v. Southern Power Distribution Company of Andhra Pradesh Ltd. (2018) 170 ITD 1 / 166 DTR 1 / 64 ITR 257 / 193 TTJ 657 (TM)(Hyd.)(Trib.)

S. 115JB : Book profit – Generation and distribution of electricity – Accounts to be prepared under state legislation – Provision computing book profit is not applicable. 1526
It was held that the assessee being an electricity generation company has to prepare its accounts under the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2007 and since its accounts were not prepared in terms of Parts II and Part III of Schedule VI to the Companies Act, 1956 which is primary condition for computing book profit, the provision of section 115JB could not be applied in the case of electricity generating company. (AY. 2010-2011)
India Power Corporation Ltd. v. ACIT (2018) 63 ITR 42 (SN)(Kol.)(Trib.)

S. 115JB : Book profit – Depreciation charged at 80% – Restricting the claim of depreciation on windmills to 5.28 per cent as per Schedule XIV of Companies Act, 1956 is held to be justified. [S. 32] 1527
Tribunal held that,though assessee is free to provide depreciation at a rate higher than what is mentioned in Schedule XIV of Companies Act, 1956, however, in opting for this method assessee has to show that depreciation is calculated in accordance with clause (b) of section 205(2) of Act, 1956. Unless an assessee can show that depreciation was provided, by spreading 95 per cent of original cost, on specified period, a claim in excess of what is set out in Schedule XIV of 1956 Act, cannot be allowed. Accordingly charge of depreciation at 80% was held to be not justified and restricting the depreciation at 5.28% as per Schedule XIV of Companies Act, 1956 is held to be justified. (AY. 2012-13)
Indus Finance Corpn. Ltd. v. DCIT (2018) 171 ITD 26 (Chennai)(Trib.)

S. 115JB : Book profit – Retention money cannot be treated as income for purpose of book profit though the amount is credited in the Profit & Loss account. [S. 2(24)] 1528
Retention money is not in the nature of income till the time contractual obligations are performed fully and satisfactory. Therefore though the amount is credited to the Profit and loss account for the purpose of book profit of the company same is not liable to be included. (AY. 2006-2007 to 2008-2009)
Dy. CIT v. Mcnally Bharat Engineering Co. Ltd. (2018) 191 TTJ 822 (Kol.)(Trib.)

1529 **S. 115JB : Book profit – Provision of doubtful debts reduced from amount of debtors, amount of write off as bad debts cannot be added to the net profit for the purpose of arriving book profit.**
Provision of doubtful debts reduced from amount of debtors, amount of write off as bad debts cannot be added to the net profit for the purpose of arriving book profit. (AY. 2006-2007 to 2008-2009)
Dy. CIT v. Mcnally Bharat Engineering Co. Ltd. (2018) 191 TTJ 822 (Kol.)(Trib.)

1530 **S. 115JB : Book profit – Amount withdrawn form general reserve is to be considered while arriving at book profit.**
Amount withdraw from general reserved for meeting of obligation towards employees benefits, liability on account of obligation as an employer is to be considered for book profit, however it is for the assessee to explain how the amount are not debited in the P& Loss account but nevertheless need to be excluded. (AY. 2006-2007 to 2008-2009)
Dy. CIT v. Mcnally Bharat Engineering Co. Ltd. (2018) 191 TTJ 822 (Kol.)(Trib.)

1531 **S. 115JB : Book profit – Provisions for bad and doubtful debts – In view of retrospective amendment made by Finance Act, 2009, provisions for bad and doubtful debts being ascertained liability are not required to be added in matter of computation**
Dismissing the appeal of the assessee the Tribunal held that in view of retrospective amendment made by Finance Act, 2009, provisions for bad and doubtful debts being ascertained liability are not required to be added in matter of computation. (AY. 2003-04)
Moser Baer India Ltd. v. DCIT (2018) 170 ITD 522 (Delhi)(Trib.)

1532 **S. 115JB : Book profit – Depreciation – AO has no power to make adjustment other than the adjustment as provided in Explanation 1**
Dismissing the appeal of the revenue, the Tribunal held that, the Assessing Officer was not permitted to make any variation. (AY. 2008-09)
DCIT v. Cauvery Aqua Pvt. Ltd. (2018) 61 ITR 734 (Bang.)(Trib.)

1533 **S. 115JB : Book profit – Non-Resident – Preparation of accounts under Special Acts – Minimum Alternate tax Provisions was held to be not applicable.**
Allowing the appeal of the assessee the Tribunal held that; Preparation of accounts under Special Acts, minimum. Alternate tax provisions was held to be not Applicable. (AY. 2005-06)
Bank of Tokyo-Mitsubishi, UFJ Ltd. v. DCIT (2018) 61 ITR 272 (Delhi)(Trib.)

1534 **S. 115JB : Book profit – Provision is not applicable to foreign companies.**
AAR held that, the Provisions of S. 115JB shall not be applicable to foreign companies, in terms of the retrospective amendment to S. 115JB by the Finance Act, 2016 and the clarification issued by the Board dated September 24, 2015.
"AB" Mauritius, In re (2018) 402 ITR 311 / 163 DTR 170 (AAR)

S. 115JB : Book profit – Provision is not applicable to foreign companies. 1535
AAR held that the Provisions of S. 115JB shall not be applicable to foreign companies, in terms of the retrospective amendment to S. 115JB by the Finance Act, 2016 and the clarification issued by the Board dated September 24, 2015.
AB Holdings, Mauritius-II, In re. (2018) 402 ITR 37/ 163 DTR 225 / 301 CTR 310 (AAR)

S. 115U : Venture capital companies – Venture capital Funds – Long term capital gains on purchase and sale of units of Venture capital fund which has suffered Securities Transaction tax is exempt from tax. [S. 10(23FB), 10(38)] 1536
Assessee had claimed exemption under S. 10(38) in respect of long term capital gains on purchase and sale of units of a Venture Capital Fund contending that transactions giving rise to LTCG had suffered Securities Transaction Tax. AO held that, no exemption was available for such long-term capital gains and Securities transaction Tax liability was borne by concerned Venture Capital Fund and not by assessee. Allowing the appeal of the assessee the Tribunal held that, Form No. 64 specified in rule 12C which is to be furnished by Venture Capital Fund was filed by assessee which meant that Venture Capital Fund had complied with conditions set out in Explanation 1 to section 10(23FB). Accordingly the assessee is entitled to exemption. (AY. 2008-09)
Gopal Srinivasan v. DCIT (2018) 169 ITD 589 / 165 DTR 345 / 193 TTJ 968 (Chennai) (Trib.)

S. 115WB : Fringe benefits – Salary – Contribution to approved superannuation fund – Disallowance is held to be justified. [S. 15] 1537
Dismissing the appeal of the assessee the Tribunal held that, nomenclature of fund was immaterial and benefit given to an employee by employer on superannuation had to be construed as Superannuation Fund. Contention of assessee that Pension Fund was different from Superannuation Fund, could not be upheld. (AY. 2003-04 to 2010-11)
ACIT v. United India Insurance Co. Ltd. (2018) 67 ITR 191 / 195 TTJ 65 (UO)(Chennai) (Trib.)

S. 119 : Central Board of Direct Taxes – Powers – Condonation of delay in making investment – Power must be exercised in a judicious manner – Order of CBDT is set aside. [S. 54EC, Art. 226] 1538
Allowing the petition the Court held that; delay of six months was deserves to be condoned in view of the fact that the assessee, a doctor by profession was travelling from India to the U.S.A. where she normally resided and came to India not only to meet her family members, but to sell the immovable property belonging to her and sought to avail of the genuine exemption from such tax liability upon making the investment in the prescribed investment in the form of bonds of infrastructure which she did make in the National Highways Authority. Accordingly the CBDT is directed to grant exemption. (AY. 2013-14)
Dr. Sujatha Ramesh (Smt.) v. CBDT (2018) 401 ITR 242 (Karn.)(HC)

1539 **S. 119 : Central Board of Direct Taxes – Refund – Application for condonation of delay in filing return of income and claiming refund of TDS – PCIT rejected the application on merits of claim / extent of exemption and not considering the criteria required to be satisfied by assessee-Impugned order is set-aside to the file of PCIT for fresh disposal. [S. 237, 264]**

HELD, by the High Court that the impugned rejection order does not deal with the various criteria which the assessee were asked to satisfy for consideration of its application i.e. specific evidence/test laid down by CBDT as indicated in PCIT's notice has not been dealt with in respect to each of the heads. Order set aside to the file of PCIT for fresh disposal and considering the parameters indicated in PCIT's notice. (AY. 2014-15)

Yash Society v. CIT (E) (2018) 163 DTR 337 / 301 CTR 729 (Bom.)(HC)

1540 **S. 124 : Jurisdiction of Assessing Officer – Reassessment – Survey – Notice was issued by Joint Commissioner – Objection was not raised within time provided under section 124(3)(b) from date of issuance of said notice, jurisdiction of Joint Commissioner stood confirmed – Since Assessing Officer had completed reassessment with presumption that assessee did not have registration under section 12AA, however, fact remained that assessee was granted registration under section 12AA, issue in assessment orders was to be re-adjudicated afresh after considering registration granted to assessee under section 12AA. [S. 12AA, 120, 148]**

Tribunal held that since challenge to jurisdiction of Joint Commissioner to issue notice under section 148 was not made within time prescribed under section 124(3)(b), issue of challenge of jurisdiction no more survived and jurisdiction of Joint Commissioner stood confirmed. However since Assessing Officer had completed reassessment with presumption that assessee did not have registration under section 12AA, however, fact remained that assessee was granted registration under section 12AA, issue in assessment orders was to be re-adjudicated afresh after considering registration granted to assessee under section 12AA. (AY. 2009-10)

Karandhai Tamil Sangam v. JCIT (2018) 172 ITD 272 (Chennai)(Trib.)

1541 **S. 127 : Power to transfer cases – Coordinated investigation – Transfer of case from Kolhapur to Mumbai – Justifying the transfer of case was not furnished – Notice to transfer the case is quashed.**

Allowing the petition the Court held that show cause notice proposing to transfer of case without explaining the reason is breach of *Audi Aleram Partem* Rule, and hence liable to be quashed.

D. Y. Patil Education Society v. (2018) 169 DTR 325 / 304 CTR 441 (Bom.)(HC)

S. 127 : Power to transfer cases – Transfer of case from Kolhapur to Mumbai – "Centralisation Committee" which took decision for transfer of jurisdiction, is not authority envisaged u/s. 127(2) – Absence of dissenting note" from officer of equal rank who has to agree to proposed transfer would not constitute agreement envisaged u/s 123(2)(a) – Transfer order was quashed. [S. 123(2)(a) 127(2)] 1542

Allowing the petition the Court held that Centralisation Committee is not the authority, envisaged u/s 127(2). The Revenue has not placed anything on record to show that CCIT, Pune has given consent to request of CCIT (Central), Mumbai so as to constitute agreement as a pre-condition for invoking powers u/s. 127. "Absence of dissenting note" from officer of equal rank who has to agree to the proposed transfer would not constitute agreement, envisaged u/s 123(2)(a). Thus, the impugned order was without jurisdiction.

Dilip Tanaji Kashid v. M. L. Karmakar, Principal CIT (2018) 169 DTR 319 / 304 CTR 436 (Bom.)(HC)

S. 127 : Power to transfer cases – Kolhapur to Mumbai – On facts, mere 'Absence of dissenting notice' from officers of equal rank who had to agree to proposed transfer, would not constitute agreement – Order of transfer of case was set aside. [S. 127(2)(a)] 1543

Allowing the petition the Court held that ; It was undisputed that Centralisation Committee was not authority, envisaged under section 127(2) and moreover, revenue had not placed anything on record to show, that Commissioner, Pune, had given a consent to request to Commissioner, Mumbai so as to constitute agreement as a pre-condition for invoking powers under section 127. On facts, mere 'Absence of dissenting notice' from officers of equal rank who had to agree to proposed transfer, would not constitute agreement, as envisaged under section 127(2)(a) .Accordingly order was seta side.

Herambh Anandrao Shelke v. M. L. Karmakar, PCIT (2018) 257 Taxman 487 (Bom.)(HC)

S. 127 : Power to transfer cases – Transfer of pending proceedings on request by assessee, provisions cannot be invoked. [S. 120, 124] 1544

Dismissing the petition the Court held that, it was not a case of a transfer under S. 127 and the assessee had raised an objection that the Income-tax Officer, Ward 1(1), should not have continued with the assessment as he had regularly filed returns with the Income-tax Officer, Ward 58(2). Objection as raised was treated as made under sub-section (3) of S. 124, notwithstanding the fact that there was delay and non-compliance. The Income-tax Officer, Ward 1(1), had accepted the request/prayer of the assessee and had transferred the pending proceeding to the Assessing Officer, Ward 58(2). Therefore, there was no need to invoke and follow the procedure mentioned in sub-section (2) of S. 127 applied when the case was to be transferred from the Assessing Officer having jurisdiction to a third officer not having jurisdiction over an assessee, under the directions of the Board under section 120 and also applied when the Department wanted the transfer of a case, and S. 120 and 124 were not attracted. (AY. 2009-10)

Abhishek Jain v. ITO (2018) 405 ITR 1 / 168 DTR 121 / 303 CTR 753 (Delhi)(HC)

1545 **S. 127 : Power to transfer cases – No evidence of change of business – Opportunity of hearing was not given – Letter proposing to transfer of case is held to be not valid.**
Allowing the petition the Court held that ; the assessee had no opportunity of being heard in the matter, there was no evidence of change of business accordingly the letter proposing to transfer of case is held to be not valid. (AY. 2015-16)
Aircel Ltd. v. DCIT (2018) 404 ITR 455 / 169 DTR 327 / 304 CTR 630 (Mad.)(HC)

1546 **S. 127 : Power to transfer cases – Transfer from one officer to another officer in same City for co-ordinated investigation of cases involving transactions to avoid tax was held to be valid. Opportunity of hearing is not mandatory.**
Dismissing the petition the Court held that; Transfer from one officer to another officer in same City for co-ordinated investigation of cases involving transactions to avoid tax was held to be valid. Opportunity of hearing is not mandatory. Referred, *Kashiram Aggarwalla v. UOI (1965) 56 ITR 14 (SC), Pannalal Binjraj v. UOI (1957) 31 ITR 565 (SC)* (AY. 2009-10)
Nilesh Natwarlal Sheth v. ACIT (2018) 402 ITR 407 (Guj.)(HC)

1547 **S. 127 : Power to transfer cases – The existence of agreement between two jurisdictional Commissioners is a condition precedent for passing the order of transfer. The agreement cannot be implied because S. 127(2) (2) (a) contemplates a positive state of mind of the two jurisdictional CITs. Absence of disagreement cannot tantamount to agreement.**
Allowing the petition the Court held that; The existence of agreement between two jurisdictional Commissioners is a condition precedent for passing the order of transfer. The agreement cannot be implied because S. 127(2) (2) (a) contemplates a positive state of mind of the two jurisdictional CITs. Absence of disagreement cannot tantamount to agreement.
Rentworks India Private Ltd. v. PCIT (2018) 161 DTR 371 / 300 CTR 294 (Bom.)(HC)

1548 **S. 127 : Power to transfer cases – Transfer from Ahmedabad to Moradabad – Transfer for effective and co-ordinated investigation and centralisation of cases – Order of Transfer is held to be valid.**
Dismissing the petition the Court held that; the assessee was a part of a group companies which were subjected to common search action. The assessments of all 42 group companies were being centralised at one place. The order of transfer had been passed to facilitate this, he order is valid.
Genus Electrotech Ltd. v. UOI (2018) 402 ITR 221 (Guj.)(HC)

1549 **S. 127 : Power to transfer cases – Transfer for centralization of cases with in city is valid, it is nether necessary to record the reasons nor opportunity of hearing is to be given**
Dismissing the petition the Court held that, Transfer for centralization of cases with in city is valid, it is nether necessary to record the reasons nor opportunity of hearing is to be given. (AY. 2012-13)
Advantage Strategic Consulting Private Ltd. v. PCIT (2018) 400 ITR 405 / 253 Taxman 11/ 161 DTR 108 / 300 CTR 151 (Mad.)(HC)

S. 127 : Power to transfer cases – Assessment proceedings were initiated by Assistant Commissioner, Circle-2(1), Bhubaneswar but taken over in middle of proceedings by Assistant Commissioner, (OSD), Range, 2 Bhubaneswar and completed by him – There was no order for transfer of jurisdiction – Order is held to be bad in law. [S. 120, 124, 143 (2)] 1550

Allowing the appeal of the assessee the Tribunal held that, the Assistant Commissioner (OSD), Range-2, Bhubneswar could not have jurisdiction to pass assessment order in case of the assessee as the Assistant Circle-2(1), Bhubaneswar had already exercised the jurisdiction by issuing notice under section 143(2) when admittedly no order under section 127 was passed by the competent authority under that section. Accordingly, the order passed by the Additional Commissioner re-assigning the cases to the Assistant Commissioner (OSD), who is the Assessing Officer in the present case, is not maintainable and, consequently, the orders passed by the Assessing Officer and confirmed by the Commissioner (Appeals) in the case of present assessee are hereby quashed. (AY. 2006-07)

Dillip Kumar Chatterjee v. ACIT (2018) 173 ITD 41 / 172 DTR 331 / 196 TTJ 1104 (Cuttack)(Trib.)

S. 127 : Power to transfer cases – An order passed after the search and seizure operation cannot confer jurisdiction to the AO, if particulars of the assessee including its name, status, address, PAN and AO before whom it was originally being assessed were not correctly mentioned and also no opportunity of being heard was given – Such defects cannot be said to be technical in nature and are not curable u/s. 292B of the Act. [S. 292B] 1551

On appeal to Tribunal, department argued that the CIT(A) erred in annulling the assessment order as without jurisdiction of the AO, ignoring the provisions of S. 292B and without appreciating that the assessee, during the assessment proceedings, never raised any objection regarding such jurisdiction. The Tribunal observed that CIT(A) has rightly relied on decision of Norton Motors (supra)? wherein it has been held that S. 292B of the Act can be relied only for registering a challenge to the jurisdictional defect or omission in notice. The P&H HC (supra) further observed that if the particulars of the assessee including its name, status, address, PAN and the AO before whom it was originally being assessed, were not correctly mentioned in order u/s. 127, especially in the light of the fact that the reason for transferring the entity was not mentioned in the said order and no evidence or any record had been produced showing that any opportunity was given to the assessee or that the said order was served on the entity mentioned in the order, such mistakes cannot be said to be technical in nature and are jurisdictional defects not curable u/s. 292B of the Act. Thus, Tribunal affirmed the order of CIT(A) in annulling the assessment order as without jurisdiction and dismissed the appeal of the Department. (AY. 2003-04 to 2005-06, 2008-09)

ACIT v. Welcome Coir Industries Ltd. (2018) 165 DTR 93 / 193 TTJ 256 (Agra)(Trib.)

1552 **S. 131 : Power – Discovery – Production of evidence – Reports submitted by the Income tax Officer who is not authorised to exercise the power cannot be the basis for reopening of assessment. [S. 131(IA), 147, 148]**
Court held that where Income-tax Officer had not been authorized to exercise his powers under S. 131(1A), reports submitted by him could not have formed valid basis for re-opening assessment. (AY. 2009-10)
Sky View Consultants (P) Ltd. v. ITO (2017) 397 ITR 673/ 86 taxmann.com 87 / 169 DTR 157 / 304 CTR 827 (Delhi)(HC)
Editorial : SLP of revenue is dismissed, ITO v. Sky view consultants. (2018) 257 Taxman 250 (SC)

1553 **S. 131 : Power – Discovery – Production of evidence – As the assessee was carrying on business in same premises proceedings initiated u/s. 131 of the Act was held to be valid. [The Diplomatic Relations (Vienna Convention) Act, 1972]**
Dismissing the appeal of the assessee the Court held that; the Assessee was appointed as Honorary Consulate of Federal Democratic Republic of Ethiopia, in view of fact that he was carrying on his business activities also in same premises, which had nothing to do with consular activities, he could not claim immunity under provisions of 'The Diplomatic Relations (Vienna Convention) Act, 1972', in respect of proceedings initiated against him under section 131 of the Act.
Sai Ramakrishna v. UOI (2018) 402 ITR 7 / 252 Taxman 194 / 163 DTR 420 (Karn.)(HC)

1554 **S. 132 : Search and seizure – Illegal search – Karta of HUF had initiated litigation against alleged illegal search action of department on HUF at relevant time, a member of HUF individually could not restart same litigation long many years after cause of action had arisen. [S. 158BC, Art.226]**
Dismissing the petition the Court held that ; since Karta of HUF had taken appropriate steps at relevant time to protect interest of HUF, in absence of any allegations of misfeasance at hands of Karta, petitioner, a member of HUF, individually could not restart same litigation, long many years after cause of action had arisen.
Alay Rakesh Shah. v. DIT (2018) 259 Taxman 189 (Guj.)(HC)

1555 **S. 132 : Search and seizure – Survey converted in to Search – Seizure of unaccounted cash – Assessment pending – Writ to refund the amount of cash seized with interest was dismissed – On same set of facts second writ petition is not maintainable on the principle of Res Judicata. [132A, 1331, 153A, art. 226]**
Dismissing the petition the Court held that; survey converted in to Search and seizure of unaccounted cash. Assessment pending. Writ to refund the amount of cash seized with interest was dismissed. On same set of facts second writ petition is not maintainable on the principle of Res Judicata.
Rich Udyog Network Ltd v. DIT (2018) 408 ITR 68 / (2019) 173 DTR 269 / 306 CTR 519 (All.)(HC)

S. 132 : Search and seizure – Validity of the Search – Pending before Supreme Court – All Authorities of department as also Courts should await decision of Supreme Court on the issue of validity of Search and could not direct Appellate Authorities of department to go into question of validity of search. [S. 153A] 1556

Dismissing the petition the Court held that; All Authorities of department as also Courts should await decision of Supreme Court on impugned issue and could not direct Appellate Authorities of department to go into question of validity of search when the appeal was pending before Supreme Court against decision of High Court in another case, allowing Appellate Authority of Income-tax Department to go into question of validity of search. Thereafter an Explanation was inserted in section 132 by Finance Act, 2017 with retrospective effect from 1-4-1962 prohibiting such Appellate Authorities to go into reasons recorded by concerned Income Tax Authority for directing search. If the assessee-petitioner files an appeal before the Income Tax Tribunal within a period of 30 days from today, the same may be entertained. (AY. 2005-06 to 2011-12)

Prathibha Jewellery House v. CIT (A) (2018) 404 ITR 91 / 252 Taxman 174 / 301 CTR 347 / 162 DTR 174 (Karn.)(HC)

S. 132 : Search and seizure – Once warrant of authorization is issued against any person, then seized amount is required to be retained by Income-tax Authority – Department is entitle to retain cash till final conclusion of proceedings under the Act. 1557

The High Court held that as regards the maintainability of the application under Article 227 of the Constitution of India, the Court in its exercise of his supervisory jurisdiction can look into the legality and validity of an order passed by the Magistrate. Further, it was held that the Revenue Authorities are entitled to retain the cash till the final conclusion of the proceedings under the Income-tax Act.

Vipul Chavda v. State of Gujarat (2018) 253 Taxman 263 (Guj.)(HC)

S. 132(4) : Search & seizure – Retraction of statement after eight months – Addition on the basis of statement is held to be justified – Appeal of revenue is allowed. [S. 131, 132] 1558

Search and seizure proceeding was carried out at residential premises of assessee and his family members incriminating documents/lose papers/books of accounts which were inventorized and some were also seized. Thereafter, assessee's statement was recorded where a surrender amount was extracted which was again reconfirmed from assessee before ADIT in statement u/s 131. Later those statements were retracted by assessee. AO completed assessment after making additions in respect of purchase of properties and constructions based on seized material and admissions made by assessee CIT(A) deleted the addition which was affirmed by the Appellate Tribunal. On appeal of the revenue allowing the appeal the Court held that statements recorded u/s 132(4) had great evidentiary value and they could not be discarded summarily and cryptic manner, by simply observing that assessee retracted from his statement. One had to come to a definite finding as to manner in which retraction took place, such retraction should be made as soon as possible and immediately after such statement was recorded by filing a complaint to higher officials or otherwise brought to notice of higher officials by way of

duly sworn affidavit or statement supported by convincing evidence, stating that earlier statement was recorded under pressure, coercion or compulsion. Duration of time when such retraction was made assumed significance and in present case retraction was made by assessee after almost eight months to be precise, 237 days Accordingly the appeal of the revenue is allowed. (AY. 2013-14)
PCIT v. Roshan Lal Sancheti (2018) 172 DTR 313 / (2019) 306 CTR 140 (Raj.)(HC)

1559 **S. 132(4) : Search and seizure – Statement on oath – Block assessment – Declaration after search has no evidentiary value – Additions cannot be made on basis of such declaration. [S. 158BC]**
Dismissing the appeal of the revenue the Court held that; the Tribunal was justified in law in deciding that the letter dated January 15, 1998 of the assessee addressed to the Assistant Director about the disclosure of ₹ 80 lakhs as income had no evidentiary value as stated under section 132(4). Court also observed that a bare reading of section 132(4) of the Income-tax Act, 1961, indicates that an authorized officer is entitled to examine a person on oath during the course of search and any statement made during such examination by such person (the person being examined on oath) would have evidentiary value under section 132(4). [BP. 1988-89 to 1998-99]
CIT v. Shankarlal Bhagwatiprasad Jalan (2018) 407 ITR 152 (Bom.)(HC)
Editorial : SLP of revenue is dismissed, CIT v. Shankarlal Bhagwatiprasad Jalan. (2018) 405 ITR 14 (St)

1560 **S. 132(4) : Search and seizure – Statement on oath – Income from undisclosed sources – Unexplained investments – Excess stock-Addition on Gross profit earned and sales of unaccounted stock – Matter setaside to the AO to examine the reconciliation statement filed before the lower authorities. Further held that Assessee's profit in earlier year was less than year under consideration meaning thereby his Gross Profit was higher than earlier years therefore, in such circumstances assessee's contentions could not be denied. [S. 69, 132, 145]**
Tribunal held that stock statements of assessee were regularly submitted to assessee's banker on monthly basis. The Stock statements submitted during period 1.4.2009 to 31.8.2009 were also submitted to CIT(A) for his perusal but both authorities did not consider reconciliation submitted by assessee and authorities relied statement of assessee u/s 142 of the Act though assessee reflected for his statement after one month and thereafter also filed affidavit to that effect but lower authorities failed to consider his contention. Tribunal set aside this issue to the file of the AO to examine the reconciliation statement filed before the lower authorities. Further held that Assessee's profit in earlier year was less than year under consideration meaning thereby his Gross Profit was higher than earlier years therefore, in such circumstances assessee's contentions could not be denied.(AY 2010-2011)
Baroda Moulds and Dies v. ACIT (2018) 62 ITR 168 (Ahd.)(Trib.)

S. 132(4) : Search and Seizure – Statement on oath – Statement was made on oath by the Managing Partner of a firm that the income returned was less than the actual, and which was not retracted in a reasonable period of time, the addition made by the AO of the undisclosed income was sustainable. [S. 132] 1561

On further appeal, the Tribunal held that if the assessee's contention was true that undisclosed income was only of ₹ 1.95 crores, then the assessee ought to have retracted the statement made u/s. 132(4) of the Act, within a reasonable time and by providing the relevant necessary evidence. Having not done so, the assessee was bound by the statement of the Managing Partner and the addition of ₹ 0.55 crores as undisclosed income was correct by the lower authorities. (AY. 2011-12)

Alhind Builders v. DCIT (2018) 63 ITR 6 (SN)(Cochin)(Trib.)

S. 132A : Powers – Requisition of books of account – Reasons to believe to issue requisition notice not required to be disclosed to any person or Authority or Appellate Tribunal. [S. 254(1)] 1562

Certain cash found in the possession of the Petitioner was seized by the police authorities. Subsequently, requisition notice was sent under section 132A. The Petitioner challenged such notice on the ground that 'reasons to believe' in issuing such notice were not disclosed to the Petitioner. Dismissing the writ, the High Court held that in view of the Explanation introduced to section 132A vide Finance Act, 2017 w.r.e.f. 1975, such reasons to believe are not required to be disclosed to any person, any authority or the Appellate Tribunal. (AY. 2019-20)

Shiv Tiwari v. PCDIT (Inv.) (2018) 171 DTR 209 / 305 CTR 307 (Raj.)(HC)

S. 133 : Power to call for information – Legal representatives cannot refuse to furnish details of bank accounts of deceased. [S. 133(6)] 1563

Dismissing the petition the Court held that; even if the notice was for furnishing the information of the deceased, the legal representatives or the persons who inherited the estate of the deceased person would have to comply with the notice for furnishing the requisite information. The very purpose of the provisions of S. 133(6) was to elicit the requisite information and details from the person concerned. There was nothing on record to show that the Income-tax Officer had the knowledge of the death of the assessee when the notice was issued. The legal representatives, including the wife of the deceased assessee could not protest or deny the obligation to furnish such information, including the bank details and relevant vouchers to be obtained from the concerned bank of the deceased assessee. The wife of a person could not plead ignorance about huge cash credits in her husband's bank account. Cutting short such inquiry by invoking the extraordinary jurisdiction of the court under articles 226 and 227 of the Constitution would defeat the very purpose of the statutory provision.

S. Savithri (Mrs.) v. ITO (2018) 400 ITR 513 / 253 Taxman 186 / 164 DTR 102 / 301 CTR 734 (Karn.)(HC)

1564 **S. 139 : Return of income – Processing of return – Refund – Return filed by assessee had been forwarded to CPC by Assessing Officer-In such circumstances, CPC should take a decision as regards computation in 4 weeks – Not the Assessing Officer. [S. 237]**
An application was filed by assessee-company for processing return for relevant assessment year and to issue refunds with department. Department intimated to assessee that return of assessment year 2016-17 had been sent to CPC (Centralised processing centre) for computation against which assessee filed writ contending that this would delay proceedings unnecessarily. Court observed that it could not be understood as to why Assessing Officer, in-charge of making and framing assessment, forwarded return to this center for computation. Further, from Center's communication, it was apparent that this Center had done nothing in relation to this computation. In such circumstances, Center should take a decision as regards computation and communicate it to concerned Assessing Officer within a period of four weeks. (AY. 2016-17)
Vodafone Idea Ltd. v. DCIT (2018) 259 Taxman 168 / (2019) 306 CTR 67 / 173 DTR 63 (Bom.)(HC)

1565 **S. 139 : Return of income – Revised return – Rejection of revised return on the ground that it was not accompanied with tax audit report without giving an opportunity to rectify the mistake is held to be bad in law – Order was set aside and matter was to be remanded back for disposal afresh. [S. 44AB, 139(5), 139(9)]**
Allowing the appeal of the assessee the Court held that; rejection of revised return on the ground that it was not accompanied with tax audit report without giving an opportunity to rectify the mistake is held to be bad in law-Order was set aside and matter was to be remanded back for disposal afresh.(AY. 1998-99)
Zeenath International Supplies, Chennai v. CIT (2018) 258 Taxman 367 / 172 DTR 429 / (2019) 306 CTR 590 (Mad.)(HC)

1566 **S. 139 : Return of income – Failure to file tax audit report – Direction of the Assessing Officer to rectify the mistake – Revised return filed beyond period prescribed by Assessing Officer – No condonation of application was filed either before Assessing Officer, CIT(A) or Tribunal-Treating the return as in valid is held to be justified. [S. 44AB, 139(9)]**
Dismissing the appeal of the revenue the Court held that ; the assessee has not filed tax audit report along with the return of income. Assessing Officer's direction to comply the mistake has not been rectified. Revised return was filed beyond period prescribed by Assessing Officer. No condonation of application was filed either before Assessing Officer, CIT(A) or Tribunal. Accordingly treating the return as in valid by the Tribunal is held to be justified. (AY. 1997-98)
Hytaisun Magnetics Ltd. v. JCIT (2018) 258 Taxman 264 (Guj.)(HC)

S. 139 : Return of income – Extension of due date – Levy of interest – CBDT is directed to consider the representation of the association and take decision on extension of date by another 15 days – Extension of due date for the purpose of Explanation 1 to S. 234A for waiver of interest and decide the same by passing speaking order preferable before 10th October, 2018. [S. 119, 139(1), 234A] 1567

Allowing the petition the Court, directed the CBDT to consider the representation of the association and take decision on extension of date by another 15 days and also extension of due date for the purpose of Explanation 1 to S. 234A for waiver of interest and decide the same by passing speaking order preferable before 10 th October, 2018. Referred *All Gujrat Federation of Tax Consultants v. CBDT (2015) 280 CTR 248 (Guj.)(HC), All Gujrat Federation of Tax Consultants v. CBDT (2014) 271 CTR 113 (Guj.)(HC)* (AY. 2018-19)

Rajasthan Tax Consultants Association v. UOI (2018) 170 DTR 273 / 304 CTR 985 / 259 Taxman 94 (Raj.)(HC)

S. 139 : Return of income – Condonation of delay of 1232 days – When explanation offered was acceptable and genuine hardship established – Condonation application for delay is to be accepted. [S. 119] 1568

Allowing the Writ filed, High Court held that it is a trite law that rendering substantial justice shall be paramount consideration of the Courts as well as the Authorities rather than rejecting on hyper-technicalities. Even though there is lapse on the part of the assessee, that itself would not be a factor to turn out the plea for filing of the return when the explanation offered was acceptable and genuine hardship was established. Sufficient cause (severe financial crisis in USA and injuries sustained in accident) shown by the petitioner for condoning the delay is acceptable and the same cannot be rejected out-rightly on technicalities (WP. Nos. 15891-15893 of 2016 dt. 27-03-2018) (AY. 2010-11 to 2012-13)

Dr. Sudha Krishnaswamy (Smt) v. CCIT (2018) 255 Taxman 46 / (2019) 414 ITR 144 (Karn.)(HC)

S. 139 : Return of income – Refund – AO wrongly treated the return filed as in valid – Fresh return filed along with condonation of delay which was rejected – AO is directed to pay the refund to the assessee after scrutinizing return. [S. 119(2)(b), 139(9)] 1569

Allowing the petition the Court held that, AO wrongly treated the return filed as in valid. Fresh return filed along with condonation of delay which was rejected without providing an opportunity of hearing. AO is directed to pay the refund to the assessee after scrutinizing return. (AY. 2011-12)

Shubharam Complex v. ITO (2018) 255 Taxman 364 (Karn.)(HC)

S. 139 : Return of income – Delay of 37 days – Change of auditor – CBDT was directed to condone the delay of 37 days in filling of return. [S. 119(2)(b)] 1570

Allowing the petition the Court held that when the assessee had satisfactorily explained reasons for delay in filing return of income, approach of 1st respondent should be justice oriented so as to advance cause of justice. Accordingly the delay of 37 days

in filing return of income should not defeat claim of assessee. Once authority had been conferred with discretion to condone delay, application seeking condonation of delay of 37 days could not be rejected for such reasons as assigned by 1st respondent Accordingly the petition was allowed. (AY. 2014-15)
Regen Powertech Private Ltd. v. CBDT (2018) 165 DTR 187 / 255 Taxman 100 / 303 CTR 727 / (2019) 410 ITR 483 (Mad.)(HC)

1571 **S. 139 : Return of income – Delay of five months due to illness of Auditor – However details of illness and any proof of doctor's prescription was not given – Delay was not condoned – Discipline on time limits regarding filing of returns had to be complied and respected, unless compelling and good reasons were shown and established for grant of extension of time. [S. 80IB,119]**
Dismissing the petition wherein the CBDT declined the delay of five months in filing of return as the assessee failed to provide proof of illness of the Auditor. Court also observed that, discipline on time limits regarding filing of returns had to be complied and respected, unless compelling and good reasons were shown and established for grant of extension of time. Extension of time could not be claimed as vested right on mere asking and on basis of vague assertions without proof. On facts no proof regarding nature of illness or medical emergency suffered by auditor and how long auditor was incapacitated and could not work was not proved. Accordingly the assessee was rightly denied benefit u/s 80IB as there was no reasonable ground for extension of time in filing of return. (AY. 2006-07)
B. U. Bhandari Nandgude Patil Associates v. CBDT (2018) 164 DTR 201 / 255 Taxman 60 / 302 CTR 472 (Delhi)(HC)

1572 **S. 139 : Return of income – Delay due to crashing of computer system – Application which was filed for condonation of delay was rejected, after six years of filing of petition was held to be not justified – CIT was directed to condone the delay and hear the matter expeditiously with the observation that delay in disposing the application after six years of filing of the petition has to be viewed seriously while rendering substantial justice to parties. [S. 119(2)(b)]**
Application of the assessee for condonation of delay in filing the return was dismissed after six years of filing of the application. On writ the Court directed the CCIT to condone the delay and hear the matter expeditiously. Court also observed that delay in disposing the application after six years of filing of the petition has to be viewed seriously while rendering substantial justice to parties. (AY. 2006-07)
PDS Logistics International (P) Ltd. v. CCIT (2018) 164 DTR 222 / 256 Taxman 167 / 304 CTR 996 (Karn.)(HC)

1573 **S. 139 : Return of income – Delay in filing of return – Reasonable cause – Court directed the CBDT to reconsider the application for condonation of delay as the circumstances were beyond the control of the assessee. [S. 80AC, 80IB, 119]**
Allowing the petition the Court held that, delay in filing the return was as the assessee was searching for his brother who was swept away while crossing flood river. As

the circumstances were beyond the control of the assessee the CBDT was directed to reconsider the application for condonation of delay. (AY. 2007-08)
Babulal Mohanraj Jain v. CBDT (2018) 253 Taxman 170 / 164 DTR 209 / 302 CTR 463 (Bom.)(HC)

S. 139 : Return of income – When the assessee took advantage of provisions of S. 139(5), he could not say that it was non-est [S. 10B, 139(5)] 1574
Dismissing the appeal the Court held that; When assessee took advantage of provisions of S. 139(5) he could not say that it was non-est. When Commissioner (Appeals) rejected assessee's claim under section 10BA, assessee filed revised return under S. 139(5) pending his appeal before Tribunal which was decided in favour of assessee. Immediately assessee sought to withdraw revised return to avail benefit of S. 10BA which was held to be not justified. (AY. 2005-06 to 2007-08)
Amit Basu v. Dy. CIT (2018) 252 Taxman 314 / 167 DTR 110 / (2019) 307 CTR 303 (Raj.) (HC)

S. 139 : Return of income – Set off of carry forward loss – Audit report – Matter was remanded for fresh disposal. 1575
Allowing the petition the Court held that; since Assessing Officer failed to verify the contention of the assessee that the audit report was filed before due date of filing of return, impugned order was to be set aside and, matter was to be remanded back for disposal afresh. (AY. 1993-94, 1994-95)
Scorpion Industrial Polymers (P.) Ltd. v. CIT (2018) 252 Taxman 413 / 163 DTR 333 / 301 CTR 481 (Mad.)(HC)

S. 139 : Return of income – Revised return – Remanded for verification. [S. 139(4)] 1576
The Tribunal held that it appears from the order of learned first appellate authority that the factual matrix has not been verified by the lower authorities. Therefore, the matter is remitted back to the file of learned AO for verification of factual matrix with a direction to the assessee to provide necessary details thereof to substantiate his claim. (AY. 2006-07)
Dy. CIT v. L & T Finance Ltd. (2018) 192 TTJ 9 (UO)(Mum.)(Trib.)

S. 139AA : Return of income – Quoting of Aadhar number – Date for linking of Aadhaar with all schemes of ministries/Departments of Union Government linking of bank accounts for existing bank accounts and for completion of Aadhaar based E-KYC process in respect of mobile phone subscribers is to be extended until 31-3-2018. 1577
Court held that; date for linking of Aadhaar with all schemes of ministries/Departments of Union Government linking of bank accounts for existing bank accounts and for completion of Aadhaar based E-KYC process in respect of mobile phone subscribers is to be extended until 31-3-2018. For new bank accounts, subject to submission of details in regard to filing of an application for an Aadhaar card and furnishing of application number to account opening bank, last date for completing process of Aadhaar linking is also to be extended until 31-3-2018. Consistent with above directions, extension of last date for Aadhaar linkage to 31-3-2018 shall apply, besides schemes of Ministries/

Departments of Union Government, to all State Governments in similar terms and said arrangement shall continue to operate pending disposal of proceedings before Constitution Bench.
K. S. Puttaswamy v. UOI (2018) 252 Taxman 357 (SC)

1578 **S. 139AA : Return of income – Quoting of Aadhaar Number – Deadline for PAN-Aadhaar linkage having been extended to 31-3-2019, assessees were be permitted to file their returns for relevant year without any insistence of linkage of their Aadhaar with their PAN numbers. [S. 119]**
Court held that the assessees shall be permitted to file their returns for relevant year without any insistence of linkage of their Aadhaar with their PAN numbers and without insistence of production of their proof of Aadhaar enrolment. Court also issued further directions to CBDT to amend digital form to enable assessees to 'opt out' of mandatory requirement of PAN-Aadhaar linkage till deadline of 31-3-2019. (AY.2 017-18)
Shreya Sen v. UOI (2018) 407 ITR 37 / 257 Taxman 95 / (2019) 306 CTR 610 / 174 DTR 266 (Delhi)(HC)
Editorial : UOI v. Shreya Sen (2019) 306 CTR 609 /262 Taxman 370 /174 DTR 265 (SC) partly reversed.

1579 **S. 139AA : Return of income – Quoting of Aadhaar Number – CBDT issued a Press Release dated 27-3-2018 which extended time to link PAN with Aadhar number, while filing Income-tax return from 31-3-2018 to 30-6-2018 – Two High Courts on basis of said press release had directed for accepting ITRs without Aadhar No. and no attempt was made to vary said orders by department – Thus, department should accept returns if uploaded on or before 30-6-2018 without Aadhar Number, Aadhar Enrollment or any linkage with PAN details and in case system does not accept returns of income they are at liberty to file their return of income in physical form with jurisdictional Assessing Officer on or before 2-7-2018 [R. 12(3)]**
Allowing the petition the Court held that; CBDT issued a Press Release dated 27-3-2018 which extended time to link PAN with Aadhar number, while filing Income-tax return from 31-3-2018 to 30-6-2018. Two High Courts on basis of said press release had directed for accepting ITRs without Aadhar No. and no attempt was made to vary said orders by department. Accordingly the department should accept returns if uploaded on or before 30-6-2018 without Aadhar Number, Aadhar Enrollment or any linkage with PAN details and in case system does not accept returns of income they are at liberty to file their return of income in physical form with jurisdictional Assessing Officer on or before 2-7-2018.(AY.2018-19)
Hussain Indorewala v. UOI (2018) 408 ITR 338 / 303 CTR 641 / 168 DTR 113 / 257 Taxman 465 (Bom.)(HC)

S. 139AA : Return of income – Quoting of Aadhaar Number – Permanent Account number – Provision making it compulsory for all assessees to obtain Aadhaar Card and quote Aadhaar number to prescribed authority – Extension of time by Circular issued by CBDT – Directions issued stating that return filed by the assessee should be processed accordingly. [Art. 226] 1580

Allowing the petition the Court held that, when the Supreme Court decided the case of *Binoy viswam v. UOI (2017) 396 ITR 66 (SC)* the court was conscious that the issue as to whether the fundamental right to privacy existed or otherwise was moot. The larger Bench of the Supreme Court was seized of the reference. Consciously, therefore, the decision had not only upheld the validity of section 139AA but also added a note of caution that the consequences spelt out under section 139AA(2) would not be presently visited with respect to those assessees who were not Aadhaar card holders and did not comply with the mandate. If the Board's Circular dated March 27, 2018 ([2018] 403 ITR (St.) 312) was noticed in the background of those circumstances, the time for linking permanent account number with Aadhaar had been extended to June 2018 in express terms and therefore, there was no reason to vary the previous order. The returns filed by the assessees should be processed accordingly. (WP No. 3212 of 2018 dt. 14-05-2018 (AY. 2018-19) (Also refer *Mukul Talwar. v. UOI (2018) 303 CTR 637* / *168 DTR 109* (Delhi) (HC)/ *Vrinda Grover v. UOI (2018) 303 CTR 637* / *168 DTR 109 (Delhi)(HC))*
Mukul Talwar v. UOI (2018) 406 ITR 472 / *303 CTR 639* / *168 DTR 111 (Delhi)(HC)*
Vrinda Grover v. UOI (2018) 406 ITR 472 / *303 CTR 639* / *168 DTR 111 (Delhi)(HC)*
Pradeep Kumar v. UOI (2018) 303 CTR 636 / *168 DTR 108 (P&H)(HC)*

S. 139AA : Return of income – Quoting of Aadhaar Number – Compulsory for assessees to give their Aadhaar Number while filing their income tax return. 1581

Dismissing the petition the Court held that makes it is compulsory for assessees to give Aadhaar number, they have to necessarily enroll themselves under Aadhaar Act and obtain Aadhaar number which is requirement under Income tax Act. (AY. 2017-18)
Preeti Mohan v. UOI (2018) 253 Taxman 396 (Mad.)(HC)

S. 139D : Return in electronic form – Form V furnished through post within stipulated extended period – Originally filed return was held to be valid. [S. 139C, 295B] 1582

Dismissing the appeal of the revenue the Court held that; the assessee had filed its return electronically on September 30, 2009 and had availed of the filing of Form V through post and that the Department was not in a position to verify either way. It was evident from a conjoint reading of the Board's Circular No. 3 of 2009 and the circular dated September 1, 2010, that the Board was aware of the difficulties faced in implementation of S. 139C, having regard to the phraseology of section 295B. If the assessee chose to file without a digital signature, under rule 12(3), there was a conflict of statute. The rule required the assessee not to attach annexures or documents and thus the assessee could not attach Form V or send any scanned form. To mitigate these hardships and difficulties that arose on account of the limited period and the procedure provided, the Board had extended the period for filing Form V up to December 31, 2010 or 120 days from the filing of the return, whichever was later. The extension of such

period meant that Form V received during such extended period validated the return originally filed. (AY. 2009-10)
PCIT v. National Informatics Centre Services Inc. (2018) 400 ITR 387 / 162 DTR 97 / 300 CTR 495 (Delhi)(HC)

1583 **S. 140A : Self assessment – Failure to pay self assessment tax, penalty cannot be levied. [S. 221]**
Allowing the appeal of the assessee,the Tribunal held that; assessee's failure to pay self-assessment tax within stipulated period, in view of fact that amended section 140A(3) with effect from 1-4-1989 levy of penalty was held to be not justified. Legislature has prescribed mandatory charging of interest u/s. 234B of the Act , for default in payment of self-assessment tax. (AY. 2009-10)
Heddle Knowledge (P.) Ltd. v. ITO (2018) 169 ITD 304 / 169 DTR 396 / 195 TTJ 536 (Mum.)(Trib.)

1584 **S. 142(2A) : Inquiry before assessment – Special audit – Limitation – Manipulation in dates by Department proved – Notices of SLP against order of High Court dismissing Writ petition against special audit under S. 142(2A) issued and directions of High Court order stayed.**
The Supreme Court, stayed the directions of High Court order and issued notices to parties for hearing, as the Assessee proved that the proposal for approval of audit under Section 142(2A) of the Act was moved on March 31, 2013, hence the order under Section 142(2A) could not be served on such date as claimed by Department in response to Writ filed by assessee seeking abatement of assessment as it becomes barred by limitation. (AY. 2009-2010)
Nokia India (P) Ltd. v. Add. CIT (2018) 255 Taxman 448 / 169 DTR 1 / 304 CTR 218 (SC)
Editorial : Nokia India (p) Ltd. v. Add. CIT (2018) 92 taxmann.76 (Delhi)(HC) is stayed.

1585 **S. 142(2A) : Inquiry before assessment – Special audit – Audit report was provided to the assessee – AO shall allow the assessee to raise the objections to the said report and decide according to law – All issues are kept open. [S. 143 (3)]**
Disposing the petition the Court held that, the assessee was provided the copy of the report and the AO shall consider the objections of the assesee and will decide accordance with law. Accordingly the petition is disposed off. (AY. 2010-11)
Multi Commodity Exchange of India Ltd v. Dy. CIT (2018) 171 DTR 289 / (2019) 306 CTR 245 (Bom.)(HC)

1586 **S. 142(2A) : Inquiry before assessment – Special audit – Principal Commissioner, before deciding issue of approval for Special Audit gave opportunity to assessee – Writ is dismissed. [Art. 226]**
Dismissing the petition the Court held that ; Principal Commissioner had granted reasonable opportunity of being heard twice, before deciding issue of approval. Accordingly petition is dismissed. (AY. 2010-11 to 2016-17)
Ramswaroop Shivhare v. Dy. CIT (2018) 258 Taxman 290 / 305 CTR 425 / 170 DTR 427 (MP)(HC)

S. 142(2A) : Inquiry before assessment – Special audit – Accounts were complex and there was multiplicity of transactions – Notice was approved by PCIT after application of mind and also opportunity to be heard was given to assessee – Order for special audit is held to be valid. 1587

Dismissing the petition the Court held that ; Accounts were complex and there was multiplicity of transactions. Notice was approved by PCIT after application of mind and also opportunity to be heard was given to assessee. Accordingly the order for special audit is held to be valid. (AY. 2009-10 to 2015-16)

Pratius Merchants P. Ltd. v. DCIT (2018) 404 ITR 474 / 170 DTR 122 / 304 CTR 758 (Guj.) (HC)

S. 142(2A) : Inquiry before assessment – Special audit – Court cannot go into sufficiency of reasons assigned by assessing authority for directing Special Audit 1588

Dismissing the petition the Court held that ; Court cannot go into sufficiency of reasons assigned by assessing authority for directing Special Audit. If there were no reasons assigned and objections of assessee were not considered court can entertain the petition. (AY. 2015-16)

Habitat Shelters (P.) Ltd. v. PCIT (2018) 254 Taxman 160 / 170 DTR 118 / 305 CTR 279 (Karn.)(HC)

S. 142(2A) : Inquiry before assessment – Special audit – Time limit for assessment – Opportunity of oral and written submission against the order for special audit was considered, hence writ is not maintainable – Issuance and despatch of order u/s 142(2A) with in period of limitation and service on assessee beyond limitation period, order does not abate. [S. 143(3), 153, Expl. 1(iii)] 1589

Dismissing the petition the Court held that; Opportunity of oral and written submission against the order for special audit was considered, hence writ is not maintainable. Court also held that, issuance and despatch of order u/s. 142(2A) with in period of limitation and service on assessee beyond limitation period, order does not abate. (AY. 2009-10)

Nokia India Pvt. Ltd. v. Addl. CIT (2018) 402 ITR 517 / 301 CTR 665 / 164 DTR 121 / 255 Taxman 266 (Delhi)(HC)

Editorial : SLP filed by the assessee, Nokia India Pvt. Ltd. v. Addl. CIT (2018) 169 DTR 1 / 255 Taxman 448 (SC) Direction of special audit stayed.

S. 142(2A) : Inquiry before assessment – Special audit – Order passed without application of mind and objections of the assessee was held to be bad in law. 1590

Allowing the petition the Court held that; the orders neither disclosed the discussion on the objections of the assessee to the special audit and at least in one case for the assessment year 2013-14, the assessing authority did not even wait for the objections to be placed on record and before they were furnished on March 29, 2016, he had already passed the order on March 28, 2016 while the limitation for passing the assessment order was expiring on March 31, 2016. The orders under section 142(2A) could not be sustained. (AY. 2013-14, 2014-15)

Karnataka Industrial Area Development Board v. CIT (2018) 401 ITR 74 / 162 DTR 73 / 300 CTR 449 / 253 Taxman 178 (Karn.)(HC)

1591 **S. 142(2A) : Inquiry before assessment – Special audit – Complexity of accounts not shown – Special audit made only to overcome limitation – Order for special audit is held to be not justified.**

Tribunal held that, the order passed by the Additional Commissioner did not spell out any reasons exhibiting the complexity of the accounts. The objections raised by the assessee were similar to those of the previous year. Therefore there was no reason to deviate from the finding of the Tribunal in the previous year. Therefore the directions by the Additional Commissioner for special audit under S. 142(2A) of the Act were illegal, invalid and not in accordance with law, the assessment order was barred by limitation and thus quashed. (AY. 2010-11)

Unitech Limited v. DCIT (2018) 65 ITR 434 (Delhi)(Trib.)

1592 **S. 142(2A) : Inquiry before assessment – Special audit – AO not giving any finding about nature and complexity of accounts, volume of accounts, multiplicity of transactions, specialised nature of business activity of assessee – Order being not speaking order for special audit was held to be not valid – Since the direction for special audit was without proper jurisdiction the time so taken could not be counted and the period did not get extended. Since the order was passed on July 28, 2010, it was time barred. Therefore the order passed by the Assessing Officer was therefore, bad in law. [S. 153C]**

Tribunal held that the services of the expert in the field of accounts cannot be denied to the AO. At the same time he should have reasonable satisfaction to be brought out on record about the nature and complexity of the accounts. The AO had not given any finding about the nature and complexity of accounts, volume of accounts, multiplicity of transactions, or the specialised nature of business activity of the assessee. The assessee had submitted books of account translated in English and the reasons given by the AO, viz, that details had not been given, the intricate the nature of the seized material, that the true picture of undisclosed income could not be worked out within a span of a week, could not make any valid ground for referring a case to special audit. Even when the books of account had not been called for satisfaction as to the nature and complexity of accounts of the assessee is a sine qua non for directing the assessee to get the accounts audited by an accountant as defined in the Explanation below sub-section (2) of section 288. As there was no speaking order and giving no reason for arriving at the conclusion having regard to the nature and complexity of the accounts the order under section 142(2A) was bad in law. Since the direction for special audit was without proper jurisdiction the time so taken could not be counted and the period did not get extended. Since the order was passed on July 28, 2010, it was time barred. Therefore the order passed by the Assessing Officer was therefore, bad in law. (AY. 2005-06 to 2008-09)

Sunder Mal Sat Pal v. ITO (2018) 65 ITR 28 (SN) / 169 DTR 175 / 194 TTJ 981 (Chd.) (Trib.)

S. 143(1) : Assessment – Intimation – Additional tax – Reduction of loss on account of depreciation – Additional tax is held to be not leviable. [S. 143(IA)] 1593

Dismissing the appeal of the revenue the Court held that, the Tribunal had found on the facts that the reduction of loss was on account of the disallowance of the depreciation claimed by the assessee. It had also found that the disallowance was on the dispute of the machinery not having been installed during the assessment year, and such depreciation was available to the assessee in later years. Since there was consistent loss offered by the assessee, such shifting of the depreciation to a later year had no impact on its tax. (AY. 1991-92)

PCIT v. Gujarat Electricity Board (2018) 403 ITR 245 (Guj.)(HC)

S. 143(1)(a) : Assessment – Intimation – Provision for doubtful over due installments – Adjustment was held to be not valid – Interpretations given by High Courts and Tribunals cannot be ignored by the Assessing Officers. [S. 36(1)(vii), 36(2)] 1594

Allowing the reference of the assessee the Court held that; Provision for doubtful over due installments, disallowance cannot be made by intimation under section 143(1)(a) of the Act, as it requires that a party be given an opportunity to establish its claim before disallowing it. It would have been a completely different matter if the Apex Court had ruled that in no case can provision for bad debts be allowed as a bad debt under section 36(1)(vii) of the Act. Court also observed that; Submission of Dept that decisions of Courts and Tribunals interpreting a provision is to be ignored by the AO will ring the death knell of Rule of law in the Country. It ignores the hierarchical system of jurisprudence in our country. The AO is bound by the views of the Court. (AY. 1993-94)

Bajaj Auto Finance Ltd. v. CIT (2018) 404 ITR 564 / 166 DTR 379 (Bom.)(HC), www.itatonline.org

S. 143(IA) : Assessment – Additional tax – Adjustment – Co-Operative Society – Reduction in loss – Payment of statutory dues not substantiated by evidence – Levy of additional tax is justified. [S. 43B, 80P, 154] 1595

Dismissing the appeals of the assessee the Court held that ; according to the provisions of section 143(1A) the additional tax was chargeable if the loss declared by the assessee was reduced as a result of adjustments. Whether or not the assessee was entitled to the deduction under section 80P was not a relevant factor for the purposes of charging additional tax under section 143(1A). When the assessee did not produce any evidence that it had made payment of gratuity and bonus which were statutory dues, the Assessing Officer was justified in making adjustment of such amounts not paid. There was no error in the order passed by the Tribunal. (AY. 1990-91, 1994-95, 1995-96)

Fatehpur Kshetriya Gramin Bank v. ACIT (2018) 408 ITR 324 (All.)(HC)

S. 143(1D) : Assessment – Processing of return – Matter pending for scrutiny before competent authority – No mandamus can be issued by Court at this stage for granting refund. [S. 237] 1596

On Writ filed, held by the High Court that as the matter is pending for scrutiny before the competent officer no mandamus can be issued, at this stage, by the Court in the

matter for processing or grant of refund. Assessee-petitioner may approach Department for furnishing all information and we direct the Department to complete scrutiny and thereafter proceed to consider for granting of refund. (AY. 2016-17)
Uttar Bihar Gramin Bank v. PCIT (2018) 166 DTR 407 / 303 CTR 303 (Pat.)(HC)

1597 **S. 143(2) : Assessment – Notice – Notice to authorised representative was held to be deemed service of notice on assesse and sufficient compliance – Non availability of assesse on the given address, the notices could not be served. [S. 143(3)]**
Allowing the appeal of the revenue the Court held that; Notice to authorised representative was held to be deemed service of notice on assesse and sufficient compliance, though the authorised representative disowns. On facts due to non availability of assesse on the given address the notices could not be served which was sent by registered post twice. Accordingly the order of High Court was set aside.
ITO v. Dharam Narain (2018) 163 DTR 41 / 253 Taxman 479 / 301 CTR 41 (SC)

1598 **S. 143(2) : Assessment – Notice – Once return is filed pursuant to notice issued u/s. 148, issue of notice u/s 143(2) is mandatory. [S. 139, 144, 148]**
Dismissing the appeal of the revenue the Court held that ; once a return was filed, issuance of notice under section 143(2) to the assessee was mandatory prior to making an assessment. The question of making an assessment ex parte without issuing a notice under section 143(2) did not arise. The assessee had filed a return pursuant to the notice under section 148 notwithstanding that it might not have filed a return under section 139 for any assessment year in question. (AY. 2003-04)
CIT v. Staunch Marketing Pvt. Ltd. (2018) 404 ITR 299 (Delhi)(HC)

1599 **S. 143(2) : Assessment – Notice – Limited scrutiny – The CBDT Circulars which restrict the right of the AO in limited scrutiny cases apply only in cases where the AO seeks to do comprehensive scrutiny to find if there is potential escapement of income on other issues. However, if the S. 143(2) notice seeks information on whether the share premium is from disclosed sources and is correctly offered to tax, the AO can also inquire into whether the premium exceeds the FMV and is taxable u/s 56(2)(viib) of the Act. Writ to quash the notice was held to be not maintainable. [S. 56(2) (viib)]**
The petitioner challenged the notice issued u/s 143(2) of the Act wherein information on whether the share premium is from disclosed sources and is correctly offered to tax, the AO can also inquire into whether the premium exceeds the FMV and is taxable u/s 56(2)(viib) of the Act. Dismissing the petition the Court held that; The CBDT Circulars which restrict the right of the AO in limited scrutiny cases apply only in cases where the AO seeks to do comprehensive scrutiny to find if there is potential escapement of income on other issues. However, if the S. 143(2) notice seeks information on whether the share premium is from disclosed sources and is correctly offered to tax, the AO can also inquire into whether the premium exceeds the FMV and is taxable u/s 56(2)(viib) of the Act. Writ to quash the notice was held to be not maintainable. (AY. 2015-16)
Sunrise Academy of Medical Specialities (India) Private Limited v. ITO (2018) 409 ITR 109 / 167 DTR 233 / 257 Taxman 373 / 304 CTR 195 (Ker.)(HC), www.itatonline.org
Editorial : Affirmed by division Bench, Sunrise Academy of Medical Specialities(India)Private Limited v. ITO (2018) 169 DTR 65 / 304 CTR 190 (Ker.)(HC)

S. 143(2) : Assessment – Block assessment – Notice issued with in period of limitation, however the notice was served beyond limitation period hence the assessment was held to be invalid and quashed – Tribunal was justified in considering the issue of limitation first time raised before the Tribunal. [S. 158BC, 254(1), 292BB] 1600

Dismissing the appeal of the revenue the Court held that; even though revenue authorities issued notice under section 143(2) within period of limitation as prescribed in proviso to section 143(2), yet same was served on assessee after limitation period, it was to be regarded as invalid notice and, thus, assessment proceedings initiated in pursuance of said notice deserved to be quashed. The assessment was for the assessment years 1990-91 to 1990-2000, was completed on November 28, 2001. Both were prior to the amendment whereby S. 292BB was inserted. The assessment was barred by limitation. Tribunal was justified in considering the issue of limitation first time raised before the Tribunal. (AY. 1990-91 to 1999-2000)

CIT v. V. V. Devassy (2018) 403 ITR 25 / 252 Taxman 390 / 163 DTR 76 (Ker.)(HC)

S. 143(2) : Assessment – Notice – Additional ground – Jurisdictional issue – Admitted – A notice u/s 143(2) issued by the AO before the assessee files a return of income has no meaning – If no fresh notice is issued after the assessee files a return, the AO has no jurisdiction to pass the reassessment order and the same has to be quashed. [S. 147, 148, 254(1)] 1601

Tribunal admitted the additional ground on question of law and the facts were already on record. Facts relating to the additional ground are that the assessee filed his return of income on 31.07.2010 declaring total income at ₹ 46,76,95,780/- and this return was processed under section 143(1) of the Act on 21.03.2012. Thereafter, the case was reopened by issuing notice under section 148 of the Act dated 01.04.2013, which was served on assessee at 08.04.2013. The ACIT, Central Circle-45, Mumbai issued notice under section 143(2) of the Act dated 03.05.2013 requiring the assessee to attend his office on 13.05.2013. The assessee in a response to notice under section 148 of the Act dated 01.04.2013, which was served on assessee on 08.04.2013, filed a letter dated 23.05.2013 stating that return originally filed be treated as return filed in response to notice under section 148 of the Act. According to the learned Counsel no notice under section 143(2) of the Act was issued after the filing of return by assessee i.e. vide letter dated 22.05.2013 which was received in the office of the ACIT, Central Circle-45, Mumbai on 23.05.2013. It means that the return of income was filed on 23.05.2013 in response to notice under section 148 of the Act. The learned Counsel for the assessee now before us stated that when no notice under section 143(2) of the Act, which is a jurisdictional notice, is issued to the assessee in response to return filed under section 148 of the Act, the assessment framed is invalid and bad in law. The learned Counsel for the assessee relied on the decision of Hon'ble Bombay High Court in of *ACIT v. Geno Pharmaceuticals Ltd. (2013) 32 taxmann.com 162 (Bombay)* & in *CIT v. MS. Malvika Arun Somaiya (2010) 2 taxmann.com 144 (Bom)* and Hon'ble Delhi high Court in the case of *DIT v. Society for Worldwide Inter Bank Financial, Telecommunications (2010) 323 ITR 249 (Delhi)* and also Tribunal's decision of Delhi Bench in ITA No. 5163 & 5164/Del/2010, 5554/Del/2012 for AY 2004-5 & 2005-06 vide order dated 02.07.2018. When these facts were pointed to the learned CIT Departmental Representative, he only relied

on the orders of the lower authorities and on this jurisdictional issue he could not controvert the arguments of the learned Counsel of the assessee. Allowing the appeal the Tribunal held that ; a notice u/s. 143(2) issued by the AO before the assessee files a return of income has no meaning,if no fresh notice is issued after the assessee files a return, the AO has no jurisdiction to pass the reassessment order and the same has to be quashed. (AY. 2010-11)
Sudhir Menon v. ACIT (2018) 67 ITR 86 (SN) (Mum.)(Trib.), www.itatonline.org

1602 **S. 143(2) : Assessment – Notice – Reassessment – If the notice u/s. 143(2) is issued prior to the furnishing of return by the assessee in response to notice u/s. 148, the notice issued u/s 143(2) is not valid and the reassessment framed on the basis of said notice has to be quashed. S. 292BB does not save the assessment. [S. 147) 148, 292BB]**
Allowing the appeal of the assessee,the Tribunal held that , if the notice u/s 143(2) is issued prior to the furnishing of return by the assessee in response to notice u/s 148, the notice issued u/s 143(2) is not valid and the reassessment framed on the basis of said notice has to be quashed. S. 292BB does not save the assessment. (AY. 2004-05, 2005-06)
Halcrow Groups Ltd. v. ADIT (2018) 194 TTJ 704 / 167 DTR 103 (Delhi)(Trib.), www.itatonline.org

1603 **S. 143(2) : Assessment – Notice by an AO not having jurisdiction over the assessee is irrelevant – Assessment was held to be bad in law.**
Notice by an AO not having jurisdiction over the assessee is irrelevant. If the proper AO does not issue the notice within the time limit, the assessment is null and void. The argument that the non-jurisdictional AO issued the S. 143(2) notice as per PAN or computerized system or internal procedure is not relevant as it violates the law (AY. 2006-07)
ITO v. NVS Builders Pvt. Ltd (2018) 169 ITD 679 (Delhi)(Trib.), www.itatonline.org

1604 **S. 143(3) : Assessment – Real income – lease rental – Interest and loan recovery – Guidance Note issued by the ICAI carries great weight – An assessee can only be taxed on "real income" – Lease rental is allowable. [S. 37(1), 145(3), CA 1956, S. 211]**
Dismissing the appeal of the revenue, the Court held that; an assessee can only be taxed on "real income". The bifurcation of lease rental is not an artificial calculation. Lease equalization is an essential step in the accounting process to ensure that real income from the transaction in the form of revenue receipts only is captured for the purposes of income tax. The Guidance Note issued by the ICAI carries great weight. The method of accounting prescribed in such a Guidance Note, in order to compute real income and offering the same for taxation, cannot be disregarded by the AO unless such action falls within the scope and ambit of S. 145(3) of the IT Act. Lease rental is allowable. (AY. 1996-97 to 2000-01)
CIT v. Virtual Soft Systems Ltd. (2018) 404 ITR 409 / 165 DTR 121 / 302 CTR 65 / 255 Taxman 352 (SC), www.itatonline.org
Editorial : Refer CIT v. CIT v. Virtual Soft Systems Ltd (2012) 341 ITR 593 / 67 DTR 410 (Delhi) (HC) is affirmed

S. 143(3) : Assessment – Hindu undivided family – Individual – Regardless of what an assessee claims, if the correct factual position is otherwise, the Assessing Officer has to adopt correct position. Even if SM had filed returns in the status of 'individual' if the correct status is that of HUF, then there is no legal impediment for the legal heirs to claim that the succession was of the HUF. Tribunal was therefore right in law in holding that the status of the assessee was that of an HUF. [S. 2(31))(ii)] 1605

The High Court held that :

a) There is no material on record to show that the Kachwaha clans (which the Jaipur royal house belonged to) was governed by the rule of lineal primogeniture (Jyeshthaadhikaar).

b) Further, Late Maharaja of Jaipur's (SM) position, post Paramountancy in the year 1947, was reduced to an ordinary citizen. Hence, he had to and did file tax returns, declaring his wealth and income in accordance with the laws and SM was governed by the ordinary rules of inheritance applicable to members of HUF;

c) It is now established that regardless of what an assessee claims, if the correct factual position is otherwise, the Assessing Officer has to adopt correct position. Hence, even if SM had filed returns in the status of 'individual' if the correct status is that of HUF, then there is no legal impediment for the legal heirs to claim that the succession was of the HUF. Tribunal was therefore right in law in holding that the status of the assessee was that of an HUF. (AY. 1970-1971)

CIT v. Bhawani Singhji & Ors. (2018) 305 CTR 161 / 171 DTR 121 (Delhi)(HC)

S. 143(3) : Assessment – Reassessment – Notice – When return was not filed in compliance of notice issued under S. 148, issue of notice under S 143(2) is not required for making assessment. [S. 139,142(1), 143(3), 148] 1606

Allowing the appeal of the revenue, the Court held that, when return was not filed in compliance of notice issued under S. 148, issue of notice under S 143(2) is not required for making assessment. The notice under S. 143(2) is required to be given only when return is furnished. Furnishing of the return is a sine qua non for issuance of notice under section 143(2). If no return is furnished by the assessee, there can be no reason for issuance of notice under section 143(2). Accordingly the substantial question of law framed is answered in the negative and in favour of the revenue. (AY. 2003-04)

PCIT v. Broadway Shoe Co. (2018) 259 Taxman 223 (J&K)(HC)

S. 143(3) : Assessment – Revised return – Claim made under wrong provision, if necessary facts are available, the Assessing Officer can consider the claim though no revised return was filed – Alternative claim not raised in return can be claimed if necessary facts are on record. [S. 139(5)] 1607

Dismissing the appeal of the revenue the Court held that ; Claim made under wrong provision, if necessary facts are available, the Assessing Officer can consider the claim though no revised return was filed. Alternative claim not raised in return can be claimed if necessary facts are on record. Followed *CIT v. M.R.P. Firm Muar (1965) 56 ITR 67 (SC), CIT v. Mahalaxmi Sugar Mills Co. Ltd. (1986) 160 ITR 920 (SC) (AY. 2004-05)*

CIT v. Malayala Manorama Co. Ltd. (2018) 409 ITR 358 / 257 Taxman 597 (Ker.)(HC)

1608 **S. 143(3) : Assessment – Estimation of sales and gross profit – Additions on account of suppressed sales were solely based on information received by Assessing Officer from Central Excise department without bringing any independent material on record to justify same, additions were unjustified.**

Dismissing the appeal of the revenue the Court held that; additions on account of suppressed sales were solely based on information received by Assessing Officer from Central Excise department without bringing any independent material on record to justify same, additions were unjustified. There was no independent material brought on record by Assessing Officer other than those which were already collected by Excise department and which were yet to be verified. (AY. 2008-09)

PCIT v. Vrundavan Ceramics (P.) Ltd. (2018) 256 Taxman 383 (Guj.)(HC)

1609 **S. 143(3) : Assessment – Balance sheet and profit and loss account certified by a chartered accountant in Form 3CB in accordance with rule 6G(1)(b) for obtaining loan from bank – AO is justified in making the additions on basis of window dressed financial statement to make it attractive for bankers to rely thereupon and all gloss and sheen removed thereafter when it was time to pay tax – The doctrine of pari delicto would apply and preclude the appellant herein from detracting from the figures contained in the balance sheet and profit and loss accounts certified on 18-7-2005 at any subsequent stage – Appellate Tribunal may only be faulted for not reporting the chartered accountants to the Institute of Chartered Accountants for having apparently abetted in the commission of a colossal act of misrepresentation which the appellant assessee undertook before his bankers for the purpose of obtaining credit facilities by indicating a financial position that was not warranted by the books of the assessee. [S. 44AB, R. 6G]**

Dismissing the appeal of the assessee and confirming the addition made by the Tribunal, the court held that a rosy picture as to the financial position of the applicant seeking credit facilities from a bank would be presented before the bank for the bank to assess the creditworthiness of the applicant and the desirability of extending credit facilities to such applicant; but later another balance sheet and profit and loss accounts would be slipped into the file, possibly indicating a less robust financial position of the constituent. If such was the object on the exercise, to which the chartered accountants appear to have been a willing accomplice, the assessee has been appropriately dealt with by the fora below. The balance sheet and profit and loss accounts of an assessee accompanied by a certificate as to its fairness, notwithstanding the caveat as noticed in paragraph 2(A) thereof, cannot be tailor-made to suit a particular purpose or window-dressed to make it attractive for bankers to rely thereupon and all the gloss and sheen removed thereafter when it was the time to pay tax. The doctrine of pari delicto would apply and preclude the appellant herein from detracting from the figures contained in the balance sheet and profit and loss accounts certified on 18-7-2005 at any subsequent stage. When the assessee presented the financial position as in the balance sheet of 18-7-2005, the assessee could no longer resile from such position. It was then open to the Assessing Officer and the income tax authorities to pin the assessee down on the basis of the assessee's representation contained in the earlier balance sheet and the

reasoning indicated in paragraph 2(A) by the Appellate Tribunal does not call for any interference. Indeed, the Appellate Tribunal may only be faulted for not reporting the chartered accountants to the Institute of Chartered Accountants for having apparently abetted in the commission of a colossal act of misrepresentation which the appellant assessee undertook before his bankers for the purpose of obtaining credit facilities by indicating a financial position that was not warranted by the books of the assessee.
Binod Kumar Agarwala v. CIT (2018) 257 Taxman 58 / 303 CTR 406 / 167 DTR 433 / (2019) 411 ITR 493 (Cal.)(HC)

S. 143(3) : Assessment – Construction business – Estimate of gross profit rate of 8% and peak credit of undisclosed cash receipts is finding of fact – No substantial question of law. [S. 260A] 1610
Dismissing the appeal of the revenue the Court held that ; Estimate of gross profit rate of 8% and peak credit of undisclosed cash receipts is finding of fact. No substantial question of law.
CIT v. Vikas A. Shah (2018) 404 ITR 627 (Guj.)(HC)

S. 143(3) : Assessment – Assessed income can fall below returned income – Disallowance can fall below disallowance *suo motu* voluntarily made by the assessee in the return of income filed. [S.14A, 139, R.8D] 1611
The assessee contended that the disallowance u/s 14A can fall below the voluntary disallowance made by the assessee *suo motu* in return of income filed with the Revenue. The assessee has relied on decision of Hon'ble Gujarat High Court in the case of *Pr. CIT v. UTI Bank Ltd. [2017] 398 ITR 514* and decision of ITAT, Mumbai in the case of Rupee Finance and *Management (P.) Ltd. v. Dy. CIT [2017] 81 taxmann.com 249*. Tribunal held that once Tribunal has adjudicated matter in assessee's favour then merely because disallowance was made in return of income voluntarily under a wrong belief, the assessee cannot resile from its position is not acceptable . The mandate of the 1961 Act is to tax real income and not an income which was never the income chargeable to tax in the hands of the assessee but was declared under a wrong belief or notion . The mandate of the 1961 Act is to tax real income and tax can only be levied under the authority of law. Thus, if after verifications and following the ratio of law decided by the tribunal in the instant case, if the disallowance falls below the disallowance u/s 14A offered by the assessee in return of income, be it may the Revenue cannot charge tax on income which never was the income of the assessee chargeable to tax within the mandate and provisions of the 1961 Act as the tax can only be levied by the authority of law. The Hon'ble Andhra Pradesh High Court in the case of *CIT v. Bakelite Hylam Ltd. (1999)237 ITR 392* as well Hon;ble Gujarat High Court in the case of *Gujarat Gas Co. Ltd. v. Jt. CIT (2000) 111 245 ITR 84 (Guj) (HC)* after considering CBDT circular No. 549 dated 31-10-1989 (1990) 182 ITR (st) 1. (AY. 2011-12, 2012-13)
Editorial: Refer CIT v. Milton Laminates Ltd (2013) 218 taxman 108 (Mag.) (Guj.) (HC) (Para 5) The Court held that the Assessing Officer is free to give effect to order of Commissioner (Appeals) without restricting income to returned income. Assessing Officer can compute income lower than that returned., Nirmala L. Mehta v. A. Balasubramanian (2004) 269 ITR 1 (Bom.)(HC) (11) the court held that, "There

cannot be any estoppel against the statute, Article 265 of the Constitution of India in unmistakable terms provides that no tax shall be levied or collected except by authority of law. Acquiescence cannot take away from a party the relief that he is entitled to where the tax is levied or collected without authority of law". [Also refer, CIT v. V.MR.P. Firm, Muar (1965) 56 ITR 67 (74))
Sajjan India Ltd. v. ADIT (2018) 89 taxmann.com 21 (Mum.)(Trib.)

1612 **S. 143(3) : Assessment – Difference in form 26AS – Matter remanded. [26AS]**
Tribunal held that, prima facie the assessee had brought on record material to show that correct figure of receipts as per amended Form No. 26AS. Accordingly the AO was directed to consider amended Form No. 26AS as well as those balances shown by assessee as on 31/3/2008 as well as on 31/3/2009 on account of commission receivables and then to compute difference, if any, to be added in income of assessee.
Jaipur Pensioners Hitkari Sahakari Samiti Ltd. v. ITO (2018) 195 TTJ 112 (UO) (Jaipur) (Trib.)

1613 **S. 143(3) : Assessment – Validity – Draft order wrongly titled as assessment order – Objection was not raised before DRP – Validity of assessment cannot be challenged. [S. 92CA, 144C]**
TPO passed order u/s. 92CA(3) wherein he proposed adjustment. AO enhanced income declared by assessee by making adjustment on account of arm's length price in respect of international transactions entered into by assessee with its associate enterprise. CIT (A) confirmed the addition. Dismissing the appeal of the assessee the Tribunal held that if the assessee had any objections on proposed additions by AO, it should have filed such objections within 30 days before DRP and AO. However, since assessee had not filed any objections before DRP or AO, then ground of Assessee is not sustainable. (AY. 2011-12)
Jaipur Rugs Co. P. Ltd. v. DCIT (2018) 64 ITR 128 / 193 TTJ 49 (UO)(Jaipur)(Trib.)

1614 **S. 143(3) : Assessment – Alleged excess consumption – Addition is held to be not justified.**
Tribunal held that shortage of consumption was only 0.018% of total consumption of material debited to Profit & Loss Account here may be production efficiencies or inefficiencies leading to under or over consumption of inputs vis-a-vis standard consumption. Such under or over consumption became part of cost of production. Accordingly there could be no logic in disallowing such amount. (AY.2008-09)
Maruti Suzuki India Ltd. v. ACIT (2018) 191 TTJ 148 (Delhi)(Trib.)

1615 **S. 143(3) : Assessment – Professional income – Year of taxability – Income offered in subsequent year – No loss to revenue – Deletion of addition is held to be justified. [S. 4]**
Dismissing the appeal of the revenue the Tribunal held that the assessee has offered the income in next year and rate of tax is same. Followed *CIT v. Excel Industries Ltd (2013) 358 ITR 295 100 (SC)*, (AY. 2008-09, 2010-11, 2011-12)
Dy.CIT v. Deloitte Touche Tohmatsu India (P) Ltd. (2018) 193 TTJ 65 (UO) (Mum.)(Trib.)

S. 143(3) : Assessment – Method of accounting – AIR information – Addition cannot be made solely based on AIR information. [S. 4, 145 AS. 26] 1616

On perusal of AIR data found that there was discrepancy in income in AS-26 and AO treated said amount as income of assessee for reason that assessee claimed TDS on such transactions and only denied owning up of said transactions. CIT(A) confirmed the addition. Allowing the appeal of the assessee the Tribunal held that AO failed to make any enquiries with parties when assessee was denying any transactions with them. Tribunal further held that the assessee was denying any transactions with parties, onus was on AO to verify transactions with parties and to establish that assessee indeed entered into any transactions with said parties and had received income from them. No such enquiries or effort was made by AO to find out whether assessee entered into such transaction with parties. Accordingly the AO was directed to delete addition made on account of alleged difference in income. (AY. 2011-12)

ACIT v. Zee Media Corporation Ltd. (2018) 193 TTJ 36 (UO)(Mum.)(Trib.)

S. 143(3) : Assessment – Form 26AS – Merely on the basis of information form 26AS submitted by the deductor, addition cannot be made, as the assessee had no control over inputs made by the deductor. [S. 4] 1617

Assessee received ₹ 1.10 lac as interest from bank, however, information appearing in Form 26AS showed said amount to be ₹ 4.48 lakh. AO made addition of ₹ 3, 37,791 as income of the assessee. CIT(A) also confirmed the addition. On appeal Tribunal held that once assessee had produced reasonable evidence establishing a particular quantum of interest income in his hands and such evidence was not found fault with, he could not be taxed on some other figure merely because a tax deductor stated that other figure when the assessee had no control over inputs made by the deductor. (AY..2011-12)

Seal For Life India (P.) Ltd. v. DCIT (2018) 173 ITD 229 / (2019) 197 TTJ 742 / 174 DTR 281 (Ahd.)(Trib.)

S. 143(3) : Assessment – Survey – Bogus expenditure – Statement – Retraction – A statement recorded u/s 133A under fear/ coercion cannot be relied upon by the AO if it is not corroborated by documentary evidence – The assessee is entitled to retract such statement. The AO is bound to give the assessee an opportunity to controvert evidence and cross examine the evidence on which the department places its reliance – A failure in providing the same can result in the order being a nullity – Income is estimated on the basis of gross profit. [S. 133A] 1618

Allowing the appeal of the assessee the Tribunal held that ; addition cannot be made merely on the basis of statement in the course of survey. A statement recorded u/s 133A under fear/ coercion cannot be relied upon by the AO if it is not corroborated by documentary evidence – The assessee is entitled to retract such statement. The AO is bound to give the assessee an opportunity to controvert evidence and cross examine the evidence on which the department places its reliance-.A failure in providing the same can result in the order being a nullity. Income is estimated on the basis of gross profit. (ITA No. 3026/Mum./2016 and other appeals, dt. 14.11.2018)(AY. 2007-08 to 2011-12)

Concept Communication Ltd. v. DCIT (Mum.)(Trib.), www.itatonline.org

1619 **S. 143(3) : Assessment – Assessment of amalgamating company – Notices were issued prior to the amalgamation with another company – Assessment proceedings cannot be held to be invalid [S. 142(1), 143(2)]**

As the notices under sections 142(1) & 143(2) were issued prior to the amalgamation with another company the assessment proceedings cannot held to be invalid. The AO can proceed with the assessment proceedings by transposing the amalgamating company as the assessee and issuing fresh notice under section 142(1) and complete the assessment proceedings. (AY. 2004-05, 2006-07 2007-08)

Cyient Ltd. v. Dy. CIT (2018) 194 TTJ 69 / 167 DTR 281 (Hyd.)(Trib.)

1620 **S. 143(3) : Assessment – Overdue interest – Provisions for bad and doubtful debts – Schedule bank – Interest income on NPAs is taxable on receipt basis and not on accrual basis. [S. 4, 28(i), 36, 37(1)]**

On revenue's appeal, the Tribunal, relying on RBI guidelines and various rulings, held that interest on NPAs is to be recognised on actual receipt basis but not on accrual basis. Hence, overdue interest in respect of interest accrued on NPAs, which had not been received, could not be recognised as income. (AY. 2008-09)

ACIT v. The Guntur Co-operative Central Bank (2018) 193 TTJ 870 / 166 DTR 280 (Vishakha.)(Trib.)

1621 **S. 143(3) : Assessment – Assessment has to be framed as per provisions – Instruction No. 13 of 2006 would not override the provisions – Revised return claiming refund of tax deduction at source – Assessment order as framed by the Assessing Officer is contrary to the provisions of law and beyond the jurisdiction of the Assessing Officer as the notice u/s 143(2) of the Act is beyond the time prescribed under the law and is illegal. Accordingly, the assessment is quashed. The Assessing Officer is directed to allow the refund with interest as per law. [S. 119, 143(2)]**

Allowing the appeal of the assessee the Tribunal held that ; notice issued under section 143(2) is beyond the time prescribed under the law barred by limitation and was thus illegal. There is no ambiguity under the law that the scrutiny assessment is to be framed as per the provisions of section 143. The Instruction No. 13 of 2006 would not override these provisions. From a bare reading of the instructions, it is evident that the Instruction is related to condonation of delay in respect of refund due. This instruction is issued with an objective to mitigate the hardship to the assessee. Para 7 of the Instruction, is limited to the extent of ascertaining the claim of the assessee. This does not empower the Assessing Officer to make scrutiny of the entire case, which goes against the spirit of the law. In the instant, the Assessing Officer was required to ascertain that the tax has been deducted at source and on the returned income, such refund is available to the assessee or not. It is viewed that the Assessing Officer has misconstrued direction of the Commissioner and assessed the income by making scrutiny assessment. It is also noticed that there is an inordinate delay in disposing the application by the Commissioner. Under these facts, it is held that the impugned assessment order as framed by the Assessing Officer is contrary to the provisions of

law and beyond the jurisdiction of the Assessing Officer. Accordingly, the assessment is quashed. The Assessing Officer is directed to allow the refund with interest as per law. (AY. 2000-01)
M. Lodha Impex v. ITO (2018) 171 ITD 659 / 170 DTR 113 / 195 TTJ 761 / 65 ITR 69 (SN)(Indore)(Trib.)

S. 143(3) : Assessment – Bogus purchases – Accommodation entries – Readymade garments – Addition of 12.5% is held to be proper. [S. 69] 1622
Tribunal on merit reduced the additions to the tune of 12.5% of the alleged unproved bogus purchases. (AY. 2007-08)
ACIT v. Rich and Royal (2018) 63 ITR 65 (SN)(Mum.)(Trib.)

S. 143(3) : Assessment – Amalgamation – Assessment in name of Company not in existence having amalgamated with another is liable to be cancelled as nullity being bad in law. [S. 263] 1623
Allowing the appeal of the assessee the Tribunal held that ; assessment in name of Company not in existence having amalgamated with another is liable to be cancelled as nullity being bad in law. The Assessing Officer was at liberty to have alternative recourse and such a course of action could be taken by the Assessing Officer only if it was still permissible in terms of law and had not become time barred. (AY. 2008-09)
Basundhara Goods P. Ltd. ITO (2018) 65 ITR 62 (SN)(Kol.)(Trib.)

S. 143(3) : Assessment – Income from undisclosed sources – Survey – Surrendered during survey and assessee retracting statement – Onus is on AO to investigate further and establish additions made on basis of surrender – Addition of ₹ 1,42,778 on account of gross profit was confirmed. [S. 133A] 1624
Tribunal held that merely on the basis of statement surrendered during survey which was retracted addition cannot be made. Onus is on AO to investigate further and establish additions made on basis of surrender. Addition of ₹ 1,42,778 on account of gross profit was confirmed.
Satish Chand Agarwal v. ITO (2018) 64 ITR 713 (Jaipur)(Trib.)

S. 143(3) : Assessment – On Money – The fact that the assessee has sold flats at an undervaluation does not mean that he has understated the consideration and earned undisclosed 'on money'. The mere presumption that excess price could have been charged is not a ground for coming to the conclusion that the assessee did charge a higher price. The burden of proving such understatement or concealment is on the Revenue – Addition was deleted. 1625
Allowing the appeal of the assessee,the Tribunal held that, the fact that the assessee has sold flats at an undervaluation does not mean that he has understated the consideration and earned undisclosed 'on money'. The mere presumption that excess price could have been charged is not a ground for coming to the conclusion that the assessee did charge a higher price. The burden of proving such understatement or concealment is on

the Revenue. Accordingly the addition was deleted. Tribunal distinguished the ratio in *ITO v. Diamond Investment and Properties* in ITA No. 5537/M/2009 dt. 29.07.2010 and followed the ratio in *ACIT v. Rustom Soli Sethna, ITA No. 5086/M/2014 dt. 22.06.2017, Prashant Arjunrao Kolhe v. DCIT [2016] 75 taxmann.com 156(Mum.)(Trib.), Aum Shiv Enterprises v. ACIT ITA No. 6985 /M/2010 dt.24.08.2013 (Mum.) (Trib.), Neelkamal Realtors and Erectors v. DCIT ITA No.1143/M/2013 dt. 16.08.2013 (Mum.) (Trib.) and K.P. Varghese v. ITO (1981) 131 ITR 597(SC)*. (ITA No.2656/Mum./2016, dt. 25.05.2018) (AY. 2012-13)
Shah Realtors v. ACIT (Mum.)(Trib.), www.itatonline.org

1626 **S. 143(3) : Assessment – Estimate of profits – Gross profit rate – Findings based on conjectures and surmises and not on positive evidence – Order of Tribunal was set aside. [S. 254(1)]**
Allowing the appeal the Court held that the Tribunal, ought to have appreciated that only reasonable and proper gross profit rate was to be applied and the assessee was the only dealer who had entered into bulk purchases of timber with the State Forest Corporation. The returns of the subsequent years, i.e., 1989-90 to 1991-92 could not have been taken into account for computing the gross profit rate in respect of the assessment year 1986-87. Thus, the finding with regard to gross profit rate was based on surmises and conjectures and it had been arrived at in contravention of the directions contained in the earlier order passed by the Tribunal, which was upheld by the court and had attained finality. The orders passed by the Commissioner (Appeals) and the Tribunal were quashed. (AY. 1986-87)
Nek Ram Sharma And Co. v. CIT (2018) 402 ITR 194 (J&K)(HC)

1627 **S. 143(3) : Assessment – Capital gains – Capital gains wrongly shown in the return as taxable – Duty of Assessing Officer to refrain from assessing such income. – No tax shall be levied or collected except by authority of law. [S. 45, Right to fair compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, S. 96, Art. 265]**
Allowing the petition the Court held that, merely because the assessee has shown capital gains as taxable in the return, the same cannot be taxed if it is not taxable. It is the duty of the Assessing Officer to refrain from assessing such income. Under article 265 of the Constitution The powers of the Assessing Officers under the Act are quasi-judicial in nature and they are duty-bound, therefore, to act fairly in the discharge of their functions. They are also invested with the authority to do justice to the assessees. In a case where it is apparent on the face of the record that the assessee has included in his return, an income which is exempted from payment of Income-tax, on account of ignorance or by mistake, the Assessing Officer is bound to take into account that fact in a proceeding under section 143 of the Income-tax Act, 1961. In other words, if the capital gains on a transaction are exempted from payment of tax, the Assessing Officer has a duty to refrain from levying tax on the capital gains and the Assessing Officer cannot, in such cases, refuse to grant relief under section 143 of the Act to the assessee on the technical plea that the assessee has not filed a revised return. It is so since the

paramount duty of the Assessing Officer is to complete the assessments in accordance with law (AY. 2014-15)
Raghavan Nair v. ACIT (2018) 402 ITR 400 / 162 DTR 353 / 253 Taxman 379 / 304 CTR 96 (Ker.)(HC)

S. 143(3) : Assessment – Income from undisclosed sources – Manufacture and sale of gold ornaments – Discrepancy in recording quantity of gold – Addition was held to be justified. 1628
Dismissing the appeal of the assessee following the order of for the AY. 1989-90 for which year the additions were confirmed by the court and the years under consideration, as the new evidence could not be said to be the evidence to show actual consumption of gold. The additions were held to be justified. (AY. 1990-91 to 1994-95)
Subodhchandra and Co. v. DCIT (2018) 402 ITR 500 (Guj.)(HC)

S. 143(3) : Assessment – Assessment order passed without considering relevant materials and objections raised by assessee was held to be arbitrary and violative of principles of natural justice was quashed. [Art 226] 1629
Allowing the petition the Court held that, it is a cardinal principle of law that if relevant materials and objections are produced before a quasi-judicial authority, the quasi-judicial authority is duty-bound, under law, to advert to them, discuss them and then reject them by recording reasons. Accordingly the assessment order passed without considering relevant materials and objections raised by assessee was held to be arbitrary and violative of principles of natural justice was quashed. Assessing Officer was directed to pass the order in accordance with law.
Dhananjay Kumar Singh v. ACIT (2018) 402 ITR 91 / 167 DTR 261 / 303 CTR 413 / 99 taxmann.com 203 / 259 Taxman 373 (Pat.)(HC)
Editorial : SLP of revenue is dismissed, ACIT v. Balmiki Prasad Singh (2018) 259 Taxman 372 (SC)

S. 143(3) : Assessment – Estimate of cost of construction – Books of account not rejected – Assessing Officer cannot refer the matter to District valuation Officer. 1630
Dismissing the appeal of the revenue, the Court held that; when the books of account is not rejected by the Assessing Officer, for estimating the cost of construction, reference to District Valuation Officer to make addition was held to be bad in law. (AY. 2009-10)
CIT v. A. L. Homes (2008) 401 ITR 285 (Mad.)(HC)

S. 143(3) : Assessment – Survey – An admission of estimated income made during survey has no evidentiary value and is not binding on the assessee. The income has to be assessed as per the return of income and books of account. [S. 133A] 1631
Allowing the appeal of the assessee the Tribunal held that; merely on the basis of admission made in the course of survey addition cannot be made. Order in *Hiralal Maganlal v. DCIT (2005)97 TTJ 377 (Mum.) (Trib.)* is distinguished. CBDT Circular No. 286/2/2003 (Inv.) II dated 10.03.2003 referred. (ITA No. 795/Mum./2015, dt. 23.02.2018) (AY. 2006-07)
Amod Shivlal Shah v. ACIT (Mum.)(Trib.), www.itatonline.org

1632 **S. 143(3) : Assessment – Undisclosed income – If admission is made in the course of search on the basis of material found in the course of search,the retraction of such admission of undisclosed income is not permissible especially when the retraction is by the mother and not by the assessee. [S. 69A,132(4)]**

Dismissing the appeal of the assessee the Tribunal held that; if an admission of undisclosed income is made by the assessee after reference to the material found during search and seizure, it cannot be said that the admission is not based on incriminating material. The retraction of such admission of undisclosed income is not permissible especially when the retraction is by the mother and not by the assesse. (AY. 2008-09)

Priyanka Chopra (Ms) v. DCIT (2018) 169 ITD 144 / 163 DTR 103 / 192 TTJ 324 (Mum.) (Trib.)

Priyanka Chopra (Ms) v. DCIT (2018) 169 ITD 144 / 163 DTR 112 / 192 TTJ 334 (Mum.) (Trib.)

Priyanka Chopra (Ms) v. DCIT (2018) 169 ITD 1 / 192 TTJ 343 (Mum.)(Trib.)

1633 **S. 143(3) : Assessment – Transfer pricing – Amalgamation – On the date of passing of draft assessment order, assessee company was merged with another company hence the order was held to be not sustainable. [S. 92D]**

Allowing the appeal of the assessee the Tribunal held that; on the date of the draft assessment order dated December 21, 2011 and the assessment order dated October 25, 2012 the assessee had merged with JCBIL. The assessee was not in existence with effect from April 1, 2009 pursuant to the scheme of amalgamation. This fact was duly recorded by the Panel in its order. Thus the assessment order was a nullity and was not sustainable in the eyes of law. (AY. 2008-09, 2009-10)

JCB India Limited v. DCIT (2018) 61 ITR 148 (Delhi)(Trib.)

1634 **S. 144 : Best judgment assessment – Low net profit – Tribunal remanded the matter for re examination – No question of law. [S. 260A]**

Dismissing the appeal of the assessee the Court held that ; the Tribunal was justified in remanding the matter to the Assessing Officer on all questions which were somewhat interconnected. (AY. 2011-12)

Cheil India Pvt. Ltd. v. CIT (2018) 407 ITR 304 (Delhi)(HC)

1635 **S. 144 : Best judgment assessment – Road contractor – Order passed by the CIT(A) was incomplete – Matter was remanded to CIT(A) for reappraisal of material on record. [S. 145, 145(3)]**

Allowing the appeal of the revenue the Court held that; though the Assessing Officer had made queries to various sub-contractors, he had failed to discuss what was stated by them or what material was produced by them. The matter was remitted to the Commissioner (Appeals) to render fresh findings after considering the materials produced. (AY. 2007-08 to 2010-11)

CIT v. Mehta Construction Co. (2018) 402 ITR 281 (Delhi)(HC)

S. 144 : Best judgment assessment – Profit in earlier year less than in instant year – GP higher than earlier years – No addition on difference in stock found as on date of search. 1636

Appellate Tribunal held that the assessee's profit in the earlier year was less than the year under consideration meaning thereby his gross profit was higher than the earlier years. Therefore, no addition can be on difference in stock found as on date of search. (AY. 2010-11)

Baroda Moulds and Dies v. ACIT (2018) 62 ITR 168 (Ahd.)(Trib.)

S. 144C : Reference to dispute resolution panel – Final order passed by the AO which was sought to be corrected by issue of corrigendum – Time to pass draft assessment order had expired – Order passed was without jurisdiction. [S. 92C, 153A(2A)] 1637

Dismissing the appeal of the revenue the Court held that, when the time for passing the final order has expired, which was sought to be corrected by issue of corrigendum. Court held that as the time to pass draft assessment order had expired,order passed was without jurisdiction. (AY. 2007-08)

PCIT v. Lionbridge Technologies (P) Ltd. (2018) 100 taxmann.com 413 / (2019) 260 Taxman 273 / 173 DTR 281 / 306 CTR 335 (Bom.)(HC)

S. 144C : Reference to dispute resolution panel – Remand – Direction by the ITAT to AO/TPO to undertake a fresh exercise of determination of Arm's length price – Failure to pass draft assessment order would violative of S. 144C(1) hence bad in law – Not curable defects. [S. 92C, 153(2A), 254(1), 292B] 1638

Allowing the petition the Court held that ; when there is a order of setting aside of an assessment order with requirement of Assessing Officer/TPO to undertake a fresh exercise of determining arm's length price, failure to pass a draft assessment order, would violate section 144C(1) which is not a curable defects. Accordingly the petition was allowed. (AY. 2008-09)

Nokia India (P.) Ltd v. (2018) 259 Taxman 92 / 98 taxmann.com 373 (Delhi)(HC)

Editorial : SLP of revenue is dismissed, ACIT v. Nokia India (P.) Ltd. (2018) 259 Taxman 91 (SC)

S. 144C : Reference to dispute resolution panel – Order passed by DRP must contain discussion of facts and independent findings on those facts by DRP; mere extraction of rival contentions will not satisfy requirement of consideration – Matter remanded [S. 92C] 1639

Allowing the petition the Court held that ; issuance of directions under section 144C (5) cannot be made mechanically or as an empty formality and on other hand, it has to be done only after considering material as stated in sub-section (6). Consideration of such materials by Dispute Resolution Panel must be apparent on face of order and such exercise would be evident only when order contains discussion of facts and independent findings on those facts by Dispute Resolution Panel. Mere extraction of rival contentions will not satisfy requirement of consideration. Accordingly the matter remanded. (AY. 2013-14)

Renault Nissan Automotive India (P.) Ltd. v. Secretary, Dispute Resolution Panel (2018) 259 Taxman 174 / (2019) 175 DTR 143 / 307 CTR 391 (Mad.)(HC)

Nissan Motor India (P) Ltd. v. Secretary, Dispute Resolution Panel (2019) 175 DTR 143 / 307 CTR 391 (Mad.)(HC)

1640 **S. 144C : Reference to dispute resolution panel – Transfer Pricing Officer – Draft assessment order – Reference to TPO – Failure to comply with statutory requirement under S. 144C, defects cannot be cured by issuing corrigendum – Order of assessment is held to be void. [S. 92CA, 143(3), 292B]**

Where pursuant to order of TPO, Assessing Officer passed a final order under section 143(3) instead of passing a draft assessment order under section 144C, there being violation of procedure prescribed under Act, impugned order was to be set aside and, in such a case, even corrigendum issued by Assessing Officer modifying final order of assessment to be read as a draft assessment order, could not cure defect existing in original order. Failure to comply with statutory requirement under S. 144C, defects cannot be cured by issuing corrigendum. The act committed by the Revenue was an illegality, which could not be protected by S. 292B of the Act. Accordingly the order was not valid. (AY. 2009-10)

ACIT v. Vijay Television (P.) Ltd. (2018) 407 ITR 642 / 304 CTR 149 / 169 DTR 17 (Mad) (HC)

Editorial : Decision of the single judge in Vijay Television (P.) Ltd. v. DRP (2014) 369 ITR 113 / 270 CTR 505 / 225 Taxman 35 (Mad.)(HC) is affirmed.

1641 **S. 144C : Reference to dispute resolution panel – Foreign company – Order in remand proceedings – Even in partial remand proceedings from the Tribunal, the Assessing Officer is obliged to pass a draft assessment order under section 144C(1) of the Act – Order passed without passing a draft assessment order being violative of provisions of section 144C(1) is set aside. [S. 92C, 144C(1), 254(1)]**

Allowing the petition the Court held that ; order in remand proceedings and even in partial remand proceedings from the Tribunal, the Assessing Officer is obliged to pass a draft assessment order under section 144C(1) of the Act. Order passed without passing a draft assessment order being violative of provisions of section 144C(1) is set aside. 'fresh adjudication' itself would imply that it would be an order which would decide the lis between the parties, may not be entire lis, but the dispute which has been restored to the Assessing Officer. The impugned order is not an order merely giving an effect to the order of the Tribunal, but it is an assessment order which has invoked section 143(3) of the Act and also section 144C of the Act. This invocation of section 144C of the Act has taken place as the Assessing Officer is of the view that it applies, then the requirement of section 144C(1) of the Act has to be complied with before he can pass the impugned order invoking section 144C(13) of the Act. Moreover, so far as a foreign company is concerned, the Parliament has provided a special procedure for its assessment and appeal in cases where the Assessing Officer does not accept the returned income. In this case, in the working out of the order of the Tribunal results in the returned income being varied, then the procedure of passing a draft assessment order under section 144C(1) of the Act is mandatory and has to be complied with, which has not been done. In the above view, the impugned order has been passed without complying with the mandatory requirements of section 144C of the Act which is applicable to a foreign company such as the assessee. Therefore, the impugned order is quashed and set aside. (AY. 2011-12)

Dimension Data Asia Pacific PTE Ltd. v. Dy. CIT (2018) 257 Taxman 442 / 169 DTR 145 / 304 CTR 140 (Bom.)(HC)

S. 144C : Reference to dispute resolution panel – Draft assessment order – Limitation – Quoting wrong provision in the assessment order inconsequential – Alternative remedy – Writ is not maintainable. [S. 92CA, 246(1)(A), Art. 226] 1642

Dismissing the appeal the Court held that, the single judge had rightly dismissed the writ petition and remitted the assessee to the remedy of appeal under section 246(1)(a) before the first appellate authority. An order of rejection of objections on the ground of their being barred by limitation was not a direction under sub-section (5) read with sub-section (6) of section 144C. Though the order rejecting the objections on the ground of the bar of limitation was captioned as a direction under section 144C(5), it was not a direction under the section. The quoting of a wrong provision in an order was a mistake apparent on the face of the record and, therefore, inconsequential. The assessment order though stated to be an order under section 143(3) read with section 144C(13), was not an order in pursuance of the directions of the Dispute Resolution Panel, but an order of assessment simpliciter from which an appeal would lie to the Commissioner (Appeals). The court exercising its jurisdiction under article 226 of the Constitution would not adjudicate the correctness of an order of assessment. (AY. 2012-13)

Inno Estates Pvt. Ltd. v. DRP-2 (2018) 406 ITR 553 / 258 Taxman 21 (Mad.)(HC)

S. 144C : Reference to dispute resolution panel – In terms of sub-section (1) of section 144C, issuance of draft assessment order is a sine qua non before Assessing Officer can pass a regular assessment order under section 143(3). [S. 143(3) 292B] 1643

Tribunal held that the AO had passed a regular assessment order along with issue of notice of demand under section 156 of the Act and notice under section 274 read with section 271 was issued to the assesse.

Tribunal noted that undoubtedly, if draft assessment order was wrongly titled an assessment order, section 292B should have come to the rescue of the AO. However given the fact that resultant tax demand and penalty proceedings have been initiated, it was a final assessment order which has been passed by the AO in substance and in effect. Thus the Tribunal concluded that since the AO had failed to follow the mandate of the provisions of section 144C of the Act whereby he was required to pass a draft assessment order which is mandatory and is prescribed by the statute where order is passed under section 92CA proposing transfer pricing adjustment, the final assessment order passed was without jurisdiction. Further, the issuance of a show-cause notice cannot be equated and treated as a draft assessment order as the same would make the provisions of section 144C redundant. Accordingly, the impugned assessment order was set aside and assessee's appeal was thus allowed. (AY. 2011-12)

DCIT v. Jaipur Rugs Company P. Ltd (2018) 193 TTJ 49 (UO) / 64 ITR 128 (Jaipur)(Trib.)

S. 144C : Reference to dispute resolution panel – Non-speaking order – Order passed by DR P without giving any reasons for rejecting objections raised by assessee – Order was set aside and, matter was to be remanded back for disposal afresh.[S. 92C] 1644

Tribunal held that, the DRP passed a non-speaking order and did not assign any reasons for rejecting objections raised by assessee, order so passed was to be set aside and, matter was to be remanded back for fresh disposal. Followed, *Vodafone Essar Ltd. v. DRP [2011] 340 ITR 352 (Delhi)(HC)* (AY. 2011-12, 2012-13)

Sun Tec Business Solutions (P.) Ltd. v. DCIT (2018) 173 ITD 185 (Cochin)(Trib.)

1645 **S. 144C : Reference to dispute resolution panel – If draft assessment order has not been passed in accordance with procedure laid down in S. 144C(1) and instead final assessment order has been passed though within limitation time, then such an order cannot be cured after limitation has expired by any subsequent rectification proceedings or corrigendum and in such a situation all subsequent proceedings and final assessment order will get invalidated. [S. 92C]**

The Tribunal held that the said Assessment order was clearly a final assessment order and was not in accordance with procedure laid down in section 144C. The procedure laid down under section 144C is to be strictly adhered to and such a non-adherence cannot be cured. Secondly, when there is a violation of the statute and jurisdiction/ limitation ceases to exist, the order cannot be cured merely by issuing a corrigendum. If corrigendum is issued after a period of limitation for which jurisdiction to pass order ceases, then it cannot revive limitation. The defect is fatal which cannot be cured even by consent.

Tribunal further held that it is a trite proposition that errors which can be rectified either under section 154 or some error in the printing work for which a corrigendum has been issued, cannot be resorted for curing the defect of jurisdictional nature and if there is an error of jurisdiction or limitation, then same cannot be validated by such an order. Rectification orders can only be exercised in respect of an order which is valid on the date of proposed rectification and if the order itself was void ab initio for want of following the correct procedure of law then such a rectification cannot revive its legality. Accordingly, Tribunal held that the proposed corrigendum issued by the AO so as to cure the defect of the original final assessment order is bad in law and same could not have been done and consequently entire subsequent proceedings and final assessment order is held to be invalid being barred by limitation and is hereby quashed.

Oracle India (P) Ltd. v. ITO (2018) 162 DTR 188 (Delhi)(Trib.)

1646 **S. 144C : Reference to dispute resolution panel – Transfer pricing – Duty of DRP to decide issues raised by assessee – DRP is directed to pass a reasoned and speaking order dealing with all contentions of assessee after giving reasonable opportunity to assessee.**

Tribunal held that it is the duty of the Dispute Resolution Panel to decide the issues raised by the assessee before it dealing with all the contentions of the assessee. Since this had not been done the entire matter was remanded for the assessment year 2006-07 to the Panel with the direction to pass a reasoned and speaking order dealing with all the contentions of the assessee. The Panel was to afford a reasonable opportunity of being heard to the assessee. (AY. 2006-07)

Cengage Learning India Pvt. Ltd. v. ITO (2018) 65 ITR 374 (Delhi)(Trib.)

1647 **S. 144C : Reference to dispute resolution panel – Defect existing in original assessment order cannot be cured – show cause notice cannot be equated with assessment order – Oder passed without passing draft assessment was setaside.**

Allowing the appeal of the assessee the Tribunal held that ; defect existing in original assessment order cannot be cured.Show cause notice cannot be equated with assessment order. Oder passed without passing draft assessment was setaside. (AY. 2011-12)

Dy CIT v. Jaipur Rugs Co. P. Ltd. (2018) 64 ITR 128 (Jaipur)(Trib.)

S. 145 : Method of accounting – Business expenditure – Provision for liquidated damages – Held to be not allowable as negotiation was in progress. [S. 37(1)] 1648

Dismissing the appeal of the assessee the Court held that provision for liquidated damages was held to be not allowable in the relevant assessment year, since there were negotiations, discussions before the liquidated damages was arrived at which was must after the subject assessment year and noting was placed before the AO to show that there is every probability of expenditure being incurred. (AY. 1997-98, 1998-99)

FFE Minerals India (P) Ltd. v. JCIT (2018) 172 DTR 80 (Mad.)(HC)

S. 145 : Method of accounting – Project completion method – Disclosure in the course of survey – Construction business – Income could be taxed only when sale deeds of units sold were registered even though sale consideration have been received earlier from buyer. [S. 133A] 1649

Dismissing the appeal of the revenue the Court held that, though the income was offered in the course of survey, as the assessee is in the business of construction which is following project completion method, income could be taxed only when sale deeds of units sold were registered even though sale consideration have been received earlier from buyer.

CIT v. Happy Home Corporation (2018) 256 Taxman 214 (Guj.)(HC)

Editorial : SLP of revenue is dismissed, CIT v. Happy Home Corporation (2019) 261 Taxman 555 (SC)

S. 145 : Method of accounting – Search – Statement on oath – Method of accounting – Estimation of income – Manufacturing of Jewellery and in trading of Gems stones – Bogus purchase bills – Average gross profit – Tribunal deleted the addition- Court held that,since average gross profit (GP) rate in assessee's industry was 12 per cent, where ever profit of assessee was more than 12 per cent, same would not be refunded to assessee but where it was less than 12 per cent, income would be assessed on basis of 12 per cent. [S. 153A] 1650

Assessee is in the business of manufacturing of Jewellery and in trading of Gems stones. AO has made the addition on the basis of statement made u/s 132(4) of the Act and as well as evidence gathered in the Course of search in respect of bogus bills obtained. Tribunal deleted the entire addition made by the AO on the basis of statement made in the Course of Search. On appeal by the revenue the Court held that average gross profit (GP) rate in assessee's industry was 12 per cent. Accordingly, High Court directed that wherever profit of assessee was more than 12 per cent, same would not be refunded to assessee but where it was less than 12 per cent, income would be assessed on basis of 12 per cent GP. (AY. 2004 05 to 2010-11)

CIT v. Clarity Gold (P.) Ltd. (2018) 99 taxmann.com 46 / 259 Taxman 138 (Raj.)(HC)

Editorial : SLP is granted to the revenue ; CIT v. Clarity Gold (P.) Ltd. (2018) 259 Taxman 137 (SC)

1651 **S. 145 : Method of accounting – Banking company – Stock in trade – Securities held on basis of 'Held to Maturity' (HTM) were to be regarded as stock-in-trade and, thus, same had to be valued at cost or market value whichever was less.**
Dismissing the appeal of the revenue the Court held that ; securities held on basis of 'Held to Maturity' (HTM) were to be regarded as stock-in-trade and, thus, same had to be valued at cost or market value whichever was less. Court also held that, Tribunal has given the finding that HTM securities were in fact held by assessee as stock-in-trade and receipts on said securities was also offered as business income. (AY. 2005-06)
PCIT v. Bank of Maharashtra (2018) 258 Taxman 205 / 98 taxmann.com.581 / (2019) 410 ITR 413 (Bom.)(HC)
Editorial : SLP of revenue is allowed; PCIT v. Bank of Maharashtra (2018) 258 Taxman 204/ 406 ITR 32 (St) (SC)

1652 **S. 145 : Method of accounting – Bank – Valuation of shares and securities of public Ltd Companies – Books at cost and in the return cost or market value which ever is less-changed method of valuation of closing stock i.e. cost or market price whichever was lower would determine income/loss correctly – Order of Tribunal was set aside.**
Allowing the appeal of the assessee the Court held that ; in books of account, assessee valued stock of shares and securities on cost basis however since price of those shares fell during relevant year, assessee suffered huge loss. Accordingly in return of income, assessee valued closing stock on market value or cost, whichever was lower basis. Court held that in view of fact that changed method of valuation of closing stock i.e. cost or market price whichever was lower would determine income/loss correctly, impugned order passed by authorities below was to be set aside. (AY. 1990-91)
United Bank of India v. CIT (2018) 257 Taxman 306 (Cal.)(HC)

1653 **S. 145 : Method of accounting – Mercantile system – Accrual of liability – contingencies and events occurring after the balance sheet date – The manner in which the assessee recorded its liability in its books of accounts is not conclusive – The liability to pay tax on the income arises when it has arisen or accrued, and how the assessee deals with it subsequently does not affect that liability – (1) – Provision made for increase in wages on the basis of Wage Board Award which became enforceable on the date of publication of the award on 20-7.1983 could be accepted as a liability having accrued on 19-5-1983 with in the previous year ended on 30-06 1983, when the assessee agreed before the Arbitrators that the award shall come in to operation from an earlier date – Provision is held to be not allowable – (2) Business expenditure – Commission payment – Construction of agreement – liability to pay commission accrued when the orders were secured by the agents, and not when supplies were effected by the assessee – (3) Insurance premium-The liability towards the insurance policy did not arise in the previous year 01.07.1982 to 30.06.1983, since the basic condition, relating to actual payment of insurance premium, had not been fulfilled by the assessee by then – Not allowable as deduction for the relevant year (4). Commission-The obligation to pay commission, in terms of Clause(1) of the agreement,**

is on the procurement of an order by the agent, and the agent had procured the order during the previous year 01.07.1982 to 30.06.1983. Notwithstanding the fact that the obligation to make payment of commission was dependent on receipt of payment from the client, the liability to pay commission arose on the date on which the order was procured by the agent.(5) Liquidated damages – Held to be allowable as business expenditure. [S. 37(1), 145(2)]

1. Provision for increase in wages.

The manner in which the assessee recorded its liability in its books of accounts is not conclusive, for the test to be applied, in cases where an assessee is regularly maintaining its books of accounts on the mercantile system of accounting, is when the liability accrued, and it is only on the date of accrual of such expenditure can the assessee claim its deduction from their income during the relevant previous years. The liability to pay tax on the income arises when it has arisen or accrued, and how the assessee deals with it subsequently does not affect that liability. The provisions of fiscal statutes must be strictly construed and, if the assessee falls within the letter of the law, he must be taxed. His liability to pay tax cannot be determined relying on its possible consequences of whether or not it would make any difference if the deduction is claimed in one year or the other. The consequences of the liability being held to arise in a previous year, different from the previous year in which the liability actually arose, are many. Q. No.1 "Whether,on the facts and in the circumstances of the case the provision made for increase in wages on the basis of Wage Board Award which became enforceable on the date of publication of the award on 20-7-1983 could be accepted as a liability having accrued on 19-5-1983 with in the previous year ended on 30-06 1983, when the assessee agreed before the Arbitrators that the award shall come in to operation from an earlier date ? is answered in the negative, against the assessee and in favour of the Revenue.

Q. No. 2 : Commission.-

The question whether liability has arisen to the assessee, during the relevant previous year, must be determined on a reading of the clauses in the agreement as a whole, and not piece meal. While the assessees agents had secured an order during the previous year, relevant to the assessment year 1984-85, supplies were effected in the subsequent previous years. The agreement entered into by the assessee with its two agents in Sri Lanka viz., Eastern Indian Company Limited and Global Commercial Agencies Limited must, therefore, be read as a whole to determine when the liability of the assessee, to pay commission to these two agents, arose. A plain reading of the relevant clauses in the agreement, entered into between the assessee and Global Commercial Agencies, shows that the agent was to be paid consideration of 1% on the FOB value of the machinery and equipment supplied by the assessee to the Sugar Corporation, and also on the consideration received by the assessee for services rendered in Sri Lanka towards erection and civil works. Payment of commission was required to be made only after supplies were made by the assessee to the Sugar Corporation. Clause (d) stipulated that the

commission shall be paid to the agents or their nominees in Sri Lanka. Clause (e) is relevant. It stipulated that the consideration, as referred to in the earlier clauses, would arise only on the assessee securing the order. It is evident therefore that, while the liability of the assessee to pay commission to its agents accrued, in terms of clause (e), on the agent securing the order, actual payment of commission was to be made, at 1% of its FOB value, on the supply of machinery and equipment to the client as well as on the consideration received by the assessee for services rendered by them for erection and civil works. As the assessee maintained its books of accounts, under the mercantile system of accounting, their liability to pay commission to the agents arose in the relevant previous year in which the agent secured the order; and as, in the present case, both the agents had secured orders from the clients in Sri Lanka, during the previous year relevant to the assessment year 1984-85, the Tribunal has, in our view rightly, held that the liability to pay commission accrued when the orders were secured by the agents, and not when supplies were effected by the assessee. This question is answered in the affirmative, in favour of the assessee, and against the Revenue.

Q. No. 3 : Insurance Premium.

For instance, under the very same insurance policy, if the risk, for which the policy was taken, had occurred before 30.06.1983, the assessee would not have been entitled to claim insurance for the damage or loss suffered by it, since the conditions of the insurance policy explicitly stipulated that the terms and conditions of the insurance policy would apply only on payment of the insurance premium. It is only on the date on which the insurance premium is paid or, in terms of the facility extended by the Insurance Corporation of Sri Lanka, the first installment, of the insurance premium payable in four installments, is actually paid, can the assessee claim that the liability to pay the insurance premium had arisen. As, admittedly, no amount was paid towards insurance premium, in the previous year 01.07.1982 to 30.06.1983 (as is evident from the letter of the Insurance Corporation of Sri Lanka dated 30.06.1983), the liability towards the insurance policy did not arise in the previous year 01.07.1982 to 30.06.1983, since the basic condition, relating to actual payment of insurance premium, had not been fulfilled by the assessee by then. This question is also answered in the negative, in favour of the Revenue and against the assessee.

Q. 4. Commission.

The obligation to pay commission, in terms of Clause(1) of the agreement, is on the procurement of an order by the agent, and the agent had procured the order during the previous year 01.07.1982 to 30.06.1983. Notwithstanding the fact that the obligation to make payment of commission was dependent on receipt of payment from the client, the liability to pay commission arose on the date on which the order was procured by the agent. The view taken by the Tribunal, that the liability arose, on the date on which the order was procured by M/S. Annapurna Agencies, is a possible view. Even if the view taken by the revenue is presumed also to be a possible view, it cannot be overlooked that, even if two views are possible, the view which is favourable to the assessee must be accepted while construing the

provisions of a taxing statute. This question is answered in the affirmative, in favour of the assessee and against the revenue.

(5) Liquidated damages-Held to be allowable as business expenditure followed order of earlier year. (AY. 1984-85)

CIT v. the K.C.P Ltd. (2018) 409 ITR 436 (AP)(HC), www.itatonline.org

S. 145 : Method of accounting – Valuation of stock – Valuation of HTM securities at cost or market value which ever is less is held to be valid. Merely because RBI guidelines direct a particular treatment to be given to particular asset, the same would not necessarily hold good that for the purpose of income chargeable to tax under the income-tax Act. [S. 28(i)] 1654

Dismissing the appeal of the revenue the Court held that Valuation of HTM securities at cost or market value which ever is less is held to be valid. Merely because RBI guidelines direct a particular treatment to be given to particular asset, the same would not necessarily hold good that for the purpose of income chargeable to tax under the income-tax Act. (AY. 2005-06)

PCIT v. Bank of Maharashtra (2018) 165 DTR 438 (Bom.)(HC)

S. 145 : Method of accounting – Valuation of stock – Tribunal taking only market rate one day later for determining valuation of stock-in-trade is held to be not consistent with law – Tribunal was directed to reconsider valuation of closing stock on the basis of principles established by law. 1655

Allowing the appeal of the assessee the Court held that; Tribunal taking only market rate one day later for determining valuation of stock-in-trade is held to be not consistent with law. Tribunal was directed to reconsider valuation of closing stock on the basis of principles established by law. Cost or market which ever is less. (AY. 2010-11)

Shri Ram Kutir Khandsari Udyog P. Ltd. v. CIT (2018) 404 ITR 185 (All.)(HC)

S. 145 : Method of accounting – License fee – Merely on the basis of billing income cannot be assessed unless the income accrues to the assessee-Rule of constancy is followed. [S. 5] 1656

Dismissing the appeal of the revenue the Court held that the manner in which the assessee has reflected his income by following mercantile system of accounting cannot be found fault with as the amounts attributable to the period post 31st March is income which has not accrued during the previous year relevant to subject assessment year. This is so as it is not due during the period for which the revenue seeks to bring it to tax. The appellant has not been able to show that the method followed by the respondent does not correctly bring out the income chargeable to the tax. The obligation in respect of the license fees billed for the entire calendar year is yet to be discharged at the end of the previous year related to the subject assessment year and would be due only in the next previous year related to the next assessment year. (Referred *CIT v. Nagri Mills Co. Ltd. (1981) 131 ITR 257(Guj) (HC)* and *CIT v. Excel Industries Ltd. (2013) 358 ITR 295(SC)*) (AY. 2004-05, 2006-07, 2008-09)

PCIT v. C. U. Inspections India (P.) Ltd. (2018) 254 Taxman 137 (Bom.)(HC)

1657 **S. 145 : Method of accounting – Mere fact that books of account were not supported by vouchers of payments received from patients, same could not be a ground to reject assessee's books of account and to make addition on estimate basis.**
Allowing the appeal of the assessee the Court held that; Mere fact that books of account were not supported by vouchers of payments received from patients, same could not be a ground to reject assessee's books of account and to make addition on estimate basis (AY. 2003-04)
Dr. Prabhu Dayal Yadav v. CIT (2018) 253 Taxman 191 / 162 DTR 12 (All.)(HC)

1658 **S. 145 : Method of accounting – Rejection of accounts was held to be not justified on the basis that the goods are sold at the price lower than the market price or purchase price – Law cannot oblige or compel a trader to make or maximise its profits. [S. 145(3)]**
Dismissing the appeal of the revenue, the Court held that, Rejection of accounts was held to be not justified on the basis that the goods are sold at the price lower than the market price or purchase price – Law cannot oblige or compel a trader to make or maximise its profits. Relied *CIT v. A. Raman & Co (1968) 67 ITR 11 (SC) S. A. Builders Ltd v. CIT (2006) 288 ITR 1 (SC)*. (ITA No. 813 of 2015 dt. 20-02-2018) (AY. 2005-06)
PCIT v. Yes Power and Infrastructure Pvt. Ltd. (2018) BCAJ-May. 63 (Bom.)(HC)

1659 **S. 145 : Method of accounting – Mere non-maintenance of stock register could not form the basis of rejection of books of accounts.**
Allowing the appeal of the assessee the Court held that; there was no finding by the AO that the books of accounts were not correctly maintained. The mere non-maintenance of the stock register cannot form the basis of rejection of the Assessee's books of accountS. As rightly pointed out by the Assessee, although a separate stock register may not have been maintained, a physical verification of the stock on yearly basis was undertaken and was reflected in the balance sheet of the Assessee. In a large number of decisions, including *Pandit Bros v. CIT [1954] 26 ITR 159 (Punj. & Har.)(HC) Bombay Cycle Stores Co. Ltd. v. CIT [1958] 33 ITR 13 (Bom.)(HC)* and *S. Veeriah Reddiar v. CIT [1960] 38 ITR 152 (Ker.)(HC)*, it has been held that the mere non-maintenance of stock register would not lead to the conclusion that profit of the Assessee could not be determined on the basis of the books of accounts maintained by it. (AY. 1999-2000)
Maruti Udyog Ltd. v. CIT (2018) 406 ITR 562 / 253 Taxman 60 / 161 DTR 1 (Delhi)(HC)

1660 **S. 145 : Method of accounting – Accrual – Mercantile system of accounting – Interest on fixed deposits – Interest accrued is taxable income and liable to tax as soon as it accrues. [S. 4,5]**
Allowing the appeal of the revenue the Court held that; interest for the period during which the amounts stood in deposit, accrued on the close of the previous year and became the income of that particular assessment year, liable to be taxed in that year. In view of the fact that the assessee had exercised the option to let the interest accumulate to the deposit and thereby earned compound interest by the end of the deposit term, it would not mulct any liability on the bank to pay tax on periodical accrual of interest to the Income-tax authorities. The bank's liability to deduct tax at source arose only

when it paid the interest. The amount that was to be received as interest, was known to the assessee and was accounted, as income accrued by way of interest in the account books of the assessee following the mercantile system. The interest income that accrued could not, by any stretch of imagination, be termed hypothetical income. (AY. 2009-10)
CIT v. Plantation Corporation of Kerala Ltd. (2018) 400 ITR 577 / 161 DTR 435 / 300 CTR 260 (Ker.)(HC)

S. 145 : Method of accounting – Valuation of stock – Opening and closing stock to be valued on same basis. [S. 143(3)] 1661
Dismissing the appeal of the revenue, the Court held that ; the findings of the Commissioner (Appeals) were based upon sound principles and an appraisal of not merely the bank stock statement but also the RG-I registers and Form 3CB duly audited by the assessee's auditors and accepted by the Excise Department. The appreciation of evidence was in no way unreasonable and the findings were in accordance with law. The Tribunal did not commit any error in affirming the order of the Commissioner (Appeals). (AY. 1999-2000)
PCIT v. Basti Sugar Mills Co. Ltd. (2018) 400 ITR 436 (Delhi)(HC)

S. 145 : Method of accounting – Accrual of income – Sale of prepaid mobile cards – Matching concept & principles of Revenue Recognition as per Accounting Standards (AS-9, AS-22) – Amount received on sale of prepaid cards to the extent of unutilized talk time did not accrue as income in the year of sale. [S. 4, 5, AS. 9, AS. 22] 1662
Revenue has raised the following question before the High Court

> "Whether on the facts and in the circumstances of the case the Tribunal erred in holding that the amount received on sale of prepaid cards to the extent of unutilized talk time did not accrue as income in the year of sale?"

Dismissing the appeal of the revenue the Court held that ;the appropriation of prepaid amount was contingent upon the respondent-assessee performing its obligation and rendering services to the prepaid customers as per the terms. If the respondent-assessee had failed to perform the services as promised, it would be liable and under an obligation to refund the advance payment received under the ordinary law of contract or special enactments, like the Consumer Protection Act. The aforesaid legal position would meet the argument of the Revenue that the prepaid amount received was not liable to be refunded or repaid, whether or not any services were rendered. In *J.K. Industries Ltd. and Anr. v. UOI [2008] 297 ITR 176 (SC)* and *CIT v. Woodward Governor India P. Ltd. [2009] 312 ITR 254 (SC)*, the Supreme Court has emphasized that the accounting standards as framed and followed by the auditors should be respected, for they provide harmonization of concepts and accounting principles and ensure discipline. Accounting methods followed continuously by the assessee for given period of time would ensure revenue neutrality and reflect true and correct income or profits.
Counsel for the Revenue has submitted that in some cases the prepaid cards would have lapsed and the subscribers may not have utilized or availed of services/talk time. Unutilized amount when the prepaid card lapses has to be treated as income or receipt of the respondent-assessee on the date when the card had lapsed. The respondent-assessee has accepted this position. Assessing Officer would be accordingly entitled to

examine this aspect when passing the appeal effect order. Looked at from all angles, we do not find any reason or good ground to interfere with the order passed by the Tribunal. The substantial question of law is accordingly answered in favour of the respondent-assessee and against the Revenue. The appeals are disposed of. We would clarify that the Assessing Officer while passing the appeal effect order, would ensure that the unutilized talk time has been accounted for and included in the receipt of the year in which the amount had lapsed and was forgone. (AY. 2003-04, 2004-05, 2009-10)
CIT v. Shyam Telelink Ltd. (2019) 410 ITR 31/ 173 DTR 89 / 260 Taxman 402 / 306 CTR 307 (Delhi)(HC), www.itatonline.org
CIT v. Sistema Shyam Teleservices Ltd. (2019) 410 ITR 16 / 173 DTR 89 / 306 CTR 307 (Delhi)(HC), www.itatonline.org

1663 **S. 145 : Method of accounting – Cost of construction – Payment only on account of architecture fee – Estimate of value is not justified – Matter remanded. [S. 142A]**
Assessee has paid only account of architecture fee – Estimate of value is not justified. Matter remanded. (AY. 2011-12 to 2012-13)
Ganpati Plaza v. ITO (2018) 165 DTR 25 / 193 TTJ 86 (Jaipur)(Trib.)

1664 **S. 145 : Method of Accounting – Percentage completion method – Accepted by department in earlier year, then there is no reason for AO to deviate from that method.**
Tribunal held that the assessee recognized revenue from incomplete projects on proportionate completion method by taking into account percentage of work done in project. Assessee was following this method of accounting continuously from past several years and same had been accepted by revenue. During year under consideration, AO determined income from project by taking into account advance received by assessee from its project on basis of gross profit declared by assessee from its completed projects without any change in facts and circumstances.
Tribunal held that once assessee was following method of accounting which was in accordance with method prescribed by ICAI for recognition of revenue from kind of projects assessee was undertaking and such method had been accepted by department in earlier year, there was no reason for AO to deviate from method followed by assessee without any change in facts and circumstances. Accordingly, the Hon'ble Tribunal ruled in favour of the assessee. (AY. 2008-09)
Dy.CIT v. Libra Techon Ltd. (2018) 195 TTJ 105 (UO) / 53 CCH 472 / 67 ITR 14 (SN) (Mum.)(Trib.)

1665 **S. 145 : Method of accounting – Works contract – Composite contract – First year of business – Rejection of books of account is not justified – GP rate of 7.3% is held to be proper. [S. 145(3)**
Dismissing the appeal of the revenue the Tribunal held that, entire work carried under a composite contract, genuineness of expenditure not in doubt, produced all relevant details and evidence, insignificant defects in supporting evidence not a reason for rejection of books of account. This being first year of business activity income declared by assessee at gross profit rate 7.44 per cent. Is held to be justified. (AY. 2012-13)
ITO v. Dreamax Infrastructure Developers (2018) 65 ITR 500 (Jaipur)(Trib.)

S. 145 : Method of accounting – Books of account not produced – Sale of furniture to Government offices – Treated as sales receipts and not contract receipts – Amount received was part of sales, hence the Assessing Officer was justified in treating same as contract receipt – Interest accrued – Assessable as income on accrual basis when the assessee is following mercantile system of accounting – Interest income accrued to assessee was duly recognized by debtor-Business expenditure – Not produced books of account and supporting vouchers for verification of expenditure booked by her in P&L account – Disallowance of expenditure is held to be justified – loan taken by assessee was found to be unexplained and was added to assessee's income as cash credits, claim of expenditure of interest paid on such loan being consequential to claim of loan which is not allowable as deduction. [S. 5, 37(1), 68, 194C, 26AC] 1666

During year, assessee supplied steel furniture to various Government offices and received consideration for same on which some of Government offices deducted TDS before making payment to assessee on account of supply of steel furniture. AO treated the receipts as part of sales and not contract receipts. As the assessee failed to produce books of account and supporting evidences to show that amount received by her was part of sales and not contract receipt Tribunal held that the AO was justified in treating amount in question as contract receipt. Interest accrued is assessable as income on accrual basis when the assessee is following mercantile system of accounting. Interest income accrued to assessee was duly recognized by debtor. As the assessee has not produced books of account and supporting vouchers for verification of expenditure booked by her in P&L account-Disallowance of business expenditure is held to be justified. When loan taken by assessee was found to be unexplained and was added to assessee's income as cash credits, claim of expenditure of interest paid on such loan being consequential to claim of loan which is not allowable as deduction. (AY. 2009-10)

Sonu Khandelwal (Smt.) v. ITO (2018) 173 ITD 67 / 195 TTJ 715 / 172 DTR 42 / 66 ITR 81 (SN) (Jaipur)(Trib.)

S. 145 : Method of accounting – Rejection of books – AO has to specify defects, non-compliance of accounting standards. 1667

Assessee followed method of accounting same as earlier years and the lower authorities never questioned its books of account. AO rejected books of account in impugned year and made a disallowance under provisions of the Act. Tribunal observed that there was no change in profit after recasting. AO did not point out any specific defect in maintenance of books of account and did not identify accounting standard has to be followed by the Assessee. Held rejection books of account by AO was not proper. (AY. 2008-09)

Google India (P.) Ltd. v. Jt. DIT(IT) (2018) 194 TTJ 385 (Bang.)(Trib.)

S. 145 : Method of accounting – Suppression of Sales – In absence of anything on record to show that claim of the Assessee that he was following London Bullion Market (LBM) for fixing rate for sale of bullion, it cannot be concluded that Assessee was suppressing sales. 1668

ITAT held that where Assessee has affected cash sales and had considered London Bullion Market (LBM) for fixing rate of sale of bullion, it could not be said that Assessee

had supressed sales merely because such rate of cash sales was lower than the rate at which sales were made to certain jeweller. ITAT noted that the diaries found during search in which higher rates were mentioned, pertained to different year and thus could not be relied upon. ITAT observed that it is the choice of the seller whether to follow LBM rate or association rate or rate followed by any other dealer or rate which is deemed fit considering the nature of the business; and that Revenue cannot force Assessee to sell its products at a particular rate. Accordingly, ITAT upheld the deletion of addition on account of suppression of sales and dismissed the Revenue's appeal.
Shiv Sahai & Sons (I) Ltd. v. Dy.CIT (2018) 66 ITR 409 (Chennai)(Trib.)
Naresh Prasad Agarwal v. Dy.CIT (2018) 66 ITR 409 (Chennai)(Trib.)

1669 **S. 145 : Method of accounting – If AO accepted books of accounts in preceding and subsequent years – Rejection of books based on hypothetical calculations was not justified.**
The nature of business was same in the current year and books of accounts were accepted by the AO in preceding as well as subsequent assessment years and hence Tribunal was of the opinion that AO should have brought on record some concrete material to reject the books of accounts following the rule of consistency. The Tribunal observed that AO had rejected the books of accounts because it showed variation in gross profit margins. It was further observed that assesse had submitted all the bills and supporting evidence along with computation of raw materials which were recorded in books of accounts. The AO was not able to point out any specific instance of round tripping of material purchased from different parties. Hence Tribunal was convinced that AO had rejected the books of accounts without verifying the books of accounts and provide any just reasons for the same. Tribunal was of the belief that hypothetical calculations were made by AO on basis of entries in books of accounts for making additions against the assesse without any jurisdiction. The AO had also not pointed out whether assesse had violated any accounting standards prescribed for maintenance of books of accounts. In the end, the Tribunal concluded that CIT(A) was correct on appreciation of facts and materials on records and correctly did not agree with the findings of the AO and hence there was no justification of AO to reject the books of accounts under section 145(3) of the Act. Thereby the department appeal was dismissed.
Dy. CIT v. Prakul Luthra (2018) 53 CCH 607 / 66 ITR 672 (Delhi)(Trib.)

1670 **S. 145 : Method of accounting – Project completion method – Land owner – Project completion method consistently followed by the assessee cannot be rejected on the ground that the percentage completion method is followed by its developer. [AS. 7]**
Allowing the appeal of the assessee the Tribunal held that ; project completion method had been consistently followed by assessee land owner and it had been accepted by revenue authorities in case of assessee for previous years. Accordingly the AO was not justified in applying percentage completion method on assessee for one year on selective basis merely, because it had been followed by its developer. (AY. 2012-13, 2013-14)
Ashoka Hi-Tech Builders (P.) Ltd. v. DCIT (2018) 172 ITD 231 / 172 DTR 225 / 196 TTJ 196 (Indore)(Trib.)

S. 145 : Method of accounting – Assessee followed mercantile system of accounting – Certain percentage of expenses were debited in the year and the balance was deferred – Also, certain percentage of income was booked in the year and balance was deferred for a period of 12 years – Held, the accounts were liable to be rejected. 1671

Where the assessee neither offered its income on accrual basis nor claimed deduction of the entire amount of expenses on due basis, it cannot be said that it followed mercantile system of accounting in true sense and therefore, the books were rightly rejected under proviso to S. 145(1) (AY. 1987-88 to 1992-93)

Sahara India Ltd. v. ACIT (2018) 168 ITD 1 / 164 DTR 49 / 192 TTJ 655 (TM)(Luck.) (Trib.)

S. 145 : Method of accounting – offering of income and allowability of expenses – Assessee floated a scheme wherein it received money in first year and the payment to the subscribers were to flow in subsequent years – held, taxing of income in first year and allowability of expenses in subsequent years based on cash system presented a skewed picture – Held, method of accounting should be such which does not affect the interest of the Revenue and at the same time should not put the assessee in undue hardship. Held, mercantile system to be followed. [S. 4] 1672

Assessee floated a scheme called 'Golden Key Scheme' whereunder the subscribers were required to pay full amount of ₹ 2,500/-and they were to be given NSC worth ₹ 1,000/- each simultaneously. Prizes were to be distributed to the subscribers throughout the tenure of scheme of 12 years. Such subscribers who could not get any prize were to receive gifts in the form of articles worth ₹ 2,500 at the end of scheme. The Tribunal held that cash system of accounting whereby, the entire receipts are taxed in first year and the deduction is allowed in subsequent years would give rise to artificial income in the first year and for the subsequent year there would be deductions without any corresponding income. The Tribunal held that such method of accounting presented a skewed picture. Method of accounting should be such which does not affect the interest of the Revenue and at the same time should not put the assessee in undue hardship. Held, mercantile system to be followed. It was further held that the expenses in the nature of prize money would be allowed in the first year itself on pro-rata basis. (AY. 1987-88 to 1992-93)

Sahara India Ltd. v. ACIT (2018) 168 ITD 1 / 164 DTR 49 / 192 TTJ 655 (TM) (Luck.) (Trib.)

S. 145 : Method of accounting – Failure to produce the necessary details as asked by the AO – Rejection of the books of accounts is held to be justified. [S. 145(3)] 1673

On Revenue's appeal, the Tribunal reversed the CIT(A)'s Order and held that where the AO had repeatedly asked the assessee to produce the necessary details but the books of account were not produced, the AO rightly rejected the books of accounts by invoking the provisions of section 145(3) of the Act. (AY. 2007-08)

ACIT v. Origin Express (I) North Pvt. Ltd. (2018) 63 ITR 71 (SN)(Delhi)(Trib.)

1674 **S. 145 : Method of accounting – Works contract – Genuineness of expenditure was not in doubt – First year of business – Rejection of books of account is held to be not valid – Income declared of 7.44% is held to be justified.**
Tribunal held that ; when the assessee produced all the relevant details and evidence insignificant defects in the supporting evidence could not a reason for rejection of the books of account. Once the expenditure claimed by the assessee was not found to be bogus or excessive the low profit declared by the assessee could not be a reason for rejection of the books of account. The entire work was carried out under a composite work order and the assessee was working as one enterprise. Production of a separate trading account for each activity was not called for. Therefore the assessee's case did not warrant the rejection of books of account under section 145(3) and the action of the Assessing Officer was not justified as not in accordance with the provisions of section 145(3). (AY. 2012-13)
ITO v. Dreamax Infrastructure Developers (2018) 65 ITR 500 / 194 TTJ 57 (UO) (Jaipur) (Trib.)

1675 **S. 145 : Method of accounting – Without pointing out any specific defects in the books of account, rejection of books of account and estimating higher income is not justified.**
Dismissing the appeal of the revenue the Tribunal held that, Without pointing out any specific defects in the books of account, rejection of books of account and estimating higher income is not justified. (AY. 2010-11)
ACIT v. Future Distributors (2018) 65 ITR 59 (SN)(Kol.)(Trib.)

1676 **S. 145 : Method of accounting – Where books of account is rejected and income is estimated, separate addition u/s. 40A(3), 68 or peak credit cannot be made. [S. 68. 145(3)]**
Allowing the appeal of the assessee the Tribunal held that; when the books of account is rejected there is no justification for the authorities below to make addition of ₹ 6,92,25,000/- under section 40A(3) of the I.T. Act and addition of ₹ 7,12,15,150/- under section 68 of the I.T. Act. In view of the above discussion, we set aside the orders of the authorities below and delete both these additions. (ITA No. 4709/Del/2017, dt. 23.03.2018)(AY. 2013-14)
Deepak Mittal v. ACIT (Delhi)(Trib.), www.itatonline.org

1677 **S. 145 : Method of accounting – Work-in-progress – Construction and development of properties – Interest paid on borrowings as component of work in progress was capitalised and also claimed as deduction for same interest under the head income from house property. Matter was remanded to the AO to consider AS 10 and AS 16 and decide according to law. [S. 22]**
Tribunal held that where the assessee which is in the business of construction, Interest paid on borrowings as component of work in progress was capitalised and also claimed as deduction for same interest under the head income from house property. Matter was remanded to the AO to consider AS 10 and AS 16 and decide according to law. (AY. 2010-11)
HGP Community (P) Ltd. v. ITO (2018) 170 ITD 18 (Mum.)(Trib.)

S. 145 : Method of accounting – Developer – Percentage completion method – Accounting Standards AS-1, AS-7 & AS-9, the Guidance Note on Accounting for Real Estate Transactions issued by the ICAI – Percentage of revenue recognised by the CIT(A) was held to be justified. [S. 145(2)] 1678

Tribunal held that the AO has not disputed the fact that the assessee is required to carry out the specified development activities and also the application of percentage of completion method of recognition of revenues but has missed this finer nuisance of interconnection between the economic substance of the transaction and application of percentage completion method of recognition of revenues while analyzing the guidance note issued by the ICAI and which has been rightly appreciated by the Id CIT(A). The stage of development of the township project has been determined by the assessee at 45. 73% with reference to entire land and development cost for the whole project and is not in dispute before us. The total revenues in respect of executed sale deeds till 31.03.2012 comes to ₹ 5,44,46,105 and 45. 73% thereof comes to ₹ 2,48,98,204 and after allowing credit for revenues already recognized in the previous year amounting to ₹ 37,59,918, the revenues for the year have been rightly determined by the Id CIT(A) at ₹ 2,11,38,286 and we hereby affirm his findings in this regard. (ITA No. 105, 119,172,106 & 120 /JP/2017, dt. 22. 12. 2017)(AY. 2012-13)

Vastukar Township Pvt. Ltd. v. DCIT (Jaipur)(Trib.), www.itatonline.org

S. 145A : Method of accounting – Valuation – Inclusion of excise duty in closing stock – Tribunal remanded the matter – No substantial question of law. [S. 145, 260A] 1679

Tribunal held that S. 145A have overriding effect on the provisions of S. 145 and has further held that the said provisions are applicable not only closing stock but on inventory i.e opening and closing stock both and even on purchases and sales and matter remanded for re computation. On appeal by the revenue the Court held that no substantial question of law. (AY. 20056-06, 2008-09, 2009-10

PCIT v. Bridgestone India (P) Ltd. (2018) 167 DTR 427 (MP)(HC)

S. 145A : Method of accounting – Section 145A inserted w.e.f. April 1, 1999 are clarificatory in nature and would be applicable even for AYs prior to AY 1999-2000 – Excise duty has to be included in the value of closing stock of finished goods-Order of Tribunal is set aside. [S. 147] 1680

On appeal, the High Court held that the provisions of Section 145A of the Act inserted w.e.f. April 1, 1999 are clarificatory in nature and would be applicable even for assessment years prior to AY 1999-2000. Further, the excise duty becomes payable the moment excisable goods are manufactured, hence excise duty has to be included in the value of closing stock of finished goods irrespective of the fact whether the assessee has paid the excise duty or not. Appeal of the revenue is allowed. (AY. 1997-1998)

CIT v. Chhata Sugar Company Ltd. (2018) 171 DTR 330 / 307 CTR 63 (All.)(HC)

S. 145A : Method of accounting – Valuation – Stock – Trading in shares – Valuation of shares according to net realisable value is held to be justified. [S. 145(2)] 1681

Allowing the appeal of the assessee the Court held that, the year under consideration was the first year of business of the assessee in trading of stocks and shares. The value

adopted by the assessee was the value realised by the assessee upon sale of the shares and such a contingency was clearly covered in clause 8 of Accounting Standard-4, which deals with events occurring after the date of the balance-sheet. The method was justified. (Notification Nos. 9949 [F. No. 132/7/95-TPL]/S. O. 69(E)(1996) 218 ITR 1 (St), and 31/2018, dt. January 25, 1996 and March 31, 2005) (AY. 2000-01)
P. Amarnath Reddy v. DCIT (2018) 409 ITR 645 (Mad.)(HC)

1682 **S. 145A : Method of accounting – Valuation – Advance Custom duty paid adjusted against excise duty payable – Allowable as deduction – Directed the AO to recast profit and loss account under inclusive method. [S. 43B]**
Tribunal held that advance Custom duty paid adjusted against excise duty payable is allowable as deduction. Followed, *CIT v. Samtel Colour Ltd. (2009) 184 Taxman 120 (Delhi) (HC)*. However in view of S. 145A Tribunal directed the AO to recast Profit and loss account under 'Inclusive method' as per mandate of the said section. (AY. 2008-09)
Maruti Suzuki India Ltd. v. ACIT (2018) 191 TTJ 148 (Delhi)(Trib.)

1683 **S. 145A : Method of accounting – Valuation – Excise duty and taxes – Recorded purchases net of tax – Not required to add excise duty and other taxes while valuing closing stock. [Accounting Standard 2]**
Tribunal held that, if the assessee followed the exclusive method of accounting, i.e., when the assessee accounted for the excise duty and taxes paid or charged under the head "current asset" and recorded purchases net of taxes then as per the accounting method the assessee was not required to add the excise duty and other taxes while valuing the closing stock or else the figures of trading/manufacturing account would stand distorted. The assessee followed the exclusive method of accounting for many years and, therefore, the action taken by the Assessing Officer was not justified. Followed, *CIT v. Indo Nippon Chemicals Co. Ltd. (2003) 261 ITR 275 (SC)*
DCIT v. Mittal Corporation Ltd. (2018) 65 ITR 65 (SN) (Indore)(Trib.)

1684 **S. 147 : Reassessment – Based on subsequent finding of DRP that there was no PE of the assessee in India – AO dropped reassessment proceedings – Order passed by High Court upholding validity of those proceedings was to be set aside – SLP granted. [S. 148]**
In course of a survey carried out at the premises of assessee's Indian subsidiary, a non-resident company, AO found that the subsidiary formed assessee's PE in India. Assessment of non-resident assessee was reopened. Subsequently, DRP recorded a finding that there was no PE of assessee in India. AO passed an order dropping the reassessment proceedings Supreme Court set aside the judgement of the High Court which upheld the validity of the reassessment proceedings.
Principal Officer, Honda Access Asia & Oceania Co. Ltd. v. ADIT (2018) 168 DTR 425 / 255 Taxman 77 / 304 CTR 108 (SC)
Principal Officer, Honda Access Asia & Oceania Co. Ltd. v. ADIT (2018) 168 DTR 426 / 255 Taxman 77 (SC)
Editorial : Principal Officer, Honda Access Asia & Oceania Co. Ltd. v. ADIT(IT) (2014) 271 CTR 663/ 108 DTR 201 /368 ITR 401/226 Taxman 204 (All) (HC) is set aside

S. 147 : Reassessment – Notice – Non-resident – Permanent-establishment – Tax deduction at source – Survey – Reassessment proceedings was held to be valid by High Court – Subsequent finding of DRP that there was no permanent of assessee in India, AO has dropped reassessment proceedings – Order passed by High Court up holding validity of proceedings was set aside – DTAA – India – Korea. [S. 148, Art. 5] 1685

Reassessment proceedings was held to be valid by High Court. Subsequent finding of DRP that there was no permanent of assessee in India, AO has dropped reassessment proceedings. Accordingly the order passed by High Court up holding validity of proceedings was set aside and appeals are allowed. (AY. 2004-2005)

Principal Officer, L.G. Electronics Inc. v. ADIT (IT) (2018) 255 Taxman 77 / 168 DTR 426 / 304 CTR 109 / 101 CCH 273 (SC)

Editorial : Order in Principal Officer, L.G. Electronics Inc. v. ADIT (IT)(2014) 368 ITR 401/226 Taxmann 204 / 271 CTR 663 (All.)(HC) is set aside.

S. 147 : Reassessment – Clerical mistake – The object and purpose behind S. 292B is to ensure that technical pleas on the ground of mistake, defect or omission should not invalidate the assessment proceedings, when no confusion or prejudice is caused due to non-observance of technical formalities. [S. 148, 292B] 1686

Dismissing the petition the Court held that; notice issued in the name of a company which does not exist upon its conversion into a LLP is valid if there is material to show that the issue in the name of the company was a clerical mistake. The object and purpose behind S. 292B is to ensure that technical pleas on the ground of mistake, defect or omission should not invalidate the assessment proceedings, when no confusion or prejudice is caused due to non-observance of technical formalities. The Court also observed that, in the peculiar facts of this case, we are convinced that wrong name given in the notice was merely a clerical error which could be corrected under S. 292B of the Income-tax Act. (AY. 2010-11)

Skylight Hospitality LLP v. ACIT (2018) 254 Taxman 390 / 166 DTR 421 / 303 CTR 130 (SC), www.itatonline.org

Editorial. Order in Skylight Hospitality LLP v. ACIT (2018) 254 Taxman 109 / 166 DTR 409 / 303 CTR 131 (Delhi) (HC) is affirmed

S. 147 : Reassessment – Change of opinion – Deduction was allowed in the original assessment, on the same facts to hold that the excess deduction was allowed will be change of opinion therefore,reassessment was held to be bad in law. [S. 10A,148] 1687

Dismissing the appeal of the revenue the Court held that; initiation of the re-assessment proceedings under Section 147 by issuing a notice under Section 148 merely because of the fact that now the Assessing Officer is of the view that the deduction under Section 10A was allowed in excess, was based on nothing but a change of opinion on the same facts and circumstances which were already in his knowledge even during the original assessment proceedings. Court also observed that,in order to constitute "change in opinion", the assessment earlier made must either expressly or by necessary implication have expressed an opinion on the subject matter of reopening. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the AO any opinion on the questions that are raised in the proposed re-assessment proceedings.

The reassessment cannot be struck down as being based on "change of opinion" if the assessment order does not address itself to the aspect sought to be examined in the re-assessment proceedings. (*CIT v. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC)* (AY. 2001-02)
ITO v. Techspan India (P) Ltd. (2018) 404 ITR 10 / 165 DTR 130 / 302 CTR 74 / 255 Taxman 152 (SC), www.itatonline.org
Editorial : Techspan India (P) Ltd v. ITO (2006) 283 ITR 212 / 203 CTR 550 (2007) 158 Taxman 182 (Delhi) (HC)

1688 **S. 147 : Reassessment – Transfer pricing – Permanent establishment – Income had already been disclosed by the Indian subsidiary and found by the Transfer Pricing Officer (TPO) to be at arm's length. Reassessment was held to be bad in law. [S. 92C, 148]**
Allowing the appeal of the assessee the Court held that, The AO is not entitled to issue a reopening notice only on the basis that the foreign company has a permanent establishment (PE) in India if the transactions in respect of which it is alleged that there has been an escapement of income had already been disclosed by the Indian subsidiary and found by the Transfer Pricing Officer (TPO) to be at arm's length. (AY. 2004-05)
Honda Motor Co. Ltd. v. ADCIT (2018) 164 DTR 97 / 301 CTR 601 / 255 Taxman 72 (SC)
Editorial : Principal Officer, LG. Electronics Inc v. Asstt. DIT(IT) (2014) 271 CTR 663/ 108 DTR 201 (All) (HC) was set a side.

1689 **S. 147 : Reassessment – After the expiry of four years – Income from Mushroom Cultivation as Agricultural Income. The ground that the petitioner had failed to disclose all the relevant material was not incorporated in the reasons supplied to the petitioner – Court directed the Counsel to furnish the compilation of judgments on reassessment proceedings to the Commissioner to study the same. Even for reopening the assessment with in four years there are certain jurisdictional requirements that must exist before the power of reassessment is exercised. Strictures passed against the AO for making comments which are highly objectionable and bordering on contempt and for being oblivious to law. [S. 2(1A), 10(1), 148]**
Allowing the petition the Court held that, the reassessment proceedings to deny the exemption u/s 10(1) of the Act in respect of Mushroom Cultivation was held to be not valid as there no failure on the part of the assessee to disclose the relevant material factS. In the Course of original assessment proceedings the assessee has disclosed fully and truly all material facts. Court also directed the Counsel to furnish the compilation of judgments on reassessment proceedings to the Commissioner to study the same. Even for reopening the assessment with in four years there are certain jurisdictional requirements that must exist before the power of reassessment is exercised. Court also passed strictures against the AO for making comments which are highly objectionable and bordering on contempt and for being oblivious to law. (AY. 2013-14)
Zuari Foods and farms Pvt. Ltd. v. ACIT (2018) 408 ITR 279 (Bom.)(HC), www.itatonline.org

S. 147 : Reassessment – After the expiry of four years – Transfer of shares – There was no failure to disclose material facts – Reassessment is bad in law. [S. 148, R. 40B] 1690
Allowing the petition the Court held that; if the primary facts were placed before the Assessing Officer he would have been in a position to take a decision thereupon, and it could not amount to failure on the part of the assessee to withhold to furnish the material particulars. The assessee had placed on record the necessary information for the purpose of assessing the income as regards the transfer of shares. Production of form 29B under rule 40B was a requirement at the time of original assessment and during the scrutiny assessment, the assessee was specifically called upon to respond to certain queries, which the assessee did what was sought to be done by the Assessing officer in reopening of the assessment by issuing notice under S. 148 after a period of four years was on a mere change of opinion and the reason of non – furnishing of the form was only an attempt to exercise a non – existent power. The assessee did not fail to disclose all the material facts necessary for the assessment. Referred *Gemini Leather Store v. ITO (1975) 100 ITR 1(SC)* (AY. 2010-11)
Dempo Brothers Pvt. Ltd. v. ACIT (2018) 403 ITR 196 (Bom.)(HC)

S. 147 : Reassessment – After the expiry of four years – Undisclosed investment – Valuation of shares – All facts were disclosed in the original return – Reassessment notice for valuing the shares at ₹ 35 as per Govt valuer's report as against the purchase value of ₹ 10 per share, though the value as per rule 11U was less than ₹ 5 per share. Reassessment proceeding is stayed by passing interim relief in terms of prayer clause (d) of the Act. [S. 56(2)(vii), 69B, 148, R. 11UA] 1691
Admitting the petition, staying the proceedings of reassessment, the Court held that, in the assessment its self the AO mentions that the value of shares is less than ₹ 5 per share on application of the Income-tax Rules. There was complete disclosure of facts during regular assessment proceedings. As all facts were disclosed and discussed in the original assessment proceedings, further on the application of method of valuation as mandated by the Explanation to S. 56(2) (vii), prima facie, the AO could not have reason to believe that the income chargeable to tax has escaped assessment. Accordingly the interim relief is granted as per prayer Clause (d) of the petition. (AY. 2010-11)
Sharukh Khan v. CIT (2018) 253 Taxman 487 / 163 DTR 378 / 302 CTR 62 (Bom.)(HC)

S. 147 : Reassessment – After the expiry of four years – Carry forward the loss – No failure to disclose all material facts – Reassessment is bad in law. [S. 79, 148] 1692
Dismissing the appeal of the revenue the Court held that, the only basis of reopening of assessment by the AO in the regular assessment did not apply provisions of S. 79 of the Act to determine the taxable income. This non application of mind by the AO while carrying out assessment cannot lead to the conclusion that there was failure on the part of the Assessee to truly and fully disclose all material facts necessary for assessment. As there was No failure to disclose all material facts-Reassessment is bad in law. Followed *Calcutta Discount Company Ltd v. ITO (1961) 41 ITR 191 (SC)* (ITA No. 802 of 2015 dt. 29-1-2018) (AY. 2003-04)
ACIT v. Kalyani Hayes Lemmerz Ltd. (2018) BCAJ-April – P 72 (Bom.)(HC)

1693 **S. 147 : Reassessment – After the expiry of four years – There was no failure to disclose all material facts – Reassessment was held to be not valid – Alternative remedy is no bar to file writ petition if the action of the authority is beyond their jurisdiction. [S. 148]**

Allowing the petition the Court held that; the statutory requirement, that the assessee had failed to fully and truly disclose all material facts, was not established by the Department. Furthermore, there were no particulars in the reasons recorded, which alone could have been the foundation for the issuance of notice after the prescribed period of four years under section 148 to reopen the assessment invoking the provisions of section 147. There was no statement in the reasons recorded as to which material the assessee had failed to disclose. Even though the assessee could have pursued the alternative remedy under the Act, the assessee was entitled to writ remedy under article 226 of the Constitution, if the action of the authorities in reopening the assessment was beyond their jurisdiction. (AY. 2010-11)

Cedric De Souza Faria v. DCIT (2018) 400 ITR 30 (Bom.)(HC)

1694 **S. 147 : Reassessment – After the expiry of four years – Special audit report subsequent to assessment indicated claims made by the assessee for deduction and expenditures were excessive – Prima facie, no benefit of first proviso to S. 147 to assessee – Order disposing objections – Considered to be valid if each objection has been considered and found unacceptable-Reopening sustainable. [S. 142(2A), 148]**

Held by the High Court that :

(i) Basis special audit report, the AO was of the opinion that assessee's claim for deduction / expenditures are excessive, hence it cannot be said that AO did not have reasonable belief.

(ii) Though criminal proceedings initiated on the basis of the special audit report was quashed by HC, the considerations which come into play in criminal and tax proceedings are entirely different.

(iii) Order disposing objections cannot be said to be suffering from non-application of mind if AO has dealt with such objections in some detail in as much as each objection has been considered and found unacceptable. (AY. 2010-2011)

Multi Commodity Exchange of India Ltd. v. DCIT (2018) 304 CTR 551 / 168 DTR 217 / 91 taxmann.com 265 (Bom.)(HC)

Editorial : SLP of assessee is dismissed Multi Commodity Exchange of India Ltd. v. DCIT (2019) 260 Taxman 243 (SC)

1695 **S. 147 : Reassessment – After the expiry of four years-Failure to disclose material facts – Failure to deduct tax at source – Discount on sales- Revenue has not able to show that the assessee has claimed discount on sales as expenditure,therefore Stay was granted in terms of prayer (d) of the petition. Court also observed that the AO is free to examine all issues in terms of Explanation III to S. 147 of the Act. [S. 148]**

Admitting the petition the Court held that ; Revenue has not able to show that the assessee has claimed discount on sales as expenditure accordingly the stay was granted in terms of prayer (d) of the petition. Court also observed that we may point out that we do not accept the Petitioner's contention as urged in the objection and in the Petition,

that because an earlier reopening notice dated 19 March 2015 under Section 148 of the Act is pending, the Revenue is barred from issuing the impugned notice. We also clarify that in the reassessment proceedings consequent to the reopening notice dated 19 March 2015, would not in any manner be fettered by virtue of this admission. The AO is free to examine all issues in terms of Explanation III to S. 147 of the Act. (AY. 2010-11)
Novartis India Ltd. v. CIT (2018) 165 DTR 198 (Bom.)(HC)

S. 147 : Reassessment – After the expiry of four years – Explanation 3, to S. 147 by Finance (No. 2) Act, 2009 – After issuing a notice under S. 148, he accepts the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income – If he intends to do so, a fresh notice under S. 148 would be necessary – Assessing Officer has no power to reassess other income not mentioned in notice under S 148.[S. 148] 1696

Allowing the appeal the Court held that, after issuing a notice under S. 148, he accepts the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income – If he intends to do so, a fresh notice under section 148 would be necessary. Assessing Officer has no power to reassess other income not mentioned in notice under S 148. Explanation 3 to section 147 was inserted by the Finance (No. 2) Act of 2009. The effect of the Explanation is that once an Assessing Officer has formed a reason to believe that income chargeable to tax has escaped assessment and has proceeded to issue a notice under section 148, it is open to him to assess or reassess income in respect of any other issue though the reasons for such issue had not been included in the reasons recorded under section 148(2). However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepts the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary. Accordingly, if the Assessing Officer was to reopen the finding rendered in the scrutiny assessment, it would clearly amount to change of opinion, which was impermissible. The reassessment was not valid. (AY. 1997-98)
Tractors And Farm Equipment Ltd. v. ACIT (2018) 409 ITR 369 / (2019) 175 DTR 312 (Mad) (HC)

1697 **S. 147 : Reassessment – After the expiry of four years – No failure to disclose material facts – Reassessment is bad in law. [S. 148]**

Dismissing the appeal of the revenue the Court held that, there was no failure to disclose material facts, the details were furnished in the course of original assessment proceedings as part of annexure. Accordingly the reassessment is held to be not valid. (AY. 2008-09)

CIT v. Santech Solutions Pvt. Ltd. (2018) 409 ITR 301 (Mad.)(HC)

Editorial: SLP dismissed due to low tax effect, PCIT v. Santech Solutions Pvt. Ltd. (2019) 263 Taxman 248 (SC)

1698 **S. 147 : Reassessment – After the expiry of four years – Power of reassessment is not one of review and the reasons recorded has to emanate from some material coming to notice of Assessing Officer after original assessment – Reassessment is held to be bad in law. [S. 80IA, 148]**

Dismissing the appeal of the revenue the Court held that ; power of reassessment is not one of review and the reasons recorded has to emanate from some material coming to notice of Assessing Officer after original assessment. Accordingly the reassessment is held to be bad in law. Court also held that,if in course of reopening, for escapement of income, it comes to notice of Assessing Officer that any other item other than that recorded for purpose of re-opening, has escaped assessment, Assessing Officer is bound to assess such item also in course of re-assessment. (AY. 1999-2000)

CIT v. Malayala Manorama Co. Ltd. (2018) 258 Taxman 238 / (2019) 410 ITR 423 (Ker.) (HC)

1699 **S. 147 : Reassessment – After the expiry of four years – Full and true disclosure – Merger of AO's order with order of CIT(A) – AO having rejected the claim of deduction under S. 80-IA(4) and the CIT(A) allowing the claim in its entirety – AO cannot reopen this very claim for possible disallowance of part thereof.**

HELD by the High Court that when the CIT(A) was examining assessee's claim, it was open for the Revenue to point out to the CIT(A) that even if in principle the claim is allowed, a part thereof would not stand the scrutiny of law. Also, the CIT(A) could examine such issue suo motu. However, if the claim is allowed in entirety by CIT(A), then the AO cannot revisit such a claim and seek to disallow a part thereof as this would be contrary to the principle of merger statutorily provided and judicially recognized by law. (AY. 2010-2011)

Gujarat Enviro Protection & Infrastructure Ltd. v. DCIT (2018) 91 Taxman.com 436 / 168 DTR 85 (Guj.)(HC)

1700 **S. 147 : Reassessment – After the expiry of four years – Method of accounting – All material facts disclosed and examined by assessing Officer – Notice is quashed. [S. 145A, 148]**

Allowing the petition the Court held that; it was not open to the Assessing Officer to re-examine the entire issue which would be merely on a change of opinion. According to the documents on record the entire issue of the assessee's treatment of the unutilised

CENVAT credit in the valuation of closing stock had been scrutinised during the original assessment proceedings. The Assessing Officer was aware of the methodology adopted by the assessee. He had raised multiple queries and the assessee had replied to such queries. It was only after such scrutiny that the Assessing Officer had passed the order of assessment, in which, after recording detailed reasons, he had made limited disallowance in respect to the unutilised CENVAT credit. Accordingly the notice of reassessment is bad in law. (AY. 2011-12)
Adani Enterprise Ltd. v. ACIT (2018) 408 ITR 453 / (2019) 261 Taxman 64 (Guj.)(HC)

S. 147 : Reassessment – After the expiry of four years – No failure to disclose material facts – Deduction was allowed after scrutiny – Reassessment is held to be bad in law – Revision application of the assessee was allowed. [S. 10B, 143(3), 148, 264] 1701
In this petition the assessee challenged the order of Commissioner rejecting the application under S. 264 of the Act to quash the reassessment which was passed after the expiry of four years. Allowing the petition the Court held that, the notice for reopening of assessment came to be issued beyond a period of four years from the end of assessment year in question. The Assessing Officer in the original assessment proceedings had examined the assessee's claim to deduction under section 10B of the Income-tax Act, 1961. He wanted to be specific about the assessee's claim and therefore, he raised queries in respect thereof in response to which the assessee placed a number of documents and materials on record. After scrutiny, the Assessing Officer passed the original order of assessment in which he did not reject the claim of deduction under section 10B. In fact, he accepted the claim substantially making a minor disallowance to the extent the assessee of foreign exchange payment not received within the prescribed period. There was no failure on the part of the assessee to disclose necessary facts. Both on the ground of non-failure of the assessee to disclose necessary facts and on the ground of scrutiny during original assessment proceedings, notice of reopening on this issue was not permissible. (AY. 2007-08)
Hitech Outsourcing Services v. PCIT (2018) 408 ITR 129 (Guj.)(HC)
Editorial : SLP of revenue is dismissed, CIT v. Hitech Outsourcing Services (2018) 406 ITR 38 (St)

S. 147 : Reassessment – After the expiry of four years – Export oriented undertaking – Mentioning of wrong year of commencement of manufacture in Form 56G, when other materials furnished indicated correct year of commencement of manufacture is not a case of failure to disclose material facts – The proviso to S. 147 cannot be invoked on the Assessing Officer's omission or mistake – Reassessment notice is held to be not valid – Notice is not barred by limitation. [S. 10B,148] 1702
Allowing the petition the Court held that, mentioning of wrong year of commencement of manufacture in Form 56G, when other materials furnished indicated correct year of commencement of manufacture is not a case of failure to disclose material facts. The proviso to S. 147 cannot be invoked on the Assessing Officer's omission or mistake. Reassessment notice is held to be bad in law. (AY. 2010-11)
MBI Kits International v. ITO (2018) 408 ITR 1 / 172 DTR 89 / (2019) 306 CTR 125 (Mad.) (HC)

1703 **S. 147 : Reassessment – After the expiry of four years – Survey – Return filed in response to notice u/s 148 was accepted by the Assessing Officer after disallowance of certain expenses – No new material or information – Reopening is bad in law. [S. 133A, 148]**
Allowing the petitions, that in the absence of any new information or material which did not form part of the original assessment proceedings, it was not open to the Assessing Officer to frame a fresh assessment, that too, in a case where the notice of reopening had been issued beyond a period of four years. The legal conclusions on the basis of the factual analysis the Assessing Officer had arrived at, were based on the material already on record during previously reopened assessment proceedings. The reasons proceeded concededly only on the material available on record. Such relevant material included the notings in the assessee's diary which recorded a figure of ₹ 5,96,914 as outstanding fees to be collected and other entries referring to certain outstanding payments. Permitting the Assessing Officer to re-examine the entire issue once again, looking at the materials on record from a different angle would destroy the very concept of finality of an assessment order which could be permitted only on legally recognized grounds. The notices issued under section 148 for reopening the assessment were to be set aside. (AY. 2010-11)
Jalil Abdulbhai Shaikh v. DCIT (2018) 407 ITR 418 / 254 Taxman 26 (Guj.)(HC)
Editorial : SLP of revenue is dismissed Dy. CIT v. Jalil Abdulbhai Shaikh (2019) 261 Taxman 2 (SC)

1704 **S. 147 : Reassessment – After the expiry of four years – Shell companies – Search of third person revealing that transaction disclosed by Assessee during original assessment was bogus – Notice is held to be valid. [S. 148]**
Dismissing the petition, the court held that after conclusion of the assessment order under S. 143(3), the Assessing Officer received information that the disclosure, as made by the assessee in the return, was bogus. The material was in no way unreliable or unauthentic, inasmuch as it was on the basis of the statement of the person, running the shell company, who himself had confessed that the assessee was one of the companies which had received a sum of ₹ 14,70,15,000 as security premium during the assessment year 2008-09. The notice of reassessment was valid. (AY. 2008-09)
Sairam Commercial Pvt. Ltd. v. UOI (2018) 406 ITR 281 (All.)(HC)

1705 **S. 147 : Reassessment – After the expiry of four years – Income forming subject matter of appeal – Reassessment is held to be not valid. [S. 148, 151]**
Assessments cannot be reopened under section 147 of the Income-tax Act, 1961 by the Assessing Officer in relation to income arising out of a matter which was the subject matter of an appeal. Accordingly, that the investment agreement dated August 12, 2009 being the subject matter of the appeals before the Appellate Tribunal and, thereafter, before the court, it was not open to the Assessing Officer to treat it as the foundation for forming an opinion that income chargeable to tax had escaped assessment in the context thereof. (AY. 2010-11)
Anne Venkata Vishnu Vara Prasad v. ACIT (2018) 405 ITR 491 / 169 DTR 377 / 304 CTR 476 (T&AP)(HC)
Yelamanchili Venkta Ramana v. ACIT (2018) 405 ITR 491 / 169 DTR 377 / 304 CTR 476 (T&AP)(HC)

S. 147 : Reassessment – After the expiry of four years – Notice is not mentioning of failure to disclose material facts – Reassessment is not valid. [S. 148, 151] 1706

Allowing the petition the Court held that; the Assessing Officer did not even state either in the notices dated March 31, 2017 issued under section 148 of the Act or in the letters dated September 22, 2017 and October 11, 2017 furnishing reasons for issue of such notices, that the assessee had failed to disclose fully and truly all material facts necessary for assessment. Further, she did not also mention that she had reason to believe that the income chargeable to tax which had escaped assessment would amount to or was likely to be ₹ one lakh or more. The notice issued beyond four years of assessment was not valid. (AY. 2010-11)

Anne Venkata Vishnu Vara Prasad v. ACIT (2018) 405 ITR 491 / 169 DTR 377 / 304 CTR 476 (T&AP)(HC)

Yelamanchili Venkta Ramana v. ACIT (2018) 405 ITR 491 / 169 DTR 377 / 304 CTR 476 (T&AP)(HC)

S. 147 : Reassessment – After the expiry of four years – Transaction disclosed in original assessment proceedings discovered to be bogus, reassessment is held to be valid. [S. 148] 1707

Dismissing the petition the Court held that, the disclosure of a transaction at the time of the original assessment proceedings does not protect the assessee from a reassessment under S 147 if the Assessing Officer has information that indicates that the transaction is sham or bogus. Reassessment is held to be valid. (AY. 2008-09)

New Delhi Television Ltd. v. DCIT (2017) 298 CTR 230 / (2018) 405 ITR 132 (Delhi)(HC)

S. 147 : Reassessment – After the expiry of four years – Information from investigation wing – No averment of failure on part of the assessee to disclose fully and truly all material facts necessary for assessment – Reassessment is held to be not valid. [S. 148] 1708

Dismissing the appeal of the revenue the Court held that ; there was no averment of failure on part of assessee to disclose fully and truly all material facts necessary for assessment. Merely on the basis of information from investigation wing,reassessment was held to be not valid . (AY. 2005-06)

PCIT v. Light Carts P. Ltd (2018) 404 ITR 574 (All.)(HC)

S. 147 : Reassessment – After the expiry of four years – Firm – Partner – Pension paid to retiring partner which was allowed as deduction-Reassessment was held to be not valid. [S. 37(1), 148, 184] 1709

Allowing the petition the Court held that; all details regarding pension was furnished in the original assessment proceedings. As all necessary facts were already on record, duly disclosing that there was no failure on part of assessee to disclose primary facts, reassessment to disallow said payment was unjustified. (AY. 2010-11, 2011-12)

Deloitte Haskins & Sells Chartered Accounts v. DCIT (2018) 253 Taxman 490 (Guj.)(HC)

Editorial : SLP of revenue is dismissed as the tax effect is less than ₹ 1. Crore Dy.CIT v. Deloitte Haskins & Sells Chartered Accounts (2019) 261 Taxman 449 (SC)

1710 **S. 147 : Reassessment – After the expiry of four years – Cash credits – Share application money – Shell companies Bogus accommodation entries – Report from investigation wing having live link with formation of belief – Proviso added by the Finance Act, 2012 with effect from April 1, 2013 did not change the position – Reassessment was held to be valid. [S. 68, 143(3), 148]**

Dismissing the petition the Court held that; the requirement of full and true disclosure on the part of the assessee was not confined to filing of the return alone but continued throughout during the assessment proceedings also. The Assessing Officer had received fresh information after the assessment was completed, prima facie suggesting that considerable income chargeable to tax had escaped assessment and that such escapement was on account of failure on the part of the assessee to disclose truly and fully all material facts. AO has recorded the reason which showed that the report from investigation wing having live link with formation of belief. Court also observed that proviso added by the Finance Act, 2012 with effect from April 1, 2013 did not change the position, accordingly the reassessment was held to be valid. (AY. 2010-11)

Aradhna Estate Pvt. Ltd. v. DCIT (2018) 404 ITR 105 / 165 DTR 72 / 304 CTR 531 (Guj.) (HC)

1711 **S. 147 : Reassessment – After the expiry of four years – Interest on deposits not disclosed in return – Details were available in the books of account or the balance – sheet or profit and loss account could not absolve the assessee from a true and correct disclosure of material facts necessary for assessment. Explanation 1 to S.147 is applicable – Reassessment is valid. [S. 148]**

Allowing the appeal of the revenue the Court held that, interest on deposits was not disclosed in return just because details were available in the books of account or the balance-sheet or profit and loss account could not absolve the assessee from a true and correct disclosure of material facts necessary for assessment. Explanation 1 to S. 147 is applicable. Reassessment was held to be valid. (AY. 1994-95)

CIT v. Tata Ceramics Ltd. (2018) 403 ITR 389 / 168 DTR 417 (Ker.)(HC)

1712 **S. 147 : Reassessment – After the expiry of four years – There was an outside alien material which had later on come on record therefore reassessment was held to be valid. [S. 148]**

HELD by the High Court, the Assessee cannot succeed as :

(i) Assessee never challenged the CIT(A)'s order giving direction for re-opening and the directions of CIT(A) were based on the material which came before him during the Appellate proceedings by assessee's own account of providing correct valuation of land in question,

(ii) The directions issued by Appellate Authorities including Tribunal during proceedings need not be in all cases confined to saving of limitation in terms of S. 150 of the Act if such directions are specific and in such case it should go beyond mere saving of limitation On facts,there was an outside alien material which had later on come on record therefore reassessment was held to be valid. (AY. 2005-06).

Senitax Chemicals Ltd. v. ITO (2017) 100 CCH 0049 / (2018) 161 DTR 218 (Guj.)(HC)

S. 147 : Reassessment – After the expiry of four years – Reopening of assessment on the ground that activities of assessee is not eligible for deduction was held to be change of opinion, hence reopening was held to be not valid. [S. 80IB(8A), 148] 1713

Allowing the petition the Court held that; it was evident that the claim of the assessee was processed in detail after calling for explanations from the assessee. It was accepted after forming an opinion on the activities carried out by the assessee. There was no failure on the part of the assessee as to true and full disclosure of all material facts. Therefore, the reopening of the assessment under S. 147 was based on change of opinion and hence was not justifiable. The notice issued under S. 148 was quashed and set aside. (AY. 2010-11)

Lambda Therapeutic Research Ltd. v. ACIT (2018) 402 ITR 177 (Guj.)(HC)

S. 147 : Reassessment – After the expiry of four years – Agricultural income – Change of opinion – Objection was disposed without speaking order – No failure to disclose material facts – Notice for reassessment only for the relevant year and there were hundreds of coffee growers whose income were also exempted, reopening notice issued only against assessee during relevant assessment year was unjustified. [S. 10(1), 148] 1714

Allowing the petition the Court held that, since reassessment order was passed without disposing of assessee's objections to reopening of assessment and without passing a speaking order, same was unjustified. Court also held that where claim of assessee of exemption of income under section 10(1) on proceeds from sale of coffee subjected to only pulping and drying was accepted for several years and there were hundreds of coffee growers whose income were also exempted, reopening notice issued only against assessee during relevant assessment year was unjustified. (AY. 2009-10)

Karti P. Chidambaram v. ACIT (2018) 402 ITR 488 / 252 Taxman 416 / 300 CTR 233 / 161 DTR 74 (Mad.)(HC)

Srinidhi Karti Chidambaram v. ACIT (2018) 402 ITR 488 / 252 Taxman 416 / 300 CTR 233 / 161 DTR 74 (Mad.)(HC)

Nalini Chidambaram v. ACIT (2018) 402 ITR 488 / 252 Taxman 416 / 300 CTR 233 / 161 DTR 74 (Mad.)(HC)

P. Chidambaram v. ACIT (2018) 402 ITR 488 / 252 Taxman 416 / 300 CTR 233 / 161 DTR 74 (Mad.)(HC)

S. 147 : Reassessment – After the expiry of four years – Failure to repatriate export proceeds with in time stipulated – Reassessment proceedings was held to be valid. AO was directed to verify the contention of the assessee on facts. [S. 10B, 148] 1715

On appeal the Court held that, the reassessment proposed, within the six year period was perfectly in order, if the amounts in question had not already been disallowed in the original assessment order itself. The assessee had claimed the deduction in the assessment year 2005-06. According to S. 10B(3), the deduction claimed under S. 10B had to be in respect of the amounts which were brought into the country, within six months from the close of the previous year. The previous year had ended on March 31, 2005 and the assessee ought to have brought the amounts into India prior to September 30, 2005, unless the period had been extended by the Reserve Bank of India

as provided under Explanation to sub-section (3) of S. 10B. If such extension had not been granted, definitely there was a suppression in so far as the assessee having had filed return, presumably, only after the closure of the previous year, which was after the date prescribed in sub-section (3) of S. 10B for bringing the amounts into the country. In the reassessment proceedings, the specific contention raised by the assessee as to the deduction claimed, under S. 10B, having already been carried out was to be verified. (AY. 2005-06)
Suntec Business Solutions Pvt. Ltd. v. UOI (2018) 401 ITR 101 / 170 DTR 318 / 305 CTR 102 (Ker.)(HC)

1716 **S. 147 : Reassessment – After the expiry of four years – Deemed dividend – No failure to disclose material facts hence reassessment was held to be not valid. [S. 148]**
Allowing the petition the Court held that; the notice for reopening of the assessment having been issued beyond a period of four years from the end of relevant assessment year, there was no failure on the part of the assessee to disclose truly and fully all material facts became relevant hence the notice issued to assessee the loan as deemed dividend was held to be not valid. (AY. 2008-09)
Gujarat Mall Management Company Private Limited v. ITO (2018) 400 ITR 329 (Guj.)(HC)

1717 **S. 147 : Reassessment – Within four years – No where it has been mentioned that the property has been purchased by the assessee as a trustee/agent of the trust – instead evidences prove Assessee himself to be the purchaser – Hence, re-opening is valid. [S. 148]**
On Writ filed, the High Court held that land was purchased in the name of Assessee (not as a trustee / agent of a trust as contended by the Assessee) as the sale deed, certificate of Registrar as well as order of District Magistrate clearly indicated the name of Assessee as purchaser and hence reopening was valid. (AY. 2014-2015)
Chandra Mohan Tiwari v. ITO (2018) 168 DTR 251 (All.)(HC)

1718 **S. 147 : Reassessment – Matter remanded to the AO for redoing the assessment after getting the reply from the assessee – Original order passed was set aside. [S. 148, 153C]**
AO passed the order without giving sufficient time to file objection in respect of notice issued u/s 148 of the Act. On writ the assessee contended that the notice could be issued u/s 153C and not under S. 148. By an interim order High Court extended the time for filing the objections by assessee. Assessment order passed on same day before the time allowed by the court is set aside. (AY. 2007-08, 2008-09)
P. Thangaraju v. ITO (2018) 170 DTR 253 / (2019) 306 CTR 89 (Mad.)(HC)

1719 **S. 147 : Reassessment – Mere non quoting of reasons formed by AO in notice would not vitiate entire proceedings – communication of all reasons for reopening of assessment at time of issuance of notice was not necessary – When notice was issued within timeline provided by virtue of S. 149(1)(b), challenge raised by assessee on**

point of limitation was not sustainable – Since assessee was holding high position of Union Minister and since, transaction were believed to be multifolded, which warranted further investigation, issuance of notices on multiple choice could not be faulted – Writ petition was dismissed. [S. 148/ 149 (1)(b)]

Assessee assumed Office of Union Minister for Communications and Information Technology on May 21, 2004 and he resigned from Office on May 13, 2007. He filed return of income for AY 2008-2009 and same was assessed and reached finality. In repose to notice u/s 148 the, assessee addressed a letter to AO to provide reasons for reopening of assessment. On expiry of statutory period of six years. AO furnished reasons for reopening and thereafter, AO passed order, rejecting objections and confirmed reopening of assessment proceedings. The assessee challenged the order disposing the objection. Dismissing the petition the Court held that, mere non quoting of reasons formed by AO in notice would not vitiate entire proceedings-communication of all reasons for reopening of assessment at time of issuance of notice was not necessary. When notice was issued within timeline provided by virtue of S. 149(1)(b), challenge raised by assessee on point of limitation was not sustainable. Since assessee was holding high position of Union Minister and since, transaction were believed to be multifolded, which warranted further investigation, issuance of notices on multiple choice could not be faulted. Accordingly the writ petition was dismissed. (AY. 2008-09, 2009-10)

Dayanidhi Maran v. ACIT (2018) 171 DTR 161 / 305 CTR 233 (Mad.)(HC)

S. 147 : Reassessment – Disallowance of 20% expenditure – Bogus dealers – Reassessment is held to be valid. [S. 40A(3) 148] 1720

Allowing the appeal of the revenue the Court held that, reassessment was made on basis of report of ITO who pointed out that six dealers to whom payments had been made were bogus. Opinion formed for purpose of disallowance to extent of 20% was on incorrect facts and there was no infirmity in re-assessment proceedings. There was acquisition of fresh information, specific in nature and reliable in character relating to concluded assessment in assessee's case. Income Tax Officer having jurisdiction over area in which certain dealers to whom assessee had made payments were situated made enquiries and found that they were non-existent – Non-disclosure germane to facts was that six dealers were bogus and in regular assessment, no such question raised or enquiry conducted. There was no reason for first appellate authority or Tribunal to interfere with findings of AO.

CIT v. Parrisons Roller Flour Mills Pvt. Ltd. (2018) 168 DTR 369 (Ker.)(HC)

S. 147 : Reassessment – Duty Draw Back and other such incentives were not profits derived from eligible business and accordingly exemption u/s 10BA could not be allowed in respect of Duty Draw Back and other export incentives – Matter was remanded back to AO to decide same afresh in accordance with law, however, leaving it open for both parties to raise all contentions before AO – Matter remanded. [S. 10BA, 148] 1721

Court held that questionnaire issued to assessee during assessment proceedings and assessment order passed on that basis made it clear that no information with regard to

DEPB or Duty Draw Back was furnished by assessee. There was indeed no adjudication on that aspect of matter and, therefore, concurrent view taken by lower authorities could not be faulted with. Assessee failed to show from record whether AO had indeed considered issue of allowability of deduction u/s 10BA in respect of Duty Draw Back. Had this issued been actually considered, some query would certainly have been raised on this aspect and reply thereto, if any, would also was submitted by assessee. Obviously, AO did not apply his mind to this aspect of the matter. Since assessee failed to point out that AO formed any opinion on this issue, it could not be held that initiation of re-assessment proceedings u/s 148 was based on mere change of opinion. It was only when AO later realized that deduction u/s 10BA was not allowable in respect to Duty Draw Back and that exemption was allowed on account of this mistake, he initiated re-assessment proceedings by recourse to S. 148. Duty Draw Back and other such incentives were not profits derived from eligible business and accordingly exemption u/s 10BA could not be allowed in respect of Duty Draw Back and other export incentives. Matter was remanded back to AO to decide same afresh in accordance with law, however, leaving it open for both parties to raise all contentions before AO. Matter remanded. (AY. 2008-09)

Village Antique & Ethinic v. ITO (2018) 171 DTR 408 / (2019) 306 CTR 73 (Raj.)(HC)

1722 **S. 147 : Reassessment – Notice – License fee – Use of logo – Capital or revenue – Reopening solely based on audit objections not permitted as it amounts to change of opinion. [S. 37(1),147]**

The assessment of A.Y. 2009-10 was sought to be reopened on the ground that license fee paid by the assessee for the use of a logo was capital in nature, whereas the assessee had claimed it as a revenue expenditure. This was done pursuant to the objection raised by the audit party. Assessee challenged such proceedings in writ. Quashing the notice and the subsequent order, the High Court noted that the AO had allowed such expenditure as being revenue in nature, in preceding as well as in succeeding years. In some of these years, queries regarding such payment were also raised. Thereafter, taking a contrary view based on audit objections alone amounts to change in opinion and the reassessment proceedings are therefore bad in law. (AY. 2009-10)

T. T. K. Prestige Ltd. v. Dy. CIT (2018) 97 taxmann.com 112 / 169 DTR 409 / 304 CTR 689 (Karn.)(HC)

1723 **S. 147 : Reassessment – Survey – Non disclosure of Royalty and FTS in the original return- Reassessment is held to be justified. [S. 133A, 148]**

In the course of survey operation in the premises of the Indian subsidiary of the foreign assessee, it was found that the foreign assessee had not disclosed certain royalty/ FTS income receivable from such subsidiary. Accordingly, assessments were sought to be reopened. Assessee challenged the reassessment on the ground that the reasons for reopening erroneously stated that it had not filed a return of income, whereas its branch had filed a return on its behalf. The AO's action of reopening was upheld by the CIT(A) and the ITAT. On appeal to the High Court, it was held that the assessee had not

disputed the fact that it had not disclosed royalty and FTS income receivable from its subsidiary in the original returns of income and the assessee had in fact disclosed such income in the return filed pursuant to reopening. Therefore, reassessment was justified. Regarding the assessee's ground that its branch office had filed a return of income on its behalf, the High Court noted that such return only disclosed income from software operations and not the royalty/FTS income. (AY. 2004-05 to 2006-07, 2008-09, 2009-10)
Samsung Electronics Co. Ltd. v. Dy. CIT (IT) (2018) 97 taxmann.com 637 / 170 DTR 433 / 305 CTR 946 (Delhi)(HC)

S. 147 : Reassessment – Notice – Not to be quashed if appeal on similar issue pending in another Assessment year. [A. 226, S. 115BBC] 1724
In the AY. 2015-16, the AO sought to tax the anonymous donations received by the assessee under section 115BBC. Assessee's appeal was pending before the CIT(A). The AO issued a notice to reopen the proceedings in the subject assessment year, i.e. A.Y. 2013-14 on the same issue, i.e. to tax the anonymous donation under section 115BBC. The assessee challenged such notice by way of a writ. Rejecting such petition, the High Court held that since a similar issue was pending before the CIT(A) in the subsequent year, that appeal would get affected if any finding was given by the High Court in the writ proceedings. It was further held that the assessee was capable of challenging the addition on all the grounds, including the challenge to reopening by way of an appeal before the CIT(A) for the subject A.Y. Accordingly, no interference was called for. (AY. 2013-14)
Shri Saibaba Sansthan Trust (Shirdi) v. UOI (2018) 100 taxmann.com 77 / 168 DTR 364 / 304 CTR 444 (Bom.)(HC)

S. 147 : Reassessment – Notice – Expenditure on contact charges – Allegation of charges were high – Reopening on issues examined in detail in the assessment is bad in law. [S. 37(1), 69C, 148] 1725
Assessments were sought to be reopened on the information received from the Investigation Wing that the expenditure incurred by the assessee on contract charges was unduly high. The assessee challenged the same by way of a writ. Quashing the reopening, the High Court noted that in an earlier A.Y., reopening on the same ground had been set aside by the Court. It was further noticed that in the course of the original assessment proceedings, detailed enquiry was done by the AO, after which the claim was allowed. In the circumstances, reopening proceedings were held to be bad in law. (AY. 2010-11)
Sky View Consultants (P) Ltd. v. ITO (2018) 96 taxmann.com 419 / 304 CTR 834 (Delhi) (HC)

S. 147 : Reassessment –With in four years – Change of opinion – Block assessment – Notice to reassess amount discovered during post search enquiries is held to be not valid. [S. 132, 148, 158BC] 1726
Allowing the petition the Court held that, the original assessment was passed under S. 158BC read with S 143(3) of the Act. Bank details were verified. An attempt of the

next incumbent officer who issued notice under S 148, is a mere change of opinion. Accordingly the notice is held to be not valid. (AY. 1997-98, 1998-99, 1999-2000)
P. A. Ahamed v. CIT (2018) 409 ITR 530 / (2019) 177 DTR 341 / 308 CTR 574 (Ker.)(HC)

1727 **S. 147 : Reassessment – With in four years – Cash credit – Capital – Partner – Return was not filed – No specific direction by CIT(A) – Notice for reassessment was held to be valid. [S. 68, 148]**
Dismissing the appeal of the assessee the Court held that, the reasons given by the AO were sufficient to reopen the assessment though a specific direction was not given by the CIT(A) for reopening the assessment for the assessment years 2010-11 and 2011-12 as the assessee did not file its returns for the assessment years 2010-11 and 2011-12. The order passed by the single judge was to be confirmed. (AY. 2010-11, 2011-12)
Alfa Investments. v. ITO (2018) 409 ITR 540 (Mad.)(HC)
Editorial : Decision of single judge in Alfa Investments v. ITO (2018) 400 ITR 445 (Mad.)(HC) is affirmed.

1728 **S. 147 : Reassessment – With in four years – Reasons for notice must be communicated – Failure to communicate the reason is not procedural lapse, it goes to the root of the matter – Mere participation of the assessee or authorised representative in the reassessment proceedings does not amount to the assessee being made aware or known of the reasons for such reopening – order is not valid. [S. 148]**
Dismissing the appeal of the revenue the Court held that, failure to communicate the reason is not procedural lapse, it goes to the root of the matter. Mere participation of the assessee or authorised representative in the reassessment proceedings does not amount to the assessee being made aware or known of the reasons for such reopening. Order is not valid. (Followed *Gkn Driveshafts (India) Ltd. v. ITO (2003) 259 ITR 19 (SC)*)
CIT v. V. Ramaiah (2018) 409 ITR 580 / 170 DTR 163 (Karn.)(HC)

1729 **S. 147 : Reassessment – With in four years – Change of opinion – Opinion of revenue Audit party – Foreign Exchange Fluctuation gain on interest income is not allowable – Notice for reassessment is held to be invalid. [S. 148]**
Allowing the petition the Court held that, the audit information was merely an information and that change of opinion was impermissible. The reassessment notice was solely based on audit opinion. (AY. 2011-12)
FIS Global Business Solutions India Pvt. Ltd. v. CIT (2018) 409 ITR 560 (Delhi)(HC)

1730 **S. 147 : Reassessment – With in four years – Change of opinion – Claim of exemption was accepted in original assessment after scrutiny – Reassessment to withdraw Exemption on ground that some other aspects of claim was not examined will be change of opinion which is not permissible. [S. 10A, 10B, 148, 264]**
Allowing the petition the court held that, Claim of exemption was accepted in original assessment after scrutiny. Reassessment to withdraw Exemption on ground that some other aspects of claim was not examined will be change of opinion which is not permissible. (AY. 2010-11)
Hitech Outsourcing Services v. CIT (2018) 409 ITR 609 (Guj.)(HC)

S. 147 : Reassessment – With in four years – Survey – Related company – Inaccurate information of shareholdings shown in notice and illogical conclusions – Reassessment is held to be bad in law. [S. 133A, 148] 1731

Allowing the petition the Court held that, inaccurate information of shareholdings shown in notice and illogical conclusions. Accordingly the reassessment is held to be bad in law. (AY. 2010-11)

Kolahai Infotech Pvt. Ltd. v. ITO (2018) 409 ITR 595 (Delhi)(HC)

S. 147 : Reassessment – Change of opinion – Income from other sources – AO has consciously considered the claim for deduction u/s. 80IC in the regular assessment proceedings – Accordingly reassessment is held to be not valid. [S. 80IC, 148] 1732

Dismissing the appeal of the revenue the Court held that, AO has consciously considered the claim for deduction u/s 80IC in the regular assessment proceedings. Accordingly reassessment is held to be not valid. (AY. 2007-08)

PCIT v. Century Textiles & Industries Ltd. (2018) 167 DTR 105 / 99 Taxmann.com 205 / 259 Taxman 361 / (2019) 412 ITR 228 (Bom.)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Century Textiles & Industries Ltd (2018) 408 ITR 59 (St) / 259 Taxman 360 (SC)

S. 147 : Reassessment – Order passed consequent to reassessment had not confirmed the addition attributable to the reasonable belief of the Assessing Officer, while passing the reassessment order – Reassessment is held to be bad in law. [S. 148] 1733

Dismissing the appeal of the revenue the Court held that, order passed consequent to reassessment had not confirmed the addition attributable to the reasonable belief of the Assessing Officer, while passing the reassessment order. Accordingly the reassessment is held to be bad in law. (AY. 2004-05)

PCIT v. Lark Chemicals (P) Ltd (2018) 99 taxmann.com 311 / 259 Taxman 366 (Bom.) (HC)

Editorial : SLP of revenue is dismissed, PCIT v. Lark Chemicals (P) Ltd. (2018) 259 Taxman 265 (SC)

S. 147 : Reassessment – Intimation – The AO cannot reopen on the basis of info received from DIT (Inv) that a particular entity has entered into suspicious transactions without linking it to the assessee having indulged in activity which could give rise to reason to believe that income has escaped assessment – Such reopening amounts to a fishing inquiry – The AO has to apply his mind to the information received by him from the DDIT (Inv.) and cannot act on borrowed satisfaction.[S. 143(1), 148] 1734

Dismissing the appeal of the revenue the Court held that ; the submission of the Dept that in view of *ACIT v. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007) 291 ITR 500 (SC)*, the AO can reopen the assessment for "whatever reason" is preposterous. The AO cannot reopen on the basis of info received from DIT (Inv.) that a particular entity has entered into suspicious transactions without linking it to the assessee having indulged in activity which could give rise to reason to believe that income has escaped

assessment. Such reopening amounts to a fishing inquiry. The AO has to apply his mind to the information received by him from the DDIT (Inv.) and cannot act on borrowed satisfaction. (AY.2003-04)
PCIT v. Shodiman Investments Pvt. Ltd. (2018) 93 taxmann.com 153 / 167 DTR 290 (Bom.) (HC), www.itatonline.org

1735 **S. 147 : Reassessment – With in four years – Disclosure in computation – The fact that the AO did not raise specific queries and is silent in the assessment order does not mean there is no application of mind – Reassessment is held to be bad in law. [S. 143(3), 148]**
Allowing the petition the Court held that, computation is the basic document for making the S. 143(3) assessment. If there is a disclosure in the computation, it leads to the prima facie necessary inference that there is application of mind by the AO. The fact that the AO did not raise specific queries & is silent in the assessment order does not mean there is no application of mind *ITO v. Techspan (2018) 404 ITR 10(SC)* followed. (AY. 2013-14, 2014-15)
State Bank of India v. ACIT (2018) 172 DTR 401 / 96 taxmann.com 77 / (2019) 411 ITR 664 (Bom.)(HC), www.itatonline.org

1736 **S. 147 : Reassessment – With in four years – The assessment cannot be reopened on the ground that the AO lost sight of a statutory provision like 50C. This amounts to a review. A.L.A. *Firm v. CIT (1991) 189 ITR 285 (SC)* distinguished on the basis that the reopening in that case was because the AO was unaware of a binding High Court judgement. Here it is not the case of the Revenue that the AO was not aware of S. 50C at the time of passing the S. 143(3) assessment order. [S. 50C, 143(3), 148]**
Dismissing the appeal of the revenue the Court held that ; The assessment cannot be reopened on the ground that the AO lost sight of a statutory provision like 50C. This amounts to a review. A.L.A. *Firm v. CIT (1991) 189 ITR 285 (SC)* distinguished on the basis that the reopening in that case was because the AO was unaware of a binding High Court judgement. Here it is not the case of the Revenue that the AO was not aware of S. 50C at the time of passing the S. 143(3) assessment order. Court also observed that,Bone must not lose the sight that the reassessment proceedings are not proceedings to review of the order already been passed but only a power to reassess. As observed by the Supreme Court in *CIT v. Kelvinator India Ltd (2010) 320 ITR 561*, 'We must also keep in mind the conceptual difference between power to review and power to reassess'. (ITA No. 102 of 2016, dt. 23.07.2018) (AY. 2005-06)
PCIT v. Inarco Ltd. (Bom.)(HC), www.itatonline.org

1737 **S. 147 : Reassessment – Notice is issued on the basis of assessment order of earlier year – Earlier year order was set aside by CIT(A) before issue of reassessment notice – Reassessment notice is held to be bad in law. [S. 143(1),148]**
Dismissing the appeal of the revenue the Court held that ; notice under S. 148 was issued to assessee on 9-3-2009 seeking to re-open assessment for assessment year 2006-07, based upon order of assessment for assessment year 2005-06. Assessment order

passed for year 2005-06, had been set aside in appeal by order dated 13-1-2009 of CIT (A) and also given effect to by AO on 5-3-2009 and held that since on 9-3-2009 when notice under S. 148 was issued, Assessing Officer was aware of said order of CIT (A), accordingly AO could not have any reason to believe that income chargeable to tax had escaped assessment. (AY. 2006-07)
DIT (IT) v. Atomstroyexport (2018) 95 taxmann.com 257 (Bom.)(HC)
Editorial : SLP of revenue is dismissed; DIT (IT) v. Atomstroyexport (2018) 257 Taxman 30 (SC)

S. 147 : Reassessment – If the recorded reasons do not specify, prima – facie, the quantum of tax which has escaped assessment but merely state that it would be at least ₹ 1,00,000, and if the reopening is to "verify" suspicious transactions, prima – facie, the reasons do not indicate reasonable belief of the AO and the notice is without jurisdiction – Interim stay was granted till final hearing. [S. 148] 1738
Admitting the petition the Court held that, if the recorded reasons do not specify, prima-facie, the quantum of tax which has escaped assessment but merely state that it would be at least ₹ 1,00,000, and if the reopening is to "verify" suspicious transactions, prima-facie, the reasons do not indicate reasonable belief of the AO and the notice is without jurisdiction. Interim stay was granted till final hearing. (WP No. 1641 of 2018, dt. 6/07/2018) (AY. 2010-11)
Dulraj U. Jain v. ACIT (Bom.)(HC), www.itatonline.org

S. 147 : Reassessment – Recorded reason was 31st March 2010 where as notice u/s 148 was issued on 30th March 2010 – Recording of reasons before issue of notice is mandatory hence Reassessment was held to be bad in law. [S. 148] 1739
Dismissing the appeal of the revenue the Court held that; even before recording reasons on 31st March 2010, under his signature, a notice u/s. 148 was already issued on 30th March, 2010, therefore Tribunal was right in holding that even if case made out in affidavit belatedly filed by AO was correct, it would not advance case of revenue. Court observed that the process of recording reasons as per mandate of Sub-Section (2) of S. 148 was completed when AO signed reasons on 31st March, 2010, thus, even before recording reasons under his signature, a notice u/s. 148 was already issued on 30th March, 2010, therefore reassessment was held to be bad in law.
CIT v. Blue Star Ltd. (2018) 162 DTR 302 / 301 CTR 38 (Bom.)(HC)

S. 147 : Reassessment – With in four years – Audit objection – Reply of Assessing Officer to audit objection opposing the reassessment – Apex court Judgement was not available – Reassessment was held to be bad in law. [S. 80IB, 148] 1740
Dismissing the appeal of the revenue the Court held that, the Assessing Officer has objected to the audit objection, Apex court judgement was not available when the notice for reopening was issued, Change of opinion, therefore reassessment was held to be bad in law. (AY. 2004-05)
CIT v. Rajan N. Aswani (2018) 403 ITR 30 / 165 DTR 371 (Bom.)(HC), www.itatonline.org

1741 **S. 147 : Reassessment – Reason to believe – Based on decision of Tribunal accepting contention of Assessee's son in his case that income was chargeable in assessee's hands as first holder of investments in mutual funds – Formation of belief is within subjective satisfaction of Assessing officer – Notice for reopening of assessment is valid. [S. 148]**
Dismissing the appeal of the assessee the Court held that, since the Tribunal in her son's case had accepted the submission that those investments should not be brought to tax in his hands as he was the second holder and that they could have been brought to tax, if any, in the hands of the first holder, the assessee, the Assessing Officer had reason to believe that the income of the assessee with reference to those three investments had escaped assessment. The subjective satisfaction of the Assessing Officer was not perverse or vitiated by any error of law. The order of the Tribunal upholding the proceedings initiated against the assessee under section 147 for the assessment year 2007-08 was not erroneous. (AY. 2007-08).
S. Rajalakshmi (Smt.) v. ITO (2018) 409 ITR 157 / 172 DTR 36 / 305 CTR 929 / (2019) 260 Taxman 205 (Bom.)(HC), www.itatonline.org

1742 **S. 147 : Reassessment – Capital gains – Opening WDV of land was shown by assessee at lesser amount in its statement of fixed accounts but, while filling return of income, assessee had shown cost of land at much higher amount, reassessment was held to be justified. [S. 45, 148]**
Dismissing the petition the Court held that; since there was clear cut mention in reasons for reassessment that assessee had wrongly taken cost of land, being market value based on valuation report of valuer, impugned reassessment notice as well as order was justified. Further, it would not be open for assessee to contend that it had a choice either to make computation on basis of market value or on basis of cost of property to previous owner. Reassessment was held to be justified. (AY. 2010-11)
J. B. Amin & Brothers (HUF) v. UOI (2018) 253 Taxman 229 / 172 DTR 57 (Bom.)(HC)

1743 **S. 147 : Reassessment – Charitable trust – Appeal against rejection of application for exemption of income was pending for next year – Reassessment notice for earlier years would not be vitiated by pending appeal against cancellation of application under S. 13 of the Act. [S. 11, 12AA, 13, 148]**
Dismissing the petition, the Court held that, pendency of appeal against rejection of application for exemption of income was pending for next year before ITAT would not vitiate the Reassessment notice for earlier years. (AY. 2010-11 to 2014-15)
Urban Development Authority v. ITO (2018) 256 Taxman 237 (Karn.)(HC)

1744 **S. 147 : Reassessment – Export oriented undertakings – Where in the course of original assessment proceedings the Assessing Officer has raised several queries and allowed the claim – Reassessment cannot be made to examine another facet of said claim. [S. 10B, 148]**
Allowing the petition the Court held that, Where in the course of original assessment proceedings the Assessing Officer has raised several queries and allowed the claim-Reassessment cannot be made to examine another facet of said claim. (AY. 2011-12)
QX KPO Services (P) Ltd. v. Dy. CIT (2018) 94 taxmann.com 467 (Guj.)(HC)
Editorial : SLP of revenue is dismissed, Dy.CIT v. QX KPO Services (P) Ltd. (2018) 259 Taxman 31 (SC)

S. 147 : Reassessment – Audit – A report of the Revenue audit party is merely information and opinion – It is not new or fresh or tangible material – If the reassessment notice is solely based on an audit opinion, it means it is issued on change of opinion which is not permissible. [S. 148] 1745

Allowing the petition the Court held that, a report of the Revenue audit party is merely information and opinion-It is not new or fresh or tangible material – If the reassessment notice is solely based on an audit opinion, it means it is issued on change of opinion which is not permissible. In the present case, the reassessment notice is solely based on an audit opinion. Having regard to the fact that the assessee's challenge to the previous year's re-assessment orders was successful. In *FIS Global Business Solutions India Pvt. Ltd. v. ACIT (2018) 408 ITR 75 (Delhi) (HC)*, the reassessment proceedings are unsustainable. (W.P.(C) 12277/2018, C.M. APPL. 47539/2018. Dt. 16.11.2018) (AY. 2011-12)

FIS Global Business Solutions India Pvt. Ltd. v. PCIT (Dehi)(HC), www.itatonline.org

S. 147 : Reassessment – Issuance of notice under S. 143(2) is mandatory – Failure to issue is not procedural irregularity – S. 292BB does not dispense with the issuance of any notice that is mandated to be issued under the Act, but merely cures the defect of service of such notice if an objection in such regard is not taken before the completion of the assessment or reassessment – Entire proceedings including any order is liable to be quashed though the assessee had participated in the course of the reassessment. [S. 143(2), 148, 153(2), 292BB] 1746

Dismissing the appeal of the revenue the Court held that, If the time for issuance of the notice under section 143(2) of the Income-tax Act, 1961 has expired or the time for completing the reassessment proceedings under section 153(2) has run out, the failure to issue such notice under section 143(2) would result in the entire proceedings, including any order of assessment being quashed. Accordingly entire proceedings including any order is liable to be quashed though the assessee had participated in the course of the reassessment.

PCIT v. Oberoi Hotels Pvt. Ltd. (2018) 409 ITR 132 / 304 CTR 988 / 169 DTR 179 (Cal.) (HC)

S. 147 : Reassessment – Doctrine of merger – Annulment of reassessment proceedings was held as invalid – The original assessment order would automatically get restored. – Doctrine of merger does not apply. [S. 143(3) 148] 1747

Dismissing the appeal of the assessee the Court held that, if the initiation of the reassessment proceedings was held to be invalid, the original assessment order would revive. The doctrine of merger had no application as the subsequent order was held to be unsustainable. The doctrine would apply only in a situation where the subsequent reassessment order had been held to be valid. The Tribunal had rightly held that where the reassessment order was annulled, the original assessment order would automatically get restored. (AY. 2008-09)

Patiala Improvement Trust v. ACIT (2018) 409 ITR 43 / (2019) 175 DTR 148 / 307 CTR 443 (P&H)(HC)

1748 **S. 147 : Reassessment – Shell companies – Bogus long term capital gains – Assessment under S. 143(1) – Notice of reassessment based on information from departmental channels- Assessing Officer had no occasion to form opinion – Reassessment is held to be valid. [S. 10 (38), 45, 143(1), 148]**

Dismissing the petition, that at the stage of reopening of the assessment under section 147 the court would not examine the possible additions which the Assessing Officer would make. The scrutiny at that stage would be limited to examining whether the Assessing Officer had formed a valid belief on the basis of the material available with him that income chargeable to tax had escaped assessment. The Assessing Officer had considered the material on record which prima facie suggested that the assessee had sold number of shares in a company which was found to be a shell company indulging in providing bogus claims of long term and short-term capital gains. The assessee had claimed exemption of long-term capital gains of ₹ 1.33 crores by way of sale of shares of such company. The return filed by the assessee were accepted without scrutiny. Since there was no scrutiny assessment, the Assessing Officer had no occasion to form any opinion on any of the issues that arose out of the return filed by the assessee. The concept of change of opinion therefore had no application. (AY. 2013-14)

Purviben Snehalbhai Panchhigar v. ACIT (2018) 409 ITR 124 (Guj.)(HC), www.itatonile.org

1749 **S. 147 : Reassessment – Alternative remedy – Share premium – Notice based on information – Reasons for notice furnished to assessee – Writ petition against the notice is not maintainable. [S. 68, 148, Art. 226]**

Dismissing the petition the High Court held that, court cannot appreciate mixed questions of law and facts, at the initial stage, when a notice had been issued under section 148. The High Court cannot entertain a writ petition, when there is a remedy available to the aggrieved person under the statute. Even in the case of procedural lapses, such procedural lapses can be taken advantage of by the assessee only if they cause prejudice to the proceedings. The request made by the assessee had been complied with and the reasons for reopening of the escaped assessment had been communicated to the assessee. Based on preliminary information gathered by the Assessing Officer, the notice issued for the purpose of reopening of the assessment would not provide a cause of action for filing of the writ petition. (AY. 2009-10)

Sun Direct TV P. Ltd. v. ACIT (2018) 409 ITR 49 / 259 Taxman 228 (Mad.)(HC)

1750 **S. 147 : Reassessment – Cash credits – Share capital – On the basis of information from CBI that the receipts were camouflaged as capital receipts – Considering fact that there were materials and informations on record with revenue – Reopening of assessment was done to verify the genuineness of the investment – Reassessment is in accordance with law – Reasons recorded by the Assessing Officer need not be communicated along with the notice itself – Notice issued for purpose of reopening of assessment would not provide a cause of action for filing writ petitions. [S. 68, 143(1), 148]**

Dismissing the petition the court held that, on the basis of information from CBI that the receipts were camouflaged as capital receipts. Considering fact that there were materials and informations on record with revenue, reopening of assessment was in accordance

with law and the assessee failed to establish any legally acceptable ground for purpose of interfering with reopening of assessment. Reasons recorded by the Assessing Officer need not be communicated along with the notice itself – Notice issued for purpose of reopening of assessment would not provide a cause of action for filing writ petitions. Accordingly the writ petitions being devoid of merit were to be dismissed. (AY. 2008-09, 2010-11, 2011-12)
South Asia FM Ltd. v. ACIT (2018) 259 Taxman 266/ (2019) 413 ITR 205 (Mad.)(HC)

S. 147 : Reassessment – Bogus share capital – Search in the premises of Shreeji Polymers (India) Ltd – Specific information was available with the authorities-Allegation that assessee is a dummy concern used to route unaccounted money by way of bogus share application money is sufficient to reopen assessment. [S. 68, 148] 1751
Dismissing the petition the Court held that, in the course of search in the premises of shreeji Polymers (India) Ltd, the Court found that specific information was available with the authorities. Accordingly the allegation that assessee is a dummy concern used to route unaccounted money by way of bogus share application money is sufficient to reopen assessment. (AY. 2011-12)
Etiama Emedia Ltd. v. ITO (2019) 261 Taxman 88 / 176 DTR 155 / 308 CTR 225 (MP) (HC), www.itatonline.org

S. 147 : Reassessment – With in four years – Deduction allowed without discussion in original assessment – Reassessment on the ground that excess deduction was allowed is held to be valid. [S. 148] 1752
Dismissing the petition the Court held that in the original assessment order there was no opinion formed with respect to any of the issues on which now a reassessment was attempted. Reassessment is held to be valid. (AY. 2007-08)
Innovative Foods Ltd. v. UOI (2018) 409 ITR 415 (Ker.)(HC)

S. 147 : Reassessment – Notice issued based on overruled judgment is illegal and improper. [S. 43D, 148] 1753
Allowing the appeal of the assessee the Court held that the judgment relied on by the Assessing Officer had been overruled in the case of *CIT v. Karnataka State Co-operative Apex Bank (2001) 251 ITR 194 (SC)*. Accordingly the Tribunal was not justified in holding that the additions made by the Assessing Officer towards non-recoverable interest on non-performing asset debts as being in conformity with the requirement of S. 43D. (AY.1998-99)
Aravali Kshetriya Gramin Bank v. ACIT (2018) 409 ITR 242 (Raj.)(HC)

S. 147 : Reassessment – Unabsorbed depreciation – Transient year where carry forward of earlier year had been brought forward to that year and again carried forward to next year for set off in appropriate assessment year – Reassessment is held to be bad in law. [S. 32(2), 143(3), 148] 1754
Tribunal held that assessment year in question was merely a transient year where carry forward of earlier year had been brought forward to that year and again carried forward to next year for set off in appropriate assessment year. Tribunal further held that

disclosure of unabsorbed depreciation had no impact on 'chargeable income' for relevant year which was alleged to have escaped assessment. Order of Tribunal is affirmed by High Court. (AY. 2006-07)
PCIT v. Accura Polytech (P.) Ltd. (2018) 89 taxmann.com 12 (Guj.)(HC)
Editorial : SLP of revenue is dismissed, PCIT CIT v. Accura Polytech (P.) Ltd. (2018) 258 Taxman 59 (SC)

1755 **S. 147 : Reassessment – Unexplained money – Income Declaration Scheme, 2016 – Share premium and share capital – Disclosed by Gard Logistics Pvt. Ltd. as undisclosed income – Attempt to assessee the same income as undisclosed income of the assessee would amount to double taxation – Reassessment is bad in law. [S. 69A, 143(1), 148]**
Allowing the petition the Court held that; the amount which the Assessing Officer is proposing to add as undisclosed income has been disclosed by Gard Logistics Pvt. Ltd. as undisclosed income under Income declaration scheme. Attempt on the Assessing Officer to assessee the same income as undisclosed income of the assessee would amount to double taxation. Accordingly the reassessment is bad in law. Circulars and Notifications : Circular dt. 1-9-2016 (AY. 2010-11)
M.R. Shah Logistrics (P.) Ltd. v. Dy. CIT (2018) 258 Taxman 103 / 172 DTR 408 / 308 CTR 493 (Guj.)(HC)

1756 **S. 147 : Reassessment – Unexplained expenditure – Information received from Investigation Wing – Reassessment proceedings initiated on same ground in earlier assessment years had been set aside – There was no tangible material to justify impugned reassessment proceedings – Reassessment proceedings is quashed. [S. 69C, 148]**
Allowing the appeal of the assessee the Court held that ; merely on the basis of information received from Investigation Wing, the re assessment proceedings cannot be initiated when the reassessment proceedings initiated on same ground in earlier assessment years had been set aside. There was no tangible material to justify impugned reassessment proceedings. (AY. 2010-11)
Sky View Consultants (P.) Ltd. v. ITO (2018) 258 Taxman 331 (Delhi)(HC)

1757 **S. 147 : Reassessment – Based on observations made by Commissioner (Appeals) in case of another person that sum not taxable in that person's hands – Notice based on same facts in respect of later assessment-Inadequate material for reopening of assessment is set aside. [S. 132, 143(1), 148]**
Allowing the petition the Court held that; under very similar circumstances in the case of this very assessee, a notice under section 148 for reopening of assessment was quashed by the court. The only distinction between the two cases was that in the present case, the return was accepted without scrutiny whereas in the judgment, the assessment for the assessment year 2009-10 which was sought to be reopened was initially made after scrutiny. However, this distinction was of no material since the reasons recorded by the Assessing Officer in both cases were exactly the same. The cause on which the notice was quashed in the earlier case was available in the

present petition also. In the appeal, the Commissioner (Appeals) deleted this addition. The Assessing Officer had believed that in that order, the Commissioner (Appeals) had observed that it would be the assessee, who would be liable to explain the source of the cash. It was for such purpose that the notice had been issued. For the earlier assessment year the notice of reopening was quashed by the High Court holding that the Assessing Officer had taken the observations of the Commissioner (Appeals) out of context and made them the basis of formation of his belief that income chargeable to tax in the hands of the assessee has escaped assessment, that to link the observations of the Commissioner (Appeals) he had not referred to any other material at his command which even prima facie suggested that the assessee had paid such sum, that when the belief was founded on no material whatsoever and too inadequate to form a belief that income chargeable to tax had escaped assessment, the court even at that stage would interject. Accordingly the notice for reopening of the assessment was to be set aside. (AY. 2010-11)

Rajesh Shantilal Shah v. ITO (2018) 408 ITR 485 (Guj.)(HC)

S. 147 : Reassessment – Search in premises of third party revealing unaccounted investments by assessee – Notice is valid. [S. 132, 143(1), 148] 1758

Dismissing the petitions, that the Assessing Officer had analysed the voluminous material collected by the Revenue during the search operations in connection with Venus group. This material prima facie suggested huge cash transactions in connection with sale of lands against the total declared sale consideration of ₹ 8.21 crores. The material prima facie suggested that total cash transactions of ₹ 33.24 crores had taken place. Since the original return filed by the assessee was accepted without scrutiny, the material at the command of the Assessing Officer was sufficient to permit the process of reopening. The notice was valid. (AY. 2010-11)

Kiran Ravjibhai Vasani v. ACIT (2018) 408 ITR 303 / (2019) 307 CTR 635 / 175 DTR 269 (Guj.)(HC)

S. 147 : Reassessment – Reason recorded was that return was not filed – Affidavit in reply stated that possibility of application of S. 50C – Incorrect reason – Notice is held to be bad in law. [S. 50C, 139, 148] 1759

Allowing the petition, the Court held that even in a case where the return was not taken up for scrutiny assessment the requirement that the Assessing Officer must have reason to believe that income chargeable to tax had escaped assessment applied. That the assessee had by filing the return offered his share of the proceeds by way of capital gains for the purpose of computing the capital gains tax. The reasons cited were that the assessee filed no return and that the one-third share of the assessee from the actual sale consideration of ₹ 1,18,95,000 therefore, was not brought to tax. Both the reasons were factually incorrect. The notice issued under section 148 for re-opening the assessment was to be quashed. (AY. 2010-11)

Mumtaz Haji Mohmad Memon v. ITO (2018) 408 ITR 268 (Guj.)(HC), www.itatonline.org

1760 **S. 147 : Reassessment – Second reassessment – New tangible material was found – Reassessment is valid – Order of single judge is affirmed. [S. 148, 149(1)(b)]**
Dismissing the appeal against the judgement of single judge, the Court held that the original assessment can be reopened any number of times within the period of limitation prescribed under section 147 read with section 149 of the Income-tax Act, 1961. For such reopening after the limitation period, the Revenue has to satisfy that any one of the ingredients as stipulated under the first proviso to section 147 is satisfied. According to the provisions, if the Revenue wants to invoke the extended period of limitation under the first proviso, it has to satisfy that escapement of income was by the reason either by failure on the part of the assessee to make the return under section 139 or in response to the notice issued under section 142(1) or section 148 or by his failure to disclose fully and truly all material facts necessary for that assessment. On facts new tangible material was found, accordingly the reassessment is valid. (AY. 2009-10)
A. Sridevi (Smt) v. ITO (2018) 409 ITR 502 / 172 DTR 433 / (2019) 260 Taxman 181 / 306 CTR 81 (Mad.)(HC)
Editorial : Affirmed the order of single judge, A. Sridevi (Smt) v. ITO (2018) 408 ITR 83/ 171 DTR 417 / 305 CTR 670 / (2019) 260 Taxman 76 (Mad.)(HC)

1761 **S. 147 : Reassessment – Second reassessment – New tangible material was found – Reassessment is valid. [S. 148, 149(1)(b)]**
Dismissing the petition the Court held that the original assessment can be reopened any number of times within the period of limitation prescribed under section 147 read with section 149 of the Income-tax Act, 1961. For such reopening after the limitation period, the Revenue has to satisfy that any one of the ingredients as stipulated under the first proviso to section 147 is satisfied. According to the provisions, if the Revenue wants to invoke the extended period of limitation under the first proviso, it has to satisfy that escapement of income was by the reason either by failure on the part of the assessee to make the return under section 139 or in response to the notice issued under section 142(1) or section 148 or by his failure to disclose fully and truly all material facts necessary for that assessment. On facts new tangible material was found, accordingly the reassessment is valid. (AY. 2009-10)
A. Sridevi (Smt) v. ITO (2018) 408 ITR 83 / 171 DTR 417 / 305 CTR 670 / (2019) 260 Taxman 76 (Mad.)(HC)
Editorial : Affirmed by division Bench, A. Sridevi (Smt) v. ITO (2018) 409 ITR 502 / (2019) 260 Taxman 181 (Mad.)(HC)

1762 **S. 147 : Reassessment – Foreign exchange gains on interest – Audit objection – Change of opinion based on mere information – Impermissible. [S. 143(3), 144C, 148]**
Allowing the petition the Court held that the reasons recorded were that subsequent to an audit conducted it was found that the Assessing Officer had allowed the foreign exchange gains on interest income which was wrongly claimed by the assessee, that it was revenue in nature and not an allowable deduction and that had resulted in underassessment of income on account of the foreign exchange gains on interest. Court held that the audit objection was merely an information and change of opinion was impermissible. (AY. 2010-11)
FIS Global Business Solutions India Pvt. Ltd v. ACIT (2018) 408 ITR 75 (Delhi)(HC)

S. 147 : Reassessment – Client code modification – Information from investigation wing regarding evasion of tax by assessee – Notice is held to be valid. [S. 133A, 148] 1763
Dismissing the petition the Court held that ; that there was a direct nexus or live link between the material coming to the notice of the Assessing Officer, namely, the material submitted by the Investigation Wing, and the formation of the Assessing Officer's belief that there has been escapement of income. Details of the client code modification were furnished in the information. The information was in respect of several brokers. The information pertaining to the assessee's broker was culled out and tabulated. There were 74 cases of the assessee's broker having modified the assessee's transactions. The information was directly on the issue of the transactions. It could not by any stretch of imagination be said to be vague, indefinite or distant. Reasons to believe were there. The reasons were based on tangible material. The return and account books of the assessee had not undergone scrutiny at the time of assessment. The information was specific and not vague. A reasonable person could form an opinion on the basis of the material. The information received could form the basis of reason to believe that income had escaped assessment and the reopening was not on mere suspicion. Hence, the assumption of jurisdiction was in accordance with law. (AY. 2009-10)
Rakesh Gupta v. CIT (2018) 405 ITR 213 / 303 CTR 670 / 167 DTR 265 / 101 CCH 318 (P&H)(HC)

S. 147 : Reassessment – Subsequent receipt of tax evasion report from Investigation Wing of Income – Tax Department – Notice After Considering Report – Notice is valid – Error in name of the assessee in notice – Reply by assessee – Human errors and mistakes cannot and should not nullify proceedings which are otherwise valid and no prejudice had been caused – No prejudice to the assessee – Notice cannot be invalidated. [S. 143(1), 148, 292B] 1764
Dismissing the petition the Court held that; that in the notice for reassessment reference was made to the tax evasion report received from the Investigation unit of the Income-tax Department. Peculiar and specific details relating to transactions between the assessee and a third party were mentioned in it. The assessee as per tax evasion report had not been able to satisfactorily explain source of ₹ 35 crores. Hence there was evidence and material on record to justify issue of notice under section 147 / 148 of the Act. However the notice was meant for the assessee and no one else. Legal error and mistake was made in addressing the notice. Noticeably, the appellant having received the notice, had filed without prejudice a letter dated April 11, 2017. It had objected to the notice being issued in the name of the company, which had ceased to exist. However, the letter indicated that it had understood and was aware that the notice was for it. It was replied to and dealt with. The fact that notice was addressed to SHPL, a company which had been dissolved, was an error and technical lapse on the part of the respondent. No prejudice was caused. Human errors and mistakes cannot and should not nullify proceedings which are otherwise valid and no prejudice had been caused. This is the effect and mandate of section 292B of the Act. The notice of reassessment was valid. (AY. 2010-11)
Sky Light Hospitality LLP v. ACIT (2018) 405 ITR 296 (Delhi)(HC)

1765 **S. 147 : Reassessment – With in four years – No failure to disclose truly all material facts – Reexamination of claim on the basis of breach of condition for claiming deduction in another assessment year is not valid. [S. 80IB(10), 148]**

Allowing the petition the Court held that; there was no failure on the part of the assessee to disclose truly and fully all material facts and the mandatory condition before reassessment under section 147 could be permitted was satisfied. In the absence of allegation of any of the breaches in the assessment year 2010-11 in question, the Assessing Officer according to the reasons recorded wished to re-examine the assessee's claim to deduction under section 80-IB(10) on the premise that, that in the assessment year 2013-14 such claim was rejected since the assessee had breached the condition by allotting individual residential units to husband and wife. The notice issued under section 148 for reopening was set aside. (AY. 2010-11)

Royal Infrastructure v. DCIT (2018) 407 ITR 358 (Guj.)(HC)

1766 **S. 147 : Reassessment – Notice based on the audit objection is not valid. [S. 148]**

Dismissing the appeal of the revenue the Court held that a notice for reassessment based on mere audit objection raised by the internal auditors of the Department is not valid. (AY. 2003-04)

CIT v. Gmr Holdings P. Ltd. (2018) 407 ITR 439 (Karn.)(HC)

1767 **S. 147 : Reassessment – With in four years – Allotment of shares – less than fair market value of shares – Reasons recorded on the basis of letter from Department of Investigation and tax evasion petition – Failure to disclose material facts as regards issue of shares to the assessee at a price less than Fair Market Value-Reassessment is valid. [S. 56(2)(vii) 143(1), 143(3), 148, 151, Companies Act, 1956 S. 299]**

The Congress Party advanced ₹ 90 Crores to company Associated Journals Ltd. (AJL) being publisher of the newspaper "National Herald" with the condition that the amounts to be urtilised by the letter to write-off its accumulated debts and recommence its news paper. A charitable non-profit company Yong Indian (YI) was incorporated and by a deed of assignment of ₹ 90 crores in favour of YI was executed by the congress party on 28-12-2010. There was transfer of YI shares from its existing shareholders to Sonia Gandhi and Oscar Fernades. In a fresh allotment assessees. Viz. Rahul Gandhi, Sonia Gandhi, Motilal Vohra, Oscar Fernades were allotted 1900, 1350 600m and 60 shares of YI on payment of ₹ 1.90 Lakhs ₹ 1.35 lakhs ₹ 60 and ₹ 500 respectively issued a cheque for ₹ 50 lakhs subsequently on 26-2-2011 to the congress party as part consideration for the assignment of ₹ 90 Crore debt to it and AJL allotted ₹ 9.02 crores equity shares to YI in 2011. YI applied for section 12AA exemption on 29-03-2011. The exemption was granted by on 9-5-2011 by a certificate, with effect from financial year 2010-11. The assessment of Rahul Gandhi was completed u/s 143(3) of the Act. As late as on 31-03 2018, Rahul Gandhi received an email from the Assessing Officer, intimating that notice under section 148. The assessee received it on 2-4-2018 through speed post. The Assessing Officer furnished the reasons recorded. 'Reason to believe' alleging that difference

between the 'Fair Market Value' of the shares of the Young Indian (YI) and the cost of acquisition of those shares by Rahul Gandhi was his income. In support of this position, the revenue relied upon a letter written by its Department of Investigation dated 11-05-2015 and a letter dated 8-06-2015 and a Tax Evasion Petition (TEP) addressed to the Finance Minister by Subramanian Swamy.

The assessee challenged the reassessment proceedings on various grounds such as;(1) there was no tangible material (ii) The assesses were share holders of a non profit and charitable company hence no obligation to disclose value of shares, (iii) Section 56(2) (vii) is in applicable in the issue of fresh shares (iv) second proviso to section 56 (2) (vii)(c) (ii) enacts certain exceptions as the institution registered under section 12AA, section 56 (2)(vii) could not apply, (v) order subsequently cancelling the registration granted to YI on 26-10-2017 with retrospective effect was of no avail, (vi) the reliance placed upon the TEP was vitiated because the revenue had acted on stale grounds, before issuing the reassessment notice the Assessing Officer should have made independent investigations as to whether there was any obligation with respect to value of underlying assets of YI in the light of the fact that it was a charitable institution.

Dismissing the petition the Court held that the reassessment notice was issued by following due process of law and the revenue had tangible material to form the opinion that the income has escaped the assessment. Court held that entire premise of the reassessment notice is that the non disclosure of the taxing event. i.e. allotment of shares (and the absence of any declaration as to value). Deprived the Assessing Officer of the opportunity to look in to records. In the case of Rahul Gandhi, no doubt the assessment originally completed, was under section 143(3) Had he disclosed in his returns or any related documents about the event (Share acquisition) the primary fact would have been on the record; the Assessing Officer's subsequent action in pursing that aspect or letting go of it, after inquiry might well have justified the change of second and impermissible opinion on the same subject. However, that is not the case. The TEP and investigation reports of subsequent vintage (after completion of Gandhi's assessment) therefore, constituted tangible material which in terms of ruling in CIT v. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC) justified reassessment. In the case of other two assesses (Mrs Soni Gandhi and Oscar Ferandes) the returns filed by them were processed under section 143(1). Such instances are not treated as 'assessment' *Dy.CIT v. Zuari Estate Development & Investment CO Ltd (2016) 236 Taxman 1 (SC)* is an authority on the subject. (W.P 8293/2018; W.P.(C) 8482/2018 and W.P.(C) 8483/2018 are accordingly dismissed. (AY. 2011-12)

Sonia Gandhi v. ACIT (2018) 407 ITR 594 / 257 Taxman 515 / 170 DTR 57 / 304 CTR 561 (Delhi)(HC), www.itatonline.org

Rahul Gandhi v. ACIT (2018) 407 ITR 594 / 257 Taxman 515 / 170 DTR 57 / 304 CTR 561 (Delhi)(HC), www.itatonline.org

Oscar Fernandes v. ACIT (2018) 407 ITR 594 / 257 Taxman 515 / 170 DTR 67 / 304 CTR 561 (Delhi)(HC), www.itatonline.org

1768 **S. 147 : Reassessment – Subsequently Assessing Officer desired to withdraw notice without issuing any formal withdrawal of notice – The law does not recognise two parallel assessments – In the absence of withdrawal of the first notice of reassessment, the proceedings would survive – Second notice of Reassessment is held to be not valid. [S. 148]**

Allowing the petition the Court held that; a notice of reopening which is once issued would remain in operation unless it is specifically withdrawn, quashed or gets time barred. The first instance would be at the volition of the Assessing Officer as the person who had issued the notice. He can recall the notice for valid reasons and may even issue a fresh notice which is not impermissible in law. Nevertheless, there has to be an action of withdrawal. Mere intention, a stated intention or even an intention which is otherwise put in practice cannot be equated with withdrawal of the notice. By mere intention to abandon the proceedings arising out of the notice, the Assessing Officer cannot bring about the desired result of withdrawing the notice. Even the files did not show any such formal withdrawal of the notice with or without communication thereof to the assessee. The law does not recognise two parallel assessments. In the absence of withdrawal of the first notice of reassessment, the proceedings would survive making the subsequent notice of reopening invalid. (AY.2010-11)

Marwadi Shares And Finance Ltd. v. DCIT (2018) 407 ITR 49 / 168 DTR 296 / 304 CTR 899 (Guj.)(HC)

1769 **S. 147 : Reassessment – Tax evasion petition – Recording of reasons – Bogus entries – Tax evasion petitions received for previous years cannot be basis for reopening of assessment for relevant year, as Assessing Officer had not referred in recording reasons for the year under consideration – Reports submitted by the Income tax Officer who is not authorised to exercise the power cannot be the basis for reopening of assessment. [S. 69A, 131(IA), 148]**

Allowing the petition the Court held that the Tax evasion petitions received for AY. 2007-08, 2008 09 cannot have formed basis for reopening of assessment for relevant year, as Assessing Officer had not referred to orders passed therein at time of recording reasons for reopening assessment for current year. Court also held that where Income-tax Officer had not been authorized to exercise his powers under S. 131(1A), reports submitted by him could not have formed valid basis for re-opening assessment. (AY. 2009-10)

Sky View Consultants (P) Ltd. v. ITO (2017) 397 ITR 673 / 86 taxmann.com 87 / (2018) 169 DTR 157 (Delhi)(HC)

Editorial : SLP of revenue is dismissed, ITO v. Sky view consultants (2018) 257 Taxman 250 (SC)

S. 147 : Reassessment – The revenue played a subterfuge in trying to cover up its omission and in ante dating the record. The court hereby directs the Chief Commissioner to cause an inquiry to be conducted as to the involvement of the officials or employee in the manipulation of the record, and take strict disciplinary action, according to the concerned rules and regulations. This inquiry should be in regard to the conduct of the concerned AO posted at the time, who issued the notice under S. 147/148 as well as the officers who filed the affidavits in these proceedings. [S. 148] 1770

It goes without saying that whilst the "reasons" shown to the court and the petitioner may ipso facto not be faulted, yet the file tells a different story; they were not recorded before the impugned notice was issued. In fact, the revenue played a subterfuge, in trying to cover up its omission, and in ante dating the record, in the attempt to establish that such reasons existed, and this court's interference was not called for. In these circumstances, this court hereby directs the Chief Commissioner concerned to cause an inquiry to be conducted as to the involvement of the officials or employee in the manipulation of the record in this case, and take strict disciplinary action, according to the concerned rules and regulations. This inquiry should be in regard to the conduct of the concerned AO posted at the time, who issued the notice under Section 147/148 as well as the officers who filed the affidavits in these proceedings. The investigation and consequential action shall be completed within four months. The writ petition is allowed in the above terms; the impugned reassessment notice and all subsequent orders, made pursuant thereto are hereby quashed. The matter shall be listed for the revenue to report its action, to the court, in the form of an Action taken Report, on or before second Tuesday of January, 2019. The matter shall be listed before the court on 15 January, 2019 for considering the said report. The writ petition is allowed, in the above terms and in terms of the above directions. No costs. (AY.2004-05)

Prabhat Agarwal v. DCIT (2018) 169 DTR 282 (Delhi)(HC), www.itatonline.org

S. 147 : Reassessment – Block assessment – Gift – Once gifts are assessed in block assessment proceedings, same cannot be subject matter of assessment in regular assessment; whether in block assessment, Assessing Officer has found gift to be genuine or non-genuine can be of no consequence. [S. 68, 143(1), 148, 158BC] 1771

Gift from NRI was accepted u/s 143(1) of the Act. Assessee was subjected to search and in the course of block assessment proceedings AO carried out detailed enquiry in respect of gift received by assessee-Donors were summoned, they appeared before Assessing Officer and their statements were recorded, in which, they owed up gift and also cited reasons for giving such lavish gift to assessee. AO after such detailed inquiry held majority of amount of gift to be genuine and rest as non-genuine. After block assessment order was passed, reassessment order in which AO made addition of gift amount under section 68 holding entire gift amount to be non-genuine. Dismissing the appeal of the revenue the Court held that once gifts were assessed in block assessment proceedings, same could not be subject matter of assessment in regular assessment; whether in block assessment, Assessing Officer had found gift to be genuine or non-genuine could be of no consequence. (AY. 2000-01, 2001-02)

CIT v. Mukesh M Sheth (2018) 256 Taxman 443 / 170 DTR 262 / 305 CTR 558 (Guj.)(HC)

1772 **S. 147 : Reassessment – With in four years-Deduction allowed from Income from other sources in original assessment – No new facts on record – Reassessment to withdraw deduction is not valid.[S. 56, 57(iii), 148]**

Allowing the appeal the Court held that the Commissioner (Appeals) and the Income-tax Appellate Tribunal had mechanically upheld the order of the Assessing Officer without proper appreciation of the true scope and purport of sections 147 and 148. Deduction allowed from Income from other sources in original assessment and the AO has not brought any new facts on record. Accordingly the reassessment to withdraw deduction is not valid. (AY.1992-93)

Kumar's Metallurgical Corporation Ltd. v. JCIT (2018) 406 ITR 386 (T&AP)(HC)

1773 **S. 147 : Reassessment – Accommodation entries – Non application of mind – Merely on the basis of DIT(Inv.) without verification, reassessment is held to be bad in law. [S. 148]**

Dismissing the appeal of the revenue the Tribunal held that; merely on the basis of DIT(Inv.) without verification is without application of mind hence the reassessment is held to be bad in law. (AY. 2003-04)

CIT v. SNG Developers Ltd. (2018) 404 ITR 312 (Delhi)(HC)

1774 **S. 147 : Reassessment – Reference to full Bench – Non-disclosure of primary facts – Reason to believe – Explanation 3 – Different interpretations by High Courts – Following issue framed for reference to the Full Bench i.e. "whether the view expressed in the case of *Ranbaxy Laboratories Ltd. v. CIT (2011) 336 ITR 136(Delhi) (HC)* following in *CIT v. Jet Airways (I) Ltd (2011) 331 ITR 236 (Bom.) (HC)* and followed later in *CIT v. Monarch Educational Society (2016) 387 ITR 416 (Delhi) (HC)* with respect to the interpretation of Section 147 read with Explanation (3) of the Act, is restrictive, so as to sustain only additions made in the course of reassessment proceedings subject to the additions adverted to in the reassessment notice in the "reason to believe" under section 147/148 of the Act and notice pursuant thereof? [S. 148]**

In *Ranbaxy Laboratories Ltd. v. CIT (2011) 336 ITR 136 (Delhi)(HC)* and other cases, High Court had held that interpretation of section 147, read with Explanation 3, is restrictive, so as to sustain only additions made in course of reassessment proceedings subject to additions of amounts adverted to in reassessment notice in 'reasons to believe' under section 147/148 in *N. Govinda Raju v. ITO (2015) 377 ITR 243 (Karn.)* (HC) held that Explanation 3 was inserted in section 147 by which it has been clarified that Assessing Officer can assess income in respect of any issue which has escaped assessment and also 'any other income' which comes to his notice subsequently during course of proceedings. High Court held that there being some doubt as to accuracy of interpretation of section 147, appropriate course would be to refer issue to Full Bench. Following issue accordingly framed for reference to the Full Bench i.e. "whether the view expressed in the case of *Ranbaxy Laboratories Ltd. v. CIT (2011) 336 ITR 136 (Delhi)(HC)* following in *CIT v. Jet Airways (I) Ltd (2011) 331 ITR 236 (Bom.)(HC)* and followed later in *CIT v. Monarch Educational Society (2016) 387 ITR 416 (Delhi)(HC)* with respect to the interpretation of Section 147 read with Explanation (3) of the Act, is restrictive, so

as to sustain only additions made in the course of reassessment proceedings subject to the additions adverted to in the reassessment notice in the "reason to believe" under section 147/148 of the Act and notice pursuant thereof? (AY.2005-06)
PCIT v. Jakhotia Plastics (P.) Ltd. (2018) 94 taxmann.com 89 (Delhi)(HC)
Editorial : SLP of assessee is dismissed; Jakhotia Plastics (P.) Ltd. v. P CIT (2018) 256 Taxman 60 (SC)

S. 147 : Reassessment – Order passed without following the procedure – Order passed before disposal of objections raised by assessee on reasons recorded for reopening is curable irregularity does not vitiate the proceedings. Matter can be remitted for compliance with procedure. [S. 148] 1775
Dismissing the appeal of the assessee the Court held that; the assessee knowing fully well that there was no disposal of the objections, submitted to the jurisdiction of the Assessing Officer. It was only when the assessment order was passed that the assessee had come up with a contention that the mandatory procedure was not complied with by the Assessing Officer. In case an order was passed without following a prescribed procedure, the entire proceedings would not be vitiated. It would still be possible for the authority to proceed further after complying with the particular procedure. (AY.2012-13)
Home Finders Housing Ltd. v. ITO (2018) 404 ITR 611 / 166 DTR 393 / 93 Taxmnn.com 371 / 303 CTR 269 (Mad.)(HC)
Editorial : SLP of assessee is dismissed Home Finders Housing Ltd. v. ITO (2018) 256 Taxman 59 (SC)

S. 147 : Reassessment – Capital gains – Sale of land on the basis of valuation by Government approved valuer – Reassessment notice based on the valuation by Valuation officer is held to be bad in law. [S. 148] 1776
Allowing the petition the Court held that; the assessment was sought to be reopened solely on the basis of the Valuation Officer's report. Nothing was on the record that thereafter, any further inquiry was conducted by the Assessing Officer to form an opinion that the income chargeable to tax had escaped assessment with respect to the capital gains. The Valuation Officer had mechanically and on the basis of the rate in the case of two other properties situated in the same town planning scheme determined the fair market value of the land as on April 1, 1981 at ₹ 65 per sq. m. However, from the report, it did not appear that the Valuation Officer had applied his mind with respect to the location, etc., of the land in question. Thus there was no tangible material available with the Assessing Officer to form an opinion that income chargeable to tax had escaped assessment. Under the circumstances, on this ground alone, the notice deserved to be quashed. (AY.2011-12)
Munir Ismail Voraji v. ITO (2018) 404 ITR 696 (Guj.)(HC)

S. 147 : Reassessment – Recording of reasons is mandatory – Capital gains – Inflated cost of indexation of land – The Assessing Officer cannot supply reasons from any material or grounds outside the reasons recorded by him – Notice issued without application of mind is held to be invalid. [S. 148] 1777
Allowing the petition the Court held that, recording of reasons is a mandatory requirement before the Assessing Officer can issue notice for reopening an assessment.

The notice must succeed or fail on the basis of reasons so recorded and the Assessing Officer cannot supply reasons from any material or grounds outside the reasons recorded by him. Court observed that at all stages the Assessing Officer exhibited absolute non-application of mind to the facts and materials on record. The notice for reopening of assessment was therefore, based on reasons which were the product of such non-application of mind. Accordingly the notice was quashed. (AY.2009-10)
Vithalbhai G. Prajapati v. ITO (2018) 404 ITR 732 / 172 DTR 331 / 85 taxmann.com 249 (Guj.)(HC)

1778 **S. 147 : Reassessment – Duty of the Assessing Officer to furnish the reasons recorded to the assessee and proper procedure to be followed – Matter was set a side. [S. 148]**
Allowing the petition the Court held that; Duty of the Assessing Officer to furnish the reasons recorded to the assessee and proper procedure to be followed. Accordingly the AO and assessee was directed to follow the proper procedure. (AY. 2013-14)
Manjula Athur v. ITO (2018) 404 ITR 177 / 165 DTR 314 (Mad.)(HC)

1779 **S. 147 : Reassessment – Bogus purchases – Even the assessment which is completed u/s. 143(1) cannot be reopened without proper 'reason to believe'. If the reasons state that the information received from the VAT Dept that the assessee entered into bogus purchases "needed deep verification", it means the AO is reopening for doing a 'fishing or roving inquiry' without proper reason to believe, which is not permissible. [S. 143(1), 148]**
Dismissing the appeal of the revenue the Court held that; even the assessment which is completed u/s. 143(1) cannot be reopened without proper 'reason to believe'. If the reasons state that the information received from the VAT Dept that the assessee entered into bogus purchases "needed deep verification", it means the AO is reopening for doing a 'fishing or roving inquiry' without proper reason to believe, which is not permissible. Court also observed that, before closing, we can only lament at the possible revenue loss. The law and the principles noted above are far too well settled to have escaped the notice of the Assessing Officer despite which if the reasons recorded fail the test of validity on account of a sentence contained, it would be for the Revenue to examine reasons behind it. (AY. 2009-10)
PCIT v. Manzil Dineshkumar Shah (2018) 406 ITR 326 / 304 CTR 326 / 169 DTR 229 / 95 taxmann.com 46 (Guj.)(HC), www.itatonline.org
Editorial : SLP of revenue is dismissed PCIT v. Manzil Dineshkumar Shah (2019) 261 Taxman 1 (SC)

1780 **S. 147 : Reassessment – Cash credits – Accommodation entries – Bogus companies – Information from investigation wing – No nexus with reasons recorded for initiating reassessment proceedings – Reassessment was held to be bad in law. [S. 68, 143(1), 148]**
Allowing the petition the Court held that; On verifying the record it was found that, there was no nexus with reasons recorded for initiating reassessment proceedings and the information received by the AO from the investigation wing, accordingly, reassessment was held to be bad in law. (AY. 2010-11)
Amar Jewellers Ltd. v. Dy. CIT (2018) 405 ITR 561 / 254 Taxman 384 (Guj.)(HC)

S. 147 : Reassessment – Cash credits – Information from investigation Wing – Loan from company working as an entry operator and earning bogus funds to provide advances to various persons – Reassessment was held to be valid. [S. 143(1)] 1781

Dismissing the petition the court held that; Information from investigation Wing stating that loan from company working as an entry operator and earning bogus funds to provide advances to various persons. Reassessment was held to be valid. (AY. 2010-11)

Jayant Security & Finance Ltd. v. ACIT (2018) 254 Taxman 81 / 165 DTR 60 / 304 CTR 519 (Guj.)(HC)

S. 147 : Reassessment – Share capital – Bogus accommodation entries – Reassessment was held to be valid. [S. 68, 143(1), 148] 1782

Dismissing the petition the Court held that; reassessment on the basis of information for DIT stating that the assessee had received share application money from several entities which were only engaged in business of providing bogus accommodation entries to beneficiary concerns, reassessment on basis of said information was justified. (AY. 2013-14)

Ankit Agrochem (P.) Ltd. v. JCIT (2018) 253 Taxman 141 / 172 DTR 46 / (2019) 306 CTR 657 (Raj.)(HC)

S. 147 : Reassessment – Change of opinion – Since there was no material on record to indicate that there was a failure on part of the assessee to disclose fully and truly relevant material during original assessment proceedings, initiation of reassessment proceedings was without jurisdiction. [S. 80IA(4), 148] 1783

Allowing the petition the Court held that; there was no material on record before the AO indicating any failure on part of the assessee to truly and fully disclose the relevant material before the original assessing authority while passing the original assessment order and the assessing authority had discussed all the relevant facts and evidence and had rightly allowed the deduction. Therefore, there was no jurisdiction to invoke section 147/148 of the Act. Accordingly, writ petition of the assessee was allowed. (AY. 2010-11)

Kotarki Constructions (P) Ltd. v. ACIT (2018) 162 DTR 49 / (2019) 306 CTR 223 (Karn.) (HC)

S. 147 : Reassessment – Change of opinion – Unexplained investment – Reasons not recorded – Reassessment on the basis of report of departmental Valuer is held to be bad in law. [S. 148] 1784

Dismissing the appeal of the revenue the Court held that, Reassessment on the basis of report of departmental Valuer is held to be bad in law. (AY. 1991-92)

CIT v. P. Nithilan (2018) 403 ITR 154 (Mad.)(HC)

S. 147 : Reassessment – Reopening of assessment based on assessment of subsequent assessment year without any new material is found, reassessment was not valid. [S. 80IA, 148] 1785

Dismissing the revenue appeal the Court held that; Reopening of assessment based on assessment of subsequent assessment Year without any new material is not valid. (AY. 2007-08, 2008-09)

PCIT v. Jai Prakash Associates Ltd. (2018) 403 ITR 41 (All.)(HC)

1786 **S. 147 : Reassessment – Two notices – Reassessment was initiated vide two notices and the second notice was beyond prescribed period – No where it was stated that second notice was in continuation of first one hence reassessment was invalid. [S. 143(1), 148]**
Allowing the petition the Court held that, no satisfactory explanation was provided as to why the first notice on March 2015 issued by the AO under S. 148 of the Act was not carried to its logical end. The mere fact that the AO who issued that notice was replaced by another AO can hardly be the justification for not proceeding in the matter. On the other hand, the AO did not seek to proceed under S. 129 of the Act but to proceed de novo under S. 148 of the Act and this was a serious error which could not be accepted to be a mere irregularity. The High Court noticed that there were numerous legal infirmities which lead to inevitable invalidation of all the proceedings that took place pursuant to the notice issued to the assessee first in March 2015 and then again in January, 2016 under S. 148 of the Act. Thus the High Court set-aside the proceedings initiated by the AO under S. 148 of the Act. (AY. 2008-09)
Mastech Technologies Pvt. Ltd. (2018) 407 ITR 242 / 161 DTR 189 (Delhi)(HC)

1787 **S. 147 : Reassessment – Recorded reasons – Wrongly stating matters for earlier years pending before High court instead of before Tribunal being inadvertent error, does not invalidate reasons recorded for reopening of assessment – Reopening was held to be valid. [S. 10A, 143(1), 148]**
Dismissing the petition the Court held that the fact that the Assessing Officer had made a wrong reference as to the issue being pending before the High Court instead of before the Tribunal did not invalidate the foundation of the reasons recorded by him. It was obviously an inadvertent error in referring to the forum before which such issue was pending. Where the original assessment was not made after scrutiny, the Assessing Officer could not be stated to have formed any opinion and therefore, the concept of change of opinion did not apply. The reopening of the assessment was permissible. (AY. 2010-11)
Gateway Technolabs Pvt. Ltd. v. ACIT (2018) 402 ITR 437 (Guj.)(HC)

1788 **S. 147 : Reassessment – With in four years – Reopening of assessment by succeeding Assessing Officer to disallow excess deduction was held to be change of opinion which was held to be impermissible. [S. 80IA, 143(3), 148]**
Allowing the petition the Court held that; the assessee's claim to deduction under section 80-IA was examined by the previous Assessing Officer minutely during the scrutiny assessment proceedings. He had given detailed reasons for reducing the claim by ₹ 3. 8 lakhs and had accepted the rest of the claim. Any attempt on the part of the succeeding Assessing Officer to modify that position would be change of opinion. If an angle or an element of the claim had not been directly addressed by the previous Assessing Officer during the original assessment to the satisfaction of the succeeding Assessing Officer, it could not be a ground for reopening of the assessment which was previously made after scrutiny. (AY. 2011-12)
Ajanta Pvt. Ltd. v. DCIT (2018) 402 ITR 72 (Guj.)(HC)

S. 147 : Reassessment – Purchase and sale of shares – Accommodation entries – Reassessment rejecting the capital gain was held to be valid. [S. 143(3) 148] 1789

Dismissing the appeal the Tribunal held that reassessment rejecting the claim of capital gain was held to be justified. There was no error in the order of the Tribunal in so far as it had sustained the addition not only on the ground of surrender but also after disbelieving the genuineness of the transaction of purchase and sale of shares. (AY. 1998-99)

Rajnish Jain v. CIT (2018) 402 ITR 12 / 166 DTR 205 / 303 CTR 845 (All.)(HC)

S. 147 : Reassessment – With in four years – Change of opinion – Transaction relating to subsequent year – Reassessment was held to be not justified. [S. 2(15), 148] 1790

Allowing the petition the Court held that; the Assessing Officer had raised written queries during the original assessment and answers were given by the assessee to such questions. This included the applicability of the amended S. 2(15). The Assessing Officer held that the activities of the trust are not for charitable purpose. He, thus, accepted the assessee's stand in this regard. Any attempt now to re-examine this issue would be considered as change of opinion and clearly impermissible even if it was within the period of four years. The notice of reassessment was not valid. (AY. 2009-10)

Friends of WWB India v. DIT (2018) 402 ITR 350 (Guj.)(HC)

S. 147 : Reassessment – With in four years – Details submitted during scrutiny assessment – Reassessment notice based on same facts was held to be not valid. [S. 148] 1791

Allowing the petition the Court held that; Details of income submitted during scrutiny assessment-Reassessment notice based on same facts was held to be not valid. (AY. 2012-13)

Giriraj Steel v. DCIT (2018) 402 ITR 204 (Guj.)(HC)

S. 147 : Reassessment – Rejection of objection without assigning reasons was held to be bad in law. [S. 148] 1792

Allowing the appeal the Court held that; The Assessing Officer had merely observed and recorded that the objections raised by the assessee were untenable and wrong, without elucidating and dealing with the contentions and issues raised in the objection. The Assessing Officer had not applied his mind to the assertions and contentions raised by the assessee and the core issue to be examined and considered. The reassessment proceedings were not valid. (AY. 2008-09)

Scan Holding P. Ltd. v. ACIT (2018) 402 ITR 290 / 169 DTR 334 (Delhi)(HC)

S. 147 : Reassessment – Educational institution – The interim injunction granted on April 26, 2006 continued to operate till completion of the procedures. [S. 10(23C)(vi), 148, Art. 226] 1793

The assessee had applied for exemption under section 10(23C)(vi) and final orders were awaited. The assessee was issued notices under section 148 for reopening of the assessments for the assessment years 1999-2000 to 2004-05. On writ petitions, the Court held, that the assessee was entitled to seek reasons for reopening of the assessment, under section 147 and on receipt of the reasons, the assessee was entitled to file its

objections. The interim injunction granted on April 26, 2006 continued to operate till completion of the procedures. (AY. 1999-2000 to 2004-05)
Annamalai University v. ITO (2018) 401 ITR 80 / 166 DTR 422 (Mad.)(HC)

1794 **S. 147 : Reassessment – Natural justice – Order passed without disposing of objections raised by assessee for reopening was improper and null and void. [S. 143(2), 148]**
Allowing the petition the Court held that, Order passed without disposing of objections raised by assessee for reopening was improper and null and void. The law laid down by the Supreme Court is of binding nature and is a source of law unto itself, which would bind on all the authorities. *Gkn Driveshafts (India) Ltd. v. ITO (2003) 259 ITR 19 (SC)* lays down a law and failure to comply would render the assessment order without jurisdiction (AY. 2009-10)
Jayanthi Natarajan (MS.) v. ACIT (2018) 401 ITR 215 / 300 CTR 225 / 161 DTR 281 (Mad.)(HC)

1795 **S. 147 : Reassessment – Notice issued in name of deceased assessee – Objection raised by legal heir of deceased assessee before completion of reassessment – Notice was held to be null and void. [S. 148, 159, 292B, 292BB]**
Allowing the petition the Court held that; Notice was issued in name of deceased assessee and the objection was raised by legal heir of deceased assessee before completion of reassessment therefore, notice was held to be null and void. The legal heirs had raised objections before completion of the reassessment proceedings and, therefore, the provisions of S. 292B were not applicable.
Jaydeepkumar Dhirajlal Thakkar v. ITO (2018) 401 ITR 302 / 165 DTR 404 / 305 CTR 683 (Guj.)(HC)

1796 **S. 147 : Reassessment – With in four years – Reassessment on basis of tangible material placed on record was held to be valid. [S. 44BB(3), 92CA]**
Dismissing the petition the Court held that; (1) AO noticed that assessee had transactions with AEs which were never referred to TPO for computation of income at arm's length. (2) Since it was a case where assessment had been reopened on basis of tangible material placed on record, validity of reassessment proceedings deserved to be upheld.
Dolphin Drilling Ltd. v. ADIT (2018) 401 ITR 209 / 252 Taxman 181 (Uttarakhand)(HC)

1797 **S. 147 : Reassessment – Principle of natural justice – Matter remitted to income tax officer for fresh consideration. [S. 44AB, 45]**
Allowing the petition the Court held that; Order was passed without following the principle of natural justice, therefore the matter was remitted back to income tax officer for fresh consideration. (AY. 2010-11)
Kovalam Santhana Krishnan Mohan v. ITO (2018) 404 ITR 597 / 252 Taxman 289 (Mad.) (HC)

S. 147 : Reassessment – Failure in computing income from outside India at a low rate – Reassessment was held to be valid. [S. 44BB, 148] 1798
Dismissing the petition the Court held that; ADIT found that assessee did not bifurcate receipts into outside India and inside India and had, thus, failed to tax entire receipts in India as business income at maximum marginal rate as per Income-tax Act. There was also failure in computing income from outside India at a low rate, therefore reassessment was held to be valid.
Invensys Process Systems (S) v. ADIT (2018) 252 Taxman 199 (Uttarakhand)(HC)

S. 147 : Reassessment – With in four years – Original reassessment was held to be invalid for non service of notice u/s. 143(2) – Notice reassessment on same ground was held to be valid. [S. 143(2), 148] 1799
Dismissing the petition the Court held that; where original assessment reassessment was held to be invalid for non service of notice u/s 143(2). Subsequent notice for reassessment on same ground was held to be valid. (AY. 2012-13)
Krishna Developers and Co. v. DCIT (2018) 400 ITR 260 (Guj.)(HC)
Editorial : SLP of assessee is dismissed, Krishna Developers and Co. v. DCIT (2018) 254 Taxman 125 (SC)

S. 147 : Reassessment – With in four years – Change of opinion – Reassessment was held to be not valid. [S. 148] 1800
Allowing the petition the Court held that; successor officer seeking to reopen the assessment on same grounds examined by the predessor officer was held to be not valid. Reassessment on grounds other than those stated in reasons recorded was held to be impermissible. Disposal of objection raised by the assesee is held to be not mere formality, hence reassessment was held to be not valid. (AY. 2010-11)
Vijay Harishchandra Patel v. ITO (2018) 400 ITR 167 / 167 DTR 475 (Guj.)(HC)

S. 147 : Reassessment – Cash credits – Finding of the CIT(A) in assessment year, 2012-13 amount assessable in the years 2009-10 and 2010-2011 – Reassessment was held to be valid. [S. 68, 148] 1801
Dismissing the appeal the Court held that; the assessee has failed to file its return for the Asst. Years 2010-2011-12, reopening of assessment when it was made known during assessment year 2012-13 that the capital introduced in the course of earlier two financial years. The notice to reassessment is held to be valid. (AY. 2010-11 to 2012-13)
Alfa Investments v. ITO (2018) 304 CTR 425 / 167 DTR 95 (Mad.)(HC)
Editorial : Order of single judge, Alfa Investments. v. ITO (2018) 400 ITR 445 / 161 DTR 155 / 300 CTR 85 (Mad.)(HC)

S. 147 : Reassessment – Cash credits – No specific direction – Finding of the CIT(A) in assessment year, 2012-13 stating that the amount assessable in the years 2009-10 and 2010-2011 – Reassessment was held to be valid. [S. 68, 148] 1802
Dismissing the petition the Court held that; even assuming that there was no specific direction in the order passed by the CIT(A), the Assessing Officer was entitled to exercise his powers under S. 148 of the Act, as there was no opportunity to verify the

transactions claimed to have been made in those years. The notice was valid. (AY. 2010-11 to 2012-13)
Alfa Investments v. ITO (2018) 400 ITR 445 / 161 DTR 155 / 300 CTR 85 (Mad.)(HC)
Editorial : Affirmed by division Bench, Alfa Investments v. ITO (2018) (2018) 304 CTR 425 (Mad.)(HC)

1803 **S. 147 : Reassessment – Reassessment notice on basis of subsequent years assessment was held to be valid. [S. 148]**
Dismissing the petition the Court held that; in the course of subsequent year assessment it was found that claim was allowed in the original assessment were based on erroneous statement by assessee hence the notice of reassessment was held to be valid. (AY. 2007-08, 2008-09)
S. C. Johnson Products P. Ltd. v. ACIT (2018) 400 ITR 426 / 253 Taxman 108 / 161 DTR 209 (Delhi)(HC)

1804 **S. 147 : Reassessment – Deemed dividend – Notice based on information received from another assessee's assessing authority was held to be valid. [S. 2(22)(e), 143(1), 148]**
Dismissing the petition the Court held that; merely because the relevant material was brought to the notice of the Assessing Officer by an Assessing Officer of another assessee that would not per se vitiate his satisfaction that income chargeable to tax had escaped assessment. The return of the assessee was processed under section 143(1) without scrutiny. The reasons recorded by the Assessing Officer for issuing notice under section 148 did not lack validity so that the notice for reopening could be terminated at that stage itself on such ground. (AY. 2009-10)
Sunrise Broking Pvt. Ltd. v. ITO (2018) 400 ITR 337 (Guj.)(HC)

1805 **S. 147 : Reassessment – After the expiry of four years – Concluded assessment reopened on the basis of assessment of subsequent years – Held, no failure on the part of the assessee to disclose fully and truly all material facts – Held, reassessment is not valid.**
Concluded assessment was sought to be reopened after four years on the basis of assessment of subsequent years. It was held by the Tribunal that though in the reasons recorded, it was held that the assessee had failed to disclose fully and truly all material facts, no reference was made in the reasons to the material facts not so disclosed. Accordingly, the reassessment was held to be bad in law. (AY. 2006-07)
Dy. CIT v. Wind World (India) Limited (2018) 63 ITR 599 (Mum.)(Trib.)

1806 **S. 147 : Reassessment – After the expiry of four years – Bogus purchases – No tangible material before the AO to come to the conclusion that income has escaped assessment – Reassessment was held to be not valid. Notice based on information from Sales Tax Department that assessee obtained accommodation entries – Recorded reasons have a live link with formation of belief – Failure to disclose primary facts – Reassessment was held to be valid – Matter was remanded to the AO to give fair opportunity of hearing and opportunity of cross examination. [S. 148]**
Tribunal held that, the assessee filed before the AO the copies of ledger accounts, bank statement and purchase bills of the two parties. Also the assessee had filed the copies

of corresponding sale bills and chart showing bill-wise purchases in respect of the two parties and the corresponding sales. Thus the assessee had disclosed the primary facts. Therefore the notice under S. 148 issued by the AO was bad in law. Tribunal held that for the AY.2009-10, the AO received tangible material from the Sales Tax Department that the assessee had obtained accommodation entries from six parties to inflate its purchases. The reasons had a live link with the formation of belief. The assessee failed to disclose the primary facts before the AO in the original assessment proceedings. There was no change of opinion by the AO in the subsequent reassessment. Therefore the reassessment was valid.

Tribunal also held that a proper hearing must always include a fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view. Cross-examination is allowed by procedural rules and by the rules of natural justice. Any witness who has been sworn on behalf of any party is liable to be cross-examined on behalf of the other party to the proceedings. The matter was remanded to the Assessing Officer to make a fresh assessment after examining the concerned parties and giving opportunity of cross-examination to the assessee. The assessee was directed to file the relevant details before the Assessing Officer. The Assessing Officer would give reasonable opportunity of being heard to the assessee before finalising the assessment order. (AY.2008-09 to 2010-11)

Ganesh J. Modi v. ACIT (2018) 65 ITR 30 (Mum.)(Trib.)

S. 147 : Reassessment – After the expiry of four years – Reassessment notice to be set a side where no income had escaped assessment on account of assessee's failure to disclose true facts in the assessment. [S. 148, 153A] 1807

On this jurisdictional issue, the Tribunal held that the first proviso to section 147 mandates income to be taxed must have escaped assessment on account of assessee's failure to disclose full and true facts in the assessment proceedings. The reasons for reopening the assessment did not even whisper about the non-disclosure of full facts and record during the completed assessment proceedings u/s. 153A r.w.s 143(3) of the Act and therefore, the notice u/s. 148 lacks jurisdictions and was to be set aside.(AY. 2004-05)

ACIT v. Maruti Clean Coal & Power Ltd. (2018) 193 TTJ 1 (UO)(Raipur)(Trib.)

S. 147 : Reassessment – After the expiry of four years – No accommodation entries were found in books of assessee – AO plainly relied on the information from the investment wing, there was nothing in the reassessment recorded for reopening of assessment-Reassessment not valid. [S. 148] 1808

The Tribunal held that, when the entries were not found in the books of the assessee, the entries could not be made the basis for reopening the completed assessment. The veracity of the notice u/s. 148 has to be tested on the basis of the notice. Further nothing in the reasons recorded for the reopening of the assessee relating to non-disclosure of full and true facts by the assessee. There was no independent application of mind by the AO. The AO had borrowed information from the investigation made by the Investigation Wing. Therefore the notice issued u/s. 148 was without jurisdiction and the notice was set aside. (AY. 2004-05)

ACIT v. Maruti Clean Coal and Power Ltd. (2018) 63 ITR 78 (SN)(Raipur)(Trib.)

1809 **S. 147 : Reassessment – After the expiry of four years – If there is nothing in the recorded reasons to suggest that the income chargeable to tax has escaped assessment is ₹ one lakh or more, the notice issued u/s. 148 of the Act beyond four years of the end of the relevant assessment year is invalid. [S. 148]**

Allowing the appeal of the assessee the Tribunal held that, if there is nothing in the recorded reasons to suggest that the income chargeable to tax which has escaped assessment is ₹ one lakh or more, the notice issued u/s 148 of the Act beyond four years of the end of the relevant assessment year is invalid. Followed *Mahesh Kumar Gupta v. CIT (2014) 363 ITR 300 (All.)(HC), Amar Nath Agarwal v. CIT (2015) 371 ITR 183 (All) (HC).* (AY. 2007-08)

Usha Agarwal v. ITO (SMC) (2018) 194 TTJ 41 (UO)(Agra)(Trib.), www.itatonline.org

1810 **S. 147 : Reassessment – After the expiry of four years – Bogus share capital – Statement was retracted – No allegation of failure on part of assessee to disclose material facts-Reasons recorded without independent application of mind – Reassessment is held to be in valid. [S. 148]**

Tribunal held that, there is no allegation of failure on part of assessee to disclose material facts. Reasons recorded without independent application of mind. The statement of two persons relied upon was retracted and alleged statements of two persons were not with the AO at the time of reopening of assessments. No enquiry or prima facie verification was made. Therefore the reopening was bad in law as the reasons recorded were without application of mind. (AY.2009-10)

ACIT v. Adhunik Cement Ltd. (2018) 64 ITR 65 (SN) / 194 TTJ 626 / 168 DTR 25 (Kol.) (Trib.)

1811 **S. 147 : Reassessment – Capital gains – Transfer of property – Development agreement – General power of attorney – Liable to capital gains – Reassessment is held to be valid. [S. 2(47) (v), 148 Transfer of Property Act, 1882, S. 53]**

Tribunal held that the assessee has handed over possession hence there is part performance of contract in nature referred to in Section 53 of Transfer of Property Act, 1882 then Clause(v) of Section 2(47) was clearly attracted. Accordingly liable to capital gains tax. Reassessment is held to be valid. Whether the gain is short term or long term matter reamended to the AO. (AY.2009-10)

Adinarayana Reddy Kummeta v. ACIT (2018) 166 DTR 206 / 169 ITD 683 / 193 TTJ 888 (Hyd.)(Trib.)

1812 **S. 147 : Reassessment – Royalty – Survey – Merely because tax was deducted at source on such income it could not be said that there was no escapement of income – Wrong mentioning of provision of law relating to other issues in the reasons recorded would not vitiate reassessment proceedings – Reassessment is held to be valid – DATA-India-South Korea. [S. 133A, 148, Art.5(2)]**

Pursuant to survey AO issued notice u/s 148 of the Act. Tribunal held that perusal of figures in statement furnished in respect of income as reported in return furnished u/s 148 proved that there was huge difference. It was only after re-opening matter and verification of re-conciliation of royalty and FTS income as declared in return u/s

147 with TDS details of SIEL, AO recorded that Royalty/FTS income as offered to tax in such returns was acceptable. Merely because tax was deducted at source on such income it could not be said that there was no escapement of income. It was open under Explanation 3 to section 147 for AO to reassess income on any issue which newly came to his notice subsequent to issuance of notice u/s 148, it could not be said that mere wrong mentioning of provision of law relating to other issues in reasons recorded would vitiate proceedings. (AY. 2004-05 to 2014-15)
Samsung Electronics Co. Ltd. v. Dy. CIT (IT) (2018) 170 DTR 85 / 64 ITR 99 / 193 TTJ 769 (Delhi)(Trib.)

S. 147 : Reassessment – Change of opinion – Re-insurance premium – Failure to deduct tax at source – Reassessment is held to be bad in law. [S. 195] 1813
AO reopened the assessment on ground that re-insurance premium was paid by assessee to non-resident company contrary to provisions of Insurance Act and without deducting TDS. Allowing the appeal of the assessee the Tribunal held that, It was not case of revenue that any new material was found for purpose of reopening of assessments – On basis of material already available while processing assessment, AO came to a conclusion that assessee had not deducted tax while making payment towards re-insurance premium. When the AO examined material available on record while passing order u/s. 143(3) and assessee also disclosed payment of re-insurance premium, it could not be said that there was any negligence on part of assessee in disclosing relevant material for completing assessment. Therefore reassessment is held to be bad in law. (AY. 2003-04, 2004-05).
Cholamandalam Ms General Insurance Company Ltd. v. ACIT. (2018) 170 DTR 22 / 195 TTJ 166 (Chennai)(Trib.)

S. 147 : Reassessment – Claimed deduction u/s 10B despite fact that STPI, Noida from whom assessee had been taking approval was not competent to accord approval for deduction – Reassessment is held to be justified- AO is bound to allow deduction /s 10A which was made in the return filed in pursuance of notice u/s 148. [S. 10A] 1814
Assess claimed the deduction u/s. 10B of the Act. AO issued notice u/s 148 of the Act. In pursuance of notice u/s. 148 the assessee filed the return claiming deduction u/s. 10A of the Act. AO disallowed the claim u/s. 10B of the Act, which was confirmed by the CIT(A). On appeal the Tribunal held that reassessment proceeding for bringing to tax items which had escaped assessment, it would be open to assessee to put forward claims for non taxability of same. Since in this matter amount sought to be brought under tax by reassessment proceedings was same amount which assessee claims non taxable u/s. 10A, assessee could not be prevented from contending amount which was originally allowed to be deductible u/s. 10B was also deductible u/s. 10A. Tribunal held that AO must in fairness consider documents on basis of claim and ascertain whether they were proper and after verifying them, pass appropriate order as to whether benefit of Section 10A could be granted. Matter was set aside to file of AO to consider case of assessee u/s. 10A. (AY.2007-08)
Smart Cube India (P) Ltd. v. ITO (2018) 164 DTR 201 / 192 TTJ 881 (Delhi)(Trib.)

1815 **S. 147 : Reassessment – Notice issued in the name of assessee – Sanction was obtained of other assessee – Reassessment is held to be bad in law – Not curable defects. [S. 148, 292BB]**

Allowing the appeal of the assessee the Tribunal held that, notice was issued in the name of individual. Sanction was obtained in the name of firm. Reassessment is held to be bad in law. Provision of S. 292BB cannot be invoked, defects is not curable defects. (AY.2004-05)

Kailash Sharma v. ITO (2017) 49 CCH 545 / (2018) 163 DTR 130 / 192 TTJ 488 (Asr.) (Trib.)

1816 **S. 147 : Reassessment – Deposit in bank – Merely on the basis of deposit made in bank, reassessment is not valid when there is contradiction between statement recorded and information of recording reasons. [S. 148]**

The AO recorded in the assessment order that as per the information available on record, the assessee had made a cash deposit of ₹ 39 lakhs in his bank account and on that basis he recorded reasons for reopening the assessment. Further, in the reasons, he had recorded the information available with him of cash deposit of ₹ 10 lakhs only. Thus, there was a contradiction in the statement recorded in the assessment order and in the reasons. The Assessing Officer without verifying the information had recorded the reasons for reopening of the assessment. Thus, he had not applied his independent mind to the information received in this regard. Merely based on suspicious reasons Assessing Officer cannot reopen the case of the assessee on incorrect fact that income chargeable to tax had escaped assessment. (AY. 2008-09, 2011-12)

Inder Jeet v. ITO (2018) 68 ITR 71 (SN) (Delhi)(Trib.)

Ashok Kumar v. ITO (2018) 68 ITR 71 (SN) (Delhi)(Trib.)

1817 **S. 147 : Reassessment – With in four years – Survey – Reassessment on the basis of statement of the partner – Reassessment is held to be valid – Adoption of cost of construction – Matter is remanded. [S. 133A]**

Tribunal held that when the assessee firm failed to produce single document during course of survey proceedings and post survey inquiry to show source of investment which could not be treated as income of assessee firm then, vague statements giving estimated details without supporting evidence would not help case of assessee. Accordingly the reassessment is held to be justified. As regards the adoption of cost of construction. Matter is remanded. (AY. 2011-12, 2012-13)

Ganpati Plaza v. ITO (2018) 52 CCH 535 / 165 DTR 25 / 193 TTJ 86 (Jaipur)(Trib.)

1818 **S. 147 : Reassessment – Amalgamation – AO issued notice for reopening only against amalgamating company and not against assessee company which was amalgamated/ successor company, assessment made in name of assessee company was void. [S. 148, 292B]**

The Tribunal stated that notice for reopening under section 148 can be issued only against amalgamating company (NPPL) for being provided accommodation entries and not against assessee-company which was amalgamated/ successor company. As a result, the Tribunal held that assessment made in name of assessee company was void because, even after

AO came to know that NPPL got amalgamated with assessee-company he did not care to issue section 148 and 143(2) notices to assessee-company which was sine qua non. Further, Tribunal held that notice issued in name of non-existent company was clearly jurisdictional defect and not mere procedural irregularity and thereby it was curable defect and section 292B could not come to the rescue of Department. (AY.2006-07)
Dy. CIT v. Mani Square Ltd (2017) 190 TTJ 742 / (2018) 163 DTR 34 (Kol.)(Trib.)

S. 147 : Reassessment – Change of opinion – When the initiation of reassessment proceedings amounted to change of opinion, same is not permitted in the law. [S. 40(a)(ia), 43B] 1819
AO had in original assessment proceedings made disallowance of TDS under provisions of section 43B whereas for reopening of case, AO wanted to make disallowance under section 40(a)(ia). Accordingly it was a clear case of change of opinion which as per judicial precedents was not permissible in the law in view of the Delhi High Court in case of *Kelvinator India Ltd. (2002) 256 ITR 1 (FB) (Delhi) (HC)* and other judicial precedents which held that in a situation where according to AO he failed to apply his mind to relevant material in making assessment order, he could not take advantage of his own wrong and reopen assessment by taking recourse to provisions of S. 147. In view of the above, Tribunal held that there was no infirmity found in order of CIT(A) and thereby revenue's appeal was dismissed.(AY.2009-10)
DCIT v. Jasminder Singh (2018) 52 CCH 645 / 63 ITR 53 (SN) (Luck.)(Trib.)

S. 147 : Reassessment – No tangible material – Reassessment is held to be not valid. [S. 148] 1820
Tribunal held that reopening of assessment proceedings in the absence of any tangible material to hold that there was reason to believe that income had escaped assessment is not valid in law. Therefore reassessment proceedings were not valid. (AY. 2006-07 to 2008-09)
DCIT v. Sandvik Information Technology AB (2018) 63 ITR 19 (SN)(Pune)(Trib.)

S. 147 : Reassessment – With in four years – Derived from – Export benefits – Decision of the Supreme Court was operative when the return was filed – Reassessment was held to be valid. [S. 80IC, 148] 1821
Allowing the appeal of the revenue the Tribunal held that; the Commissioner (Appeals) was seized of the matter with reference to determining the controversy as to the inclusion of export benefits to the tune of ₹ 2,36,32,653 for computing eligible profits derived from the industrial undertaking for computing deduction under section 80-IC was fallacious and to contend that the assessment order originally framed could not be now subject to reassessment proceedings under section 147 despite the income having escaped assessment in light of the Supreme Court decision was not acceptable and was rejected as the Commissioner (Appeals) was never seized of this controversy. Thus the reassessment order passed by the Assessing Officer both on the merits as well on the legal ground concerning validity of reopening of the concluded assessment under section 147 and the appellate order passed by the Commissioner (Appeals) which was an order

of rectification rectifying appellate order passed by the Commissioner (Appeals) was set aside. (AY. 2009-10)
DCIT v. Century Textiles And Industries Ltd. (2018) 61 ITR 647 / 162 DTR 247 / 191 TTJ 483 (Mum.)(Trib.)

1822 **S. 147 : Reassessment – So long as the income escaped assessment for which reasons were recorded has been assessed, the Assessing Officer has power to include other incomes which has escaped assessment and which comes to his knowledge in the course of the proceedings under this section. Disallowance of commission is held to be justified. [S. 37(1), 80IB]**
Dismissing the appeal of the assessee the Tribunal held that provisions of S. 147 permit the Assessing Officer to assess or reassess the income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section. So long as the income escaped assessment for which reasons were recorded has been assessed, the Assessing Officer has power to include other incomes which has escaped assessment and which comes to his knowledge in the course of the proceedings under this section. (AY. 2007-08)
Sun Infraa v. DCIT (2018) 65 ITR 687 (Hyd.)(Trib.)

1823 **S. 147 : Reassessment – Income of any other person – Issue of notice u/s. 153C and did not continue with proceedings, again issuing a notice u/s. 148 is held to be bad in law. [S. 148, S. 153C]**
Allowing the appeal of the assessee, the Tribunal held that when the AO had issued a notice u/s. 153C to which the assessee had complied with. Thereafter the AO did not continue with the proceedings u/s. 153C. Subsequently the AO issued a notice u/s 148, which was held to be bad in law. (ITA No. 3275/Mum./2015 & 3276/Mum./2015) (AY. 2003-04, 2005-06)
Rayoman Carriers Pvt. Ltd. v. ACIT (Mum.)(Trib.), www.itat.nic.in

1824 **S. 147 : Reassessment – Reopening of assessment cannot be permitted merely on ground that there is change in view of AO and he subsequently believes that earlier view is incorrect. [S. 133(6), 143(3)]**
Assessee contended that he has disclosed all the primary facts regarding purchases from the concerned parties at the time or original assessment. The Tribunal held that If AO has taken a view in assessment, then he cannot change his view u/s. 147 on the basis of his personal opinions. Held that unless the Ld. AO has tangible material before him on basis of which he comes to conclusion that income has escaped assessment, reopening of an assessment cannot be permitted merely on ground that there is a change in view of Ld. AO and he subsequently believes that earlier view was incorrect. The Tribunal held that the notice u/s. 148 issued by the Ld. AO was bad in law. (AY. 2008-09 to 2010-11)
ACIT v. Ganesh J. Modi (2018) 65 ITR 30 (SN)(Mum.)(Trib.)

S. 147 : Reassessment – Failure to issue notice u/s. 143(2), reassessment was held to be invalid. [S. 143(2), 148, 292BB] 1825

Tribunal held that since the Department could not produce any evidence to show that notice under section 143(2) had been issued or served to the assessee the reassessment made under section 143(3) read with section 147 was void ab initio. (AY. 2011-12)

Ramesh Salecha HUF v. ITO (2018) 61 ITR 632 (Mum.)(Trib.)

S. 147 : Reassessment – Failure to disclose beneficial owner of deposits in foreign Bank accounts-Reassessment was held to be justified. [S. 69, 148] 1826

Tribunal held that, assessee being beneficial owner of deposits in foreign bank accounts failed to disclose interest from said deposits in its return of income, reopening of assessment in case of assessee was justified. (AY. 2005-06, 2010-11 to 2012-13)

Ambrish Manoj Dhupelia v. DCIT (2018) 168 ITD 407 (SMC)(Mum.)(Trib.)

S. 147 : Reassessment – With in four years – Reopening of assessment based only on the change of opinion on the existing material cannot be sustained in absence of any new tangible material. 1827

ITAT observed that since the very basis for reopening of the assessment was based on the information already on record and since the issue was already examined by the AO during regular assessment proceedings, reopening could not be made only on the basis of change of opinion.

Mylan Laboratories Ltd. v. DCIT (2018) 52 CCH 631 / 66 ITR 354 (Hyd.)(Trib.)

S. 147 : Reassessment – Scientific research expenditure – Original assessment completed after considering all facts – reassessment based on subsequent amendments applicable to subsequent years – Held, no new tangible material – Held, reassessment bad in law. [S. 35(2AB)] 1828

The Tribunal held that original assessment was completed after considering all the facts and evidence regarding the allowability of scientific research expenditure u/s. 35 of the Act. The assessment was reopened on the basis of amendment which was effective from subsequent years. Accordingly, it was held that reassessment was bad in law. (AY. 2008-09, 2009-10)

Efftronics Systems P. Ltd. v. Dy. CIT (2018) 63 ITR 25 (SN)(Vishakha.)(Trib.)

S. 147 : Reassessment – If the AO acts on borrowed satisfaction and without application of mind, the reopening is void. [S. 92, 148] 1829

Allowing the appeal of the assessee the Tribunal held that; The information given by DIT (Inv) can only be a basis to ignite/ trigger "reason to suspect". The AO has to carry out further examination to convert the "reason to suspect" into "reason to believe". If the AO acts on borrowed satisfaction and without application of mind, the reopening is void. (AY. 2010-11)

Devansh Export v. ACIT (2018) 196 TTJ 665 / (2019) 176 DTR 17 (Kol.)(Trib.), www.itatonline.org

1830 **S. 147 : Reassessment – Bogus share capital – Reassessment is held to be valid – Addition is confirmed as cash credits on merit. [S. 148, 151]**
Dismissing the appeal of the assessee considering the facts of the case reassessment is held to be valid and addition is confirmed on merit. (AY. 2005-06)
Pee Aar Securities Ltd. v. DCIT (2018) 169 DTR 340 / 195 TTJ 542 (Delhi)(Trib.), www.itatonline.org

1831 **S. 147 : Reassessment – Information is received from investigation wing itself cannot be said to be tangible material per se and, thus, reassessment on said basis is not justified. [S. 148, 151]**
Allowing the appeal of the assessee the Tribunal held that,if information is received from investigation wing that assessee was beneficiary of accommodation entries but no further inquiry was undertaken by AO, said information cannot be said to be tangible material per se and, thus, reassessment on said basis is not justified. (AY. 2009-10)
Pioneer Town Planners Pvt. Ltd. v. DCIT (2018) 195 TTJ 388 / 170 DTR 237 / 66 ITR 47 (SN) (Delhi)(Trib.), www.itatonline.org

1832 **S. 147 : Reassessment – Reopening assessment on borrowed satisfaction rather than his own satisfaction – Reassessment is held to be invalid. [S. 148]**
Tribunal held that the validity of reassessment proceedings has to be judged with the material available with the Assessing Officer and opinion are strictly based on documents and information in possession of the Assessing Officer. Merely on the basis of statement recorded by investigation wing and also without giving an opportunity of cross examination, no reopening can be made in mechanical manner. Reopening cannot be based on borrowed satisfaction. The independent satisfaction of the Assessing Officer is the basic necessity. (AY. 2007-08, 2008-09)
Nirmala Agarwal v. ACIT (2018) 64 ITR 658 (Jaipur)(Trib.)

1833 **S. 147 : Reassessment – Borrowed satisfaction – The recorded reasons referred to any document, a copy should be provided to the assessee. Failure to do so results in breach of natural justice and renders the reopening is void. [S. 148]**
Allowing the appeal of the assessee the Tribunal held that; If the reopening is based on information received from the investigation dept, the reasons must show that the AO independently applied his mind to the information and formed his own opinion. If the reopening is done mechanically, it is void. Also, if the reasons refer to any document, a copy should be provided to the assessee. Failure to do so results in breach of natural justice and renders the reopening void. (AY. 2010-11)
Deepraj Hospital (P) Ltd. v. ITO (2018) 65 ITR 663 (Agra)(Trib.), www.itatonline.org
Charan Singh Ice and cold Storage (P) Ltd v. ITO (2018) 65 ITR 663 (Agra)(Trib.), www.itatonline.org

S. 147 : Reassessment – Escapement of capital gains in AY. 2007-08 – Reopening of assessment for the AY. 2006-07 – No nexus between material and the formation of prima facie belief that income had escaped taxation for the AY. 2006-07 – Reassessment is held to be bad in law. [S. 148] 1834

Tribunal held that, sale executed and registered 12-1-2007, therefore escapement of capital gains in AY. 2007-08. However reopening was for the AY.2006-07 As there is no nexus between material and the formation of prima facie belief that income had escaped taxation for the AY. 2006-07 reassessment is held to be bad in law. (AY. 2006-07, 2008-09)

Jagdish Narayan Sharma v. ITO (2018) 65 ITR 194 / 194 TTJ 825 / (2019) 174 DTR 25 (Jaipur)(Trib.)

S. 147 : Reassessment – Un explained deposit in the Bank – Specific information with the AO – Reassessment is held to be valid. [S. 148] 1835

Tribunal held that the assessee has not filed the return before issue of notice. The AO had specific information stating that there was unexplained deposit in the bank. Accordingly the reopening of assessment is held to be valid. (AY. 2006-07, 2008-09)

Jagdish Narayan Sharma v. ITO (2018) 65 ITR 194 / 194 TTJ 825 / (2019) 174 DTR 25 (Jaipur)(Trib.)

S. 147 : Reassessment – Issue was not examined during assessment hence reassessment was held to be valid. [S. 194H] 1836

The Tribunal held that the in the course of assessment for A. Y. 2011-12 having realized that the assessee for the A. Y. 2009-10 had not deducted tax under section 194H from discount which constituted commission. There being no application of mind by AO to this issue, assessment for A. Y. 2009-10 was validly reopened by AO. (AY. 2009-10)

Bharat Sanchar Nigam Ltd. v. Addl. CIT (2018) 191 TTJ 393 (Delhi)(Trib.)

S. 147 : Reassessment – Bogus accommodation entries – Order was passed before expiry of four weeks of passing the orders of objection – Non application of mind while recording reasons – Order was held to be bad in law. [S. 148] 1837

Allowing the petition the Tribunal held that, passing the reassessment order before the expiry of 4 weeks of passing the order of objections renders the reassessment order void. Also, if the reasons state "bogus accommodation entries were provided/taken" and it is not clear whether the assessee has received or provided accommodation entries, it means there is no application of mind by the AO while recording reasons. (ITA No. 5780/Del/2014, dt. 06.04.2018)(AY. 2004-05)

Meta Plast Engineering P. Ltd. v. ITO (Delhi)(Trib.), www.itatonline.org

S. 147 : Reassessment – In the notice u/s. 143(2) earlier assessment year is mentioned, the said notice cannot be said to be in valid. [S. 143(2), 148] 1838

The Tribunal held that, merely because in the notice u/s. 143(2) earlier assessment year is mentioned, the said notice cannot be said to be invalid. Reassessment was held to be valid. (AY. 2009-10)

Mahendri Devi v. ITO (2018) 170 ITD 181 (Delhi)(Trib.)

1839 **S. 147 : Reassessment – Non-speaking order disposing of Assessee's objection – Reassessment was held to be invalid. [S. 68, 148]**
Allowing the appeal of the assessee the Tribunal held that; the Assessing Officer had not passed a speaking order in disposing of the assessee's objections against the notice under section 148 before proceeding with the assessment. Hence the subsequent assessment order was bad in law and was quashed. (AY. 2006-07)
Veer Vardhman Finance Investment Pvt. Ltd. v. DCIT (2018) 61 ITR 669 (Delhi)(Trib.)

1840 **S. 147 : Reassessment – Rectification proceedings earlier – Reopening is held to be not valid. [S. 148, 154]**
Dismissing the appeal of the revenue the Tribunal held; Reopening on same issues as considered in rectification proceedings earlier was held to be not valid. (AY. 2007-08)
CIT v. Jandu Construction Co. (2018) 61 ITR 235 (Chand.)(Trib.)

1841 **S. 147 : Reassessment – Issue was not considered in the original assessment proceedings hence reassessment was held to be valid. [S. 32, 148]**
Tribunal held that in the order of assessment, issue of allowability of depreciation was not considered, hence reassessment was held to be valid. As regard the allowability of depreciation on stock exchange membership the matter was remanded. (AY. 2006-07, 2007-08)
Way 2 Wealth Brokers P. Ltd. v. (2018) 61 ITR 259 (Bang.)(Trib.)

1842 **S. 147 : Reassessment – Information received from investigation wing for alleged accommodation entries and denial by parties – Reopening was held to be bad in law. [S. 148]**
Tribunal held that; Reassessment on the basis of information received from investigation wing for alleged accommodation entries and denial by parties the reopening was held to be bad in law as the Assessing Officer recorded incorrect and non-existing reasons for reopening of the assessment. The reopening of the assessment was void and bad in law. (AY. 2007-08)
DCIT v. VSB Investment Pvt. Ltd. (2018) 61 ITR 16 (Delhi)(Trib.)

1843 **S. 147 : Reassessment – Share capital – Cash credits – Accommodation entries-No specific evidence – Reassessment is held to be in valid. [S. 68, 148]**
Dismissing the appeal of the revenue the Tribunal held that; the AO could not have issued a notice mechanically. There were no enquires which the assesse had been confronted with despite specific requests and that there was no material which could enable the AO to form an opinion that income of the assesse had escaped assessment so as to allege that share capital represented accommodation entries. It was further observed that, the bank statement of the assessee duly established that the transactions were through banking channels and that both the shareholders had creditworthiness to subscribe to the share capital. There was no tangible material and therefore, it was held that the action of the AO to reopen the proceedings was invalid and that the CIT(A) was justified in treating the assessment order passed as void-ab-initio. (AY. 2009-10)
ACIT v. KMS Associates P. Ltd. (2018) 67 ITR 245 (SMC)(Delhi)(Trib.)

S. 148 : Reassessment – Notice – When department had correct address of assessee sending notice at incorrect address could not be sustained. [S. 147] 1844

Allowing the appeal of the assessee the Court held that, when department had correct address of assessee furnished in return of income, sending notice at incorrect address available with bank and then drawing presumption of service of notice on ground that notice was not received back unserved, could not be sustained. (AY. 1999-2000)

Suresh kumar Sheetlani v. ITO (2018) 257 Taxman 338 (All.)(HC)

S. 148 : Reassessment – Validity of service – Notice was sent on the address where assessee was not residing – Reassessment is held to be bad in law. [S. 147, 292BB] 1845

On appeal filed, held by the High Court that notice under S. 148 having been sent to an address where the assessee was not residing, the presumption of services cannot be drawn. Reassessment is held to be bad in law.

Shubhashri Panicker (Mrs) v. CIT (2018) 403 ITR 434 / 166 DTR 1 (Raj.)(HC)

S. 148 : Reassessment – Notice – Issue of notice at old address in spite of change in the official record by updating PAN data base – Reassessment is held to be bad in law. [S. 147, 292BB] 1846

Allowing the appeal of the assesesee the Tribunal held that; reassessment notice under S. 148(1) was issued against assessee after expiry of period of limitation at old address of assessee which was already changed by assessee before date of issuance of said reassessment notice in official record by updating PAN data base, it could be said that there was no service of reassessment notice upon assessee. Accordingly reassessment proceeding is held to be bad in law.(AY.2009-10)

Ardent Steel Ltd. v. ACIT (2018) 405 ITR 422 / 302 CTR 362 / 166 DTR 33 (Chhattisgarh)(HC)

S. 148 : Reassessment – Notice – Concurrent jurisdiction of Assessing Officer – Delay and laches on part of assessee in responding notices lost his right to question jurisdiction of Assessing Officer. [S. 120(1), 124(3), 147] 1847

Dismissing the petition the Court held that the objections as to the jurisdiction of the Assessing Officer in the assessee's case could not be equated with lack of subject-matter jurisdiction. They related to the place of assessment. The Income-tax Officer Ward 1(1) would not per se lack jurisdiction, although he had concurrent jurisdiction with the Income-tax Officer Ward 36(1)/58. On the facts the contention raised about the lack of jurisdiction would not justify quashing of the notice under section 148 read with section 147. Court also held that delay and laches on part of assessee in responding notices lost his right to question jurisdiction of Assessing Officer. (AY. 2009-10)

Abhishek Jain v. ITO (2018) 405 ITR 1 / 168 DTR 121 / 303 CTR 753 (Delhi) (HC)

S. 149 : Reassessment – Time limit for notice – Jurisdiction – Direction of CIT(A) to issue notice after the expiry of period of period of limitation is held to be not valid. [S. 147, 148, 150, 250] 1848

CIT(A) annulled the assessment order passed u/s. 144/148 being without jurisdiction. After annulling assessment order CIT (A) had given directions by stating that income of assessee for year under consideration had to be assessed u/s 147 by AO having jurisdiction over case. Allowing the appeal the Tribunal held that, Appellate or Revisional authority

could not give direction for assessment or reassessment which goes to extent of conferring jurisdiction upon AO if his jurisdiction had ceased due to bar of limitation. Accordingly the action of CIT(A) in directing ITO, to make fresh order u/s. 147 inspite of facts notice u/s. 148 was validly issued only after expiry of time limit provided u/s. 149 was not valid. Followed *K. M. Sharma v. ITO (2002) 254 ITR 772 (SC)* (AY.2003-04)
Sunil Katyal v. ITO (2017) 190 TTJ 889 (2018) 161 DTR 275 (Delhi)(Trib.)

1849 **S. 150 : Assessment – Order on appeal – Reassessment – Assessment in pursuance of an order of appeal, etc. could not be regarded as definite finding under section 150(1) and, thus, assessment could not be reopened on basis of said observation. [S. 147, 148, 149]**
Allowing the appeal of the assessee the Tribunal held that. Amendment in S. 150, pursuance of an order of appeal, etc. is held to be prospectively. In course of appellate proceedings Commissioner (Appeals) made on observation that issue relating to capital gain earned by assessee might be considered in relevant year, it could not be regarded as definite finding under section 150(1) and, thus, assessment could not be reopened on basis of said observation after expiry of time limit of six years as prescribed in S. 149. Accordingly the order was quashed. (AY. 2005-06)
Pt. Rung Lal Trust v. ACIT (2018) 172 ITD 419 (Luck.)(Trib.)

1850 **S. 150 : Assessment – Order on appeal – Tribunal gave direction in the case of one person for assessing the income in the hands of the correct person – For the purpose of sub-section (2) of S. 150, the order under appeal would be the order of CIT(A) – Held, reassessment in case of the correct person was barred by limitation. [S. 149]**
The Tribunal passed an order in case of a company that the income was to be assessed in the hands of the assessee. In light of the direction, the AO reopened the assessment beyond the period of 6 years relying on the provision of S. 150(1). The assessee contented that the reassessment was barred by limitation. The Tribunal in case of the assessee held that, the order of the CIT(A) was appealed before the Tribunal in case of the first mentioned company. On the day when the said CIT(A) order was made, the time limit to reopen the assessment in case of the assessee had already expired. Under S. 150(2), the order appealed against must be taken as the order of the CIT(A) and not that of the AO. Accordingly, the Tribunal held that the reassessment was barred by limitation. (AY. 2001-02, 2002-03)
Ramesh Chand Soni (HUF) v. ITO (2018) 161 DTR 205 / 191 TTJ 137 (Jaipur)(Trib.)

1851 **S. 151 : Reassessment – Sanction for issue of notice – Sanction of the Commissioner of Income-tax instead of the Additional Commissioner of Income-tax reopening is void. [S. 147, 148]**
Dismissing the appeal of the revenue the Court held that ; If the AO reopens the assessment by obtaining the sanction of the Commissioner of Income Tax instead of the Additional Commissioner of Income-tax, there is a breach of S. 151 which renders the reopening void.(ITA No. 904 of 2016, dt. 25.07.2018)(AY. 2004-05)
CIT v. Aquatic Remedies Pvt. Ltd. (2018) 406 ITR 545 / 304 CTR 783 / 258 Taxman 357/ 170 DTR 33 (Bom.)(HC), www.itatonline.org

S. 151 : Reassessment – Sanction for issue of notice – Notice and proceedings was vitiated for want of specific sanction. [S. 147, 148] 1852

Allowing the petition the Court held that; notice issued without proper sanction was held to be bad in law and liable to be quashed. (AY. 2010-11)

Maruti Clean Coal And Power Ltd. v. ACIT (2018) 400 ITR 397 / 161 DTR 457 / 300 CTR 358 (Chhattisgarh)(HC)

S. 151 : Reassessment – Sanction for issue of notice – Sanction of the Chief Commissioner was a pre-condition – Order is bad in law. [S. 147, 148, 149] 1853

Dismissing the appeal the appeal of the revenue the Court held that, the satisfaction and approval of the Chief Commissioner or the Commissioner under section 151(1) was a sine qua non before issuance of a notice under S.148 by the Assessing Officer, who might be of the rank of an Income-tax Officer or Assistant Commissioner or Deputy Commissioner, but when such notice was to be issued after the expiry of four years period of limitation, the sanction of the Chief Commissioner was a precondition. The proviso to section 151(1), when it referred to an Assessing Officer, could also mean not merely an Assessing Officer below the rank of an Assistant Commissioner and a Deputy Commissioner but also all Assessing Officer. (AY. 1996-97)

CIT v. Gee Kay Finance And Leasing Co. Ltd. (2018) 401 ITR 472 / 163 DTR 425 / 301 CTR 645 (Delhi)(HC)

S. 151 : Reassessment – Sanction for issue of notice – Reassessment proceedings couldn't be quashed just because AO had obtained prior approval from higher authority. [S. 147, 148] 1854

Dismissing the appeal of the assessee the Court held that; Reassessment proceedings couldn't be quashed just because AO had obtained prior approval from higher authority. Merely because an even higher authority i.e. Commissioner has also expressed similar satisfaction, does not obliterate satisfaction of appropriate authorities and, thus, reassessment proceedings cannot be quashed on said ground. (AY. 2005-06)

Mayurbhai Mangaldas Patel v. ITO (2018) 407 ITR 238 / 302 CTR 349 / 166 DTR 73 / 256 Taxman 91 (Guj.)(HC)

Editorial : Order in Mayurbhai Mangaldas Patel v. ITO (2018) 168 ITD 317 (Ahd.) (Trib.) is affirmed

S. 151 : Reassessment – Issue of notice u/s. 148 to give affect of finding without obtaining sanction – Entire reassessment proceedings stood vitiated. [S. 147, 148, 149, 150] 1855

Allowing the appeal of the assessee the Tribunal held that, Assessing Officer issued notice under S. 148 after four years from end of relevant assessment year without obtaining sanction under S. 151,was unjustified and, consequently, entire reassessment proceedings stood vitiated. Even if assessment was reopened in consequence of or to give effect to any finding or direction of Appellate Authority, requirement of sanction under section 151 is mandatory for issuing notice. (AY. 2006-07)

Sonu Khandelwal (Smt.) v. ITO (2018) 173 ITD 67 / 195 TTJ 715 / 172 DTR 42 / 66 ITR 81 (SN) (Jaipur)(Trib.)

1856 **S. 151 : Reassessment – Sanction for issue of notice – Sanction granted by writing "Yes, I am satisfied" not sufficient – Reassessment is bad in law. [S. 147, 148, 292B]**
Allowing the appeal of the assessee, the Tribunal held that, Sanction granted by writing "Yes, I am satisfied" is not sufficient to comply with the requirement of S. 151 because it means that the approving authority has recorded satisfaction in a mechanical manner and without application of mind. Reassessment is bad in law. (AY. 2009-10)
Pioneer Town Planners Pvt. Ltd. v. DCIT (2018) 195 TTJ 388 / 170 DTR 237 / 66 ITR 47 (SN)(Delhi)(Trib.), www.itatonline.org

1857 **S. 151 : Reassessment – Sanction for issue of notice – If the CIT merely states "Yes, I am satisfied" – Order was quashed and held to be void ab-initio. [S. 147, 148]**
Allowing the appeal of the assesee the Tribunal held that, if the CIT merely states "Yes, I am satisfied" while granting sanction to the reopening, it means that the sanction is merely mechanical and he has not applied independent mind. There is not an iota of material on record as to what documents he had perused and what were the reasons for his being satisfied to accord the sanction to initiate the reopening of assessment. Order was quashed and held to be void ab-initio. (AY. 2008-09)
Ghanshyam v. ITO (SMC) (2018) 194 TTJ 25 (UO)(Agra)(Trib.), www.itatonline.org

1858 **S. 151 : Reassessment – Sanction for issue of notice – Approval was not obtained – Reassessment was held to be bad in law. [S. 147, 148]**
Allowing the appeal of the assessee the Tribunal held that the reassessment was done to meet the objections of the audit party without application of mind and also no approval was obtained hence the reassessment was held to be bad in law. (AY. 2008-09)
Rama Goyal (Smt.) v. ITO (2018) 64 ITR 1 (Jaipur)(Trib.)

1859 **S. 151 : Reassessment – Sanction for issue of notice – If the CIT does not give reasons while according sanction, it implies that he has also not applied his mind reopening is void. [S. 147, 148]**
Allowing the appeal of the assessee the Tribunal held that; If the AO reopens on the basis of information received from another AO without further inquiry, it means he has proceeded "mechanically" and "without application of mind". If the CIT does not give reasons while according sanction, it implies that he has also not applied his mind. Both render the reopening void (ITA No. 988/Del/2018, dt. 25.05.2018)(AY. 2008-09)
Sunil Agarwal v. ITO (Delhi)(Trib.), www.itatonline.org

1860 **S. 151 : Reassessment – Sanction for issue of notice – Mechanical approval was held to be bad in law. [S. 147, 148]**
Allowing the cross objection of the assessee the Tribunal held that; The grant of approval by the CIT with the words "Yes. I am satisfied" proves that the sanction is merely mechanical and he has not applied independent mind while according sanction as there is not an iota of material on record as to what documents he had perused and what were the reasons for his being satisfied to accord the sanction to initiate the reopening of assessment u/s. 148 of the Act. (AY. 2005-06)
ITO v. Virat Credit & Holdings Pvt. Ltd. (Delhi)(Trib.), www.itatonline.org

S. 151 : Reassessment – Sanction for issue of notice – Reassessment proceedings couldn't be quashed just because AO had obtained prior approval from higher authority. [S. 147, 148] 1861

Dismissing the appeal of the assessee the Tribunal held that; Reassessment proceedings couldn't be quashed just because AO had obtained prior approval from higher authority. Merely because an even higher authority i.e. Commissioner has also expressed similar satisfaction, does not obliterate satisfaction of appropriate authorities and, thus, reassessment proceedings cannot be quashed on said ground. (AY. 2005-06)

Mayurbhai Mangaldas Patel v. ITO (2018) 168 ITD 317 (Ahd.)(Trib.)

Editorial : Affirmed in Mayurbhai Mangaldas Patel v. ITO (2018) 302 CTR 349 (Guj.) (HC)

S. 151 : Reassessment – Sanction for issue of notice – If the AO issues the notice for reopening the assessment before obtaining the sanction of the CIT, the reopening is void ab initio – The fact that the sanction was given just one day after the issue of notice makes no difference. [S. 147, 148] 1862

Dismissing the appeal of the revenue the Tribunal held that, If the AO issues the notice for reopening the assessment before obtaining the sanction of the CIT, the reopening is void ab initio-The fact that the sanction was given just one day after the issue of notice makes no difference. (ITA.No. 1505/Ahd/2017, dt. 14.11.2018)(AY. 2007-08)

ITO v. Ashok Jain (Surat)(Trib.), www.itatonline.org

S. 151 : Reassessment – Sanction for issue of notice – Failure on part of Assessing Officer to take sanction of appropriate authority would go to very root of jurisdiction by Assessing Officer – Order is bad in law. [S. 147, 148, 292B] 1863

Tribunal held that; failure on part of Assessing Officer to take sanction of appropriate authority would go to very root of validity of assumption of jurisdiction by Assessing Officer hence the order is bad in law. (AY. 2007-08)

Anil Jaggi v. CIT (2018) 168 ITD 612 (Mum.)(Trib.)

S. 153 : Assessment – Reassessment – Limitation – Direction by CIT(A) to assess income in the hands of another person can be given only if an opportunity of being heard is given to such other person – Matter remanded to CIT(A). [S. 147, 148, 149, 150] 1864

In an appeal before the CIT(A) arising from an assessment in the hands of a company, the CIT(A) reached the conclusion that the income was not taxable in the hands of the company but in the hands of two individuals, one of them being the petitioner. Accordingly, notice for reopening was issued to the petitioner by the AO and the reassessment order was passed. Such notice and the consequent order were challenged in writ before the HC, on the ground that the CIT(A) did not give the petitioner an opportunity of being heard before giving such direction. Accepting the contentions of the petitioner, the HC held, that if the notice under section 148 was to be issued beyond the limitation prescribed under section 149, in view of section 150(1) and the consequent assessment was made as per the limitation provided in section 153, then the CIT(A)

directions which resulted in the reassessment proceedings should have been given only after giving the petitioner an opportunity of being heard in view of the clear language of the erstwhile Explanation 3 to section 153(3). Not having done so, the matter was sent back to the CIT(A) to provide such opportunity before giving any directions, as deemed fit. (AY. 2009-10)
Ramesh Chandra v. ACIT (2018) 169 DTR 468 / 304 CTR 449 (Delhi)(HC)
Sanjay Chandra v. ACIT (2018) 169 DTR 468 / 304 CTR 449 (Delhi)(HC)

1865 **S. 153 : Assessment – Limitation – Special audit – Period be excluded and not counted for limitation – Accordingly the draft assessment order is not bared by limitation. [S. 142(2A)]**
Allowing the appeal of the revenue the Court held that; period from date when Assessing Officer directs special audit till last date of furnishing such report under section 142 (2A) shall be excluded and not counted for limitation. Accordingly the draft assessment order is not bared by limitation. (AY. 2008-09)
PCIT v. AT & T Global Network Services (India) (P.) Ltd. (2018) 258 Taxman 197 / 305 CTR 283 / 169 DTR 473 (Delhi)(HC)

1866 **S. 153 : Assessment – Limitation – When seven issues were before Tribunal, Tribunal remanding of only five issues – Time Limit specified in S. 153(2A) is applicable not S. 153 (3)(ii)of the Act – Order is held to be not valid. [S. 153(2A), 153(3)(ii)]**
Allowing the petition the Court held that ; of the seven issues, the assessment in respect of five was set aside and remanded for a fresh determination. Whether the remand was to the Transfer Pricing Officer or the Dispute Resolution Panel would not make a difference as long as what resulted from the remand was a fresh assessment of the issue. Clearly, therefore, the time-limit for completing that exercise was governed by section 153(2A). The assessment proceedings had to necessarily be completed by the Assessing Officer within the time-limit specified in section 153(2A) of the Act. Inasmuch as the Assessing Officer failed to do so, the notice dated September 14, 2015 issued by the Assessing Officer and all proceedings consequential thereto including the order dated December 2, 2015 passed by the Assessing Officer were not valid. (AY.2007-08)
Nokia India P. Ltd. v. DCIT (2018) 407 ITR 20 (Delhi)(HC)

1867 **S. 153 : Assessment – Reassessment – Limitation – Settlement commission admitted the Application on 30-8-1996, admitted tax and interest was not paid and during pendency of proceedings – S. 245HA and 245D were amended providing abatement due to non-payment by 31-7-2007 – Constitutional validity of which was challenged and finally case was abated in 2016 – Assessment order was passed within 60 days was not time barred. [S. 245C(1), 245HA, 245D]**
Application for settlement was admitted on 30-8-1996 but admitted tax and interest required to be paid within 35 days was not paid. During pendency of proceedings by Settlement Commission, there was an amendment by Finance Act, 2007 w.e.f. 1-6-2007. New provisions being S. 245D(2D) and 245HA, were inserted which provided that in cases where admitted tax and interest were not paid by 31-7-2007, Settlement Application would stand abated on 31-7-2007. Assessee challenged constitutional

validity of said amendment. High Court adjourned writ petition sine die awaiting judgment of Supreme Court in case of *Prabhu Dayal v. Union of India* [CWP No. 1130 of 2008] which was later withdrawn. High Court passed judgment based on ratio laid down by Bombay High Court in case of *Star Television News Ltd. v. UOI (2007) 317 ITR 66 (Bom.) HC)*. Settlement Commission passed an order on 25-4-2016 under section 245HA(1) read with section 245D(2D) and the Assessing Officer was also marked a copy of the order dated 25-4-2016 under section 245HA(1), read with section 245D(2) stating that the proceedings had abated on the grounds that the admitted tax and interest on the income disclosed had not been paid as per newly inserted section 245D(2D). Intimation letter dated 25-4-2016 was communicated to the Principal Commissioner on 2-5-2016. Following this, the assessee received the notice under section 142(1) from the Assessing Officer. In response to the said notice, the assessee submitted a reply contending that the proceedings have become time-barred. AO completed proceedings on 22-6-2016. Assessee challenged the said order stating that the order is time barred. The Commissioner (Appeals) held that the impugned assessment order was time barred as per the newly inserted provisions of sections 245D(2D), 245HA(1)(ii) and Explanation (b) thereto, 245HA(4) read with 2nd proviso to section 153(4). On appeal by the revenue the Tribunal held that, order passed by AO being passed within 60 days from order of Settlement Commission abating case was well within time allowed by Act. Tribunal held that,having received the information regarding the abatement of the cases on 25-4-2016 has completed the proceedings on 22-6-2016 which is well within the time allowed by the Act as the orders have been passed within 60 days from the order of the ITSC under section 245HA(1), read with section 245D(2D). Accordingly the order of the Commissioner (Appeals) could not be sustained neither on the factual grounds nor on the legal grounds. (AY. 1994-95 to 2000-01)

DCIT v. Gurinderjit Singh (2018) 173 ITD 487 (Chd.)(Trib.)

S. 153 : Assessment – Limitation – AO is required to pass the assessment order within the period of limitation available under S. 153(2A) of the Act. [S. 153(2A)] 1868

In this case the Tribunal had set aside only one issue i.e., transfer pricing adjustment, out of multiple issues to the AO/TPO for passing a speaking order, the AO was required to pass the assessment order within the period of limitation of S. 153(2A) of the Act. Since the limitation for completion of fresh assessment in terms of S. 153(2A) expired on 31.03.2016, the order passed on 27.07.2017 is beyond the limitation period. (AY. 2008-09)

Bechtel India (P) Ltd. v. Addl. CIT (2018) 191 TTJ 280 (Delhi)(Trib.)

S. 153A : Assessment – Search or requisition – No incriminating material was found – Addition cannot be made in respect of unabated assessment which has became final. [S. 132, 143(3)] 1869

Dismissing the appeal of the revenue the Court held that, if no incriminating material was found, addition cannot be made in respect of unabated assessment. Followed *CIT v. Murli Agro products Ltd. (2014) 49 taxmann.com 172 (Bom) (HC)*. (ITA No. 555 of 2016 dt 26-09-2018) Arising ITA No 1553 & 3173 of 2010 dt 13-02 2015 www.itatonline.org)

PCIT v. Jignesh P. Shah (2018) 99 taxmann.com 111 (Bom.)(HC)

1870 **S. 153A : Assessment – Search or requisition – No incriminating material was found-Rejection of claim u/s. 80IB, 80IC is held to be not justified. [S. 80IB, 80IC, 132]**
Dismissing the appeals of the revenue, the Court held that,no incriminating that for the financial year 2010-11, the Tribunal, after undertaking a material was found in the course of search. Accordingly disallowances of claim u/s. 80IB, 80IC is held to be not justified. (AY.2005-06 to 2007-08)
CIT v. Dharampal Premchand Ltd. (2018) 408 ITR 170 (Delhi)(HC)
Editorial : SLP is granted to the revenue, CIT v. Dharampal Premchand Ltd. (2018) 405 ITR 27 (St)

1871 **S. 153A : Assessment – Remand by Tribunal – Search or requisition – Limitation – The time limit of 2 years u/s. 153B for framing search assessment orders applies only to the original order and not orders passed after remand – Period of limitation prescribed for completion of remand (nine months) constituted a special provision, which applies to every class of remand regardless whether they originate from assessments/re-assessments/revisions or search and seizure assessments – The time limit for passing remand orders is governed by S. 153(3)/ erstwhile 153(2A) & not by S. 153B – Limitation begins (for any purpose under the Act) from the point of time when the departmental representative (a Commissioner ranking officer) receives the copy of a decision or an order of the ITAT – The last date by which the remand order could have been worked out validly was 31.12.2016. Accordingly the impugned order pursuant to the remand dated 22.12.2017 and all consequential orders and actions are hereby quashed. [S. 153(2A), 153B, 254(1)]**
In all these writ petitions, the narrow question agitated by the assessees is that assessment order made on 22.12.2017 under Section 153A read with Section 254 of Income-tax Act, 1961 for Assessment Year 2005-06 and subsequent years (up-to 2012-13) covered by search assessment, were barred and therefore, needs to be quashed. Allowing the petition the Court held that; it is quite evident from the decision in *CIT v. Odeon Builders Pvt. Ltd. (2017) 393 ITR 27 (FB) (Delhi)(HC)* that limitation begins (for any purpose under the Act) from the point of time when the departmental representative receives the copy of a decision or an order of the ITAT. The evidence on record in this case clearly establishes that the concerned DR (a Commissioner ranking officer) nominated by the revenue received a copy of the ITAT order dated 30.03.2016. In the opinion of the Court, to apply that general two years limitation, the block reassessment proceeding after remand is not a feasible proposition. The general provision of two years, in the opinion of the Court, has been provided with one important objective i.e. to cater to a specific situation where upon search and seizure operation, if new material is found, already completed assessments are revisited. Had Parliament not prescribed such a specific period of limitation, possibly, the assessee's concern would have successfully urged that search and seizure proceedings would be confined only to the concerned year in which the search operation took place. The only provision that prescribed a period of limitation in respect of remands at the relevant time at least in this case is Section 153(2A). In that sense, that period of limitation prescribed for completion of remand (nine months) constituted a special provision, which applies to every class of remand regardless whether they originate from assessments/re-assessments/

revisions or search and seizure assessments. In these circumstances, completion of the assessment proceedings for the block period by the impugned order dated 22.12.2017 was clearly beyond the period of limitation. Accordingly the order pursuant to the remand dated 22.12.2017 and all consequential orders and actions were quashed. (AY. 2005-06 to 2012-13)

Surendra Kumar Jain v. PCIT (2018) 408 ITR 328 / 171 DTR 281 / (2019) 307 CTR 749 (Delhi)(HC), www.itatonline.org

Virendra Jain v. PCIT (2018) 408 ITR 328 / 171 DTR 281 / (2019) 307 CTR 749 (Delhi) (HC), www.itatonline.org

S. 153A : Assessment – Search or requisition – Documents seized revealed total expenditure that assessee incurred in respect of both his children was not disclosed in the return of income, addition confirmed by the Tribunal is up held. As both brothers have signed the panchnama there was no necessity of issuing notice u/s. 153C of the Act. [S. 132] 1872

Dismissing the appeal the Court held that, documents seized revealed total expenditure that assessee incurred in respect of both his children was not disclosed in the return of income, accordingly the addition confirmed by the Tribunal is up held. As both brothers have signed the panchnama there was no necessity of issuing notice u/s. 153C of the Act (AY.2006-07)

Vinod Kumar Gupta v. DCIT (2018) 165 DTR 409 / 305 CTR 288 (Delhi)(HC)

S. 153A : Assessment – Search or requisition – Industrial undertaking – Developer – Deduction can be claimed in return pursuant to notice under S. 153A of the Income-tax Act. [S. 80IA (4)(i), 139(4)] 1873

Dismissing the appeal of the revenue the Court held that; the return under S. 153A is not a revised return but an original return. If that be so, the deduction under S. 80-IA, if otherwise admissible, always could have been claimed. Court also held that the fact that the assessee was a "developer" and not a "contractor" was a finding of fact concurrently recorded by the Commissioner (Appeals) and the Appellate Tribunal, which was not shown to be perverse or contrary to record. Hence, the assessee was eligible for tax benefit under S. 80-IA(4)(i) of the Act. (AY. 2009-10)

CIT v. Vijay Infrastructure Ltd. (2018) 402 ITR 363 (All.)(HC)

S. 153A : Assessment – Search or requisition – Search based on incriminating material and during search also certain documents relating to suppressed income not offered in tax return filed, hence, it could not be said that the assessment are non-est – Reassessment beyond four years was held to be justified. [S. 147, 149] 1874

On appeal, the High Court held that :

(i) The first search was conducted on 02-03-2005 in the assessment year 2005-06. Hence, it enabled assessments for six years prior to AY 2005-06 which brings in AY 1999-2000 in the block for six years. The limitation period with respect to finalization of assessment u/s. 153B cannot be applied for computation of assessments years which are enabled in u/s 153A of the Act.

(ii) The two documents (tax evasion petition) based on which the search was conducted were itself incriminating documents. Pursuant to search and enquiry conducted thereafter that the suppressed account maintained by assessee is being unaccounted consideration from the purchaser was unearthed. Hence, the notices issued under S. 153A were not solely basis of two consent documents. Even if there was no incriminating found during search, the Revenue was justified in proceedings with the assessments based on such consent letters, as otherwise, Revenue would have based on such consent letters initiated re-assessment proceedings, which would be well within the limitation period as on the date of issuance of notice u/s. 153A of the Act since the Assessee himself has disclosed additional consideration in return filed in response to Section 153A proving that there was a failure on the part of Assessee to disclose true and complete details and the assessed income being more than 1 lakh, re-opening is possible within six years (not restricted to four years). (AY. 1999-2000 to 2004-05).

Dr. A. V Sreekumar v. CIT (2018) 404 ITR 642 / 253 Taxman 428 / 305 CTR 647 (Ker.)(HC)

1875 **S. 153A : Assessment – Search or requisition – Merely on the basis of third party statement without any incriminating evidence addition was held to be not justified. [S. 132 (4)]**

Dismissing the appeal of the revenue the Court held that; the statement under S. 132(4) could not bind the assessee. According to S. 132(4) a presumption arose in the case of the searched party. In the case of statements by the party whose premises were searched, or attributed to a third party, there had to be a connect or corroboration and there was none in the case of the assessee. No incriminating material was found in the premises of the assessee. The addition made by the Assessing Officer was unsustainable.

CIT v. Manoj Hora (2018) 402 ITR 175 (Delhi)(HC)

1876 **S. 153A : Assessment-Search or requisition – When no incriminating material was found in the course of search, addition cannot be made on the basis of evidence collected after the search – No addition can be made on the basis of statement of director much later after the search. [S. 131, 132]**

Dismissing the appeal of the revenue the Court held that; where no incriminating evidence was found against assessee during course of search, additions cannot be made on basis of material collected after search. Court also held that, additions cannot be made on basis of statement of director of assessee company which was recorded under S. 131 much later after search. (AY. 2007-08)

PCIT v. Sunrise Finlease (P.) Ltd. (2018) 252 Taxman 407 / 171 DTR 237 / 305 CTR 421 (Guj.)(HC)

1877 **S. 153A : Assessment – Search – Real estate business – Suppression of turnover – Future sales on unsold plots on date of search cannot be brought to tax-No incriminating materials found during search – Estimation of profit at 12.5 % on the suppressed turnover is held to be justified. [S. 132]**

Tribunal held that future sales on unsold plots on date of search cannot be brought to tax as no incriminating materials found during search. Since the assessee had mostly

sold real estate plots, estimation of income at 12.5 per cent on the suppressed turnover would be reasonable. (AY. 2010-11 to 2014-15)
Sri Sri Gruhanirman India Pvt Ltd. v. ACIT (2018) 67 ITR 178 (Hyd.)(Trib.)

S. 153A : Assessment – Search or requisition – Share Capital and Share premium – Statement recorded – No incriminating material was found in the course of search – Order is bad in law. [S. 68, 132, 132(4)] 1878
Allowing the appeal of the assessee the Tribunal held that the addition u/s 68 of share capital and share premium as unexplained cash credit, during search and seizure proceedings u/s 132, was not based on incriminating material. The statements recorded u/s 132(4) could not constitute as incriminating material. Hence, in the absence of any such incriminating material additions made by the ld. CIT(A) in the 153A proceedings, would be void ab-initio. Followed *PCIT v. Lata Jain (2016) 384 ITR 543 (Delhi)(HC).* (AY. 2013-14)
Hindustan Aqua Ltd. v. ACIT (2018) 195 TTJ 76 (Delhi)(Trib.)
Moon Beverages Ltd. v. ACIT (2018) 195 TTJ 76 (Delhi)(Trib.)

S. 153A : Assessment – Search or requisition – If assessee has neither filed return in response to notice nor participated in the assessment proceedings, addition made on the same shall not be deleted – Matter remanded to CIT (A). 1879
Tribunal held that in the remand report, the AO had categorically stated that he was not satisfied as the authenticity of cheques and also sources of credits in the bank was not verifiable The Tribunal observed that assessee was non co-operative through out assessment proceedings as the assessee neither filed return of income in pursuant to notice u/s. 153A nor participated in the assessment proceedings u/s. 153A. Further, it observed that CIT(A) had accepted the contentions of the assessee without satisfying the adverse comments by the AO which were valid observations of the AO. Accordingly the Tribunal held that the order of CIT(A) could not be sustained in the eyes of law and was set aside and matter was once again restored back to the file of learned CIT(A) for fresh adjudication on merits in accordance with law.(AY. 2002-03, 2004-05 to 2006-07)
DCIT v. Ketan V. Shah (2017) 51 CCH 318 / (2018) 163 DTR 275 / 191 TTJ 35 (Mum.)(Trib.)
DCIT v. Ketan V. Shah (HUF) (2017) 51 CCH 318 / (2018) 163 DTR 275 / 191 TTJ 35 (Mum.)(Trib.)

S. 153A : Assessment – Search or requisition – Additions made by AO were beyond scope because no incriminating material or evidence was found during course of search – Action of AO was based upon conjectures and surmises and hence, addition made was not sustainable in eyes of law. [S. 132, 143(3)] 1880
Tribunal held that additions made by AO were beyond scope of S. 153C, because no incriminating material or evidence was found during course of search. In entire assessment order, AO had not referred to any seized material or other material for year under consideration having being found during course of search in case of assessee, leave alone question of any incriminating material for year under appeal. Action of AO was based upon conjectures and surmises and hence, addition made was not sustainable in eyes of law. (AY.2009-2010, 2010-2011)
ACIT v. Dingle Buildons Pvt. Ltd. (2018) 52 CCH 73 / 62 ITR 161 (Delhi)(Trib.)

1881 **S. 153A : Assessment – Search or requisition – Completed assessments – No addition can be made which is not based on any incriminating material found in the course of search.**
Disallowance of commission expense of ₹ 370.43 lac in respect of the assessment years whose assessments were already completed, was not permissible in law as the same was not based on any incriminating material found during the course of search. (AY. 2004-05 to 2006-07)
Dy. CIT v. Sopariwala Exports (2018) 63 ITR 658 (Mum.)(Trib.)

1882 **S. 153A : Assessment – Search or requisition – Set-off of brought forward loss – No incriminating material was found in course of search relating to those expenses, claim raised by assessee was to be allowed. [S. 132]**
In response to notice u/s. 153A the assessee filed returns for earlier years in which it claimed set-off of brought forward losses. AO rejected assessee's claim on ground that claim of various expenses was not verifiable. CIT(A) allowed the claim of assessee. There was difference of opinion amongst members and the matter was referred to third member. Third member held that since no incriminating material was found during course of search in respect of expenses claimed as deduction, assessee's claim for set-off of brought forward loss was to be allowed. (AY. 2005-06, 2006-07)
HBN Dairies & Allied Ltd. v. ACIT (2018) 172 ITD 43 / 170 DTR 273 / 195 TTJ 969 (TM) (Delhi) (Trib.)

1883 **S. 153A : Assessment – Search or requisition – No incriminating material was found at the time of search – Assessment is void in law.**
Dismissing the appeal of the revenue the Tribunal held that; No incriminating material was found at the time of search-Assessment is void in law. (AY. 2004-05)
ACIT v. Maruti Clean Coal & Power Ltd. (2018) 193 TTJ 1 (UO)(Raipur)(Trib.)

1884 **S. 153A : Assessment – Search or requisition – No addition can be made on the basis of statement recorded at the time of search without any corroborative evidence. [S. 132(4)]**
On appeal to Tribunal, it was held that the AO failed to produce any incriminating material that can quantify the surrendered income of ₹ 15 crores during the course of search. The Tribunal held that additions made only on the basis of a statement that has been retracted immediately thereafter were not sustainable. (AY.2007-08)
Rajiv Gulati v. ACIT (2018) 62 ITR 7 (Delhi)(Trib.)

1885 **S. 153A : Assessment – Search or requisition – Any information or material found post the date of search cannot be construed to be incriminating material for the purpose of making additions as cash credits. [S. 68]**
As on the date of search, no incriminating material was found against the assessee so to prove that the assessee had received any bogus share capital or share premium as to make addition u/s. 68 of the Act. Subsequent to the completion of search, the Investigating Wing made a reference for exchange of information and part information was received from Foreign Tax and Tax Research, CBDT which formed the basis of

addition u/s 68 of the Act. The assessee alleged that such information received post the date of search could not be construed as any incriminating material against the assessee during the course of search. The Tribunal held that the information supplied by the Mauritius Revenue authorities post the date of search could not be treated as incriminating material unearthed during the course of search. The Tribunal held that the invocation of S. 153A by the AO was without any legal basis and no addition could be made against the assessee u/s. 68 of the Act. (AY. 2007-08 to 2010-11), (AY. 2012-13)
ACIT v. Spectrum Coal and Power Ltd. (2018) 62 ITR 184 (Delhi)(Trib.)
ACIT v. Shyam Indus Power Solutions (P) Ltd. (2018) 62 ITR 512 (Delhi)(Trib.)
ACIT v. TRN Energy P. Ltd. (2018) 62 ITR 499 (Delhi)(Trib.)

S. 153A : Assessment – Search or requisition – No incriminating material found during the course of search – Additions cannot be made. [S. 132] 1886
Tribunal held that the additions made by the AO were beyond the scope of S. 153C because no incriminating material or evidence had been found during the course of search so as to doubt the transaction. (AY. 2009-10, 2010-11)
Dingle Buildcon P. Ltd. v. ACIT (2018) 62 ITR 161 (Delhi)(Trib.)

S. 153A : Assessment – Search or requisition – Undisclosed income – Without any incriminating material found in the course of search additions cannot be made – Deduction of claim u/s. 80IB(10) which was allowed in the regular assessment proceedings cannot be disallowed. [S. 80IB(10)] 1887
Allowing the appeal of the assessee,the Tribunal held that, Without any incriminating material found in the course of search additions cannot be made – Deduction of claim u/s. 80IB(10) which was allowed in the regular assessment proceedings cannot be disallowed. (AY. 2002-03 to 2006-07)
Engineers Syndicate India Pvt. Ltd. v. Dy. CIT (2018) 65 ITR 572 (Hyd)(Trib.)

S. 153A : Assessment – Search or requisition – No incriminating material was found in the course of search proceedings – Net agricultural income accepted during assessment proceedings – Addition cannot be made on net agricultural income. 1888
Addition cannot be made as no incriminating material was found in the course of search proceedings. Net agricultural income accepted. (AY. 2006-07 to 2011-12)
ACIT v. Mahesh Bhagwat Chaudhary (2018) 65 ITR 343 (Pune)(Trib.)

S. 153A : Assessment – Search or requisition – On the date of search the company does not existed as it was merged with another company, hence the notice and assessment is held to be bad in law. 1889
On the date of search the company does not existed as it was merged with another company, hence the notice and assessment is held to be bad in law. (AY. 2007-2008, 2010-2011)
Garuda Imaging & Diagnostics (P) Ltd. v. ACIT (2018) 191 TTJ 765 (Delhi)(Trib.)
ACIT v. Sindhu Holding Ltd. v. ACIT (2018) 191 TTJ 765 (Delhi)(Trib.)

1890 **S. 153A : Assessment – Search or requisition – When there was no search proceedings against the assessee, assessment made in consequence of notice issued under section 153A, is invalid and void ab initio. [S. 69, 132]**
Allowing the appeal of the assessee, when there was no search proceedings against the assessee, assessment made in consequence of notice issued under S. 153A, is invalid and void ab initio. (AY. 2007-08, 2010-11)
Regency Mahavir Properties v. ACIT (2018) 169 ITD 35 / 64 ITR 628 (Mum.)(Trib.)

1891 **S. 153A : Assessment – Search or requisition – On the basis of seized documents from office premises of group of companies in which assessee was a director, said material could not be used against the assessee. [S. 132, 292C]**
Allowing the appeal of the assessee the Tribunal held that; On the basis of seized documents from office premises of group of companies in which assessee was a director, said material could not be used against the assessee. The assessment already deemed to have been completed for the assessment year 2009-10, which was unabated/concluded assessment, on the date of search, deserves to be undisturbed in the absence of any incriminating material found in the course of search and, accordingly, no fresh addition could be made thereon without the existence of any incriminating materials found in the course of search from the premises of the assessee. (AY. 2009-10, 2011-12)
Krishna Kumar Singhania v. DCIT (2018) 168 ITD 271 (Kol.)(Trib.)

1892 **S. 153A : Assessment – Search or requisition – Time limit for issuing notice for assessment was expired prior to date of search having expired and no material was found during the search, block assessment was held to be bad in law. [S. 143(2)]**
Dismissing the appeal of the revenue the Tribunal held that; As the time limit for issuing notice for assessment was expired prior to date of search and no material was found during the search, block assessment was held to be bad in law. (AY. 2006-07 to 2009-10)
CIT v. Saravana Stores (TEX) (2018) 61 ITR 20 (Chennai)(Trib.)

1893 **S. 153A : Assessment – Search or requisition – Admitting additional income of on money – Addition was held to be justified [S. 132(4)]**
Dismissing the appeal of the assessee the Tribunal held that; assessee had explicitly conceded and confessed in the sworn statement that receipts in cash had not been recorded in the books of account. Accordingly treating the amount as on money for sale of flats was justified. (AY. 2008-09 to 2011-12)
Shantilal J. Shah v. DCIT (2018) 61 ITR 79 (Bang.)(Trib.)

1894 **S. 153A : Assessment – Search or requisition – Merely on the basis of contract for professional receipt addition cannot be made**
Dismissing the appeal of the revenue the Tribunal held that merely on the basis of contract agreement found in the course of search for professional receipt addition cannot be made, when only half of the amount was received after performing. (AY. 2007-08)
DCIT v. Priyanka Chopra (Ms) (2018) 169 ITD 310 / 163 DTR 97 / 192 TTJ 318 (Mum.) (Trib.)

S. 153B : Assessment – Search or requisition – Time limit – On a remand under S. 263, such assessment would have to be completed only within a reasonable period of time. [S. 153A, 263] 1895

Dismissing the appeal of the assessee the Court held that on a remand under S. 263, such assessment would have to be completed only within a reasonable period of time. Accordingly the order passed by the AO was justified. (AY. 2000-01 to 2006-07)

K. V. Abdul Azeez v. CIT (2018) 404 ITR 288 / 253 Taxman 210 / 168 DTR 74 / 304 CTR 801 (Ker.)(HC)

S. 153B : Assessment – Search or requisition – Time limit – Seized material relating to assessee was received by Assessing Officer of assessee under section 153C in financial year 2011-12, assessment order passed on 22-3-2013 was well within period of limitation. [S. 132, 153A, 153C] 1896

Tribunal held that in pursuance of search action u/s. to 132, seized material relating to assessee was received by Assessing Officer of assessee under S 153C in financial year 2011-12, assessment order passed on 22-3-2013 was well within period of limitation.

Geeta Dubey (Smt.) v. ITO (2018) 172 ITD 538 (Indore)(Trib.)

S. 153C : Assessment – Income of any other person – Search – No satisfaction was recorded – In the absence of any incriminating material, notice was held to ne in valid. [S. 132] 1897

Dismissing the appeal of the revenue the Court held that,as no satisfaction was recorded. In the absence of any incriminating material, notice was held to be invalid. (AY. 2009-10)

CIT v. N. S. Software (FIRM) (2018) 403 ITR 259 / 165 DTR 201 / 302 CTR 136 / 255 Taxman 230 (Delhi)(HC)

S. 153C : Assessment – Income of any other person – Search and seizure – AO is required to arrive at a conclusive satisfaction that documents belongs to a person other than searched person. [S. 132(4A)(i), 158BD, 292C] 1898

Allowing the petition of the assesse the Court held that; before issue of notice u/s. 153C the AO is required to arrive at a conclusive satisfaction that documents belongs to a person other than searched person searched. Mere use of word "satisfaction" or "I am satisfied" in order or note would not meet requirement of concept of satisfaction as used in S. 153C of the Act. Accordingly the notice u/s. 153C was quashed. (AY. 2006-07 to 2011-12)

Pepsi Foods (P) Ltd. v. ACIT (2015) 231 Taxman 58 / 162 DTR 129 (Delhi)(HC)

Editorial : SLP of revenue was dismissed, ACIT v. Pepsi Foods (P) Ltd. (2018) 252 Taxman 372 (SC)

S. 153C : Assessment – Income of any other person – Search – Satisfaction note recorded by the AO of assessee was not by the AO of person in respect of whom search was conducted – Seized document not relevant to assessment year – Notice is void ab initio and vitiates entire assessment proceedings. [S. 132] 1899

On appeal before the Tribunal, it was held that recording of satisfaction by the Ld. AO of the person in respect of whom the search was conducted is a condition precedent

for initiating action u/s. 153C. In the case of assessee, the satisfaction note had been recorded by the Ld. AO of the assessee and not by the Ld. AO of the companies in whose case search was conducted. Also, the seized documents were not relevant to the assessment year under consideration. Therefore, it was held that, since no satisfaction note as required by law was recorded in the case of the companies in respect of whom search was conducted, the assumption of jurisdiction by the Ld. AO to issue notice u/s. 153C was void ab initio and bad in law and vitiated the entire assessment proceedings u/s. 153C. (AY.2011-12)
ACIT v. Surbhi Sen Jindal (2018) 68 ITR 12 (SN) (Patna)(Trib.)

1900 **S. 153C : Assessment – Income of any other person – Search and seizure – Satisfaction note is not available – Assessment is held to be bad in law.[S. 153A]**
The satisfaction of the AO of the person in respect of whom the search was conducted to the effect that relates to a person other than person referred to in S.153A, is a sine qua non. In this case, no satisfaction note by the AO of the person in respect of whom the search was conducted was furnished by the Department despite categorical directions. Accordingly the order passed is held to be bad in law. (AY.2008-09)
Avalanche Reality P. Ltd. v. ACIT (2018) 68 ITR 79 (SN)(Indore)(Trib.)

1901 **S. 153C : Assessment – Income of any other person – Search and Seizure – Issue of notice is mandatory – The amendment in S. 153C by the Finance Act, 2017, with effect from April 1, 2017 to the effect that the block period for the person in respect of whom the search was conducted as well as the "other person" would be the same six assessment years immediately preceding the year of search was prospective in nature – Order is held to be bad in law. [S. 132, 153B(1)(b)]**
Tribunal held that the search was conducted on the K group of cases on November 9, 2011. The impounded documents had been received by the AO on August 29, 2013. The satisfaction u/s. 153C had been recorded on October 3, 2013. The AO passed the assessment order u/s. 153B(1)(b) considering the AY 2012-13 to be the year of search. However, the first proviso to S. 153C of the Act provides that the six assessment years for which assessments or reassessments could be made u/s. 153C would have to be construed with reference to the date of handing over of the assets or documents to the AO of the assessee. Therefore, the AY 2014-15 would be the year of search and the six assessment years u/s. 153C of Act in the case of assessee would be assessment years 2008-09 to 2013-14. However, the AO had not issued any notice u/s. 153C before initiating the proceedings against the assessee. The amendment in S. 153C by the Finance Act, 2017, with effect from April 1, 2017 to the effect that the block period for the person in respect of whom the search was conducted as well as the "other person" would be the same six assessment years immediately preceding the year of search was prospective in nature. The AO, therefore, should have framed the assessment u/s. 153C in the case of the assessee and at the time of initiating the proceeding against the assessee, issued notice u/s. 153C which had not been done in this case. The issue of notice u/s. 153C was mandatory and a condition precedent for taking action against the assessee u/s. 153C. Accordingly the assessment is illegal and bad in law. (AY. 2012-2013)
BNB Investment and Properties Ltd. v. Dy.CIT (2018) 68 ITR 567 (Delhi)(Trib.)
Ranjan Gupta v. Dy.CIT (2018) 68 ITR 567 (Delhi)(Trib.)

S. 153C : Assessment – Income of any other person – Search – No incriminating material was found during course of search – Assessment is not valid. [S. 153A] 1902
Allowing the appeal of the asessee the Tribunal held that other than the details filed by the assessee during the course of assessment proceedings, there was no reference to any new material relating to the assessee found during the course of search operation. When documents or bullion or other material were not available against the assessee, initiation of proceedings under section 153C itself was bad in law. (AY.2007-08, 2008-09)
ACIT v. Surumy Mammotty (Smt.) (2018) 65 ITR 85 (Chennai)(Trib.)

S. 153C : Assessment – Income of any other person – Search – Illegal payments – Addition made on the basis of third party statement who have retracted and without giving an opportunity of cross examination initiation of proceedings was held to be not valid.[S. 132] 1903
Searched person being Secretary General of State Distilleries Association retracted from statement recorded during search that association collected sums from distilleries to make illegal payments to politicians/bureaucrats. In fact assessee had no occasion to make alleged payment as it was not at all running its distillery hence initiation of proceedings under section 153C was not justified. Tribunal also held that no document has been brought on record evidencing any such alleged payment to the politicians/ bureaucrats and thus, the addition made by the Assessing Officer without any material and without discharging the burden deserves to be deleted. (AY. 2003-04 to 2006-07)
Mohan Meakin Ltd. v. ACIT (2018) 168 ITD 99 (Delhi)(Trib.)

S. 153D : Assessment – Search or requisition – Approval – Provision do not require any opportunity of hearing to be given to assessee by authority who has to approve draft assessment order passed by Assessing Authority. [S. 143(3), 153A] 1904
Dismissing the appeal of the assessee the Court held that; the internal guidelines issued by the Central Board of Direct Taxes bereft of the statutory provisions in section 153D cannot bind the approving Authority, namely, the Joint Commissioner to comply with the principles of natural justice by the said Authority. The Assessing Authority undoubtedly has given adequate and reasonable opportunity of hearing to the assessee and all objections on merits were considered by him. Merely because, section 153D requires a prior approval of the draft assessment order by the higher Authority, namely, the Joint Commissioner in the present case, because the assessment order was passed by the authority below the rank of the Joint Commissioner, the provisions of the Act do not mandate that a fresh round of opportunity of hearing should be given to the assessee by such Authority, namely, Joint Commissioner even for approving draft assessment order. They are not even statutory instructions issued under section 119, which if beneficial to assessee have been held to be binding on the Authorities of the department. The assessee has also not been able to point out any prejudice caused to him on account of approving Authority not giving him an opportunity of hearing. (AY. 2005-06 to 2009-10)
Gopal S. Pandit v. CIT (2018) 257 Taxman 300 (Karn.)(HC)

1905 **S. 153D : Assessment – Search or requisition – Approval – There is no requirement of granting an opportunity of hearing to assessee by Joint Commissioner prior to giving approval as per S. 153D to order of assessment or reassessment under S. 153A of the Act. [S. 153A]**

Dismissing the appeal of the assessee the Court held that, There is no requirement of granting an opportunity of hearing to assessee by Joint Commissioner prior to giving approval as per S. 153D to order of assessment or reassessment under S. 153A of the Act. (BP.2005-06 to 2009-10)

Gopal S. Pandit v. CIT (2018) 408 ITR 346 / 257 Taxman 50 / 172 DTR 23 / (2019) 307 CTR 112 (Karn.)(HC)

1906 **S. 153D : Assessment – Search or requisition – Approval – No requirement under S. 153D of the Act for prior approval for passing order pursuant to / complying with remand or revisional directions by CIT. [S. 143(3), 263]**

Court held that; (i) S. 153D of the Act is applicable only in case of original assessment/ re-assessment order. Since there was no occasion of fresh assumption of jurisdiction to frame assessment pursuant to revisional directions, rather it was in continuance of earlier proceeding which was duly approved, there is no requirement under S. 153D for prior approval for complying with the remand/revisional directions. Hence, the assessment order framed pursuant to remand/revisional directions is valid without again issuing notice under S. 153D of the Act (ii) : The contention of assessee that the order was passed under S. 143(3) r.w. S. 263 of the Act is not founded well as even though in the heading Section 143(3)/263 are referred to, from the order it is clear that it has been passed under S. 153A r.w. S. 143(3) of the Act and the same has been passed pursuant to the remand/revisional directions under S. 263 of the Act. (AY. 2007-2008)

Osho Forge Ltd. v. CIT (2018) 255 Taxman 375 / 303 CTR 832 / 168 DTR 361 / (2019) 410 ITR 198 (P&H)(HC)

1907 **S. 153D : Assessment – Search or requisition – Approval – Order passed by the Assessing Officer without approval of Joint Commissioner was held to be bad in law. [S. 153C]**

Dismissing the appeal of the revenue the Court held that; an assessment order under S. 153C can be passed by Income Tax Officer only after obtaining prior approval under S. 153D of Joint Commissioner in as much as compliance of S. 153D requirement is absolute therefore order passed by the Assessing Officer without approval of Joint Commissioner was held to be bad in law. (AY. 2007-08)

PCIT v. Sunrise Finlease (P.) Ltd. (2018) 252 Taxman 407 / 171 DTR 237 / 305 CTR 421 (Guj.)(HC)

1908 **S. 153D : Assessment – Search or requisition – The requisite for approval for assessment from JCIT is mechanical and not proper i.e. given without due application of mind, the assessment order is held to be bad in law. [S. 153A]**

The Tribunal agreed to the assessee's contention by stating that the approval granted by JCIT was carried out in a mechanical manner without examining the material prior to approving the assessment order. The Tribunal held that the approval granted by JCIT

u/s. 153D of the Act, has been carried out in utmost haste and in mechanical manner and without proper application of mind. Accordingly, Tribunal held that the assessments were liable to be annulled as they suffered from an incurable defect. (AY. 2005-06, 2009-10, 2010-11)
ACIT v. Shyam Lal Bansal & Ors. (2018) 164 DTR 185 / 192 TTJ 968 (Jodhpur)(Trib.)
Indra Bansal v. ACIT (2018) 164 DTR 185 / 192 TTJ 968 (Jodhpur)(Trib.)

S. 154 : Rectification of mistake – As long as the order of the Tribunal stood, the assessment order was required to be implemented – After giving effect to the order of the Tribunal,notice issued for rectification of mistake on the ground that deduction was wrongly allowed is held to be bad in law.[S. 54EC, 115JB, 254(1)] 1909
Allowing the petition the Court held that, there was no error in the Assessing Officer's order implementing the Tribunal's directions. The Tribunal had directed the Assessing Officer to compute the assessee's book profits in a particular manner which was correctly understood and given effect to by him. He had proposed to rectify his order giving effect to the Tribunal's decision on the ground that there had been an apparent error. However, as long as the order of the Tribunal stood, the assessment order was required to be implemented. Further having implemented the order, it was not open for him to exercise power of rectification which was meant for correcting any error apparent on record. (AY. 2010-11)
Meteor Satellite Pvt. Ltd v. ITO (2018) 408 ITR 99 (Guj.)(HC)

S. 154 : Rectification of mistake – Pendency of appeal before Commissioner (Appeals) – No statutory bar to rectify assessment order even if an appeal was pending against it. [S. 250] 1910
Dismissing the petition the Court held that there is no statutory bar for Assessing Officer to rectify assessment order even if an appeal was pending against it. Accordingly the assessee is directed to file objections before Assessing Officer. (AY. 2014-15)
N. Arjunan v. ITO (2018) 257 Taxman 588 (Mad.)(HC)

S. 154 : Rectification of mistake – Business expenditure – Commencement of business – The assessee admitted to have not commenced business – Disallowance of expenditure is held to be valid. [S. 37(1)] 1911
Allowing the appeal of the revenue the Court held that, there was no warrant for examination of documents or evidence as assessee admitted to have not commenced business. Accordingly there is no debatable issue hence rectification order disallowing the expenditure is held to be valid. (AY. 1997-98)
CIT v. Parry Agro Industries Ltd. (2018) 256 Taxman 359 / 169 DTR 478 / 305 CTR 1007 (Ker.)(HC)

S. 154 : Rectification of mistake – Levy of interest – Waiver of interest – Petition was dismissed. [S. 119, 234A, 234B, 234C] 1912
Court held that the assessee's case is not covered in any of Circular dated 26.6.2006 issued by CBDT for waiver of interests. There is no mistake apparent from record. Apex Court in case of *CIT Bhopal v. Ralson Industries Ltd, AIR 2007 SC 668*, held that u/s.

154, order of rectification could be passed only when there was an error apparent on face of record. Petition was dismissed.
Harish Kumar Gupta v. CCIT (2018) 404 ITR 590 / 163 DTR 260 / 301 CTR 354 (Uttarakhand)(HC)

1913 **S. 154 : Rectification of mistake – Intimation – Refund due to senior citizen – AO ought to have granted the refund as per the order of CIT(A) – Before the Court the, Commissioner of Income tax assured that the refund along with interest will be granted with in six weeks. [S. 143(1), 237]**
Assessee a senior citizen of 82 years moved petition before the High Court for not getting the refund due to him which he is entitle as per the order of CIT(A). When the matter was taken up for hearing, Commissioner of Income-tax assured that the refund along with interest will be granted within six weeks. High Court recorded sincere appreciation for the proactive and sensitive manner in which the Commissioner of Income-tax has intervened to ensure that injustice caused to the assessee is addressed. Accordingly the petition was allowed. (AY. 1997-98)
Suresh M. Jamkhindikar v. ACIT (2018) 405 ITR 544 (Bom.)(HC), www.itatonline.org

1914 **S. 154 : Rectification of mistake – Miscalculation of interest under S. 220 can be corrected. [S. 220, 244(IA) 245(4), 245C, 245D(6A)]**
Allowing the appeal of the revenue the Court held that; rectification implies the correction of an error or removal of defects or imperfections. It implies an error, mistake, or defect which after rectification is made right. According to the proviso to sub-section (2) of S. 220, there can be variation in charging interest, and such variation can be effected through correction under S. 154. Accordingly the mistake in calculating the interest could be corrected under S. 154. (AY. 1985-86)
CIT v. Younus Kunju, Younus Cashew Industries. (2018) 402 ITR 95 / 164 DTR 89 (Ker.) (HC)

1915 **S. 154 : Rectification of mistake – Refund of excise duty – Interest subsidy – Capital receipt – Appeal of assessee is allowed. [S. 145A]**
Allowing the appeal the Tribunal held that the issue involved in the appeals under consideration relates to the excise duty refund and interest subsidy as capital receipt or revenue receipt, has already been decided by the Jurisdictional High Court in the case of *Sh. Balaji Alloys v. CIT (2011) 333 ITR 335 (J&K) (HC)* by holding the Excise Duty Refund and interest subsidy as 'capital receipt'. The said High Court Judgment was further challenged in the Apex Court and the Apex Court vide its judgment affirmed the view of the High Court, hence, in view of the judgments of Apex Court and Jurisdictional High Court, appeal of the assessee is allowed. (*CIT v. Ponni Sugars & Chemicals Ltd. (2008) 306 ITR 392 (SC) and CIT v. Meghalaya Steels Ltd. (2016) 3 SCALE 192* (AY.2005-06, 2006-07)
Kashmir Steel Rolling Mills v. DCIT (2018) 169 DTR 137 / 195 TTJ 125 (Asr.)(Trib.)

S. 158BA : Block assessment – Undisclosed income – Sale consideration – Security deposit was not offered to tax on the ground that there was no provision in agreement enabling buyer to refund any part of sale consideration – Buyer treated amount paid as stock-in-trade – Addition is held to be justified. [S. 68] 1916

Assessee had 40 percent share in a multistoreyed complex to be built. Assessee entered into an agreement with one, VIPL whereby latter acquired right of such 40 percent share of assessee along with obligation to develop multistoried complex for a total consideration of ₹ 42 crores. Assessee contended that amount received by it was only a security deposit to check performance of VPIL and same was to be returned on completion of project. A search was carried out on 'A' Group of companies in which a 'note' was found and seized in which it was found that amount received by assessee was account of sale consideration. Assessing Officer included amount of ₹ 92 crores total income of assessee. The assessee contended that there was no such condition in agreement enabling VIPL to claim refund of any part of consideration. In course of recording of statement of directors of VIPL, it was categorically admitted that sale consideration paid to assessee was ₹ 42 crores. Further, VIPL showed entire sum of ₹ 42 crores as stock-in-trade thereby confirming interpretation that real intention was that entire sum was towards sale consideration and not to be treated as part of security deposit. Allowing the appeal of the revenue the Court held that; on facts, security deposit was a mere camouflage or a devise to postpone tax liability towards an uncertain date, at convenience of assessee, thus, Assessing Officer was justified in making impugned additions. (AY. 1995-96)

CIT v. Ansal Properties & Industries (2018) 259 Taxman 103 / 170 DTR 225 / (2019) 308 CTR 510 (Delhi)(HC)

S. 158BA : Block assessment – Undisclosed income – Expenses or payments not deductible – Excessive or unreasonable-Commission payment – Reflected in its books filed along with its return of income which was subjected to normal assessment, impugned addition was unjustified. [S. 40A(2)] 1917

Dismissing the appeal of the revenue the Court held that; where addition was made to income of assessee on account of commission paid by it to an agent to facilitate sale of a building, since such commission paid by assessee was duly reflected in its books filed along with its return of income which was subjected to normal assessment, impugned addition was unjustified. (AY. 1995-96)

CIT v. Ansal Properties & Industries (2018) 259 Taxman 103 / 170 DTR 225 / (2019) 308 CTR 510 (Delhi)(HC)

S. 158BB : Block assessment – Survey – Material found in the course of search and survey which has been simultaneously made at the premises of connected person can be utilised while making block assessment. [S. 132, 133A, 158BC, 158BH] 1918

Allowing the appeal of the revenue the Court held that; while it is a cardinal principle of law that in order to add any income in the block assessment, evidence of such

income must be found in the course of the search u/s. 132, any material or evidence found/collected in a survey u/s. 133A which has been simultaneously made at the premises of a connected person can also be utilized while making the Block Assessment. The same would fall under the words "and such other materials or information as are available with the Assessing Officer and relatable to such evidence" occurring in S. 158 BB. (AY.2001-02)

CIT v. S. Ajit Kumar (2018) 404 ITR 526 / 165 DTR 281 / 302 CTR 177 / 255 Taxman 286 (SC), www.itatonline.org

CIT v. Braj Binani (2018) 404 ITR 526 / 165 DTR 281 / 302 CTR 177 / 255 Taxman 286 (SC), www.itatonline.org

CIT v. P. K. Ganeshwar (2018) 404 ITR 526 / 165 DTR 281 / 302 CTR 177 / 255 Taxman 286 (SC), www.itatonline.org

CIT v. Yashoda Shetty (2018) 404 ITR 526 / 165 DTR 281 / 302 CTR 177 / 255 Taxman 286 (SC), www.itatonline.org

Editorial : Decision in CIT v. S. Ajit Kumar (2008) 300 ITR 152 (Mad) (HC), CIT v. P. K. Ganeshwar (2009) 308 ITR 124 (Mad) (HC), CIT v. Yashoda Shetty (2015) 371 ITR 75 (Karn) is reversed

1919 **S. 158BB : Block assessment – Undisclosed income – Gift – Statement during search proceedings – Retraction – Books of account – Oral statement – Evidentiary value – Found and evidence found – Divergence opinion among Courts – Referred to larger Bench. Question whether a statement recorded u/s. 132(4) cannot be treated as evidence found during the course of search could also be considered and reappraised. [S. 68, 131,132(4), 158BA, Evidence Act, 1872, S. 3, 57, 114]**

CIT v. DPA Finvest Services Ltd. (2015) 376 ITR 399 (Delhi) (HC) and CIT v. Vishal Aggarwal (2006) 283 ITR 326 (Delhi) (HC), distinguished.

In *CIT v. Harjeev Aggarwal (2016) 241 Taxman 199 / 6 ITR-OL 504 (Delhi) (HC)* observed that oral statements recorded would constitute information only if such information was relatable to the material or evidence found during search and only then could be used as evidence as expressly mandated by virtue of the explanation to section 132(4) of the Act. A contrary view has been taken by the Kerala High Court in *CIT v. Hotel Meriya (2011) 332 ITR 537 (Ker.)(HC)* to the effect that oral evidence would be admissible for the purpose of block assessment also and that the Explanation to section 132(4) permits recording of statement on oath for all purposes connected with any proceedings under the Act. In view of the conflict and divergence, having recorded the prima facie reservation on the view expressed on "books of account" and on "oral statement" not being evidence found, the question of interpretation of the term "undisclosed income" for the purpose of block assessment was to be referred to a larger bench. Question whether a statement recorded u/s. 132(4) cannot be treated as evidence found during the course of search could also be considered and reappraised. [BP. 1-4-1989 to 15-1-2000]

CIT v. M.S. Aggarwal (2018) 406 ITR 609 / 93 taxmann.com 247 / 303 CTR 560 / 166 DTR 121 (Delhi)(HC)

S. 158BB : Block assessment – Undisclosed income – Addition cannot be made on the basis of returns filed by assess's wife and other related entities on the basis of valuation reports of departmental Valuer – Addition was held to be justified as the retraction was made after inordinate delay and not supported by any evidence. [S. 132(4)] 1920

Court held that, the Tribunal is justified in holding that, Addition cannot be made on the basis of returns filed by assess's wife and other related entities on the basis of valuation reports of departmental Valuer. As regards Diamond found in the course of search addition was held to be justified as the retraction was made after inordinate delay and not supported by any evidence. (BP. 1-4-1995 to 13-9-2001)

CIT v. S. V. Sreenivasan (2018) 404 ITR 433 (Mad.)(HC)

S. 158BC : Block assessment – Undisclosed income – Amount surrendered in the course of survey – Merely on the basis of statement in the course of search or survey addition cannot be made, if the assesseee is able to explain the differences – Actual concealment was less than the amount surrendered-Deletion on the basis of explanation is held to be valid. [S. 132, 133A] 1921

Dismissing the appeal of the revenue the Court held that, the Department could not dispute that the statement recorded during search and seizure could have been explained subsequently and also that after examining the entire material on record, the actual concealment apparent from record was much less than that disclosed by the assessee. Further, the assessee was entitled to explain his statement made during search and seizure operation. Therefore, the Tribunal was right in holding that there was no concealment on the part of the assessee. [BP. 1-4-1996 to 13-9-2002]

CIT v. S. K. D. New Standard Coaching Institute (2018) 407 ITR 529 (All.)(HC)

S. 158BC : Block assessment – Unexplained expenditure – Cost of construction valuation report-Since no undisclosed income was detected as a result of search, and amounts in question had been found to have been entered in regulars books of account of assessee, inquiry, if any, in respect of valuation of building was permissible only in course of regular assessment proceedings and, thus, addition made by Assessing Officer was to be deleted. [S. 69C] 1922

Dismissing the appeal of the revenue the Court held that ; Chapter XIV-B of Act is a complete code in itself and if assessment has to be made for undisclosed income, such undisclosed income should be out of result of search; since no undisclosed income was detected as a result of search, and amounts in question had been found to have been entered in regulars books of account of assessee, inquiry, if any, in respect of valuation of building was permissible only in course of regular assessment proceedings and, thus, addition made by Assessing Officer was to be deleted.

PCIT v. Rajni Developers (P.) Ltd. (2018) 89 taxmann.com 408 (Guj.)(HC)

Editorial : SLP of revenue is dismissed PCIT v. Rajni Developers (P.) Ltd. (2018) 257 Taxman 258 (SC)

1923 **S. 158BC : Block assessment – Addition was made on the basis of seized material – Block assessment cannot be held to be invalid on the ground that the authorisation was not in the name of the assessee but the premises of the assessee – Neither AO nor Tribunal in appeal could examine warrant of authorization for purpose of examining whether there existed reasons to believe on material before competent authority to order search u/s. 132(1). Assessee has not disputed the panchanama prepared by the search team in the name of assessee-Block assessment is held to be valid. In the present case search and seizure was actually made on the premises on the premises of assessee and documents and material collected therefrom also pertain to it, therefore S. 158BD is not attracted. [S. 132, 158BD]**

Allowing the appeal of the revenue the Court held that, neither AO nor Tribunal in appeal could examine warrant of authorization for purpose of examining whether there existed reasons to believe on material before competent authority to order search u/s. 132(1). Assessee has not disputed the panchanama prepared by the search team in the name of assessee. Addition was made on the basis of seized material,Block assessment cannot be held to be invalid on the ground that the authorisation was not in the name of the assessee but the premises of the assesee. Dismissing the appeal of the assessee the Court held that, S. 158BD would have been attracted only when the search and seizure was made in the premises of another person and material collected belong to another person. In the present case, search and seizure was actually made on the premises on the premises of assessee and documents and material collected therefrom also pertain to it, therefore S. 158BD is not attracted. [BP 1-4-1994 to 28-11-1996)

CIT v. Verma Roadways (2018) 165 DTR 377 / 304 CTR 163 (All.)(HC)

1924 **S. 158BC : Block assessment – Estimation of undisclosed income was held to be justified – Expenses during Block Period could not be set off against undisclosed income**

Dismissing the appeal of the assessee the Court held that, estimation of undisclosed income was held to be justified. Court also held that considering the report of the Special Auditor expenses during Block Period could not be set off against undisclosed income.

Madhurapuri Chits And Finance Co. Pvt. Ltd. v. DCIT (2018) 404 ITR 222 (Ker.)(HC)

1925 **S. 158BC : Block assessment – Undisclosed income – Inflated sales – Report of special auditors – No Unqualified Acceptance of Figures of Special Auditors – Matter remanded to quantify inflated income. [S. 158BB]**

Allowing the appeal of the revenue, the Court held that merely because the assessee's income was audited by chartered accountants in regular process, there could not be unqualified acceptance of the audited figures. But the nature of deletion directed for the residual period was not proper without scrutiny. Therefore, the decision of the Tribunal was to be set aside and directed to ascertain the quantum of inflated income. (BP. 1986-87 to 1997-98 1987-88 to 1997-98)

CIT v. Kedia Castle Dellion Industries Ltd. (2018) 401 ITR 334 (Cal.)(HC)

S. 158BC : Block assessment – Statement u/s. 132(4) can be used against the assessee only if the statement has relevance to any incriminating document or material found during course of search – Block assessment is held to be bad in law. [S. 132(4)] 1926

Allowing the appeal of the assessee the Tribunal held that; Statement u/s. 132(4) can be used against the assessee only if the statement has relevance to any incriminating document or material found during course of search. Block assessment is held to be bad in law. (BP. 10-10-1985 to 21-11-1996)

Promain Ltd. v. DCIT (2018) 170 ITD 188 (Delhi)(Trib.)

S. 158BD : Block assessment – Undisclosed income of any other person – Recording of reasons – Issue of Second (Fresh) Notice under S. 158BD of the Act is valid [S. 132, 148, 158BC] 1927

Dismissing the appeal of the assesse the Court held that; although S. 158BD does not speak of 'recording of reasons' as postulated in S. 148, but since proceedings u/s. 158BD may have monetary implications, such satisfaction must reveal mental and dispassionate thought process of the AO in arriving at a conclusion and must contain reasons which should be the basis of initiating the proceedings u/s. 158BD. Notice u/s. 158BC issued on the same date to the searched person and the other person is not valid as no reasonable or prudent man can come to the satisfaction that any undisclosed income belongs to the other person unless the seized books of accounts etc are verified. The AO is empowered to issue a second notice u/s. 158BD to the other person. Accordingly the order of High court was affirmed. (AY. 1989-90 to 1999-2000)

Tapan Kumar Dutta v. CIT (2018) 404 ITR 28 / 165 DTR 169 / 302 CTR 102 / 255 Taxman 200 (SC), www.itatonline.org

S. 158BD : Block assessment – Undisclosed income of any other person – Recording of satisfaction is not required where AO is the same. [S. 132] 1928

Allowing the appeal of the revenue the Court held that; recording of satisfaction is not required where AO is the same.

CIT v. Soudha Gafoor (Smt) (2017) 298 CTR 381 / (2018) 408 ITR 246 (Ker.)(HC)

S. 158BD : Block assessment – Undisclosed income of any other person – Recording of satisfaction can be done even after assessment of person searched, however must be recorded with in reasonable time. Recording of satisfaction was done after nine months after assessment of person searched is held to be bad in law. [S. 158BC] 1929

Dismissing the appeal of the revenue the Court held that, recording of satisfaction can be done even after assessment of person searched, however must be recorded with in reasonable time. On facts recording of satisfaction was done after nine months after assessment of person searched is held to be bad in law. (*CIT v. Calcutta Knitwears (2014) 362 ITR 673 (SC)*) [B P 1992-93 to 2001-02]

CIT v. Jitendra H. Modi HUF (2018) 403 ITR 110 (Guj.)(HC)

1930 **S. 159 : Legal representatives – Reassessment – Notice issued in name of dead person is not enforceable in law – There is no statutory obligation on part of legal representative of deceased to immediately intimate death of assessee or take steps to cancel PAN registration-The proceedings under S. 159 can be invoked only if the proceedings have already been initiated when the assessee was alive and was permitted for the proceedings to be continued as against the legal heirs, the issue relating to limitation is not a curable defect. [S. 147, 148, 292BB]**

Allowing the petition the Court held that, notice issued in name of dead person is not enforceable in law. Court also held that there is no statutory obligation on part of legal representative of deceased to immediately intimate death of assessee or take steps to cancel PAN registration. Court observed that, the proceedings under S. 159 can be invoked only if the proceedings have already been initiated when the assessee was alive and was permitted for the proceedings to be continued as against the legal heirs. The factual position in the instant case being otherwise, the provisions of S. 159 have no application. Court observed that,the language employed in S. 292B is categorical and clear. The notice has to be, in substance and effect, in conformity with or according to the intent and purpose of the Act. Undoubtedly, the issue relating to limitation is not a curable defect for the revenue to invoke S. 292B. Accordingly the Court held the impugned notice is wholly without jurisdiction and cannot be enforced against the assessee. (AY. 2010-11)

Alamelu Veerappan v. ITO (2018) 257 Taxman 72 / 169 DTR 434 / 304 CTR 512 wwwitatonline.org. (Mad.)(HC)

1931 **S. 159 : Legal representatives – Notice or order on dead person or wound up company is a nullity subject to condition that the department is made aware of the death or winding up. If the assessee participated in the proceedings and thereafter has taken the plea that order or notice was served on dead person, wound-up company are nullity. In such cases, the assessment is liable to be set-aside for a fresh assessment in accordance with law instead of its annulment. [S. 163, 176]**

Tribunal held that; a notice/ order on a dead person/ wound-up company is a nullity, this is subject to the condition that the department is made aware of the death/ winding-up. If the legal representative, either voluntarily or in response to a notice issued against the deceased but served upon his agent, allows the assessment proceedings to continue against the deceased/ wound-up company without any objection and lets the AO make an assessment order, it would not be open for him to take a plea at the appellate stage, as a last resort or as an afterthought, that the proceedings taken and the assessment order made against the deceased/ wound-up company are nullity. In such cases, the assessment is liable to be set-aside for a fresh assessment in accordance with law instead of its annulment. (AY. 2012-13)

Pesak Ventueres Ltd. v. DCIT (2018) 67 ITR 495 (Delhi)(Trib.), www.itatonline.org

S. 161 : Liability of representative assessee – Income from house property – Shares of beneficiaries are definite – Trust cannot be assessed separately at maximum rate – Tax on the share of each beneficiary will have to be separately calculated as if it formed a part of the beneficiary's income. Tax payable by the Trust will be the sum total of the tax calculated on the share of each beneficiary. [S. 22, 26, 164] 1932

Assessee was a family trust with 14 beneficiaries having equal shares. During previous year relevant to assessment year assessee was in receipt of only rental income. Shares of all beneficiaries were determined and known. AO held that shares of beneficiaries though definite in trust, they were not co-owners of trust property, thus, S. 26 mandating assessment in hands of each beneficiary separately would not apply. AO assessed rental income in hands of assessee-trust at maximum marginal rate instead of allotting it in hands of beneficiaries. Allowing the appeal of the assessee the Tribunal held that since beneficiaries were real owners of property of trust and their shares of income were determined, tax on share of each beneficiary would be separately calculated as if it formed a part of beneficiary's income and tax payable by trust would be sum total of tax calculated on share of each beneficiary. (AY.2007-08)

Abad Trust v. ADIT (E) (2018) 171 ITD 50 (Cochin)(Trib.)

S. 163 : Representative assessees – Agent – Non-Resident – Transfer of shares in Foreign Country by non-resident company – No evidence that assessee was party to transfer – Notice seeking to treat assessee as agent of non-resident is not valid. [S. 160, 161, 162, Art. 226] 1933

Allowing the petition the Court held that; question was whether the show-cause notice was at all without jurisdiction, whether the respondent wrongly assumed jurisdiction by erroneously deciding jurisdictional facts, whether in the facts and circumstances of the case, the appellant at all had any liability in respect of the capital gains in question, and whether the appellant could be said to be an agent under section 163(1)(c) can be considered in writ proceedings. Court also observed that, no case was made out by the Department that in respect of transfer of shares to a third party outside India, the Indian company could be taxed when the Indian company had no role in the transfer. Merely because those shares related to the Indian company, that would not make the Indian company an agent qua deemed capital gains purportedly earned by the foreign company. The notice was not valid. (AY. 2014-15)

Wabco India Limited v. DCIT (2018) 407 ITR 317 / 258 Taxman 218 / 172 DTR 297 / 305 CTR 911 (Mad.)(HC)

S. 164 : Representative assessees – Charge of tax – Beneficiaries unknown – Un registered trust – Trustees filing their return showing taxable income – Trust is to be assessed as an AOP and the income would be taxable at maximum marginal rate. [S. 12A, 164(1), 167B] 1934

Dismissing the appeal of the assessee the, Tribunal held that in case of unregistered Trust, if Trustees are having taxable income, Trust is to be assessed as an AOP at maximum marginal rate. (AY. 2011-12)

Basil Mendes Memorial Educational & Charitable Trust v. ITO (2018) 173 ITD 390 (Bang.) (Trib.)

1935 **S. 164 : Representative assessees – Charge of tax – Beneficiaries unknown – Association of Persons – Trust formed for providing financial assistance to self-help groups – Assessee taxable as association of persons at maximum marginal rate on entire income not merely on surplus – Principle of mutuality is not applicable – Liable to deduct tax at source – Matter remanded to AO. [S. 4, 40(a)(ia), 160, 167]**

Dismissing the appeal of the assessee the Tribunal held that; Trust formed for providing financial assistance to self-help groups. Assessee taxable as association of persons at maximum marginal rate on entire income not merely on surplus. Principle of mutuality is not applicable. However, S. 40(a)(ia) witnessed amendments inserted by the Finance Act, 2012 with effect from April 1, 2013 provided that the assessee would not deemed to be in default where the payee had taken the relevant interest income into account in computing his income, and had paid tax on the income, so returned, and to which effect the assessee furnished a certificate in the form as prescribed. Since the proviso to S. 40(a)(ia) was curative and retrospective, the assessee was entitled to the saving of the second proviso to S. 40(a)(ia). Matter was remanded. (AY. 2009-10)

Sarvodaya Mutual Benefit Trust, Thellar v. ITO (2018) 61 ITR 104 (Chennai)(Trib.)

Sarvodaya Mutual Benefit Trust, Pernamallur v. ITO (2018) 61 ITR 104 (Chennai)(Trib.)

1936 **S. 170 : Succession to business otherwise than on death – Assessment – Amalgamation of companies – Assessment on company which is non-existent was held to be not valid – Assessment was not procedural irregularity which can be curable. [S. 143(3), 292B]**

Dismissing the appeal of the revenue the Court held that; in the first instance the assessment was conducted in the name of a non-existing entity. The Dispute Resolution Panel to whom the matter was directed, by the first remand, by the Tribunal, was not directed, in turn, to require the Assessing Officer to "better" the original illegality, which was not curable, under S. 292B. (AY. 2006-07)

PCIT v. Nokia Solutions And Network India Pvt. Ltd. (2018) 402 ITR 21 / 253 Taxman 409 / 164 DTR 198 (Delhi)(HC)

1937 **S. 170 : Succession to business otherwise than on death – Capital gains – Conversion of private Limited company to LLP would be subject to liability of assessee LLP as a successor entity. [S. 5, 45, 47A(4)]**

Capital gains, if any, involved in transfer of capital assets on conversion of private limited company to assessee LLP, de hors applicability of S. 47A(4), would not be liable to be assessed in hands of assessee LLP as per S. 45 read with S. 5, however, same would be subject to liability of assessee LLP as a successor entity. (AY.2010-11)

ACIT v. Celerity Power LLP (2019) 174 ITD 433 / 197 TTJ 45 / 174 DTR 68 (Mum.)(Trib.), www.itatonline.org

1938 **S. 179 : Private company – Liability of directors – Person treated as Director should be given opportunity to be heard.**

Assessee contended that he was remanded to judicial custody on his appearance before the criminal court on March 29, 2017 and he was released on bail only on August 11, 2017. This fact was not seen disputed in the statement filed on behalf of the respondents. In so far as the assessee was in jail when notice was ordered in the

proceedings initiated against him under section 179, the notice should have been served on him through the Superintendent of the jail wherein he was detained. This course admittedly had not been adopted by the respondents. In the circumstances, the order was liable to be set aside and the matter had to be considered afresh. Court held that an order under section 179 cannot be passed without affording the parties concerned an opportunity of hearing. (AY. 2009-10 to 2015-16)
Mailakkattu Varghese Uthup (NO. 1) v. PCIT (2018) 406 ITR 289 / 304 CTR 1000 / 170 DTR 321 (Ker.)(HC)
Editorial : Order of single judge is affirmed; Mailakkattu Varghese Uthup (NO. 2) v. PCIT (2018) 406 ITR 296 / 304 CTR 1006 / 170 DTR 326 (Ker.)(HC)

S. 179 : Private company – Liability of directors – Before the Assessing Officer assumed jurisdiction, efforts to recover the tax dues from the company should have failed and such efforts and failure of recovery ought to have been mentioned in the notice, howsoever briefly – No distinction can be made between professional or paid directors and directors holding a large shareholding stake in the company. 1939
Allowing the petition the Court held that; the Act made no distinction between professional or paid directors and directors holding a large shareholding stake in the company. S. 179(1) only gave jurisdiction to the AO to proceed against a company when it was unable to recover the dues of the company. It was not, therefore, open to the Assessing Officer to read conditions into S. 179(1) and ignore the strict rule of interpretation of fiscal statutes which prohibited reading anything in the statute not expressed therein. Before the Assessing Officer assumed jurisdiction, efforts to recover the tax dues from the company should have failed and such efforts and failure of recovery ought to have been mentioned in the notice, howsoever briefly. (AY. 2011-12)
Mehul Jadavji Shah v. DCIT (2018) 403 ITR 201 / 165 DTR 366 / 255 Taxman 126 / 302 CTR 344 (Bom.)(HC)

S. 179 : Private Company – Liability of directors – Assessing Officer can exercise jurisdiction to recover the dues of the company against the director only when it fails to recover its dues from the company. Order of AO was set aside. 1940
Allowing the petition the Court held that; it is condition precedent for the AO to exercise jurisdiction under S. 179(1) of the Act that to proceed against the directors of the delinquent Private Limited Company only after it has failed to recover its dues from such company. The jurisdictional requirement cannot be said to be satisfied by a mere statement in the impugned order that the recovery proceedings had been conducted against the defaulting Private Limited Company but it had failed to recover its dues. The above statement should be supported by mentioning briefly the types of efforts made and its results. Accordingly the order was set aside. (AY. 2006-07 to 2011-12)
Madhavi Kerkar v. ACIT (2018) 403 ITR 157 / 253 Taxman 288 / 165 DTR 362 / 302 CTR 340 (Bom.)(HC)

1941 **S. 184 : Firm – Registration – Firm – Assessment as a firm – Failure to file certified copy of partnership deed along with return – There is no change either in the constitution or in the shares of the partners – S. 184(3) allows the status/benefit of being assessed as a partnership firm if in an earlier assessment it was so assessed – Hence, the firm would continue to be assessed as a partnership firm in the subject assessment year despite not filing the certified partnership deed with the return of income filed.**

Allowing Assessee's appeal the High Court held that :

a) Execution of a fresh instrument of partnership providing for payment of salary and/ or interest to the partners does not bring about a change in share of profits of the partners as indicated in the partnership deed;

b) As the assessee-firm was assessed as a partnership firm prior to AY 1993-94 and there has been no change in the share of the partners, it would continue to be assessed as a partnership firm in the relevant year i.e. AY 1993-94 as the requirement of filing certified copy of the partnership deed along with the return of income is applicable w.e.f April 1, 1993 and only applied to firms which sought to be assessed as partnership firm under the Act for the first time after April 1, 1993. (AY. 1993-1994)

Badshah Enterprises v. AO (2018) 169 DTR 2 (Bom.)(HC)

1942 **S. 192 : Deduction at source – Salary – Perquisite – Since contributions made by assessee were to recoup deficiency suffered by said Educational Society for meeting its educational requirements and burden borne per child per month by assessee had never crossed ₹ 1000, no perquisite could be said to be arise in hands of employees of assessee-legislation amended rule 3(e) only for period subsequent to 2001, to include concessional education facility, assessee could not be held liable to recover tax for assessment years prior to such amendment for contribution of concessional facility given to employees – Not liable to deduct tax at source. [S. 17(2), 201(1)]**

Allowing the appeal of the assessee the Court held that; Since contributions made by assessee were to recoup deficiency suffered by said Educational Society for meeting its educational requirements and burden borne per child per month by assessee had never crossed ₹ 1000, no perquisite could be said to be arise in hands of employees of assessee-legislation amended rule 3(e) only for period subsequent to 2001, to include concessional education facility, assessee could not be held liable to recover tax for assessment years prior to such amendment for contribution of concessional facility given to employees-Not liable to deduct tax at source. (AY. 2000-01, 2001-02)

Gujarat Co-operative Milk Marketing Federation Ltd. v. ITO (2018) 257 Taxman 311 / 172 DTR 57 / 305 CTR 988 (Guj.)(HC)

1943 **S. 192 : Deduction at source – Salary – Bar against direct demand – If the deductor has deducted TDS and issued Form 16A, the deductee has to be given credit even if the deductor has defaulted in his obligation to deposit the TDS with the Government revenue. [S. 205, 221]**

Allowing the petition the Court held that; if the deductor has deducted TDS and issued Form 16A, the deductee has to be given credit even if the deductor has defaulted in his obligation to deposit the TDS with the Government revenue. (SCA No. 12965 of 2018, dt. 24.09.2018)

Devarsh Pravinbhai Patel v. ACOT (Guj.)(HC), www.itatonline.org

S. 192 : Deduction at source – Salary – Commission paid to non-executives/ independent directors could not be treated as salary and, not liable to deduct tax at source. [S. 15] 1944

Dismissing the appeal of the revenue the Court held that; Commission paid to non-executives/independent directors could not be treated as salary and, not liable to deduct tax at source. (AY. 2006-07 to 2010-11)

CIT v. Zee Entertainment Enterprises Ltd. (2018) 254 Taxman 370 (Bom.)(HC)

S. 192 : Deduction at source – Salary – Contributions to unrecognised Provident Fund is not eligible for deduction u/s. 80C. Interest accrued to Employees contribution to unrecognised Provident Fund is taxable as income from other sources and liable for deduction of tax at source. [S. 2(38) 80C, 201(1), 201(IA)] 1945

Dismissing the appeal of the assessee the Tribunal held that; the contributions to the provident fund that was not recognised by the Chief Commissioner or the Commissioner in accordance with the rules contained in the Part A of the Fourth Schedule or under a scheme framed under the Employees' Provident Funds Act, 1952, therefore not entitled to deduction under S. 80C. Interest accrued to the assessee on the contributions to such unrecognised provident fund is taxable as income from other sources. Accordingly the assessee is liable to deduct tax at source u/s. 192 of the Act. (AY.2007-08, 2008-09)

Chirakkal Service Co-Operative Bank Ltd. v. ITO (TDS) (2018) 64 ITR 670 (Cochin)(Trib.)

S. 192 : Deduction at source – Salary – Non-Resident – Employees rendering services on deputation at USA and Germany on assignment basis – Not liable to tax in India as services were rendered there hence not liable to deduct tax at source – DTAA-India-USA-Germany. [S. 2(45) 4, 5(2), 9(i)(ii), 90, 192, 195, Art. 25, 23] 1946

AAR held that, employees of Indian company sent on assignments to render services in USA. and Germany to companies, income earned from services rendered in those countries chargeable to tax there, and not in India, during period of assignment hence the Indian company is not liable to deduct tax on salaries paid in India. Employees residents of those Countries and liable to tax on their worldwide income in those countries for period of their assignment, income did not accrue in India and not chargeable to tax in India.

Hewelett Packed India Software Operation P. Ltd In, re (2018) 401 ITR 339 / 162 DTR 337 / 301 CTR 12 (AAR)

S. 194A : Deduction at source – Interest other than interest on securities – NOIDA and Greater NOIDA are covered by the notification No. S.O. 3489 dt 22nd Oct, 1970 – Interest received by them is exempt – Bank is not liable to deduct tax at source. [S. 194A(3) (iii) (f)] 1947

NOIDA and Greater NOIDA are covered by the notification No. S. O. 3489 dt 22nd Oct, 1970, hence interest received by them is exempt u/s. 194A (3)(iii)(f) of the Act. (AY. 2005-06, 2006-07)

CIT v. Canara Bank (2018) 406 ITR 161 / 168 DTR 33 / 303 CTR 433 / 257 Taxman 12 (SC)

Editorial : CIT v. Canara Bank (2016) 386 ITR 504 / 141 DTR 73 / 289 CTR 75 (All) (HC) is affirmed.

1948 **S. 194A : Deduction at source – Interest other than interest on securities – NOIDA and Greater NOIDA are covered by the notification No. S.O. 3489 dt 22nd Oct, 1970 – Interest received by them is exempt. [S. 194A(3)(iii)(f)]**

NOIDA and Greater NOIDA are covered by the notification No.S. O. 3489 dt 22nd oct, 1970, hence interest received by them is exempt u/s. 194A (3)(iii)(f) of the Act. (AY. 2010-11, 2011-12)

New Okhla Industrial Development Authority (NOIDA) v. CCIT (2018) 406 ITR 209 / 168 DTR 145 / 257 Taxman 3 / 303 CTR 553 (SC)

CIT v. HDFC Ltd (2018) 406 ITR 209 / 168 DTR 145 / 303 CTR 553 (SC)

CIT v. Rajesh Projects (India) (P) Ltd (2018) 406 ITR 209 / 168 DTR 145 / 257 Taxman 3 / 303 CTR 553 (SC)

Greater Noida Industrial Development Authority v. ACIT (2018) 406 ITR 209 / 168 DTR 145 / 303 CTR 553 (SC)

ITO v. United Bank of India (2018) 406 ITR 209 / 168 DTR 145 / 303 CTR 553 (SC)

Editorial : Affirmed Rajesh Projects (India) (P) Ltd v. CIT (2017) 392 ITR 483 / 148 DTR 33 / 293 CTR 121 (Delhi) (HC)

1949 **S. 194A : Deduction at source – Interest other than interest on securities – Additional compensation paid wrongly mentioned as interest in award – Not liable to deduct tax at source of Competent Authority. [S.201(1), 201 (IA), Land Acquisition Act, 1894, S. 23(IA)]**

Dismissing the appeal of the revenue the Court held that; additional compensation which was wrongly mentioned as interest in award is not liable to deduct tax at source of Competent Authority. (AY.2013-14)

CIT (TDS) v. Dedicated Freight Corridor Corporation Ltd. (2018) 408 ITR 380 / (2019) 173 DTR 349 / 306 CTR 413 (P&H)(HC)

1950 **S. 194A : Deduction at source – Interest other than interest on securities – Co-operative society-Banking business – Interest paid to members on time deposits is not required to deduct tax at source.**

Dismissing the appeal of the revenue the Court held that, in view of decision in case of *CIT v. Karnataka Vikas Grameena Bank* [ITA No. 100060 of 2016, dt. 7-6-2017], where assessee, a co-operative society, carrying on banking business, paid interest income to its members on time deposits, it was not required to deduct tax at source under section 194A by virtue of exemption granted vide clause (v) of sub-section (3) of section 194A. (AY. 2009-10, 2010-11)

CIT(A) v. Bijapur District Central Co-Operative Bank Ltd. (2018) 256 Taxman 51 (Karn.)(HC)

Editorial : SLP of revenue is dismissed, CIT v. Bijapur District Central Co-Operative Bank Ltd. (2019) 260 Taxman 297 (SC)

1951 **S. 194A : Deduction at source – Interest other than interest on securities – Non-resident – External commercial borrowings with ICICI Bank Singapore Branch – ICICI Bank is an Indian resident company and its global income including offshore branch chargeable to tax in India – Not liable to deduct tax at source. Matter was set aside for verification. [S. 6(3), 194A(3)(iii), 195, 201(1), 201(iA)]**

Allowing the appeal of the assessee the Tribunal held that; the office of the Joint Commissioner Mumbai had clarified by his letter dated January 24, 2011 that the ICICI-

Bank was an Indian resident company in terms of S. 6(3)(iii) and the global income of the bank including of the offshore branch was chargeable and was assessed to tax in India. Any payment made to a resident banking company does not come within the purview of tax deduction at source in terms of the provisions of S. 194A(3)(iii). The agreement between the assessee and the bank stated that the bank was acting as an arranger-cum-facility agent. The Singapore branch was the original lender. But the letter written by the Singapore branch stated that it was an arranger and facility agent and the lender of the loan was a group of financial institutions to be assembled by the arranger. The facts were contradictory to each other according to the assessee's own record. Therefore the issue needed to be re examined by the Assessing Officer in the light of the claim of the assessee that the Singapore branch was the main lender. The assessee was directed to substantiate its case with further evidence. In case the Assessing Officer found that the Singapore branch was the lender of external commercial borrowing there was no default in deduction of tax at source under section 201(1) and (1A). Hence the issue was set aside to the Assessing Officer with a direction to consider the issue afresh in the light of the evidence filed by the assessee. (AY.2009 10, 2011-12)
Bajaj Eco Tec Products Ltd. v. ITD (TDS) (2018) 65 ITR 48 (SN) (Mum.)(Trib.)

S. 194C : Deduction at source – Contractors – Refining crude oil and selling petroleum products – Agreement with another company for transportation of goods – Works contract is not rent – Liable to deduct tax at source u/s. 194C and not 194I. [S. 194I] 1952
Court observed that even after the amendment to the Explanation under section 194I, the case could not fall within its scope as it was a case of a contract for transport of goods and, therefore, a contract of work within the meaning of section 194C and not one which fell within the Explanation to section 194I, namely, use of plant by the assessee.
CIT (TDS) v. Indian Oil Corporation Ltd. (2018) 303 CTR 188 / 92 taxmann.com 281 / 166 DTR 89 / (2019) 410 ITR 106 (Uttarakhand)(HC)

S. 194C : Deduction at source – Contractors – Licence fee paid to contractor by contractee and not vice versa – Not liable to deduct tax at source. [S. 40(a)(ia), 201(1)] 1953
Dismissing the appeal of the revenue the Court held that; since payment of licence fee was made by contractee to contractor, provision of S. 194C is not applicable.
PCIT v. Hakmichand D & Sons (2018) 258 Taxman 208 / 97 taxmann.com 583 (Guj.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Hakmichand D & Sons (2018) 258 Taxman 207 (SC)

S. 194C : Deduction at source – Contractors – Payment towards annual maintenance contracts for lifts and air conditioners is not technical services – Deduction of tax as contractor is justified payment cannot be treated as fees for technical services. [S. 194J, 260A] 1954
Dismissing the appeal of the revenue the Court held that; the assessee had made payments only in respect of maintenance contracts which related to minor repairs, replacement of some spare parts, greasing of machinery, etc. which services did not require any technical expertise, and therefore, could not be categorized as "technical services" as contemplated under section 194J and that the assessee had correctly

deducted the tax at source under section 194C which applied to payments made to contractors. No question of law arose. (AY. 2000-01 to 2009-10)
CIT v. Mumbai Metropolitan Regional Development Authority (2018) 408 ITR 111 / 258 Taxman 164 / 304 CTR 776 / 170 DTR 97 (Bom.)(HC)
Editorial: SLP of revenue is dismissed due to low tax effect, CIT v. Mumbai Metropolitan Regional Development Authority (2019) 262 Taxman 451 (SC)

1955 **S. 194C : Deduction at source – Contractors – Persons responsible for paying – As per the agreement freight payment was to be made by company directly to truck owners and TDS deduction as applicable would be made by said company – Since payment was not made by assessee, default in TDS was that of other company and not assessee – No disallowance can be made. [S. 40(a)(ia), 204(iii)]**
Dismissing the appeal of the revenue the Court held that S. 194C, read with S. 204(iii), will come into operation only on payment made by assessee contractor. There was an agreement between said company and the assessee that freight payment would be made by said company directly to truck owners and tax deduction at source as applicable would be made by said company. Since payment was not made by assessee, default in tax deduction at source was that of other company and not assessee. Accordingly no disallowance can be made in the assessment of the assessee.
CIT v. Daulat Enterprises (2018) 94 taxmann.com 261 (Raj.)(HC)
Editorial : SLP of revenue is dismissed, CIT v. Daulat Enterprises (2018) 256 Taxman 422/ 256 Taxman 211 (SC)

1956 **S. 194C : Deduction at source – Contractors – Placement fees/carriage fees to cable operators and MSO/DTH operators, which were payment for work contract and fees for technical services. [S. 194J]**
Dismissing the appeal of the revenue the Court held that; Placement fees/carriage fees to cable operators and MSO/DTH operators, which were payment for work contract and fees for technical services. Followed CIT v. UTV Entertainment television Ltd (2017) 399 ITR 443 (Bom.)(HC) (AY. 2006-07 to 2010-11)
CIT v. Zee Entertainment Enterprises Ltd. (2018) 254 Taxman 370 (Bom.)(HC)

1957 **S. 194C : Deduction at source – Contractors – Payment made to production house for programme software purchase, equipment hire etc. whether contract or technical services – Substantial question of law admitted by High Court. [S. 194J, 260A]**
Following question of law is admitted "Whether in the facts and in the circumstances of the case and in law, the Tribunal is justified in holding that the payments for programme software purchase, equipment hire charges and other production related expenses excluding dubbing and processing charges made to production house, are payment for work contract covered under section 194C and not fees for technical services under section 194J?" (AY. 2006-07 to 2010-11)
CIT v. Zee Entertainment Enterprises Ltd. (2018) 254 Taxman 370 (Bom.)(HC)

S. 194C : Deduction at source – Contractors – Event managers – Tax to be deducted as a Contract or as technical services is substantial question of law admitted by High Court. [S. 194J, 260A] 1958

Following question of law is admitted "Whether in the facts and circumstances of the case and in law, the Tribunal is justified in holding that the assessee has correctly deducted tax under section 194C on payments made to event managers, for events other than sport related activities, as per CBDT's notification no 188 of 2008 dated 21-08-2008, without appreciating that this notification has merely brought sport related event managers under section 194J where as other professional event managers are always covered under section 194J for TDS purpose?" (AY. 2006-07 to 2010-11)

CIT v. Zee Entertainment Enterprises Ltd. (2018) 254 Taxman 370 (Bom.)(HC)

S. 194C : Deduction at source – Contractors – Milling charges-property in by-products came into ownership of millers from a point of coming of it into existence – Assessee was not owners of such by-products – TDS provisions is not attracted. [S. 201(1) 201(IA)] 1959

Dismissing the appeal of the revenue the Tribunal held that property in by-products came into ownership of millers from a point of coming of it into existence; hence, assessee was not owners of such by-products. Accordingly it was held that TDS provision is not attracted. (AY.2012-13 2013-14, 2014-15)

ITO(TDS) v. Distt. Manager Punjab State Warehousing Corporation (2018) 54 CCH 164 / 196 TTJ 815 / (2019) 176 DTR 129 (Chd.)(Trib.)

S. 194C : Deduction at source – Contractors – Sub-Contractor – Contractor has to deduct tax at source on payment made to their sub contractors – Where person fails to deduct tax at source on sum paid to resident or on sum credited to account of resident such person shall not be deemed to be assessee in default in respect of such tax if such resident has furnished his return of income u/s. 139. [S. 40(a)(ia), 139, 201] 1960

Tribunal held that merely because the assessee is provided grant for onward distribution to these parties does not exclude the assessee from the liability for deduction of tax at source u/s. 194C of the act, as the assessee is responsible for making payments to these parties and in fact, undeniably assessee has made the payments and obtained utilization certificates. It cannot be a reason for non-deduction of tax at source that recipient of the income have onward distributed the work to the sub contractors and recipient of the income have in turn deducted the tax at source on payment made by them to those sub-contractors. According to the provision of 194C of the Act even, the contractor is also required to deduct tax at source on payment made to their sub contractors. Where person fails to deduct tax at source on sum paid to resident or on sum credited to account of resident such person shall not be deemed to be assessee in default in respect of such tax if such resident has furnished his return of income u/s. 139. (AY.2009-10, 2010-11)

DCIT v. Joint Secretary Organizing Committee for Winter Games, 2009 (2018) 196 TTJ 975 / 54 CCH 84 / 68 ITR 14 (SN)(2019) 173 DTR 122 (Delhi)(Trib.)

1961 **S. 194C : Deduction at source – Contractors – Outsourced non-technical work such as collection of data to various contractors, said work being in nature of 'works contract' and cannot be considered as technical services – Justified in deducting tax at source under S. 194C. [S. 194J]**
Dismissing the appeal of the revenue the Tribunal held that, outsourced non-technical work such as collection of data to various contractors, said work being in nature of 'works contract' and cannot be considered as technical services. Accordingly the assessee is justified in deducting tax at source under S. 194C. (AY. 2012-13)
ACIT v. WTI Advance Technology Ltd. (2018) 171 ITD 11 (Mum.)(Trib.)

1962 **S. 194C : Deduction at source – Contractors – Installation of set-top box by ISPs amounts to works contract and as no technical expertise is required provision of S. 194J cannot be applicable. [S. 194J]**
Dismissing the appeal of the revenue the Tribunal held that; Installation of set-top box by ISPs amounts to works contract as no technical expertise is required of provision of S. 194J is not applicable. (AY. 2010-11, 2011-12)
JCIT v. Bharat Business Channels Ltd. (2018) 170 ITD 628 (Mum.)(Trib.)

1963 **S. 194C : Deduction at source – Contractors – Principal to principal basis – Manufacture or supply of a product according to requirement or specification of a customer by using material which is purchased from a person other than such customer is not liable to deduct tax at source.**
Dismissing the appeal of the revenue the Tribunal held that; Manufacture or supply of a product according to requirement or specification of a customer by using material which is purchased from a person other than such customer on the basis of principal to principal basis is not liable to deduct tax at source. (AY. 2011-12)
DCIT v. Laboratories Griffon (P.) Ltd. (2018) 170 ITD 387 / 65 ITR 317 / 193 TTJ 855 / (2019) 178 DTR 355 (Kol.)(Trib.)

1964 **S. 194C : Deduction at source – Contractors – Payments to contractor for purchase of land and not development of works carried out is not liable to deduct tax at source. [S. 201(1) 201(IA)]**
Dismissing the appeal of the revenue the Tribunal held that, Payments to contractor for purchase of land and not development of works carried out is not liable to deduct tax at source. (AY. 2008-09 to 2013-14)
ITO v. Remco (BHEL) House Building Co-Operative Society Ltd. (2018) 64 ITR 39 (Bang.)(Trib.)

1965 **S. 194H : Deduction at source – Commission or brokerage – Principal and agent-Payment of commission made to advertisement agencies was held to be liable to deduct tax at source. Non compliance was held to be attracted the provision of S. 201. [S. 201(IA)]**
Dismissing the appeal of the assessee the Court held that, payment of commission made to advertisement agencies was held to be liable to deduct tax at source. Non compliance was held to be attracted the provision of S. 201(IA) of the Act. (AY. 2002-03)
Director, Prasar Bharti v. CIT (2018) 403 ITR 161 / 164 DTR 177 / 302 CTR 9 / 255 Taxman 1 (SC), www.itatonline.org
Editorial : CIT v. Director, Prasar Bharti (2010) 325 ITR 205 / 230 CTR 277 / 189 Taxman 315 (Ker) (HC) is affirmed

S. 194H : Deduction at source – Commission or brokerage – Commission or discount to distributors – Arrangement between assessee company and the distributor that of principal to principal basis – Amount receivable from distributor was adjusted/reduced and no commission was paid as such-Regarding MRP-restrictions on distributor (price fixed and expenses to be managed by distributor)-not to decide the relationship of principal and agent – Provisions of S. 194H were not applicable and proceedings under S. 201 or S. 201(1A) are misconceived. [S. 201, 201(IA)] 1966

Held by the High Court that :

(i) Under the provisions of Section 194H, TDS is deductible on any commission paid and in the present case, it was only an arrangement between the assessee company and distributor by which the amount to be received was reduced and no amount was paid as commission.

(ii) Considering the provisions of Section 182 of Contract Act, a distributor cannot be considered to be an agent more particularly when the arrangement is on principal to principal basis and the responsibility is on the basis of agreement entered into between the parties.

(iii) Pricing policy agreed between the parties is that a price is fixed by assessee-company (MRP) and all other expenses like commission to retailers, etc has to be managed by distributor. Such restrictive pricing arrangement cannot be considered to be the basis for reaching a conclusion that the relationship between parties is that of principal and agent.

Hindustan Coca Cola Beverages (P) Ltd. v. CIT (2018) 402 ITR 539 / 303 CTR 13 (Raj.) (HC)

S. 194H : Deduction at source – Commission or brokerage – Trade discount – Not liable to deduct tax at source. [S. 201(1), 201(IA)] 1967

Dismissing the appeal of the revenue the Court held that; on trade discount the assessee is not liable to deduct tax at source. (AY.2008-09)

CIT (TDS) v. OCM India Ltd. (2018) 408 ITR 369 / 305 CTR 971 / 172 DTR 369 (P&H) (HC)

S. 194H : Deduction at source – Commission or brokerage – Reimbursement of expenses – Not liable to deduct tax at source. 1968

Dismissing the appeal of the revenue the Court held that, Company Zee Turner paid commission to its constituents on behalf of assessee, which was reimbursed hence not liable to deduct tax at source. (Followed *CIT v. Siemens Aktiongesellschaft (2009) 310 ITR 320 (Bom.) (HC), DIT(IT) Krupp Udhe Gmbh (2013) 354 ITR 173 (Bom.)(HC)* (AY. 2006-07 to 2010-11)

CIT v. Zee Entertainment Enterprises Ltd. (2018) 254 Taxman 370 (Bom.)(HC)

S. 194H : Deduction at source – Commission or brokerage – Cash discount – Provision is applicable in respect of amounts paid to agents in connection with sale of SIM cards and other services – Mere fact that assessee was only a recipient and had not paid any amount to distributor would not make a difference. [S. 201(1), 201(IA)] 1969

Dismissing the appeal of the revenue the Court held that the contract was for rendering services and commission was paid by assessee to it's distributors for rendering of such

services in which event relationship between assessee and it's distributor was that of 'principal and agent' and provisions of S. 194H would automatically came into play. Mere fact that assessee was only recipient and had not paid any amount to distributor would not make difference. (AY.2007-08 to 2009-10, 2010-2011)
Tata Teleservices Ltd v. DCIT (2018) 163 DTR 179 / 191 TTJ 294 (Hyd.)(Trib.)

1970 **S. 194H : Deduction of tax at source – Commission or brokerage – Trade discount – Discount offered is to be regarded as 'commission' – Liable to deduct tax at source.**
Assessee providing post-paid and pre-paid telecommunication services through various channel partners (distributors) under agreements entered into between them. Assessee sold its products, i.e., starter kits and pre-paid vouchers, to distributors in bulk against advance payments. As per the assessee, starter kits and recharge coupon vouchers were sold to its various distributors on principal-to-principal basis at a discounted price than MRP with agreed rider that no product would be sold at a price more than MRP. The AO took a view that discount, i.e., difference between MRP and selling price, to distributors amounted to payment of commission which was liable to TDS u/s. 194H. Tribunal held that, it was not a sale of goods but a case of providing telephone services and, hence, there could be no sale of goods from service provider, so as to create a principal-to-principal relationship. Discount on prepaid products offered by assessee was in nature of 'commission' which did attract S. 194H of the Act. (AY. 2007-08 to 2011-12)
Tata Teleservices Ltd. v. ITO (2018) 171 ITD 196 / 64 ITR 497 (Delhi)(Trib.)

1971 **S. 194H : Deduction at source – Commission or brokerage – Trade discount granted to principal distributor could not be held as commission and, hence not liable for deduction of tax at source.**
Trade discount granted to principal distributor could not be held as commission and, hence not liable for deduction of tax at source. (AY. 2010-11, 2011-12)
JCIT v. Bharat Business Channels Ltd. (2018) 170 ITD 621 (Mum.)(Trib.)

1972 **S. 194H : Deduction at source – Commission or brokerage – Cash discount given to customers for purchasing in bulk quantity cannot be termed as commission hence not liable to deduct tax at source.**
Dismissing the appeal of the revenue, the Tribunal held that; Cash discount given to customers for purchasing in bulk quantity cannot be termed as commission hence not liable to deduct tax at source. (AY. 2008-09 to 2010-11)
EPCOS India (P.) Ltd. v. ITO (2018) 169 ITD 541 / 65 ITD 20 (SN)(Kol.)(Trib.)

1973 **S. 194H : Deduction at source – Commission or brokerage – Recharge vouchers supplied to distributors at discount was held to be commission, considering the principal and agent relation hence liable to deduct tax at source. [S. 201(1), 201(IA)]**
Dismissing the appeal of the assessee, the Tribunal held that; Recharge vouchers supplied to distributors at discount was held to be commission,considering the principal and agent relation hence liable to deduct tax at source. Tribunal also held that the distributor is merely a link between assessee and ultimate consumer/subscriber and distributor can at best enforce obligation on the part of assessee to provide connection/

talk-time to subscriber which itself would not change the characteristic of transaction from 'principal to agent' to 'principal to principal'. Therefore the order passed by Assessing Officer, as confirmed by Commissioner (Appeals), by holding that assessee is a defaulter under S. 201(1) and consequently liable to pay interest under S. 201(1A), is in accordance with law. (AY. 2010-11 to 2015-2016)
Vodafone Mobile Services Ltd. v. DCIT (2018) 168 ITD 219 (Hyd.)(Trib.)

S. 194I : Deduction at source – Rent – Annual rent paid under lease deed is rent – Liable to deduct tax at source on the payment of lease rent to NOIDA/Greater NOIDA. [S. 10(20), (10(20A)] 1974
Court held that the definition of rent as contained in the explanation to S. 194I is very wide definition. Explanation states that "Rent" means any payment, by whatever name called under the lease, sublease, tenancy or any other agreement for the use of any land. The High Court has read the relevant clause of the lease deed and has rightly come to the conclusion that payment which is to be made as annual rent is rent with in the meaning of S. 194I. Accordingly payment of annual lease rent to NOIDA /Greater Noida is liable to deduct tax at source. Court also observed that Circular No 699 dt. 30th Jan, 1995 (2012) 212 ITR 2 (St) cannot be relied by NOIDA/Greater Noida to contend that there is no requirement of deduction at source under S. 194I. (AY. 2010-11, 2011-12)
New Okhla Industrial Development Authority (NOIDA)(No.2) v. CCIT (2018) 406 ITR 209 / 168 DTR 145 / 257 Taxman 3 (SC)
CIT v. HDFC Ltd. (2018) 406 ITR 209 / 168 DTR 145 / 303 CTR 553 (SC)
CIT v. Rajesh Projects (India) (P) Ltd. (2018) 406 ITR 209 / 168 DTR 145 / 257 Taxman 3 / 303 CTR 553 (SC)
Greater Noida Industrial Development Authority v. ACIT (2018) 406 ITR 209 / 168 DTR 145 / 303 CTR 553 (SC)
ITO v. United Bank of India (2018) 406 ITR 209 / 168 DTR 145 / 303 CTR 553 (SC)
Editorial : Affirmed Rajesh Projects (India) (P) Ltd v. CIT (2017) 392 ITR 483 / 148 DTR 33/ 293 CTR 121 (Delhi) (HC)

S. 194I : Deduction at source – Rent – Hoarding – If a person has taken a particular space on rent and thereafter sub-lets same, fully or in part, for putting-up a hoarding, such payments would be liable for tax deduction at source under S. 194I and not under S. 194C of the Act.[S. 194C, 201(1), 201(IA)] 1975
Tribunal held that as per CBDT, Circular 715 dt. 8-8-1995 (1995) 215 ITR 12 (St), a contract for putting up a hoarding is in nature of advertising contract and provisions of S. 194C would be applicable; however, if a person has taken a particular space on rent and thereafter sub-lets same, fully or in part, for putting-up a hoarding, such payments would be liable for tax deduction at source under S. 194I and not under S. 194C of the Act. The matter was remanded to the AO to decide according to law. (AY. 2003-04, 2005-06)
Accord Advertising (P.) Ltd. v. ITO (2018) 171 ITD 111 (Mum.)(Trib.)

1976 **S. 194I : Deduction at source – Rent – Lease line charges – Liable to deduct the tax as rent and cannot be treated as royalty – Cannot be treated as assessee in default. [S. 9(1)(vi), 194J, 201(1)]**

Tribunal held that; The lease line charges were paid by the assessee to the internet service provider for faster internet access on dedicated lease line and as such the said payment had been made for use of telecommunication services / connectivity for transmission of voice/data facility provided by the vendors and not for use of any asset involved in provision of such facility/ service covered in section 194I. The assessee was not liable to deduct tax at source from the payment in question under section 194J, and it could not be treated as the assessee in default under S. 201 (1)/201(1) (AY.2012-13)

ACIT v. SDV International Logistics Ltd. (2018) 172 ITD 505 / 68 ITR 35 (SN)(Kol.)(Trib.)

1977 **S. 194IA : Deduction at source – Transfer of certain immoveable property other than agricultural land – The exemption of ₹ 50 lakh in S. 194IA(2) is applicable w.r.t. the amount related to each transferee and not with reference to the amount as per sale deed – Each transferee is a separate income tax entity and the law has to be applied with reference to each transferee as an individual transferee/person – Each purchase consideration being Only ₹ 37,50,000, provision is not applicable. [S. 194IA(2), 201(1), 201(IA)]**

Allowing the appeal of the assessee the Tribunal held that; The exemption of ₹ 50 lakh in S. 194IA(2) is applicable w.r.t. the amount related to each transferee and not with reference to the amount as per sale deed. Each transferee is a separate income tax entity and the law has to be applied with reference to each transferee as an individual transferee/person. Each purchase consideration being only ₹ 37,50,000, provision is not applicable.(AY. 2014-15)

Vinod Soni v. ITO (2019) 197 TTJ 352 / 174 ITD 598 / 174 DTR 377 (Delhi)(Trib.), www.itatonline.org

Pradeep Kumar Soni v. ITO (2019) 197 TTJ 352 / 174 DTR 377 (Delhi)(Trib.)

Babli Soni v. ITO (2019) 197 TTJ 352 / 174 DTR 377 (Delhi)(Trib.)

Beena Soni v. ITO (2019) 197 TTJ 352 / 174 DTR 377 (Delhi)(Trib.)

1978 **S. 194J : Deduction at source – Fees for professional or technical services – Reimbursement – If there is no income embedded in a payment TDS provision would not apply as the TDS is only an alternative method of collection of taxes. [S. 201, 201(IA)]**

Dismissing the appeal of the revenue the Court held that; Since no income was reflected in balance sheet and Profit & Loss account of HSL towards payment made by assessee and it was reimbursement of expenses incurred on cost to cost basis by assessee, it could not be treated as in default. Court also observed that if there is no income embedded in a payment, then TDS provisions would not apply as TDS is only an alternative method of collection of taxes; reimbursement cannot be deducted out of bill amount for purpose of TDS. Under the circumstances, the assessee falls outside the scope of S. 194J read with S. 200 during the relevant assessment years. Consequently, the provisions of S. 201 and 201(1A) are not attracted. Circular No. 715, dated 3-8-1995. (AY. 2008-09 to 2010-11)

CIT v. Kalyani Steels Ltd. (2018) 254 Taxman 350 / 163 DTR 513 / (2019) 308 CTR 400 (Karn.)(HC)

CIT v. Mukund Ltd. (2018) 254 Taxman 350 / 163 DTR 513 / (2019) 308 CTR 400 (Karn.)(HC)

S. 194J : Deduction at source – Fees for professional or technical services – Third Party Administrator (TPA), who was responsible for making payment to hospitals for rendering medical services to policy holders under various medical insurance policies issued by several insurers, was liable to deduct tax at source from payments made to hospitals only professional services relating to medical services alone should be liable for deduction of tax at source and not payment towards bed charges, medicines used on patients, transportation charges, implants, consumables etc-Consequence of failure to deduct or pay – Interest – If certificate from an auditor has been obtained from deductee that it had paid taxes in income tax return filed by him, had been brought into effect by Finance Act, 2012 w.e.f. 1-7-2012, therefore, it could not be applied for impugned assessment year i.e. 2009-10. Accordingly liable to pay interest only in respect of professional fees and not on reimbursement – Partly allowed. [S. 201(1), 201(IA)] 1979

Tribunal held that,third Party Administrator (TPA), who was responsible for making payment to hospitals for rendering medical services to policy holders under various medical insurance policies issued by several insurers, was liable to deduct tax at source from payments made to hospitals only professional services relating to medical services alone should be liable for deduction of tax at source and not payment towards bed charges, medicines used on patients, transportation charges, implants, consumables etc. If certificate from an auditor has been obtained from deductee that it had paid taxes in income tax return filed by him, had been brought into effect by Finance Act, 2012 w.e.f. 1-7-2012, therefore, it could not be applied for impugned assessment year i.e. 2009-10. Accordingly liable to pay interest only in respect of professional fees and not on reimbursement. (AY. 2009-10)

Vipul Medcorp TPA (P.) Ltd. v. ACIT (2018) 172 ITD 610 / 68 ITR 32 (SN)(Delhi)(Trib.)

S. 194J : Deduction of tax at source – Fee for professional or technical services – Roaming charges paid to other operators for using their network, payment is not liable to deduct tax at source. 1980

Assessee a telecommunication company paid roaming charges to other operators for using their network, provisions of roaming services did not require any human intervention, and payment in question did not require deduction of tax at source u/s. 194J. (AY. 2007-2008 to 2011-2012)

Tata Teleservices Ltd. v. ITO (2018) 171 ITD 196 / 64 ITR 497 (Delhi)(Trib.)

S. 194J : Deduction at source – Fees for professional or technical services – Rendering desktop, help desk, call centre etc was held to be technical services and not maintenance contract. [S. 194C] 1981

Dismissing the appeal of the assessee, the Tribunal held that, payment made by the assessee to 'CSCIPL' for rendering desktop, help desk, call centre, datacentre, network and application management services to support assessee's rail equipment manufacturing and services operation, said services being in nature of technical or professional services, required deduction of tax at source under S. 194J and not under S. 194C. (AY. 2008-09 to 2014-15)

Bombardier Transportation India (P.) Ltd. v. DCIT (2018) 168 ITD 599 / 193 TTJ 115 / 168 DTR 212 (Ahd.)(Trib.)

1982 **S. 194L : Deduction at source – Compensation on acquisition of capital asset – Compulsory acquisition of land for projects and paying sums to illegal squatters for their rehabilitation is not a case of compulsory acquisition from owners of land – Not liable to deduct tax at source. [S. 194LA, 201, 201A]**

Dismissing the appeals of the revenue the Court held that Compulsory acquisition of land for projects and paying sums to illegal squatters for their rehabilitation is not a case of compulsory acquisition from owners of land. The possession of those persons was unauthorized and illegal and they were not the owners of the land on which they had squatted or built their illegal hutments and were trespassers. Therefore, there was no question of the land being acquired by the assessee. Accordingly not liable to deduct tax at source. (AY. 2000-01 to 2009-10)

CIT v. Mumbai Metropolitan Regional Development Authority (2018) 408 ITR 111 / 258 Taxman 164 / 304 CTR 776 / 170 DTR 97 (Bom.)(HC)

Editorial: SLP of revenue is dismissed CIT (TDS) v. Mumbai Metropolitan Regional Development Authority (2019) 263 taxman 365 (SC)

1983 **S. 194LA : Deduction at source – Compensation on acquisition of certain immoveable property – Where Land Acquisition Collector while disbursing compensation, had deducted tax at source and deposited same with Income Tax Department, better course of action, which was in consonance with provisions of Act, for assessee should have been to approach concerned Assessing Officer and raise issue that no tax was payable on compensation/enhanced compensation received by them as their land was agricultural land – Collector was directed to follow the procedure prescribed by Kerala High Court. [S. 197]**

Court held that it is Assessing Officer who has to come to conclusion whether land is agricultural land or not. Accordingly where Land Acquisition Collector while disbursing compensation, had deducted tax at source and deposited same with Income Tax Department, better course of action, which was in consonance with provisions of Act, for assessee should have been to approach concerned Assessing Officer and raise issue that no tax was payable on compensation/enhanced compensation received by them as their land was agricultural land. Court also held that in future, Land Acquisition Collectors shall follow the procedure as stipulated by the High Court of Kerala in *Nalini v. Dy. Collector, Land Acquisition [2006 (4) ILR Kerala 229.*

UOI v. Hari Singh (2018) 254 Taxman 126 / 166 DTR 176 / 302 CTR 458 (SC)

ITO v. Movaliya Bhikubhai Balabhai (2018) 254 Taxman 126 / 166 DTR 176 / 302 CTR 458 (SC)

1984 **S. 195 : Deduction at source – Non-resident – Payment for technical services rendered outside India – Amendment with retrospective effect from 1-4-1962 – Not liable to deduct tax at source. [S. 9(1)(1) (vii)]**

Dismissing the appeal of the revenue the court held that, that the Tribunal had accepted the factual assertion that the payments were for technical services provided by a non-resident for providing services to be utilised for serving the assessee's foreign clients. Clearly the source of income namely the assesee's customers based were foreign based companies. As the income from arising to non-resident is not in India. Amendment with

retrospective effect from 1-4-1962 is not applicable. Accordingly the not liable to deduct tax at source. (AY.2009-10)
CIT v. Motif India Infotech (P.) Ltd. (2018) 409 ITR 178 (Guj.)(HC)

S. 195 : Deduction at source – Non-resident – Commission paid to non-resident agents for services rendered outside is not liable to deduct tax at source. 1985
Dismissing the appeal of the revenue the Tribunal held that, commission paid to non-resident agents for services rendered outside is not liable to deduct tax at source. (AY. 2011-12)
DCIT v. Sterling Ornaments (P) Ltd. (2018) 65 ITR 492 (Delhi)(Trib.), www.itatonline.org

S. 195 : Deduction at source – Non-resident – Other sums – Payment made to foreign entities for supply of equipment – Where no income accrued in India – Not liable to deduct tax at source. [S. 5, 9(1)(i), 194C] 1986
The Tribunal held that the common management was only for administrative convenience and assessee made payment to the foreign parties independently, directly and it ought to be chargeable to tax in their own hands. Further, Tribunal noted that title in the goods was passed from the suppliers to the assessee outside India at the port of shipment and thus no income was accrued to those parties in India in terms of provisions of section 5 and 9 of the Act. Thus, Tribunal opined that provisions of section 195 would not apply to these payments and assessee was not required to deduct tax at source either under section 194C or 195 on payments made to foreign entities. (AY. 2009 10, 2010-11)
DCIT v. Joint Secretary Organizing Committee for Winter Games, 2009 (2018) 196 TTJ 975 / 54 CCH 84 / 68 ITR 14 (SN) / (2019) 173 DTR 122 (Delhi)(Trib.)

S. 195 : Deduction at source – Non-resident – Fees for technical services – Royalty – Building platform comprising secure servers equipped with proprietary software which pulled content from customer's Web Server and replicated it for faster, more reliable delivery – End-users accessing customer's website through platform-Amount received by the assessee is not royalty – Assessee did not have any permanent establishment in India. Accordingly not liable to deduct tax at source – DTAA-India-USA. [S. 9(1)(vi), 9(1)(vii), Art. 5, 12(3), (4)] 1987
AAR held that the solutions provided by the applicant were neither specialized nor exclusive and did not cater to individual requirements of the customer. The solutions were offered by the applicant through its platform and they remained the same for all customers who availed of the applicant's facility, irrespective of the business or website content. The solutions provided by the applicant without human intervention could not be treated as provision of technical services. The payments received by the applicant from the Indian company for content delivery solutions were outside the scope of "fees for technical services" within the meaning of Explanation 2 to section 9(1)(vii) of the Act. AAR also held that the payment received cannot be assessed as royalty. As the assessee did not have any permanent establishment in India. Accordingly not liable to deduct tax at source.
Akamai Technologies Inc., IN RE. (2018) 404 ITR 495 / 167 DTR 1 / 303 CTR 162 (AAR)

1988 **S. 195A : Deduction at source – Net of tax – Deduction of tax at source – Gross amount of fees for technical services – Since obligation to pay tax was on university and assessee in terms of agreement, agreed to pay tax, same had to be necessarily added to income of university and therefore principle of grossing up had to be applied – DTAA-India-UK. [S. 2(24)(iva), 9(1)(i), 90, 201(1), 201(IA), Art.13]**

Dismissing the appeal of the assessee the Court held that; the India-UK DTAA does not define the term 'gross amount'. Likewise the word 'income' has not been defined in the treaty and therefore, one has to be guided by the definition of 'income' as defined under section 2(24), which includes, payments net of taxes. The tax which has been borne by the assessee, is also the income of the U.K. University and since such income is covered by the words 'gross amount', as mentioned in the treaty, the revenue was justified in grossing up by applying section 195A, as the provisions of the treaty do not provide a mechanism for computation of income, it prescribes only the rate of tax. Thus, to apply the correct rate of tax, the first requirement would be to determine the income on which tax is payable. This mechanism having not been provided under the treaty essentially, the assessee has to compute his income on such transaction in terms of the provisions of the Act and on such computation, if the rate of tax as applicable to such transactions under the DTAA is beneficial to the assessee, then the assessee would be entitled to avail such beneficial provision in terms of section 90. Thus, the contentions advanced by the assessee to state that no grossing up is provided for under article 13 of the DTAA and therefore, they are liable to pay tax at the rate of 15 per cent on the amounts specified in the agreement is a submission, which is liable to be rejected. (AY. 2002-03, 2003-04)

TVS Motor Co. Ltd. v. ITO (2018) 258 Taxman 77 / 170 DTR 15 / 304 CTR 853 / (2019) 413 ITR 171 (Mad.)(HC)

1989 **S. 195A : Deduction at source – Net of tax – Salary and tax both were borne KSEB, in whose project assessees were employed and, therefore, provisions is applicable – Amount paid as tax would be included as salary. [S. 192]**

Kerala State Electricity Board (KSEB) entered into a contract of consultancy with a Canada based Consultant for carrying out a project in site of KSEB. As per terms of an agreement, entered into between KSEB and Consultant, liability to pay salary of employees deputed by Consultant to project site was of consultant itself whereas tax component had to be satisfied by KSEB. Tribunal held that the amount paid as tax would be included as salary. Dismissing the appeal of the assessee the Court held that ;salary and tax both were borne KSEB, in whose project assessees were employed and, therefore, provisions of section 195A would be applicable. Accordingly, the income-tax paid by employer in satisfaction of an obligation of the employee, should be treated as part of assessee's salary income.

Horace Dansereau v. ACIT (2018) 162 DTR 7 / 253 Taxman 52 / 300 CTR 548 (Ker.)(HC)

1990 **S. 197 : Deduction at source – Certificate for lower rate – Deduction of tax deducted at source and depositing with Government by the payee does not decide the final tax liability of the recipient of the income which would be the subject matter of assessment-Petition is dismissed. [S. 143(3)]**

Dismissing the petition the Court held that under S. 197(1), it is an AO who can entertain and decide an application of an assessee for either total exemption or

permission for reduced deduction of TDS. The statute has used the language that if the AO is satisfied that the total income of the recipient justifies the deduction of income-tax at any low rates or no deduction of income-tax, as the case may be, the AO shall on application made by the assessee in this behalf give to him such certificate as may be appropriate. It is undoubtedly true that the deduction of TDS and depositing it with the Government revenue by the payee does not decide the final tax liability of the recipient of the income which would be the subject matter of assessment of the return. If tax higher than what is actually due to be paid by the assessee to the Department is recovered in form of TDS, the assessee can always claim refund of such excess tax. However, sub-section (1) of S. 197 has been enacted to give relief to the assessee, whose income may not justify deduction of tax at full rate or no deduction altogether. Necessarily, therefore, the satisfaction of the AO at that stage about the total income of the recipient justifying reduced collection of tax at source would be prima facie in nature. Two things emerge from the said provisions; firstly, that such consideration cannot be devoid of exercise of sound discretionary powers and based on mere ipse dixit of the AO. Secondly, that the power vests with AO. No provision or rule is brought to our notice which would enable the higher authority to govern such discretion of the AO statutorily vested in him under sub-section (1) of S. 197. (AY.208-19)
OPJ Trading Pvt. Ltd. v. ITO (2018) 171 DTR 265 / 305 CTR 413 / 259 taxman 36 (Guj.) (HC)

S. 197 : Deduction at source – Certificate for lower rate – Only the concerned official has to record his satisfaction while issuing the TDS certificate – No functionary other than the officer referred to in the relevant statutory provision to take over the jurisdiction or interfere in the exercise of the discretionary power envisaged by this statutory provision. [R.28AA] 1991
Allowing the petition the Court held that; only the concerned official has to record his satisfaction while issuing the TDS certificate. No functionary other than the officer referred to in the relevant statutory provision, namely S. 197 and Rule 28AA of the Income Tax Rules, 1962, is permitted to take over the jurisdiction or interfere in the exercise of the discretionary power envisaged by this statutory provision. Court also clarified that; while issuing those certificates, the Petitioner can request the officer to make it effective from a specific date. That liberty is given to the Petitioner, as well.(WP No. 2764 of 2018, dt. 08.10.2018)
TLG India Pvt. Ltd. v. JCIT (Bom.)(HC), www.itatonline.org

S. 197 : Deduction at source – Certificate for lower rate – Charitable trust – AO was directed to dispose the application expeditiously. [S. 11, 12AA] 1992
Assesee's application for nil tax deduction at source under S. 197 of Act was rejected by the AO. On writ the Court held that the AO has rejected the application without considering the submission of the assesee. Accordingly the order was set aside. AO was directed to dispose the application expeditiously. (AY.2018-19)
South Indian Education Society v. DCIT (2018) 165 DTR 278 (Bom.)(HC)

1993 **S. 197 : Deduction at source – Certificate for lower rate – Maintainability of Writ against cancellation of certificate – Assessee not stating all facts fully and truly and the suppression may have been on account of mistake as it would stand exposed on the other side having notice of the same – Petition allowed to be withdrawn as prayed by assessee and costs of ₹ 75,000 to be deposited for filing fresh petition. [Art. 226]**

The High Court held that it is needless to state that it is the responsibility of the assessee to ensure that every material statement of the fact stated in Petition is correct and there is no suppression of material fact relating to the proceedings. The suppression could have been on account of mistake as it would stand exposed on the other side having notice of the same. In these peculiar circumstances, the High Court allowed to withdraw the Petition and imposed costs of ₹ 75,000 as a condition precedent for filing any such fresh petition. Court observed that any party who approaches this Court seeking a prerogative writ in our extraordinary writ jurisdiction, must come with clean hands. (AY. 2018-19)

Vodafone India Ltd. v. DCIT (2018) 407 ITR 353 / 163 DTR 313 / 301 CTR 392 / 93 taxmann.com 329 (Bom.)(HC)

1994 **S. 197 : Deduction at source – Certificate for lower rate – Flaw in decision making process – No Change in facts during period between grant of certificate and order cancelling certificate – Violation of principles of natural justice – Order was quashed. [S. 263 R. 28AA]**

Allowing the petition the Court held that; if the Department sought to cancel the certificate on the ground that a particular aspect had not been considered, before taking a decision to cancel the certificate already granted, it must have satisfied the requirement of natural justice by giving a copy of the same to the assessee and heard the assessee on it before taking a decision to cancel the certificate. The notices which sought to review the certificate did not indicate that the review was being done as the certificate dated May 4, 2017 was granted without considering the applicability of rule 28AA in the context of the assessee's facts. Therefore, there was no occasion for the assessee to seek a copy of the reasons recorded while issuing the certificate. Moreover, it was found on facts that there was no change in the facts that existed on May 4, 2017 and those that existed when the order dated October 23, 2017 was passed. Thus, there was a flaw in the decision-making process which vitiated the order dated October 23, 2017. The grant or refusal to grant the certificate under S. 197 had to be determined by the parameters laid down therein and rule 28AA and it could not be gone beyond the provisions to decide an application. The order dated October 23, 2017 did not indicate, what the profits were likely to be in the near future, which the Department might not be able to recover as it would be more than the carried forward losses. However, such a departure from the earlier view had to be made on valid and cogent reasons. Therefore, on the facts, the basis of the order, that the financial condition of the assessee was that any further tax payable might not be recoverable, was not sustainable and rendered the order bad. (AY. 2018-19)

Tata Teleservices (Maharashtra) Ltd. v. DCIT (2018) 402 ITR 384 / 253 Taxman 343 / 163 DTR 317 / 301 CTR 377 (Bom.)(HC)

S. 197 : Deduction at source – Certificate for lower rate – When tax was deducted on the basis of certificate the ITO (TDS) was unjustified in holding assessee in default for short deduction of tax [S. 194C, 194I, 201] 1995

Allowing the appeal of the assessee the Tribunal held that; when tax was deducted on the basis of certificate issued by the AO i.e. on handling and transport charges under S. 194C and on, ware housing charges under S. 194I, the ITO (TDS) was unjustified in holding assessee in default for short deduction of tax on grounds that assessee was liable to deduct TDS on entire amount under S. 194I. (AY.2009-10)

Kribhco Shyam Fertilizers Ltd. v. ITO (TDS) (2018) 172 ITD 319 (Luck.)(Trib.)

S. 198 : Deduction at source – Tax deducted is income received – Mismatch of receipts – Balance sheet item – Service tax wrongly treated as TDS by AO cannot be considered as income. [Form 26AS] 1996

Dismissing the appeal of the revenue the Tribunal held that the mismatch in receipts cannot be held as undisclosed receipts as they were balance sheet items. Further, it also noted that the assessee had submitted reconciliation statement between the service tax return and Form 26AS and there was no under reporting of income. (AY. 2010-11)

DCIT v. G.E. Capital Business Process Management Services Pvt. Ltd. (2017) 51 CCH 158 (2018) 63 ITR 337 (Delhi)(Trib.)

S. 199 : Deduction at source – Credit for tax deducted – TDS related to HUF was credited to assessee's TDS account – HUF had not availed benefit of such TDS certificate – Denial of refund is held to be not justified. [S. 10(37), 194LA] 1997

Income by way of compensation was exempted in view of provision of S 10(37), assessee claimed refund of TDS credit stating that benefit of TDS certificate was mistakenly issued in his PAN name. AO denied claim of assessee holding that credit for TDS could be given to person in whose hand income was assessed, i.e., HUF. Tribunal held that since income by way of compensation was exempt in view of specific provisions of S. 10(37) and also fact that HUF had declared compensation in its return of income and claimed exemption under S. 10(37), the AO was not justified to deny credit for TDS merely on ground that no income was offered to tax in hands of assessee. (AY. 2013-14)

Ratanlal Biharilal Atal v. ITO (2018) 173 ITD 569 / (2019) 175 DTR 156 / 198 TTJ 1019 (Nagpur)(Trib.)

S. 199 : Deduction at source – Credit for tax deducted – Credit for tax deducted at source has to be given in assessment year in which income has actually been assessed/ offered to tax and not in year of deduction itself. 1998

Tribunal held that credit for tax deducted at source has to be given in assessment year in which income has actually been assessed/offered to tax and not in year of deduction itself. (AY. 2010-11)

Surendra S. Gupta v. ACIT (2018) 170 ITD 732 (Mum.)(Trib.)

1999 **S. 200 : Deduction at source – Duty of person deducting tax – Employer – Failure to issue Form no 16 after deducting tax at source from salary – Commissioner (TDS) is directed to file a comprehensive affidavit and Department of Revenue was also to be directed to penalise such defaulters and take other strict measures as contemplated by law against them by launching prosecution as per S. 405 of the Indian Penal code (Criminal breach of trust). [S. 192, Indian Penal Code S. 405]**

Assessee filed the petition contending that Form No. 16 having not been issued by his employer in time, he was suffering at hands of department. Court observed that it was found that petition raised an issue which was of serious concern for those salaried employees whose employers did not bother to issue TDS certificates within prescribed time period. Accordingly direction were issued to Commissioner (TDS) to file a comprehensive affidavit. Further Department of revenue was directed to penalise such defaulters and take other strict measures as contemplated by law against them. Court also invited the departmental counsel section 405 of the Indian Penal Code (Criminal breach of trust) for launching of prosecutions against the defaulters. Matter posted for hearing on 11-1-2019. (WP No. 2357 of 2018 dt 15-10-2018)

Ramprakash Biswanath Shroff v. CIT (TDS) (2018) 259 Taxman 385 (Bom.)(HC), www.itatonline.org

Editorial: Petitioner has received the TDS certificate accordingly the petition was heard and decided. (WP No. 2537 of 2018 dt 11-1-2019) Ramprakash Biswanath Shroff v. CIT (TDS) (Bom.)(HC)

2000 **S. 201 : Deduction at source – Failure to deduct or pay – Remand matter – Tribunal being final fact finding body ought to have looked into facts of present case rather making a remand basis Supreme Court's decision – Appeal of the revenue is partly allowed. [S. 271C]**

On appeal the High Court held that :

a) Tribunal being a creature of the statute, cannot adopt the directions issued by the Supreme Court without looking into the distinction on facts, on which the directions were issued as against the facts available in the case before it

b) With respect to the payments of uplink charges and backhaul link usage charges, the Tribunal shall examine an expert as produced by the assessee. Appeal of revenue is partly allowed. (AY. 2004-05 to 2008-2009)

CIT v. Jeevan Telecasting Corporation Ltd. (2018) 305 CTR 1001 / 171 DTR 145 (Ker.)(HC)

2001 **S. 201 : Deduction at source – Failure to deduct or pay – Interest is automatic – Genuine belief that tax was not deductible at source is not relevant – Unlike S. 221, S. 201(1A) is not hedged in by any requirement such as good faith or wilful default – Therefore, for levying interest, mens rea or wilful conduct is wholly irrelevant. [S. 15, 10(14), 17, 192, 221]**

Dismissing the appeal of the assessee the Court held that ; Genuine belief that tax was not deductible at source is not relevant. Extra payment to meet costs constitute perquisites. Extra payment to meet costs in Foreign location is not entitled to exemption. Failure to deduct tax and deposit to Govt interest can be levied. Unlike S. 221, S. 201(1A) is not hedged in by any requirement such as good faith or wilful default.

Therefore, for levying interest, mens rea or wilful conduct is wholly irrelevant. (AY. 2001-02 to 2003-04)
Sun Outsourcing Solutions P. Ltd. v. CIT (2018) 407 ITR 480 / 171 DTR 358 / 305 CTR 537 (T&AP)(HC)

S. 201 : Deduction at source – Failure to deduct or pay – Short deduction of tax at source – Finding that there was no default hence not liable to interest. [S. 201(IA)] 2002
Dismissing the appeal of the revenue the Court held that Tribunal has given the finding that there was no default. Since this finding of fact had not been shown to be perverse in any manner, assessee was not liable for levy of interest. (AY. 2006-07 to 2010-11)
CIT v. Zee Entertainment Enterprises Ltd. (2018) 254 Taxman 370 (Bom.)(HC)

S. 201 : Deduction at source – Failure to deduct or pay – Limitation – Order passed by AO raising demand u/s 201(1) is beyond limit provided in sub-section (3) for quarter Nos. 1 to 3 then, AO could be directed to delete demand raised for quarter Nos. 1 to 3. and sustained demand for quarter No.4 – U/s 201(3) no limit was provided for passing order charging interest u/s 201(1A), hence assessee was liable to pay interest u/s 201(1A) and said order of AO was upheld – Partly allowed.[S. 201(1), 201(IA), 201(3)] 2003
Tribunal held that, order passed by AO raising demand u/s 201(1) was beyond limit provided in sub-section (3) for quarter Nos. 1 to 3. However, return for quarter No.4 was filed in financial year 2009-10 and order raising demand u/s 201(1) was passed before expiry of two years from end of financial year in which TDS return was filed and hence, same had been filed within time. Accordingly the AO was directed to delete demand raised for quarter Nos. 1 to 3 and sustained demand for quarter No.4. u/s 201(3) no limit was provided for passing order charging interest u/s 201(1A), hence assessee was liable to pay interest u/s 201(1A) and said order of AO was upheld. Assessee's appeal partly allowed. (AY.2009-10)
Vodafone Cellular Ltd. v. DCIT (TDS) (2018) 165 DTR 88 / 169 ITD 675 / 193 TTJ 404 (Pune) (Trib.)

S. 201 : Deduction at source – Failure to deduct or pay – The Employees of society cannot be equated with employees of Central Government and, therefore, applying clause (ii) of sub-rule (1) of rule 3 and treating assessee as assessee-in-default is justified. [S. 17, 192. R.3, Employee of society under Societies Registration Act, 1860] 2004
Tribunal held that,employee of society under Societies Registration Act, 1860 cannot be equated with employees of Central Government and, therefore, applying clause (ii) of sub-rule (1) of rule 3 and treating assessee as assessee-in-default is justified. (AY. 2010-2011)
National Dairy Research Institute v. ACIT (2018) 171 ITD 271 (Bang.)(Trib.)

S. 201 : Deduction at source – Failure to deduct or pay – Short deduction of tax at source was rectified and paid the tax with interest, assessee cannot be treated as assessee in default. [S. 194C, 201(1), 201(IA) 2005
Allowing the appeal of the assessee the Tribunal held that, short deduction of tax at source was rectified and paid the tax with interest, assessee cannot be treated as assessee in default. (AY. 2011-12)
Executive Engineer Construction v. DCIT (2018) 169 ITD 340 (Agra)(Trib.)

2006 **S. 201 : Deduction at source – Failure to deduct or pay – Interest is to be levied only from date on which tax was deducted and till date on which tax was deposited, only if such a period exceeds one month, however interest would be levied even for delay of a day. [S. 194A, 201(IA)]**
The AO charged the interest under S. 201(1A) for two months, i. e., September and October. On appeal the Tribunal held that; interest was to be levied only for actual period of delay, i. e., from date on which tax was deducted and till date on which tax was deposited, only if such a period exceeds one month. However interest would be levied even for delay of a day. (AY. 2014-15)
Bank of Baroda. v. DCIT (2018) 168 ITD 180 (Ahd.)(Trib.)

2007 **S. 201 : Deduction at source – Failure to deduct or pay – Charge of interest is mandatory even if recipient has paid for short deduction of tax. [S. 194A]**
Tribunal held that, the provision for payment of interest is mandatory and automatic and interest has to be paid from the date on which the tax was chargeable till the date on which tax is actually paid. Even if the recipient had paid the tax, for the short fall, the interest shall have to be paid by the assessee. (AY. 2009-10)
D. D Township Ltd. v. ITO (2018) 61 ITR 1 (Delhi) (Trib.)

2008 **S. 206AA : Requirement to furnish Permanent Account Number – Where the non-resident payee is resident in a territory with which India has a Double Taxation Avoidance Agreement, the rate of taxation would be as dictated by the provisions of the treaty – DTAA-India-Singapore. [S. 4, 5, 90, Art. 12]**
Allowing the petition the Court held that; The requirement (pre amendment) that TDS should be deducted at 20% on payments to non-residents even though the income is chargeable to tax at a lower rate under the DTAA is not acceptable because the DTAA has primacy over the Act. S. 206AA (as it existed) has to be read down to mean that where the non-resident payee is resident in a territory with which India has a Double Taxation Avoidance Agreement, the rate of taxation would be as dictated by the provisions of the treaty.
Danisco India Private Ltd. v. UOI (2018) 404 ITR 539 / 163 DTR 212 / 301 CTR 360 / 253 Taxman 500 (Delhi)(HC)

2009 **S. 206AA : Requirement to furnish Permanent Account Number – Payment to non-resident – Assessee can apply the rate prescribed under DTAA if it is beneficial to him-Provision of S. 206AA does not override provisions of DTAA. [S. 90,195]**
Allowing the appeal of the assessee the Tribunal held that, assessee can apply the rate prescribed under DTAA if it is beneficial to him. Provision of S. 206AA does not override provisions of DTAA. (AY.2013-14)
Emmsons International Ltd. v. DCIT (2018) 171 ITD 140 (Delhi)(Trib.)

2010 **S. 206C : Collection at source – Toll plaza does not include Tahbazari – Tahbazari does not come within ambit of S. 206C(1C) – Order of Tribunal is set aside.**
Allowing the appeal of the assessee the Court held that; the Tahbazari is not an item which is provided under this section for collecting TCS. If a licence or lease is issued

in favour of any other person for collecting the Tahbazari, it cannot be said that lessee is collecting toll on such licence or lease, as the case may be. Accordingly the Court held that toll plaza does not include Tahbazari inasmuch as there is no toll set up for collecting the Tahbazari when licence for collecting the Tahbazari is issued. The Tahbazari has different connotation and it is not a toll as held by the Tribunal. The view taken by the Tribunal that Tahbazari is nothing but a toll or it is not different from Toll Plaza cannot be accepted. Accordingly the order of Tribunal is setaside and the appeal is allowed. (AY. 2010-11 to 2012-13)

Apar Mukhya Adhikari v. ITO (TDS) (2018) 258 Taxman 111 / 171 DTR 302 / 305 CTR 574 (All.)(HC)

S. 206C : Collection at source – Trading – Limitation – Order passed beyond limit of four years is bad in law – Though Section does not impose any limitation period for the AO to hold the assessee to be in default for collection of tax at source, a reasonable time limit of four years has to be read into the statute – Orders passed after this period are beyond the limitation and are void – The fact that the Dept became aware of the default later is irrelevant. The fact that the assessee admitted his liability is also irrelevant – Assessment is held to be bad in law. [S. 191, 201] 2011

Allowing the appeal of the assessee the Tribunal held that; though Section does not impose any limitation period for the AO to hold the assessee to be in default for collection of tax at source, a reasonable time limit of four years has to be read into the statute. Orders passed after this period are beyond the limitation and are void. The fact that the Dept became aware of the default later is irrelevant. The fact that the assessee admitted his liability is also irrelevant. Assessment is held to be bad in law. Followed *CIT (TDS) v. Anagram Wellington Assets Management Co. Ltd. (2016) 389 ITR 654 (Guj.)(HC), Vodafone Essar Mobile Services Ltd. v. UOI (2016) 385 ITR 436 (Delhi) (HC)*. (AY. 2009-10)

ITO v. EID Mohammad Nizamuddin (2018) 172 ITD 448 / 196 TTJ 232 / (2019) 173 DTR 156 (Jaipur)(Trib.), www.itatonline.org

S. 206C : Collection at source – Scrap – Items used by the buyers in manufacturing of other items cannot be considered as scrap, hence not liable to collect tax at source. 2012

Dismissing the appeal of the revenue the Court held that; assessee having imported garments, cut them into smaller pieces and sold to different parties in form of rags, wipers or chindi which were used by buyers in manufacturing other items like blankets, pillows etc., waste so manufactured would not fall within ambit of expression 'scrap' as envisaged in clause (b) of Explanation to S. 206C. Accordingly not liable to collect tax at source. (AY. 2009-10 to 2013-14)

PCIT (TDS) v. Safari Fine Clothing (P) Ltd. (2018) 253 Taxman 198 / 163 DTR 219 / 305 CTR 331 (Guj.)(HC)

2013 **S. 219 : Credit for advance tax – Succession of business – Receipt on account of Mobilisation advance under work order when assessee was partnership – Succession by Company – Credit should be given to the assessee in subsequent year whenever receipt or part of receipt recognised as income by Company.**

Tribunal held that according to the provisions of S. 219 tax credit on account of tax deduction at source was available in respect of the corresponding income offered to tax by the assessee. Although tax at source was deducted on the amount which was received by the assessee as mobilisation advance and the amount had to be recognised as income of the assessee in the subsequent year due to the succession of business of the assessee's partnership by the company, the tax deduction at source in the name of the assessee would not automatically available for credit to the company. Accordingly, the Assessing Officer was to allow the credit of the tax deduction at source available in the account of the assessee which had ceased to exist due to the succession of the business activity by the company in the subsequent year whenever the receipt or part of the receipt was recognised as income by the company. (AY.2012-13)

ITO v. Dreamax Infrastructure Developers (2018) 65 ITR 500 / 194 TTJ 57 (UO) (Jaipur) (Trib.)

2014 **S. 220 : Collection and recovery – Assessee deemed in default – Stay – CBDT's OMs dated 29.02.2016 & 31.07.2017 by which AO's have been directed to grant stay of disputed demand on payment of 20%/ 15% does not fetter the power of the AO & CIT to grant stay on payment of amounts lesser than 15%/ 20%. The AO/CIT have to deal with the prima facie merits and give reasons for rejection of the stay application.**

Having heard Shri Vikramjit Banerjee, learned ASG appearing on behalf of the appellant, and giving credence to the fact that he has argued before us that the administrative Circular will not operate as a fetter on the Commissioner since it is a quasi judicial authority, we only need to clarify that in all cases like the present, it will be open to the authorities, on the facts of individual cases, to grant deposit orders of a lesser amount than 20%, pending appeal. The appeal is disposed of accordingly. (AY. 2007-08)

PCIT v. LG Electronics India Pvt. Ltd. (2018) 303 CTR 649 / 168 DTR 353 (SC), www.itatonline.org

Editorial : Order in LG Electronics India Pvt. Ltd. (2018) 303 CTR 650 / 168 DTR 354 (Delhi) (HC) is affirmed

2015 **S. 220 : Collection and recovery – Assessee deemed in default – Time available for filing appeal – Interim protection granted to the petitioners shall continue till the stay petitions in the tax case appeals are heard – During appeal time, if recovery proceedings are initiated, it would virtually render the appeal as infructuous. [S. 260A]**

On Writ filed, the High Court held that it is settled legal principle that before expiry of appeal time, if recovery proceedings are initiated, it would virtually render the appeal as infructuous. Considering the fact that the said writ petitions were directed to be numbered and there was an interim stay order passed. Respective AOs of the petitioners insurance companies are directed not to initiate any recovery proceedings, as the insurance companies have filed appeals or are in the process of filing appeals

under S. 260A of the Act. During appeal time, if recovery proceedings are initiated, it would virtually render the appeal as infructuous.
Cholamandalam MS General Insurance Company Ltd. v. ITAT (2018) 305 CTR 891 / 172 DTR 33 (Mad.)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – Stay – Power of stay with Appellate Authority cannot be equated to power granted to the Assessing Officer – Petition was dismissed and directed to file stay petition before CIT(A). [S. 220(6), 251] 2016
Dismissing the petition to stay when the appeal is pending before CIT(A), the Court observed that, power of stay with Appellate Authority cannot be equated to power granted to the Assessing Officer. Petition was dismissed and directed to file stay petition before CIT(A).(AY. 2011-12)
Cavinkare (P) Ltd. v. CIT(A) (2018) 255 Taxman 181 (Mad.)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – Stay – Revenue authorities cannot pass an order mechanically directing the Assessee to pay 20 percent of amount during pendency of appeal before CIT (A) – Order of PCIT is set aside and remanded to the PCIT to reconsider the application of stay and decide in accordance with law. [S. 251] 2017
When the appeal is pending before the CIT(A), the assessee moved the application to stay the demand. The AO directed the Assessee to deposit the 20% of tax in dispute. Application filed before the PCIT was also rejected. On writ the Court held that, Revenue authorities cannot pass an order mechanically referring the instruction no 1914 dt. 21-03 1996,directing the Assessee to pay 20 percent of amount during pendency of appeal before CIT (A). High Court set aside the order of PCIT and remanded to the PCIT to reconsider the application of stay and decide in accordance with law. (AY. 2012-13, 2015-16)
Charishma Hotels (P) Ltd. v. ITO (2018) 255 Taxman 187 / 305 CTR 621 / (2019) 410 ITR 96 (Karn.)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – If the assessee has exercised on time its statutory remedy of filing an appeal and also filed a stay petition, procedural fairness demands that the authorities may wait, before taking further steps, until the appellate authority decides on the stay petition. [S. 220(6)] 2018
Allowing the petition the Court held that the, petitioner has exercised on time its statutory remedy of filing an appeal. It appears that it has also filed a stay petition. Procedural fairness demands that the authorities may wait, before taking further steps, until the appellate authority decides on the stay petition. Therefore, the honourable court directed the respondent authority to defer coercive steps until the 4th respondent considers the stay petition and also directed the 4th respondent will dispose of the stay petition expeditiously. (AY. 2012-13)
Kerala State Co-op Agricultural and Rural Development Bank Ltd. v. ITO (Ker.)(HC), www.itatonline.org

2019 **S. 220 : Collection and recovery – Assessee deemed in default – When an appeal is pending there is no automatic stay – Commissioner (Appeals) is directed to dispose of appeal expeditiously – Matter remanded. [S. 154, 246]**

Writ petition seeking a direction to revenue to not recover disputed tax during pendency of appeal is not entertained; however, Commissioner (Appeals) is directed to dispose of appeal expeditiously. (AY. 2009-10)

MPhasis Ltd. v. Dy. CIT (2018) 258 Taxman 120 (Karn.)(HC)

2020 **S. 220 : Collection and recovery – Assessee deemed in default – Stay – When the stay application is pending before CIT (A) directing the assessee to pay 20 per cent of tax demand without considering as to whether assessee had made out a prima facie case for grant of interim relief, same was not justified. [S. 157]**

Allowing the petition the Court held that; when the stay application is pending before CIT (A) directing the assessee to pay 20 per cent of tax demand without considering as to whether assessee had made out a prima facie case for grant of interim relief, same was not justified. Order of the AO was set aside and directed him to decide on merits. (AY. 2015-16)

Samms Juke Box v. ACIT (2018) 409 ITR 33 / 257 Taxman 37 (Mad.)(HC)

2021 **S. 220 : Collection and recovery – Assessee deemed in default – Assessee to pay only a meager portion of tax demand (10%) for stay – Several cases were selected for scrutiny with aid of computers hence case not picked up for scrutiny maliciously – No need to interfere with the stay order of Revenue Authorities.**

High Court held that the contention of the petitioner is that returns filed by them have been taken for scrutiny maliciously with a view to fasten liability on them for having lodged a complaint against an officer of the department. It is brought to the notice of Court that in several cases the files are selected for scrutiny with aid of computers. Also, the Court observed that the petitioner is asked to pay a meager portion of demand (10%) hence there is no reason to interfere with the stay order passed by the Revenue Authorities requesting to pay 10% of the tax demand. (AY. 2014-15)

St Joseph's Granites v. ACIT (2018) 255 Taxman 123 (Ker.)(HC)

2022 **S. 220 : Collection and recovery – Assessee deemed in default – Waiver of interest – Principal amount of tax was not paid for over fourteen years – Rejection of waiver application for interest is held to be valid. [S. 132, 158BC, 220(2)]**

Dismissing the petition the Court held that the; assessee had not paid principal amount for over fourteen years. Assessee had not pointed out any difficulty in partners paying amount of taxes. Further, in facts arising principle that person could not take advantage of his own wrong would apply as assessee had failed to pay his taxes conscious of fact that non-payment would be visited with interest, if its plea was not accepted in appeal. Rejection of application for waiver by the CIT is affirmed. (BP. 1-1-1985 to 24-8-1995)

Video Master v. CIT (2018) 165 DTR 47 / 303 CTR 117 / 256 Taxman 95 / 413 ITR 153 (Bom.)(HC)

S. 220 : Collection and recovery – Stay – Pendency of appeal before CIT(A) – Direction of the CIT to enhancing to pay 50% of demand when first appeal is pending is held to be bad in law – Application for stay was pending before CIT(A) – CIT(A) was directed to dispose the stay application with in four weeks and stay will continue for further period of two weeks. 2023

Allowing the petition the Court held that; Direction of the CIT to enhancing to pay 50% of demand when first appeal is pending is held to be bad in law. As the application for stay was pending before CIT(A) he was directed to dispose the stay application with in four weeks and stay will continue for further period of two weeks. (AY. 2015-16)

Vodafone M-Pesa Ltd. v. PCIT (2018) 164 DTR 257 / 256 Taxman 240 (Bom.)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – Pursuant to two orders passed by writ Courts, assessee had deposited 30 per cent of demand and had furnished bank guarantee to extent of 45 per cent of demand. Since interest of revenue stood adequately safeguarded, revenue was not justified in increasing tax demand to 55 per cent of dues. 2024

Division Bench of the High Court held that pursuant to two orders passed by writ Courts, assessee had deposited 30 per cent of demand and had furnished bank guarantee to extent of 45 per cent of demand. Since interest of revenue stood adequately safeguarded, revenue was not justified in increasing tax demand to 55 per cent of dues. (AY. 2012-13)

CIT v. Google India (P.) Ltd. (2018) 254 Taxman 410 / 164 DTR 278 / 302 CTR 282 (Karn.) (HC)

S. 220 : Collection and recovery – Assessee deemed in default – Maintainability of Writ vis-à-vis fraudulent withdrawal from attached bank account – Conduct of the assessee disentitled it to any relief under Art. 226 of the Constitution of India. 2025

HELD by the High Court that since no oral directions were given by the Court, as communicated (mis-represented) by the Petitioner to TRO and bankers for fraudulently withdraw money from attached bank account, the conduct of the Petitioner does not deserve any relief under the extra-ordinary writ jurisdiction and it shall be disentitled to any relief under Article 226 of the Constitution of India.

Sinhgad Technical Education Society v. DCIT (2018) 162 DTR 185 / 301 CTR 26 (Bom.) (HC)

S. 221 : Collection and recovery – Assessee deemed in default-Pendency of appeal before CIT(A) – Attachment of bank account and recovery of amount – Recovery of the amount was held to be without following the due process of law – Stay was granted and directed the revenue 85 percent of tax recovered. [S. 156] 2026

When the first appeal was pending. Revenue has attached bank account and recovered the amount. On writ allowing the petition the Court directed the revenue to refund 85 % of tax recovered without following the due process of law. On facts notice under S. 221 was issued on 6-2-2017 and dispatched on 16-2-2017. Notice was received by assessee on 17-2-2017. Attachment of bank account of assessee on first working day after that and withdrawal of amount in Bank. Stay was granted. (AY. 2014-15)

Sunflower Broking Pvt. Ltd. v. DCIT (2018) 403 ITR 305 (Guj.)(HC)

2027 **S. 221 : Collection and recovery – Penalty – Tax in default – Survey – Reasonable cause – Cash was generated on account of sale of property – Levy of penalty was held to be not valid. [S. 133A]**

Tribunal held that cash was generated only on account of sale of property. Tribunal found that the statutory defence of good and sufficient reasons which is set out in the second proviso to Section 221(1) of the Act operates in favour of the assessee. Accordingly the penalty in the peculiar facts and circumstances of the present case has wrongly been levied and confirmed. Satisfied with the consistent explanation offered before the Tax Authorities, which Tribunal noted has not been assailed or rebutted, Tribunal held that the penalty deserves to be quashed. Ordered accordingly.(AY. 2011-12)

Shivjot Developers & Builders Ltd. v. DCIT (2018) 193 TTJ 74 (UO) (Chd.)(Trib.)

2028 **S. 221 : Penalty – Failure to pay self-assessment tax – Amendment prescribing mandatory charge of interest – Amendment does not envisage penalty for non-payment of self-assessment tax. [S. 140A(3), 221(1)]**

The Legislature did not envisage that consequent to the amendment, the default in payment of self-assessment tax would hitherto be covered by the scope of S. 221(1). S. 221 remains unchanged, both during the pre and post amended S. 140A(3) and even in the pre-amended situation, penalty u/s. 221 was not attracted for default in payment of self-assessment tax. Thus, without there being any requisite corresponding amendment to S. 221 in consonance with the amendments carried out in S.140A(3) with effect from April 1, 1989, the Department cannot impose penalty u/s. 140A(3) read with S. 221(1) of the Act. (AY. 2012-13)

Balraj Prakashchand Bansal v. Dy. CIT (2018) 64 ITR 62 (SN) (Mum.)(Trib.)

2029 **S. 222 : Collection and recovery – Certificate to Tax Recovery Officer Income-tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons. Given S. 238 of the Insolvency and Bankruptcy Code, 2016, the Code will override anything inconsistent contained in any other enactment, including the Income-tax Act. [Insolvency and Bankruptcy Code, 2016. S. 238]**

Dismissing the SLP of the revenue the Court held that; Income-tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons. Given S. 238 of the Insolvency and Bankruptcy Code, 2016, the Code will override anything inconsistent contained in any other enactment, including the Income-tax Act. Referred, *Dena Bank v. Bhikhabhai Prabhudas Parekh and Co. & Ors. (2000) 5 SCC 694* and its progeny, making it clear that income-tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons.

PCIT v. Monnet Ispat and Energy Ltd. (2018) 304 CTR 233 / 169 DTR 262 (SC), www.itatonline.org

Editorial : CIT v. Monnet Ispat and Energy Ltd (2018) 169 DTR 263 / 304 CTR 234 (Delhi) (HC)

S. 222 : Collection and recovery – Auction of property – Direction of CBDT to hold fresh auction after determining a reserve price by taking in to account fresh valuation report of District valuer is held to be justified. 2030

Dismissing the petition the Court held that; direction of CBDT to hold fresh auction after determining a reserve price by taking in to account fresh valuation report of District valuer is held to be justified. High Court will not interfere in contracts unless patently unfair.

Sankalp Recreation (P.) Ltd. v. UOI (2018) 258 Taxman 341 / (2019) 411 ITR 671 (Bom.) (HC)

S. 222 : Collection and recovery – Certificate to Tax Recovery Officer – Arrest – Notice under rule 73 of Schedule II having been issued for recovery of tax dues did not give rise to any apprehension of immediate arrest – Petition under S. 438 of Cr.P.C. against said show-cause notice would not be maintainable. [S. 276C, Cr.P.C. S. 438] 2031

Assessee, apprehending his arrest pursuant to notice under rule 73 of Schedule II having been issued for recovery of tax dues approached sessions judge for grant of anticipatory bail, which was rejected. On appeal to High Court under S. 438 of Cr.P.C. dismissing the petition the Court held that by issuance of notice under rule 73 of the Second Schedule of the Income-tax Act, the assessee is not accused of committing any non-bailable offence and the said notice does not give rise to any apprehension of immediate arrest so as to invoke the jurisdiction of the Sessions Court or High Court under section 438. Both the constituents of section 438 are not attracted to the facts of this case. As a result, it is held that the petition under section 438 of Cr.P.C. is not maintainable. Court also observed that offence under S. 276C has to be classified as a non-bailable offence, but in instant case tax liability of assessee under S. 276C had already been adjudicated and certificate under section 222 had been issued and notice under rule 73 was issued for recovery of tax dues under S. 222 therefore assessee's reliance on S. 276C was totally misplaced and held that attempt of assessee interlinking these two different proceedings was an attempt to mislead Court.(AY. 2007-08, 2009-10, 2010-11)

M.A. Zahid. v. ACIT (2018) 257 Taxman 137 / 303 CTR 835 / 168 DTR 313 / (2019) 412 ITR 135 (Karn.)(HC)

S. 222 : Collection and recovery – Certificate to Tax Recovery Officer – Time limit for sale of attached immovable property – The order of the DRT becomes final only after expiry of period prescribed for filing appeal and therefore 3 year period as stipulated by rule 68B for sale of attached property should be determined from such date when the order of DRT becomes final-Sale was held to be not time barred. 2032

Assessee was owner of a piece of land which was furnished as security by his son-in-law for availing loan from respondent bank. Since defaults were made in repayment of loan, the respondent bank preferred an application before Debts Recovery Tribunal (DRT) which allowed the said application vide order dated 27-02-2004 and issued a Recovery Certificate dated 06-05-2004 authorizing Recovery Officer to recover the amounts due. Property was sold by Recovery Officer on 27-11-2007. Assessee filed a writ petition contending that as per rule 68B of the Second Schedule, the property can only be sold

within 3 years and since in his case property was sold after a lapse of 3 years 7 months from the end of the financial year in which order giving rise to the demand for recovery was passed, the sale was vitiated and liable to be set aside. The petition was dismissed by the single judge. On further appeal, High Court held that period of 3 years stipulated in rule 68B is to commence from end of the financial year in which order becomes conclusive and final. The court observed that even though the order of the DRT was passed on 27-02-2004, the same became final only when period of 45 days stipulated for filing an appeal had lapsed on 13-04-2004. Therefore, High held that 3 year period stipulated by rule 68B expired only on 31-03-2008 and thus, the sale was within time stipulated by statutory provisions. Accordingly, the appeal was dismissed by High Court.
K. Kutaguptan v. Canara Bank (2018) 253 Taxman 88 / 166 DTR 65 / 305 CTR 431 (Ker.)(HC)

2033 **S. 222 : Collection and recovery – Attachment of immovable property on 27-10-2016 – Company in liquidation – Sale of immovable properties by auction under provisions of code on 31-1-2018 – Income-Tax Department cannot claim priority of debt – Insolvency and Bankruptcy Code, 2016, shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law – Sale is valid. [S. 178, 247, 281, Insolvency and Bankruptcy Code, 2016, S.238]**

In the event an assessee-company is in liquidation under the Code, the Income-tax Department can no longer claim a priority in respect of clearance of tax dues of the company, as provided under section 178(2) and (3) of the 1961 Act. In the light of the statutory schemes under the Code and the 1961 Act, respectively, it is clear that the Income-tax Department does not enjoy the status of a secured creditor, on par with a secured creditor covered by a mortgage or other security interest, who can avail of the provisions of section 52 of the Code. At best, it can only claim a charge under the attachment order, in terms of section 281 of the Act. Thus held, that the Tax Recovery Officer could not claim any priority merely because of the fact that the order of attachment dated October 27, 2016 issued by him was prior to the initiation of liquidation proceedings under the Code against the company. Section 36(3)(b) of the Code indicates in no uncertain terms that the liquidation estate assets may or may not be in the possession of the corporate debtor, including but not limited to encumbered assets. Therefore, even if the order of attachment constituted an encumbrance on the property, it still did not have the effect of taking it out of the purview of section 36(3)(b) of the Code. The order of attachment therefore could not be taken to be a bar for completion of the sale effected by the liquidator under the provisions of the Code. The Income-tax Department necessarily had to submit its claim to the liquidator for consideration as and when the distribution of the assets, in terms of section 53(1) of the Code, was taken up. The Sub-Registrar had to entertain and register the sale transaction effected by the liquidator in favour of the petitioner, if not already done.
Leo Edibles and Fats Ltd. v. TRO (2018) 407 ITR 369 / 259 Taxman 387 / (2019) 307 CTR 190 / 174 DTR 288 (T&AP)(HC)

S. 225 : Collection and recovery – Stay of proceedings – Disallowance of expenditure has to be determined having regard to object of provision and not on the basis of whether anybody else is also being levied same fee or charge – Directed to pay 20% of tax in dispute with in six weeks from the order. [S. 40(a)(iib)] 2034

Dismissing the petition, to stay the entire demand when the first appeal is pending before the CIT (A) the Court observed that, disallowance of expenditure has to be determined having regard to object of provision and not on the basis of whether anybody else is also being levied same fee or charge. Directed to pay 20% of tax in dispute with in six weeks form the order.

Kerala State Beverages (Manufacturing & Marketing) Corporation Ltd. v. ACIT (2018) 256 Taxman 88 / 166 DTR 313 / 305 CTR 666 (Ker.)(HC)

S. 225 : Collection and recovery – Stay – Once the CIT(A) concludes hearing the appeal, the stay application becomes infructuous. CBDT should investigate arm twisting measures, dehors application of the law, adopted by the Revenue for recovery of tax and take corrective measures to ensure AOs are not overzealous in recovering maximum revenue before 31st March – CBDT was directed to take appropriate measure. [S. 115BBC, 220(6), 226, 246A] 2035

Allowing the petition the Court held that; once the CIT(A) concludes hearing the appeal, the stay application becomes infructuous. The exercise by CIT(A) of taking up the stay application, after the appeal was heard, was only done so as to collect some revenue before 31st March, 2018. This is certainly not expected of an Appellate Authority who adjudicates disputes between the Revenue and the Assessee on a regular basis. The CIT(A) must not only be fair but appear to be so, in a country governed by Rule of law. CBDT should investigate arm twisting measures, dehors application of the law, adopted by the Revenue for recovery of tax and take corrective measures to ensure AOs are not overzealous in recovering maximum. Revenue before 31st March. (AY. 2015-16)

Saibaba Sansthan Trust (Shirdi) v. UOI (2018) 403 ITR 283 / 164 DTR 187 / 255 Taxman 36 / 302 CTR 230 (Bom.)(HC), www.itatonline.org

S. 225 : Collection and recovery – Stay – Appeal pending before CIT(A) – Stay was granted by depositing part of demand. 2036

Allowing the petition the Court,stay was granted by depositing part of demand of ₹ 5 crores as against demand of ₹ 15 crores Circular No. 3 of 2015 ([2015] 371 ITR (St.) 359). (AY. 2009-10, 2013-14, 2014-15)

Mitsui And Co. (India) Pvt. Ltd. v. CIT (2018) 403 ITR 10 (Delhi)(HC)

S. 225 : Collection and recovery – Stay of proceedings – Interim stay be granted on condition of payment of 15 Per cent of demanded tax. 2037

Allowing the petition the Court has granted interim stay on condition of payment of 15 Per cent of demanded tax. (AY. 2014-15)

S-10 Health Care Solutions v. ITO (2018) 402 ITR 33 (Mad.)(HC)

2038 **S. 226 : Collection and recovery – Stay – Pendency of appeal before CIT(A) – Directed to deposit only 1 % of tax demanded during pendency of appellate Proceedings. [S. 68, 250]**
In appellate proceedings Commissioner (Appeal) granted a stay on condition of payment of 50 per cent of amount of demand. Single Judge reduced said demand to 20 per cent. Division Bench finding that assessee was institution in co-operative sector and its members were from general public as also from marginalised sections, held that assessee was required to make a deposit of one per cent of tax demanded during pendency of appellate proceedings.
Anad Farmers Service Cooperative Bank Ltd. v. CBDT (2018) 100 taxmann.com 97 / 259 Taxman 406 (Ker.)(HC)
Editorial : SLP of assessee is dismissed, Anad Farmers Service Cooperative Bank Ltd. v. CBDT (2018) 259 Taxman 405 (SC)

2039 **S. 226 : Collection and recovery – Arrest and Detention – Since the detenue did not co-operate with IT Dept in any manner and the TRO has followed all the due procedure before his arrest, there was no need to produce Assessee before the Magistrate and no violation has been made under Art. 21 of the Constitution of India-Writ of habeas corpus is dismissed. [R. 73, 76, CRPC. S. 57 Art. 21]**
Dismissing the Assessee's writ of habeas corpus, the High Court held that the detenue having ignored the notices issued to him under Rule 73 Sch. II and refused to pay the arrears of tax, and the TRO having followed the due procedure laid down under the provisions of the IT Act before directing the arrest for recovery of arrears of tax dues from him, no violation has been made under Art. 21 of the Constitution of India and hence writ of habeas corpus be dismissed.
Ayush Kataria v. UOI (2018) 305 CTR 110 / 170 DTR 408 (MP)(HC)

2040 **S. 226 : Collection and recovery – Attachment – A sale is a contractual transaction – For a contract to be valid, it must be made by the free consent of parties competent to contract – In rule 16(1) of the Second Schedule to the Income-tax Act, 1961 it is expressly stated that the defaulter-assessee shall not be competent to deal with the property Notice of demand served on 5-1-2013 – Order of attachment on 21-12-2015 – Order relates back to date of notice of demand – Order of attachment is valid- Certain transfers to be void – Tax recovery Officer cannot declare transaction is null and void, it is the function of the civil court to declare a transaction null and void – The Tax Recovery Officer clearly erred in declaring the transactions to which the petitioner was a party null and void. [S. 281, Second Schedule, Rule 2, 11]**
S. Rajendran was served with a notice of demand under section 156 on May 30, 2012 and June 12, 2012 in respect of assessment years 2005-06 to 2011-12. It was finally quantified that he was liable to pay a sum of ₹ 4,04,56,280 and notice of demand was served on him on January 5, 2013 under rule 2 of the Second Schedule to the Income-tax Act, 1961 in the relevant form. The petitioner purchased the properties from S. Rajendran, the defaulter-assessee thereafter. Subsequent to the purchases, orders of attachment were made on December 21, 2015. The petitioner lodged its objections with the Tax Recovery Officer for raising the attachment. After considering the objections the Tax Recovery Officer not only declined to vacate the attachment, but also declared the

sale transactions effected by S. Rajendran favour of the petitioner null and void. On a writ petition : the Court held that, it was the function of the civil court to declare a transaction null and void and the Tax Recovery Officer cannot exercise that function. Therefore, the Tax Recovery Officer clearly erred in declaring the transactions to which the petitioner was a party null and void. Court also held that the attachment made subsequent to the purchase by the petitioner would relate back to and take effect from January 5, 2013 onwards. The order of attachment was valid. Court also observed that a sale is a contractual transaction. For a contract to be valid, it must be made by the free consent of parties competent to contract. In rule 16(1) of the Second Schedule to the Income-tax Act, 1961 it is expressly stated that the defaulter-assessee shall not be competent to deal with the property. (AY. 2005 06 to 2011-12)
Sri Sivalaya Advances v. TRO (2018) 408 ITR 611 / 256 Taxman 246 (Mad.)(HC)
Jegadish Auto Finance v. TRO (2018) 408 ITR 611 (Mad.)(HC)
Madura Auto Finance v. TRO (2018) 408 ITR 611 (Mad.)(HC)
Sri Sadasivam Combines v. TRO (2018) 408 ITR 611 (Mad.)(HC)

S. 226 : Collection and recovery – Modes of recovery – Co-operative societies – Cash credits – Direction to deposit 50% of tax in dispute is reduced to 20% and directed the CIT(A) to expedite the hearing [S. 68, 80P] 2041
On writ the Court modified the direction to deposit 50% of tax in dispute is reduced to 20% and also directed the CIT(A) to expedite the hearing. (AY. 2011-12)
Mundela Service Co-Operative Bank Ltd. v. ITO (2018) 258 Taxman 233 (Ker.)(HC)

S. 226 : Collection and recovery – Stay – Pendency of Appeal before – Commissioner (Appeals) – CIT(A) granted stay on condition of 50% of tax in dispute – Single judge reduced to 20% of tax in dispute – On appeal considering the assessee being a co-operative bank, stay is granted by paying 1 % of tax in dispute. [S. 68, 249] 2042
Allowing the petition the Court held that; since assessee was an institution in co-operative sector, and its members were from general public as also from marginalised sections, an opportunity could be afforded to assessee to produce details of deposits. Accordingly the assessee should make a deposit of 1 per cent of tax on addition made under section 68.
Aruvikkara Farmers Service Co-Operative Bank Ltd. v. ITO (2018) 258 Taxman 18 (Ker.) (HC)

S. 226 : Collection and recovery – Stay of recovery – Garnishee proceedings – When an application for stay was pending before the Commissioner, attachment of bank accounts as per office Memorandum of Central Board of Direct Taxes, 15 Per cent of demand recovered from Assessee – Notices was quashed and set aside – However the claim of the assessee, seeking refund of the amounts attached pursuant to such directions, was not justified and could not be granted. [S. 226(3)] 2043
Allowing the petition the Court held that 15 per cent of the demand amount had already been recovered by the Department and such amount was covered by the office memorandum dated February 29, 2016 issued by the Board. The authorities were not justified to pass the attachment notices under section 226(3). The claim of the assessee,

seeking refund of the amounts attached pursuant to such directions, was not justified and could not be granted. The notices issued to the banks under section 226(3) in respect of the assessment years 2011-12 and 2012-13 were quashed and set aside. (AY. 2011-12, 2012-13)
Sesa Resources Ltd. v. ACIT (2018) 408 ITR 527 (Bom.)(HC)

2044 **S. 226 : Collection and recovery – Stay – Pendency of appeal – Circular by Central Board of Direct Taxes that 15 Per cent of disputed demand to be deposited for stay – Permits decrease or even increase in percentage of disputed tax demand to be deposited – Requirement reduced to 7.5 Per cent. On Further condition of security for remaining tax in dispute.**
Allowing the petition the Court held that; the total tax demand was quite high. Even 15 percent of the disputed tax dues would run into several crores of rupees. Considering such facts and circumstances, the requirement of depositing the disputed tax dues was to be reduced to 7.5 percent in order to enable the assessee to enjoy stay of pending appeals before the Commissioner. This would however be on a further condition that he should offer immovable security for the remaining 7.5 percent to the satisfaction of the assessing authority. The order passed by the Principal Commissioner was to be modified accordingly. Both these conditions should be satisfied by April 30, 2018. (AY. 2011-12, 2013-14, 2014-15)
Ashokbhai Jagubhai Kheni v. DCIT (2018) 405 ITR 179 / 258 Taxman 275 (Guj.)(HC)

2045 **S. 226 : Collection and recovery – Modes of recovery – Appeal – The AO is not justified in insisting on payment of 20% of the demand based on CBDT's instruction dated 29.02.2016 during pendency of appeal before the CIT(A) – CIT(A) is directed to hear the appeal expeditiously – Pendency of appeal the stay is granted. [S. 220(6), 246]**
Allowing the petition the Court held that, the AO is not justified in insisting on payment of 20% of the demand based on CBDT's instruction dated 29.02.2016 during pendency of appeal before the CIT(A). This approach may defeat & frustrate the right of the assessee to seek protection against collection and recovery pending appeal. Such can never be the mandate of law. CIT(A) is directed to hear the appeal expeditiously. Pendency of appeal the stay is granted. (AY.2015-16)
Bhupendra Murji Shah v. DCIT (2018) 170 DTR 423 / 305 CTR 88 / 259 Taxman 45 (Bom.)(HC), www.itatonline.org

2046 **S. 226 : Collection and recovery – Stay – On payment of 20% of original tax demanded, notice issued u/s. 226(3) of the Act is directed to be vacated. [S. 220, 226(3)]**
Petition filed by the assessee, for grant of absolute stay and collection of disputed demand was rejected, in interest of justice, assessee was to be directed to deposit further 20 per cent of original tax demand and if assessee complied with said direction, impugned notice issued under S. 226(3) would be revoked. (AY.2010-11)
Bright Packaging (P.) Ltd. v. ACIT (2018) 256 Taxman 29 (Karn.)(HC)

S. 226 : Collection and recovery – Modes of recovery – No coercive steps should be taken for recovery of outstanding tax demand, till expiry of period of limitation for filing an appeal. [S. 253] 2047

Allowing the petition the Court held that, no coercive steps should be taken towards recovery of alleged liability pursuant to impugned notice issued under S. 226(3), till expiry of period of limitation for filing an appeal against order passed by CIT(A) (AY.2011-12)

Kalaignar TV (P.) Ltd. v. ACIT (2018) 256 Taxman 49 (Mad.)(HC)

S. 226 : Collection and recovery – Stay – Mere pendency of an appeal before Commissioner (Appeals) was no ground to state that there should be stay on recovery of tax demanded. No prima facie case is established for grant of an unconditional stay – Direction of AO to deposit 20 percent of tax demanded was held to be justified. [S. 220] 2048

Dismissing the petition the Court held that ; assessee miserably failed to substantiate their contention that they were unable to mobilise funds to comply with direction of Assistant Commissioner to deposit 20 per cent of tax demanded nor they had brought out as to how they had made out a prima facie case for grant of an unconditional stay, mere pendency of an appeal before Commissioner (Appeals) was no ground to state that there should be stay on recovery of tax demanded. (AY. 2011-12 to 2016-17)

Vasan Health Care (P.) Ltd. v. ACIT (2018) 406 ITR 462 / 256 Taxman 4 (Mad.)(HC)

S. 226 : Collection and recovery – Modes of recovery – Attachment of bank account – Interim injunction was granted subject to payment of 20 percent of disputed tax on account of claim of additional depreciation. [S. 32(1)(iia), 226(3)] 2049

Allowing the petition the Court granted interim in junction subject to payment of 20 percent of disputed tax on account of claim of additional depreciation. Court also held that the attachment of the assessee's bank account stood lifted. (AY. 2014-15)

S. P. Mani and Mohan Dairy v. ACIT (2018) 404 ITR 633 / 255 Taxman 172 (Mad.)(HC)

S. 226 : Collection and recovery – Attachment of property – Limitation – Appeal – Ground that the recovery proceedings is now time barred rejected as it was inappropriate for Tax Recovery Officer to continue proceedings for realization of tax arrears on account of pendency of proceedings challenging decisions taken by Tax Recovery Officer, irrespective of fact as to whether there was any interim order in such proceedings or not. [Sch.II R. 11, 68B] 2050

Dismissing the petition the Court held that; Ground that the recovery proceedings is now time barred was rejected on the ground that it was inappropriate for Tax Recovery Officer to continue proceedings for realization of tax arrears on account of pendency of proceedings challenging decisions taken by Tax Recovery Officer, irrespective of fact as to whether there was any interim order in such proceedings or not, while computing outer time limit provided for under sub-rule (1) of Rule 68B. (AY. 1977-78, 1978-79)

Mohammed Niyas v. CIT (2018) 165 DTR 240 / 302 CTR 420 (Ker.)(HC)

2051 **S. 226 : Collection and recovery – Modes of recovery – As 20% of demand had not been deposited, assessee's petition to stay of recovery is dismissed. [S. 220(6), 226(3)]**
Dismissing the petition the Court held that; As 20% of demand had not been deposited, assessee's petition to stay of recovery is dismissed (AY. 2014-15)
Madhya Pradesh Audyogik Kendra Vikas Nigam Ltd. v. DCIT (2018) 165 DTR 151 / 305 CTR 612 (MP)(HC)
SEZ Indore Ltd. v. Dy.CIT (2018) 165 DTR 151 / 305 CTR 612 (MP)(HC)

2052 **S. 226 : Collection and recovery – Modes of recovery – Tribunal has directed to pay 55% of outstanding demand – High Court directed the Tribunal to dispose the appeal expeditiously – Interim order of stay was declined as the appeal was slated for final arguments before the Appellate Tribunal.**
On writ High Court directed the Tribunal, to dispose the appeal expeditiously. Interim order of stay was declined as the appeal was slated for final arguments before the Appellate Tribunal. (dt. 22-11-2017) (AY. 2013-14)
Google India (P) Ltd. v. DCIT (IT) (2018) 252 Taxman 27 / 163 DTR 161 / 301 CTR 485 (Karn.)(HC)

2053 **S. 226 : Recovery – Stay – Tax Recovery Officer could not grant stay of order of assessment and remedy lies only before AO or before First Appellate Authority AO had to consider case on merits and then take decision in matter and not mechanically go by guidelines issued by Central Board of Direct Taxes, as guidelines themselves provide for contingencies, which might vary from case to case. [S. 281B]**
Allowing the petition the Court held that, Tax Recovery Officer could not grant stay of order of assessment and remedy lies only before AO or before First Appellate Authority AO had to consider case on merits and then take decision in matter and not mechanically go by guidelines issued by Central Board of Direct Taxes, as guidelines themselves provide for contingencies, which might vary from case to case. (AY. 2009-10 to 2015-16)
S. Arputharaj v. Dy. CIT (2018) 162 DTR 25 / 300 CTR 558 (Mad.)(HC)

2054 **S. 226 : Recovery – Stay was granted by directing to pay 5% of demand in dispute in two instalments as against 15% was directed to be paid earlier order.**
Allowing the petition, considering the peculiar facts of the case It is beyond dispute that if the petitioner does not remit the 15% of the amount directed to be paid, the benefit of the interim order will not be available to him. At the same time, if he is compelled to pay such a huge amount, there is force in the contention that the same will have an adverse impact on his business. In the circumstances, I deem it appropriate to modify earlier order granting stay for 95% of the demand covered by Ext. P1 order, on condition that he shall pay the remaining 5% in two instalments, the first of which shall be paid on or before 01/02/2018 and the second instalment before, 01/03/2018. (AY. 2014-15)
Antony Sunny v. JCIT (2018) 164 DTR 290 (Ker.)(HC)

S. 226 : Collection and recovery – Modes of recovery – The ITO (TDS) Bhagalpur cannot act arbitrarily and extend favour to the Mining Department and release their Bank account and decide to attach the Bank account of the petitioner and recover the tax liability from the Bank account of the petitioner in proceedings u/s 226(3) – Department was directed to refund the amount collected within three months along with interest, failure to which the department was directed to pay the cost of ₹ 1 lakhs which shall be paid from the pocket of the ITO. [S. 226(3)] 2055

By issuing the notice u/s 226(3) to the assessee the ITO (TDS) attached the bank account and recovered the amount. On writ allowing the petition the Court held that, neither the Income Tax Department nor the Mines Department has come out with any corrective measures to refund the excess amount or the amount deducted from the bank account of the petitioner and as such we hereby direct the Income Tax Department to forthwith return the amount recovered from the bank account of the petitioner as we are of the considered view that the action of the Department is illegal, arbitrary and totally unauthorized in the peculiar facts and circumstances, since amount was recovered by the respondent Income Tax Department therefore the Department is liable to pay the said amount with interest at the rate applied by the Income Tax Department while calculating the dues from the date of recovery from petitioner's Bank account till the date of refund. In the event of failure to refund the said amount within a period of three months from today, they are liable to pay the cost of Rs. 1 lakh also which shall be recovered from the pocket of the ITO of the Income Tax Department at the same time we notice the lapses on the part of the Mines and Geology Department as for whose lapse the petitioner has to suffer not only uncalled for litigation but has to face the ordeal of the litigation and as such we direct for payment of the cost of the one lakh by the Mines and Geology Department within a period of three months. We direct that after refund of the amount recovered from the bank account of the petitioner, the Income Tax Department may pursue the matter for recovery in accordance with law against the Mines and Geology Department and take all legal recourse which is admissible under the law including under S. 276B and 276BB of the Act.

Sainik Food (P) Ltd. v. PCIT (2018) 406 ITR 596 / 164 DTR 265 / 302 CTR 49 (Pat.)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Sainik Food (P) Ltd. (2019) 264 taxman 28 (SC)

S. 226 : Collection and recovery – Stay – Proceedings cannot be initiated before expiry of period of limitation to file an appeal before the Tribunal i.e. 60 days from the date of receipt of order – Revenue cannot issue notice for recovery directly to Assessee's bank without giving an opportunity to be heard – Appropriate direction for re-crediting the amount to Assessee's bank account issued to the Revenue. [S. 220(6), 253] 2056

Court held that, recovery proceedings cannot be initiated before expiry of period of limitation to file an appeal before the Tribunal i.e. 60 days from the date of receipt of order. Revenue cannot issue notice for recovery directly to Assessee's bank without giving an opportunity to be heard. Appropriate direction for re-crediting the amount to Assessee's bank account is issued to the Revenue. Court also held that, the principle laid down in the case of *Shri Lakshmi Brick Industries v. TRO (2013) 351 ITC 345* and the judgement of Hon'ble Supreme Court of India in case of *Mohan Wahi v. CIT (2001)*

248 ITR 799(SC) would apply with full force in the present case and it will be fully justified in issuing appropriate direction to re-credit the amount to the Assessee's bank account. (AY. 2009-2010)
Rapid Care Transcription (P) Ltd. v. ITO (2018) 404 ITR 244 / 253 Taxman 392 / 164 DTR 285 / 302 CTR 415 (Mad.)(HC)

2057 **S. 226 : Recovery – Attachment of property – Settlement Commission's order itself was not conclusive until the request, was dealt with and disposed of order had not attained finality, particularly in the light of the application filed by the assessee. The sale was not barred by limitation. [S. 245C, 245D(4), 245I, Rule 68B of Schedule II]**
Dismissing the petition, the Court held that; the assessee approbated and reprobated. The assessee referred to the order dated December 1, 2011 passed by the Settlement Commission as the triggering point. However, in the grounds, he conveniently did not refer to the period consumed by his own applications before the Settlement Commission and his own request for postponement or deferment of the recovery proceedings or to hold them in abeyance. These requests were made by the assessee on his own because of the financial problems faced by him. All this was a creation of the assessee himself. The Settlement Commission's initial order was based on the assessee's request to make payment of the tax in instalments. That request was accepted, instalments were determined and even the time was stipulated. It was the assessee, who sought modification of this time relief and extension to make payment by instalments. The request was distinct. There was an attachment levied and the assessee apprehended that if the time to make payment expired the auction may follow. Therefore, the request of the assessee was to extend the time to make payment in instalments and if that had been granted, nothing could have been done by the Revenue pursuant to the attachment. If the time was extended and the payment was made, the sale could not have taken place at all. In these circumstances, based on the assessee's request, no steps were taken. Secondly and more importantly the Settlement Commission's order itself was not conclusive until the request, was dealt with and disposed of. The payment by instalments was a direction incorporated in the order of the Settlement Commission. It is that main order, which had not attained finality, particularly in the light of the application filed by the assessee. The sale was not barred by limitation. (BP. 2002-03 to 2008-09)
Rajiv Yashwant Bhale v. CIT (2018) 401 ITR 408 (Bom.)(HC)

2058 **S. 226 : Collection and recovery – Stay of proceedings – Deduction at source – Appeal pending before CIT(A) – Refusal to extend stay merely because the assessee had funds was held to be not proper, when the Board has given instructions that stay must be granted on paying 15% of tax in dispute when appeal is pending before CIT(A). Assessee has paid 38% of demand. [S. 225]**
Allowing the petition the Court held that; earlier stay granted and extended from time to time on the basis of a binding Central Board of Direct Taxes' circular which directs officers of the Revenue to grant stay till the disposal of the first appeal on payment of 15 per cent disputed amount. This circular was completely ignored. Merely having funds, i.e., no financial hardship, would not by itself justify the deposit where a

prima facie case was made out. Nowhere had the delay in disposal of the pending appeals before the appellate authority been attributed to the assessee. The petition was adjourned and ad interim stay was granted restraining the authorities from taking any coercive steps to recover the amount of ₹ 43.79 crores or any part thereof being the outstanding demand in respect of the pending appeals before the Commissioner (Appeals) till the next date. On facts the assessee has paid 38% of demand. (AY. 2000-01 to 2012-2013) (dt. 4-01-2018)
Vodafone India Ltd. v. CIT (2018) 400 ITR 516 / 164 DTR 261 / 305 CTR 609 (Bom.)(HC)

S. 226 : Collection and recovery – Stay – PCIT & ACIT directed to pay personal costs for filing frivolous writ petition to challenge ITAT stay order. [S. 220, 222, 254(2A)] 2059
Dismissing the petition of the revenue, the Court held that; raising unsustainable, illegal and high pitched demands and enforcing coercive recovery and challenging stay orders shows utterly irresponsible and unfair behaviour. Thereafter, seeking adjournments by the Dept of the hearing in the ITAT adds insult to the injury. Irresponsible and uncoordinated manner of the Dept strongly deprecated. PCIT & ACIT directed to pay personal costs for filing frivolous writ petition to challenge ITAT stay order.
ACIT v. Epson India Pvt. Ltd. (2018) 163 DTR 81 / 301 CTR 242 (Karn.)(HC)

S. 230 : Collection and recovery – Tax clearance certificate-liability of the assessee was more than ₹ 400 crores – Insistence on a tax clearance certificate for the assessee to leave the country under the first proviso to sub-section (1A) of S. 230 of the Act is valid. 2060
Dismissing the petition the court held that; the first proviso to sub-section (1A) of S. 230 of the Act, makes it clear that no person who is domiciled in India and in respect of whom circumstances exist, which in the opinion of the Income-tax authority render it necessary for such person to obtain a certificate under the section, shall leave the country unless he obtains a certificate from the Income-tax authority stating that he has no liabilities under the Act or that satisfactory arrangements have been made for discharging the liability under the Act. On facts the liability of the assessee was more than ₹ 400 crores. In the circumstances, the second respondent could not be found fault with for having insisted on a tax clearance certificate for the assessee to leave the country under the first proviso to sub-section (1A) of S. 230. (AY. 2009-10-2015-16)
Mailakkattu Varghese Uthup (NO. 1) v. PCIT (2018) 406 ITR 289 / 304 CTR 1000 / 172 DTR 321 (Ker.)(HC)
Editorial : Order of single judge is affirmed; Mailakkattu Varghese Uthup (NO. 2) v. PCIT (2018) 406 ITR 296 / 304 CTR 1006 / 170 DTR 326 (Ker.)(HC)

S. 234A : Interest – Default in furnishing return of income – Disclosure was made after the search action rejection of application for waiver of interest was held to be justified. [S. 119, 132(4), 234B, 234C] 2061
Dismissing the petition the court held that; Disclosure was made after the search action rejection of application for waiver of interest was held to be justified. Right to claim waiver of interest is not a statutory right given to assessee but based on Circular

No. 400/29/2002 and, therefore, strict interpretation of said circular has to be done. (AY. 1989-90 & 1990-91)
A. Kuberan v. CCIT (2018) 254 Taxman 189 (Mad.)(HC)

2062 **S. 234A : Interest – Default in furnishing return of income – Waiver – Capital gains – Circular only guideline having no overriding effect on statutory provision – Rejection of application for waiver of interest by Chief Commissioner was held to be proper. [S. 45, 119(2), 143(1)(a)]**
Dismissing the petition, the court held that; the interest levied giving effect to capital gains based on receipt of compensation for the land acquired would not absolve the assessee from paying tax on capital gains. Further, the circular relied on by the assessee was only a guideline and it had no overriding effect on the statutory provision. The Chief Commissioner had rightly rejected the assessee's request for waiver of interest.
C. V. Jayachandran v. CIT (2018) 401 ITR 484 (Ker.)(HC)

2063 **S. 234A : Interest – Default in furnishing return of income – Waiver of interest – Rejection of application was held to be valid. [S. 40(a)(ia), 234B, 234C]**
Dismissing the petition the Court held that; rejection of application by holding that levy of interest under S. 234A, 234B and 234C was automatic and same could not be waived. Court also held that, the order passed by Chief Commissioner was in accordance with CBDT. (AY. 2005-06)
Gaonkar Mines v. Addl. CIT (2018) 252 Taxman 158 (Karn.)(HC)

2064 **S. 234A : Interest – Default in furnishing return of income – Bonafide family dispute – Entitle to waiver of interest. [S. 119, 133A, 148, 234B, 234C]**
The assessee approached the Chief Commissioner under S. 119(2)(a) for waiver of interest. The assessee in his application for waiver stated that he was under the bona fied belief that he had no taxable income and therefore not required to file a return. The Chief Commissioner had rejected the petition for waiver on the grounds that the assessee failed to voluntarily file its return but the return were filed consequent upon a survey conducted under S. 133A and issuance of notice under section 148 and tax on the assessed income was not paid which was a pre-condition for waiver of interest. On writ the Court held that the property continued to be in the name of the HUF i.e. it remained undivided and there were serious civil disputes between the family members. Thus, when the property continues to remain undivided, the assessee cannot anticipate the accrual/receipt of such income hence the assesse was right in the belief that he had no taxable income. The High Court also held that the return was filed well before the issuance of notice under section 148 and merely because there was a survey counducted in premises cannot be stated that the ROI was not voluntatily filed by the assesse. Hence the assesse would be entitle to waiver of interest levied under section 234A. the High Court also observed that the circular (Circular No. 400/234/95 dated 30-1-1997) issued by the Board empowering the Chief Commissioner to consider the waiver petition for waiver of interest under S 234A as well as S. 234B would show that even in cases covered by section 234B and even though these provisions are compensatory in nature, special orders for grant of relaxation could be passed. It was further held that the

dispute with regard to the division of property was a bona fide dispute which directly relates to the assessbility of the petitioner to tax. Therefore, if the petitioner is entitled for waiver of interest under S. 234A for the reasons set out above, the question of payment of advance tax nor a portion thereof will not arise and therefore, the petitioner is entitled for waiver of interest under S. 234B and 234C as well. (AY. 1997-98, 1998-99)
R. Mani v. CCIT (2018) 406 ITR 450 / 253 Taxman 3 / 164 DTR 114 / 302 CTR 250 (Mad.) (HC)

S. 234A : Interest – Default in furnishing return of income – Taxes deposited more than tax determined – Interest is not leviable. 2065
Taxes deposited before filing the return of income is more than the taxes finally determined on regular assessment, interest is not leviable. (AY.2014-15)
Rajasthan State Mines & Minerals Ltd. v. ACIT (2018) 196 TTJ 768 / (2019) 174 DTR 383 (Jaipur)(Trib.)

S. 234B : Interest – Advance tax – Interest is chargeable at the rate provided under S. 234B(3) of the Act on the differential tax payable on reassessment. [S. 140A, 234B(3)] 2066
On appeal the High Court held that Department having raised the tax demand on reassessment, the liability for advance tax also stood increased and hence interest is chargeable at the rate provided under S. 234B(3) on the differential tax payable on reassessment since the tax paid under Section 140A stood refunded along with interest to the assessee even before the regular assessment. (AY. 1996-1997)
CIT v. Fertilizers and Chemicals Travancore Ltd. (2018) 166 DTR 181 / (2019) 307 CTR 349 (Ker.)(HC)

S. 234B : Interest – Advance tax – Refund of warehousing charges paid on seized goods by department was rejected – Cannot claim interest from date when goods were auctioned but entitled to claim interest at 12% p.a. from the date of order passed by the settlement commission till actual payment. [S. 132] 2067
Assessee was engaged in manufacturing of sugar and rab jaggery. A search u/s 132 was conducted at the business and residential premises of partners wherein, FDRs and cash along with 5,724 sugar bags were seized. Assessee wrote to AO for release of sugar bags being perishable items. Since, no action was taken by the AO, assessee approached the High Court which directed the authority concerned to pass appropriate orders for release of goods seized. The authority passed an order requiring assessee to furnish a bank guarantee of ₹ 63.85 lacs to release stock of sugar. The AO passed an order under section 132(5) assessing the total tax liability including interest of ₹ 164.84 lacs. The High Court held that since the tax liability was much more than the value of goods seized, it found no illegality in requiring assessee to furnish a bank guarantee for release of stock of sugar. Assessee furnished a bank guarantee of only ₹ 40.20 lacs and the department released the stock of sugar but retained 1,200 sugar bags which was ultimately auctioned pursuant to the High Court order which had to be adjusted against the assessee's tax liability. The department had to keep 1,200 sugar bags in a Central Warehouse and incurred charges of ₹ 3.09 lacs. High Court rejected the claim of the

assessee for refund of ₹ 3.09 lacs towards warehouse charges paid by the department as it was not the department which was at fault, rather it was the assessee itself for which the department cannot be penalized.
With regard to the second issue of granting interest from the date of seizure to the date of its actual payment, the High Court held that assessee could not claim interest on amount from date when goods were auctioned but the assessee was entitled to claim interest at 12% p.a. from the date of final order passed by the settlement commission (as settlement commission waived interest amount) till the date of actual payment.
Pooran Sugar Works v. UOI (2018) 170 DTR 113 / 304 CTR 793 / 103 CCH 54 (All.)(HC)

2068 **S. 234B : Interest – Advance tax – Salary income – Tax deduction at source – Not liable to pay advance tax and consequently not liable to pay interest u/s. 234B (1). [S. 15, 192]**
Allowing the appeal of the assessee the Court held that, an assessee whose income-tax liable to be deducted at source is not liable to pay advance tax and consequently not liable to pay interest u/s. 234B (1). (AY. 1992-93 to 1996-97)
J. Aditya Rao v. ACIT (2018) 409 ITR 169 (T&AP)(HC)

2069 **S. 234B : Interest – Advance tax – Sale proceeds were deposited in a 'No Lien' account with bank as per direction of BIFR – Assessee could not remit tax within time as amount received from sale proceeds were lying with bank – Rejection of application for waiver of interest is held to be not justified – Directed the Commissioner to pass the order on merits. [S. 220(2)]**
Allowing the petition the Court held that ; Sale proceeds were deposited in a 'No Lien' account with bank as per direction of BIFR. Assessee could not remit tax within time as amount received from sale proceeds were lying with bank. Accordingly the rejection of application for waiver of interest is held to be not justified when the interest under section 220(2) was waived by Chief Commissioner. Matter is remanded and directed the Commissioner to pass the order on merits. (AY.2001-02)
Travancore Sugars & Chemicals Ltd. v. Addl. CIT (2018) 258 Taxman 273 (Ker.)(HC)

2070 **S. 234B : Interest – Advance tax – Capital gains – CBDT declined to waive the interest – Dismissing the petition the Court held that in law, equity would be subservient to; and, could not override; statute – Rejection of petition for waiver of interest is held to be justified. [S. 119]**
Dismissing the petition the Court held that in law, equity would be subservient to; and, could not override; statute. Rejection of petition for waiver of interest is held to be justified. Court also held that, when regulatory mechanisms in fiscal legislation govern a situation; that cannot be visited in exercise of power under Article 226 and appellate jurisdiction through an intra-court appeal since that would be in defeasance of statutory impact of fiscal legislation in nature of the Income Tax Act, 1961.
Arun Sunny v. CCIT (2018) 161 DTR 391 / 303 CTR 110 (Ker.)(HC)

S. 234B : Interest – Advance tax – Assessment order was set aside and refund of advance tax was granted, interest could not be levied. 2071

Dismissing the appeal of the revenue the Court held that; the assessee had advance tax and had credit of tax deducted at source of ₹ 5,12,984, in excess of the tax liability created. Hence, there was no cause for imposition of a liability under S. 234B(1) or under S. 234B(3). The entire tax assessed on regular assessment, for which there was advance tax payment in compliance with sections 208 and 210, was set aside and the advance tax paid was refunded to the assessee. The Department also had the benefit of advance tax from March 31, 1992 to March 4, 1996, when the refund was made. Hence, there would be no liability on the assessee under S. 234B(3), since there could not be a liability created from April 1, 1992. (AY. 1992-93)

CIT v. Baby Marine Exports (2018) 402 ITR 420 / 254 Taxman 375 / 163 DTR 503 / 303 CTR 287 (Ker.)(HC)

S. 234B : Interest – Advance tax – Interest is to be computed with respect to total income determined in regular assessment as per definition of assessed tax given in S. 234B of the Act – Matter remanded. [S. 140A] 2072

Tribunal held that in case of *ACIT v. C.C. Chokshi & Co.* (ITA No 7791/ Mum./2004, it was held that interest payable under S. 234B for purpose of adjustment against tax paid under sec. 140A of the Act had to be computed with respect to assess tax determined on basis of total income declared in return. This was only for limited purpose of adjustment of payment made under S. 140A of the Act against interest payable under S. 234B of the Act while making computation of interest payable by assessee under S. 234B which had to be computed with respect to total income determined in regular assessment as per definition of assessed tax given in sec. 234B of the Act. Accordingly the Tribunal set aside matter to the file of AO to decide issue afresh in view of finding in the case of *ACIT v. C.C. Chokshi & Co.* (AY.2008-09)

Maruti Suzuki India Ltd. v. ACIT (2018) 191 TTJ 148 (Delhi)(Trib.)

S. 234B : Interest – Advance Tax – Book profits – Alternate Minimum tax – Interest is leviable. [S. 115JC] 2073

Interest under S. 234B shall be payable on failure to pay advance Alternate Minimum tax under S. 115JC. (AY. 2013-14, 2014-15)

GIE Jewels v. ITO (2018) 192 TTJ 852 (Jaipur)(Trib.)

S. 234B : Interest – Advance tax – Book profit – MAT credit has to be allowed from 'assessed tax' and, thereafter, interest to be computed. 2074

Allowing the appeal of the asessee the Tribunal held that; in view of Explanation 1(v) of sub-section (1) of S. 234B, MAT credit has to be allowed from 'assessed tax' and, thereafter, interest to be computed. (AY. 2007-08)

Ellenbarrie Industrial Gases Ltd. v. ITO (2018) 169 ITD 194 (Kol.)(Trib.)

2075 **S. 234B : Interest – Advance tax – Book profit – Interest shall be payable for failure to pay alternative Minimum tax. [S. 115JC]**
Dismissing the appeal of the assessee the Tribunal held that; interest shall be payable for failure to pay alternative Minimum tax. (AY. 2014-15)
GIE Jewels v. ITO (2018) 168 ITD 260 / 192 TTJ 852 / 166 DTR 118 (Jaipur)(Trib.)

2076 **S. 234C : Interest – Deferment of advance tax – There was no tax due on returned income and hence, no interest could be levied.**
Tribunal held that the AO while computing Income Tax liability for the subject assessment year levied interest u/s 234C amounting to ₹ 32,26,844/- on the assessed income, whereas as per S. 234C the interest is to be charged on the returned income. Tribunal held that from the facts of the case that there is no tax due on the returned income and hence, no interest can be levied u/s. 234C of the Act. (AY. 2009-10)
Morgan Stanley Investment Management (P) Ltd. v. DCIT (2017) 160 DTR 19 / (2018) 191 TTJ 365 (Mum.)(Trib.)

2077 **S. 234D : Interest on excess refund – No additional interest had been computed under S. 234D in the reassessment proceedings and therefore interest is chargeable.**
The Tribunal held that Expl. 2 to S. 234D is squarely applicable to the facts of the case as no additional interest had been computed under S. 234D in the reassessment proceedings and therefore interest under section 234D is chargeable. (AY. 1999-2000, 2002-03; 2003-04)
Dy. CIT v. Central Bank of India (2018) 191 TTJ 265 (Mum.)(Trib.)

2078 **S. 234E : Fee – Default in furnishing the statements – Demand under S. 200A for computation and intimation for payment of fees under S. 234E could not be made in the purported exercise of power under S. 200A prior to June 1, 2015 – Matter remanded. [S. 200A]**
The High Court observed that there is Division Bench decision of Karnataka High Court in the case of *Fatheraj Sanghvi v. UOI (2016) 142 DTR 281 (Karn.)(HC)* which had already held that no fee can be levied under S. 234E of the Act in so far as they are prior to the period of June 1, 2015 and such intimations can be said as without any authority of law and hence illegal and invalid and matter remanded.
Sree Ayyappa Educational Charitable Trust v. DCIT (2018) 162 DTR 350 / 301 CTR 150 (Karn.)(HC)
Sadhguru Infratech (P) Ltd. v. UOI (2018) 162 DTR 350 / 301 CTR 150 (Karn.)(HC)

2079 **S. 234E : Fee – Default in furnishing the statements – In the absence of enabling provisions u/s. 200A, levy of late fee is not valid – Matter remanded. [S. 200A]**
Allowing the appeal of the assessee the Tribunal held that prior to 1-06-2015, there was no enabling provision in Act u/s. 200A for raising demand in respect of levy of fee u/s 234E. Accordingly the issue was restored back to CIT(A) to decide a fresh. (AY.2013-14)
State Bank of India v. ITO(TDS) (2018) 195 TTJ 6 (UO) (Agra)(Trib.)

S. 234E : Fee – Default in furnishing the statements – In the absence of enabling provisions u/s 200A, levy of late fee is not valid. [S. 200A] 2080

Allowing the appeal of the assessee the Tribunal held that prior 1-06-2015, there was no enabling provision in Act u/s 200A for raising demand in respect of levy of fee u/s 234E. Accordingly the levy of penalty is held to be not valid. (AY.2013-14)

Sudarshan Goyal v. Dy. CIT (2018) 194J 22 (UO) (Agra)(Trib.)

S. 234E : Fee – Default in furnishing the statements – Fees levied u/s. 234E prior to 01.06.2015 in intimations made u/s 200A was directed to be deleted. [S. 200A] 2081

Provisions of Section 234E for levy of fees on account of late filing of TDS returns was brought on the Statute vide Finance Act, 2012 w.e.f. 01.07.2012 and also that Section 200A, which deals with the processing of TDS returns, gave no mandate to make adjustments on account of levy of fees u/s 234E prior to 01.06.2015 and that the same was brought on the Statute only vide Finance Act, 2015 w.e.f. 01.06.2015 (AY.2013-14)

Sonalac Paints & Coatings Ltd. v. DCIT (2018) 167 DTR 83 / 194 TTJ 771 (Chd)(Trib.)

Nagapal Trading Co v. Dy CIT (2018) 167 DTR 83 / 194 TTJ 771 (Chd.)(Trib.)

S. 234E : Fee – Default in furnishing the statements – Prior to 1-6-2015, AO did not have power to charge fees under S. 234E while processing TDS returns – In absence of enabling provision fees cannot be levied in respect of intimation issued under S. 200A prior to 1-6-2015. [S. 200A] 2082

Tribunal held that, since amendment to S. 200A with effect from 1-6-2015 is prospective in nature, AO while processing TDS returns for period prior to 1-6-2015 was not empowered to charge fees under S. 234E by way of intimation issued under S. 200A in respect of defaults before 1-6-2015. (AY. 2013-14 to 2015-16)

Medical Superintendent Rural Hospital v. DCIT (2018) 173 ITD 575 (Pune) (Trib.)

S. 234E : Fee – Default in furnishing the statements – No enabling provision to impose fees for late filing of return or statement of TDS prior to 1st June, 2015 – AO had no jurisdiction to levy fees under section 234E if intimation issued prior 1st June, 2015. [S. 200A] 2083

The Assessing Officer issued intimations under section 200A for the assessment years 2013-2014 to 2015-2016 before June 1, 2015. The Commissioner (Appeals) held that the intimation was issued on July 31, 2015, and therefore, it was beyond June 1, 2015. Tribunal held that the amendment to section 200(3) was made only with effect from June 1, 2015. The CIT(A) was not correct in saying that the intimations were issued on July 31, 2015. Referring to the submissions made by Assessee's representative, a copy of intimation issued under section 200A available on record it was evident that they were issued before June 1, 2015. The Assessing Officer had no jurisdiction to levy fee under section 234E. Therefore the fees levied by the Assessing Officer under section 234E while processing the statement of tax deducted at source was beyond the scope of adjustment provided under section 200A. Therefore, such adjustment could not stand in the eye of law. (AY. 2013-2014 to 2015-2016)

A.R.R. Charitable Trust v. ACIT (2018) 66 ITR 69 (Chennai)(Trib.)

2084 **S. 237 : Refunds – Adjustment of refund – Claim for refund was rejected on ground that amount of refund had been adjusted against tax demand relating to subsequent assessment years, in view of fact that notice of demand under section 156 for subsequent years was never served on assessee, impugned order was to be set aside and a direction was to be issued to grant refund to assessee along with applicable rate of interest – Cost of ₹ 1.50 lakhs was levied on the revenue with in four weeks by the Officers from their salaries – Superiors should enter their Annual confidential Reports these lapses and errors – Superiors must initiate the requisite steps and if they include denial of nay promotional or monetary benefits to such officials, then, even such steps and measures be initiated in accordance with law-That is the minimal expectation of this Court. [S. 156]**

Revenue authorities rejected assessee's claim on ground that amount of refund had been adjusted against tax demand relating to subsequent assessment years 2003-04 and 2009-10. Assessee filed instant petition contending that no demand was ever raised in relation to aforesaid assessment years. It was noted that although revenue placed reliance upon copy of notice of demand found in official records, yet there was no evidence on record that such a notice under section 156 had been served on assessee. Thus, there was nothing in records which could attribute knowledge of tax demand to assessee. in view of negligent approach adopted by revenue authorities, impugned order passed by them was to be set aside and a direction was to be issued to grant refund to assessee along with applicable rate of interest. Court also held that Cost of ₹ 1.50 lakhs was levied on the revenue with in four weeks by the Officers from their salaries Superiors should enter their Annual confidential Reports these lapses and errors. Superiors must initiate the requisite steps and if they include denial of any promotional or monetary benefits to such officials, then, even such steps and measures be initiated in accordance with law. That is the minimal expectation of this Court. (AY. 1993-94, 1995-96, 2002-03)

Nu-Tech Corporate Services Ltd. v. ITO (2018) 259 Taxman 183 / 305 CTR 296 / 171 DTR 201 (Bom.)(HC). www.itatonline.org

Editorial : Strictures against DCIT and levy of personal cost of ₹ 1.50 lakhs are expunged (SLP no 48031/2018 dt 1-03-2019) Snajay Jain v. Nu-Tech Corporate Services Ltd. (SC) www.itatonline.org

2085 **S. 237 : Refunds – Refund was adjusted without taking in to consideration amount of advance tax paid – Order was set aside and matter was remanded for fresh disposal.**

Allowing the petition the Court held that, while computing amount of tax arrears, Assessing Officer had not considered amount of advance tax paid in assessment year 2002-03. Accordingly the order was set aside and matter was remanded for fresh disposal. (AY.2015-16)

T.V. Ramanathan (HUF) v. ACIT (2018) 259 Taxman 179 (Mad.)(HC)

2086 **S. 237 : Refunds – Annulment of assessment – Only tax paid by assessee in excess of what was declared by it on its own in return of income would be entitled to be refunded. [S. 4(1), 140A(3), 158BD, 240(b), 244]**

Dismissing the petition the Court held that; when an assessee, who admitted income in his return as total income, is not entitled to retract such admission or go against such

admission, merely because assessment based on such return was subsequently annulled and annulment of assessment, at best, may result in refund of excess tax levied by way of such assessment over and above admitted tax paid. Accordingly only tax paid by assessee in excess of what was declared by it on its own in return of income would be entitled to be refunded.
Dr. Thirupathy Reddy (HUF) v. ACIT (2018) 258 Taxman 177 / (2019) 410 ITR 186 (Mad.) (HC)

S. 237 : Refunds – Duty of the Authority to pass orders on claim of refunds without delay and with in three months from the receipt of the a copy of order. 2087
Allowing the petition the Court held that, it is the duty of the Authority to pass orders on claim of refunds without delay and with in three months from the receipt of the a copy of order. (AY.2015-16)
Aircel Ltd. v. DCIT (2018) 404 ITR 455 / 169 DTR 327 / 304 CTR 630 (Mad.)(HC)

S. 237 : Refunds – Tax deducted at source – It is an obligation cast on revenue to effect refund, without calling upon assessees to apply for refund claim. Revenue was directed to grant refund with interest. 2088
Allowing the petition the Court held that; it is an obligation cast on revenue to effect refund, without calling upon assessees to apply for refund claim. Revenue was directed to grant refund with interest.
Gopalan Thygarajan v. CIT (2018) 253 Taxman 189 (Mad.)(HC)

S. 237 : Refunds – Refund of excess self-assessment tax – No power to condone the delay – Court cannot extend the date – Rejection of application was held to be justified. [S. 119(2)(b) 239, Limitation Act, 1963, S. 5] 2089
Dismissing the petition, that the order issued by the Board showed that it was applicable to the excess tax deducted at source, collected at source and payment of advance tax made under the provisions of Chapters XVII-B, XVII-BB and XVII-C, respectively, where the amount of refund did not exceed Rs. one lakh for any assessment year. Thus, self-assessment was not included in this order issued by the Board. Subsequently on June 9, 2015 the category of self-assessment tax was included in an order made by the Board under S. 119(2)(b) of the Act. Thus, the order came into existence subsequently and the Commissioner had no power to condone delay on the date when the order was made on the application filed by the assessee. Due to the provision like S. 119(2)(b) made in the Act, it could be said that discretionary power was given to the Board to issue such instructions and only after that the assessing authority can use such power. As in the past, at the time when the claim of the assessee was considered, there was no such instruction or order from the Board, such benefit could not be given to the assessee. Thus, no case was made out for interference in the order made by the Commissioner. Whenever there is a special provision in a special enactment fixing the period of limitation the court cannot extend that period and the provisions of section 5 of the Limitation Act, 1963 cannot be applied in those cases. (AY. 2004-05, 2005-06)
Shayona Pulp Conversion Mills P. Ltd. v. CIT (2018) 403 ITR 20 / 303 CTR 220 / 167 DTR 175 (Bom.)(HC)

2090 **S. 237 : Refunds – Revenue to ensure that unblocked amount is paid and credited to assessee's account and interest on refund to be paid till the date of payment not up to date of unblocking.**

HELD by the High Court that unblocking is an internal mechanism and protocol of Revenue and hence it is the legal obligation and duty of the Revenue to make payment. Interest on refund has to be paid till the date of payment and not up to date of unblocking.

Vodafone Mobile Services Limited v. ACIT (2018) 253 Taxman 168 (Delhi)(HC)

2091 **S. 237 : Refunds – CBDT – Excess deduction of tax deduction at source – Delay in disposal of application for refund by CBDT – High Court ccondones delay for making belated TDS refund claim for bonafide reason and directs the AO to decide on merits. [S. 119, 195]**

Allwoing the petition the Court, observed that CBDT had not replied to the assesse and application was still pending. The High Court further observed that if the assesse was correct in pointing out that there was clear excess deduction of tax, the assesse would be liable to refund thereof. Hence, unless the delay was gross or intentional or arising out of inaction or lethargy, the tax mistakenly deposited could not be retained by the government. High Court further held that the CBDT had powers under S. 119 of the Act to condone the delay and would be able to condone the delay. The High Court further held that the issue was pending with the CBDT for a long time and hence High Court itself would condone the delay since the last date of filing refund claim was 31. 03. 2008, and assesse approached the authorities on 15. 12. 2008. Accordingly The High Court has directed the AO to decide the matter on merits at the earliest. (AY. 2005-06)

Multibase India Ltd v. ITO (2018) 163 DTR 493 / 302 CTR 46 (Guj.)(HC)

2092 **S. 237 : Refunds – Assessing Officer was directed to consider and process assessee's representation and dispose of same as expeditiously as possible and refund could not be denied/withheld merely because issuance of notice under section 143(2). [S. 143(1) 143(ID), 143(2), 244A]**

Allowing the petition the Court held that; as per citizen's charter issued by Income Tax Department, in its vision statement, published in 2014, department should issue refund along with interest under S. 143(1) within six months from date of electronically filing returns, therefore, Assessing Officer was directed to consider and process assessee's representation and dispose of same as expeditiously as possible and same could not be denied/withheld merely because issuance of notice under S. 143(2). (AY. 2015-16. 2016-17)

Randstad India (P.) Ltd. v. Dy. CIT (2018) 401 ITR 369 / 252 Taxman 204 / 163 DTR 298 / 301 CTR 337 (Mad.)(HC)

S. 239 : Refund – Limitation – Seized amount – If an assessee obtains an order from the Court that the Dept should refund the seized amount but does not take steps to enforce the order beyond the period of limitation, he is guilty of laches and negligence. He is not entitled to file another Writ for enforcement of the earlier order. Such a litigant does not deserve any relief in the discretionary and equitable jurisdiction of the High Court – Accordingly the Writ petition is dismissed. [S. 132B, Art. 226] 2093

Dismissing the petition the Court held that; if an assessee obtains an order from the Court that the Dept should refund the seized amount but does not take steps to enforce the order beyond the period of limitation, he is guilty of laches and negligence. He is not entitled to file another Writ for enforcement of the earlier order. Such a litigant does not deserve any relief in the discretionary and equitable jurisdiction of the High Court. Accordingly the Writ petition is dismissed.

Kishore Jagjivandas Tanna v. JDIT (2018) 259 Taxman 25 / 172 DTR 73 / (2019) 307 CTR 69 (Bom.)(HC), www.itatonline.org

S. 239 : Refund – Limitation – CBDT – Tax deduction at source – Delay in filing of return,matter was remanded to CIT to consider the genuine hardship being the charitable institution. [S. 12A, 119(2)(b), 139] 2094

Allowing the petition the Court held that, at the stage of considering delay condonation application, the merits of the claim cannot be subject matter of examination, accordingly the application of the applicant was restored to the file of the CIT for fresh disposal. Court also made reference to *Sitaldas K. Motwani v. DG(IT) (2010) 323 ITR 223 (Bom.) (HC)*, dealing with "genuine hardship" the Court observed that "There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. The approach of the authorities should be justice-oriented so as to advance cause of justice. If refund is legitimately due to the applicant, mere delay should not defeat the claim for refund". (AY. 2014-15)

Yash Society v. CIT (2018) 301 CTR 729 (Bom.)(HC)

S. 241 : Refund – Power to with hold in certain cases – Non granting of refund citing issue of notice u/s. 143(2) was held to be not valid. [S. 143(1), 143(2) 143(3)] 2095

Allowing the petition the Court held that; non granting of refund citing issue of notice u/s. 143(2) was held to be not valid. (AY. 2015-16, 2016-17)

Corrtech International P. Ltd. v. DCIT (2018) 401 ITR 355 / 161 DTR 441 / 300 CTR 425 (Guj.)(HC)

S. 242 : Correctness of assessment not to be questioned – Refund – HUF – Delay due to rectification of errors in certificate tax deduction at source – Return should have been treated a valid return and other consequences will follow. [S. 119(2), 239] 2096

Allowing the petition the Court held that; merely because one application was decided by the Commissioner and another by the Chief Commissioner there could not be a distinction. The assessee was not entitled to any interest on refund even if ultimately allowed by the Department till June 8, 2011. If the delay was condoned and the effect

of condonation was that the return filed by the assessee after the delay was treated as a valid return filed on the date of its submission to the Department, the period as envisaged in the proviso to sub-section (2) of S. 143 would have lapsed. Therefore, the return should be treated to have been validly filed from the date of this order for the purpose of scrutiny and completion of assessment, if taken in scrutiny. All consequential provisions for scrutiny, final assessment and limitation would consequentially apply. (AY. 2009-10)

Sahebsingh Bindrasingh Senagar HUF v. CIT (2018) 402 ITR 368 / 164 DTR 218 / 254 Taxman 280 / 302 CTR 480 (Guj.)(HC)

2097 **S. 244 : Refund – Interest on refund – Time of accrual – Assessment on 22-3-1991 – Interest on refund granted on 9-10-2002 – Interest is not assessable in Assessment Year.**

Dismissing the appeal of the revenue the Court held that; the Tribunal found that at the time of original assessment for the assessment year 1988-89, on March 22, 1991, no interest was allowed. The interest, which was originally assessed at ₹ 98,244 and later reduced to ₹ 88,007, was allowed for the first time by order dated October 9, 2002. On the basis of that order, it was accounted by the assessee for the assessment year 1993-94. There was no failure on the part of the assessee, to disclose the interest under section 244(1A) ; since it was received only in the financial year 1992-93 and therefore, the finding of the Tribunal as regards the exclusion of interest, was justified. (AY.1992-93)

CIT v. Malayala Manorama Co. Ltd. (2018) 405 ITR 249 / 171 DTR 254 (Ker.)(HC)

2098 **S. 244 : Refund – Interest on refund – Strictures – The Dept should bring some order and discipline to the aspect of granting refunds. All pending refund applications should be processed in the order in which they are received. It is the bounden duty of the Revenue to grant refunds generated on account of orders of higher forums and disburse the amount expeditiously. In the absence of a clear policy, the Courts may impose interest on the quantum of refund at such rates determined by the Court – Registrar of High Court is directed to forward copy of the order to the PCIT and the Chairperson – Central Board of Direct Taxes. [S. 119]**

Allowing the petitions the Court observed that,we hope and trust that all pending refund applications are processed in the order in which they are received by the Respondents. If refunds are generated on account of orders of Higher Forums, Authorities and Courts, then, it is the bounden duty of the Revenue to grant such refund and disburse the amount expeditiously. Court also observed that,needless to clarify that in the absence of a clear policy, the Courts may then impose interest on the quantum of refund generated either by virtue of Court orders or by virtue of substantive proceedings arising out of refund applications. Either way, it is the Revenue who would have to pay interest on the delayed refund and as such rates determined by the Court. It is in these circumstances that we hope and trust that some order and discipline should be brought as far as this aspect is concerned. Let the copy of this order be forwarded to the Principal Commissioner-3 and the Chairperson – Central Board of Direct Taxes. The needful be done by the Registry officials within two weeks from today. (WP. No. 2460 of 2018, dt. 01.10.2018)

Sicom Ltd. v. DCIT (Bom.)(HC), www.itatonline.org

S. 244A : Refund – Interest on refunds – Entitle to interest on refund of excess self assessment tax paid. 2099

Tribunal held that assessee was entitled to interest under section 244-A on refund of excess self-assessment tax paid. High court affirmed the order of Tribunal following the ratio in *Stock Holding Corporation of India Ltd. v. N.C. Tewari,* CIT 373 ITR 282. (AY. 2003-04)

PCIT v. Bank of India (2018) 100 taxmann.com 105 / 259 Taxman 428 (Bom.)(HC)

Editorial : SLP is granted to revenue ; PCIT v. Bank of India (2018) 259 Taxman 427 (SC)

S. 244A : Refund – Interest on refunds – Search and seizure – Tax dues appropriated from seized cash – Balance to be returned with interest. [S. 132] 2100

Allowing the petition the Court held that when there was no tax liability, and after the order of assessment for assessment year 2011-12, i.e., December 31, 2012, there was no justification at all to retain the balance amount of ₹ 13,51,714. The assessee was entitled to a refund of the amount. He was also entitled to interest as per the Income-tax Act from April 1, 2013, i. e., after three months from the date of order of assessment for the assessment year 2011-12. (AY. 2011-12)

Rajesh Vachhani v. CIT (2018) 408 ITR 94 (Guj.)(HC)

S. 244A : Refund – Interest on refunds – Tax deduction at source – Order of commissioner denying interest on facts is upheld by High Court – Court cannot go into merits of contention unless the order is perverse. [Art.226] 2101

Dismissing the petition the Court held that ; The court had taken note of the fact that the delay was substantial and when the statute clearly specifies that interest need not be paid if the proceedings of refund were delayed for reasons attributable to the assessee, and the Department having refused interest on the basis of a factual finding placing reliance on a statutory provision, there was no reason to interfere in the direction. Once the competent authority had taken such a decision, the court, in a petition under article 226 of the Constitution of India would not go into the merits of the contention, unless the decision was illegal or perverse.

State Bank of Travancore v. CIT (2018) 404 ITR 535 (Ker.)(HC)

S. 244A : Refund – Interest on refunds – Month – Assessee had paid taxes and such taxes were refunded, assessee was to be paid interest at prescribed rate for every month or part of month comprising period from date of payment of tax to date on which refund was granted. If such period is a fraction of a month, the same shall be deemed to be a full month and the interest shall be calculated for the entire month accordingly. [General Clauses Act. [S. 3(35)] 2102

Assessee had paid taxes and such taxes were refunded, assessee was to be paid interest at prescribed rate for every month or part of month comprising period from date of payment of tax to date on which refund was granted. If such period was fraction of month, same should be deemed to be full month and interest should be calculated for entire month accordingly. Therefore, in order to ascertain for how many months assessee would be entitled to receive interest, number of months comprised in period should

have to be determined and term 'month' had to be given ordinary sense of term i.e. 30 days of period and not British calendar month as defined u/s. 3(35) of General Clauses Act. Date on which refund was granted was date of refund voucher/order which was signed and issued on 09.06.2010. AO should verify date of payment of taxes and taking date of grant of refund as 09.06.2010, determine number of months for which interest was payable at prescribed rate of interest and interest so determined was directed to be paid to assessee. Matter set-aside to file of AO Followed *Rajasthan State Electricity Board v. CIT (2006) 281 ITR 274 (Raj.) (HC), CIT v. Arvind Mills Ltd.(ITA No. 2486 of 2009 dt. 13.09.2011) (Guj)* (HC).(AY.2005-06)
Rajasthan State Industrial Development & Investment Corporation Ltd. v. ACIT (2018) 193 TTJ 18 (UO) (Jaipur)(Trib.)

2103 **S. 244A : Refund – Interest on refunds – Less than 10 per cent of total tax determined on regular assessment-Not entitle to interest on refunds.**
Dismissing the appeal of the assessee the Tribunal held that; refund on account of excess TDS and advance tax was less than 10 per cent of total tax determined on regular assessment, hence not entitle to interest on refunds. (AY. 1991-92)
Indian Aluminum Company Ltd. v. DCIT (2018) 170 ITD 287 (Mum.)(Trib.)

2104 **S. 245 : Refund – Set off of refunds against tax remaining payable – Adjustment of the refund – Not following the ratio of jurisdictional High Court order – Order is set aside.**
Allowing the petition the Court held that; adjustment of the refund without following the ratio laid down by jurisdictional in *Hindustan Unilever Ltd. v. Dy CIT (2015) 377 ITR 281 (Bom.)(HC)* and also speaking order is set aside. Court directed the respondent to follow the principle of natural justice and pass the order with in five weeks. (AY. 2005-06)
Vodafone India Ltd. v. DCIT (2018) 165 DTR 294 (Bom.)(HC)

2105 **S. 245BA : Settlement Commission – Chairman – Power – Jurisdiction – These Petitions have been filed challenging a somewhat curious and unforeseen development-We do not know in what circumstances the Chairman flew down to Mumbai and invited the members for discussion in relation to some cases or related issues – It would be highly risky if such discussions in relation to judicial orders and judicial matters are held in a close-door meeting or in the privacy of the chambers of the members of the Settlement Commission-There is a uncalled for interference in judicial proceedings and none including the Chairman can direct a particular course of action to be taken or a particular order being passed in pending judicial proceedings. Court also observed that,to avoid an allegation of the nature made in these Writ Petitions, the Chairman would be well advised not to chart this course hereafter. We leave the matter entirely to his wisdom and say nothing more. Court also held that, apprehensions of assessee of adverse order, court will not interfere in ending proceedings. Assessee at liberty, if adverse order is passed to challenge it. [Art, 226, 227]**
The apprehension of the Petitioner in Writ Petition (L) No. 2769 of 2018 and Writ Petition (L) No. 2770 of 2018 is that they would not be treated fairly by the Settlement Commission in the pending proceedings, more-so in the light of the events that have

transpired pursuant to a visit by the Chairman of the Settlement Commission in Mumbai on 2nd August, 2018. Court held that, these Petitions have been filed challenging a somewhat curious and unforeseen development. We do not know in what circumstances the Chairman flew down to Mumbai and invited the members for discussion in relation to some cases or related issues. It would be highly risky if such discussions in relation to judicial orders and judicial matters are held in a close-door meeting or in the privacy of the chambers of the members of the Settlement Commission. There is a uncalled for interference in judicial proceedings and none including the Chairman can direct a particular course of action to be taken or a particular order being passed in pending judicial proceedings. Referring various case laws the Court observed that, the guarantee of justice is ensured when there are public hearings and open sittings. In judicial matters and proceedings of that nature, the discussion in open Court, after questioning the respective parties/their advocates or their representatives ensures not only fairness but purity and sanctity of Judicial process. It is not that everybody gets an opportunity to preside over as a Judge or Member of quasi judicial/judicial Commission. The more the power, the greater the responsibility. Here the power comes with a trust. Litigants and Parties trust the Judges and Members of judicial bodies and Commissions only because they are sure that they will not decide cases going by somebody's interference or influence. Members of Judicial bodies have to act without fear or favour, affection or ill-will. They have to uphold the Constitution and the Laws. The guarantee or assurance of justice is above everything and that is ensured by the Constitution of India. If independence and impartiality of a Judge is questioned, then, that sets the above guarantee and assurance at naught. We would remind all concerned of these salutary principles emerging from the Judgments of the Hon'ble Supreme Court. They have been summarised and referred in a recent order of this Court passed on 8th March, 2018 in three Writ Petitions being Writ Petition No. 13488 of 2017 *(Suresh Hareshwar Naik & Ors. v. The State of Maharashtra & Ors.); WP. No. 13353 of 2016 (Robert Marsalin Dias & Ors. v. The State of Maharashtra & Ors.) and WP No. 2759 of 2011 (Jagannath Kusaji Sawant v. State of Maharashtra & Ors.).* Court also observed that,to avoid an allegation of the nature made in these Writ Petitions, the Chairman would be well advised not to chart this course hereafter. We leave the matter entirely to his wisdom and say nothing more. Court also held that, apprehensions of assessee of adverse order, court will not interfere in ending proceedings. Assessee at liberty, if adverse order is passed to challenge it. The Writ Petitions are disposed of.

Raghuleela Builders Pvt. Ltd. v. ITSC (2018) 407 ITR 721 / 171 DTR 273 (Bom.)(HC), www.itatonline.org

Radius Estates And Developers P. Ltd. v. ITSC (2018) 407 ITR 721 / 171 DTR 273 (Bom.)(HC)

S. 245C : Settlement Commission – Settlement of cases – Finding of the settlement Commission that disclosure of income was not full and true being finding of fact – High Court cannot interfere in writ proceedings. [S. 245D, Art, 226] 2106

Dismissing the petition the Court held that; Finding of the settlement Commission that disclosure of income was not full and true being finding of fact, High Court cannot interfere in writ proceedings.

Anbuchezhian v. ITSC (2018) 402 ITR 471 / 162 DTR 161 / 253 Taxman 253 / 301 CTR 136 (Mad.)(HC)

2107 **S. 245D : Settlement of cases – Voluntary offer of income – Commission computed assessee's aggregate income which was neither objected by assessee nor by Department – Said suo motu offer in no way detracts from character of full and true disclosure – Subsequently, all issues in applicant's case was settled – Held, it was not open to Revenue to challenge correctness of facts recorded in order by Settlement Commission before this Court, particularly when it was not even remotely case of Revenue that consent was given/made on a wrong appreciation of law. [S. 245C]**

Dismissing the petition the Court held that ;It is not open to the Revenues to challenge the correctness of facts recorded in the order by the Settlement Commission before this Court, particularly when it is not even remotely the case of the Revenue that the consent was given/made on a wrong appreciation of law. The remedy, if any, would have been to move the Settlement Commission to correct, what according to the Revenue, was an incorrect recording in the impugned order. Thus, we see no reason to interfere. Besides, the contention urged on behalf of the Revenue that the concession be ignored in view of the conduct of the Revenue is not even averred to in the petition as filed and/or that the concession made was contrary to law. Revenues cannot challenge the correctness of facts recorded in the order by the Settlement Commission before High Court, when it is not even remotely the Revenue's case that the consent was given/made on a wrong appreciation of law. (dt. 21-06-2018) (AY.2014-15)

PCIT v. ITSC (2018) 172 DTR 110 (Bom.)(HC)

2108 **S. 245D : Settlement Commission – Unexplained money – Application for Offering the Income of ₹ 27.05 crores – Accepted at ₹ 30 crores – Order of settlement commission is held to be valid. [S. 69C, 153A, 245C]**

Dismissing the appeal of the revenue the Court held that, in response to notice issued under section 153A, assessee filed its return offering ₹ 4.5 crores for taxation. Assessee thereafter filed an application under section 245C before Settlement Commission offering ₹ 27.5 crores for taxation. After considering material on record, Commission settled concealed income of assessee for all block years at ₹ 30 crores. Revenue filed an appeal before High Court contending that Commission should have made addition to assessee's income in respect of illegal bribe payments made through UPDA to various officials and politicians. High Court held that since revenue failed to establish any linkage between material seized from assessee's premises and those from premises of UPDA in respect of aforesaid payments, order passed by Settlement Commission did not require any interference.

CIT v. Radio Khaitan Ltd. (2017) 83 taxmann.com 375 (Delhi)(HC)

Editorial : SLP dismissed on merit, CIT v. Radio Khaitan Ltd. (2018) 259 Taxman 85 (SC)

2109 **S. 245D : Settlement Commission – If Settlement Commission is unable to form a decisive opinion to give a definitive finding for rejection of settlement application after initial and preliminary hearing, proceeding to second stage, in which more in-depth scrutiny and verification takes place is the only option – Order of Settlement Commission rejecting the petition was set aside and directed to decide on merits. [S. 132, 245C(1), 245D(2)(C)]**

Assessee a partnership firm was engaged in production and trading of mustard oil, mustard seeds, oil cakes etc. A search and seizure operation under section 132 was

conducted and cash and jewellery was seized. Incriminating documents in form of loose papers, registers, diary were also seized. Application was filled under section 245C(1) before the Settlement Commission. The Settlement Commission rejected the settlement application and held that assessee had failed to establish sources of undisclosed income, extent and manner in which such income was derived. The statement of affairs were lacking credible evidence and were unreliable.

The pre-condition for invoking jurisdiction of the Settlement Commission are that the provisions do not postulate revision of the undisclosed income. Declaration contemplated under section 245C(1) is in the nature of warranty that a disclosure made must be true and fair disclosure.

Thus, Settlement Commission held that conditions prescribed in section 245C(1) were not fulfilled. The High Court held that opinion formed by Settlement Commission in case of rejection under section 245D(1) should be conclusive and final and not tentative or prima facie. If Settlement Commission is unable to form a decisive opinion to give a definitive finding for rejection of settlement application after initial and preliminary hearing, proceeding to second stage is the only option. Further, the Settlement Commission should have as per statutory mandate called Principal Commissioner/ Commissioner to submit their report as second stage examination under section 245D(2C) in which in-depth scrutiny and verification takes place, notwithstanding earlier preliminary scrutiny under section 245D(1). Thus, the petition was allowed and impugned order of the Settlement Commission rejecting the settlement applications was set aside. (AY. 2010-11 to AY. 2015-16)

R.T. Industries v. ITSC (2018) 98 taxmann.com 236 / 170 DTR 281 / 305 CTR 1 / 103 CCH 4 (Delhi)(HC)

S. 245D : Settlement Commission – Addition was made by extrapolating the actual production vis a vis the reported production of the current year to the preceding years – Addition on the grounds of sufficient evidence of unaccounted production confirmed- Entire process to be seen for considering 80IB deduction – Writ petition was dismissed on the ground that the issue was very factual and there being no perversity.[S. 132, 153A, 80IB, 245D(4), Art.226] 2110

Consequent to search operations, the assessee approached settlement commission. Based on evidence such as registers which showed the existence of unaccounted production, actual employees exceeding the employees in the books and the statements of such employees that there is unaccounted production, an addition was made by extrapolating the actual production vis a vis the reported production of the current year to the preceding years. The assessee challenged the settlement order by way of a writ. Dismissing the assessee's ground, the High court held that there was sufficient evidence with the settlement commission to come to the conclusion that there was unaccounted production and considering the limited scope of review of the order of the settlement commission by way of a writ, no interference was called for. The second issue arising out of the settlement commission's order was that it held that the assessee's manufacturing process could be divided into three stages and the first stage did not result in any new product. It was therefore held that the expenditure pertaining to stage 1 could not be allowed under section 80IB. The High Court overturned such findings

of the Settlement Commission and held that the entire manufacturing process was one activity and it was wrong for the Settlement Commission to dissect such activity into stages and disallow expenses pertaining to stage 1. The third issue challenged before the High Court was the Commission's disallowance of expenditure on director's higher education abroad. The High Court held that the issue was very factual and there being no perversity, there was no cause for interference. (AY. 2003-04 to 2009-10)
Sumilon Industries Ltd. v. ITSC (2018) 168 DTR 97 / 99 CCH 112 (Guj.)(HC)

2111 **S. 245D : Settlement Commission – Application – Rejection of an application on the ground that the income disclosed belonged to another entity was a finding of fact and did not call for interference by the High Court. [S. 245C, Art.226]**
A search was carried out, pursuant to which, the petitioner, who was a key person in the management of a group of companies engaged in real estate development, approached the Settlement Commission. The application was rejected by the Commission on the ground that the income declared by the Petitioner did not belong to him, but belonged to the entities of the group, which had not declared such income. The petitioner filed a writ before the High Court. Rejecting such writ, the High Court held that though the books of accounts of the group entities were maintained at the premises of the petitioner, but that did not mean that income received by such entities belonged to the petitioner. It was further held that this was a purely factual matter and therefore did not call for an interference by the High Court. (AY. 2009-10 to 2013-14)
Vishwa Nath Gupta v. PCIT (2018) 82 taxmann.com 382 / 304 CTR 673 (Delhi)(HC)

2112 **S. 245D : Settlement Commission – When the Settlement commission passed the order following due process of law – The order passed by the Settlement Commission does not require interference – Department cannot be said to be aggrieved by such order – Revenue cannot compel the Settlement Commission to reopen the earlier years by passing rectification order – Petition is dismissed. [S. 154, 245C, 245D(4), 245HA, Art.226]**
Dismissing the writ petition of the revenue the Court held that considering the scheme of S. 245HA and the object and purpose of proceedings before the Settlement Commission under S. 245 the petition at the instance of the Revenue challenging the order passed by the Settlement Commission not considering the settlement application for all the years for which the application was submitted was not required to be considered further. The Settlement Commission had passed the final order under section 245D(4) with respect to some of the years for which the application was made. Only thereafter, the Department submitted the rectification application which was rightly rejected by the Settlement Commission. Even thereafter, there was no specific prayer to quash and set aside the order passed by the Settlement Commission on the merits. On the merits it could not be said that the order suffered from any procedural lapse or that the principles of natural justice had been violated. The order passed by the Settlement Commission did not require interference. Department cannot be said to be aggrieved by such order. Revenue cannot compel the Settlement Commission to reopen the earlier years by passing rectification order. Petition is dismissed. (AY. 1999-2000 to 2004-05)
CIT v. ITSC (2018) 409 ITR 626 / 258 Taxman 36 / (2019) 307 CTR 658 / 174 DTR 391 (Guj.)(HC)

S. 245D : Settlement Commission – Rejection of application on the basis of subsequent report of commissioner – Allegation of Commissioner is not rebutted – Rejection of application is held to be justified. [S. 245C, 245D(2C)] 2113

Dismissing the petition the Court held that based on the report submitted by the Revenue and in view of the conduct and inability of the assessee to satisfy the Commission with regard to the deficiency in the disclosure of contents in pen drives and hard disc which contained accurate figures, would certainly show that the Commission was fully justified in holding against the assessee regarding full and true disclosure. When the Settlement Commission was fully satisfied that there was suppression of materials and that there was no valid and true disclosure of income, even while hearing the matter at the stage of section 245D(2C), it had ample power to reject the application at that stage itself. (2010-11 to 2016-17)

Abdul Rahim v. ITSC (2018) 408 ITR 467 / 305 CTR 69 / 170 DTR 145 (Mad.)(HC)

S. 245D : Settlement Commission – Application – Rejection of application only on technical ground stating that the applicant has not mentioned the subsequent receipt of refund is held to be not justified – The order was set aside and the matter was remanded to the Settlement Commission for fresh consideration. [S. 245C, Art. 226] 2114

Allowing the petition the Court held that the Income-tax Department did not dispute the fact that the grant of refund was brought on record before the Settlement Commission only by supplementary report dated February 13, 2018, three days prior to the hearing of the application. The applicant submitted that he had claimed adjustment of the refund in respect of the additional tax liability arising in the application filed before the Commission and the sum was claimed inadvertently and stated that it was an unintentional one and that he may be pardoned. Considering the facts and circumstances of the case and more particularly, that the Department itself was not aware of the fact that the refund had been processed and granted on October 25, 2016, when it filed a report dated February 5, 2018 and it was brought on record only by way of a supplementary report dated February 13, 2018, it was inadvertently omitted by the assessee and the assessee having pleaded ignorance and inadvertence and sought for pardon, the Settlement Commission could not have treated the assessee's case as one of making a false claim of refund. The Settlement Commission did not conduct an enquiry to satisfy itself that the stand taken by the Principal Commissioner by way of supplementary report could be a valid ground to come to a conclusion that the assessee had made a false claim on the refund due. The rejection of application was not justified. The order was set aside and the matter was remanded to the Settlement Commission for fresh consideration. (AY. 2016-17)

Dr. Prathap Chandra Reddy v. ITSC (2018) 408 ITR 222 (Mad.)(HC)

2115 **S. 245D : Settlement Commission – Pendency of assessment – Once the assessment is made by the Assessing Officer by passing the order of assessment, the case can no longer be stated to be pending. An application for settlement would be maintainable only if filed before that date. The date of dispatch or service of the order on the assessee would not be material for such purpose Matter – Precedent – Settlement Commission must follow decision of jurisdictional High Court – Case remanded to Settlement Commission. [S. 245C]**

Allowing the petition of the revenue the Court held that the High Court in the case of Shalibhadra Developers (2017) 8 ITR.OL355 (Guj) (HC) held that for the purpose of application under section 245C(1) of the Income-tax Act, 1961, a case would be pending only as long as the order of assessment is not passed. Once the assessment is made by the Assessing Officer by passing the order of assessment, the case can no longer be stated to be pending. An application for settlement would be maintainable only if filed before that date. The date of dispatch or service of the order on the assessee would not be material for such purpose. As an authority subordinate to the High Court the duty of the Commission would always be to apply the law as laid down by the High Court. It was not open for the Settlement Commission to disturb such ratio of the judgment of the High Court. If the Settlement Commission had noticed a judgment of a larger Bench of the same High Court or a judgment of the Supreme Court which, in an identical situation, laid down law to the contrary, it was open for the Settlement Commission to record that the judgment of the High Court in the case of Shalibhadra Developers was rendered per incuriam. Except for this proposition, it was simply not open for the Settlement Commission to disturb the conclusions of the High Court on law points reached after detailed consideration. On the dispute about the orders of assessment being actually passed on December 26, 2017 itself or not, the Commissioner had given no finding. Matter remanded. (AY.2010 11-2014-15)

CIT v. Vallabh Pesticides Ltd. And Another (2018) 408 ITR 54 / (2019) 173 DTR 356 / (2019) 307 CTR 646 (Guj.)(HC)

Editorial : SLP is granted to the assessee. Vallabh Pesticides Ltd. v. CIT (2018) 407 ITR 27 (St)(SC)

2116 **S. 245D : Settlement Commission – Finding of failure by assessee to make true disclosure of undisclosed income – The limited jurisdiction of judicial review while examining the correctness of the order of the Settlement Commission is a well settled principle – Rejection of application is held to be justified. [S. 245C]**

Dismissing the petition the Court held that the multiple disclosures made by the assessee during the settlement proceedings would show that the assessee had scant regard for truth. Several revised settlement offers were made by the assessee. Each time the assessee shifted his stand, either on the quantum of undisclosed income or its source. The Settlement Commission rightly held that there was lack of true and full disclosure and total flip flop on the part of the assessee while making multiple disclosures. The settlement application was rightly rejected. Court also observed that the limited jurisdiction of judicial review while examining the correctness of the order of the Settlement Commission is a well settled principle. The order of the Settlement

Commission would be subject to interference only if it suffers from mala fides or is opposed to the principles of natural justice or is passed against the provisions of the Income-tax Act, 1961. (AY. 1991-92 to 1994-95)
Maheshbhai Shantilal Patel v. ITSC (2018) 405 ITR 270 (Guj.)(HC)

S. 245D : Settlement Commission – Failure to make full and true disclosure of undisclosed income with regard to property and bank accounts held abroad – Rejection of application is held to be valid. [S. 132(4), 245C] 2117
Dismissing the petition the Court held that; it is inherent for every assessee invoking and filing an application for settlement to make full and true disclosure of undisclosed income and on this there is no lis or argument. On facts though the assessee submitted that he was not beneficial owner of said two foreign accounts and property at London was owned by his brother-in-law, however, failed to produce any evidence in support of such submission. Further, documents, i.e., KYC details in account opening form filed with bank at Singapore, as part of banking procedures applicable, specifically and categorically mentioned that assessee was a beneficial owner. Accordingly Income tax settlement Commission rightly rejected settlement application filed by assessee as invalid. (AY. 2008-09 to 2014-15)
Moin A Qureshi v. CIT (2018) 257 Taxman 406 / 170 DTR 169 / 305 CTR 37 / (2019) 412 ITR 243 (Delhi)(HC)

S. 245D : Settlement Commission – No power to waive tax or interest which are statutorily payable – Settlement Commission is vested with power to rectify mistake – Interest is payable up to date of order of Settlement Commission. [S. 154, 234A, 234B, 245D(4), 245F(1)] 2118
Allowing the appeal of the revenue against the single Judge in a Writ petition filed by the assessee against the order of Settlement Commission; the Court held that; (i) that the Settlement Commission had rightly found that a later decision of the Supreme Court which declared the correct legal position rendered an order passed earlier erroneous. The interest under section 234B was to be charged up to the date of order under section 245D(4). The order of the Settlement Commission that the assessee would be entitled to waiver of interest leviable under section 234A, that there was no case for waiver of interest leviable under section 234B and that such interest should be charged up to the date of the order of the Settlement Commission under section 245D(4) did not warrant interference, more so, in view of the remand by the Supreme Court. There was no infirmity in the order of the Settlement Commission which called for interference.
(ii) That the Settlement Commission had the power to rectify an order. The powers under section 154 could be exercised by the Settlement Commission in addition to those specifically provided under Chapter IX-A. Section 245F(1) conferred on the Settlement Commission all the powers which were vested in an authority. The power of the Commission to rectify an apparent mistake under section 154 included wide power to amend the order, which had the effect of enhancing an assessment or increasing the liability of the assessee. (AY. 1992-93 to 1995-96)
UOI v. DR. L. Subramanian and Another (2018) 407 ITR 411 / 257 Taxman 343 / (2019) 173 DTR 275 / 307 CTR 676 (Mad.)(HC)

2119 **S. 245D : Settlement Commission – Broker – Search and seizure – Failure to substantiate that entire unaccounted income from seized documents did not belong to him in respect of off market commodity transactions and hedging transaction – Rejection of application was held to be justified. [S. 69A, 153A, 245C]**

Dismissing the petition the Court held that, failure of the assessee to substantiate that entire unaccounted income from seized documents did not belong to him in respect of off market commodity transactions and hedging transaction. Accordingly the rejection of application by the Settlement Commission was held to be justified. (AY. 2007-08 to 2013-14)

Manojkumar Babulal Agarwal v. Secretary, ITSC (2017) 83 taxmann.com 139 / (2018) 406 ITR 481 / (Guj.)(HC)

Editorial : SLP is granted to the assessee, Manojkumar Babulal Agarwal v. Secretary, ITSC (2018) 255 Taxman (2018) 255 Taxman 170 (SC)/ 403 ITR 311 (St)

2120 **S. 245D : Settlement Commission – Settlement Commission does not have power to rectify, review or re-examine order passed in the rectification application. [S. 154, 234B, 245C]**

Dismissing the petition of revenue the Court held that; Settlement Commission does not have power to rectify, review or re-examine order passed in the rectification application

PCIT v. Frontline Business Solutions (P.) Ltd. (2018) 252 Taxman 217 (Delhi)(HC)

2121 **S. 245HA : Settlement Commission – Income-tax Settlement Commission (ITSC) went wrong in rejecting assessee's settlement petition treating it as having abated under S. 245A(1)(iv) without any finding that the delay was attributable to the assessee. [S. 245C, 245D]**

The High Court held that :

(i) Relying on decision of Bombay High Court in *Star Television News Ltd. v. UOI & Ors. (2009) 317 ITR 66 (Bom.)(HC)(225 CTR 140)* as approved by the Supreme Court in *UOI v. Star Television News Ltd. (2015) 373 ITR 578 (SC)* if the proceedings were delayed due to reasons attributable to the applicants, the provision for abatement would apply but not otherwise

(ii) ITSC to come to a conclusion whether assessee had deposited the tax or was short of doing it.

(iii) ITSC to examine the fact that the assessee's initial disclosure and further disclosures made nearly four years later were of additional sum in the light of Supreme Court's judgement in the case of Ajmera Housing Corporation v CIT (2010) 326 ITR 642 (SC)

M. Kantilal & Co. v. ITSC (2018) 256 Taxman 216 / (2019) 411 ITR 542 (Guj.)(HC)

M. Kantilal & Exports v. ITSC (2018) 256 Taxman 221 / (2019) 411 ITR 542 (Guj.)(HC)

S. 245I : Settlement Commission – Conclusive – Order passed by Settlement Commission under S. 245D(4) shall be conclusive as to matter covered therein and no matter covered by such order shall be reopened in any proceeding under Income tax Act or under any other law for time being in force. [S. 245C, 245D(4), 245E] 2122

Allowing the appeal of the assessee the Tribunal held that; Order passed by Settlement Commission under S. 245D(4) shall be conclusive as to matter covered therein and no matter covered by such order shall be reopened in any proceeding under Income tax Act or under any other law for time being in force, accordingly the order of CIT(A) was set aside. (AY. 2004-05)

Shree Ganpati Synthetics (P.) Ltd. v. ACIT (2018) 168 ITD 357 (Asr)(Trib.)

S. 245N : Advance rulings – Transaction includes also proposed transaction – Maintainability of application cannot be raised at the time of hearing of application – Duty of the Authority to look in to all aspects of questions posed for its consideration, proceedings on the presumption that one part of agreement has no bearing on other is held to be not tenable. [S. 245S(1), 245R] 2123

AAR held that the very purpose of setting up the Authority for Advance Rulings is to give a ruling in advance to remove uncertainty in the mind of an applicant and eliminate the possibility of dispute regarding the tax issues surrounding a proposed or intended transaction, even before the transaction or a dispute occurs. When the provisions of S. 245N(a)(i) of the Income tax Act, 1961 are read with S. 245S(1) it becomes clear that not only a "transaction" but also a "proposed transaction" on which ruling has been sought would get covered. Maintainability of application cannot be raised at the time of hearing of application. Duty of the Authority to look in to all aspects of questions posed for its consideration, proceedings on the presumption that one part of agreement has no bearing on other is held to be not tenable.

Saudi Arabian Oil Company, In Re (2018) 405 ITR 83 / 303 CTR 225 / 167 DTR 185 (AAR)

S. 245R : Advance rulings – Capital gains – Application for advance ruling could not be rejected merely because it involved computation of capital gains as computation of capital gains is embedded in concept of valuation and question pertained to legal admissibility of transaction and not of any valuation – DTAA-India – Mauritius. [Art. 13(4)] 2124

Department has raised the objection regarding the maintainability of the application filed by assessee taking a view that question raised involved valuation and determination of fair market value of property and hence application was barred under clause (ii) of proviso to section 245R(2). AAR held that application for advance ruling could not be rejected merely because it involved computation of capital gains as computation of capital gains is embedded in concept of valuation and question pertained to legal admissibility of transaction and not of any valuation.

Worldwide Wickets In, re (2018) 254 Taxman 222 / 166 DTR 326 / 303 CTR 107 (AAR)

2125 **S. 246 : Appeal – Deputy Commissioner (Appeals) – Appealable orders – Order charging interest u/s. 154 was held to be appealable. [S. 154, 220(2), 246A]**
Allowing the appeal the Court held that; Order charging interest u/s. 154 was held to be appealable. (AY. 1989-90)
Televista Electronics Ltd. v. CIT (2018) 400 ITR 36 / 165 DTR 163 (Delhi)(HC)

2126 **S. 246A : Appeal – Commissioner (Appeals) – Appealable orders – Income from other sources – Cash credits – Assessee filing writ petition – Writ Court interpreting statutory provisions in favour of revenue – Assessee cannot file statutory appeal thereafter. [Art 226]**
Before the Court the counsel for the assessee submitted that the assessee would approach the appellate authority, but the adjudication be untrammelled to so efface the declaration made by the learned single judge. Court held that appellate powers are not a weapon to obliterate a perfectly legal and reasonable construction given to the provisions in a statute on a writ petition. Having opted to challenge an order on the ground that a proceeding is totally without jurisdiction, when it is answered against the assessee, he cannot seek the luxury of a fresh consideration on the very same aspect by the subordinate authority. That would be waste of judicial time and an abuse of process.
Sunrise Academy of Medical Specialities (India) P. Ltd. v. ITO (2018) 409 ITR 109 / 167 DTR 233 / 257 Taxman 373 / 304 CTR 195 (Ker.)(HC), www.itatonline.org
Editorial : Affirmed by division Bench, Sunrise Academy of Medical Specialities (India)Private Limited v. ITO (2018) 169 DTR 65 / 304 CTR 190 (Ker.)(HC)

2127 **S. 246A : Appeal – Commissioner (Appeals) – Filed before wrong authority – Appeal for AY 2015-16 was filed before wrong authority i.e. Ayakar Seva kenda [ASK] instead of CIT(A)]-CIT(A) to entertain the appeal filed (on merits) along with stay applications and pass orders on stay-Demand to be kept in abeyance till CIT(A) passed the relevant orders-Matter remanded.**
On Writ filed, the High Court instructed the assessee to file appeal for AY 2015-16 before the CIT(A) (which was earlier filed with Ayakar Sevakendra (ASK) within ten days from receipt of High Courts order and CIT(A) to entertain it on merits, without law of limitation, and dispose off such appeal along with the other pending appeal for AY 2012-13 and stay applications; in the mean while the demand to be kept in abeyance. (AY 2012-13, 2015-16)
G.R.D. Trust v. DCIT (E) (2018) 255 Taxman 121 (Mad.)(HC)

2128 **S. 246A : Appeal – Commissioner (Appeals) – Appealable orders – Deduction at source – Order determining amount of tax deduction at source is appealable order – Tribunal has failed to consider S. 248 of the Act therefore suffers from infirmity and is per incuriam – Matter set aside to decide in accordance with law. [S. 195(2), 248, 254(1)]**
Allowing the appeal of the assessee the Court held that, order determining amount of tax deduction at source is appealable order. Tribunal has failed to consider S. 248 of the Act therefore suffers from infirmity and is per incuriam. Accordingly the matter set aside to decide in accordance with law. (AY. 2006-07)
Bangalore International Airport Ltd. v. ITO (IT) (2018) 257 Taxman 148 (Karn.)(HC)

S. 246A : Appeal – Commissioner (Appeals) – Strictures – The total callous, negligent and disrespectful behaviour shown by the Departmental authorities in this Court should not be tolerated at all. It is this kind of lack of judicial discipline which if it goes unpunished, will lead to more litigation and chaos and such public servants are actually a threat to the society. Commissioner Service tax (Appeals) should pay cost of ₹ 1 lakh from his personal funds. 2129

The petitioner-assessee may now approach the concerned Commissioner with a fresh request to consider the request of refund in accordance with law and in terms of the order passed by the Tribunal on 23.03.2017 and the said concerned officer will pass appropriate orders, granting the refund after verifying the facts within a period of three months from today. (WP NO.37514/2017 (T-RES), dt. 22.10.2018)

XL Health Corporation India Pvt. Ltd. v. UOI (Karn.)(HC), www.itatonline.org

S. 246A : Appeal – Commissioner (Appeals) – Non filing of appeal in electronic form – Appeal cannot be dismissed on Technical grounds during changeover period. 2130

The assessee filed its appeal in manual form and such appeal had been filed within the prescribed time under the Act. Therefore, merely because the assessee had not filed the appeal in electronic form, the assessee's appeal could not be dismissed on technical grounds that too during the transition period.

During the transition period the provisions of any notification or circulars mandating assessees to follow certain instructions should not be strictly applied. When technicalities and substantial justice are pitted against each other, substantial justice deserves to prevail over technicalities. The CIT(A) directed to admit the appeal filed by the assessee and also to condone delay in filing such appeal in electronic format. (AY. 2010-2011)

Asterix Reinforced Ltd. v. ITO (2018) 64 ITR 79 (SN) (Mum.)(Trib.)

S. 246A : Appeal – Commissioner (Appeals) – Appealable orders – The assessment order cannot be merged with reassessment order as both are two separate orders. [S. 143(3), 147] 2131

On appeal before the Tribunal, it was held that the order u/s. 143(3) and order u/s. 143(3) r.w.s. 147 were two separate orders and the submission of the assessee that the order 143(3) should be merged with order u/s. 143(3) r.w.s. 147 could not be accepted. In the present appeal, the assessee had neither raised grounds nor challenged the additions in the order u/s 143 r.w.s. 147. In the result the appeal filed by the assessee as well as revenue was dismissed. (AY. 2009-10)

Rajdhani Systems and Estates P. Ltd. v. ACIT 61 ITR 664 (Cuttack)(Trib.)

S. 249 : Appeal – Commissioner (Appeals) – Form of appeal and limitation – Delay of 231 days – Affidavit was filed explaining the delay – Revenue has not disputed the correctness of the affidavit – Delay was condoned – Matter remanded to Tribunal to decide on merits. 2132

Allowing the appeal of the assessee the Court held that there is no any such gross negligence on the part of the appellant especially in the light of the reasons assigned for filing the appeal belatedly, which have not been controverted by the revenue.

Therefore, the matter should not be shut down on technicalities and a liberal approach should be taken bearing in mind the reasons assigned by the appellant, as the assessee is a joint venture company controlled by the Government of Tamil Nadu and its DCEO, who is invariably in the cadre of IAS Officer, is being nominated by the Government and he has to take a decision to file an appeal. The appellant has submitted that in the assessee's own case for the assessment years 1995-96, 1996-97 and 2001-02, a Division Bench of this Court, decided the very same issue in favour of the assessee. In the result, the above tax case appeal is allowed, the substantial questions of law are answered in favour of the assessee and the order passed by the Tribunal is set aside. The matter is remanded to the Tribunal to take a decision on the merits of the case. (AY. 1997-98)
Elnet Technologies Ltd. v. Dy. CIT (2018) 259 Taxman 593 (Mad.)(HC)

2133 **S. 249 : Appeal – Commissioner (Appeals) – Form of appeal and limitation – Delay in filing of appeal electronically was to be condoned by CIT(A) where such delay was caused due to technical issues and lack of knowledge regarding e-filing procedure.**
Assessee filed an appeal before the CIT(A) manually within time as per the old provisions but belated electronically as necessitated in Notification No. 5 of 2016 dt. 6th April, 2016. CIT(A) dismissed the appeal ex-parte in limine since appeal filed beyond the extended period as specified in the said notification. The Hon'ble Tribunal noted that the earlier appeal filed by the assessee manually on was well within time and thus, directed the CIT(A) to decide the appeal of the assessee on merits after condoning the delay, if any, in filing the appeal electronically since it was the first year when the provisions for filing the appeal were changed and it was directed to file electronically, the hardship faced by the assessee was also explained before the CIT(A) that the delay was occasioned due to technical issue and lack of knowledge regarding the duly introduced e-filing procedure.
Gurinder Singh Dhillon v. ITO (2018) 194 TTJ 120 / 166 DTR 274 (Delhi)(Trib.)

2134 **S. 249 : Appeal – Commissioner (Appeals) – E-filing of appeal – Appeal filed in manual form cannot be dismissed – CIT(A) is directed to condone the delay in filing the appeal in electronic format and to decide the issue on merits [S. 246A]**
Tribunal held that Appeal filed in manual form cannot be dismissed on technical grounds during transition period. CIT(A) is directed to condone the delay in filing the appeal in electronic format and to decide the issue on merits.(AY. 2010-11)
Asterix Reinforced Ltd. v. ITO (2018) 64 ITR 79 (SN) (Trib.)(Mum.)

2135 **S. 249 : Appeal – Commissioner (Appeals) – Form of appeal and limitation – E-filing of appeal is not applicable to order passed prior to 1-3-2016. [S. 246A]**
Allowing the appeal of the assessee the Tribunal held that, E-filing of appeal is not applicable to order passed prior to 1-3-2016. CIT(A) was directed to admit the appeal and pass an order on merits. (Notification no SO. 637 (E)[No. 11/2016 (F. NO 149/150 /2015-TPL), dated 1-03-2016) (AY. 2009-10)
Ashraf Aziz Kasmani v. ITO (2018) 170 ITD 230 / 66 ITR 301 (Mum.)(Trib.)

S. 249 : Appeal – Commissioner (Appeals) – Form of appeal and limitation – e-filing of appeals before CIT(A) w. e. f. 1-04-2016 – Appeal filed in paper format should be permitted to make good the defeat and file an appeal electronically-Appeal cannot be rejected on technical grounds. Delay in filing the appeal is condoned and CIT(A) is directed to decide the issue on merits. [R. 45] 2136

Allowing the appeal of the assessee, the Tribunal held that, appeal filed in paper format should be permitted to make good the defeat and file an appeal electronically. Appeal cannot be rejected on technical grounds. Assessee is directed to file the appeal electronically with in 10 days from the date of receipt of the order. Delay in filing the appeal is condoned and CIT(A) is directed to decide the issue on merits. (AY. 2013-14)

All India Federation of Tax Practitioners v. ITO (2018) 166 DTR 276 / 64 DTR 704 / 194 TTJ 122 (Mum.)(Trib.)

S. 250 : Appeal – Commissioner (Appeals) – Delay in filing appeals – Delay was condoned and the CIT(A) was directed to hear the appeal with in three months. [S. 10(23C)(iiiab), 11] 2137

The assessee is a society running a college and imparting education to the students belonging to back ward area. Special Officer was appointed only to mange the school. The AO has raised the demand of ₹ 83, 74, 558. The assessee has not filed the appeal on due date. The assessee moved high Court to condone the delay in filing of the appeal. Considering the interest of the students and staff members, the High Court condoned the delay and directed the Officer in charge to file the appeal and also directed the CIT(A) to dispose the appeal with in three months. (AY.2010-11)

Yadhava Kalvi Nithi v. ITO (2018) 167 DTR 422 (Mad.)(HC)

S. 250 : Appeal – Commissioner (Appeals) – Addition based on valuation report – There was no reason to refer matter to DVO especially when assessee was not having any income and has not started business during subjected assessment year-Explanation tendered under Rule 46A was found to be satisfactory – Report of DVO was not considered as valid. [S. 142A R.46A] 2138

Dismissing the appeal of the revenue the Court held that,there was no reason to refer matter to DVO especially when assessee was not having any income and has not started business during subjected assessment year. Explanation tendered under Rule 46A was found to be satisfactory and report of DVO was not considered as valid.

CIT v. Megha Jewells Pvt. Ltd. (2018) 169 DTR 58 (Raj.)(HC)

S. 250 : Appeal – Commissioner (Appeals) – Additional evidence – Ex parte order – Duty of the CIT(A) to admit additional evidence in the interest of justice – Matter remanded to AO. [S. 10AA, 80IC, 144, R.46A(4)] 2139

CIT(A) rejected additional evidence filed by assessee observing that assessee had not filed audit report or Form 10CCB online/through internet. The assessee explained that the reasons for non-filing of Form 10CCB as he had mistakenly claimed deduction u/s 10AA instead of S. 80IC, however, assessee had filed requisite documents before CIT(A) under Rule 46A. Tribunal held that it was repeatedly held that Revenue Authorities should charge legitimate tax from tax payees. If assessee was otherwise, entitled to

deduction under another provision but had claimed deduction under wrong provision, a duty was also upon Assessing Authorities to apply relevant provision while computing income. As per provisions, a duty was also upon CIT(A) to admit and consider those evidences which were relevant for just and proper decision of case and go to root of case. Under Rule 46A(4), CIT(A) was given power to call for production of any document or examination of any witnesses to enable him to dispose of appeal. There was no doubt about legal position that if any document furnished by assessee before CIT(A) was in nature of clinching evidence which went to root of case then in interest of justice such types of evidence should not be rejected. Issue was restored to AO for fresh adjudication.
Shree Ganesh Concast Group of Industries v. Dy.CIT (2018) 195 TTJ 1 (UO) (Chd.)(Trib.)

2140 **S. 250 : Appeal – Commissioner (Appeals) – Power to admit additional evidence – Books of account and vouchers were produced before the AO – Commissioner (Appeals) can call for books of account, details and vouchers for examination – No violation of Rule 46A(4). [S. 250(4) R. 46A]**
Tribunal held that The Commissioner (Appeals) had verified the details and the books of account and come to the finding that the assessee had maintained proper books of account and that there were no violation of provisions relating to tax deduction at source and correctly deleted the additions. (AY. 2012-13)
ITO v. Jaidka Woolen and Hosiery Mills P. Ltd. (2018) 68 ITR 216 (Delhi)(Trib.)

2141 **S. 250 : Appeal – Commissioner (Appeals) – If a decision is challenged by the assessee both on the issue of jurisdiction as well as on merits, the appellate authority has to decide both issues. He cannot decline to decide one of the issues on the basis that the decision on the other issue renders it academic. This approach leads to multiplication of proceedings and leads to delay – CIT(A) is directed to decide both the issues. [S. 254(1), R.27]**
Tribunal held that; if a decision is challenged by the assessee both on the issue of jurisdiction as well as on merits, the appellate authority has to decide both issues. He cannot decline to decide one of the issues on the basis that the decision on the other issue renders it academic. This approach leads to multiplication of proceedings and leads to delay. CIT(A) is directed to decide both the issues. Followed the ratio of judgement in *CIT v. Ramdas Pharmacy (1970) 77 ITR 276 (Mad.) (HC)* had expounded that an appellate authority cannot decide only one issue arising out of many issues and decline to go into the other issues raised before it on the ground that further issues will not arise in view of the finding on the issue decided by it. (ITA. No.6098/Mum./2016, dt. 02.07.2018) (AY. 2007-08)
ITO v. Mohanraj Trading & Exchange (Mum.)(Trib.), www.itatonline.org

2142 **S. 250 : Appeal – Commissioner (Appeals) – Has to pass a speaking order. [S. 144]**
Tribunal held that CIT(A) has to pass a speaking order after giving a reasonable opportunity of being heard. (AY.2013-14)
Harbans Lal v. ITO (2018) 172 ITD 550 (Chd.)(Trib.)

S. 250 : Appeal – Commissioner (Appeals) – Procedure – All issues to be mandatorily adjudicated when specific ground is raised. Matter remanded to CIT(A) to decide all the issues raised before him afresh which were not adjudicated. [R.27] 2143

In appeal before the CIT(A) the assessee has challenged the addition on facts as well as on jurisdictional issue on reopening of assessment. CIT(A) has decided the issue on jurisdiction in favour of assessee, however he has not decided the issue on merits. On appeal by revenue the assessee has filed application and under Rule 27 of the ITAT Rules and contended that CIT (A) ought to have decided the matter on merits. Tribunal held that even if a decision is challenged before the first appellate authority both on issue of validity of jurisdiction as well as merits of the case, the adjudication on the issue of merits can by no stretch of imagination be liable for rejection on the ground that the assessment has been quashed due to change of opinion. Ref : *CIT v. Ramdas Pharmacy (1970) 77 ITR 276 (Mad.) (HC).* (AY. 2006-07)

DCIT v. J. M. Financial Institutional Securities Ltd. (2018) 67 ITR 52 (SN) (Mum.)(Trib.), www.itatonline.org

S. 251 : Appeal – Commissioner (Appeals) – Powers – Doctrine of merger – Powers – After filing an appeal the assessee filed revision application – Despite the revisional order being passed the Commissioner (Appeals) decided the same issue – Once revision petition was filed and decided, it was not open to Commissioner (Appeals) to decide appeal on same issue. [S. 264] 2144

Court held that; once revision petition was filed and decided, it was not open to Commissioner (Appeals) to decide appeal on same issue. (AY. 2013-14)

Nitin Babubhai Rohit v. Ashok Bhavanbhai Patel (2018) 258 Taxman 252 / 172 DTR 388 / 305 CTR 979 (Guj.)(HC)

S. 251 : Appeal – Commissioner (Appeals) – Power of enhancement – In penalty appeal the CIT(A) cannot issue direction to the Assessing Officer for exploring the addition in assessment. [S. 271(1)(c)] 2145

Dismissing the appeal of the revenue, the Court held that in appeal arising out of order imposing penalty, matter pertaining to some other income escaping assessment does not fall within purview of expression 'any matter arising out of proceedings in which order appealed against was passed' in Explanation to S. 251 of the Act. Accordingly the direction issued by the CIT(A) to the Assessing Officer for exploring the addition in assessment which was quashed by the Tribunal is up held. (AY. 2007-08 to 2009-10)

PCIT v. KPC Medical College & Hospital (2018) 257 Taxman 159 (Cal.)(HC)

Editorial : Order in KPC Medical College & Hospital v. Dy. CIT (2015) 172 TTJ 204 (Kol) (Trib.) is affirmed.

S. 251 : Appeal – Commissioner (Appeals) – Powers – Doctrine of merger – Once penalty order was set aside by revisional authority, it was thereafter not open for Commissioner (Appeals) to still examine merits of such an order and declare his legal opinion on same. [S. 264, 271(1)(c)] 2146

During pendency of appeal, assessee filed a revision petition against order of penalty passed by Assessing Officer before Commissioner. He also made a communication to

CIT(A) before whom his appeal was pending conveying his wish to withdraw appeal. Commissioner allowed assessee's revision petition. Despite revisional order passed by Commissioner cancelling penalty, CIT(A) proceeded to decide appeal on merits and dismissed same. Tribunal set aside order passed by CIT(A). On appeal by the ITO dismissing the appeal the Court held that once penalty order was set aside by revisional authority, it was thereafter not open for CIT(A) to still examine merits of such an order and declare his legal opinion on same. (AY. 2011-12)
Nitin Babubhai Rohit v. Dharmendra Vishnubhai Patel (2018) 409 ITR 276 / 254 Taxman 103 (Guj.)(HC)

2147 **S. 251 : Appeal – Commissioner (Appeals) – Ex parte order – Dismissal of appeal in limine – CIT(A) cannot dismiss an appeal in limine on account of non-prosecution or if assessee seeks to withdraw appeal or if assessee does not press appeal – Order of CIT(A) is set aside. [S. 144, 250(1)]**
An ex parte order was passed under S. 144 wherein certain ad hoc disallowance out of the total expenses was made. The assessee filed an appeal before the Commissioner (Appeals), who, dismissed the assessee's appeal, on the ground that no compliance was made to notices of hearings. The Commissioner (Appeals) presumed that the assessee did not wish to pursue the appeal, and passed an ex parte order dismissing the appeal in limine for reason of non-prosecution of appeal by assessee. On appeal the Tribunal held that, CIT(A) cannot dismiss an appeal in limine on account of non-prosecution or if assessee seeks to withdraw appeal or if assessee does not press appeal. Order of CIT(A) is set aside. Followed *CIT v. Premkumar Arjundas Luthra (HUF) (2016) 240 Taxman 133 (Bom.) (HC)* (AY.2013-14)
HV Metal ARC (P.) Ltd. v. ACIT (2018) 173 ITD 606 (Delhi)(Trib.)

2148 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Enhancement – Notional trading loss – Set-off against income under different head – Enhancement on the basis of annual report and statement enclosed to return cannot be considered as new source of income – Disallowance of notional trading loss by valuing shares at lesser amount without any basis and also set-off said loss against income under different head – Enhancement and disallowance is held to be justified. [S. 73]**
Tribunal held that since Commissioner (Appeals) had not unearthed a new source of income, but only had gone by annual report/statements enclosed to return in which assessee had claimed set off of trading loss and Assessing Officer had not examined said claim, Commissioner (Appeals) was justified in making addition to income of assessee. The claim of loss being notional and without any basis set off of said loss against income under different head is held to be not allowable. (AY.2002-03)
Fincity Investments (P.) Ltd. v. ACIT (2018) 172 ITD 240 / 196 TTJ 755 (Hyd.)(Trib.)
Veeyes Investments (P) Ltd. v. ACIT (2018) 172 ITD 218 / (2019) 197 TTJ 261 / 175 DTR 109 (Hyd.)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Additional evidence – Valuation report of the CA which was filed before the CIT (A) – Tribunal directed the CIT(A) to accept the additional evidence as no opportunity was given by the AO to exercise the option as per Explanation (a) (ii) to section 56(2)(viib) of the Act. [S. 56(2)(viib), 254(1), R. 11UA(1)(b)] 2149

Allowing the appeal of the assessee the Tribunal held that AO has not given an opportunity to assessee to exercise its option given as per Explanation (a)(ii) to S. 56(2)(viib) of the Act. Accordingly the certificate of CA which was filed before the CIT(A) as additional evidence is directed be admitted as additional evidence. Matter is remanded to CIT (A).(AY. 2013-14)

ASG Leather (P.) Ltd. v. ITO (2018) 171 ITD 476 / 170 DTR 17 / 195 TTJ 747 (Kol.)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Powers – CIT(A) cannot enhance the assessment, without giving any show – Cause notice. [S. 54F] 2150

Tribunal held that CIT(A) cannot enhance the assessment and also change the head of income without giving any show-cause notice, accordingly the impugned order could not be sustained. (AY.2009-10)

Naresh Sunderlal Chug v. ITO (2018) 171 ITD 116 (Pune)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Powers – CIT (A) has no power to travel beyond the subject-matter of the assessment and is not entitled to assess new sources of income. In order for the CIT(A) to enhance, there must be something in the assessment order to show that the AO applied his mind to the particular subject-matter or the particular source of income with a view to its taxability or to its non-taxability and not to any incidental connection – Enhancement of long term capital gains on sale transaction was deleted. [S. 246A] 2151

Tribunal held that CIT (A) has no power to travel beyond the subject-matter of the assessment and is not entitled to assess new sources of income. In order for the CIT(A) to enhance, there must be something in the assessment order to show that the AO applied his mind to the particular subject-matter or the particular source of income with a view to its taxability or to its non-taxability and not to any incidental connection. Enhancement of long term capital gains on sale transaction was deleted. (AY. 2006-07, 2007-08, 2008-09)

Jagdish Narayan Sharma v. ITO (2018) 65 ITR 194 / 194 TTJ 825 / (2019) 174 DTR 25 (Jaipur)(Trib.), www.itatonline.org

S. 251 : Appeal – Commissioner (Appeals) – Powers – Fresh claim can be made – Assessee to demonstrates that he was unable to make such a claim through a revised return. [S. 35D, 139(5)] 2152

Fresh claim can be made before the appellate authorities if the assessee demonstrates that he was unable to make such a claim through a revised return. Hence the matter was restored back to the AO. (AY. 2009-10 to 2011-12)

HLL Lifecare Limited v. ACIT (2018) 191 TTJ 1 (UO) / 66 ITR 361 (Cochin)(Trib.)

2153 **S. 251 : Appeal – Commissioner (Appeals) – Powers to entertain new claim without filing revised return. [S. 139]**

Dismissing the appeal of the revenue the Tribunal held that; the Commissioner (Appeals) is sufficiently empowered to entertain and consider a new claim made by the assessee on the merits even without there being any revised return filed by the assessee making such claim. The Department had not disputed this position. As the Assessing Officer himself in the assessment order had accepted the claim of the assessee on the merits and the claim was disallowed by him only for want of revised return. The claim was allowable. (AY. 2011-12)

DCIT v. Associated Pigments Ltd. (2018) 61 ITR 553 (Kol.)(Trib.)

2154 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Additional evidence – Matter decided in favour of assessee considering the additional evidence, without obtaining the remand report – Matter restored and directed to issue the matter after obtaining the remand report. [R. 46A]**

Allowing the appeal of the revenue the Tribunal held that CIT(A) has decided the matter in favour of assessee considering the additional evidence without obtaining the remand report. The Matter restored and directed to issue the matter after obtaining the remand report. (AY. 2009-10, 2010-11)

ITO v. Dr. Arvind Goverdhan (2018) 61 ITR 159 (Bang.)(Trib.)
ITO v. Monica Goverdhan (Mrs) (2018) 61 ITR 159 (Bang.)(Trib.)
ITO v. Margrift Goverdhan (Mrs) (2018) 61 ITR 159 (Bang.)(Trib.)
ITO v. Anitha Goverdhn (Mrs) (2018) 61 ITR 159 (Bang.)(Trib.)

2155 **S. 252 : Appellate Tribunal – Appointment of Tribunal Members under new rules – Persons selected as Member of the Appellate Tribunal will continue till the age of 62 years and the person holding the post of President, shall continue till the age of 65 years.**

The validity of the 'Tribunals, Appellate Tribunals and Other Authorities (Qualifications, Experience And Other Conditions of Service of Members) Rules, 2017' has been challenged in the Supreme Court in *Kudrat Sandhu v. UOI (Writ Petition (Civil) No. 279 of 2017).*

The Supreme Court had earlier directed that pending the outcome of the challenge, the appointment of Members of the ITAT will be for a period of five years or till the maximum age that was fixed under the old Act and Rules.

The Supreme Court has now clarified the situation as follows :

"At this juncture, we may note that there is some confusion with regard to the Income Tax Appellate Tribunal (ITAT) as regards the age of superannuation.

We make it clear that the person selected as Member of the ITAT will continue till the age of 62 years and the person holding the post of President, shall continue till the age of 65 years."

See also : Law Ministry Invites Applications For Appointment to Posts of Judicial & Accountant Members In ITAT. (WP(C) No. 279/2017 dt. 16-07-2018)

Kudrat Sandhu v. UOI (2018) 257 Taxman 185 (SC), www.itatonline.org

S. 252 : Appellate Tribunal – Appointment of Tribunal Members under new rules – Interim directions issued regarding the method for selection of Tribunal Members and their terms and period of appointment. [Tribunals, Appellate Tribunals and Other Authorities (Qualifications, Experience And Other Conditions of Service of Members) Rules, 2017] 2156

The validity of the 'Tribunals, Appellate Tribunals and Other Authorities (Qualifications, Experience And Other Conditions of Service of Members) Rules, 2017' has been challenged in the Supreme Court. The Supreme Court is required to examine whether the Rules, which seek to appoint the Members of the Tribunal for a limited period, and which make the appointment and removal of the Members the sole prerogative of the Government, is valid in law.

The following interim order has been passed by the Supreme Court :

We have heard learned counsel for the petitioners and Mr. K. K. Venugopal, learned Attorney General for India.

In the course of hearing, suggestions for an interim order in respect of Central Administrative Tribunal have been filed. The suggestions read as follows :

"1. Staying the composition of Search-cum-Selection Committee as prescribed in Column 4 of the Schedule to the Tribunal, Appellate Tribunal and Other Authorities (Qualification, experience and other conditions of service of members) Rules, 2017 both in respect of Chairman/Judicial Members and Administrative Members. A further direction to constitute an interim Search-cum-Selection Committee during the pendency of this W. P. in respect of both Judicial/ Administrative members as under :

a. Chief Justice of India or his nominee – Chairman b. Chairman of the Central Administrative Tribunal – Member c. Two Secretaries nominated by the Government of India – Members

2. Appointment to the post of Chairman shall be made by nomination by the Chief Justice of India.

3. Stay the terms of office of 3 years as prescribed in Column 5 of the Schedule to the Tribunal, Appellate Tribunal and other Authorities (Qualification, experience and other conditions of service of members) Rules, 2017. A further direction fixing the term of office of all selectees by the aforementioned interim Search-cum-Selection Committee and consequent appointees as 5 years.

4. All appointments to be made in pursuance to the selection made by the interim Search-cum-Selection Committee shall be with conditions of service as applicable to the Judges of High Court.

5. A further direction to the effect that all the selections made by the aforementioned interim selection committee and the consequential appointment of all the selectees as Chairman/Judicial/Administrative members for a term of 5 years with conditions of service as applicable to Judges of High Court shall not be affected by the final outcome of the Writ Petition."

Mr. Venugopal, learned Attorney General has submitted that he has no objection if the suggestions, barring suggestion nos. 4 and 5, are presently followed as an interim measure. On a query being made whether the said suggestions shall

be made applicable to all Tribunals, learned Attorney General answered in the affirmative.

He would, however, suggest that suggestions nos. 4 and 5 should be recast as follows :

"4. All appointments to be made in pursuance to the selection made by the interim Search-cum-Selection Committee shall abide by the conditions of service as per the old Acts and the Rules.

5. A further direction to the effect that all the selections made by the aforementioned interim selection committee and the consequential appointment of all the selectees as Chairman/Judicial/Administrative members shall be for a period as has been provided in the old Acts and the Rules.

In view of the aforesaid, we accept the suggestions and direct that the same shall be made applicable for selection of the Chairpersons and the Judicial/Administrative/ Technical/Expert Members for all Tribunals.

List after twelve weeks along with W. P. (C)Nos. 120 of 2012; 267 of 2012. (WP. No. 279/2017, dt. 09.02.2018)

Kudrat Sandhu v. UOI (2018) 255 Taxman 31 / (2018) (10) G. S. T. L. 130(SC), www. itatonline.org

2157 **S. 253 : Appellate Tribunal – Limitation – Delay of 1400 days – Dismissing the cross objections which was filed four years later was held to be justified [S. 14A, 254(1)]**

Dismissing the appeal the Court held that; The assessee had chosen to approach the Tribunal and had filed cross-objections, when the appeals filed by the Department in the year 2011 were pending. The assessee did not approach the Tribunal in its own right. When the Commissioner (Appeals) had passed an order on October 27, 2010, the belated cross-objections filed after a period of over four years, meant that the assessee was seeking to rake up stale issues for which it had accepted the finality as regards its basic tax liability.

Jubilant Securities Pvt. Ltd. v. Dy. CIT (2018) 400 ITR 527 / 163 DTR 1 / 253 Taxman 284 (Delhi)(HC)

Jubilant Capital Pvt. Ltd. v. Dy. CIT (2018) 400 ITR 527 / 163 DTR 1 (Delhi)(HC)

2158 **S. 253 : Appellate Tribunal – Limitation – Delay of 285 days – No material prove bona fides attempts made in filing appeal, mere self-serving documents cannot condon the huge delay – Appeal was dismissed. [S. 246A]**

Dismissing the appeal of the assessee the Tribunal held that; the assessee had failed to make out sufficient and reasonable cause for condonation of delay in filing the appeal filed before the Commissioner (Appeals). In the absence of any evidence to prove the bona fides of the assessee, merely on the basis of self-serving documents, the huge delay in filing appeal cannot be condoned. (AY. 2009-2010)

Astec Lifesciences Ltd. v. Dy.CIT (2018) 67 ITR 485 (Mum.)(Trib.)

S. 253 : Appellate Tribunal – Condonation of delay of 387 days-turbulent time in family as well as with his earlier Chartered Accountant – Copy of complaint against the Chartered Accountant was also filed before the various authorities including the Court of Additional Chief Metropolitan Magistrate, Jaipur – Delay was condoned. [S. 254(1)] 2159

Assessee filed an appeal before Tribunal with a delay of 387 days by taking a plea that he was facing very turbulent time in family as well as with his earlier Chartered Accountant, who had mischievously prepared his accounts and also filed return of income in his own signatures without his knowledge and thus was fighting to get his accounts set right. In support of his explanation, assessee had filed record regarding complaint against Chartered Accountant. Assessee had also filed medical record of ailment of his father suffering from cancer and undergoing cancer treatment since year 2012. Tribunal held that the explanation offered by assessee was found to be true and bona fide and not a device to cover an ulterior purpose. Accordingly delay of 387 days in filing appeal was to be condoned. (AY. 2012-13)

Nitesh Agarwal v. ACIT (2018) 173 ITD 14 / 196 TTJ 27 (UO)(Jaipur)(Trib.)

S. 253 : Appellate Tribunal – Delay of 2819 days in filing the appeal caused by the fault of CA/ Counsel has to be condoned – The expression "sufficient cause" should be interpreted to advance substantial justice – If there is "sufficient cause", the period of delay cannot be regarded as excessive or inordinate – Delay was condoned. [S. 254(1) 2160

Tribunal held that, delay of 2819 days in filing the appeal caused by the fault of CA/ Counsel has to be condoned. The expression "sufficient cause" should be interpreted to advance substantial justice. If there is "sufficient cause", the period of delay cannot be regarded as excessive or inordinate. Accordingly the delay was condoned. (ITA. No.288/ Coch/2017, dt. 25.06.2018)(AY. 2006-07)

Midas Polymer Compounds v. ACIT (Cochin)(Trib.), www.itatonline.org

S. 253 : Appellate Tribunal – Condonation of delay – An assessee supported by large number of CAs & Advocates cannot seek condonation of delay on the ground that the officer handling the issue was transferred – A party cannot sleep over its rights and expect its appeal to be entertained. The fact that the issue on merits is covered in favour of the assessee makes no difference to the aspect of condonation of delay. [S. 234E] 2161

Dismissing the appeal of the assessee the Tribunal held that an assessee supported by large number of CAs & Advocates cannot seek condonation of delay on the ground that the officer handling the issue was transferred. A party cannot sleep over its rights and expect its appeal to be entertained. The fact that the issue on merits is covered in favour of the assessee makes no difference to the aspect of condonation of delay. (AY. 2013-14, 2014-15)

Catholic Syrian Bank Ltd. v. DCIT (2018) 173 ITD 384 (Cochin) (Trib.), www.itatonline.org

2162 **S. 253 : Appellate Tribunal – Power to admit additional grounds – Revenue once accepted claim during assessment cannot raise additional ground which was not a subject matter appeal before lower authorities.**

Assessee rendered services to its Irish group company under an agreement for specific consideration which was claimed as export u/s. 10A and was allowed by the AO. During the course of hearing before Tribunal, it was admitted that Assessee was separately compensated for performance of such services. Revenue raised additional ground requesting to restore the issue of deduction u/s. 10A to the file of AO. Tribunal held that Revenue cannot improve upon his case at second appellate stage. There are various provisions under the Act where revenue can rectify its mistakes but before the Tribunal no additional grounds can be raised which was a subject matter of appeal before the lower authorities. (AY. 2008-09)

Google India (P.) Ltd. v. Jt. DIT (IT) (2018) 194 TTJ 385 (Bang.)(Trib.)

2163 **S. 253 : Appellate Tribunal – Delay of 658 days in filing of appeal – Employee failed to deliver the order of the CIT(A) to the CA for necessary action – Delay caused due to bonafide mistake of employee – Delay condoned – Initiated vide notice dated 23.09.2003 but the respective orders were passed on 28.03.2011 which were beyond a period of one year from the end of the financial year in which the proceedings u/s. 201 of the Act were initiated-orders passed u/s. 201(1)/201(1A) of the Act, were barred by limitation. [S. 194C, 201(1), 201(IA)]**

The assessee was held to be 'assessee-in-default' u/s. 201(1)/201(1A) of the Act, for non-deduction of tax at source on payment of feed charges and channel cost u/s. 194C of the Act. On appeal, the CIT(A) upheld the action of the AO. Delay in filing appeal with the Tribunal by 658 days.

The Tribunal condoned the delay in filing the appeal, on the ground that delay had occurred on account of an inadvertent mistake on the part of employee of the assessee who had failed to deliver the order of the CIT(A) to the chartered accountant for taking necessary action. Further, appeals for immediately two preceding assessment years were pending before the Tribunal. Hence, the assessee would not have benefited from delaying the filing of the appeal. On merits the Tribunal held that proceedings u/s. 201(1)/201(1A) of the Act were initiated vide notice dated 23.09.2003 but the respective orders were passed on 28.03.2011 which were beyond a period of one year from the end of the financial year in which the proceedings u/S. 201 of the Act were initiated. Therefore, the respective orders passed u/s. 201(1)/201(1A) of the Act, were barred by limitation.

Hathway C-Net (P) Ltd. v. TRO (2018) 192 TTJ 497 (Mum.)(Trib.)

2164 **S. 253 : Appellate Tribunal – Oral ground – Jurisdiction – Where there being no occasion for CIT(A) to decide a particular issue against assesse, assesse cannot support the impugned order under rule 27 on that ground. [S. 271(1)(c), R.27]**

Since the assessee had not filed any application under rule 27, the objection raised by assessee was not admissible in the Tribunal. Alternatively, the Tribunal observed that

assessee had never assailed the penalty imposed under section 271(1)(c) before CIT(A) on the ground that AO had wrongly assumed jurisdiction to impose penalty without striking off irrelevant default. As a result CIT(A) had no reason to decide the impugned issue against the assessee and therefore assessee could not have supported CIT(A) order on the said ground. Accordingly, new oral ground raised by Authorised Representative in Department's appeal is not maintainable. [Note: Refer, Additional grounds can be raised orally – Rule 11 of the Appellate Tribunal Rules. *Amines Plasticizers Ltd. v. CIT (1997) 223 ITR 173 (Guwahati) (HC) Assam Carbon Products Ltd. v. CIT (1997) 224 ITR 57 (Guwahti) (HC) Baby Samuel v. ACIT (2003) 262 ITR 385 (Bom) (HC) Shilpa Associates v. ITO (2003) 263 ITR 317 (Raj.)(HC)*]
Dy. CIT v. Shahrukh Khan (2018) 66 ITR 168 / 194 TTJ 777 / 53 CCH 55 / 172 DTR 73 (Mum.)(Trib.)

S. 253 : Appellate Tribunal – Limitation – Application for condonation of delay was not supported by evidence – Appeal of revenue was dismissed. 2165
Dismissing the appeal of the revenue the Tribunal held that, even the authorisation by the Commissioner to file the appeal had been granted after the period of limitation to file the appeal. No sufficient cause had been shown to explain the delay in filing the appeal before the Tribunal beyond the period of limitation. The application was not supported by any evidence. Therefore the Department failed to explain the delay in filing the appeal was due to sufficient cause and the appeal of the Department was dismissed as time barred. (AY.2007-08)
ITO v. Gisil Designs P. Ltd. (2018) 65 ITR 38 (SN)(Delhi)(Trib.), www.itatonline.org

S. 253 : Appellate Tribunal – Tax Effect – Below 10 lakhs – Where the addition relates to undisclosed foreign assets/ bank accounts – Exception to circular – Appeal by revenue is maintainable. 2166
The Tribunal held that since the present case was falling within the exceptions carved out in the Circular no. 21/2015 dt.10/12/2015, (2015) 379 ITR 107 (St.) appeals have to be contested where the addition related to undisclosed foreign assets/bank accounts. Assessee is having foreign bank account and information thereof has been received by Indian authorities inasmuch as the assessee has used Indian address. Hence, the appeal by the Revenue having been filed in accordance with the CBDT Circular in this regard is duly maintainable. (ITA No. 5889/Mum./2016 dt.01.06.2018 (AY. 2003-04)
DCIT v. Rahul Rajnikant Parikh & Ors (Mum.)(Trib.), www.itatonline.org

S. 253 : Appellate Tribunal – Tax Effect below prescribed limit – Appeal is not maintainable. 2167
Referring the CBDT Circular No 21/2015 dt.10/12/2015, (2015) 379 ITR 107 (St.). Tax effect being below limit prescribed by the CBDT, appeal of revenue was dismissed.
DCIT v. Talwar Mobiles P. Ltd. (2018) 63 ITR 18 (SN) (Hyd.)(Trib.)

2168 **S. 253 : Appellate Tribunal – Registrar's Court – The Registrar of the Tribunal has no jurisdiction to consider and decide on applications for condonation of delay. Only the Court/ Tribunal have the power. The order passed by the Registrar is ultra vires his power and non est in law. He should desist from passing such orders. [S. 152(1). 253(5)]**

Order passed by the Bench in ITA No. 6339/Mum./2017 in the case of Shri Hiten Ramanlal Mahimtura on 1st May 2018 through order sheet.

ORDER

This appeal is barred by limitation by 21 days. While hearing the appeal. we observed that the Registrar has heard this preliminary issue of condoning the delay and passed order on 8.3.3018 condoning the delay.

The power of condoning the delay is with the Court/Tribunal under the Limitation Act as well as u/s 253(5) r. w. s. 252(1) of the Income Tax Act.

The petition of assessee has to be examined by the court/Tribunal after hearing both the parties and after considering the reasons, facts etc.

Hence, the order passed by the Registrar is ultra virus beyond his power. hence his order is non-est in the eyes of the law.

Henceforth the Registrar should desist from passing such orders and he should put up all petitions before the Bench.

The Registry is also directed to place this order before Hon'ble President for issuing necessary instructions. Copy of this order is sent to Registrar for compliance. The appeal as well as condonation Petition is adjourned to 19.6.2018. (ITA No. 6339/Mum./2017, dt. 1.05.2018)

Hiten Ramanlal Mahimtura (Mum.)(Trib.), www.itatonline.org

2169 **S. 253 : Appellate Tribunal – Unexplained investments – Remand report – Strictures – Once the AO was satisfied in the remand proceedings and did not oppose not controverted the documents filed by the assessee, he cannot be said to be aggrieved by the Order passed by the CIT(A) considering his own remand report – Merely on account of change of the AO, presumably the incumbent cannot be allowed to file appeals willy nilly. Such rampant careless behaviour shakes the public trust and faith reposed in the authority of the AO to act fairly and impartially. [S. 69C, 251]**

The CIT(A) deleted the addition after relying upon the remand report and on consideration of the facts. On appeal by the revenue the Tribunal held that the occasion for the AO to file an appeal did not arise. Since the facts and evidences considered in the remand proceedings have not been rebutted by the AO in the present proceedings, the present appeal ought not to have been filed. The AO once satisfied in the remand proceeding cannot be said to be aggrieved by the order passed by the CIT(A) considering his own remand report and thus the appeal filed by the Revenue was dismissed. It need not be over emphasized that as far as the world at large is concerned, the Assessing Officer is an authority and is not a specific person. Thus, merely on account of change of the AO, presumably the incumbent cannot be allowed to file appeals willy nilly. Such rampant careless behaviour shakes the public trust and faith reposed in the authority of the AO to act fairly and impartially. (AY. 2009-10)

ITO v. Randhir Singh (2018) 163 DTR 10 / 192 TTJ 64 (SMC) (Chd.)(Trib.)

S. 253 : Appellate Tribunal – Territorial jurisdiction – Stay – Location of Assessing Officer, at point of time when Tribunal hears and determines case, is relevant for determining jurisdiction of Bench to hear stay/appeals – Registry was directed to place matter before President to take final call on issue, hence the Registry was directed to place matter before President for final decision on transfer of assesee's case to Delhi Benches. [S. 127, ITATR, 4] 2170

The Tribunal held that, The Assessing Officer having jurisdiction to assess the income of the assessee is located in New Delhi, which falls in jurisdiction of Delhi therefore the jurisdiction for hearing of these applications, and hearing of the related appeals, vests in Delhi benches of this Tribunal. However, it is for the Hon'ble President to take a final call on the issue, as is the unambiguous thrust of Rule 4(1) of the ITAT Rules. We, therefore, deem it fit and proper to direct the Registry to place all stay applications and related appeals, as indeed all other appeals of this assessee, before Hon'ble President for appropriate orders. In order to ensure, however, that these applications are not rendered infructuous or nugatory by recovery of the impugned outstanding tax demands in the meantime, we also take on record the categorical assurance so graciously extended by the learned Departmental Representative, not to take any coercive measures for recovery or collection of the outstanding disputed demands till the time the present stay applications are disposed of by the Tribunal.

11. In the result, while, in our considered view, the correct jurisdiction of hearing these appeals is with Delhi benches, the matter is to be placed before Hon'ble President for directing transfer of appeals, as he, under the scheme of rule 4(1) of the ITAT Rules, is the final arbiter on this issue. (AY. 2008-09, 2009-10)

Vedanta Ltd. v. ADIT (IT) (2018) 170 ITD 652 / 166 DTR 129 / 193 TTJ 905 (Ahd.)(Trib.)

S. 254(1) : Appellate Tribunal – Duties – Tribunal failed to act as last fact finding authority – It failed to discharge its duty and function expected of it by law – Tribunal set aside the matter to AO – Court held that Tribunal could have summoned all records and thereafter should have arrived at categorical conclusion whether First Appellate Authority was right or AO – This having admittedly not been done, court was of firm opinion that Tribunal failed to act as last fact finding authority – It failed to discharge it duties – Matter remanded to Tribunal – DTAA-India-Netherlands. [Art.5(5)] 2171

Assessee claimed to have provided assistance on principle to principle basis to Indian company on few transactions and received fees and guarantee commission. Amounts received under aforesaid category were not offered to tax in India on ground that Assessee did not have permanent establishment in India. AO held that Indian Company was permanent establishment of Assessee within meaning of Article 5(5) of DTAA hence, certain percentage of sums under category referred above were taken as profits attributable to permanent establishment. CIT(A) passed detailed order that Assessee neither had fixed place of business nor agency or any other form of permanent establishment in India and consequently income of Assessee was not taxable in India. Tribunal remanded matter back to AO. On appeal the Court held that There was nothing on record to prove that provisions of Article 5(1) of Agreement were applicable - Assessee was not having fixed place of business in India. Hence, First Appellate Authority rightly held that provisions of Article 5(1) were inapplicable. Tribunal could

have summoned all records and thereafter should have arrived at categorical conclusion whether First Appellate Authority was right or AO. This having admittedly not been done, court was of firm opinion that Tribunal failed to act as last fact finding authority. It failed to discharge its duty and function expected of it by law. Tribunal is directed to decide afresh. (AY. 2002-2003, 2004-05, 2005-06)
Co-Operative Centrale Reiffeisen-Boereleenbank B. A. v. Dy.CIT (2018) 170 DTR 41 / (2019) 411 ITR 699 (Bom.)(HC)

2172 **S. 254(1) : Appellate Tribunal – Duties – Co-operative societies – Tribunal while considering the issue of deduction under S. 80P(2)(a)(i) to Assessee suddenly shifted to Section 80P(4) and held that the assessee is not entitled for the benefit of S. 80P(4) without providing an opportunity to the Assessee – Order of Tribunal s set a side. [S. 80P(2)(a)(i), 80P(4)]**
On appeal the High Court held that Tribunal while considering the issue of deduction under S. 80P(2)(a)(i) to Assessee suddenly shifted to Section 80P(4) and held that the assessee is not entitled for the benefit of S. 80P(4) without providing an opportunity to the Assessee. Hence, impugned orders are set aside and the matters are remanded to the AO to examine the case in the light of the judgment in *Totgars Co-operative Sale Society Ltd. v. ITO (2010) 228 CTR 526 (Karn) (HC)* as well as CBDT Circular No. 6 of 2010, dt. 20th Sept., 2010 and to take a decision in accordance with law. (AY.2007-2008 to 2009-2010).
Bellad Bagewadi Krishi Seva Sahakari Bank Ltd. v. ITO (2018) 171 DTR 140 (Karn.)(HC)

2173 **S. 254(1) : Appellate Tribunal – Duties – Reversal of findings of fact of Assessing Officer by Tribunal without recording reasons and also not deciding the cross appeal filed by the department – Matter remanded to Tribunal for fresh adjudication. [S. 80IB]**
Allowing the appeal of the revenue the Court held that, the Tribunal has reversed the finding of the Assessing Officer without recording reasons and also not decided the cross appeal filed by the department. Accordingly the matter remanded to Tribunal for fresh adjudication. (AY. 2005-06, 2006-07)
PCIT v. Montage Enterprises Pvt. Ltd. (2018) 409 ITR 185 / 305 CTR 444 / 171 ITR 70 (Delhi)(HC)

2174 **S. 254(1) : Appellate Tribunal – Duties – Reassessment – Tribunal reversing decision of Commissioner (Appeals) without cogent reasons – Order of Tribunal is held to be not valid. [S. 147]**
Allowing the appeal of the assessee the Court held that the Tribunal being the last fact finding authority had not given any cogent reason for reversing the finding recorded by the Commissioner (Appeals). Its order was not valid. Matter remanded to the Tribunal. (AY. 1999-2000, 2000-01)
Prime Chem Oil Ltd. v. ACIT (2018) 409 ITR 309 (Raj.)(HC)

S. 254(1) : Appellate Tribunal – Duties – The Appellate Tribunal should give independent reasons showing consideration of the submissions made on behalf of the assessee – An appellate order which affirms the order of the lower authority need not be a very detailed order – Nevertheless, there should be some indication in the order passed by the appellate authority of due application of mind to the contentions raised by the asseseee in the context of findings of the lower authority which were the subject matter of the challenge before it. 2175

Question before the High Court "Whether in the facts and circumstances of the case and in law, the Tribunal was justified in dismissing the assessee's appeal by merely recording that it accepts the view of the (CIT) Appeals?"

Court held that we find that while discussing various issues, the Tribunal has not given any independent reasons showing consideration of the submissions made on behalf of the assessee. We are conscious of the fact that an appellate order which affirms the order of the lower authority need not be a very detailed order, nevertheless, there should be some indication in the order passed by the appellate authority, of due application of mind to the contentions raised by the asseseee in the context of findings of the lower authority which were the subject matter of the challenge before it. In view of above, the interest of justice would be served if the impugned order is quashed and set aside and the appeals are restored to the Tribunal for fresh consideration. Therefore, both the appeals are allowed by way of remand. All contentions are kept open. (ITA No. 643 of 2016, dt 26.11.2018) (AY.2003-04, 2004-05)

Cheryl J. Patel v. ACIT (Bom.)(HC), www.itatonline.org

S. 254(1) : Appellate Tribunal – Duties – Reasoned speaking order which is the mandate as laid down by the Supreme Court in *Kranti Associates Pvt. Ltd. v. Masood Ahmed Khan (2010) 9 SCC 496 and Canara Bank v. V. K. Awasthy (2005) SC 2090* – Non speaking orders by Tribunal as well as Commissioner (A) – Natural justice is violated matter remitted to Commissioner (A) for fresh consideration. [S. 12AA] 2176

Allowing the appeal of the revenue the Court held that, the order of the Tribunal was neither speaking nor gave any cogent reasons for grant of registration to the assessee under section 12AA. Neither the Commissioner (A) nor the Tribunal had passed a reasoned speaking order which was the mandate as laid down by the Supreme Court in *Kranti Associates Pvt Ltd v. Masood Ahmed Khan (2010) 9SCC 496 and Canara Bank v. V.K Awasthy (2005) SC 2090.* The order passed by the Tribunal did not satisfy the requirements of being a reasoned order and was passed in violation of the principles of natural justice. The matter was remitted to the Commissioner (A) to pass a fresh speaking order after affording an opportunity of hearing to the assessee.

CIT v. Tara Ripu Dhamanpal Trust (2018) 409 ITR 102 (P&H)(HC)

S. 254(1) : Appellate Tribunal – Duties – Passing the Ex-parte order without ascertaining whether notice was duly served and assessee had avoided intentionally and deliberately to attend case of hearing would result in miscarriage of justice – Ex-parte order is set aside. [R. 24] 2177

Allowing the appeal of the assessee, the Court held that passing Ex-parte order without ascertaining whether notice was duly served and assessee had avoided intentionally

and deliberately to attend case of hearing would result in miscarriage of justice-Ex-parte order is seta side.
Lalitnirman Business Development (P.) Ltd. v. ITO 259 Taxman 23 (Bom.)(HC)

2178 **S. 254(1) : Appellate Tribunal – Duties – Business income or capital gains – Investment in shares – The entire data of each transaction was before the Tribunal and nothing prevented it from looking into all the transactions and recording findings of fact – The Tribunal had failed to perform its duty and therefore, its order was unsustainable. The matter was remitted to the Tribunal for decision afresh. [S. 28(i), 45]**
Allowing the appeal of the assessee the Court held that the entire data of each transaction was before the Tribunal and nothing prevented it from looking into all the transactions and recording findings of fact-The Tribunal had failed to perform its duty and therefore, its order was unsustainable. The matter was remitted to the Tribunal for decision afresh. (AY.2007-08, 2008-09)
Jaya Chheda, Legal Heir of Late Hitesh S. Bhagat v. ACIT (2018) 407 ITR 553 (Bom.)(HC)

2179 **S. 254(1) : Appellate Tribunal – Duties-It would always be ideal for the Tribunal to consider the entire issues in an appeal, so that the parties can have a quietus to the matter.**
Court held that, it would always be ideal for the Tribunal to consider the entire issues in an appeal, so that the parties can have a quietus to the matter. Court observed that the appeal on question of law, is being considered after a decade-and-half from the assessment year. If the final fact finding authority, the Tribunal, has not considered the entire questions arising on facts, then a remand would be necessitated which would drag on the matter for another decade. (AY. 2003-04, 2005-06)
Nishant Export v. ACIT (2018) 401 ITR 401 / 168 DTR 157 / 303 CTR 624 (Ker.)(HC)

2180 **S. 254(1) : Appellate Tribunal – Duties – Consolidation of appeals on the request of the department without adequate notice to the assessee is quashed. [S. 253]**
Allowing the petition the Court held that the Tribunal ought to have given adequate notice to the assessee on the issue of consolidation and if the Department's request was found feasible and reasonable, it ought to have indicated reasons why the consolidation was essential. The record nowhere disclosed that the Tribunal gave notice to the assessee nor did the Department dispute that the Tribunal did not give any notice to the assessee before issuance of the consolidation order. All the appeals preferred by the assessee were being listed and heard repeatedly by different Benches. The failure of the Tribunal to conform to the salient features vitiated its order.
BPTP Ltd. v. CIT (2018) 406 ITR 475 / 257 Taxman 456 (Delhi)(HC)

2181 **S. 254(1) : Appellate Tribunal – Duties – Order for early hearing is not merely an administrative order but judicial order – Revenue has to move a formal application under Rule 29 of the ITAT Rules to bring on record additional evidences. [S. 254(2), R. 29]**
Court held that : (i) Tribunal's opinion on the aspect that order for early hearing is merely an administrative order is incorrect. The view held in case of *Olympia Paper & Stationary Stores v. ACIT (1997) 63 ITD 148 (Mad) (Trib)* has to be followed. (ii) A formal

application under Rule 29 of the ITAT Rules is required to be submitted by the Revenue before the Tribunal for admission of additional evidences. (AY. 2009-10, 2010-11)
Dr. Prannoy Roy v. DCIT (2018) 303 CTR 122 / 255 Taxman 369 / 166 DTR 317 (Delhi) (HC)
Radhika Roy (Smt) v. DCIT & Ors (2018) 303 CTR 122 / 255 Taxman 369 / 166 DTR 317 (Delhi) (HC)
Editorial: SLP of revenue is dismissed, Dy.CIT v. Radhika Roy (2019) 263 Taxman 117 (SC)

S. 254(1) : Appellate Tribunal – Duties – Ex-parte order – Tribunal has to dispose of an appeal on merits irrespective of whether appellant appears or not, in view of Rules 24 and 25 of the ITAT Rules, 1963. [ITAT, R. 24, 25] 2182
Allowing the writ petition, the Court held that where assessee was not able to appear before Tribunal when appeal was called on, nor any adjournment application was filed on their behalf, appeal could not be dismissed for default. Tribunal has to dispose of an appeal on merits irrespective of whether appellant appears or not, in view of Rules 24 and 25 of the ITAT Rules, 1963. Followed *CIT v. S. Chenniappa Mudaliar (1969) 74 ITR 141 (SC) / AIR 1969 SC 1068 (FB)* (AY. 2009-10)
N.S. Mohan v. ITAT (2018) 256 Taxman 76 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Additional grounds – Tribunal must consider additional grounds raised on question of law arising from facts on record. 2183
Allowing the appeal of the assessee the Court held that; the Tribunal has the discretion to allow or not to allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings such a question should be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.
Ravindra Arora v. ACIT (2018) 404 ITR 452 / 302 CTR 174 (Raj.)(HC)
Praveen Arora v. ACIT (2018) 404 ITR 452 / 302 CTR 174 (Raj.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Remand – Qualified remand was held to be not proper it has to be open remand, direction of the Tribunal was modified. 2184
Allowing the appeal of the revenue the court held that, qualified remand was held to be not proper it has to be open remand, direction of the Tribunal was modified. (AY. 2010-11)
CIT v. Tagros Chemicals (India) Ltd. (2018) 161 DTR 341 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Limitation – Tribunal considering appeal from order of assessment and dismissal of appeal from order of revision without considering on merit is held to be not valid. [S. 263] 2185
Court held that order passed by the Tribunal on the ground of limitation without going into the merits of the case was unjustifiable when the issue was considered on the merits while adjudicating the consequential orders. (AY. 2006-07 to 2008-09)
Hubli Electricity Supply Co. v. DCIT (2018) 404 ITR 462 / 170 DTR 332 (Karn.)(HC)

2186 **S. 254(1) : Appellate Tribunal – Duties – Failure to consider entire material on record by the Tribunal, order was set aside [S. 253]**

Allowing the appeal of the revenue the Court held that failure to consider entire material on record by the Tribunal, order was set aside. (AY. 1999-2000)

CIT v. Essa Ismail Sait (Late) (2018) 400 ITR 134 (Ker.)(HC)

2187 **S. 254(1) : Appellate Tribunal – Powers – While setting aside the order of Commissioner, the Appellate Tribunal cannot rewrite the Assessing Officer's order and improve upon it. [S. 14A, 252, 263]**

Allowing the appeal of the assessee the Court held that the Tribunal's findings amounted to supplying reasons in respect of the Assessing Officer's order, on aspects, which were not expressly reflected in the assessment order. The Tribunal not only went into the merits of the Commissioner's order, which could be considered as only indicative of what was missed out by the Assessing Officer, but also recorded its findings. It proceeded to hold that amounts due to drawbacks/incentives and foreign exchange fluctuations were to be considered and had been considered by the Assessing Officer but not the Commissioner. As a matter of fact, the Assessing Officer had recorded no observation or findings on those issues, nor the issue of the loans, which the assessee had received, or the amounts claimed by him as interest. Given those matters of record, it was difficult to validate the Tribunal's approach reading into the Assessing Officer's order, reasons which were not there. The Tribunal's order itself disclosed that the Assessing Officer did not investigate into the question of advances given to others, having regard to the assessee's claim for having taken loans, for which interest expenditure was claimed. The duty of the Commissioner was to record why revision was warranted. The Tribunal's jurisdiction was not to rewrite the Assessing Officer's order and improve upon it. The orders of the Tribunal were unsustainable and thus were to be set aside. (AY. 2011-12, 2012-13)

CIT v. Braham Dev Gupta (2018) 408 ITR 291 / 169 DTR 49 (Delhi)(HC)

2188 **S. 254(1) : Appellate Tribunal – Powers – Deemed dividend – Buy back of shares – Tribunal has power to give directions for fresh enquiry into aspects of subject matter of appeal filed before it either suo motu or on any grounds raised by either party to appeal which have not been investigated or enquired into by lower authorities earlier and which may result in enhancement of tax liability of assessee – Direction is held to be valid. [S. 2(22)(e), 115QA]**

Dismissing the appeal of the assessee the Court held that Tribunal has power to give directions for fresh enquiry into aspects of subject matter of appeal filed before it either suo motu or on any grounds raised by either party to appeal which have not been investigated or enquired into by lower authorities earlier and which may result in enhancement of tax liability of assessee. Said directions could not be said to be per se amounting to taxability of said payout by assessee as 'Dividend' but same would depend upon nature of enquiry to be conducted by assessing authority and findings arrived at in pursuance of said direction. Accordingly the Tribunal was right and within its jurisdiction in directing examination of fair market value of shares bought-back by

it during previous year relevant, which could have an implication of taxability under section 2(22)(e) of the Act. (AY. 2011-12)
Fidelity Business Services India (P.) Ltd. v. ACIT (2018) 257 Taxman 266 / 169 DTR 73 (Karn.)(HC)

S. 254(1) : Appellate Tribunal – Powers – Tribunal cannot go beyond question in dispute – When the amounts could not have been added under section 68, the Tribunal was not competent to make the addition under section 69A – The order of the Tribunal was vitiated in law – Matter remanded to the Tribunal. [S. 68, 69A] 2189
Allowing the appeal of the assessee the Court held that the use of the word "thereon" in section 254(1) of the Income-tax Act, 1961 is important and it reflects that the Tribunal has to confine itself to the questions which arise or are subject matter in the appeal and it cannot travel beyond that. The power to pass such order as the Tribunal thinks fit can be exercised only in relation to the matter that arises in the appeal and it is not open to the Tribunal to adjudicate any other question or issue, which is not in dispute and which is not the subject matter of the dispute in appeal. Accordingly, when the amounts could not have been added under section 68, the Tribunal was not competent to make the addition under section 69A.The order of the Tribunal was vitiated in law-Matter remanded to the Tribunal. (2001-02)
Sarika Jain (Smt.) v. CIT (2018) 407 ITR 254 (All.)(HC)

S. 254(1) : Appellate Tribunal – Powers – Tribunal has no power of enhancement – Tribunal cannot take back benefits granted to assessee by Assessing Officer. Therefore, direction of Tribunal to Assessing Officer to determine depreciation or business loss of each year and carry forward lower of two for adjustment under section 115JA, which would result in enhancement of assessment, was not justified. [S. 115JA] 2190
Allowing the appeal of the assessee the Court held that Tribunal has no power of enhancement. Tribunal cannot take back benefits granted to assessee by Assessing Officer. Therefore, direction of Tribunal to Assessing Officer to determine depreciation or business loss of each year and carry forward lower of two for adjustment under section 115JA, which would result in enhancement of assessment, was not justified. Followed *Mcorp Gobal (P) Ltd. v. CIT (2009) 309 ITR 434 (SC), Hukumchand Mills Ltd. v. CIT (1967) 63 ITR 232 (SC)* (AY.1999-2000)
Sanmar Speciality Chemicals Ltd. v. ITO (2018) 256 Taxman 46 / 168 DTR 342 / 304 CTR 319 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Powers – Additional claim – Block assessment – The fact that the second proviso to S. 158BC(a) prohibits an assessee who is subjected to search from filing a revised return of income does not mean that the assessee is prohibited from raising an additional claim before the appellate authorities [S. 158BC] 2191
Question before the High Court was "Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in law in holding that as the Appellant had not excluded or reduced lease rentals from the depreciation offered to tax while filing the return of undisclosed income for the block period it was not entitled to do so later on in view of second proviso to section 158BC of the Act?"

Court held that, "We note that the prohibition in Second Proviso to Section 158BC(a) of the Act of filing a revised return of income before the Assessing Officer would not prohibit a Assessee from raising the additional claim before Appellate Authorities as held by this Court in *CIT v. Pruthvi Brokers and Shareholders P. Ltd. (2012) 349 ITR 336 (Bom.) (HC).* This on consideration of the decision of the Supreme Court in *National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 384 (SC)* and *Goetze (India) Ltd. v. CIT (2016) 284 ITR 323 (SC).* In fact, in *Goetze (India) Ltd.*, the Apex Court after holding that Assessing Officer has no power to entertain claim for deduction otherwise than by filing revised return of income by Assessee, clarified that the same would not fetter the appellate authority from entertaining a claim not made before the Assessing Officer". In the above view, the substantial question of law is answered in favour of the Appellant Assessee and against the Respondent Revenue.
However, the merits of the claim made by the Appellant in respect of the additional grounds urged before the Tribunal would be required for consideration by the Tribunal. (AY. 1985-86 to 1995-96) (ITA No. 118 of 2003, dt. 10.07.2018)
Alok Textile Industries Ltd. v. DCIT (Bom.)(HC), www.itatonline.org

2192 **S. 254(1) : Appellate Tribunal – Powers – When the Supreme Court stayed the appeals before High Court on issue raised before Tribunal, the Tribunal is justified in not hearing the appeal. [S. 80IB(9)]**
One of the issues involved in such tax appeals was the effect of clause (iv) of the substituted sub-section (9) of section 80-IB and consequently, the ratio laid down by the High Court in the case of *Niko Resources Ltd v. UOI (2015) 374 ITR 369 (Guj.)(HC)*. Supreme Court has passed an interim order directing the High Courts where appeals were pending not to finalise them till the matter was dealt by it. On application the Tribunal decided to adjourn all the appeals sine die to be taken up after the adjudication of pending appeals before the Supreme Court. On writ by the assessee for not taking up the matters by the Tribunal, dismissing the petition the Court held that, the Tribunal could not be faulted for deciding not to proceed further with the appeals till the Supreme Court finally cleared the issues. There was no impropriety or legal error in the Tribunal choosing this option.(AY. 2003-04 to 2009-10)
Vedanta Ltd. v. ITAT (2018) 404 ITR 214 / 169 DTR 441 / 305 CTR 220 (Guj.)(HC)

2193 **S. 254(1) : Appellate Tribunal – Powers – Commission – Order of remand was held to be valid. [S. 37(1)]**
Dismissing the appeal of the revenue the Court held that; the Tribunal was right in remanding the matter to the Assessing Officer on the issue of receipt of commission when the entity, which was supposed to have received the commission, was formed only after a survey, under S. 133A, was conducted. (AY. 2002-03)
CIT v. C. S. Seshadri (2018) 404 ITR 191 (Mad.)(HC)

2194 **S. 254(1) : Appellate Tribunal – Powers – Contractor – Turnover – Assessment based on turnover admitted by assesse, the Tribunal has no power to reduce the turnover.**
Allowing the appeal of the revenue the Court held that; Assessment based on turnover admitted by assesse, the Tribunal has no power to reduce the turnover. (AY. 2010-11)
PCIT v. Silpa Project And Infrastructures (India) Pvt. Ltd. (2018) 402 ITR 512 (Ker.)(HC)

S. 254(1) : Appellate Tribunal – Powers – No satisfactory explanation was furnished hence delay of 613 days in filing the appeal was not condoned. [S. 253(1), Limitation Act, 1963, S. 5] 2195

Dismissing the appeal of the assessee the Court held that the question regarding whether there was sufficient cause or not depended upon the facts of each case and primarily was a question of fact to be considered taking into consideration the totality of events which had taken place in a particular case. No cogent and satisfactory explanation was furnished by the assessee for inordinate delay of 613 days in filing the appeal before the Tribunal. The explanation furnished by the assessee did not satisfy the test of sufficient ground as contemplated under S. 5 of the Limitation Act, 1963. Thus the Tribunal was right in dismissing the appeal. (AY. 2005-06)

Shakuntla Thukral (Smt.) v. CIT (2018) 400 ITR 85 (P&H)(HC)

S. 254(1) : Appellate Tribunal – Delay – Failure by assessee to appear before court despite several notices – Appeal liable to be dismissed for non-prosecution. [Limitation Act, 1963, S. 3] 2196

Relying on the Apex court's decision in the case of *Balwant Singh (Dead) v. Jagdish Singh* (CA No. 1166 of 2008 dt.8-7-2010) the Tribunal held that, there was no reasonable and sufficient cause for the condonation of delay. The Tribunal also held that the notice for hearing was served through the office of Department but there was no representation on behalf of the assessee despite such notice. Such conduct of the assessee shows that the assessee was not interested in its appeals, therefore, it cannot be kept pending for adjudication for indefinite period. It was the duty of the assessee to make necessary arrangements for effective representation on the appointed date. Thus the Tribunal dismissed the appeals filed by the assessee. (AY. 1998-99, 1999-2000, 2003-04)

Neo sack Ltd v. ACIT (2018) 67 ITR 389 (Indore)(Trib.)

S. 254(1) : Appellate Tribunal – Duties – Additional ground – Validity of assessment is legal in nature – Admitted. [S. 153C] 2197

Additional grounds being legal in nature and no new facts were to be considered and relating to the validity of the assessment proceedings u/s. 153C the same is admitted. (AY. 2012-2013)

BNB Investment and Properties Ltd. v. Dy.CIT (2018) 68 ITR 567 (Delhi)(Trib.)
Ranjan Gupta v. Dy.CIT (2018) 68 ITR 567 (Delhi)(Trib.)

S. 254(1) : Appellate Tribunal – Duties – Bad debts – If the AO has failed to discharge his obligation to conduct a proper inquiry, it is the obligation of the ITAT to ensure that effective inquiry is carried out – The AO has not examined the crucial aspect whether the bad debts claimed by the assessee due to the NSEL scam constitutes a "speculative transaction" u/s. 43(5) and whether Explanation to S. 73(1) applies – Matter remanded. [S. 36(1)(iii), 43(5), 73(1)] 2198

Tribunal held that if the AO has failed to discharge his obligation to conduct a proper inquiry, it is the obligation of the ITAT to ensure that effective inquiry is carried out. The AO has not examined the crucial aspect whether the bad debts claimed by the

assessee due to the NSEL scam constitutes a "speculative transaction" u/s. 43(5) and whether Explanation to S. 73(1) applies. Matter remanded. (AY. 2014-15)
Omni Lens Pvt. Ltd. v. DCIT (2019) 174 ITD 262 (Ahd.)(Trib.), www.itatonline.org

2199 **S. 254(1) : Appellate Tribunal – Powers – Additional ground on question of law can be raised before Tribunal even in second round of appeal – Royalty received from overseas subsidiary from Egypt shown as taxable in the original return of income – Though the issue of taxability was not raised in the first round of appeal, additional ground was raised before the Tribunal in the second round of appeal – Tribunal allowed the claim and set aside the matter for verification – DTAA-India-Egypt. [Art. 13]**
Royalty received from overseas subsidiary from Egypt shown as taxable in the original return of income, though the issue of taxability was not raised in the first round of appeal, additional ground was raised before the Tribunal in the second round of appeal. Tribunal allowed the claim and set aside the matter for verification. Followed *Lekshmi Traders v. CIT (2014) 367 ITR 551 (Ker.) (HC)*. (ITA No. 3289/Mum./2015 dt.11-01 2017)
Asian Paints Ltd. v. Dy CIT (Mum.)(Trib.), www.itatonline.org

2200 **S. 254(1) : Appellate Tribunal – Powers – Condonation of delay – Delay of 92 days – The AO was negligent in filing the remand report before the CIT(A). The same attitude has continued at the stage of filing appeal to the ITAT. The excuse that the appeal was not filed due to the AO being busy with time barring assessment is not acceptable. The AO deliberately overlooked the impugned order and did not file appeal before the Tribunal within the period of limitation. Even the authorization by PCIT to file the appeal has been granted after the period of limitation. Hence sufficient cause is not shown. [S. 253(1)]**
Dismissing the appeal of the revenue the Tribunal held that the AO was negligent in filing the remand report before the CIT(A). The same attitude has continued at the stage of filing appeal to the ITAT. The excuse that the appeal was not filed due to the AO being busy with time barring assessment is not acceptable. The AO deliberately overlooked the impugned order and did not file appeal before the Tribunal within the period of limitation. Even the authorization by PCIT to file the appeal has been granted after the period of limitation. Hence sufficient cause is not shown. (AY. 2007-08)
ITO v. Gisil Designs Pvt. Ltd. (2018) 65 ITR 38 (SN) / 195 TTJ 100 (UO)(Delhi)(Trib.), www.itatonline.org

2201 **S. 254(1) : Appellate Tribunal – Powers – Additional ground – Failure to deduct tax at source – Issue which was not contested before the CIT(A), it is open to the assessee to challenge the disallowance first time before the Tribunal, additional ground was admitted and matter was remanded to the file of AO for adjudication on merits. [S. 40(a)(ia), 44AB, 194A, 194I, Art. 265]**
AO disallowed the expenses for failure to deduct tax at source based on audit report u/s. 44AB of the Act, based on the voluntary disallowance made by the assessee in the return. It was not contested in appeal before CIT(A). Subsequent passing of the order of CIT(A), the assessee realised that, the provisions of S. 194A and 194I are not applicable

and wrongly disallowance u/s. 40(a)(ia) of the Act was made by the assessee. Allowing the of the assessee, following the ratio in *Maynak Podar (HUF) v. WTO (2003) 262 ITR 633 (Cal) (HC)*, the Tribunal held that there is estoppel against the statute. The scheme of taxation is primarily governed by the principles laid down in the Constitution of India as per Article 265 of the Constitution of India, no tax shall be levied or collected without authority of law. Accordingly where assessee erroneously made certain disallowance in its return on account of non-deduction of tax at source and same was not contested before CIT(A), Tribunal held that, it was open for assessee to challenge said disallowances before Tribunal for first time. Matter was remanded to the file of AO for adjudication on merits. (AY. 2007-08)
Allahabad Bank v. DCIT (2018) 169 ITD 189 (Kol.)(Trib.)

S. 254(1) : Appellate Tribunal – Powers – Addition was made in original assessment – Reassessment was made making further additions – Original assessment order does not merge with reassessment order – Assessee not challenging additions made in reassessment order – Appeal was held to be not maintainable. [S. 143(3), 147, 253] 2202
The Commissioner (Appeals) dismissed the appeal as infructuous and observed that with the passing of order under S. 143(3) / 147 for the assessment year 2009-10 in the case of the assessee, the earlier order under S. 143(3) no longer existed in the eyes of law and in respect of appeal under S. 143(3) read with S. 147, the Commissioner (Appeals) partly allowed the appeal. On appeal :
Held, that the order under S. 143(3) dated December 23, 2011 and order under S. 143(3) / 147 dated August 28, 2014 were two separate orders and the submission of the assessee that the order under S. 143(3) merged with under S. 143(3) / 147 could not be accepted. In the present appeal, the assessee had not raised grounds based on the order under section 143(3) / 147 nor challenged the additions in the order under section 143(3) / 147, and the appeal was not maintainable. (AY. 2009-10)
Rajdhani Systems And Estates P. Ltd. v. ACIT (2018) 61 ITR 664 (Cuttack)(Trib.)

S. 254(1) : Appellate Tribunal – Additional ground – Validity of the assessment can be challenged at any time as it goes to the root of the matter and is a legal issue. 2203
The Tribunal that the validity of the assessment can be challenged at any time as it goes to the root of the matter and is a legal issue. Since all the facts are on record, it can be admitted at this stage. (AY. 2004-05, 2006-07 & 2007-08)
Cyient Ltd. v. Dy. CIT (2018) 194 TTJ 69 / 167 DTR 281 (Hyd.)(Trib.)

S. 254(1) : Appellate Tribunal – Powers – Delay of 93 days in filing appeal was condoned. [S. 263] 2204
Tribunal held that delay of 93 days was due to contacting Senior Advocate and based on his opinion filing of appeal being a reasonable cause, the delay was condoned (AY. 2013-14).
Vinod Agarwal v. CIT (2018) 61 ITR 598 (Kol.)(Trib.)
Shyam Sundar Agarwal v. CIT (2018) 61 ITR 598 (Kol.)(Trib.)
Ramnaresh Agarwal v. CIT (2018) 61 ITR 598 (Kol.)(Trib.)
Pawan Kumar Agarwal v. CIT (2018) 61 ITR 598 (Kol.)(Trib.)

2205 **S. 254(1) : Appellate Tribunal – Powers – Cross objection – Delay of 138 days – Delay due to oversight was held to be not sufficient cause – Delay was not condoned. [S. 253]**

The Tribunal held that explanation of the assessee for delay of 138 days for filing the cross objection stating that due to oversight which resulted in the fling the cross objection was held to be not sufficient cause, hence the cross objection was dismissed. (AY. 2011-12)

ACIT v. Progressive Constructions Ltd. (2018) 161 DTR 289 / 63 ITR 516 / 191 TTJ 549 (SB) (Hyd.)(Trib.)

2206 **S. 254(1) : Appellate Tribunal – Powers – Additional ground – Agent of State – Not liable to be assessed – Additional ground was admitted and matter was set aside to the AO to decide accordance with law. [S. 10(23AAA), 10(23C)(iv), Art. 289(1)]**

Assessee is an association of persons constituted for benefit of workers and labour in State of Maharashtra and it claimed exemption u/s. 10(23AAA) of the Act. Assessee has raised additional ground before the Tribunal that, no income tax is payable by assessee, as it is a 'STATE', and/or agent of 'STATE' and/or instrumentality of 'STATE'. Tribunal admitted the additional ground and set a side the matter to the Assessing Officer to decide the issue de novo. (AY. 2008-09)

Maharashtra Labour Welfare Board v. ITO (2018) 168 ITD 15 (Mum.)(Trib.)

2207 **S. 254(2) : Appellate Tribunal – Duty – Rectification of mistake apparent from the record – First miscellaneous application was dismissed – Second miscellaneous application was disposed in chambers without hearing the assessee and without assigning reasons – Held to be unjustified – However considering the peculiar facts of the case the High Court directed the assessee to pay ₹ 3,25,00,000/- (Three crores and twenty five lakhs) as additional tax in respect of on money. [S. 254(1)]**

First miscellaneous application filed by assessee on ground that entire on-money claimed to be received by it did not represent its income and reasonable expenses were to be deducted from same was dismissed and said order was sought to be recalled by assessee by filing second miscellaneous application which was disposed of in chambers without hearing assessee and without assigning reasons. On writ the Court held that the Tribunal is a last fact finding authority and it is obliged to consider appeal on facts and law and aggrieved parties before Tribunal must get an opportunity to demonstrate that findings of Assessing Officer even if confirmed by First Appellate Authority, are indeed erroneous both on facts and law and that such an opportunity ought to be extended and no technicalities should come in way of a proper and complete adjudication of contested issues therefore, Tribunal was unjustified in rejecting second miscellaneous application filed by assessee. On facts of the case instead of sending back the matter to the Tribunal the Court directed the assessee to pay ₹ 3,25,0000 lakhs as additional tax in respect of on money. (AY. 1989-90 to 1993-94)

D. K. Enterprises v. ITAT (2018) 171 DTR 383 / 99 taxmann.com 151 / 305 CTR 588 / (2019) 414 ITR 591 (Bom.)(HC)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – The ITAT should give priority to the hearing of Miscellaneous application – It should assign specific dates of hearing and inform parties well in advance – The ITAT should set right the lapses and put its house in order – None should be compelled to move the High Court and seek an out of turn hearing. [S. 254(1)] 2208

Allowing the petition the Court observed that the Miscellaneous Application is pending from 26th July, 2018. We are in the month of October, 2018 and the petitioner has no information as to when this application will be heard. In such state of affairs, we direct the Tribunal to give priority to this application and dispose it of as expeditiously as possible and, in any event, by 31st December, 2018. Court also observed that we have already indicated in our earlier orders and directions that the Tribunal should inform parties well in advance by assigning specific dates of hearing on these Miscellaneous Applications. They should be taken in the order in which they have been instituted/ filed. None should be compelled to move this Court and seek an out of turn hearing. That would mean if somebody approaches this Court, gets a priority and expeditious hearing, others will have to wait for outcome of their Miscellaneous Applications for years together. This is not a happy scenario and it is for the Tribunal to set right the lapses and put its house in order. (WP No. 3104 of 2018. dt. 15.10.2018)

Lupin Investment Pvt. Ltd. v. ITAT (Bom.)(HC), www.itatonline.org

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record –While dealing with the application for rectification, the Tribunal where it finds is an error apparent on record then it should recall the original order and place the appeal for consideration of the issue on merits before the Regular bench – It is not appropriate to dispose of the controversy on merits of the submission while disposing of the Rectification application. [S. 11(1)] 2209

Allowing the petition the Court held that while dealing with the application for rectification, the Tribunal where it finds is an error apparent on record then it should recall the original order and place the appeal for consideration of the issue on merits before the Regular bench. It is not appropriate to dispose of the controversy on merits of the submission while disposing of the Rectification application. Order of the Tribunal was quashed Matter remanded to the Tribunal to decide the matter as per law. (Referred *Safari Mercantile (P) Ltd. v. ITAT (2016) 386 ITR 4 (Bom.) (HC), Gyan Constructions v. ITAT (2015) 55 taxmann.com 479 (Bom.)(HC)* (WPNO. 1340 of 2018 dt 28-06-2018)

Universal Education v. ITAT (Bom.)(HC), www.itatonline.org

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Order in the case of sister concern is binding on the Tribunal unless set-aside or stayed. A rectification application on the ground that the orders in the sister concern's case are not correct is not permissible as it amounts to a review. [S. 254(1)] 2210

Allowing the petition the Court held that order in the case of sister concern is binding on the Tribunal unless set-aside or stayed. A rectification application on the ground that the orders in the sister concern's case are not correct is not permissible as it amounts to a review. (AY. 2004-05)

Procter & Gamble Home Products Pvt. Ltd. v. ITAT (2018) 404 ITR 101 / 170 DTR 205 / 305 CTR 605 (Bom.)(HC), www.itatonline.org

2211 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Reliance on a decision not subject-matter of consideration during the hearing of appeal (and having influence on final view) constitutes mistake apparent from record.**

HELD by the High Court that :

(iv) it cannot be stated with certainty that the decision of Delhi High Court had not evenly remotely influenced the decision taken given the manner in which the order has been structured and the final view given after considering such decision, hence the Tribunal while dealing with the rectification application, must deal with the Assessee's grievance that the Delhi High Court's decision does not apply to the present case / facts. This restoration is only to reconsider the Assessee's grievance in respect of reference / reliance upon the Delhi High Court decision in the original order and pass appropriate order on the rectification application. (AY. 2009-10)

Rama Industries Ltd. v. DCIT (2018) 163 DTR 156 / 92 taxmann.com 289 (Bom.)(HC).

Rama Petrochemicals Ltd. v. DCIT (2018) 163 DTR 156 / 92 taxmann.com 289 (Bom.)(HC)

Rama Phosphates Ltd. v. DCIT (2018) 163 DTR 156 / 92 taxmann.com 289 (Bom.)(HC)

2212 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Non consideration of case laws cited by Assessee during the hearing by Tribunal – Impugned order passed by the Tribunal dismissing the Assessee's Miscellaneous Application as well as the Appellate order are set aside. [S. 254(1)]**

Allowing Assessee's Writ, High Court held that though Tribunal's order render a finding that no positive material was brought on record, there is no discussion whatsoever of the various case laws detailed in submissions which according to the Petitioner clinches the issue in support of its case hence the Tribunal ought to have allowed assessee's rectification application and consider the appeal taking into account the case laws which were already cited during the hearing. (AY. 2007-2008)

Amore Jewels (P) Ltd. v. DCIT (2018) 305 CTR 305 / 169 DTR 369 (Bom.)(HC)

2213 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Transfer of income where there is no transfer of assets – Clubbing of income – Tribunal's original order requires no rectification as it also considered reasoning of CIT(A) who took note of all the judgements relied by Assessee. [S. 60, 63]**

Dismissing Assessee's Writ, the High Court held that the Tribunal's original order does not suffer from an infirmities requiring any rectification under Section 254(2) of the Act as the original Tribunal's order took note of judgement of Poddar Cements and the Tribunal also had before it reasoning of CIT(A) who had noticed all the judgements cited by the Assessee in the written note submitted to Tribunal hence it cannot be said that the Tribunal overlooked material fact or law. (AY. 2008-2009)

Ambience Developers & Infrastructures (P) Ltd. v. CIT (2018) 171 DTR 369 / (2019) 410 ITR 289 / 307 CTR 516 (Delhi)(HC)

Ambience Hotels & Resorts v. CIT (2018) 171 DTR 369 (2019) 410 ITR 289 / 307 CTR 516 (Delhi)(HC)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Limitation – Delay of 4 months and 10 days – Though the Tribunal has no power u/s. 254(2) to condone delay in filing the MA, the High Court has power under Articles 226 and 227 of the Constitution of India to do substantial justice by condoning the delay – Accordingly, the delay in fling the MA deserves to be condoned. [S. 271(1)(c)] 2214

Allowing the petition the Court held that; Though the Tribunal has no power u/s. 254(2) to condone delay in filing the MA, the High Court has power under Articles 226 and 227 of the Constitution of India to do substantial justice by condoning the delay. Injustice was done to the assessee because the Tribunal did not follow the binding judgement in *CIT v. Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565* on the issue of levy of penalty u/s. 271(1)(c). Accordingly, the delay in fling the MA deserves to be condoned. (WP No. 25553/2018, dt. 12.07.2018) (AY.2007-08)

Muninaga Reddy v. ACIT (2018) taxmann.com 230 (Karn.)(HC), www.itatonline.org

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Tribunal has no power to recall order and pass an entirely different order. [S. 254(1)] 2215

Allowing the appeal of the revenue the Court held that; it was not a simple case of allowing the application under S. 254(2) for the reason that such an application was already rejected by the Tribunal. The Tribunal had exercised a power of recall on a second application moved by the assessee under S. 254(2) by recalling not only the order passed on the assessee's application under S. 254(2) but had also taken a different view from that taken in its earlier judgment without pointing out any mistake. This was not permissible at all and, therefore, the order dated December 5, 2008 was patently erroneous and not sustainable. (AY. 2000-01)

CIT v. U. S. Srivastava Memorial Educational Society (2018) 405 ITR 546 (All.)(HC)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Remanding the matter to the Assessing Officer – No illegality or perversity – Rectification is not maintainable. [S. 12AA] 2216

Dismissing the petition the revenue, the Court held that the Tribunal granted liberty to the Assessing Officer to examine the books of account and in case there was any violation of the Act then to disallow exemption under S. 11 of the Act. No illegality or perversity could be demonstrated in the approach of the Tribunal. By moving the miscellaneous application, the Department tried to review the order which was not permissible under S. 254(2) of the Act.

CIT (E) v. JK Education Samiti (2018) 400 ITR 174 (P&H)(HC)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Net profit rate at 10% is applied – Tribunal used jurisdictional discretion which cannot be rectified. 2217

Dismissing the petition the Court held that, the Tribunal has applied net profit rate of 10% following the jurisdictional Bench decision in the case of *Pooja Construction Company v. CIT* (ITA No.750/Asr/1992 and not the judgement cited by the assessee

in the case of *Mohan Singh contractor v. ITO* (ITA No. 59 /Asr /2012. Court held that, Tribunal used jurisdictional discretion which cannot be rectified.(AY.2010-11)
Ajay Kappor v. CIT (2018) 165 DTR 433 / 302 CTR 431 / 256 Taxman 20 (J&K)(HC)

2218 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Interest on borrowed capital – Rectification order passed by Tribunal subsequently allowing the interest was quashed. [S. 36(1)(iii)]**
Allowing the appeal of the revenue the Court held that the Tribunal travelled far beyond its power of rectification in accepting assesse's various contentions which were not confined to pure factual errors apparent on record. Some of the contentions of the assesse were highly legal issues. Once the Tribunal had taken a particular view, it was always open for the aggrieved party to challenge such views before the Higher Court. The Tribunal could not have persuaded to re-examine the issues on the premise that there was an error apparent on the record. (AY. 1999-2000)
PCIT v. Nirma Ltd. (2018) 252 Taxman 187 (Guj.)(HC)

2219 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Pendency of appeal before Appellate Tribunal – The jurisdiction to correct errors vested in the Tribunal is not akin to review powers – Whether order could be rectified or not notice was issued with returnable on 18-06-2018. [S.153A]**
At the time of admission of Writ petition the Court observed that, (i) Mere pendency of appeal in the High Court does not preclude the Tribunal's power of rectification, (ii) Fact that there is difference of opinion between the two members of the Tribunal would, by itself, not mean that the error sought to be rectified is not apparent on the record & (iii) The Tribunal has no jurisdiction to recall an order which is based on submissions made and upon consideration of materials on record. The jurisdiction to correct errors vested in the Tribunal is not akin to review powers. With respect to the fundamental question whether there was an error which could have been rectified, notice was issued with returnable on 18-06-2018. (SPNO. 6337 of 2018, dt. 20/08/2018) (AY. 201-02 to 2006-07)
Shambhubhai Mahadev Ahir v. ITAT (Guj.)(HC), www.itatonline.org

2220 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Bogus share capital – The ITAT is an adjudicator and not an investigator – It has to rely upon the investigation / enquiry conducted by the AO – The Department cannot fault the ITAT's order and seek a recall on the ground that an order of SEBI, though available, was not produced before the ITAT at the hearing. The negligence or laches lies with the Department and for such negligence or laches, the order of the ITAT cannot be termed as erroneous – Rectification application of the department is dismissed. [S. 68]**
Dismissing the miscellaneous application of the revenue, the Tribunal held that; The ITAT is an adjudicator and not an investigator. It has to rely upon the investigation / enquiry conducted by the AO. The Department cannot fault the ITAT's order and seek a recall on the ground that an order of SEBI, though available, was not produced before the ITAT at the hearing. The negligence or laches lies with the Department and for such

negligence or laches, the order of the ITAT cannot be termed as erroneous. Rectification application of the department is dismissed. (AY. 2007-08)
ITO v. Iraisaa Hotels Pvt. Ltd. (2018) 173 ITD 30 (Mum.)(Trib.), www.itatonline.org

S. 254(2) : Appellate Tribunal – Rectification of mistake – Pronouncement of order – An order passed by the Tribunal even one day after the prescribed period of 90 days from the date of hearing causes prejudice to the assessee and is liable to be recalled. [S. 254(1), R. 34(5)(c)] 2221
Allowing the petition the Tribunal held that, an order passed by the Tribunal even one day after the prescribed period of 90 days from the date of hearing causes prejudice to the assessee and is liable to be recalled and the appeal posted for fresh hearing followed *Otter Club v. DIT (E) (2017) 392 ITR 244 (Bom.)(HC)* (WP No. 2889 of 2016). (M.A. No. 98/Mum./2018, dt. 01.11.2018)(AY. 2010-11)
Kaushik N. Tanna v. ACIT (Mum.)(Trib.), www.itatonline.org

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Principles of Natural Justice – Judgments relied upon by the ITAT were not confronted to any of the parties – Mistake apparent on record – Order was recalled. 2222
Allowing the application of the assessee, the Tribunal held that Judgments relied upon by the ITAT were not confronted to any of the parties and hence the order was recalled. (Tribunal relied on *Inventure growth & securities ltd. (2010) 324 ITR 319 (Bom.) (HC), Deepak Dalela v. ITO (2014) 147 ITD 19 (Jaipur) (Trib.), CIT v. Quality steel tubes ltd. (2012) 253 CTR 298 (All.) (HC), Honda siel power products Ltd. v. CIT (2007) 295 ITR 466 (SC), CIT v. S. Kumar tyres Mfg. Co. (2008) 305 ITR 360 (MP) (HC) and Naresh K. Pahuja v. ITO (2009) 224 CTR 284 (Bom.) (HC).)* (MA No. 223/M/2017, dt. 2/3/2018 (AY. 2009-10)
Hikal Ltd. v. CIT (UR) (Mum.)(Trib.)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Decisions rendered after 3 months reflect a mistake apparent from the record and have to be recalled and the appeals heard afresh. [R. 34(5)] 2223
Allowing the petition the Tribunal held that; Excessive delay by the Tribunal in passing judgement shakes the confidence of the litigants. Under Rule 34(5) of the Tribunal Rules read with *Shivsagar Veg. Restaurant v. ACIT (2009) 317 ITR 433 (Bom.) & Otters Club v. DIT (E) (2017) 392 ITR 244 (Bom.)(HC)* orders have to be passed invariably within three months of the completion of hearing of the case. The delay is incurable. Even administrative clearance cannot cure the delay. Such decisions rendered after 3 months reflect a mistake apparent from the record and have to be recalled and the appeals heard afresh. (ITA No. 1994/Mum./2014 dt. 1-02-2016)(MA NO. 151/MUM./2016, dt. 11.05.2018) (AY. 2007-08)
Crompton Greaves Ltd. v. CIT (2018) 64 ITR 43 (SN) (Mum.)(Trib.), www.itatonline.org
Editorial : Crompton Creaves Ltd v. CIT (2016) 46 ITR 465 / 177 TTJ 1 / (2017) 82 taxmann. com (Mum.) (Trib.) is recalled. (S. 263. Revision – Explanation 2 is declaratory nature.). Tribunal in Crompton Creaves Ltd v. CIT vide order ITA No 1994/Mum/ 2013 dt 28-02 2019 (AY. 2007-08) held that revision is held to be invalid.

2224 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – The limitation period for filing a Rectification Application has to be computed from the date of "communication" of the order and not from the date of passing the order.**
Allowing the application the Tribunal held that; The limitation period for filing a Rectification Application has to be computed from the date of "communication" of the order and not from the date of passing the order. The fact that the order was pronounced in open court is not relevant because the parties will not be aware of the mistakes therein until after perusal of the order. (M. A. No. 42/Chd/2018, dt. 27.04.2018) (AY. 2013-14)
Jagmohan Gurbakshish Singh v. DCIT (Chd.)(Trib.), www.itatonline.org
Universal Print O Paxk v. ITO (Chad)(Trib.), www.itatonline.org

2225 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Law of limitation will be governed by the law applicable when the order of Tribunal was passed and not as per amended law with effect from 1-06-2016 – DTAA-India-UK. [S. 115A, Art. 13(2)]**
Tribunal held that, Law of limitation will be governed by the law applicable when the order of Tribunal was passed and not as per amended law with effect from 1-06-2016. (i.e. Four years from the date of order). Since taxability of FTS is 15% earlier direction of Tribunal to tax at 20% is amended referred, India-UK DTAA art 13(2) and S. 115A (AY. 2005-06, 2007-08) (Refer *Gifford & Partners Ltd v. ADI. (2016) 142 DTR 201 / 181 TTJ 849 (Kol.)(Trib.))*
Gifford & Partners Ltd. v. ADI (2018) 169 ITD 224 / 193 TTJ 75 / 165 DTR 190 (Kol.)(Trib.)

2226 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Review of order on the basis of principle laid down by Superior courts was held to be not permissible.**
Dismissing the petition the Court held that; miscellaneous petition filed by assessee was seeking review of order on the basis of principle laid down by Superior courts was held to be not permissible. (AY. 2014-15)
Gowthami Associates v. ITO (2018) 168 ITD 509 (Bang.)(Trib.)

2227 **S. 254(2A) : Appellate Tribunal – Stay of demand – Assessing Officer based on the information from the Central Excise Department rejected claim under S. 80IC of the Act – No independent inquiries conducted by Assessing Officer, apart from relying on information from Central Excise Department – 30% of tax demand deposited by Assessee – Assessee has made out a strong prima facie case in its favour for stay of balance demand. [S. 80IC]**
Court held that; (i) AO had no independent material in his hands while rejecting assessee's claim for deduction under S. 80IC of the Act. The Assessing Officer could not have gone beyond the observations rendered or findings recorded by the Central Excise Department as even in the show cause notice there is a reference only to the findings recorded by the Central Excise Department. (ii) Tribunal's order explained the fact that the trading volume was minuscule and if it was prima facie observation made by ITAT, a thorough exercise should have been done by the

ITAT as to whether Assessing Officer was justified in denying the entire deduction as claimed by assessee. (iii) 30 percent of the tax demand has already been paid / adjusted which sufficiently safeguards the interest of the Revenue and is in line with the CBDT circular imposing condition to pay 20 percent of the tax demand for stay of balance tax demand. Hence, the assessee has made out a prima facie case for grant of interim order and Revenue has also been sufficiently protected. (AY. 2011-12, 2012-13, 2014-15)

Turbo Energy (P.) Ltd. v. Asst Registrar, ITAT, Chennai (2018) 255 Taxman 175 / 168 DTR 380 / 304 CTR 322 (Mad.)(HC)

S. 254(2A) : Appellate Tribunal – Stay of demand – While deciding an application for stay of demand, the Appellate Tribunal can only consider the prima facie case of merits. It cannot give a final finding on the merits and decide the appeal itself.[Central Excise Act, S. 35B] 2228

Court held that, while deciding an application for stay of demand, the Appellate Tribunal can only consider the prima facie case of merits. It cannot give a final finding on the merits and decide the appeal itself. (WP NO. 5704 of 2014, dt. 13.11.2017)

Maharashtra State Road Transport Corporation v. CST (2018) (12) G.S. T.L.140 (Bom.) (HC), www.itatonline.org

S. 254(2A) : Appellate Tribunal – Stay of demand – Direction to Tribunal to decide appeals within specified time is and vacation of stay is not mandatory-third proviso has to be understood with two clear prescriptions on caveat. They are that the third proviso has to be understood primarily as directory and not mandatory – Stay will not stand automatically vacated under third proviso to sub-section 2(A) of section 254, unless the Tribunal records a finding that the assessee was responsible for the procrastination of hearing of the appeal – Interim stay granted to continue. [S. 254(1)] 2229

Court held that, sub-section (2A) of section 254 of the Income-tax Act, 1961 is to the effect that the Appellate Tribunal may hear and decide the appeal within four years, "wherever it is possible". Therefore, Parliament in its wisdom thought it fit not to make it mandatory for the Appellate Tribunal to dispose of the appeal within four years, by employing the words "wherever it is possible". The obligation to dispose of an appeal within four years, under sub-section (2A), because of the peculiar language used by Parliament, is apparently only directory and not mandatory. If the obligation to dispose of an appeal within a time frame is only directory and not mandatory, the obligation under the proviso to dispose of an appeal within one year, cannot be said to be mandatory. The proviso will have to be read only as an exception to the main provision. If the main provision expresses a mere hope or imposes a pious obligation to dispose of an appeal within four years, if possible, it is not possible to construe the third proviso as mandatory. If an assessee is responsible for prolonging the matter, after having obtained a stay, he is certainly not entitled to continue to have the benefit of stay. But if for reasons not attributable to the assessee, the disposal of the appeal takes a longer time than what is prescribed, it may not be proper to impose penal consequences upon the assessee. No law which imposes a penal consequence upon one for the fault

of another can be said to be mandatory. A penal consequence for non-adherence to a statutory prescription should fall only upon the person, who was responsible for such failure to adhere to the prescription. Therefore, the applicability of that in individual cases where the Tribunal finds that the assessee is responsible for procrastinating the decision of the appeal, the Tribunal should vacate the stay at its discretion. In other words, a stay will not stand automatically vacated under the third proviso to sub-section (2A) of section 254, unless the Tribunal records a finding that the assessee was responsible for the procrastination of the hearing of the appeal. (AY. 2007-08)
CIT (TDS) v. Vodafone Mobile Services Ltd. (2018) 408 ITR 140 (T&AP)(HC)

2230 **S. 254(2A) : High Court – Stay of demand – Court held that the assessee has already paid ₹ 25.66 crores and the appeal is coming up for hearing accordingly the assessee was directed to pay another ₹ 10 crores only during the pendency of appeal. [S. 254(1)]**
Allowing the petition the Court held that the assessee has already paid ₹ 25. 66 crores and the appeal is coming up for hearing the assessee was directed to pay another ₹ 10 crores only during the pendency of appeal. Court also made observation that normally this court will not interfere in writ jurisdiction against said interlocutory order passed by the Appellate Authority which has seized the appeal before it however in view of peculiar facts and circumstances the writ was entertained. Refer *Flipkart India (P) Ltd v. CIT (2018) 169 ITD 211 / 165 DTR 1 / 193 TTJ 266 (Bang.)(Trib.)* (AY. 2015-16)
Flipkart India (P) Ltd. v. UOI (2018) 254 Taxman 79 (Karn.)(HC)

2231 **S. 254(2A) : Appellate Tribunal – Extension of stay – Guidelines specified to ensure expeditious hearing of cases referred to Special Benches and Third Members. [S. 92, 254(1)]**
Tribunal held that inordinate delay in fixation of hearing of Special Bench & Third Member cases is inappropriate and contrary to the scheme of the Act. It also reduces the efficacy and utility of the mechanism to deal with important matters-Guide lines referred in the order are, (a) Wherever special benches are constituted, the special benches shall, as far as possible, commence hearing within 120 days of the benches being constituted. (b) It is only in exceptional circumstances that the adjournment may be granted, at the instance of the either party, in Special Benches and Third Member cases, and the hearing of such matters should be scheduled by the registry in due consultation with both the parties. Even when adjournment is granted, it shall not be generally granted beyond 30 days. (c) The guidelines shall also be followed with respect to Third Member cases, and the Registry will take up the matter with the respective benches, for scheduling the hearing, in terms of the above guidelines. (S P No. 68 and 69/Ahd/ 2018 In ITA No 1285/Ahd/2012 and 1822/Ahd/2014, dt. 26.12.2018)(AY. 2007-08 2008-09)
Doshi Accounting Services Pvt. Ltd. v. DCIT (2019) 175 ITD 1 / 173 DTR 169 (SB) / 197 TTJ 273 (Ahd.)(Trib.) www.itatonline.org

S. 254(2A) : Appellate Tribunal – Stay of demand – Penalty – The assessee has made out a prima facie case that the outcome of the appeal before the ITAT will directly impact the penalty proceedings which are hurriedly being finalized by the authorities which may entail huge liability by way of penalty on the assessee. The revenue authorities are accordingly restrained from passing any order imposing penalty on the assessee so long as the appeal is pending before the Tribunal. [S. 206AA, 271C] 2232

Tribunal held that; The assessee has made out a prima facie case that the outcome of the appeal before the ITAT will directly impact the penalty proceedings which are hurriedly being finalized by the authorities which may entail huge liability by way of penalty on the assessee. Accordingly the revenue authorities are restrained from passing any order imposing penalty on the assessee so long as the appeal is pending before the Tribunal. (Followed, *Wander 44 Taxman.com 103 (Bom.) & GE India Technology 46 Taxmann.com 374 (Guj) (HC).* (SA NOS. 436 & 437/MUM./2018, dt. 28.09.2018)(AY. 2016-17 & 2017-18)

Uber India Systems Pvt. Ltd. v. JCIT (2018) 173 ITD 268 / 171 DTR 179 / 196 TTJ 459 (Mum.)(Trib.), www.itatoline.org

S. 254(2A) : Appellate Tribunal – Stay of demand – Arrest for recovery of arrears – It is a question of confinement of a person in jail due to non-payment of tax dues. Since the recovery of outstanding dues has been stayed except deposit of specified amount, the TRO is ordered to arrange for release of the assessee immediately on deposit of said amount. 2233

Tribunal held that; it is a question of confinement of a person in jail due to non-payment of tax dues. Since the recovery of outstanding dues has been stayed except deposit of specified amount, the TRO is ordered to arrange for release of the assessee immediately on deposit of said amount. Income Tax Authorities are directed to promptly do the necessary formalities including issue of release warrant to the Jail officials on compliance of the directions of the Tribunal. (SA. Nos. 43, 44-Chd-2018 in ITA Nos. 498, 499-Chd/2015, dt. 24.08.2018)(AY. 2007-08, 2008-09)

Devinder Singh Gill v. DCIT (2018) 170 DTR 314 / 195 TTJ 638 (Chd.)(Trib.), www.itatonline.org

S. 254(2A) : Appellate Tribunal – Stay of demand – Failure to make out any prima facie case in its favour the Tribunal directed the assessee to pay deposit 50 percent of demand in question and furnishing the Bank Guarantee for balance amount. [S. 220, 254(1)] 2234

Dismissing the stay petition the Tribunal held that, the assesse's failure to make out any prima facie case in its favour and any evidence demonstrating any financial hardship, the Tribunal has directed the assessee to pay deposit 50 percent of demand in question and furnishing the Bank Guarantee for balance amount. (AY. 2015-16)

Flipkart India (P) Ltd. v. CIT (2018) 169 ITD 211 / 165 DTR 1 / 193 TTJ 266 (Bang.)(Trib.)

Editorial : Refer Flipkart India (P) Ltd. v. UOI (2018) 254 Taxman 79 (Karn.)(HC)

2235 **S. 254(2A) : Appellate Tribunal – Stay of demand – Recovery – It is painful to note that the Dept officials in order to achieve targets at the close of the FY not only are tempted to ignore the principles of law and natural justice but cross their limits, in complete violation of the orders issued by judicial authorities. They are pressurised by higher officials to do so and they have to choose the lesser risky option of the two i.e. either to face the departmental action for not achieving targets or to face contempt proceedings. They choose the later option because perhaps they think that courts will not opt for strict view in case the amount coercively recovered is refunded after passing of the cut off date i.e. 31st March, and an apology tendered to the Court. [S. 226, 254(1)]**

Tribunal held that,it is painful to note that the Dept officials in order to achieve targets at the close of the FY not only are tempted to ignore the principles of law and natural justice but cross their limits, in complete violation of the orders issued by judicial authorities. They are pressurised by higher officials to do so and they have to choose the lesser risky option of the two i.e. either to face the departmental action for not achieving targets or to face contempt proceedings. They choose the later option because perhaps they think that courts will not opt for strict view in case the amount coercively recovered is refunded after passing of the cut off date i.e. 31st March, and an apology tendered to the Court. (M. A. No. 70/Chd/2018, dt. 09. 05. 2018)(AY. 2009-10)

Greater Mohali Area Development Authority v. DCIT (Chd.)(Trib.), www.itatonline.org

2236 **S. 254(2A) : Appellate Tribunal – Interim stay – Contempt – Strictures passed against the Department for confronting, showing resentment and displeasure to the Tribunal for granting interim stay against recovery of demand. Petition of revenue was dismissed with costs of ₹ 20,000/- to be deposited in Prime Minister's Relief fund within 15 days of receipt of the copy of this order. [S. 11, 220(6), 226(3)]**

The Tribunal held that department officials fully knowing that no useful purpose will be served either by moving the present application and even knowing that the present application was infructuous and non-maintainable even on the date of its filing, not only filed this application, but also insisted for arguments despite that the hearing on the main appeal had already been concluded on a previous date. The only motive behind this application is to confront and show resentment and displeasure to this Tribunal for granting interim stay against recovery in this matter. This application is therefore dismissed with costs of ₹ 20,000/- to be deposited in Prime Minister's Relief fund within 15 days of receipt of the copy of this order. While ordering the Tribunal observed that it will not result into any loss to the Govt. Exchequer but the movement of some funds from one branch of the Govt. to the other perhaps will convey the message of caution to the concerned officials. However, keeping judicial restraint, no contempt of court proceedings was recommended Strictures passed against the Department for confronting, showing resentment and displeasure to the Tribunal for granting interim stay against recovery of demand. It further stated that the Department is showing open defiance of, disrespect of, or of open resentment to, orders of the Tribunal, which may prove be very dangerous for the sanctity of the courts of law/Justice dispensation system of the country. (MA No. 37/chd/2018, dt. 06. 04. 2018)(AY. 2013-14)

ITO (E) v. Chandigarh Lawn Tennis Association (2018) 193 TTJ 256 / 163 DTR 113 / 66 ITR 14 (SN) (Chd.)(Trib.), www.itatonline.org

S. 255 : Appellate Tribunal – Powers of President – Power to constitute special Bench is with president, Court will not interfere. 2237

Assessee filed an application before President of Tribunal for constitution of Special Bench for disposal of its appeal. President of Tribunal did not allow said application and passed an order directing Touring Bench to dispose of assessee's appeal. Assessee filed writ petition wherein Single Judge passed an order directing Tribunal to decide assessee's appeal in expeditious manner. On appeal division Bench held that,on facts, order passed by Single Judge could not be construed to mean that powers of President to constitute appropriate Bench for hearing and disposal of appeal had been dealt with by Court. Order of single judge is affirmed. (AY. 2013-14)

Google India (P.) Ltd. v. Dy. CIT(IT) (2018) 254 Taxman 228 / 163 DTR 497 / 302 CTR 276 / (2019) 412 ITR 372 (Karn.)(HC)

S. 260A : Appeal – High Court – Condonation of abnormal delay of 1371 days in removing office objections : High Court refused to condone delay and held that Dept must "set its own house in order by sacking and removing the delinquent and negligent officials or penalising them otherwise so as to subserve larger public interest". The Supreme Court reversed this holding High Court ought to have condoned the delay and not dismissed the appeal – Dept to pay costs of ₹ 1 lakh which shall be deposited with the Supreme Court Bar Association Lawyers' Welfare Fund. 2238

The appeal was filed by the Department(appellant herein) before the High Court against the judgment of the Income Tax Appellate Tribunal (ITAT). However, the said appeal was defective and the appellant took abnormal time of 1371 days in removing those defects. An application for condonation of delay was also filed. Since there was abnormal delay, the Registrar/Prothonotary & Senior Master of the Bombay High Court passed the Order dismissing the appeal for non-removal of office objections. The appellant herein took out a Notice of Motion against the aforesaid Order which has been rejected by the High Court vide the impugned Judgment. The Supreme Court held that ,no doubt, there is a long delay in removing the objections in a case like this the High Court should have condoned the delay in removing the office objections and heard the matter on merits. However, for the said delay caused by the appellant, the appellant shall pay cost of Rupees 1 lac within four weeks, which shall be deposited with the Supreme Court Bar Association Lawyers' Welfare Fund. In view of the above, we condone the delay in removing office objections and remit the matter to the High Court for consideration of the case on merits. (CA. No. 10774 of 2018, dt. 26.10.2018)

CIT v. Reliance Industries Ltd. (SC), www.itatonline.org

Editorial : Order is CIT (LTU) v. Reliance Industries Ltd. (2018) 405 ITR 483 (Bom.) (HC) is set asde.

S. 260A : Appeal – High Court – Delay of 1662 days – Apex court held that, the High Court should not take a technical approach and refuse to condone the delay when appeals for earlier years with identical issues are already pending before it – Delay was condoned and the matter was directed to hear the appeal on merits. [S. 260A (2A)] 2239

Apex court condoned the delay of 1662 days and held that the High Court should not take a technical approach and refuse to condone the delay when appeals for earlier years

with identical issues are already pending before it-Delay was condoned and the High Court was directed to hear the appeal on merits. (AY.2007-08)
Anil Kumar Nehru v. ACIT (2019) 306 CTR 113 / 173 DTR 33 / 260 Taxman 372 (SC), www.itatonline.org
Editorial : From the judgement of Bombay High Court in NOM No 2910 of 2016 dt 13-1-2017 Anil Kumar Nehru v. ACIT (2019) 260 Taxman 373 (Bom.)(HC)

2240 **S. 260A : Appeal – High Court – Inter department litigation – Clearance from the Committee on dispute – Order of High court is set aside and matter remanded to High Court for deciding the appeal on merits.**
Allowing the appeal of the revenue, Order of High Court directing the CIT to approach the High Powered Committee for clearance of Committee on Dispute for filing appeal before the High court is set aside and matter remanded to High Court for deciding the appeal on merits. Referred *Oil & Natural Gas Commission v. CCE (1994) 116 CTR 643 / 1994 (70) ELT 45 (SC)*
CIT v. Doordarshan Commercial Services (2018) 166 DTR 425 / 255 Taxman 34 / 303 CTR 129 (SC)

2241 **S. 260A : Appeal – High Court – Mesne profit – Capital or revenue – Dismissal of the appeal on the ground that the department has not filed an appeal against the Judgement of special Bench was held to be not justified – High Court was directed to hear the appeal on merits. [S. 4]**
High Court dismissed the appeal of the revenue on the ground that the department had not filed an appeal against the Judgement of special Bench in *Narang Overseas Pvt. Ltd. v. ACIT (2008) 111 ITD 1 (Mum.) (SB) (Trib.)*. On appeal by the revenue allowing the appeal the Supreme Court held that, this was not the correct approach of the High Court: though one authority had followed its own decision in another case and that matter in appeal had been dismissed on technical grounds still the High Court had to decide the question on the merits.
CIT v. Goodwill Theatres P. Ltd. (2018) 400 ITR 566 (SC)
Editorial : Order in CIT v. Goodwill Theatres Pvt. Ltd. (2016) 386 ITR 294 / 241 Taxman 352 (Bom.)(HC) was set aside.

2242 **S. 260A : Appeal – High Court – Issue not raised and adjudicated by lower authorities – Cannot be permitted to be raised for first time in appeal to High Court. [S.195A, 201(1), 201(1A)]**
Principle of grossing up of income applicable as per S.9(2) Explanation 2 was not agitated before lower authorities, hence cannot be raised for first time before Court. (AY. 2002-03, 2003-04)
TVS Motor Co. Ltd. v. ITO (2018) 258 Taxman 77 / 170 DTR 15 / 304 CTR 853 / (2019) 413 ITR 171 (Mad.)(HC)

S. 260A : Appeal – High Court – Strictures – The Court deprecated the tendency of the Revenue to file appeals even though the issues were ex facie covered by the decisions of the jurisdictional High Courts or even the Supreme Court of India – Copy of order forwarded to Chief Commissioner, CBDT, Ministry of Finance, Department of revenue for need full action – Interest income – Held to be not assessable. [S. 4] 2243

Dismissing the appeal of the revenue the Court, deprecated the tendency of the Revenue to file appeals even though the issues were ex facie covered by the decisions of the jurisdictional High Courts or even the Supreme Court of India. Court also observed that "It is expected of the concerned Authorities who approve filing of such appeals u/s. 260-A of the Act, to bona fide apply their mind to such aspects of the matter and only after recording appropriate reasons for need to file such appeals and need to get substantial question of law genuinely arising from the Order of the Tribunal determined by Constitutional Courts, that they should approve the filing of such appeals and the High Court u/s. 260-A of the Act. But, the present Appeal filed by the Revenue is certainly not one of that kind and therefore we record our note of caution for the Revenue Authorities concerned in this regard." Court also observed that, copy of this Order shall be sent to the Respondent-Assessee, as well as to the Chief Commissioner and Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, New Delhi, for aforesaid needful action. (AY. 2012-13)

PCIT v. Bank Note Paper Mill India (P.) Ltd. (2018) 256 Taxman 429 / (2019) 412 ITR 415 (Karn.)(HC); www.itatonline.org

S. 260A : Appeal – High Court – Maintainability – Small tax effect – the "tax effect" is much less than ₹ 20,00,000 for all the assessment years taken together and no material on record to show that the present appeals filed by the Revenue have any cascading effect – Therefore, the appeals are dismissed as withdrawn. 2244

Held by the High Court that in view of the fact that the tax effect in all the instant appeals taken together is much less than ₹ 20,00,000 and there is no material on record to show that these appeals filed by the Revenue have any cascading effect, the appeals were dismissed as withdrawn in accordance with the CBDT Circular No. 21 of 2015, dt. December 10, 2015. (AY. 1997-1998 to 2002-2003)

CIT v. Belgaum Urban Development Authority (2018) 304 CTR 994 / 170 DTR 279 (Karn.) (HC)

S. 260A : Appeal High Court – Abatement of proceedings – Death of assessee – Legal heirs not brought on record in spite of time given repeatedly to revenue – Proceedings abated. 2245

Dismissing the appeal of the revenue, the court held that, death of assessee on 18-6-2016 and Legal heirs not brought on record in spite of time given repeatedly to revenue. The Department had not given necessary instructions to their counsel in spite of being aware of the demise of the assessee as early as on June 18, 2016. The appeals were to be dismissed as having abated.

CIT v. Jeppiar (2018) 409 ITR 511 (Mad.)(HC)

2246 **S. 260A : Appeal – High Court – Place of assessment – Objection to reassessment notice issued in Mumbai cannot be raised for first time before High Court – Assessment proceedings is held to be valid. [S. 120(3), 124, 127, 143(3), 147, 148]**

Dismissing the appeal of the assessee the Court held that; the assessee had not raised any objection after the Assessing Officer at Hyderabad issued notice for appearance. On the contrary, he appeared before the Assessing Officer at Hyderabad and put forth his objections on the merits regarding the reassessment. Even in the two appeals filed by him before the two appellate fora, the assessee had never raised this objection. While the very initiation of proceedings and issue of notices under sections 147 and 148 constituted a jurisdictional issue, which could be raised by the aggrieved party at any point of time and at any stage, the objections regarding non-recording of reasons and non-issue of notice before passing the order of transfer would not go to the root of the matter enabling the aggrieved party to raise these issues for the first time before the High Court not having raised earlier. The reason for this is that these aspects raise mixed questions of fact and law. Unless the assessee had raised these issues before the lower fora, the facts relevant thereto would not come on record. Therefore, the assessee, having not raised the objections with respect thereto before any lower fora, was not entitled to raise them for the first time in these appeals before the court. The assessee had also not pleaded any prejudice on account of transfer or purported absence of reasons for such transfer. The assessment proceedings were valid. (AY. 1992-93 to 1996-97)

J. Aditya Rao v. ACIT (2018) 409 ITR 169 (T&AP)(HC)

2247 **S. 260A : Appeal – High Court – Notice of motion for disposal of appeal vis-a-vis pendency of appeal in the first round – Directions sought – To decide the second round of appeal basis decisions rendered by various Courts cannot be granted as the second round of proceedings have not yet culminated in a final order of the Tribunal. [S. 254 (1)]**

Held by the High Court that under the Act, it can exercise their Appellate jurisdiction in respect of appeals filed under Section 260A of the Act by the parties from the orders of the Tribunal passed under Section 254 of the Act and since the second round of proceedings have not yet culminated in a final order under Section 254 of the Act, no directions can be given in respect of such matter not before the Court. (AY. 2008-09)

Johnson & Johnson (P) Ltd. v. CIT (2018) 168 DTR 292 (Bom.)(HC)

2248 **S. 260A : Appeal – High Court – Monetary limits – CBDT Circulars continue to bind revenue and if they contain any conditions, whether such conditions are attracted or not would have to be proved and established by revenue; mere raising objection in terms of Circular would not be enough. [S. 119]**

Dismissing the notice of motion to restore the appeal on the ground that the appeal was wrongly withdrawn as the issue contested was based on audit objection. Court held that mere raising objection in terms of audit objection is not enough, the Revenue will have to point out that this audit objection has been accepted by the Department. As no such records were produced the oral request was rejected and notice of motion was dismissed. Circulars and Notifications : CBDT Circular No. 21 of 2015 dt. 10-12-2015 and Circular No. 3 of 2018, dt. 11-7-2018.

PCIT v. Nawany Construction Co. (P.) Ltd. (2018) 258 Taxman 365 (Bom.)(HC)

S. 260A : Appeal – High Court – Precedent – Department could not be permitted to raise the same questions as had been earlier dealt with in the Division Bench judgments and orders of the court. [S. 40(a)(ia), 194J] 2249

Dismissing the appeal of the revenue the Court held that; Department could not be permitted to raise the same questions as had been earlier dealt with in the Division Bench judgments and orders of the court.

CIT v. Dedicated Healthcare Services (TPA) India Pvt. Ltd. (2018) 408 ITR 36 / 304 CTR 304 / 259 Taxman 192 (Bom.)(HC)

S. 260A : Appeal – High Court – Method of accounting – Following AS-7 of the ICAI and not appreciating the fact that the same is not notified by the provisions of section 145 of the Income-tax Act, 1961 is a question of law, which requires consideration. [S. 145] 2250

Following, question of law is admitted

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in allowing the claim of the asseessee following the AS-7 of the ICAI and by not appreciating the fact that the same is not notified by the provisions of section 145 of the Income-tax Act, 1961?" (AY.2008-09)

PCIT v. International Metro Civil Contractors (2018) 408 ITR 136 / 254 Taxman 426 / 304 CTR 682 (Bom.)(HC)

S. 260A : Appeal-High Court – No satisfactory reason has been provided for delay of 439 days in filing an appeal – Pendency of rectification application before Tribunal cannot be the reason for codonation of delay. [S. 254(2)] 2251

Dismissing the petition the Court held that; no satisfactory reason has been provided for delay of 439 days in filing an appeal. Pendency of rectification application before Tribunal cannot be the reason for codonation of delay.

Agnity Technologies (P) Ltd. v. CIT (2018) 97 taxmann.com 515 / 258 Taxman 129 (Delhi)(HC)

Editorial : SLP of assessee is dismissed; Spinacom India (P.) Ltd. v. CIT (2018) 258 Taxman 128 (SC)

S. 260A : Appeal – High Court – Question of Law – Interpretation of document is question of law – Amount received by assessee under non-compete agreement constitute capital receipt. [S. 4] 2252

High Court referred the Judgement of Apex Court in *Sree Meenakshi Mills Ltd. v. CIT (1957) 31 ITR 28 (SC)* and *CIT v. Biju Patnaik (1986) 160 ITR 674 (SC)*, quoted in the judgement :

"(i) When the point for consideration was a pure question of law such as construction of a statute or document of title, the decision of the Tribunal was open for reference to the Court.

(ii) When the point for determination was a mixed question of law and fact, while the finding of the Tribunal on the facts found was final, its decision as to legal effect of those findings was a question of law, which could be reviewed by the court.

(iii) A finding on a question of fact was open to attack under reference under the relevant Act as erroneous in law when there was no evidence to support it or if it was perverse.

(iv) When the finding was one of fact, the fact that it is itself an inference from other basic facts will not alter its character as one of the fact."

Following the judgements of Apex Court the Honourable Court held that,interpretation of document is question of law accordingly the amount received by assessee under non-compete agreement constitute capital receipt. (AY. 1998-99, 1999-2000)

V. C. Nannapaneni v. CIT (2018) 407 ITR 505 / 305 CTR 625 / 171 DTR 337 (T&AP)(HC)

2253 **S. 260A : Appeal – High Court – Cross objection – Limitation – Limitation to file cross objections starts from date of service of notice of appeal – Plea by cross-objector that as no date of final hearing was mentioned in notice, therein is not necessary to explain the delay of 94 days in filing the cross objection is held to be unsustainable-Application filed for condonation of delay was not pressed by the Counsel. [Civil P.C. O. 41, R. 22, Limitation Act, 1963, S. 5]**

Dismissing the Cross objection the Court held that limitation to file cross objections starts from date of service of notice of appeal. Plea by cross-objector that as no date of final hearing was mentioned in notice it is not necessary to explain the delay of 94 days in filing the cross objection is held to be unsustainable. Application filed for condonation of delay was not pressed by the counsel.

Santosh Devi (Smt) v. Hari Singh AIR 2018 HP 170

2254 **S. 260A : Appeal – High Court – Disallowance of expenditure in respect of strategic investment – Alternative claim was raised before the Court was that disallowance cannot be in excess of total exempt income – As the alternative claim was not raised before the Tribunal the High Court declined to entertain the claim – Only issue of jurisdiction can be raised. [S. 14A, 254(1), R.8D]**

The issue raised before the High Court was "Whether on facts and in the circumstances of the case and in law, the Tribunal was justified in confirming the disallowance of ₹ 50,44,792 u/s 14A of the Act "The parties agreed that the issue is covered against the assessee in view of Judgement of Apex Court in *Maxopp Investment Ltd v. CIT (2018) 402 ITR 640 (SC)*. Alternative claim was raised before the Court for the first time that disallowance cannot be in excess of total exempt income. The Court held that issue not raised before Tribunal, could not be allowed to be urged before High Court in appeal-however, only an issue of jurisdiction would be allowed, even if same was not raised before Tribunal. Followed *CIT v. Tata Chemicals (P) Ltd (2002) 256 ITR 395 (Bom.) (HC), CIT v. Lata Shantilal Shah (Smt) (2010) 323 ITR 297 (Bom.) (HC)* (AY. 2008-09)

Ashish Estate & Properties (P.) Ltd. v. CIT (2018) 257 Taxman 585 (Bom.)(HC)

2255 **S. 260A : Appeal – High Court – Substantial question of law – Matching concept – Mixed question of law and fact – Question which is not raised before the Tribunal and lower authorities cannot be allowed to be raised before the Court in appeal for the first time. [S. 4, 5]**

Dismissing the appeal of the assessee the Court held that the assessee had recognised the amount as profit on Securitization of lease rentals receivable hence rightly taxed as revenue receipts. Question whether matching concept ought to have been applied is a mixed question of law and fact and the said issue was not raised before the Tribunal

and lower authorities. Accordingly the question which was not raised before the Tribunal and lower authorities cannot be allowed to be raised before the Court in appeal for the first time. (AY. 2002-03, 2003-04)
L & T Finance Limited v. DCIT (2018) 170 DTR 362 / 304 CTR 954 / 258 Taxman 282 (Bom.)(HC), www.itatonline.org

S. 260A : Appeal – High Court – Failure to remove objections – Prothonotary and Senior Master is not a judicial Officer – He has no power to condone the delay – Application with a delay of 958 days seeking restoration of its appeal – Restructuring of office of department and thereupon shifting of files to new independent/dedicated Commissionerate – Dismissed the appeal by observing that revenue authorities failed to remove office objections within prescribed period and, moreover, explanation offered did not constitute a sufficient cause for condoning such enormous delay, revenue's application for restoration of appeal was to be declined. [Bombay High Court (Original Side) Rule 986 of 1980] 2256
Revenue filed an appeal against order of Tribunal. In view of certain defects in appeal, revenue authorities were granted 30 days time to remove those office objections. Prothonotary and Senior Master finding that revenue failed to remove those objections within prescribed period, passed an order in terms of rule 986 of 1980 Rules dismissing revenue's appeal. Revenue thereupon filed an application with a delay of 958 days seeking restoration of its appeal and reason offered for delay was that time was consumed in restructuring of office of department and thereupon shifting of files to new independent/dedicated Commissionerate. Prothonotary and Senior Master allowed revenue's application. Assessee filed an objection. The Court held that High Court held that; Prothonotary and Senior Master is not a judicial Officer and he has no power to condone the delay. Court also held that since revenue authorities failed to remove office objections within prescribed period and, moreover, explanation offered did not constitute a sufficient cause for condoning such enormous delay, revenue's application for restoration of appeal was to be declined. (AY. 2006-07)
CIT v. Bharati Vidyapeeth (2017) 87 taxmann.com 181 (Bom.)(HC)
Editorial : SLP of revenue is dismissed; CIT v. Bharati Vidyapeeth (2018) 257 Taxman 557 (SC)

S. 260A : Appeal – High Court – Transfer pricing disputes with regard to exclusion and inclusion of comparables to determine Arm's Length Price (ALP) would not necessarily give rise to substantial questions of law except if there is perversity in finding or failure to adhere to the settled principles of law while determining comparables. [S. 92C] 2257
Dismissing the appeal of the revenue the Court held that; Transfer pricing disputes with regard to exclusion and inclusion of comparables to determine Arm's Length Price (ALP) would not necessarily give rise to substantial questions of law except if there is perversity of finding or failure to adhere to the settled principles of law while determining comparables.
PCIT v. TIBCO Software (India) Pvt. Ltd. (2018) 409 ITR 576 / 305 CTR 482 / 171 DTR 221 (Bom.)(HC), www.itatonline.org

2258 **S. 260A : Appeal – High Court – Strictures – Subsequent event was not brought to the notice of High Court by revenue – Court held that there is no discipline in the manner the Dept conducts matters. The Dept should not take legal matters casually and lightly. There should be a dedicated legal team in the department. Lack of preparation is affecting the performance of the advocates. They do not have full records & do not have the assistance of officials who can give instructions. The Commissioner of income tax should devote more time to their work rather than attending some administrative meetings and thereafter boasting about revenue collection in Mumbai.**

Honourable court observed that when the matters were placed for 'admission' the revenue counsel was not briefed about the subsequent event of miscellaneous application. It was brought to notice by the Counsel appearing for the assessee. We have no information as to whether prior to the decision of the Tribunal on this Miscellaneous Application, the Assessing Officer has already given effect to Tribunal's initial or earlier order or otherwise. If the mistakes are corrected in the later order dated 13th January 2017, then, whether the Assessing Officer has given effect to that order also will be crucial and relevant for us. Court held that there is no discipline in the manner the Dept conducts matters. The Dept should not take legal matters casually and lightly. There should be a dedicated legal team in the department. Lack of preparation is affecting the performance of the advocates. They do not have full records & do not have the assistance of officials who can give instructions. The Commissioner of income tax should devote more time to their work rather than attending some administrative meetings and thereafter boasting about revenue collection in Mumbai. (WP No.1936 of 2018. & ITA No. 1320 of 2018, dt. 26.09.2018)

PCIT v. Radan Multimedia Ltd. (Bom.)(HC), www.itatonline.org

2259 **S. 260A : Appeal – High Court – Restoration of appeal – Low Tax Effect Circular – The Circulars continue to bind the Revenue and if they contain any conditions, whether such conditions are attracted or not would have to be proved and established by the Revenue-Appeal of revenue was dismissed. [S.119]**

Dismissing the appeal of the revenue the Court held that; Circular dated 11-7-2018 contains para 10. The para 10 of this Circular reads as under :

"10. Adverse judgments relating to the following issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limits specified in para 3 above or there is no tax effect:

(a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or

(b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or

(c) Where Revenue Audit objection in the case has been accepted by the Department, or

(d) Where the addition relates to undisclosed foreign assets/bank accounts."

7. Counsel for the department argued that the Revenue's therefore, cannot be read de hors or by omitting this condition. One of the conditions in Clause 10(c) of this Circular is, where the Revenue Audit Objection in the case has been accepted by the Department. The Court observed that, while seeking to restore Income Tax Appeal No.254 of 2013

on the file of this Court, neither the Revenue's Circular dated 11-7-2018 is referred nor any condition therein. If the condition now relied upon is with regard to the Revenue Audit Objection, then, mere raising of this objection in terms of this Circular is not enough. The Revenue will have to point out that this audit objection has been accepted by the Department. No such record was before the court . Accordingly the Court held that,in the circumstances, this is an attempt to get over the binding Circulars and in any case cannot allow the Revenue to get over them in this manner. The Circulars continue to bind the Revenue and if they contain any conditions, whether such conditions are attracted or not would have to be proved and established by the Revenue.
PCIT v. Nawany Construction Co. Pvt. Ltd. (2018) 258 taxman 365 (Bom.)(HC), www.itatonlilne.org

S. 260A : Appeal – High Court – Transfer pricing – Determination of arm's length price is question of fact – High Court Will not interfere unless finding is perverse. [S. 92C] 2260
Dismissing the appeal of the asssessee the Court held that; the contention of the assessee that while admitting the underutilization of the capacity of the assessee in this particular year, the Tribunal could not have computed the operating margins without proportionately reducing the quantum of depreciation, only finding its justification in the case of two comparables, was not tenable and the findings of the Tribunal could not be held to be perverse. The Tribunal was justified in its conclusion arrived at on the premise that the depreciation on the fixed assets need not be directly proportional to the utilization of plant and machinery or production capacity. The premise of the Tribunal's findings is not necessarily contrary to the finding in the case of the assessee that in this particular year, there was underutilization of capacity in the case of the assessee. The claim of depreciation did not depend merely upon the extent of wear and tear of the plant and machinery. The findings or the premise taken by the Dispute Resolution Panel in the subsequent year did not render the findings in the previous years per se illegal or unsustainable. In the determination of the arm's length price of an international transactions, the entire exercise is in the realm of a fact finding exercise and unless on the face of it, the findings of the Tribunal or the authorities below are found to be perverse and it can not be said that the view taken by them is wholly unsustainable according to the legal provisions, no substantial question of law would arise in the matter. (AY.2010-11)
Indigra Exports Pvt. Ltd. v. DCIT (2018) 407 ITR 396 / 304 CTR 417 / 169 DTR 9 (Karn.) (HC)

S. 260A : Appeal – High Court – High Court has power to review – High Court recalled the order and remanded the matter to Tribunal.[S. 253] 2261
Recalling the order, the High Court held that, High Court has power to review. Accordingly the High Court recalled the order and remanded the matter to Tribunal. Followed the ratio in *VIP Industries Ltd. v. CCE (2003) 5 SCC 507*, it was held that all provisions, which bestow the High Court with appellate power, were framed in such a way that it would include the power of review and in these circumstances, sub-section (7) of section 260A of the Income-tax Act, 1961 cannot be construed in a narrow and restricted manner. In the case of *M. M. Thomas v. State of Kerala* (CA. No

9663 of 1994 dt. 6-1-2000), the Supreme Court held that the High Court, as a court of record, has a duty to itself to keep all its records correctly in accordance with law and if any apparent error is noticed by the High Court in respect of any orders passed that the High Court has not only the power but also a duty to correct it. (AY. 1995-96 to 1997-98)
B. Jayalakshmi (Smt) v. ACIT (2018) 407 ITR 212 / 258 Taxman 318 / (2019) 308 CTR 51 (Mad.)(HC)

2262 **S. 260A : Appeal – High Court – Bogus purchases – Tribunal restricted addition to 25 per cent of value of alleged purchases as against 100% of disallowances made by the Assessing Officer – On appeal by the revenue following question of law is admitted "Whether the Appellate Tribunal has erred in law and on facts of the case in restricting the addition to 25% of the value of alleged purchases after categorically finding it to be bogus". [S. 37(1)]**
Tribunal restricted addition to 25 per cent of value of alleged purchases as against 100% of disallowances made by the Assessing Officer. On appeal by the revenue following question of law is admitted "Whether the Appellate Tribunal has erred in law and on facts of the case in restricting the addition to 25% of the value of alleged purchases after categorically finding it to be bogus" (AY.2007-08)
CIT v. Aashadeep Industries. (2018) 256 Taxman 440 (Guj.)(HC)

2263 **S. 260A : Appeal – High Court – Representation by departmental advocates – Court observed that it is appropriate to suggest to CBDT to consider holding of a training programme, where leading advocates could address domain-expert on ethics, obligation and standard expected of advocates before they start representing State, as it would ensure that revenue is properly represented to serve greater cause of justice and fair play – It is primary duty of Assessing Officer to upgrade Counsel with regard to all facts involved in matter, more particularly facts which may have transpired after passing of impugned order of Tribunal so as to avoid unnecessary delays in disposing of cases pending before Court. The ASG and the Registry is directed to forward a copy of this order to the Chairman, CBDT. The ASG is expected to interact and advice the CBDT in respect of the issues referred to herein above to enable proper representation by the advocates on behalf of the revenue – Matter remanded. [S. 119]**
Court observed that advocates representing revenue must be utmost careful whilst making statement on instructions, as same are accepted by Court, without question. On other hand, it is primary duty of Assessing Officer to upgrade Counsel with regard to all facts involved in matter, more particularly facts which may have transpired after passing of impugned order of Tribunal so as to avoid unnecessary delays in disposing of cases pending before Court.It is job of Assessing Officer to inform advocate appearing for revenue of all facts, so as to ensure that justice is done and, thus, officers of revenue cannot believe that once matter is in Court, it is sole responsibility of counsel it is appropriate to suggest to CBDT to consider holding of a training programme, where leading advocates could address domain-expert on ethics, obligation and standard expected of advocates before they start representing State as it would ensure that revenue is properly represented to serve greater cause of justice and fair play for

revenue to protect the interest of State and their responsibility comes to end. In any case, the CBDT is expected to lay down a standard procedure in respect of manner in which the Departmental Officer/Assessing Officer assist the counsel for the revenue while promoting/protecting revenue's cause. In most cases, at least during the final hearing, revenue's counsel are left to fend for themselves and that even papers at times are borrowed from the other side or taken from the Court Records. If the mindset of the Revenue Officer changes and they attend to the case diligently till it is disposed of, only then would it be ensured that the State is properly represented. The ASG and the Registry is directed to forward a copy of this order to the Chairman, CBDT. The ASG is expected to interact and advice the CBDT in respect of the issues referred to herein above to enable proper representation by the advocates on behalf of the revenue. Matter remanded. (AY.2001-02)

PCIT v. Grasim Industries Ltd. (2018) 256 Taxman 79 (Bom.)(HC)

S. 260A : Appeal – High Court – Strictures passed against the revenue for not following the assurance given earlier – Court observed that "We are pained at this attitude on the part of the State to obtain orders of admission on pure questions of law by not pointing out that an identical question was considered by this Court earlier and dismissed by speaking order. Revenue has not carried out the assurance which was made earlier. Revenue should give proper explanation why assurance given earlier is not being followed. It is time responsibility is fixed and the casual approach of the Revenue in prosecuting its appeals is stopped" 2264

Question before the High Court was "Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is justified in allowing the claim of set-off of unabsorbed depreciation of assessment year 2000-01 beyond the period of 8 years ?" Court observed that (i) Mr. Mohanty fairly invites our attention to the decisions of this Court in the case of Commissioner of Income-Tax-1, Mumbai v. Hindustan Unilever Ltd. (ITA No. 1873 of 2013) rendered on 26th July, 2016 and in the case of *The Commissioner of Income Tax, Central-III v. Arch Fine Chemicals Pvt. Ltd.* (ITA No. 1037 of 2014) rendered on 6th December, 2016 dismissing the Revenue's appeal on this very question of law. Inspite of the above, in the subsequent case of *CIT v. Milton's Pvt. Limited (ITA No. 2301 of 2013)* and *CIT v. Confidence Petroleum India. Ltd. (ITA No. 582 of 2014)* on an identical issue as raised herein were admitted on 20th February, 2017 and 3rd April, 2017 respectively. The order dated 20th February, 2017 of this Court listed the hearing of the Appeal along with ITA No. 841 of 2011 and ITA No. 842 of 2011 admitted earlier on the same issue.

(ii) It appears that in Milton's (Pvt) Ltd. (supra) and Confidence Petroleum (I) Ltd. (supra), the attention of the Court was not drawn to the orders of this Court in Hindustan Unilever (supra) and Arch Fine Chemicals (supra) although rendered prior to the admission of the appeals of Milton (P) Ltd. (supra) and Confidence Petroleum (I) Ltd. (supra). The decision of this Court in *Hindustan Unilever Ltd. (supra) placed reliance upon the decision of Gujarat High Court in General Motors (I) Pvt. Ltd v. DCIT, 354 ITR 244* and the CBDT Circular No. 14 of 2001 dated 22nd November, 2001. The order also records that nothing was shown by the Revenue as to why the decision of Gujarat High Court should not be followed.

Infact it appears earlier orders in respect of appeals of 2011 admitting this question was pointed out by the Revenue. It may be pointed out that, the same Advocate appeared for the Revenue in Hindustan Unilever (supra) and in Milton (P) Ltd. (supra) and Confidence Petroleum (I) Ltd. (supra). It is noted that, the decision in Hindustan Unilever (supra) at the time, the Court admitted the appeals by Milton (P) Ltd. (supra) and Confidence Petroleum (I) Ltd. (supra) was not pointed out to the Court. Besides, at the hearing of the appeal of Hindustan Unilever (supra) the fact that Income Tax Appeals No. 841 and 842 of 2011 were already admitted was not pointed out.

(iii) We are pained at this attitude on the part of the State to obtain orders of admission on pure questions of law by not pointing out that an identical question was considered by this Court earlier and dismissed by speaking order.

(iv) This is not for the first time that this has happened on the part of the Revenue. On an earlier occasion also, in the case of The *CIT v. TCL India Holdings Pvt. Ltd. (ITA No. 2287 of 2013)* on 6th May, 2016 on similar issue arising, we were assured by the Revenue that proper steps would be taken to ensure that the State takes a consistent view and decisions on any issue which are already taken by this Court would be informed to their Advocates who would also be continuously updated of the decisions taken by this Court on the questions of law. This is to ensure that there is consistency in the view taken by this Court. However, it appears that the Revenue has not carried out the assurance which was made to the Court.

(v) We would expect the Revenue to look into this issue at the highest level and ensure that the State takes a consistent view and does not agitate matters on which the Court has already taken a view, without pointing out the earlier order of this Court to the subsequent Bench. It is possible that, there can be certain distinguishing features which may require the next Court to admit the question which has been otherwise dismissed by an earlier order. But this would not be an issue which could arise in the case of pure question of law as raised herein. The decision on the question raised is not related to and/or dependent upon finding upon any particular fact.

(vi) We note that the decision of this Court in Milton Private Limited (supra) rendered on 20th February, 2017 makes a reference to a Supreme Court decision in the case of *Dy.CIT v. General Motors India P. Ltd*. Mr. Mohanty is directed to produce a copy of the same on the next occasion. We would also want, Mr. Mohanty on the next occasion to bring on record by Affidavit, whether appeals have been filed from the orders of this Court in Hindustan Unilever (supra) decided on 26th July, 2016 and Arch Fine Chemicals (supra) decided on 6th December, 2016 to the Apex Court, when filed and the decision, if any, thereon.

5. We adjourn the hearing of both these appeals by a period of 3 weeks as prayed for by Mr. Mohanty, for the Revenue.

6. On the next occasion, we would expect a proper response from the Revenue and explanation as to why assurance given to us earlier that consistent view would be taken by the Revenue is not being followed. It is time, responsibility is fixed and the casual approach of the Revenue in prosecuting its appeals is stopped. We

would also request the Additional Solicitor General to assist us on the next date. (ITXA-130-2016 & ITXA-151-2016 (SR.7), dt. 27.06.2018)
PCIT v. Starflex Sealing India Pvt. Ltd. (Bom.)(HC), www.itatonline.org

S. 260A : Appeal High Court – Abatement of proceedings – Death of assessee on 18-6-2016 – Legal heirs not brought on record in spite of time given repeatedly to revenue – Proceedings abated. 2265
Dismissing the appeal of the revenue, the court held that, death of assessee on 18-6-2016 and Legal heirs not brought on record in spite of time given repeatedly to revenue. The Department had not given necessary instructions to their counsel in spite of being aware of the demise of the assessee as early as on June 18, 2016. The appeals were to be dismissed as having abated.
CIT v. Jeppiar (2018) 409 ITR 511 (Mad.)(HC)

S. 260A : Appeal – High Court – Limitation – Condonation of delay – Failure by Department to remove office objections despite extension-Reason of administrative difficulty – Delay cannot be condoned. 2266
Dismissing the notices of motion as infructuous, that the application for condonation of delay was not bona fide as the applicant failed to remove the office objections though it had secured extension of time on three occasions and the affidavit offered no explanation as to what steps were taken by the Department after the last extension to remove the office objections. The only reason made out in the affidavit in support was administrative difficulty including shortage of staff which could not be the reason for condonation of delay in the absence of the same being particularised.
CIT v. Airlift (India) Pvt. Ltd. (2018) 405 ITR 487 (Bom.)(HC)

S. 260A : Appeal – High Court – Condonation of delay of 1371 days – Delay was not condoned – Approach of the Departmental officials is strongly deprecated 2267
Court held that defective appeal filed by department dismissed for failure by department to rectify defects pointed out by Registrar .Reasons assigned for delay neither bona fide nor justified . Notice of motion dismissed. Court also observed that, "Their attitude shows that they are not at all vigilant and interested in pursuing the cases filed by the Department involving a tax effect of crores of rupees. They expect the court to be lenient and liberal and pardon them every time. This approach of the Departmental officials is strongly deprecated." (AY. 2003-04 to 2006-07)
CIT (LTU) v. Reliance Industries Ltd. (2018) 405 ITR 483 (Bom.)(HC)
Editorial: Order of High Court is set aside, (CA.No 10774 of 2018, dt. 26.10.2018) CIT v. Reliance Industries Ltd. (SC), www. itatonline.org

S. 260A : Appeal – High Court – Strictures passed against Dept's Advocate for "most unreasonable attitude" of seeking to reargue settled concluded issues and not following the judicial discipline and law of precedents – Infrastructure facility – Container freight station (CFS) is eligible deduction as an infrastructure facility [S. 80IA] 2268
Dismissing the appeal of the revenue the Court has passed strictures passed against Dept's Advocate for "most unreasonable attitude" of seeking to reargue settled concluded

issues. This results in unnecessary wastage of the scarce judicial time available in the context of the large number of the appeals awaiting consideration. Dept's Advocate are expected to act with responsibility as an Officer of the Court and not merely argue for the sake of arguing when an issue is clearly covered by the decision of Co-ordinate Bench of the Court and take up scarce judicial time. Advocates must bear in mind that this is a Court of law and not an University/College debating Society, where debates are held for academic stimulation. We deal with real life disputes and decide them in accordance with the Rule of Law, of which an important limb is uniformity of application of law. This on the basis of judicial discipline and law of precedents. (AY. 2008-09, 2009-10)
PCIT v. JWC Logistics Park Pvt. Ltd. (2018) 404 ITR 310 (Bom.)(HC), www.itatonline.org

2269 **S. 260A : Appeal High Court – Delay of 318 days was not condoned as the department has not explained reasonable cause. On an average 2000 appeals are filed by the revenue every year,thus the Officers of the revenue should be well aware of the statutory provisions and period of limitation for filing appeals.**
Dismissing the appeal of the revenue the Court held that, period of limitation should not come as an hindrance to do substantial justice between the parties. However considering the facts of the case the Delay of 318 days was not condoned as the department has not explained reasonable cause. Court also observed that on an average 2000 appeals are filed by the revenue every year,thus the Officers of the revenue should be well aware of the statutory provisions and period of limitation for filing appeals. (AY. 2008-09, 2009-10)
CIT (E) v. Lata Mangeshkar Medical Foundation (2018) 254 Taxman 429 / 166 DTR 76 / 305 CTR 387 / (2019) 410 ITR 347 (Bom.)(HC)

2270 **S. 260A : Appeal – High Court – Formulation of additional substantial question of law – Court has the power to frame an additional substantial question of law even at the time of hearing of appeal. [S. 32, 80HH, 260A(4)]**
Court held that, S. 260A(4) confers power on the Court to hear, for the reasons to be recorded, the appeal on any other question of law not formulated by it, if the Court is satisfied that such a question arises. Additional question was framed whether the assesse can disclaim depreciation when it claimed deduction u/s 80HH. (AY. 1989-90)
CIT v. Auto Mobile Corporation of Goa Ltd. (2018) 405 ITR 310 / 164 DTR 168 (Bom.)(HC)

2271 **S. 260A : Appeal – High Court – Penalty – Stay the proceedings to give effect to the order of Tribunal was rejected – Determination of the tax payable by the assessee is in the nature of money decree and hence should be paid to successful party – If assessee finally succeeds in appeal it would get the amount refunded with interest. [S. 271D]**
The High Court rejected the stay application as non-maintainable on the grounds that (i) Mere fact that a party accepts loans in cash which are otherwise explainable (source is explained) will not absolve a party from the rigors of S. 271D of the Act in the absence of a reasonable cause; (ii) The fact that the Karta of HUF (assessee) had a limited education cannot lead to a presumption that he is ignorant of law (iii) Under S. 260A(7) of the Act, provisions of Civil Procedure Code ('CPC') are made applicable and

determination of tax payable is in the nature of money decree and same should be paid to successful party and if the assessee finally succeeds it will receive the entire amount with interest. (AY. 2005-06)
Shivaji Ramchandra Pawar (HUF) v. JCIT (2018) 163 DTR 308 (Bom.)(HC)

S. 260A : Appeal – High Court – Territorial jurisdiction of High Court – Assessment order and penalty order passed by Assessing Officer at New Delhi – First Appeal adjudicated by Commissioner (Appeals), New Delhi and second appeal by Tribunal at New Delhi – Punjab and Haryana High Court has no Territorial jurisdiction to adjudicate appeal. [S. 80HHC, 271(1)(c)] 2272
Dismissing the appeal of the revenue the Court held that; the Assessing Officer who passed the assessment order and the penalty order was based at New Delhi and the first appeal was adjudicated by the Commissioner (Appeals), New Delhi and the second appeal by the Tribunal at New Delhi. Court held that, the Punjab and Haryana High Court had no territorial jurisdiction to adjudicate upon the litigation over an order passed by the Assessing Officer at New Delhi. The appeal was returned to the Department for filing before the competent court of jurisdiction in accordance with law. (AY.2001-02)
CIT v. Nectar Lifescience Ltd. (2018) 405 ITR 566 (P&H)(HC)

S. 260A : Appeal – High Court – Order of Tribunal recalling order and passing an entirely different order – Appeal is maintainable from such order. [S. 254(1), 254(2), 254(4)] 2273
An appeal under S. 260A would lie against an order of the Tribunal if a substantial question of law has arisen and for that purpose it would not be material whether it is a judgment deciding appeal or otherwise. Moreover, if an order is passed on an application under S. 254(2) so as to recall the judgment of the Tribunal which is otherwise final and referable to S. 254(1) and(4), it would be an order against which an appeal would lie under S. 260A but the pre-condition is that there must be a substantial question of law. It was not a simple case of allowing the application under S. 254(2) for the reason that such an application was already rejected by the Tribunal. The Tribunal had exercised a power of recall on a second application moved by the assessee under S. 254(2) by recalling not only the order passed on the assessee's application under S. 254(2) but had also taken a different view from that taken in its earlier judgment without pointing out any mistake. This was not permissible at all and, therefore, the order dated December 5, 2008 was patently erroneous and not sustainable. (AY. 2000-01)
CIT v. U. S. Srivastava Memorial Educational Society (2018) 405 ITR 546 (All.)(HC)

S. 260A : Appeal – High Court – Power to review decision – Review is only In case of patent error – Decision after consideration of facts by Tribunal and High Court – Decision cannot be reviewed. 2274
The High Court, being a court of superior jurisdiction and a court of record, can entertain applications for review arising out of judgments passed under S. 260A of the Income-tax Act, 1961. However a review is by no means an appeal in disguise whereby

an erroneous decision is reheard and corrected but lies only for patent error apparent on record. Dismissing the petition to review the Court held that, the finding recorded by the Division Bench could not be reviewed for the reason that for the same assessee but for the different assessment year, the same Bench of the Tribunal had accepted the assessee's plea. The view formed by the Revenue in the present case for the assessment year 1995-96 had been scrutinised not only by the Appellate Tribunal but also by the Division Bench of the court and it had been found to be correct. (AY.1995-96)
D. N. Singh v. CIT (2018) 405 ITR 507 (Pat.)(HC)

2275 **S. 260A : Appeal – High Court – Transfer pricing – Substantial questions of law – Comparables – Arm's length price – 'Transfer Pricing Adjustments' should become final with a quietus at the hands of the final fact finding body, i.e. the Tribunal. The ITAT's findings of fact cannot be challenged in the High Court unless it is shown that the findings are ex-facie perverse and unsustainable and exhibit total non-application of mind by the Tribunal to the relevant facts of the case and evidence before it.[S. 92C]**
Dismissing the appeal of the revenue the Court held that; Transfer Pricing Adjustments on the basis of the comparables are a matter of estimate of broad and fair guess-work of the Authorities based on relevant material. The exercise of fact finding or 'Arm's Length Price' determination or 'Transfer Pricing Adjustments' should become final with a quietus at the hands of the final fact finding body, i.e. the Tribunal. The ITAT's findings of fact cannot be challenged in the High Court unless it is shown that the findings are ex-facie perverse and unsustainable and exhibit total non-application of mind by the Tribunal to the relevant facts of the case and evidence before it. (AY.2006-07)
PCIT v. Softbrands India P. Ltd (2018) 406 ITR 513 / 168 DTR 185 / 303 CTR 695 (Karn.)(HC), www.itatonline.org

2276 **S. 260A : Appeal – High Court – Limitation-The time limit for filing an appeal to the High Court begins from the date of receipt of the order by the officer entitled to file the appeal. The fact that the ITAT may have dispatched the order earlier is not relevant. The fact that the officer may be aware of the ITAT's order owing to collateral proceedings is also not relevant- The appeal was not barred by limitation. [S. 2(16), 254(1), 260A(2)(a)]**
Court held that; The time limit for filing an appeal to the High Court begins from the date of receipt of the order by the officer entitled to file the appeal. The fact that the ITAT may have dispatched the order earlier is not relevant. The fact that the officer may be aware of the ITAT's order owing to collateral proceedings is also not relevant. The appeal was not barred by limitation. The matter was directed to fixed along with connected matters for admission. (AY.1997-98 to 2004-05))
DIT (IT) v. Hyundai Heavy Industries Co. Ltd (2018) 407 ITR 129 / 167 DTR 481 / 256 Taxman 147 / 303 CTR 420 (Uttrakhand)(HC), www.itatonline.org
Editorial: SLP of assessee is dismissed, Hyundai Heavy Industries Co. Ltd. (2019) 263 Taxman 119 (SC)

S. 260A : Appeal – High Court – Jurisdiction and limitation issue can be raised for the first time in appeal. [S. 153C, 253] 2277

Court held that questions raised regarding jurisdiction or limitation are valid, the mere fact that it was not raised before the AO or at the first instance cannot preclude the assessee from raising it in appeal or even before the Court. (AY. 2000-01 to 2006-07)

K. V. Abdul Azeez v. CIT (2018) 404 ITR 288 / 253 Taxman 210 / 168 DTR 74 / 304 CTR 801 (Ker.)(HC)

S. 260A : Appeal – High Court – Limitation – Delay of 326 days – No reasonable cause – Delay was not condoned. [Limitation Act, 1963, S. 5] 2278

The assessee is required to establish that in spite of acting with due care and caution, the delay had occurred due to circumstances beyond his control and was inevitable. Accordingly the delay of 326 in filing the appeal was not condoned. Referred *Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corporation (2010) 5 SCC 459 and R. B. Ramlingam v. R. B. Bhavaneshwari (2009) 1 RCR (Civil) 892*. (AY. 2006-07)

Gurpal Singh Brar v. ITO (2018) 404 ITR 58 (P&H)(HC)

S. 260A : Appeal – High Court – Procedure for registration – Trust or institution – In appeal High Court cannot direct the Commissioner to grant the registration for earlier years. [S. 12AA] 2279

Dismissing the appeal of the assessee the Court held that the assessee had applied for registration under S. 12AA only in the year 2011-12. The applications for condonation of delay, for certification for the previous years, were rejected. Exemption could not be allowed in a year in which such registration was not available by the court in appeal jurisdiction. (AY. 2007-08, 2008-09, 2009-10)

Academy Of Medical Sciences v. CIT (2018) 403 ITR 74 / 254 Taxman 419 / 170 DTR 388 / 305 CTR 659 (Ker.)(HC)

S. 260A : Appeal – High Court – Exparte order can be recalled if sufficient cause shown [S. 260A(7), 263, 68, Code Of Civil Procedure, 1908, O. XLI, r. 21] 2280

Allowing the petition the Court held that exparte order can be recalled if sufficient cause shown. Accordingly the exparte order was recalled. (AY. 2011-02)

Prayag Tendu Leaves Processing Co. v. CIT (2018) 400 ITR 120 / 252 Taxman 306 (Jharkand)(HC)

S. 261 : Appeal – Supreme Court – Strictures – Delay of 596 days – Misleading statement about pendency of similar appeal – Petition was dismissed – Awarded cost of ₹ 10 lakhs to be paid to the Supreme Court Legal Services Committee. 2281

Dismissing the petition of the revenue the Court held that; there is an inadequate and unconvincing explanation given for the delay of 596 in filing the petition. Secondly it is mentioned in the proforma for listing that a similar matter is pending in this Court. However,the office has given the report stating that the said case was decided by this court as far back as on 27th September, 2012. Court observed that as the petitioner

have given a totally misleading statement and Union of India through the CIT has taken the matter so casually. Accordingly the dismissing the petition, the Honourable Court directed the petitioner to pay cost of ₹ 10 lakhs to be paid to the Supreme Court Legal Services Committee.
CIT v. Hapur Pilkhuwa Development Authority (2018) 304 CTR 337 / 169 DTR 281 / 258 Taxman 125 (SC)

2282 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Captive power plant – Allocation of profit – Revision is held to be not justified. [S. 80I, 260A]**
Dismissing the appeal of the revenue the Court held that; a mixed issue and whether the exercise of power u/s 263 was warranted in the light of the limited direction of the ITAT have alone been considered in the impugned order. Such an exercise carried out by the ITAT is a mixed one. The jurisdiction u/s 263 was not available to be invoked in the given facts and circumstances. When ITAT interfered with a mixed issue of exercising power u/s 263 and refused to uphold it, such an order is neither perverse nor vitiated by any error of law. (AY. 1997-98,1998-99)
PCIT v. Kochi Refineries (2018) 171 DTR 217 / 305 CTR 395 (Bom.)(HC)

2283 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Notice referred only one ground – Final order on other grounds – Claim of deduction examined by the AO-CIT was not justified in substituting his view – Revision is held to be bad in law. [S. 80IA]**
Dismissing the appeal of the revenue the Court held that the CIT was not justified in passing revisional order on two additional grounds which were not stated in the notice. Court also observed that the Office note appended to the assessment order clearly shows that the AO had taken all explanations and arguments of the assessee before allowing the deduction u/s 80IA. Accordingly the revision order is held to be bad in law. (AY.2009-10)
CIT v. Maharashtra Hybrid Seeds Co. Ltd. (2018) 305 CTR 486 / 171 DTR 241 (Bom.)(HC)

2284 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – Two views possible and also when an appeal is pending before the CIT(A) on particular issue, Commissioner has no power to revise the order regarding that issue-Court also held that, since the matter has been pending for a quite long number of years and there has been repeated orders of assessment, the Court directed the AO to give effect reassessment dt 31-12-2009, wherein the AO has granted the benefit of S. 54F of the Act. [S. 45, 54, 54F, 263(1)(c)]**
Allowing the appeal of the assessee, the Court held that, the AO while completing the reassessment proceedings the AO has allowed the deduction u/s 54F and not u/s 54 of the Act. As regards the cost of acquisition and claim u/s 54 the matter was pending before the CIT(A). Mean while the Commissioner passed the revisional order stating that the claim under S. 54F was not correctly allowed by the AO. Appeal of the assesee before Tribunal was also dismissed. On appeal to the High Court allowing the appeal of the assessee the Court held that, order passed by the AO wherein two views were possible and also when an appeal is pending before the CIT(A) on particular issue,

Commissioner has no power to revise the order regarding that issue. Court also held that, since the matter has been pending for a quite long number of years and there has been repeated orders of assessment, the Court directed the AO to give effect of reassessment order dt 31-12-2009, wherein the AO has granted the benefit of S. 54F of the Act. (AY.2005-06)
Renuka Philip (Smt.) v. ITO (2018) 409 ITR 567 / (2019) 173 DTR 24 (Mad.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Bogus purchases – Hotel business – information from sales tax authorities – Hawala Traders – Assessee offering 15% of gross profit in the course of assessment proceedings with a view to buy peace and unending litigation which was accepted by the Assessing Officer without making any inquiry – Commissioner revising the order on the ground that there was no discussion in the order of Assessing Officer and the Assessing Officer limiting addition under S. 69C only on basis of GP ratio is held to be not justified – Tribunal affirmed the revision order – High Court affirmed the order of the Tribunal. [S. 69C] 2285

On the basis of information received from Sales Tax Department in relation to certain parties who were engaged in providing bogus purchase bills and that assessee was also one of beneficiaries of hawala bills given by such parties. Assessing Officer asked the assessee to show cause why this entire amount/bogus purchases should not be assessed as non-genuine purchases. With a view to buy peace and to avoid unending litigation, assessee offered that gross profit rate of said purchases might be assessed as income. Accordingly, Assessing Officer held 15 per cent of said purchases to be assessed as income of assessee. Commissioner invoked section 263 on ground that since assessee had not disputed that parties from whom purchases were made were those whose names appeared on website of Sales Tax Department as accommodation entry providers, entire purchases was to be treated as non-genuine. It was observed that the assessee was not able to produce any material purchased by it nor it could ensure presence of supplier from whom it purchased goods. Further, Assessing Officer did not make any inquiry with regard to purchase expenses claimed by assessee. Accordingly the revision order was passed directing the Assessing Officer to decide afresh by giving an opportunity of hearing. On appeal by the assessee, dismissing the appeal the Court held that Revision is held to be justified as there was no discussion in the order of Assessing Officer and the Assessing Officer limiting addition under S. 69C only on basis of GP ratio. Accordingly the order of Tribunal is affirmed. (AY.2010-11)
Shoreline Hotel (P.) Ltd. v. CIT (2018) 259 Taxman 49 / 171 DTR 245 / 305 CTR 491 (Bom.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Residence in India – Amendment to S. 6(6)(a) has been brought into effect from 1-4-2004; which is not applicable for the Asst year 2003-04 – Judgement of Supreme Court is binding on Assessing officer – Revision is held to be bad in law. [S. 6(6)(a)] 2286

Dismissing the appeal of the revenue the Court held that; the Tribunal considered the judgment of the Supreme Court in the case of *Pradip J. Mehta v. CIT (2008) 300 ITR 231* and arrived at the conclusion that the amendment to section 6(6)(a) has been

brought into effect from 1-4-2004; that was not applicable to the assessment year under consideration. The existing law was considered by the Supreme Court in the aforesaid judgment and the Supreme Court's judgment would bind the Assessing Officer. That part of the income earned outside India would have to be excluded and the assessee would have to be taxed to the extent of the income earned in India. That has admittedly been done. In such circumstances, there was no prejudice caused and this was not a fit case, therefore, to exercise the powers under section 263. Such a conclusion is imminently possible in the peculiar facts of this case. (AY. 2003-04)
CIT v. Mihir Doshi (2018) 258 Taxman 93 (Bom.)(HC)

2287 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Third party statement not provided to the assessee, during revisional proceedings, basis which fresh enquired directed – Order is Invalid and remanded to the CIT for providing material and hearing objections.**
Held by the High Court that the revisional order passed by CIT directing AO to conduct fresh enquire relying on third party statement, without providing such statement / material to assessee is not valid. Matter remanded to CIT to provide the Assessee all the material to be relied by him and hear objections of assessee on such material.
Humboldt Wedag India (P) Ltd. v. CIT (2018) 305 CTR 452 / 167 DTR 241 (Delhi)(HC)

2288 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Allowability of interest – Assessing officer taking plausible view after proper enquiry – Order is not erroneous and cannot be revised. [S. 57(iii)]**
The Commissioner of Income tax issued a notice of revision on the ground that the deduction of interest allowed by the Assessing Officer is held to be not allowable. On a writ petition to quash the notice, the Court held that, the view adopted by the Assessing Officer was after proper scrutiny of relevant facts and clearly a plausible view and therefore, not open to revision at the hands of the Commissioner. (AY.2009-10)
Micro Inks Limited v. CIT (2018) 407 ITR 681 (Guj.)(HC)

2289 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Direction of Commissioner to make certain additions – Tribunal reversed the finding of Commissioner – Question of fact. [S. 260A]**
Dismissing the appeal of the revenue the Court held that; the matters of fact that were referred to in the Commissioner's order under section 263 had been appropriately dealt with by the Tribunal which was satisfied that the order passed by the Commissioner was without basis. The Commissioner required the assessment to be reopened and directed the Assessing Officer to proceed in a particular manner. Some of the directions issued by the Commissioner indicated that the fresh assessment to be undertaken by the Assessing Officer was to only be a facile exercise as the quantum of addition in several cases were dictated to the Assessing Officer by the Commissioner. The Tribunal's order reversing the Commissioner's order did not warrant interference.
PCIT v. Anjali Jewellers Pvt. Ltd. (2018) 407 ITR 258 (Cal.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Development agreement – Transfer and right to possession of developer does not arise prior to completion of construction and apportionment effected-Quantum of depreciation based on facts – Revision was held to be not valid. [S. 2(47(v), 32, 45, Transfer of Property Act, 1953 S. 53A] 2290

Dismissing the appeal of the revenue the Court held that transfer and right to possession of developer does not arise prior to completion of construction and apportionment effected. Quantum of depreciation based on facts. Revision was held to be not valid. (AY.2007-08)

PCIT v. Infinity Infotech Parks Ltd. (2018) 407 ITR 137 / 257 Taxman 359 / (2019) 307 CTR 105 / 174 DTR 270 (Cal.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Rental income whether assessable as property income or business income – No findings had been rendered by the Commissioner that the Assessing Officer had made an incorrect assessment of facts or incorrect application of law – Revision is held to be not valid. [S. 22, 28(i)] 2291

Dismissing the appeal of the revenue the Court held that the Tribunal recorded a finding that the assessments for the relevant assessment year relating to the two trusts were carefully scrutinised by the Assessing Officer after calling for the details and examining them. The Commissioner having expressed his suspicion about the genuine nature of the transactions between the assessee and the trusts, had not exercised his revisional powers under section 263 with regard to the assessments pertaining to the two trusts completed under section 143(3) of the Act. The action of the Commissioner thus suffered from inherent contradiction. The foremost requirement that the order must be erroneous for invoking the revisional jurisdiction under section 263 by the Commissioner, had not been satisfied. (AY. 1987-88)

CIT v. V. Dhana Reddy And Co. (2018) 407 ITR 96 (T&AP)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – Firm – Investment in specified assets – Revision up held – On merit, deduction is allowed where assessee invested sale proceeds of hospital business in UTI within prescribed time period – Share of daughter received by way of release, the matter was remanded to verify whether period exceeded 36 months and decide according to law. [45(4) 54EA] 2292

On appeal by the revenue the revision was up held, however on merit, deduction is allowed where assessee invested sale proceeds of hospital business in UTI within prescribed time period. As regards share of daughter received by way of release, the matter was remanded to verify whether period exceeded 36 months and decide according to law. (AY. 1999-200)

CIT v. P. N. Bhaskaran (Dr.) (2018) 407 ITR 169 / 257 Taxman 161 (Ker.)(HC)

2293 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Dissolution of company – Taken over by limited liability partnership – Opportunity of hearing must be granted to successor before passing the order – Matter remanded to the Tribunal.**
Allowing the appeal of the assessee the Court held that ; on dissolution of company was taken over by limited liability partnership. Opportunity of hearing must be granted to successor before passing the order. Matter remanded to the Tribunal. (AY. 2008-09)
Brolly Dealcom LLP v. CIT (2018) 406 ITR 542 (Cal.)(HC)

2294 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Merger – When partial disallowance made by the AO is up held by the CIT(A), revision by the CIT to once again examine very same issue to disallow entire expenditure is not valid, as the issue is merged with the order of CIT(A). [S. 37(1)]**
Dismissing the appeal of the revenue the Court held that, when partial disallowance made by the AO is up held by the CIT(A),revision by the CIT to once again examine very same issue to disallow entire expenditure is not valid as the issue is merged with the order of CIT(A). (AY. 2008-09, 2009-10)
PCIT v. H. Nagaraja (2018) 406 ITR 242 / 256 Taxman 335 / 169 DTR 198 / 305 CTR 547 (Karn.)(HC)

2295 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – When assessee never received anything beyond the amount which was originally agreed, question of charging capital gain from assessee on a sum larger than the said amount would not arise – Tribunal was justified in setting aside revisional order passed by commissioner. [S. 45, 48]**
Dismissing the appeal of the revenue the Court held that ; When assessee never received anything beyond the amount which was originally agreed, question of charging capital gain from assessee on a sum larger than said amount would not arise. Tribunal was justified in setting aside revisional order passed by commissioner. (AY. 2009-10)
PCIT v. Lalitaben Govindbhai Patel (2018) 256 Taxman 390 (Guj.)(HC)
Editorial : SLP of revene is dismissed, PCIT v. Lalitaben Govindbhai Patel (2019) 261 Taxman 453 (SC)

2296 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Writ against notice is not maintainable, except where the Commissioner lacks jurisdiction. [Art 226]**
Dismissing the petition the Court held that the Commissioner had merely issued a notice for taking the of assessment in revision, it was open to both sides to raise all contentions before the Commissioner and there after take the matter further as may be found necessary. At the stage of dealing with the notice of the Commissioner taking the order of assessment in revision, the High Court would not interfere other than in a case where the Commissioner lacks jurisdiction. Therefore, the writ petition was not maintainable. (AY. 2011-12)
Designmate India P. Ltd v. CIT (2018) 406 ITR 443 (Guj.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Land converted in to stock in trade – Leased property – Computation of capital gains without considering nature of right of assessee over land, accordingly the revision was held to be valid as the AO has not examined the matter in the correct perspective. [S. 45(2)] 2297

Allowing the appeal of the revenue the Court held that, the AO has computed the capital gains without considering nature of right of assessee over land, accordingly the revision was held to be valid as the AO has not examined the matter in the correct perspective. Revision by Commissioner is held to be valid. (AY. 2007-08, 2008-09, 2009-10)

CIT v. Upper India Couper Paper Mills Co. P. Ltd. (2018) 405 ITR 48 / 304 CTR 275 / 169 DTR 233 (All.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Limitation – If the authority issuing the show – cause notice lacks jurisdiction and if the notice is clearly barred by law, writ is maintainable – Notice issued by the PCIT is quashed. [Art 226] 2298

Allowing the petition the Court held that a writ petition to challenge a S. 263 notice is maintainable if the authority issuing the show-cause notice lacks jurisdiction and if the notice is clearly barred by law. As per Alagendran Finance 162 Taxman 465 (SC), the two year limitation period stipulated u/s 263(2) runs from the date of the original assessment and not from the date of reassessment when the S. 263 notice deals with issues which are not subject matter of reassessment proceedings. Notice issued by the PCIT is quashed. (AY. 2012-13)

Indira Industries v. PCIT (2018) 169 DTR 171 / 305 CTR 314 (Mad.)(HC), www.itatonline.org

S. 263 : Commissioner – Revision of orders prejudicial to revenue 2299

The AO had examined entire records and there was nothing erroneous in his order, therefore revision order of commissioner was not valid.

Dismissing the appeal of the revenue the Court held that, the AO in his order had taken in to account the fact that the assessee was exporting shoes and fluctuations, if any in its accounts were due to fluctuating rate of exchange, travelling expenses etc accordingly the order of Tribunal quashing the revision was held to be justified. (AY. 2004-05)

CIT v. Metro And Metro (2018) 404 ITR 304 (All.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – No proper enquiry was made in respect of unexplained investment, revision was held to be justified. [S. 69, 133(6), 143(3)] 2300

Dismissing the appeal of the assessee the Court held that that it was only during the enquiry under section 133(6) of the Act that unexplained investment in bank deposit was unearthed. If the enquiry which was required to be made by the Assessing Officer had not been done, the order has to be considered erroneous order prejudicial to the interests of the Revenue in terms of S. 263. No enquiry was made by the Assessing Officer as regards the retail business said to have been carried on by the assessee. Thus, the exercise of power under S. 263 by the Commissioner was justifiable. (AY. 2010-11)

Syed Abubacker Riyaz v. CIT (2018) 403 ITR 252 (Karn.)(HC)

2301 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Exclusion of the deduction allowed u/s. 80IB while quantifying the deduction u/s 80HHC – Two views possible – Revision was held to be not valid. [S. 80HH]**

Allowing the appeal of the assessee the Court held that ;the view taken by the Assessing Officer was clearly supported by decisions of the Madhya Pradesh and Bombay High Courts. The view taken by the Assessing Officer was a plausible view. If it resulted in loss of revenue, it could not be treated as prejudicial to the interests of the Revenue for the purpose of invoking the power under S. 263 of the Act. Moreover, the fact that two views existed was evident from the order of reference passed by the Full Bench.

Agasthiya Granite P. Ltd. v. ACIT (2018) 403 ITR 279 (Mad.)(HC)

2302 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Mere change of opinion revision was held to be not valid. [S. 54B]**

Allowing the appeal of the assessee the High Court held that, revision on account of change of opinion was held to be not valid. Investment in the name of wife was held to be entitle to exemption. The word used are the assessee has to invest, it is not specified that it is to be in the name of assessee. Expenditure on bore wells and stamp duty to be taken in to consideration while considering the exemption u/s 54B. (AY. 2008-09)

Laxmi Narayan v. CIT (2018) 402 ITR 117 / (2019) 306 CTR 361 (Raj.)(HC)

Shravan lal Meena L/H of Late Bhagwanta Meena v. ITO (2018) 402 ITR 117 /(2019) 306 CTR 361 (Raj.)(HC)

Mahadev Balaji v. ITO (2018) 402 ITR 117 / (2019) 306 CTR 361 (Raj.)(HC)

2303 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Order passed after expiry of two years from the end of the financial year was held to be bad in law. [S. 260A]**

The Assessee has challenged the validity of the notice issued under S. 263 of the Act and the order passed thereon by the CIT. The High Court held that the CIT who passes order under S. 263 of the Act ought to satisfy himself that an adequate opportunity has been given to the Assessee to controvert the facts stated in the notice issued under S. 263 of the Act and to explain the circumstances surrounding such facts. However on facts no useful purpose would be served in providing an opportunity of being heard at this stage to the Assessee as S. 263(2) provides an outer limit in the statute hence petition in favour of Assessee. (AY. 2008-09).

Tulsi Tracom Private Ltd. v. CIT (2017) 100 CCH 0013 / (2018) 161 DTR 148 (Delhi)(HC)

2304 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Gift – Conclusion drawn by Assessing Officer was consistent with information provided by donors therefore revision was held to be not valid. [S. 68]**

Allowing the appeal of the assessee the Court held that; there was no dispute about identity of donors and genuineness of transaction. Even Assessing Officer had questioned donors as to source of money from which gifts had been made to assessee and donors on their part explained that money had come to them upon sale of certain properties. On facts, conclusion drawn by Assessing Officer was consistent with information provided by donors, therefore revision was held to be not valid. (AY. 2001-02)

Sunil Kumar Rastogi v. CIT (2018) 406 ITR 306 / 252 Taxman 293 (All.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Enhancement of agricultural income – Failure to make proper enquiry by the AO in the course of assessment proceedings, revision was held to be valid – Tribunal was justified in admitting the additional evidence which was filed by the revenue. [S. 254(1)] 2305

Dismissing the appeal of the assessee the Court held that; the assessment was completed in a "casual and routine" manner, and hence, it was a case of "no inquiry" and the order passed by the Assessing Officer was erroneous as well as prejudicial to the interests of the Revenue. The additional material adduced before the Tribunal was nothing but those collected during the course of proceedings pertaining only to the agent and his statements during the course of adjudication thereof. It was in this backdrop, that the Tribunal found the inquiry conducted by the Assessing Officer not to be in accordance with law and the view taken by the Officer not to be a plausible one, holding that since it was a case of "no inquiry", the Commissioner rightly remitted the case to the Assessing Officer, for carrying out assessment in accordance with law. Thus in the given facts and circumstances, the Tribunal correctly affirmed the order passed by the Commissioner. (AY. 2010-11)

Virbhadra Singh (HUF) v. CIT (2018) 400 ITR 530 (HP)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Income from letting out shops – Income from house property or business income – Two views possible – Revision was held to be not valid. 2306

Dismissing the appeal of the revenue, the Court held that; the two views were possible before the Assessing Officer and on the basis of the main objects and the nature of income derived by the assessee, if he had taken one view of the matter, it was not erroneous in law or likely to cause prejudice to the Revenue so as to permit interference in exercise of revisional jurisdiction by the Commissioner. The Tribunal rightly set aside the order of the Commissioner as without jurisdiction.

PCIT v. Atlantis Multiplex P. Ltd. (2018) 400 ITR 458 (All.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Source of capital contribution was explained – Source of the source cannot be gone in to – Revision was held to be bad in law. [S. 68] 2307

Appeal was dismissed exparte which was allowed to be heard on merits. Dismissing the appeal of the revenue, the Court held that the AO has passed the order after examining the source of capital introduced, hence the revision order to examine the source of the source was held to be not valid. Accordingly the order of Tribunal quashing the revision order was up held. (AY. 2011-02)

Prayag Tendu Leaves Processing Co. v. CIT (2018) 400 ITR 120 / 252 Taxman 306 (Jharkand)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital work in progress – Short term loss – Assessee has sold plant and machinery along with capital WIP, then order passed by AO cannot be considered as erroneous and prejudicial to interest of revenue. [S. 143(3)] 2308

Allowing the appeal of the assessee the Tribunal held that the assessee had made proper disclosure of facts in audited accounts as well as in transactional documents which

proved that assessee had sold both plant & machinery and Capital WIP for composite consideration of Rs. 27,50,00,000, and order of PCIT which was based on incorrect understanding of material facts was unsustainable and need to be set aside on this score alone. Accordingly, both assessee as well as AO were right in law in taking into account cost of acquisition of capital WIP for computing overall loss accruing on sale of fixed assets including capital WIP. (AY. 2012-13)
Titagarh Industries Ltd. v. DCIT (2018) 195 TTJ 1010 (Kol.)(Trib.)

2309 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Income from house property – Capital gains – Revision order was quashed on the ground that, to justify exercise of power vested by Statute u/s 263, it was incumbent upon PCIT to demonstrate that at time of investment, property was not a residential property and in terms of Explanation 2(a), PCIT was required to demonstrate that order passed was without making enquiries or investigation. [S. 45 143(3)]**
Allowing the appeal of the assessee the Tribunal held that ; in order to justify exercise of power vested by Statute u/s 263, it was incumbent upon PCIT to demonstrate that at time of investment, property was not a residential property and in terms of Explanation 2(a), PCIT was required to demonstrate that order passed was without making enquiries or investigation. Issue was enquired into and nowhere in order, PCIT was able to show that order passed either suffered from any error let alone such an error which was prejudicial to interests of Revenue. Issues were enquired into by AO during assessment proceedings. Before AO, assessee's explanation was offered—Plan and map site was also made available. Nothing was brought out in order to show status of property at time of investment. Accordingly the explanation 2(a) was not attracted and accordingly, order passed by PCIT was quashed. (AY. 2012-13)
Meenu Bansal v. PCIT (2018) 54 CCH 352 / 172 DTR 212 / 196 TTJ 788 (Chd.)(Trib.)

2310 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Non-Jurisdictional High Court – Revision is not possible. [S. 80IB(10), 115JB]**
Assessee's case was selected for scrutiny. While computing book profit u/s 115JB, AO reduced amount of profit exempt u/s 80IB(10). Subsequently, CIT noted that while computing book profit for MAT u/s 115JB, assessee had incorrectly reduced deduction u/s. 80IB which was accepted during scrutiny assessment under normal provisions and hence, such order was erroneous and prejudicial to interest of Revenue. By placing reliance on a decision of Karnataka High Court non-jurisdictional High Court, CIT set aside assessment order and directed AO to pass a fresh order. Tribunal held that explanation 2(d) u/s. 263 specifically stated that revision was possible only due to judgments of jurisdictional High Court or Supreme Court. However, in instant case, decision relied on by CIT was not of jurisdictional High Court. Provision of S. 263 would apply when decision of AO was erroneous as well as prejudicial to interests of Revenue. In a case where two views were possible and AO has taken one view, with which CIT does not agree, it could not be treated as an erroneous order, prejudicial to interests of Revenue. (AY. 2011-12)
Neha Home Builders (P) Ltd. v. CIT (2018) 169 DTR 106 / 195 TTJ 506 (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – AO to restrict disallowance to a certain percentage which was less than entire amount of such bogus purchases – Revision is held to be not valid. [S. 153A] 2311

During assessment proceeding, AO passed an order wherein he took GP margin on sales turnover @9%. As assessee's margin was below 9% in respect of AYs 2008-09 and 2009-10, AO added difference amount. But, in respect of GP of assessee was more than 9% for AY 2010-11, no addition was made. PCIT setaside the order. Tribunal held that PCIT was not justified in setting aside assessment order and substituting his opinion for opinion of AO. All documents in support of purchase made were submitted before AO. AO had made additions by rejecting books of accounts of assessee after going through material available on record. Thus, AO during assessment proceeding had examined this issue. It was not a case where AO had not applied his mind. Same AO after obtaining details and other evidences, was satisfied and hence accepted contention of assessee. Thus AO, being satisfied after reply, PCIT could not sit over judgment of AO to review order,it was not a case of lack of enquiry or a matter of inadequate enquiry so as to trigger jurisdiction u/s 263. (AY. 2008-09 to 2010-11)

NKG Infrastructure Ltd. v. PCIT (2018) 171 DTR 385 / 196 TTJ 393 (Delhi)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – AO framed assessment as per law – Even if it had resulted in loss to revenue, said decision of AO could not be treated as erroneous and prejudicial to interest of revenue. [S. 153A] 2312

Tribunal held that when the AO had framed assessment under section 153A as per law and adopted one of courses permissible in law, then even if it had resulted in loss to revenue, said decision of AO could not be treated as erroneous and prejudicial to interest of revenue under section 263 of the Act. (AY. 2009-10)

Garg Brothers P. Ltd. v. Dy. CIT (2018) 64 ITR 25 (SN)(Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Rental income – Business income – Income from house property – Every loss of Revenue as a consequence of an order of AO could not be treated as prejudicial to interests of Revenue – Revision is held to be not valid. [S. 22, 28(i)] 2313

Appellate Tribunal held that where assessee-company claimed that it was engaged in real estate business, whether rental income was to be taxed under the Head "Business Income" or "Income from House Property" was to be decided as per objects of the assessee-company. The assessee-company filed copy of the Memorandum of Association which provides that assessee-company would be carrying on business for construction of any type of property and to let-out or sell the same to the public, therefore, renting-out the properties is also one of the main objects of the assessee-company. Therefore, letting-out/renting-out the property was in fact business of the assessee-company. Therefore, same was correctly claimed by assessee-company as income from business and profession. Therefore, before taking any adverse view against assessee, CIT should have examined explanation of assessee and should have considered assessee's reply. However, nothing was done and without any justification, original assessment orders

were set aside. Every loss of Revenue as a consequence of an order of AO could not be treated as prejudicial to interests of Revenue. (AY. 2013-14, 2014-15)
Great Heights Infratech Pvt. Ltd. v. PCIT (2018) 67 ITR 424 (Delhi)(Trib.)

2314 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Cash credits – Share capital – AO had made enquiry by seeking information from Switzerland Tax Authorities through proper channel of FT & TR division of CBDT, for exchange of information so as to verify identity, source of funds and creditworthiness of holding company and its promoters – Revision is held to be not justified. [S. 68]**
Commissioner held that while completing assessment, AO had only verified identity of share applicant, however, he had failed to verify second and third limb of transactions, i.e., genuineness of transactions and creditworthiness of foreign entity. Therefore he passed a revision order u/S. 263 setting aside assessment. On appeal Tribunal held that the AO had made enquiry by seeking information from Switzerland Tax Authorities through proper channel of FT & TR division of CBDT, for exchange of information so as to verify identity, source of funds and creditworthiness of holding company and its promoters and those information was made available by Swiss Authorities from financial statements of foreign company. Besides, assessee had explained source from where its foreign holding company had made investment which was assets received from its investors by way of subordinated and conditioned loan. Transaction cannot be regarded as bogus or sham transactions. Accordingly the revision order is set aside. (AY. 2006-2007 to 2010-2011)
Bycell Telecommunications India (P.) Ltd. v. PCIT (2018) 193 TTJ 565 / 90 taxmann.com 268 / (2019) 174 DTR 97 (Delhi)(Trib.)

2315 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Delay of 565 days is condoned – Voluntary offer of income in revised return – Dropping of penalty proceedings – Commissioner cannot substitute his view in revision proceedings for assessing officer view for dropping penalty. [S. 254(1), 271(1)(c)]**
Tribunal held that; when the assessees offered the income voluntarily for taxation and the source of acquisition of such jewellery was also explained before the AO as the gifts from relatives, friends and parents, which were accepted. After considering the explanation the penalty proceedings were dropped. The view taken by the AO for dropping the penalty proceeding initiated was one of the possible views supported by the judgment of the Supreme Court. Therefore, the Commissioner was not justified in substituting his view for that of the AO in dropping the penalty proceeding. (AY 2012-13)
S. Ashok Kumar v. ACIT (2018) 64 ITR 57 (SN)(Chennai)(Trib.)

2316 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Cash credits-Share application money – Details were filed in the original assessment proceedings – AO is not to be expected to discuss each and every item of verification in assessment order – Revision is held to be not justified. [S. 143(3)]**
Allowing the appeal of the assessee the Tribunal held that the AO has called the details and after verification no disallowance was made. Accordingly there was no occasion

for him to discuss about the same in the assessment order. Merely because there was no mention regarding this issue in the assessment order, it could not be presumed that the Assessing Officer had not made any enquiry in this regard in the assessment proceedings. The Assessing Officer could not be expected to discuss each and every item of his verification in the assessment order and was expected to address only those issues on which he was not in agreement with the assessee, in his assessment order. Therefore the order passed by the Assessing Officer could not be termed erroneous in as much as it was prejudicial to the interests of the Revenue, warranting revision under section 263 in the facts and circumstances of the case. (AY. 2012-13)
RBS Credit And Financial Development P. Ltd. v. CIT (2018) 63 ITR 20 (SN)(Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue Revision – No specific query was raised by the AO regarding allowability of provision for gratuity and general reserve – Revision is held to be justified. [S. 40A(9)] 2317
There was no specific query and consequent submission regarding the general and education reserves as well as provision for gratuity which had been claimed by the assessee. In the assessment order it was mentioned that "on profit and loss appropriation account Rs. 3.77 lakhs transferred to the general reserve and Rs. 15.103 had been transferred to the education reserve account in terms of the bye-laws of the society". The AO had merely reproduced the accounting entries by way of transfer to the general reserve and the education reserve as reflected in the profit and loss appropriation account. In the absence of any specific query by the AO and in the absence of any specific finding in the assessment order, showing that the AO had examined the claim of the assessee regarding the general and education reserve and the provision for gratuity, there could not be any change of opinion when such an opinion had not been formed at the first place. There was no due and proper application of mind by the AO.
The Commissioner had given a clear reasoning and finding in order as to why the provisions of S. 40A(9) were not attracted in the instant case. The Commissioner had examined the assessment records as well as the Revenue audit memo available on record. Accordingly the revision is held to be justified. (AY. 2012 – 2013)
Bijaynagar Kraya Vikrya Sahakari Samiti Ltd. v. ITO (2018) 64 ITR 7 (Jaipur)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – In the course of scrutiny assessment, AO disallowed a part of business advancement expenses after verifying bills and vouchers – Manufacturing – R& D expenditure – Revision for further disallowance, re-determined claim of deduction under S. 80-IC and 80-IE and Weighted deduction – R&D expenditure – Revision is held to be not justified when in the Course of original assessment the AO has examined all the claims. [S. 35, 80IC, 80IE] 2318
Tribunal held that,the aim and object of introduction of aforesaid Explanation by Finance Act, 2015 was explained in circular 19/2015 [F. NO. 142/14/2015-TPL], dt. 27-11-2015. A bare reading of the circular gives a somewhat impression that Explanation 2 was inserted for the purpose of providing clarity on the expression 'erroneous insofar as it is prejudicial to the interest of the revenue'. The Explanation being clarificatory would not lead to dilution of the basic requirements of section 263(1). The provisions of section 263 although appears to be of a very wide amplitude and more particularly after

insertion of Explanation 2 but cannot possibly mean that recourse to section 263 would be available to the revisional authority on each and every inadequacy in the matter of inquiries and verification as perceived by the Revisional Authority. The revisional action perceived on the pretext of inadequacy of enquiry in a plannery and blanket manner must be desisted from. The object of such Explanation is probably to dissuade the Assessing Officer from passing orders in a routine and perfunctory manner and where he failed to carry out the relevant and necessary inquiries or where the Assessing Officer has not applied mind on important aspects. However, in the same vain where the preponderance of evidence indicates absence of culpability, an onerous burden cannot obviously be fastened upon the Assessing Officer while making assessment in the name of inadequacy in inquiries or verification as perceived in the opinion of the Revisional Authority. It goes without saying that the exercise of statutory powers is dependent on existence of objective facts. The powers outlined under section 263 are extraordinary and drastic in nature and thus cannot be read to hold that an uncontrolled, unguided and uncanalised powers are vested with the competent authority. The powers under section 263 howsoever, sweeping are not blanket nevertheless. The Assessing Officer cannot be expected to go to the last mile in an enquiry on the issue or indulge in fleeting inquiries. The action of the revisional commissioner based on such expectation requires to be struck down. On facts, in the course of scrutiny assessment, AO disallowed a part of business advancement expenses after verifying bills and vouchers. After examining manufacturing process in business units deduction u/s 80IC and 80IE was allowed. In the course of original assessment proceedings the AO had excluded patent related expenses, expenditure on which the weighted deduction was claimed. Clinical research, labour and job work charges etc, out of R&D expenditure Allowing the appeal the Tribunal held that, revision for further disallowance, re-determined claim of deduction under S. 80-IC and 80-IE and weighted deduction (R&D expenditure). Revision is held to be not justified when in the Course of original assessment the AO has examined all the claims. (AY. 2014-15)

Torrent Pharmaceuticals Ltd. v. DCIT (2018) 173 ITD 130 / 196 TTJ 318 / 66 ITR 33 (SN) (Ahd.)(Trib.)

2319 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Share application money – Lack of proper inquiry – Revision is held to be valid. [S. 68, 147]**

The Tribunal held that the PCIT is justified in revising the reassessment order passed by the AO with a direction to adjudicate a fresh the issue as regards the amount of USD 185 million claimed to have been received by the assessee as share application money after making necessary verifications. (AY. 2008-09)

ATC Telecom Tower (P) Ltd. v. PCIT (2018) 192 TTJ 16 / 169 DTR 265 (Mum.)(Trib.)

2320 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – It is obligation of the CIT to give the assessee an opportunity of being heard before passing of order – While the CIT is entitled to consider a point which is not stated in the show – cause notice, he cannot pass the revision order unless the assessee is given the opportunity of being heard – Such an order is untenable in the eyes of law.**

Tribunal held that, It is obligation of the CIT to give the assessee an opportunity of being heard before passing of his order. While the CIT is entitled to consider a point

which is not stated in the show-cause notice, he cannot pass the revision order unless the assessee is given the opportunity of being heard. Such an order is untenable in the eyes of law. Accordingly the order of CIT was set aside. Ratio in *CIT v. Amitabh Bachan (2016) 384 ITR 200 (SC)* is considered. (AY. 2010-11)
Ambuja Cements Limited v. CIT (2018) 67 TR 9 (SN) (Mum.)(Trib.), www.itatonline.org

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Land development expenditure – Explanation 2 to S. 263 inserted by the FA 2015 (which confers power upon the CIT to revise assessments where inadequate inquiries have been conducted by the AO) is prospective in nature and does not apply even to a case where the CIT passed the order after Explanation 2 came on the statute – Revision is held to be not valid unless the CIT demonstrate that the view taken by the AO is unsustainable in law. 2321

Allowing the appeal of the assessee the Tribunal held that; Explanation 2 to S. 263 inserted by the FA 2015 (which confers power upon the CIT to revise assessments where inadequate inquiries have been conducted by the AO) is prospective in nature and does not apply even to a case where the CIT passed the order after Explanation 2 came on the statute The CIT should show that the view taken by the AO is unsustainable in law. The action of the CIT in directing the AO to conduct enquiry in a particular manner is contrary to the law interpreted in *CIT v. Goetze (India) Ltd. (2014)) 361 ITR 505 (Delhi) (HC)* If such course of action is permitted, the CIT can find fault with each and every assessment order without making any enquiry or verification in order to establish that the assessment order is not sustainable in law. (ITA No. 3125/Mum./2017, dt. 19.01.2018) (AY. 2012-13)
Indus Best Hospitality & Realtors Pvt. Ltd. v. PCIT (Mum.)(Trib.), www.itatonline.org

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Even if there is lack of inquiry by the AO and the assessment order is "erroneous" under Explanation 2 to S. 263, the order is not "prejudicial to the interests of the Revenue". [S. 2(43), 40(a)(v), 115JB] 2322

Allowing the appeal of the assessee, the Tribunal held that; Even if there is lack of inquiry by the AO and the assessment order is "erroneous" under Explanation 2 to S. 263, the order is not "prejudicial to the interests of the Revenue" because Fringe Benefit Tax is not "tax" as defined in S. 2(43) and cannot be disallowed u/s 40(a)(v) or added back to "Book Profits" u/s 115JB (AY. 2012-13)
Rashriya Chemicals & Fertilizer Limited v. CIT (2018) 91 taxmann.com 104 (Mum.)(Trib.), www.itatonline.org

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Scientific research – Revision was held to be justified and the direction given by the CIT was modified allowing the AO to examine the claim. [S. 35(1)] 2323

Dismissing the appeal of the assessee the Tribunal held that, claim for deduction under S. 35(1) could not be allowed where it did not maintain separate books of account in respect of its research and development activity, however the direction given by the CIT was modified allowing the AO to examine the claim. (AY. 2009-10)
Nivo Controls (P.) Ltd. v. CIT (2018) 169 ITD 139 (Mum.)(Trib.)

2324 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Educational expenses of director at abroad – Expenditure allowable or not requires greater scrutiny therefore revision was held to be justified. [S. 37(1)]**

Dismissing the appeal of the assessee the Tribunal held that whether educational expenses of Director at abroad whether allowable or not requires greater scrutiny by the AO, hence the revision of the order was held to be valid, more over, explanation 2 to Section 263 is in place w.e.f 1-6-2005. (AY. 2012-13)

Hunumesh Realtors (P.) Ltd. v. PCIT (2018) 168 ITD 87 (Mum.)(Trib.)

2325 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – U/s 114(e) of the Evidence Act, there is a presumption that a S. 143(3) assessment order is regularly passed after application of mind. If the assessee is consistently following the same method of valuation of closing stock, the CIT is not entitled to disturb the consistent method. [S. 143(3), 145A, Evidence Act, S. 114(e)]**

Allowing the appeal of the assessee the Tribunal held that, U/s 114(e) of the Evidence Act, there is a presumption that a S. 143(3) assessment order is regularly passed after application of mind. If the assessee is consistently following the same method of valuation of closing stock, the CIT is not entitled to disturb the consistent method. (ITA No. 108/CTK/2018, dt. 12.09.2018)(AY. 2012-2013)

Sree Alankar v. PCIT (Cuttack)(Trib.), www.itatonline.org

2326 **S. 263 : Commissioner – Revision of orders prejudicial to revenue Deduction at source – Commission or brokerage – The incentive paid by the dealers to sub-dealers cannot be equated with commission – Not liable to deduct tax at source – Revision is held to be bad in law. [S. 194H]**

Allowing the appeal of the assessee the Tribunal held that, the incentive paid by the dealers to sub-dealers cannot be equated with commission. The assessee is not liable to deduct tax at source. Revision is held to be bad in law. (ITA. No. 3386/DEL/2014, dt. 13.08.2018)(AY. 2009-10)

Rakesh Kumar v. CIT (Delhi)(Trib.), www.itatonline.org

2327 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Sale of plant and machinery along with capital WIP, cost incurred on capital WIP was required to be reduced as 'cost of acquisition' while arriving at taxable amount of capital gain-Revision is held to be not valid. [S. 2(14), 50, 74]**

Allowing the appeal of the assessee the Tribunal held that ; cost for acquiring capital WIP, it was a valuable 'property' and, hence, in nature of a 'capital asset' therefore, when assessee sold plant and machinery along with capital WIP, cost incurred on capital WIP was required to be reduced as 'cost of acquisition' while arriving at taxable amount of capital gain/loss within meaning of S. 50. Accordingly revisional order was set aside. (AY. 2012-13)

Titagarh Industries Ltd. v. DCIT (2018) 171 ITD 559 / 170 ITD 361 (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – revision of order u/s 153A – held, no incriminating material was found and therefore, the AO could not have made any addition – Held, therefore, the CIT erred in assuming jurisdiction u/s 263 as the order of the AO was not erroneous. [S. 153A] 2328

The Tribunal held that as on the date of initiation of search the assessment for the impugned year stood completed. The AO, therefore, could have made addition in the order passed u/s. 153A of the Act only on the basis of incriminating material found during the course of search. It was during the course of the assessment proceedings u/s 153A, that a questionnaire was issued and thereafter the AO became aware of the gifts received by the assessee. There was no incriminating material unearthed during the search qua such gifts. In such a scenario, no addition could have been made. Therefore, the order of the AO was not erroneous. As a result, the Tribunal held that the CIT erred in assuming jurisdiction u/s 263 of the Act. (AY. 2007-08)

Reena Gambhir v. PCIT (2018) 191 TTJ 19 (UO) (Chd.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – Investment in construction of another house property within prescribed time – Deduction cannot be denied merely because exemption was not claimed in return of income. [S. 45, 54F, 139] 2329

Assessee sold the property, but he neither admitted capital gains on sale of property nor claimed exemption under any of provisions of Act. The AO accepted income declared. CIT revised the order holding that since assessee neither declared capital gain nor claimed any deduction in respect thereof in return of income, his claim for deduction was not allowable. Tribunal held that, since the sale proceeds were invested for construction of another residential property, mere fact that deduction was not claimed in return of income could not be the ground for denial of assessee's claim. Accordingly the revisional order passed by the CIT is bad in law. (AY. 2010-11)

Manohar Reddy Basani v. ITO (2018) 171 ITD 279 / 169 DTR 401 / 195 TTJ 630 (Hyd.) (Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Non-resident – Deduction of tax deducted at source cannot determine the taxability of income – Salary of the assessee cannot be taxed in India and the same has rightly been claimed as deduction in the return of income – Proceeding is valid only if the Assessment order is erroneous as well as prejudicial to the interest of the Revenue. [S. 5, 6, 154] 2330

On appeal, the Tribunal observed that from the material facts which have been placed before the Commissioner and also before the Assessing Officer during rectification proceedings under S. 154, post assessment proceedings, it is seen that the assessee has given entire details of number of days for which assessee had stayed outside India which has been computed at 203 days.

The order can be held to be erroneous in the absence of any proper enquiry at the stage of assessment proceeding, though examined subsequently by the Assessing Officer which is also part of assessment record, but certainly one has to see that, whether it is prejudicial to the interest of the Revenue or not. The assessee in terms of section 6 clearly cannot be held to be resident in India in the relevant previous year. So far as

the observation that since the salary income has been received in India, i.e., it has been credited in the bank account of the assessee in India and also TDS has been deducted by the employer, this fact cannot be determinative of the taxability of resident or non-resident in terms of provisions of the Act. Salary of the assessee cannot be taxed in India and the same has rightly been claimed as deduction in the return of income. Thus, on merits the assessment order passed by the Assessing Officer is not prejudicial to the interest of the revenue, albeit can be reckoned as erroneous in the absence of any proper enquiry and thus, relying of the decision of Supreme Court in case of *Malabar Industrial Co. Ltd v. CIT (2000)243 ITR 83 (SC)*, Tribunal held that even if one of the limbs of said expression used in S. 263 is missing, then ostensibly the assessment order cannot be set aside within the scope of revision u/s 263 and upheld the allowability of deduction of salary as claimed by the assessee. (AY. 2011-12)
Pramod Kumar Sapra v. ITO (2018) 63 ITR 31 (SN)(Delhi)(Trib.)

2331 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Income deemed to accrue or arise in India – Where the AO had made due enquiries with regard to receipts of assessee from services rendered outside India and where receipts were not taxable in India under article 15 of DTAA between India and USA, exercise of jurisdiction under section 263 was not justified – DTAA-India-USA. [S. 9(1)(i), Art.15]**
Tribunal held that where the AO had made due enquiries with regard to receipts of assessee from services rendered outside India and where receipts were not taxable in India under article 15 of DTAA between India and USA, exercise of jurisdiction under S. 263 was not justified. Tribunal also observed that, decision in Gabriel India (203 ITR 108) which clearly lays down that u/s 263 of the Act, there cannot be any substitution of the AO's judgment by judgment of CIT. Accordingly the order of CIT was quashed.
Pricewaterhouse Coopers LLP USA v. CIT (IT) (2018) 165 DTR 41 / 192 TTJ 976 (Kol.) (Trib.)

2332 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – There could have been no revision by Commissioner without pointing out in impugned order as to what was kind of enquiry that Assessing Officer ought to have made, which he failed to make. [S. 10(2A)]**
On appeal before the Tribunal the question was whether there can be no revision because the power under section 263 can be invoked only in cases of lack of inquiry and not for conducting inadequate inquiry. The Tribunal held that the Commissioner cannot initiate proceedings with a view to start fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well accepted policy of law that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity. Therefore, orders under section 263 cannot be sustained as the conditions for exercise of jurisdiction under the said provisions are absent in the instant case. Therefore, the impugned orders under section 263 in these appeals are quashed.
Pawan Kumar Agarwal v. PCIT (2018) 61 ITR 598 (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Loss in forward contract – Revision treating loss as speculative loss is not valid. [S. 43(5)] 2333

Allowing the appeal of the assessee the Tribunal held that assessee is not a dealer in foreign exchange and loss on forward contract is part of its normal business activity. Assessing Officer considering explanation given and case law cited by assessee accepting the same as business loss. Loss being normal business loss and not speculative loss, revision treating loss as speculative loss is not valid. (AY. 2012-13)

ITT Shipping P. Ltd. v. CIT (2018) 65 ITR 45 (SN) (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Share application money-No finding that assessee's unaccounted money routed through circuitous manner – Assessment order accepting share capital/share premium is not prejudicial to interests of revenue – No Adverse finding or comment by Commissioner as why work-in-progress shown by assessee at nil is not correct or requires further inquiry or verification – Revision was held to be not valid. [S. 68, 145] 2334

Allowing the appeal of the assessee the Tribunal held that CIT has not given any finding that assessee's unaccounted money routed through circuitous manner. Assessment order accepting share capital/share premium is not prejudicial to interests of revenue Tribunal also held that no Adverse finding or comment by Commissioner as to why work-in-progress shown by assessee at nil is not correct or requires further inquiry or verification. Accordingly the revision was held to be not valid. (AY. 2014-15)

Vidya Prakashan Mandir P. Ltd. v. CIT (2018) 65 ITR 26 / 169 DTR 253 / 194 TTJ 868 (Delhi)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Change in share holding of more than 51 % – Holding company of assessee, had transferred its shareholding in assessee company to another company which was again its subsidiary company – On facts, even after transfer of shares by assessee's ultimate holding company to another subsidiary, beneficial ownership of assessee – company continued to vest in ultimate holding co – Revision is not held to be valid and provisions of S. 79 would not apply. [S. 79] 2335

Allowing the appeal of the assessee the Tribunal held that ;where holding company of assessee transferred its entire shareholding in assessee company to another subsidiary company, in view of fact that in such a case beneficial ownership of assessee company continued to vest in its ultimate holding company, provisions of S. 79 placing restrictions in respect of carry forward and set off of losses incurred in previous years against profits of subsequent years would not apply to assessee's case. The Tribunal also held that the purpose of S. 79 is implicit. It seeks to curtail misuse of benefit of carry forward and set off of business losses of earlier years of a company and prohibits its availability in the hands of any new owner. In the instant case, it is manifest that no such misuse can be inferred since the beneficial ownership did not change hands. Interestingly, one may also take note of the expression 'held' used in section in distinction to the expression 'owned'. Needless to say, the expression held is far more elastic to cover the situation whereby if a person is found capable of influencing the voting rights to the extent of specified percentage (51 per cent), S. 79 will not be

triggered. Therefore, while the legal ownership might have changed, the ownership/ control/voting power of the assessee-company continues to be beneficially held by the same owner. This inevitably means that the cause for issuance of notice under section 263 ceases to exist. In the absence of any change in the beneficial ownership, one is unable to comprehend the nature of enquiry sought by the Commissioner in this regard. Hence, it is held that the action of the Commissioner is devoid of sanction of law. Consequently, the order passed under section 263 by the Commissioner is required to be cancelled. (AY. 2011-12)
CLP Power India (P.) Ltd. v. DCIT (2018) 170 ITD 744 / 195 TTJ 131 / 170 DTR 11 (Ahd.) (Trib.)

2336 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Order was passed by the AO after conducting detailed enquiries on all issues – Revision is not valid.**
Allowing the appeal of the assessee the Tribunal held that ; Order was passed by the AO after conducting detailed enquiries on all issues. Because a few of parties had not responded to the notices issued under S. 133 (6) the assessee might not be penalised for the conduct of the parties. The Commissioner had failed to point out the error committed by the Assessing Officer let alone such an error which could be considered to be prejudicial to the interests of the Revenue. The law did not permit the authority the exercise of revisionary powers to initiate fishing and roving enquiries. Accordingly the order of the Commissioner was to be quashed. (AY. 2012-13)
Abhimanyu Gupta v. CIT (2018) 64 ITR 611 (Chd.)(Trib.)

2337 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Deduction u/s 10A allowed before adjustment unabsorbed depreciation or losses is held to be valid – Revision was held to be not valid. [S. 10A]**
Allowing the appeal of the assessee the Tribunal held that deduction allowed u/s 10A allowed before adjustment unabsorbed depreciation or losses is held to be valid. Revision was held to be not valid. (AY. 2011-12)
Vision Iknowledge Solutions Pvt. Ltd. v. PCIT (2018) 64 ITR 85 (Delhi)(Trib.)

2338 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Non est revised return cannot be revised as the assessment order itself is null and void.**
Allowing the appeal the Tribunal held that, non est return cannot be revised as the assessment order itself is null and void. (AY. 2011-12)
Hari Mohan Das Tandon (HUF) v. PCIT (2018) 169 ITD 639 (All.)(Trib.)

2339 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Derivative loss – Setting a side of order without giving any finding was held to be bad in law. [S. 43(5)]**
Allowing the appeal of the assessee the Tribunal held that; Commissioner passed the order without giving any finding or conclusion as to how order of Assessing Officer was erroneous on merits and without even putting assessee on notice, said order was to be set aside (AY. 2012-13)
Sadhana Stocks & Securities (P.) Ltd. v. PCIT (2018) 168 ITD 499 (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – Cost of acquisition – Revison order was set aside and Tribunal directed the assessee to file relevant documents and directed the AO to decide accordance with law. [S. 45, 48] 2340
Commissioner set aside the order of the AO who has allowed the indexation while computing the capital gans. Tribunal setaside the order of Commissioner and directed the AO to examine whether the assessee was or was not in possession of the property on July 3, 1980. The assessee was also directed to file the relevant documents in support of his contention before the Assessing Officer and thereafter, the matter will be decided by the Assessing Officer as per law. (AY. 2008-09)
Pravinbhai Mafatlal Joshi v. ITO (2018) 61 ITR 775 (Ahd.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Exemption was claimed in respect of share of profit credited to partners account – Two views possible – Revision was held to be not valid. [S. 10(2A)] 2341
Allowing the appeal of the assessee the Tribunal held that; exemption claimed in share of profit which was credited to partners account, exemption was claimed u/s. 10(2A) of the Act which was allowed by the Assessing Officer. The Tribunal held that, view of the Assessing Officer was a possible view, Commissioner cannot revise the order merely because he did not agree with the view of the AO, hence revision was held to be not valid. (AY. 2013-14)
Vinod Agarwal v. CIT (2018) 61 ITR 598 (Kol.)(Trib.)
Shyam Sundar Agarwal v. CIT (2018) 61 ITR 598 (Kol.)(Trib.)
Ramnaresh Agarwal v. CIT (2018) 61 ITR 598 (Kol.)(Trib.)
Pawan Kumar Agarwal v. CIT (2018) 61 ITR 598 (Kol.)(Trib.)

S. 264 : Commissioner – Revision of other orders – Appeal filed was withdrawn – Revision application is maintainable – Writ petition is maintainable against the revision order – Sale of agricultural land-In the assessment of Co-owner the land was accepted as agricultural land – Rejection of revision application was held to be not valid – Matter remanded. [S. 45, 264(4)(a)] 2342
Allowing the petition the Court held that, unless the question as to the validity of the complaint is looked into or scrutinized by the authorities concerned, i.e., the appellate authority or the revisional authority, it cannot be said that the right conferred by the Income-tax Act, 1961 is fully exercised or exhausted. Where an appeal is dismissed as withdrawn, the assessee is entitled to pursue his remedy under section 264. Accordingly when the appeal filed was withdrawn, revision application is maintainable. Against an order made under section 264, no further statutory appellate remedy is available to the aggrieved party. A remedy under article of the Constitution of India is always available to the assessee. On facts in the assessment of Co-owner the land was accepted as agricultural land, accordingly the rejection of revision application was held to be not valid. Matter remanded. (AY. 2008-09)
Pallavarajha v. CIT (2018) 409 ITR 282 / 176 DTR 115 (Mad.)(HC)

2343 **S. 264 : Commissioner – Revision of other orders – Condonation of delay – Commission paid was claimed as deduction in the AY. 2013-14 – Assessing Officer held that the Commissioner was pertaining to AY. 2012-13 hence not allowed – Revision application was filed for the AY. 2012-13, with in one month of the order for the AY. 2013-14 – PCIT rejected the petition on the ground that it was time barred – On writ the delay was condoned and the PCIT is directed to dispose the application on merits. [S. 143(3)]**

Commission payment by the assessee was disallowed by the Assessing Officer in the AY. 2013-14 by holding that it pertain to AY. 2012-13. The assessee filed revision petition before the Commission within one moth of the receipt of the order and also explained the reasons for delay in filing the revision application. PCIT rejected the application on the ground that the application was time barred. On writ against the rejection of application honourable Court directed the PCIT to condone the delay and decide the issue on merit. (AY. 2012-13)

Dwarikesh Sugar Industries Ltd v. Dy.CIT (2018) 172 DTR 291 / (2019) 307 CTR 582 (Bom.)(HC)

2344 **S. 264 : Commissioner – Revision of other orders – Cash credits – In the revision order the Commissioner did not make any addition to assessee's income and held that addition of a sum of Rs. 20 crores being a serious matter, same should be examined again – Order of Commissioner is set aside by observing that it was not quantum of additions but justification thereof which would be germane for deciding to exercise revisional powers – Remanded the matter for fresh disposal. [S. 68]**

Allowing the petition of the revenue the Court held that ; in the revision order the Commissioner did not make any addition to assessee's income and held that addition of a sum of ₹ 20 crores being a serious matter, same should be examined again. Order of Commissioner is set aside by observing that it was not quantum of additions but justification thereof which would be germane for deciding to exercise revisional powers. Remanded the matter back to the Commissioner for fresh disposal. (AY. 2013-14)

Nitin Babubhai Rohit v. Ashok Bhavanbhai Patel (2018) 258 Taxman 252 / 172 DTR 388 (Guj.)(HC)

2345 **S. 264 : Commissioner – Revision of other orders – Where assessee deliberately avoided availing of regular remedy by way of an appeal against assessment order and just before expiry of prescribed time period, preferred revision same was rightly dismissed by Principal Commissioner.**

Dismissing the petition the Court held that; Where assessee deliberately avoided availing of regular remedy by way of an appeal against assessment order and just before expiry of prescribed time period, preferred revision same was rightly dismissed by Principal Commissioner. (AY. 2006-07)

Nataraju (HUF) v. PCIT (2018) 406 ITR 342 / 254 Taxman 357 / 167 DTR 100 / 304 CTR 665 (Karn.)(HC)

S. 264 : Commissioner – Revision of other orders – Business expenditure – Real income – Non filing of revised return cannot be the ground to reject the application. [S. 37(i)] 2346
Allowing the petitions, the Court held that; after the Assessing Officer passed the order of assessment in the case of the partner, the firm had filed a revised computation of income before the Assessing Officer before whom the assessment of the firm was still pending. To that extent, the view of the Commissioner that such expenditure would not be allowed in the hands of the firm also, could not be accepted. That the non-filing of the revised return by the firm could not have been a ground for rejection of the claim. Even if the powers of the Assessing Officer could have been restricted in the absence of a revised return, the Commissioner could have examined the issue and made further inquiries, if it was needed. Section 264 used the expression "any order" which implied that the section did not limit the revisional power of the Commissioner to correct the errors committed by the subordinate authorities but could also be exercised where errors were committed by the assessee. The Act proceeded on the fundamental principle of taxing real income. The accounts could not change taxability or non-taxability of a certain receipt which depended on the nature of the receipt and the legal principles applicable. (AY. 2012-13)
Hitech Analytical Services v. CIT (2018) 402 ITR 479 / (2019) 306 CTR 270 / 173 DTR 157 (Guj.)(HC)

S. 268A : Appeal – Monetary limits – Circulars are binding on department – Reference application was rejected [S. 119] 2347
Reference application was rejected as the tax effect was below the threshold contemplated in the Central Board of Direct Taxes' Circular No. 21/2015 dated December 10, 2015(2015) 379 ITR 107 (St.)
CIT v. Shalimar Industries Ltd. (2018) 401 ITR 239 (Cal.)(HC)

S. 268A : Appeal – Monetary limits – Circular is not applicable where decision on principle is involved. [S. 119] 2348
Court held that circular prescribing the monetary limit is not applicable where decision on principle is involved (AY. 1990-91)
CIT v. Vasantha Anirudhan (Smt.) (2018) 401 ITR 279 / 163 DTR 279 / 302 CTR 257 (Ker.)(HC)

S. 269SS : Acceptance of loans and deposits – Otherwise than by account payee cheque or account payee bank draft – Depositors were agriculturists and transactions were genuine – Penalty cannot be imposed. [S. 271D] 2349
Dismissing the appeal of the revenue the court held that; Depositors were agriculturists and transactions were genuine hence cancellation of penalty was held to be justified. (AY. 2007-08)
PCIT v. Tehal Singh Khara and Sons (2018) 400 ITR 243 (P&H)(HC)

2350 **S. 271(1)(c) : Penalty – Concealment – Advance received not shown as income – Revised return filed showing advance as income – Deletion of penalty is held to be justified – TDS deducted but no proof was filed – Levy of penalty was held to be not justified.**

Dismissing the appeal of the revenue the Court held that there was no deliberate suppression or concealment of income on assessee's part, as she was under bona fide belief that advances received need not be shown as income in subjected assessment. When the advances received shown in the balance sheet annexed to the return were bonafide, the same is not construed as wilful concealment even if such advances were are not shown as income in IT return. Court also held that as regards TDS deducted but no proof was filed. Levy of penalty was held to be not justified. (AY. 2010-11)

CIT v. Trisha Krishnan (2018) 170 DTR 209 (Mad.)(HC)

2351 **S. 271(1)(c) : Penalty concealment – Disallowance of expenditure – Exempt income – mere disallowance of expenditure cannot be held to be furnishing inaccurate particulars of income – Deletion of penalty is held to be justified. [S. 14A, R.8D]**

Dismissing the appeal of the revenue the Court held that disallowance made under section 14A because there was no evidence in respect of furnishing inaccurate particulars of income. Deletion penalty by the Appellate Tribunal is held to be justified.

PCIT v. Gruh Finance Ltd. (2018) 100 taxmann.com 103 / 259 Taxman 421 (Guj.)(HC)

Editorial : SLP of revenue is dismissed; PCIT v. Gruh Finance Ltd. (2018) 259 Taxman 420 (SC)

2352 **S. 271(1)(c) : Penalty – Concealment- Claimed deduction in respect of payments made to employees under VRS Scheme – Levy of penalty is held to be not justified. [S. 35DDA, 37(1)]**

AO held that payment could have been deducted only to extent of 20 per cent under section 35DDA. Tribunal held that a view that two views were possible i.e., whether amount paid was allowable as deduction under section 37(1) or deduction was to be allowed under section 35DDA. Accordingly the Tribunal set aside penalty order holding that it was not a case of furnishing inaccurate particulars of income or concealment of income. High Court up held the view of the Tribunal.

PCIT v. Modipon Ltd. (2018) 100 taxmann.com 57 / 259 Taxman 426 (Delhi)(HC)

Editorial : SLP of revenue is dismissed, PCIT v. Modipon Ltd. (2018) 259 Taxman 425 (SC)

2353 **S. 271(1)(c) : Penalty – Concealment – On excessive deduction and alleged excess stock – Deletion of penalty is held to be justified. [S. 10B]**

Dismissing the appeal of the revenue the Court held that,deletion of penalty by the Tribunal on account of excess deduction and alleged excess stock is held to be justified. (AY. 2010-11)

PCIT v. Deccan Mining Syndicate Pvt. Ltd. (2018) 168 DTR 161 / 102 CCH 315 (Karn.) (HC)

S. 271(1)(c) : Penalty – Concealment – Not mentioning the specific charge – Ground mentioned in show cause notice would not satisfy requirement of law for levying penalty as charges levied in the notice were not specific – Deletion of penalty is held to be valid. [S. 132, 139, 153A] 2354

Assessee field his return of income and including additional income in its return under section 153A. Assessment under section 153A was completed and AO during the course of assessment proceedings held that assessee had shown additional income due to search. AO initiated penalty under section 271(1)(c) as the additional income was not declared in the return filed under section 139. Tribunal held that penalty levied under section 271(1)(c) was not sustainable in law as no specific charge was levied in penalty show cause notice. The High Court held that the ground mentioned in show cause notice would not satisfy the requirement of law, as notice was not specific. The High Court placing reliance on the decisions of *CIT v. Manjunatha Cotton Ginning Factory (2013) 359 ITR 565(Karn)(HC)* and *CIT v. SSA's Emerald Meadows (2016) 242* Taman 180 (SC) held that the Tribunal was right in setting aside the order of penalty imposed by the AO. (AY. 2002-03 to 2007-08)

PCIT v. Kulwant Singh Bhatia (2018) 168 DTR 327 / 304 CTR 103 / 102 CCH 303 (MP.) (HC)

S. 271(1)(c) : Penalty – Concealment – Writing off capital work in progress – Penalty not sustainable on disallowance of assessee's claim of loss – Legislature does not intend to penalize every person whose claim is disallowed. 2355

Assessee wrote off capital work in progress as revenue loss. Assessee has disclosed all particulars of his income. AO disallowed claim without holding it be bogus or false. Hence, genuineness of the loss is not a question under dispute. Assessee cannot be penalized for making a claim which in itself is unsustainable in law. Legislature does not intend to penalize every person whose claim is disallowed. Relied, *CIT v. Reliance Petroproducts (2010) 322 ITR 158 (SC)* and dismissed the appeal of the revenue. (AY. 2009-10)

PCIT v. Samtel India Ltd. (2018) 168 DTR 322 / 305 CTR 924 (Delhi)(HC)

S. 271(1)(c) : Penalty – Concealment – Inadvertently claimed higher rate of 40% depreciation instead of 25% – Bona fide mistake – Deletion of penalty is held to be justified. [S. 32] 2356

Dismissing the appeal of the revenue the Court held that ; inadvertently claimed higher rate of 40% depreciation instead of 25% is a bona fide mistake. Deletion of penalty is held to be justified. (AY. 2004-05)

PCIT v. Bunge India Pvt. Ltd. (2018) 407 ITR 225 (Bom.)(HC)

2357 **S. 271(1)(c) : Penalty – Concealment – Appeal – If appeals with reference to the quantum proceedings have been admitted by the Court on substantial questions of law, it means that there were debatable and arguable questions raised and levy of penalty is not justified. Penalty also cannot be levied if the claim was as per judicial precedents prevalent at the time of filing the ROI. Also, there must be a finding that the details supplied by the assessee in its return were incorrect or erroneous or false.**
Dismissing the appeal of the revenue the Court held that, If appeals with reference to the quantum proceedings have been admitted by the Court on substantial questions of law, it means that there were debatable and arguable questions raised and levy of penalty is not justified. (*PCIT v. Shree Gopal Housing and Plantation Corporation (2018) 167 DTR 236 (Bom.) (HC)* is distinguished, *CIT v. Nayan Builders and Developers (2014) 368 ITR 722 (Bom.) (HC)* is followed). Penalty also cannot be levied if the claim was as per judicial precedents prevalent at the time of filing the ROI. Also, there must be a finding that the details supplied by the assessee in its return were incorrect or erroneous or false. (Refer *CIT v. Advaita Estate Development Pvt. Ltd. ITA No. 1498 of 2014 dt. 17-02-2017* (Bom.) (HC) www.itatonline.org (ITA No. 1133 of 2016, dt. 04.09.2018) (AY. 2003-04, 2004-05, 2005-06)
PCIT v. Dhariwal Industries Ltd. (2018) 170 DTR 1 / 304 CTR 870 (Bom.)(HC), www.itatonline.org

2358 **S. 271(1)(c) : Penalty – Concealment – Capital gains – Claiming exemption under S. 10(38) with a note that reserved its right to carry forward the loss – Deletion of penalty is held to be justified. [S. 10(38), 45]**
Dismissing the appeal of the revenue the Court held that ; The assessee had claimed exemption under S. 10(38) with a note that it reserved its right to carry forward the loss of Rs. 80.64 crores, under the bona fide belief that under S. 10(38) the loss was not required to be considered. It could not be stated that the act of the assessee in giving the note was with some ulterior intention or concealment of income or giving inaccurate particulars. Deletion of penalty is held to be justified. (AY. 2008-09)
DIT (IT) v. Nomura India Investment Fund Mother Fund (2018) 404 ITR 636 (Bom.)(HC)
Editorial : SLP of revenue is dismissed DIT (IT) v. Nomura India Investment Fund Mother Fund(2018) 401 ITR 172 (St)(SC)

2359 **S. 271(1)(c) : Penalty – Concealment-"sale and lease back" – Quantum of revenue appeal was admitted and pending for final hearing – Merely using the words that there is concealment of income and/or furnishing inaccurate particulars of income is not sufficient. The same should be particularized by the AO with a finding as to what particulars of income has been concealed or what particulars of income are inaccurate. The words 'concealment' or giving 'inaccurate particulars of income' have to be read strictly before penalty provisions can be invoked. [S. 32]**
Question before the High Court was "Whether in the facts and circumstances of the case and in law, the Tribunal was justified in deleting the penalty levied under Section 271(1)(c) of the Act?" In the quantum appeal of the revenue was admitted on following questions of law " Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in allowing depreciation on assets given on sale and

lease back basis when the transactions were purely financial transactions?". Dismissing the appeal of the revenue the Court held that,mere using the words that there has concealment of income and / or furnishing inaccurate particulars of income would not in the absence of same being particularized, lead to imposition of penalty. It is only when the specified officer of the Revenue is satisfied that there has been concealment of particulars of income or furnishing inaccurate particulars of income that the occasion to explain the conduct in terms of Explanation I to Section 271(1)(c) of the Act would arise. (*CIT v. Zoom Communication Pvt. Ltd. (2015) 371 ITR 570 (Delhi) (HC)* is distinguished) (AY. 1995-96, to 1997-98)
CIT v. L & T Finance Ltd. (2018) 168 DTR 212 (Bom.)(HC), www.itatonline.org

S. 271(1)(c) : Penalty – Concealment – Admission of appeal by High Court – There can be no universal rule to the effect that no penalty can be levied if quantum appeal is admitted on a substantial question of law. [S. 260A] 2360
Admitting the appeal of the revenue, the Court held that; The law in *CIT v. Nayan Builders & Developers (2014) 368 ITR 722 (Bom.)* does not mean as a matter of rule that in case where the High Court admits an appeal relating to quantum proceedings ipso facto i.e. without anything more, the penalty order gets vitiated. The question of entertaining an appeal from an order imposing / deleting penalty would have to be decided on a case to case basis. There can be no universal rule to the effect that no penalty can be levied if quantum appeal is admitted on a substantial question of law. In fact, the admission of an appeal in quantum proceedings, if arising on a pure interpretation of law or on a claim for deduction in respect of which full disclosure has been made, may, give rise to a possible view, that admission of appeal in the quantum proceedings would suggest no penalty can be imposed as it is a debatable issue. However, it cannot be a universal rule that once an appeal from the order of the Tribunal has been admitted in the quantum proceedings, then, ipso facto the issue is a debatable issue warranting deletion of penalty by the Tribunal. There could be cases where the finding of the Tribunal in quantum proceedings deleting addition could be perverse, then, in such cases, the admission of appeal in quantum proceedings would indicate that an appeal against deletion of penalty on the above account will also warrant admission. (AY. 2006-07)
PCIT v. Shree Gopal Housing & Plantation Corporation (2018) 167 DTR 236 / 303 CTR 428 (Bom.)(HC), www.itatonline.org

S. 271(1)(c) : Penalty – Concealment – Donation – Withdrawal of claim on alleged bogus donation and filing the revised return disclosing the alleged bogus donation – Deletion of penalty was held to be valid. [S. 35(1), 143(3), 148] 2361
Dismissing the appeal of the revenue, the Court held that when the donation was made the assesse believed that the Indian Medical Scientific Research Foundation was genuine. However after conclusion of enquiry by CBI it was found that the institution was bogus. The Assessee with draw the claim in the revised return filed in pursuance of notice u/s 148. As there was complete disclosure on the part of the assessee, deletion of penalty was held to be justified. (AY. 2004-05)
CIT v. Man Industries Ltd. (2018) 164 DTR 165 (Bom.)(HC)

2362 **S. 271(1)(c) : Penalty – Concealment – Inaccurate particulars – Penalty is a civil liability – Concealment need not be wilful – Non disclosure of entire receipt from transaction was held to be liable to penalty.**

Answering the reference against the assessee the Court held that; the assessee, as a matter of record, had only disclosed part of the income derived from the sale of the picture to Prakash Pictures and the balance was not declared, but came to be returned in the subsequent assessment years was admitted. The argument that the nature of the transaction was not known had been rejected by two concurrent findings which were not perverse. The Tribunal found that the entire receipts were not included for that would have resulted in the assessee paying tax. The attempt was to avoid the liability. The levy of penalty was justified. (AY. 1977-78)

Shanti Ramanand Sagar And Others v. CIT (2018) 402 ITR 245 / 161 DTR 129 / 300 CTR 132 (Bom.)(HC)

2363 **S. 271(1)(c) : Penalty – Concealment-International transaction – Transfer pricing – Explanation of Arm's length price is found to be bona fide – Penalty cannot be imposed – Explanation 7. [S. 92C]**

Dismissing the appeal of the revenue the Court held that ; the assessee had justified and explained why the independent transaction was disregarded as an internal comparable, for two reasons. Firstly, the transaction was of low value in comparison with transactions with associated entities. Secondly, it was a single transaction, whereas transactions with associated enterprises were continuous and based upon long-term business relationship. This factual position and distinction was undisputed. In view of the factual matrix, the explanation of the assessee was accepted as bona fide and that the assessee had exercised due diligence in selection of the method and comparables. It was in this context, that the Tribunal had taken a reasonable and considered view of the matter. The findings on the question of the explanation, bona fides and due diligence was a finding of fact. The deletion of penalty was justified. (AY. 2006-07)

CIT v. Sinosteel India P. Ltd. (2018) 409 ITR 116 / 304 CTR 356 / 169 DTR 265 (Delhi) (HC)

2364 **S. 271(1)(c) : Penalty – Concealment – False claim of depreciation – Levy of penalty is justified. [S. 32]**

Dismissing the appeal of the assessee the Court held that the three authorities had concurrently held on the facts against the assessee. There was no proper justification placed by the assessee to consider or to disbelieve that the transaction did not lead to a presumption of concealment of income or suppression of fact, which was covered under S. 271(1)(c) and which empowered the assessing authority to levy a penalty. The Tribunal rightly confirmed the levy of penalty. (AY. 1996-97)

Magna Credit And Financial Services Ltd. v. DCIT (2018) 408 ITR 621 (Mad.)(HC)

S. 271(1)(c) : Penalty – Concealment – Disallowance of expenditure – merely because said claim was not accepted or was not acceptable to revenue, that by itself would not attract penalty. 2365

Dismissing the appeal of the revenue the Court held that; merely because expenditure is disallowed or claim was not accepted or was not acceptable to revenue, that by itself would not attract penalty. (AY. 1984-85)

CIT v. U.P. State Bridge Corporation Ltd. (2018) 258 Taxman 64 (All.)(HC)

Editorial : SLP of revenue is dismissed ; CIT v. U.P. State Bridge Corporation Ltd. (2018) 258 Taxman 63 (SC)

S. 271(1)(c) : Penalty – Concealment – Cash credits – Reasonable cause in omitting rental income – Deletion of penalty is held to be justified. [S. 260A] 2366

Dismissing the appeal of the revenue the Court held that, the finding arrived by the Tribunal being finding of fact there being reasonable cause. Deletion of penalty is held to be justified. (AY. 2001-02)

CIT v. M. P. Purushothaman (2018) 407 ITR 689 / (2019) 175 DTR 221 (Mad.)(HC)

S. 271(1)(c) : Penalty – Concealment – Disallowance of claim – Rejection of revised return – Mere making claim which is unsustainable in law will not amount to furnishing inadequate particulars ; what the law contemplates is making of a false claim or claim which is not bona fide – Deletion of penalty is held to be justified. [S. 80IC] 2367

Dismissing the appeal of the revenue the Court held that ; Though the AO has rejected the revised return, mere making claim which is unsustainable in law will not amount to furnishing inadequate particulars ; what the law contemplates is making of a false claim or claim which is not bona fide. Deletion of penalty is held to be justified.

PCIT v. Mahima Udyog (2018) 303 CTR 633 / 168 DTR 29 (Uttarakhand)(HC)

S. 271(1)(c) : Penalty – Concealment – Survey – Agreed addition – Revised return – Burden is on the assessee to show that there was an omission or wrong statement in original return must be due to bona fide inadvertence or bona fide mistake on part of assessee and even if assessee agreed to addition with a condition that penalty could not be imposed, department is not precluded from initiating penalty proceedings-levy of penalty is held to be valid. [S. 69B] 2368

During course of survey, incriminating evidences regarding purchase were found and stock statement showed a negative figure and there was a difference in closing balances in case of four sundry creditors and assessee, accordingly, filed revised return admitting additional income. Penalty was confirmed by the Tribunal. Dismissing the appeal of the assessee the Court held that burden is on the assessee to show that there was an omission or wrong statement in original return must be due to bona fide inadvertence or bona fide mistake on part of assessee and even if assessee agreed to addition with a condition that penalty could not be imposed, department is not precluded from initiating penalty proceedings. (AY. 2001-02, 2002-03)

Khandelwal Steel & Tube Traders v. ITO (2018) 256 Taxman 305 / 167 DTR 249 / 304 CTR 500 (Mad.)(HC)

2369 **S. 271(1)(c) : Penalty – Concealment – Capital gains – Quantum proceeding was decided in favour of the assessee – Penalty cannot be imposed. [S. 45]**
Dismissing the appeal of the revenue the Court held that when the quantum proceeding was decided in favour of the assessee, Penalty cannot be imposed. (AY. 2007-08)
PCIT v. Balwinder Singh Bhunder (2018) 404 ITR 448 (P&H)(HC)

2370 **S. 271(1)(c) : Penalty – Concealment – Long term capital gains – Not specifying the charge – Deletion of penalty was held to be not justified – Order was set aside to decide the issue on merit. [S. 45, 54F]**
Allowing the appeal of the revenue the Court held that the issue whether assessee had both 'concealed particulars of his income' and also 'furnished inaccurate particulars of income' is a fact and circumstance that must be specifically alleged and found to be existing in the peculiar facts of each case. There can be no presumption as to their co-existence or existence of even one of the two contingencies or infringements. Court also observed that Tribunal ought to have decided the issue of levy of penalty on merits. Matter was remanded to Tribunal to decide the issue in accordance with law. (AY. 2012-13)
PCIT v. Prakash Chandra Sharma (2018) 406 ITR 330 / 163 DTR 368 / 301 CTR 468 (All.)(HC)

2371 **S. 271(1)(c) : Penalty – Concealment of income – Depreciation – Notice did not show nature of default – Assessee had understood purport and import of notice – Levy of penalty is held to be valid. [S. 32, 274]**
Dismissing the appeal of the assessee the Court held that; the claiming the depreciation on machinery which did not exist was held to be filing inaccurate particulars of income. When the claim of depreciation was confronted with the findings, it had voluntarily reversed the claim of depreciation. As regards notice did not show the nature of default, the Court held that when the assessee had understood purport and import of notice, levy of penalty is held to be valid. (AY. 1994-95, 1995-96)
Sundaram Finance Ltd. v. ACIT (2018) 403 ITR 407/ 170 DTR 8 / 304 CTR 846 / 93 Taxmann.com 250 (Mad.)(HC)
Editorial : SLP of assessee is dismissed, Sundaram Finance Ltd v. Dy. CIT (2018) 259 Taxman 220 (SC)

2372 **S. 271(1)(c) : Penalty – Concealment – Penalty imposed on addition made on the basis of confessional statement of assessee and supplier after search was held to be valid.**
The levy of penalty was not on estimated basis but based on confessional statement of the Assessee and the supplier post the search action. It is i based on the incriminating evidence which was revealed on the proceedings pursuant to search and seizure action that led to the addition and hence the levy of penalty is justified. However, the penalty shall be levied to the extent of tax sought to be evaded relating to the additions finally sustained by Tribunal. (AY. 2007-08, 2008-09)
Dr. P. Sasikumar v. CIT (2018) 163 DTR 358 / 301 DTR 478 (Ker.)(HC.)

S. 271(1)(c) : Penalty – Concealment – Assessment was determined as per book profit under legal fiction, hence concealment penalty cannot be imposed. [S. 115JB] 2373
Dismissing the appeal of the revenue; where the income computed in accordance with the normal procedure is less than the income determined by legal fiction namely the book profits under S. 115JB and the income of the assessee is assessed under S. 115JB and not under the normal provision, the tax is paid on the income assessed under S. 115JB of the Act, and concealment of income would have no role to play and would not lead to tax evasion. Therefore, penalty cannot be imposed on the basis of disallowance or additions made under the regular provisions. (AY. 2005-06)
CIT v. International Institute of Neuro Sciences And Oncology Ltd. (2018) 402 ITR 188 (P&H)(HC)

S. 271(1)(c) : Penalty – concealment – Notice need not specifically mention Explanation – Addition as unexplained investment – Levy of penalty was held to be justified. [S. 159(6)] 2374
Allowing the appeal of the revenue the Court held that, Notice need not specifically mention Explanation. As regards addition of unexplained investment as the assesse has not produced any material to substantiate the claim, levy of penalty was held to be justified. Court also observed that present respondent being a legal heir of the assesse, recovery would be made only to the extent of the estate of the assesse capable of meeting the liability as provided in S. 159(6) of the Act. (AY. 1990-91)
CIT v. Vasantha Anirudhan. (Smt.) (2018) 401 ITR 279 / 163 DTR 279 / 302 CTR 257 (Ker.)(HC)

S. 271(1)(c) : Penalty – Concealment – Voluntary surrender of income after survey by filing a revised income does not save the assessee from levy of penalty for concealment of income in the original return if there is no explanation as to the nature of income or its source. Deletion of penalty was held to be not justified. [S. 133A] 2375
Allowing the appeal of the revenue the Court held that; Voluntary surrender of income after survey by filing a revised income does not save the assessee from levy of penalty for concealment of income in the original return if there is no explanation as to the nature of income or its source. Deletion of penalty was held to be not justified.
PCIT v. Dr. Vandana Gupta (2018) 163 DTR 361 / 301 CTR 460 (Delhi)(HC)

S. 271(1)(c) : Penalty – Concealment – Capital gains – Cancellation of agreement – Amount receivable in respect of land was not transferred, hence penalty cannot be levied. [S. 2(47) (v), 45] 2376
Dismissing the appeal of the revenue the Court held that, due to cancellation of agreement amount receivable in respect of land was not transferred hence levy of penalty was held to be not justified (AY. 2007-08)
PCIT v. Sewa Singh Sekhwan (2018) 400 ITR 347 (P&H)(HC)

2377 **S. 271(1)(c) : Penalty – Concealment – Unaccounted sales and unexplained cash credits – Quantum addition was upheld by High Court – Levy of penalty was held to be justified. [Explanation 1]**
Allowing the appeal of the revenue, the court held that, the fact that particular income were available from the books of account is not sufficient as the quantum of addition was up held by the High Court, levy of penalty was held to be justified. (AY. 1992-93)
CIT v. N. Jayaprakash (2018) 400 ITR 99 / 163 DTR 350 / (2019) 307 CTR 627 (Ker.)(HC)

2378 **S. 271(1)(c) : Penalty – Concealment – Claim of deduction – Payable – Difference of opinion amongst High Court – Deletion of penalty was held to be justified. [S. 40(a)(ia)]**
Dismissing the appeal of the revenue, the Court held that, Claim of deduction being debatable and difference of opinion amongst High Court, deletion of penalty was held to be justified. (AY. 2009-10)
CIT v. Manzoor Ahmad Walvir (2018) 400 ITR 89 (J & K)(HC)

2379 **S. 271(1)(c) Penalty – Concealment – No penalty can be imposed where (i) income is added or disallowance is made on estimate basis, (ii) books of account cannot be produced for reasons beyond control, (iii) disallowance is made as per retrospective insertion of S. 37(1) Explanation & (iv) allegation regarding concealment vs. furnishing inaccurate particulars is vague & uncertain. [S. 37(1)]**
Tribunal held that ; no penalty can be imposed where (i) income is added or disallowance is made on estimate basis, (ii) books of account cannot be produced for reasons beyond control, (iii) disallowance is made as per retrospective insertion of S. 37(1) Explanation & (iv) allegation regarding concealment vs. furnishing inaccurate particulars is vague & uncertain. (ITA No. 141/Agra/2009, dt. 11.09.2018)
Farrukhabad Investment (India) P. Ltd. v. DCIT (TM(Agra)(Trib.), www.itatonline.org.

2380 **S. 271(1)(c) : Penalty – Concealment – Difference in TDS – Agreed addition-levy of penalty is held to be not valid.**
Allowing the appeal of the assessee the Tribunal held that merely because assessee agreed to addition in respect of difference in TDS levy of penalty is not justified in respect of agreed difference in TDS. *MAK Data Pvt. Ltd. v. CIT (2013)) 358 ITR 593 (SC)* is considered. (AY. 2013-14)
Heritage Marketing v. ITO (2018) 171 DTR 402 / 196 TTJ 379 (Chd.)(Trib.)

2381 **S. 271(1)(c) : Penalty – Concealment – Quantum addition was not challenged – Receipts were not offered to tax in the return – Levy of penalty is held to be not justified.**
Tribunal held that though, assessee had not challenged addition made by AO in quantum proceedings, it did not ipso facto follow that penalty for concealment or furnishing of inaccurate particulars could be imposed. The assessee had offered explanation and the submissions as to why receipts were not offered to tax for the year under consideration, by relying on the legal position. Assessee had acted in a bona fide manner and had also furnished all material facts and particulars in respect of the same. Levy of penalty is held to be not justified. (AY. 2010-11)
Inspectorate Singapore Pte. Ltd. (2018) 194 TTJ 53 (UO) (Delhi)(Trib.)

S. 271(1) (c) : Penalty concealment – Specific charge – concealment of particulars of income or for furnishing inaccurate particulars of income – Issue which was not raised in original proceedings cannot be raised in remand proceedings. [S. 254(2), 271(1)(a), 274] 2382

Tribunal held that issue of specific charge was not raised in original proceedings, accordingly the issue which did not emanate either from CIT(A) in first round of appeal or from order of Tribunal dt. 10.03.2011, same cannot be agitated in miscellaneous application matter in which matter was remanded to record of AO. Scope of miscellaneous application u/s 254(2) was very limited and circumscribed and parties to appeal cannot be allowed to raise any issue in proceedings u/s 254(2) to set up a new case not arising from proceedings completed till then. Accordingly when this issue was neither arisen from order passed by AO or CIT(A) originally nor from order passed by Tribunal, accordingly issue cannot be raised in appeal filed against order passed in remand proceedings. (AY. 2005-06)

Meena Bajaj (Smt) v. ITO (2018) 167 DTR 89 / 192 TTJ 952 / 63 ITR 35 (SN) (Jaipur) (Trib.)

S. 271(1)(c) : Penalty – concealment – Surrender of amount – cash credits – Survey – Surrender was held to be not voluntary – Levy of penalty is held to be justified. [S. 131 133A] 2383

Dismissing the appeal of the assessee the Tribunal held that ; survey was conducted more than 10 months before assessee filed its return of income. If the intention was to make full and true disclosure the assessee would have filed return declaring income inclusive of amount which was surrendered later during course of assessment proceedings. Tribunal held that, it was clear that assessee had no intention to declare its true income. It was statutory duty of assessee to record all its transactions in books of account, to explain source of payments made by it and to declare its true income in return of income filed by it from year to year. Accordingly the levy of penalty is held to be justified. (AY. 2005-06)

Meena Bajaj (Smt) v. ITO (2018) 167 DTR 89 / 192 TTJ 952 (Jaipur)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Transfer pricing adjustment – Software development – Levy of penalty is held to be not justified. [S. 92C] 2384

Allowing the appeal of the assessee the Tribunal held that the assessee applied the TNMM on the international transactions of 'Software development' in the manner prescribed and computed the ALP in good faith and with due diligence. Simply because certain comparables chosen by the assessee were found to be not comparable by the TPO, the good faith and due diligence cannot be said to be lacking. It is simply a difference of opinion between the assessee and the authorities on the comparability or otherwise of some companies. While disposing of the quantum appeal, we have held that the three comparables included in the final tally of comparables, are actually not comparable and liable to be excluded. As such, by treating the three companies as comparable, the assessee cannot be said to have acted in a mala fide manner or not in good faith. Levy of penalty was deleted. (AY. 2007-08)

United Health Group Information Services (P) Ltd. v. DCIT (2018) 168 DTR 246 / 192 TTJ 1 (Delhi) (Trib.)

2385 **S. 271(1)(c) : Penalty – Concealment – Cancellation of registration – Not specifying specific charge whether concealment of income or inaccurate particulars of income – Levy of penalty is held to be not justified – Disallowance of part expenses – Expenditure on foreign tour – Foreign travel expenses of trustees – Credit card expenses – Payment to relatives – Levy of penalty is held to be justified. [S. 10(23C)(vi), 11, 12, 13(1)(c)]**

AO levied concealment penalty for both cancellation of Registration and denial of exemption u/s 10(23C)(vi). Which was up held by the CIT (A). On appeal Tribunal held since AO while levying penalty for concealment had not come to finding as to whether assessee had concealed his income or furnished inaccurate particulars of income. AO while completing assessment had not recorded proper satisfaction as to which limb of section 271(1)(c) had not been fulfilled by assessee and consequently no proper show cause was given to assessee before initiating penalty proceedings. Even otherwise, said satisfaction was recorded in respect of non-denial of exemption u/s 10(23C)(vi) and not in respect of other additions made by AO. Accordingly the penalty was deleted. Confirming the levy of penalty the Tribunal held that, once expenditure was disallowed in hands of assessee for violation of clear cut provisions of Act, then issue of levy of penalty for concealment stood established and assessee was liable to same. Similarly where travelling expenses on Directors had been disallowed for want of it being for objects of Trust, levy of penalty for concealment stood established. Appeal of the assessee is partly allowed. (AY. 2001-02 to 2004-05 2006-07 to 2007-08)

Maharashtra Academy of Engineering And Educational Research v. ITO (2017) 51 CCH 728 / (2018) 163 DTR 153 / 191 TTJ 784 (Pune)(Trib.)

2386 **S. 271(1)(c) : Penalty – Concealment – Capital loss was not allowed to be carry forward – With drawn in return filed pursuance of notice u/s 148 – Every legal claim which was filed and which was not allowed by Revenue did not automatically lead to levy of penalty. [S. 147, 148]**

Allowing the appeal of the assessee the Tribunal held that the assessee has demonstrated its bona-fide by withdrawing said claim of set off long term capital gains in return of income pursuant to notice u/s 148. Every legal claim which was filed and which was not allowed by Revenue did not automatically lead to levy of penalty. As assessee voluntarily withdrew claim in return of income, no penalty was exigible. (AY. 2005-06)

NSE IT Ltd. v. DCIT (2018) 168 DTR 137 / 193 TTJ 813 (Mum.)(Trib.)

2387 **S. 271(1)(c) : Penalty – Concealment – Capital gains not shown in the return – Assessment proceedings agreed to pay the tax as he was unaware of tax on sale of property – No *mala fide* intention – Levy of penalty is held to be not justified. [S. 45, 148]**

Tribunal held that, nothing was on record to show that there was any *mala fide* intention on part of assessee to conceal income or furnish inaccurate particulars of income and there was an omission while filing return of income which was rectified through challan on very date of passing assessment order. Levy of penalty is held to be not justified. (AY. 2012-13)

Pankaj Kumar Gupta v. ITO (2018) 193 TTJ 45 (UO)(Luck.)(Trib.)

S. 271(1)(c) : Penalty-Concealment – Specific charge – Notice did not categorically specify whether penalty was invoked for concealment of income or furnishing inaccurate particulars – Levy of penalty is held to be not justified. 2388

On Revenue's appeal before the Tribunal, it was held that the Ld. AO has issued the notice without specifying as to whether the assessee has concealed the particulars of income or furnished inaccurate particulars of income and therefore the notice is itself bad in law. Relying on the Apex Court's Judgement in the case of *CIT vs. SSA's Emerald Meadows (2016) 386 ITR (St.) 13 (SC)* the Tribunal concluded that there was no infirmity in the order of the Ld. CIT(A). Since the notice initiating penalty was bad in law, consequent penalty proceedings were vitiated and therefore, the penalty was cancelled. (AY. 2011-12)

ACIT v. Uttar Bihar Gramin Bank (2018) 67 ITR 152 (Patna) (Trib.)

S. 271(1)(c) : Penalty – Concealment – Depreciation on land – Bona fide mistake – Voluntarily agreed to surrender tax on value of depreciation wrongly taken on land – Levy of penalty is not justified. [S. 32] 2389

Appellate Tribunal held that when assessee voluntarily agreed to surrender the tax on value of depreciation wrongly taken on land and such mistake was never intentional, and also, assessee had furnished all the particulars in return filed and never concealed the particulars of income nor submitted false information, penalty imposed u/s 271(1)(c) is not tenable. (AY. 2010-11)

Geeta Shroff (Dr.) v. Dy. CIT (2018) 67 ITR 711 (Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Bad debt – Mere claim of bad debts not written off in books of accounts does not call for levy of penalty for furnishing of inaccurate particulars. [S. 36(1) (vii)] 2390

Before the Tribunal the assessee submitted that a mere claim of bad debt in the return of income does not amount to furnishing inaccurate particulars of income or concealing any part of the assessee's income. Placing reliance on the judgment of Apex Court in *CIT v. Reliance Petroproducts (P) Ltd. (2010) 322 ITR 158* the Tribunal held that, a mere claim in the return of income after furnishing entire details, does not amount to furnishing inaccurate particulars of income or concealing any part of income. Dismissing the Revenue appeal, the Tribunal confirmed the order of the Ld. CIT(A) deleting the levy of penalty. (AY. 2011-12)

ACIT v. R. Easwaran HUF (2018) 68 ITR 89 (SN) (Chennai)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Undisclosed income surrendered during survey not included in return – Tax was paid – Bonafide mistake – Deletion of penalty is held to be justified. [S. 133A] 2391

Tribunal noted that the payment of tax was made and no refund was claimed. This established that there was inadvertent omission of additional income from computation and subsequent revision of computation in course of assessment proceedings show intention of assessee to be bona fide. The revenue could not bring out any deliberate mala fide intent behind the omission or alleged concealment in the return of income. Accordingly the deletion of penalty is held to be justified. (AY. 2011-12)

ACIT v. Harbans lal sethi (2018) 196 TTJ 23 (UO) / 53 CCH 552 (Jaipur)(Trib.)

2392 **S. 271(1)(c) : Penalty – Concealment – Raising incorrect claim by itself will not tantamount to furnishing inaccurate particulars of income and therefore penalty under S. 271(1)(c) of the Act, cannot be imposed.**

For the year under consideration, the assessee had incurred expenditure for development of base designs for a project and claimed 100% depreciation treating the aforesaid expenditure to result in creating of intangible asset. The AO noticed that as per AS 26 such expenditure was eligible for depreciation at 25% as against 100% claimed by the assessee. Accordingly, the AO recomputed depreciation claimed by assessee pursuant to which assessee did not prefer any appeal before CIT(A). Thereafter, AO initiated penalty proceedings under section 271(1)(c) of the Act for making a wrong claim of expenditure. The Tribunal held that it may be true that the intangible asset might have been eligible for depreciation only at the rate of 25% if it was considered in the same class as of patents, however the same cannot be considered as furnishing inaccurate particulars of income. Accordingly, relying on the decision of *CIT v. Reliance Petro Products Ltd. (2010) 322 ITR 158(SC)*, the Tribunal upheld the decision of CIT(A) deleting the penalty. (AY. 2010-11)

Dy. CIT v. MCML Train Control Technologies Pvt. Ltd. (2018) 63 ITR 144 (Chennai)(Trib.)

2393 **S. 271(1)(c) : Penalty – Concealment – Inaccurate particulars – Show cause should mention specific charge – Word used in notice "or" and not "and" – Levy of penalty is held to be not valid. [S. 274]**

The Tribunal held that the word used in the notice for linking the two portions of concealment and furnishing Inaccurate particulars was "or" and not "and". An assessee has every right to know which default he had to explain. If it was both it was necessary to mention so in the notice. Without knowing what was the default for which he was being charged, an assessee cannot give an explanation. Accordingly the notice issued under S 274 read with S. 271 was held to be not valid. (AY. 2010-11)

Bank of Ceylon v. DCIT (2018) 65 ITR 83 (SN) (Chennnai)(Trib.)

2394 **S. 271(1)(c) : Penalty – Concealment – The AO cannot initiate penalty on the charge of 'concealment of particulars of income', but ultimately find the assessee guilty in the penalty order of 'furnishing inaccurate particulars of income' (and vice versa). He cannot be uncertain in the penalty order as to concealment or furnishing of inaccurate particulars of income by using slash between the two expressions. Such error is not procedural but goes to the root of the matter and is not saved by S. 292B. The error renders the penalty order unsustainable in law. [S. 292B]**

The following point of difference was referred to the third member by the Hon'ble President under section 255(4) of the Income-tax Act, 1961 (hereinafter also called as 'the Act') :

> "Whether, in case where the satisfaction of the AO while initiating penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 is with regard to alleged concealment of income by the assessee, whereas the imposition of the penalty is for 'concealment/furnishing inaccurate particulars of income', the levy of penalty is not sustainable?"

The third member held that where the satisfaction of the AO while initiating penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 is with regard to alleged concealment of income by the assessee, whereas the imposition of the penalty is for 'concealment/furnishing inaccurate particulars of income', the levy of penalty is not sustainable. He cannot be uncertain in the penalty order as to concealment or furnishing of inaccurate particulars of income by using slash between the two expressions. Such error is not procedural but goes to the root of the matter and is not saved by S. 292B. The error renders the penalty order unsustainable in law.
Accordingly the Registry of the Tribunal is directed to list these appeals before the Division Bench for passing an order in accordance with the majority view. (AY. 2008-09, 2009-10)
HPCL Mittal Energy Ltd. v. ACIT (2018) 168 DTR 1 / 195 TTJ 1 (TM)(Amritsar)(Trib.), www.itatonline.org

S. 271(1)(c) : Penalty – Concealment – No order imposing or enhancing or reducing or cancelling penalty or dropping proceedings for imposition of penalty shall be passed unless has been given a reasonable opportunity of being heard and after expiry of six months from end of year of which order of appellate authority has been received by Commissioner. [S. 275 (IA)] 2395
AO found that assessee concealed particulars of income and levied penalty u/s. 271(1)(c) of the Act on assessee company. CIT(A) upheld order of AO. On appeal to the Tribunal held that once addition on which penalty had been levied was set aside to AO for fresh consideration, it is as good as there was no addition for levy of penalty u/s. 271(1)(c). AO finalized penalty proceedings before ITAT set aside issue to file of AO. AO levied penalty without waiting for outcome of orders of appellate authorities. Therefore, issue needed to be re-examined by AO in light of provisions of section 275(1A) and therefore issue as set aside to the file of AO. (AY 2003-2004)
Asia Investments P. Ltd v. ACIT (2018) 167 DTR 59 / 63 ITR 535 / 193 TTJ 214 (Mum.) (Trib.)

S. 271(1)(c) : Penalty – Concealment – Notional income – Where addition/disallowance made by AO is not free from doubt and debatable no penalty can be imposed. 2396
AO brought to tax notional income of villa owned by assessee at Dubai u/s. 5(1) of the Act and initiated penalty proceedings u/s. 271(1)(c) for furnishing inaccurate particulars of income and concealment of income. The Tribunal noted that assessee was under a bona fide belief that the notional income of villa was not liable to tax in India and further, whether Notification Nos. 90 and 91/2008 would have a superseding effect over DTAA was a highly debatable issue. Therefore, the Tribunal held that since the issue under consideration was not free from doubt and was debatable assessee could not be subjected to levy of penalty for adopting one of such view.
DCIT v. Shahrukh Khan (2018) 66 ITR 168 / 194 TTJ 777 / 53 CCH 55 / 172 DTR 73 (Mum.)(Trib.)

2397 **S. 271(1)(c) : Penalty – Concealment – Capital gains – Cost of acquisition – In case of inadvertent mistake of taking indexation benefit no penalty can be imposed for furnishing inaccurate particulars of income. [S. 45]**

Assessee, while computation of long term capital gains on sale of debentures, inadvertently arrived at the cost of acquisition after taking indexation benefit. Consequently, AO imposed penalty under section 271(1)(c) for furnishing inaccurate particulars of income. On appeal, the Tribunal held that since no information given by assessee in its return of income was found to be incorrect, wrong computation of capital gains cannot be considered as furnishing inaccurate particulars of income. Penalty deleted.

DCIT v. Shahrukh Khan (2018) 66 ITR 168 / 194 TTJ 777 / 53 CCH 55 / 172 DTR 73 (Mum.)(Trib.)

2398 **S. 271(1)(c) : Penalty – Concealment – Failure by assessing officer to specify exact charge for which penalty proceeding was initiated – Penalty quashed. [S. 10A, 115JB]**

The show-cause notice revealed that the Assessing Officer had not specified the exact charge, whether concealment of income or furnishing of inaccurate particulars of income. The Department had not controverted the fact by showing any other penalty notice under section 274 read with section 271(1)(c). Finally, the penalty order revealed that the penalty had been levied on the ground that the assessee had filed inaccurate particulars of income. As the Assessing Officer had applied both the limbs simultaneously, concealment of income and furnishing of inaccurate particulars which carry different meaning and connotations. Hence, the fact reflected non-application of mind on the part of the Assessing Officer since he was not sure about the limb or exact charge for which the assessee had been penalised. Therefore, the penalty order stood vitiated for want of the principles of natural justice and hence, was liable to be quashed. (AY. 2011-2012)

ITO v. Alia Creative Consultants P. Ltd. (2018) 63 ITR 175 (Mum.)(Trib.)

2399 **S. 271(1)(c) : Penalty – Concealment – Accepting addition does not mean assessee furnishing inaccurate particulars – Levy of penalty is held to be not valid.**

Tribunal held that merely because the assessee had accepted the addition it would not automatically lead to the conclusion of furnishing inaccurate particulars of income. Moreover, the contention of the assessee that considering the huge losses the assessee would not have derived any benefit by wrongly claiming such expenditure stands to reason. The assessee had claimed certain amount as deduction and had also furnished full particulars of such claim. In the course of assessment proceedings, the Assessing Officer holding a different view had disallowed the expenditure. However, the disallowance of expenditure by the Assessing Officer ipso facto would not lead to the conclusion that the assessee had furnished inaccurate particulars of income and concealed its income. Penalty was deleted. (AY. 2012-13)

ITO v. Future Mobile And Accessories Ltd. (2018) 64 ITR 699 (Mum.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Mistake of Tax Practitioner – Human error – Reasonable cause – Penalty deleted. 2400

A wrong claim does not amount to furnishing of inaccurate particulars. It can only be described as a human error to which we are all prone to make and cannot be considered to be guilty of either furnishing inaccurate particulars or attempting to conceal the income. (ITA No. 3340/Mum./2016 (AY. 2008-09)

Jagat Lodha v. ACIT (Mum.)(Trib.)(UR)

S. 271(1)(c) : Penalty – Concealment – Additional ground – Omission to strike off the relevant clause in the notice – Penalty is held to be not invalid. [S.254(1)] 2401

Tribunal held that,omission to strike off the relevant clause in the notice issued under section 271 r/w. section 271(1)(c) is a legal issue hence require to be admitted. The Tribunal also held that no striking of the irrelevant clause in the notice clearly brings out the diffidence on the part of AO and no clear and crystalised charge has been conveyed to the assessee under section 271(1)(c), which has to be met by it. Proceedings suffer from non-compliance with principles of natural justice. Consequently, the penalty imposed under section 271(1)(c) is deleted. (AY. 1997-98, 1999-2000, 2004-05)

Autoriders India (P) Ltd. v. ACIT (2018) 191 TTJ 376 / 161 DTR 217 (Mum.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Bogus purchases – Levy of penalty is not justified. 2402

The Tribunal held that the addition was made on the basis of the incriminating statement of third party recorded under section 132(4) without furnishing the same to the assessee. The assessee having chosen not to file any appeal against the addition in view of smallness of amount and in the wake of its claim of huge loss. Levy of penalty under S. 271(1)(c) is not sustainable, more so, as the assessee had filed necessary documents to substantiate the genuineness of purchases. (AY. 2010-11)

Balaji Motion Pictures Ltd. v. Dy. CIT (2018) 191 TTJ 641 / 61 ITR 421 / 162 DTR 105 (Mum.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Satisfaction was not recorded in absolute term – levy of penalty is not justified. [S. 274] 2403

The Tribunal held that if the AO has not recorded any satisfaction in absolute terms as to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of income. Levy of penalty is invalid. The judgement of the Bombay High Court in Maharaj Garage cannot be read out of context or in a manner to mean that there is no need for mentioning the specific limb of section 271(1)(c) of the Act for which the penalty was intended to be imposed, as such issue never came up for consideration before the High Court. (ITA No. 1339/Mum./2016, dt. 19. 01. 2018)(AY. 2010-11)

Indrani Sunil Pillai v. ACIT (Mum.)(Trib.), www.itatonline.org

2404 **S. 271(1)(c) : Penalty – Concealment – Recording of satisfaction – Furnishing inaccurate particulars – Claim of expenditure found to be bogus – A case of furnishing inaccurate particulars – Not concealment of income – Penalty deleted as AO issued notice on the ground of concealment.**

Tribunal relied on the Bombay High Court decision in case of *CIT v. Samson Perinchery (2017) 392 ITR 4 (Bom.) (HC)* wherein it was held that the order imposing penalty has to be made only on the ground for which the penalty proceedings have been initiated. It cannot be on a ground of which the assessee has no notice. Tribunal holding that recording of satisfaction on one ground and levying penalty on another would make the penalty order bad in law deleted the penalty. In another year under appeal, AO initiated penalty for concealment of income under S. 271(1)(c) of the Act. The penalty was levied as in the original return of income the assessee had claimed certain expenditure and payment of commission .Subsequently, they were found to be bogus. However, the assessee contented that it is a case of furnishing of inaccurate particulars of income and not concealment of income. Tribunal held that in case where the assessee has completely withheld information about the income generated and there is no mention of such income either in the books or the return of income, such suppression of income would fall within the expression 'concealment of income'. However it is not so in the present case. The assessee has made wrongful claim of bogus expenditure, therefore, it would be a case of furnishing of inaccurate particulars of income. Thus, the AO while recording satisfaction for levying penalty has erred in invoking wrong limb of S. 271(1)(c). Consequently, the penalty has been levied under wrong charge for concealment of income. Accordingly, the Tribunal deleted the penalty.

Oriental Clearing Agencies (2018) 192 TTJ 95 / 163 DTR 1 (Pune)(Trib.)

2405 **S. 271(1)(c) : Penalty – Concealment – Penalty is not leviable where the AO has failed to mention the specific charge for levy of penalty in the show cause notice under section 274 of the Act. [S. 274]**

Validity of initiation of proceedings under section 271(1)(c) of the Act was challenged since the AO had not specified in the show-cause notice issued under section 274 of the Act whether it was a case of r 'concealment of particulars of income' or of 'furnishing of inaccurate particulars of income'. The Tribunal, relying on the decision in the case of *Dilip N. Shorff v. Jt. CIT & Annr. (2007) 291 ITR 519 (SC)* and *CIT v. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Kar.)*, allowed the appeal of the assessee and held that the AO has not specifically indicated whether levy of penalties is for concealment of income or for furnishing inaccurate particulars of income, therefore, the show-cause notice suffers from illegality and hence, penalty is not leviable.

Gulam Farooq Ansari v. ITO (2018) 194 TTJ 719 / 168 DTR 42 (Jaipur)(Trib.)

2406 **S. 271(1)(c) : Penalty – Concealment – Transfer pricing study report from an outside expert not called in question – Penalty cannot be levied by invoking Explanation 7 to S. 271(1)(c).**

The TPO had made transfer pricing adjustment in respect of idle capacity adjustment and intra group services. The TPO had also considered CUP as the 'Most Appropriate Method' instead of CPM adopted by the Assessee. AO levied penalty by merely relying on the TPO's order. CIT(A) confirmed the penalty as Assessee had accepted the transfer

pricing adjustments. On appeal, the Tribunal held that assessee had obtained transfer pricing study report from an outside expert and the objectivity of the same was not questioned. Also, the ground on which the ALP as determined by Assessee had been rejected was debatable. Therefore, it could not be said that the Assessee had not determined ALP in accordance with law, in good faith and with due diligence which is a pre-condition for invoking Explanation 7 to S. 271(1)(c). Accordingly, the penalty was deleted. (AY. 2010-11)
Halcrow Consulting India (P) Ltd. v. Dy. CIT (2018) 167 DTR 103 / 194 TTJ 329 (Delhi) (Trib.)

S. 271(1)(c) : Penalty – Concealment – Claim was found false and bogus – Income from other Sources – nexus not proved – Levy of penalty is justified. 2407
The Tribunal held that the claim was found false and bogus. Therefore it was clear case where the fact of filing inaccurate particulars had been detected by the Assessing Officer at the assessment stage. If the assessee made a claim which was not only incorrect in law but was also wholly without any basis and the explanation furnished by him for making such claim was not found to be bona fide, the assessee would be liable to penalty under S. 271(1)(c). (AY. 2014-2015)
Gnyandeep Kantipudi v. ACIT (2018) 63 ITR 72 (SN) (Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Notice issued without striking out irrelevant words – shows non application of mind – Penalty not sustainable. 2408
The penalty provisions of S. 271(1)(c) of the Act are attracted where the assessee had concealed the particulars of income or furnished inaccurate particulars of such income. The two limbs of S. 271(1)(c) carry different meanings. Therefore, it is imperative for the AO to strike off the irrelevant limb so as to make the assessee aware as to what is the charge made against him so that he can respond accordingly. The standard pro forma of notice under S. 274 without striking off the irrelevant clauses would lead to an inference of non-application of mind by the A.O. (AY. 2007-08)
Bhubaneswar Development Authority v. Dy. CIT (2018) 62 ITR 290 (Cuttack)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Recording of satisfaction – The AO did not specify under which limb had the penalty been imposed i.e. whether it was on account of concealment of income or for furnishing of inaccurate particulars of income – Penalty was not sustainable. [S. 274] 2409
Tribunal held that, no proper charge was levied by the AO at any of the three stages i.e. while passing the assessment order, while issuing the jurisdictional penalty notice and while passing the penalty order. Relying on the Apex Court's Judgement in the case of *CIT v. SSA's Emerald Meadows (2016) 386 ITR (St.) 13 (SC)* where in it was held that jurisdictional notice issued by AO u/s. 274 r.w.s 271(1)(c) of the Act was bad in law, as it did not specify that under which limb of S. 271(1)(c) of the Act were penalty proceedings initiated. The Tribunal concluded that the AO's act was a serious lapse in not fixing the charge clearly, while assuming jurisdiction to levy penalty and hence, levy of penalty is not justified. (AY. 1997-98)
Aditya Chemicals Ltd. v. ITO (2018) 62 ITR 150 (Delhi)(Trib.)

2410 **S. 271(1)(c) : Penalty – Concealment – When penalty notice did not specify which limb of S. 271(1)(c) penalty proceedings had been initiated i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars, Penalty should be deleted.**

Tribunal held that the AO has initiated the penalty without specifying specific charge i.e. whether it is for concealment of particulars of income or furnishing of inaccurate particulars, which is contrary to the provisions of law. The notice issued by the AO under S. 271(1)(c) read with S. 274 of the Act is bad in law as it does not specify which limb of S. 271(1)(c) of the Act the penalty proceedings had been initiated i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars. Therefore, the penalty is not sustainable.

Om Logistics Ltd. v. ITO (2018) 63 ITR 1 (Delhi)(Trib.)

2411 **S. 271(1)(c) : Penalty – Concealment – Furnishing of inaccurate particulars of income – Mere rejection of claim – Penalty not leviable. [9(1)(vii)]**

The assessee submitted that its services were not made available to the Indian entities. Such explanation of the assessee was rejected. It was not the case of the Department that the assessee had made any false claim. Hence it could not be said that the submission or claim of the assessee was not accurate. Therefore the penalty was liable to be deleted. (AY. 2014-15)

Inspectorate International Ltd. v. ACIT (2018) 65 ITR 333 / 171 ITD 630 (Delhi)(Trib.)

2412 **S. 271(1) (c) : Penalty – Concealment – Quantum appeal the relief was allowed – Levy of penalty was held to be not valid.**

Tribunal held that the assessee had already got relief on the merits. Therefore it would be futile exercise to adjudicate the grounds accordingly the penalty was deleted. (AY. 2004-05)

Paramjit Singh v. ITO (2018) 65 ITR 244 (Amritsar)(Trib.)

2413 **S. 271(1)(c) : Penalty – Claim for deduction of rental payments without deducting tax at source – Explanation stating that defaults was due to over sight was not accepted – Penalty was confirmed.**

The Tribunal held that the explanation offered by the assessee for the default was oversight, which is not a plausible explanation on the facts of the case. The assessee is liable for levy of penalty under S. 271(1)(c) of the Act. (AY. 2009-10)

Airen Metals (P) Ltd. v. ACIT (2018) 191 TTJ 609 / 163 DTR 201 (Jaipur.)(Trib.)

2414 **S. 271(1)(c) : Penalty – Concealment – Wrong claim of depreciation by crediting capital subsidy to reserves instead of reducing from actual cost/ WDV does not attract the penalty.**

The Tribunal held that primary burden of proof is on the Revenue to show that the assessee is guilty of concealment/ furnishing inaccurate particulars. Making an incorrect claim does not tantamount to furnishing inaccurate particulars by any stretch of imagination. Wrong claim of depreciation by crediting capital subsidy to reserves instead

of reducing from actual cost/ WDV does not attract S. 271(1)(c) penalty. (ITA No. 4023/ Del/2016, dt. 15.03.2018)(2009-10)
Prafful industries (P) Ltd. v. DCIT (Delhi)(Trib.), www.itatonline.org

S. 271(1)(c) : Penalty – Concealment – Capital gains-Disclosed in the return filed pursuance of reassessment notice – Levy of penalty was held to be not justified. [S. 45, 148] 2415
The Tribunal held that though capital gains was not disclosed in the return, if tax on the same is paid after the S. 147 assessment order is passed, there is no loss to the Revenue and it also shows the bona fides of the assessee and penalty cannot be levied. The fact that if the S. 148 notice was not issued, the assessee would have got away with tax evasion does not mean that his action was not bona fide. (ITA No. 486/LKW/2016, dt. 16.01.2018)(AY. 2012-13)
Pankaj Kumar Gupta v. ITO (Luck.)(Trib.) www.itatonline.org

S. 271(1)(c) : Penalty – Concealment – Recording of satisfaction – Non specification of limb in notice levy of penalty is held to be bad in law. 2416
In the penalty notice the AO had not mentioned the limb under which limb penalty was initiated .Therefore the notice since its inception is bad in law the penalty levied was directed to be deleted. (AY. 2010-2011, 2011-2012)
Dy. CIT v. Sujata Bharadwaj (Smt.) (2018) 191 TTJ 17 (Jodh.)(UO)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Allocation of common expenses – Not a case of filing of inaccurate particulars or concealment of income-Penalty cannot be imposed. 2417
The Tribunal held that allocation of common expenses is not a case of filing of inaccurate particulars or concealment of income. If the Assessing Officer took a view contrary to that expressed by the assessee, it did not per se mean that the assessee had adopted an illegal device for reducing its tax liability. Merely because the assessee had claimed a deduction which was not acceptable to the Department, that by itself would not attract the penalty. (AY. 2005-06)
Pheonix Lamps Ltd. (2018) 61 ITR 769 (Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment – When in show cause notice AO does not strike out the inappropriate words, levy of penalty was held to be not justified. [S. 274] 2418
Tribunal held that when the show cause notice issued in the present case u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealing particulars of income or furnishing inaccurate particulars of income. The show cause notice u/s 274 of the Act did not have the inappropriate words. In these circumstances, we are of the view that imposition of penalty cannot be sustained. (IT A No. 956/ Kol/2016, dt. 01. 012. 2017)(AY. 2010-11)
Jeetmal Choraria v. ACIT (2018) 91 taxmann.com 311 (Kol.)(Trib.) www.itatonline.org

2419 **S. 271(1)(c) : Penalty – Concealment – Estimate of income – sale of land along with building – agreement silent on consideration towards super structure – estimate made by assessee – such estimate increased by the AO and finally stood reduced to another amount by ITAT – Held, no penalty on such additions based on estimates.**
Assessee estimated the sales consideration of ₹ 1 Lakh for building sold, which was estimated as ₹ 32.70 Lakhs by AO, which got finally settled by means of appellate order at ₹ 16.35 Lakhs. In such scenario, the Tribunal held that no penalty can be levied where the addition is based merely on estimates. (AY 2007-08)
Eagle Theatres v. ACIT (2018) 65 ITR 3 (Delhi)(Trib.)

2420 **S. 271AA : Penalty – Failure to keep and maintain books of accounts – Documents – International transaction – Transfer pricing – failure to maintain documents as per rule 10D and failure to furnish documents u/s. 92D(1) – No reasonable cause – Liable to penalty. [S. 92D, 271G, 273B, Rule 10D]**
The assessee failed to maintain records of relevant uncontrolled transactions required for comparability with international transactions as per rule 10D. Secondly, it also failed to furnish documents prescribed u/s 92 D(1) with the TPO within the given time limit. The assessee was unable to show any reasonable cause for non complying with the same. Levy of penalty held to be justified. (AY. 2004-05)
India Pistons Ltd. v. (2018) 169 DTR 113 / 195 TTJ 358 (Chennai)(Trib.)

2421 **S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Penalty levied on the ground that the assessee had not substantiated the manner in which the undisclosed income was derived is not sustainable where the assessee in the return of income had included that amount and no addition to the returned income was made by the Assessing Officer. [S. 132(4)]**
Dismissing the appeal of the revenue the Court held that, Penalty cannot be levied on the ground that the assessee had not substantiated the manner in which the undisclosed income was derived. Where the assessee in the return of income had included such amount and no addition to the returned income was made by the Assessing Officer. Penalty levied is not ustainable. (AY. 2012-13)
PCIT v. Bhavi Chand Jindal (2018) 170 DTR 401 / 305 CTR 180 / (2019) 414 ITR 654 (Delhi)(HC)

2422 **S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Manner in which undisclosed income earned was not satisfied – Deletion of penalty was held to be not valid. [S. 132(4)]**
Allowing the appeal of the revenue the Court held that; the appellate authorities misdirected themselves in holding that the conditions under S. 271AAA(2) were satisfied by the assessee. The second condition for availing of the immunity from penalty was that the assessee should have specified in the statement under S. 132(4) the manner in which such income stood derived. The assessee had merely stated that the sums advanced were undisclosed income. However, she had not specified how she had derived that income and under what head it fell (rent, capital gains, professional or

business income out of money lending, source of money, etc.). Unless such facts were mentioned with some specificity, it could not be said that the assessee had fulfilled the requirement that she had in her statement under S. 132(4), "substantiated the manner in which the undisclosed income was derived". The order of the appellate authorities deleting the penalty was erroneous. (AY. 2009-10)
CIT v. Ritu Singal (Smt) (2018) 403 ITR 97 / 164 DTR 153 / 303 CTR 738 (Delhi)(HC)

S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Payment of tax with interest before assessment – Deletion of penalty was held to be justified. [S. 132(4)] 2423
Both Commissioner (Appeals) as well as the Tribunal had recorded concurrent findings of fact that the partner of the firm, AGK, during the course of recording of his statement at the time of the search, had stated that the income was earned by accepting on-money in its building project. Therefore, the manner in which the income had been derived has been clearly specified in his statement. It was not the case of the Department that during the course of recording of the statement of AGK any specific questions had been asked to substantiate the manner in which the income was derived. Dismissing the appeal of the revenue the Court held that, Payment of tax with interest before assessment was made. Deletion of penalty was held to be justified. (AY. 2011-12)
PCIT v. Swapna Enterprise (2018) 401 ITR 488 / 253 Taxman 531 / 166 DTR 51 / 302 CTR 504 (Guj.)(HC)

S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Penalty – Source of investment is explained and taxes not paid – Levy of penalty is held to be justified. [S. 132(4)] 2424
Tribunal held that the assessee made statement that investment made in land/plots and movable and immovable properties represented its undisclosed income, however, he had not explained sources from where he made said investments and taxes due on said income were also not paid, penalty imposed was held to be justified (AY. 2011-12)
ACIT v. Shailesh Gopal Mhaske (2017) 192 TTJ 559 (Pune)(Trib.)

S. 271AAA : Penalty – If no search has taken place in premises of assessee – All conditions laid down fulfilled – Deletion of penalty is held to be justified. [S. 132, 153C] 2425
The Tribunal held that the provision of S. 271AAA of the Act are not applicable to cases where search was conducted under S. 132 of the Act at premises of assessee. Further from the perusal of assessment order it was evident that assessee had surrendered income hence no penalty could be levied. (AY. 2012-13)
DCIT v. Jainco Developers Pvt. Ltd. (2018) 64 ITR 458 / 52 CCH 575 (Delhi)(Trib.)

S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – As there was no search proceedings against the assessee initiation and levy of penalty is held to be invalid. [S. 132, 153C] 2426
Return was filed in pursuance of notice u/s 153C. Considering the various incriminating material the AO made the additions and also initiated proceedings for imposition of penalty under S 271AAA of the Act. Dismissing the appeal of the revenue the Tribunal

held that since no search and seizure operation under section 132(1) was carried out in assessee's case, initiation of penalty proceeding under section 271AAA by Assessing Officer was held to be invalid. (AY. 2008-09)
DCIT v. Velji Rupshi Faria (2018) 172 ITD 445 / 172 DTR 137 / 196 TTJ 812 (Mum.)(Trib.)

2427 **S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Simultaneous penalty u/s. 271(1)(c) cannot be levied. [S. 271(1)(c)]**
Penal provisions of S. 271(1)(c) cannot be invoked in cases where action under S. 132(1) was initiated after June 1, 2007. (AY. 2008-09)
ITO v. Trishul Enterprises (2018) 61 ITR 386 (Mum.)(Trib.)

2428 **S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Levy of penalty at the rate of 10% of the undisclosed income to be imposed only in respect of 'specified previous year' – The CIT(A) restricted penalty without examining 'Specified Previous Year', matter was set aside to AO for fresh consideration in light of explanation(b) S. 271AAA.**
As the search fell within the period June 1, 2007 to June 30, 2012 the CIT(A) restricted the penalty to 10% in terms of S. 271AAA. On appeal, the Tribunal held that, in terms of S. 271AAA, penalty at a lower rate of 10 percent could be levied only if the undisclosed income belonged to 'specified previous year'. Since the CIT(A) did not assess if the income belonged to the specified previous year (as defined under Explanation(b) to S. 271AAA), the matter was remitted back to examine afresh. (ITA No. 4814/Del/2014) (AY. 2006-07)
ACIT v. Nirmal Gupta (2018) 62 ITR 663 (Delhi)(Trib.)

2429 **S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – Assessee has to specify and substantiate manner of income, has been derived in its statement recorded u/S. 132(4) and not thereafter – Levy of penalty is justified. [S. 132(4)]**
A search was carried out at business premises of assessee, during search Managing Director expressed his inability to reconcile discrepancies in stock. In order to buy peace of mind and to avoid litigation, certain amount was declared as undisclosed income. The AO added amount so declared to as taxable income and passed a penalty order u/s. 271AAA. The CIT(A) set aside penalty. Tribunal held that, to avail benefit of S. 271AAA(2), assessee has to specify and substantiate manner in which income has been derived in its statement recorded u/S. 132(4) and not thereafter. Since Assessee showed inability to reconcile discrepancy in stock and failed to substantiate manner, hence it was not eligible to get general amnesty u/s. 271AAA(2) of the Act. (AY. 2010-11)
ACIT v. SSA International Ltd. (2018) 171 ITD 287 (Delhi)(Trib.)

2430 **S. 271AAA : Penalty – Search initiated on or after 1st June, 2007 – When no specific query to substantiate the manner of earning undisclosed income was put forward to the assessee by the authorised officer levy of penalty was held to be not valid when the taxes were paid on the amount surrendered. [S. 132(4)]**
The Tribunal held that when no specific query to substantiate the manner of earning undisclosed income was put forward to the assessee by the authorised officer levy of

penalty was held to be not valid when the taxes were paid on the amount surrendered (AY. 2010-11) (ITA No 4807/4808 /Del/ 2015 dt. 28-02-2018)
ACIT v. Beena Kedia (Delhi)(Trib.), www.itatonline.org

S. 271AAB : Penalty – Search initiated on or after 1st day of July 2012 – No proceedings under S. 271(1)(c), initiated during course of assessment proceedings under S. 143(3) of the Act. Admission by assessee in statement pursuant to search regarding undisclosed income and specifying manner in which such income derived – Initiation and imposition of penalty under S. 271AAB after completion of assessment proceedings is not vitiated by law. [S. 132, 271(1)(c)] 2431

The Court held that where assessee in the course of search in a statement under sub-section (4) of S. 132 admitted the undisclosed income and specified the manner in which such income had been derived, then the provisions of S. 271AAB were automatically attracted. The provisions of S. 271AAB was applicable as a search had been initiated under S. 132 and during the course of search statement of the assessee had been recorded wherein the assessee admitted undisclosed income and specified the manner in which such income had been derived. The penalty notice issued under S. 274 read with S. 271 clearly indicated that the opportunity of being heard was provided to the assessee and that proceedings under S. 271AAB were being initiated and the reply to the show-cause notice in writing on or before the date so as indicated would be considered before any such order is made under S. 271AAB. Admittedly, no proceeding under S. 271(1)(c) were initiated by the assessing authority during the course of the assessment proceeding under S. 143(3). The penalty proceedings under S. 271AAB were justified and were initiated in accordance with law. Initiation and imposition of penalty after completion of assessment proceedings was not vitiated by law. The order of the Tribunal could not be sustained and was to be set aside and the penalty orders under S. 271AAB passed by the assessing authority, confirmed by the Commissioner (Appeals), were to be affirmed and restored. (AY. 2014-15)
CIT v. Sandeep Chandak (2018) 405 ITR 648 / 93 taxmann.com 405 / 169 DTR 449/ 304 CTR 657 (All.)(HC)
CIT v. Shakutala Chandak (2018) 405 ITR 648/93 taxmann.com 405 / 169 DTR 449 / 304 CTR 657 (All.)(HC)
CIT v. Kamal Kishore Chandak (2018) 405 ITR 648/ 93 taxmann.com 405 / 169 DTR 449/ 304 CTR 657 (All.)(HC)
Editorial : SLP of the assessee is dismissed, Sandeep Chandak v. CIT (2018) 405 ITR 11 (St)/ 255 Taxman 367
Editorial : Order in Sandeep Chandak v. ACIT (2017) 185 TTJ 265 /55 ITR 209 / 150 DTR 247 (Luck.)(Trib.) is reversed

S. 271AAB : Penalty where search has been initiated – Assessee recorded profits from sale of commodities in 'other documents' maintained in normal course, which were retrieved during search, penalty could not be levied. [S. 44AA(2), 132] 2432

The Tribunal noted that since the assessee was not engaged in business or profession, he was not required to maintain books of account as per S 44AA or S 44AA(2). Accordingly, the Tribunal held that since the impugned income was entered in 'other

documents' maintained by assessee in normal course, which were retrieved during search, amount offered by assessee was beyond the scope of 'undisclosed income' defined in S. 271AAB. Accordingly the penalty was deleted. (AY. 2013-14)
Dy. CIT v. Manish Agarwala (2018) 167 DTR 369 / 194 TTJ 346 (Kol.)(Trib.)

2433 **S 271AAB : Penalty – Search cases – commodity profits – sum entered in the other documents maintained in normal course and retrieved during search – Held, not undisclosed income – Held, no penalty can be levied.**
Income from trading in commodities was offered to tax and accepted by AO as income from other sources. It was held that such income was entered in the other documents maintained in the normal course, which document was retrieved during the search process. Such income therefore, cannot be termed as undisclosed income and cannot be a subject matter of penalty. (AY. 2013-14)
Dy. CIT v. Subhas Chandra Agarwala and Sons (HUF) (2018) 65 ITR 18 (Kol.)(Trib.)

2434 **S. 271AAB : Penalty – Search initiated on or after 1st day of July 2012 – Amount offered was not undisclosed income – Levy of penalty was held to be not justified. [S. 132]**
The Tribunal held that the AO having accepted the statement of total income and the return showing the income from commodities under the head "Income from other sources" could not now after a perusal of the income and expenditure account determine the character of transaction in the penalty proceedings as income from business or profession. The assessee an individual who was a salaried person engaged in the previous year relevant to the assessment year for the first time in an activity from which he derived income from other sources was not required to maintain books of account. Since the income of ₹ 2 crores was in fact entered in the other documents maintained in the normal course relating to the assessment year 2013-14, which document was retrieved during search, the amount offered by the assessee did not fall in the definition of "undisclosed income" defined in section 271AAB. Hence no penalty could be levied against the assessee as per S. 271AAB. (AY.2013-14)
DCIT v. Subhas Chandra Agarwala and Sons (HUF) (2018) 65 ITR 18 (SN)(Kol.)(Trib.)

2435 **S. 271AAB : Penalty – Search initiated on or after 1st day of July 2012 – Levy of penalty on the basis of loose sheets found on the course of search was held to be not justified as loose sheets represented only projection – Imposition of penalty is directory and not mandatory. [S. 132(4)]**
The Tribunal held that levy of penalty on the basis of loose sheets found during the course of search was held to be not justified as loose sheets represented only projection. Imposition of penalty is directory and not mandatory. (AY. 2013-14)
ACIT v. Marvel Associates (2018) 170 ITD 353 / 65 ITR 23 (SN) / 194 TTJ 338 / 166 DTR 409 (Vishakha)(Trib.)

S. 271AAB : Penalty – Search initiated on or after 1st day of July 2012 – Undisclosed income – Failure to record profits – Levy of penalty is justified. [S. 44AA] 2436

The Tribunal held that when there is failure to record profits derived from commodity trading in books of account seized in the course of search, levy of penalty is automatic in nature. Levy of penalty is justified. (AY. 2013-14)

DCIT v. Amit Agarwal (2018) 168 ITD 370 (Kol.)(Trib.)

S. 271C : Penalty – Failure to deduct at source – Interest – Failure to deduct tax at source at the time of credit of payee – No reasonable cause is shown – Liable to penalty. [S. 194A (4), 273B] 2437

The Court held that in terms of section 194A(1) tax has to be deducted at the time interest is credited to account of payee or when it is paid in cash/cheque Accordingly, deduction of tax at source on interest income before close of financial year concerned as provided under section 194A(4) would not absolve assessee bank from penalty for not deducting tax at source at time of credit of said income in payee's account. Levy of penalty is justified. (AY. 2012-13)

Union Bank of India v. ACIT (2018) 172 DTR 337 / 305 CTR 994 / (2019) 260 Taxman 23 / 415 ITR 422 (All.)(HC)

S. 271C : Penalty – Failure to deduct at source – It is necessary to establish 'contumacious conduct' on the part of the assessee for failure to deduct tax at source for levy of penalty – Penalty was deleted. [S. 194C] 2438

The Tribunal noted that the AO could not show any contemptuous conduct on part of the assessee for non-deduction of tax at source. There could also not be any reason for non-deduction as the assessee had made most of the payments to the public sector undertaking. The Hon'ble Supreme Court in the case of *CIT v. Bank of Nova Scotia (2016)380 ITR 550(SC)* has approved the decision of the Hon'ble Delhi High Court wherein, it has been held that it is necessary to establish 'contumacious conduct' on the part of the assessee for failure to deduct tax at source for levy of penalty u/s 271C of the act. In the present case, all the recipients have also furnished a certificate that they have received the payment. Accordingly the penalty was deleted. Referred, *Hindustan Coca Cola Beverages Pvt Ltd v. CIT (2007) 293 ITR 226 (SC)* (AY. 2009 10, 2010-11)

DCIT v. Joint Secretary Organizing Committee for Winter Games, 2009 (2018) 196 TTJ 975 / 54 CCH 84 / 68 ITR 14 (SN) / (2019) 173 DTR 122 (Delhi)(Trib.)

S. 271C : Penalty – Failure to deduct tax at source – Bonafide belief – There cannot be a case of automatic levy of penalty – The circular has come much after the expiry of the financial year ending on 31-3-2009, the assessee was clearly under a bona fide belief that no TDS is liable to be deducted – Penalty was deleted. [S. 194J] 2439

The assessee was under a bona fide belief that the payments through the hospital should not deducted under section 194J as CBDT circular has given only after expiry of eight months from the end of the relevant financial year. Now the assessee submitted that prior to the CBDT circular, it was not clear, whether the TDS was required to deducted under section 194J on the payments made to the hospital for which assessee used to

get reimbursement from the Insurance Companies. The CBDT circular was challenged before the Delhi High Court and it was only vide order dated 30-9-2010 the said circular has been upheld. However, the High Court has clearly held that the aforesaid circular to the extent that it directs that the failure to deduct tax or after deducting tax failure to pay on all transactions would make the deductor (TPA) to the hospital under section 194J is upheld, but in so far as levy of penalty under section 271C is concerned, that portion of the circular was struck down/set aside. Thus, the portion of the circular that penalty necessarily will be attributed has been negated by the Delhi High Court and hence there cannot be a case of automatic levy of penalty under section 271C. Tribunal held that since the circular has come much after the expiry of the financial year ending on 31-3-2009, the assessee was clearly under a bona fide belief that no TDS is liable to be deducted. Accordingly, it is not a fit case for levy of penalty. (AY. 2009-10)
Vipul Medcorp TPA (P.) Ltd. v. ACIT (2018) 172 ITD 610 (Delhi)(Trib.)

2440 **S. 271D : Penalty – Takes or accepts any loan or deposit – Journal entries – Penalty cannot be levied if the transactions are bona fide, genuine and reasonable cause – No substantial question of law. [S. 260A, 269SS, 269T, 273B]**
Dismissing the appeal of the revenue the Court held that for accepting or repaying the loan or deposit by passing journal entries, penalty cannot be levied, if the transactions are bona fide, genuine and have a reasonable cause. No substantial question of law. (AY. 2009-10)
CIT v. Lodha Properties Development Pvt. Ltd. (2018) 165 DTR 227 / 304 CTR 811 / (2019) 412 ITR 316 (Bom.)(HC)
CIT v. Adinath Builders (P) Ltd. (2018) 165 DTR 227 / 304 CTR 811 / (2019) 412 ITR 316 (Bom.)(HC)
CIT v. Adinath Hi-Tech Builders (P) Ltd. (2018) 165 DTR 227 / 304 CTR 811 / 92 taxmann.com 228 / (2019) 412 ITR 316 (Bom.)(HC)
CIT v. Asthavinayak Real Estate (P) Ltd. (2018) 165 DTR 227 / 304 CTR 811 / (2019) 412 ITR 316 (Bom.)(HC)
CIT v. Lodha Bulders (P) Ltd. (2018) 165 DTR 227 / 304 CTR 811 / (2019) 412 ITR 316 (Bom.)(HC)
CIT v. Lodha Crown Buildmart (P) Ltd. (2018) 165 DTR 227 / 304 CTR 811 / (2019) 412 ITR 316 (Bom.)(HC)
Editorial : Lodha Properties Development Pvt. Ltd. v. ACIT (2014) 106 DTR 226 / 163 TTJ 778/34 ITR 157 (Mum.) (Trib.) is affirmed
Editorial : SLP of revenue is dismissed CIT v. Adinath Builders (P) Ltd. (2018) 409 ITR 14 (St)/(2019) 261 Taxman 168 (SC)

2441 **S. 271D : Penalty – Takes or accepts any loan or deposit – Acceptance of Loan in cash in excess of specified limits – Deletion of penalty based on entries alone – Matter remanded to Tribunal for fresh consideration. [S. 158BC, 269SS]**
Court held that the Tribunal in its findings had primarily relied on entries in the books of account that the two cash payments were imprest, and therefore neither loan nor deposit. It had not considered and noticed specific aspects referred to in the order of penalty under section 271D and the observations and findings of the Commissioner

(Appeals) holding that the contention and claim of imprest was a sham and facile. Accordingly the penalty order was set aside and the matter was remanded to the Tribunal. (AY. 1999-2000)
CIT v. Pawan Kumar Jain. (2018) 407 ITR 405 (Delhi)(HC)

S. 271D : Penalty – Takes or accepts any loan or deposit – Deposits from staff members in cash without any reasonable cause – Levy of penalty was held to be justified. [S. 269SS, 273B] 2442
Allowing the appeal of the revenue the Court held that the assessee failed to prove reasonable cause for accepting the deposits from staff members in cash in violation of the provision of S. 269SS of the Act, accordingly the levy of penalty was confirmed. Ignorance of law is not an excuse. *Sitaram Ramachandran v. M. N. Nagrashana AIR 1960 SC 2601* (AY. 2005-06)
CIT v. AL-Ameen Educational Trust (2018) 254 Taxman 402 / 165 DTR 417 / 308 CTR 151 (Ker.)(HC)

S. 271D : Penalty – takes or accepts any loan or deposit – Representative of the assessee consented to the proposition that apart from the bona fides of the transaction, assessee is also required to prove the existence of reasonable cause to come within the immunity provided in S. 273B of the Act, Accordingly the Tribunal has not dealt with the reservations expressed by the Division Bench in the reference note. Accordingly on facts the assessee has failed to show that there was a reasonable cause for getting loans in violation of the provisions of S. 269SS of the Act. Levy of penalty is held to be justified. [S. 269SS, 273B] 2443
Tribunal held that since the Learned representative for the assessee consented to the proposition that apart from the bona fides of the transaction, assessee is also required to prove the existence of reasonable cause to come within the immunity provided in S. 273B of the Act,there was no reason to dwell upon any further on the reservations expressed by the Division Bench. *ADIT (Inv) v. Kum. A. B. Shanthi (2002) 255 ITR 258 (SC)*. The Tribunal held that, the assessee failed to show that there was any urgent business necessity due to which the assessee was constrained to take loans by way of cash. As the assessee has failed to show that there was a reasonable cause for getting loans in violation of the provisions of S. 269SS of the Act. CIT(A) was justified in confirming the penalty of ₹ 2.00 lakhs imposed by the AO. (AY. 2008-09)
Deepak Sales & Properties Pvt. Ltd. v. ACIT(2018) 172 ITD 33 / 168 DTR 65 / 194 TTJ 690 / 65 ITR 726 (Mum.)(Trib.)(SB), www.itatonline.org

S. 271D : Penalty – Accepts any loan or deposit – loan received from father – same could be treated as gift and not loan – levy of penalty unjustified. 2444
It has been held by the Appellate Tribunal that merely because loan taken by assessee from his father for purchasing the assets was shown as debt in his father's balance sheet, same need not be treated as violation of the provision of S. 269SS and attracting levy of penalty u/s. 271D of the Act. (A.Y. 2009-10)
Gokavarapu Venkata Satya Durga Prasad v. Addl. CIT (2018) 194 TTJ 14 (Vishakha)(UO) (Trib.)

2445 **S. 271G : Penalty – Documents – International transaction – Transfer pricing – Failure to furnish information or documents – Change In Law – Default occurring prior to date of amendment conferring jurisdiction on Transfer Pricing Officer to impose penalty – Transfer Pricing Officer had no jurisdiction prior to Amendment ie on October 1, 2014. [S. 2(7A), 92D(3)]**

Allowing the petition the Court held that since the "event of default" in March, 2014 occurred prior to the date of the amendment coming into force, October 1, 2014 the penalty order passed by the Transfer Pricing Officer was without jurisdiction. (AY. 2011-12)

Note : Securities and Exchange Board of India v. Classic Credit Ltd. (2017) (9) JT SC 558 is distinguished.

Ericsson India Pvt. Ltd. v. ACIT (2018) 305 CTR 584 / (2019) 411 ITR 333 (Delhi)(HC)

2446 **S. 271G : Penalty – Documents – International transaction – Transfer pricing – A specific finding should be recorded on date by which assessee was required to furnish documents and whether said documents were furnished within specified date – Deletion of penalty is held to be justified. [S. 274]**

Dismissing the appeal of the revenue the Court held that, a specific finding should be recorded with respect to the date by which assessee was required to furnish documents and whether said documents were furnished within specified date. Deletion of penalty by the Tribunal held to be justified. Followed *CIT v. Bumi Hiway (I) (P) Ltd. (2014) 51 taxmann.com 572 (Delhi) (HC)*

CIT v. Gillette India Ltd (2018) 99 Taxman.com 230 / 259 Taxman 353 (Raj.)(HC)

Editorial : SLP of revenue is dismissed, CIT v. Gillette India Ltd (2018) 259 Taxman 352 (SC)

2447 **S. 271G : Penalty – Documents-International transaction – Transfer pricing – No adjustment was made – Failure to furnish documents – Filed belatedly – Levy of penalty is held to be not justified. [S. 92CA, 273B]**

Allowing the appeal of the assessee the Tribunal held that when assessee had requested TPO to keep the matter in abeyance for the reason that it had been requesting transfer of its file, then AO should have considered the same and pursued the matter with higher authorities to expedite such transfer or the AO should have given an opportunity to the assessee with further time and then ask the assessee to file all relevant documents when transfer application got delayed. Ultimately, assessee did file all documents necessary for determination of arm's length price of its international transaction with its AE. Assessee was not in default and was under genuine and *bona fide* belief for not filing documentation within 30 days as required in notice issued u/s 92D(3). Accordingly the penalty was directed to be deleted. (AY. 2009-10)

NTT Data Global Delivery Services Ltd. v. ACIT (2018) 162 DTR 132 / 192 TTJ 11 (Delhi) (Trib.)

S. 272A : Penalty – delay in filing statement of tax deducted at source – difficulties in initial stage of change from manual filing to electronic filing of returns-plausible explanation given – Levy of penalty is held to be not justified. [S. 200(3), 272A(2) (k), 273B] 2448

For the concerned assessment year the assessee had deposited the tax deducted at source on salaries paid to its employees within the prescribed due date to the credit of the Central Government but filed the quarterly statements of deduction of tax at source u/s. 200(3) in form 24Q beyond the time stipulated under Rule 31A. The assessee had given an explanation that it employed more than 200 employees spread over several locations across the country making it difficult to collate the information to prepare these quarterly returns in time as those employees were travelling on official duties. The permanent account numbers of all the employees was made mandatory in e-filing of statements without which such statements could not be filed on to the Department's server. Secondly, several modifications in the formats and software system of e-filing of quarterly tax deducted at source returns were made by the Department from time to time apart from technical glitches in the working of the Department's software which caused delays in filing of quarterly tax deducted at source returns in form 24Q for AY 2011-12. For subsequent periods, those delays were substantially reduced and ultimately all statements of quarterly tax deducted at source returns in forms 24Q, 26Q and 27Q were filed in time. The provisions of S. 272A(2)(k) were subject to the provisions of S. 273B and the cause shown by the assessee was a reasonable cause. The burden was on the Department to provide the necessary infrastructure so that taxpayers would not face any inconvenience in filing the returns. Since, the Income-tax deducted at source was deposited in time and only the returns were delayed in the initial years of the change, therefore penalty levied u/s. 272A(2)(k) was not sustainable as the assessee had shown a reasonable cause falling within the parameters of S. 273B. (AY. 2011-2012)

Board of Control for Cricket in India v. ACIT (TDS) (2018) 68 ITR 372 / 196 TTJ 706 (Mum.)(Trib.)

S. 272A : Penalty – Failure to answer questions – Sign statements – Furnish information – New accountant of assessee ignorant of statutory provisions of tax deduction at source – Reasonable cause – Levy of penalty is held to be not justified. [S. 272A(2)(k), 273B] 2449

Allowing the appeal of the assessee the Tribunal held that ; the provisions of S. 272A read with the provisions of S. 273B provided that notwithstanding anything contained in sub-section (2) of section 272A, no penalty shall be imposable for the failure referred to in the provisions, if reasonable cause is established for such failure. Change of accountant who was ignorant of statutory provisions of tax deduction at source can be said to be reasonable cause so as not to warrant levy of penalty. Therefore there was a reasonable cause for not filing the prescribed returns within the time, and the Assessing Officer was directed to delete the penalty. (AY. 2011-12)

Investascent Wealth Advisors Pvt. Ltd. v. ACIT (2018) 65 ITR 604 (Bang.)(Trib.)

2450 **S. 272A : Penalty – Failure to answer questions – Sign statements – Furnish information – When conduct of the assessee is not *bona fide*, levy of penalty for non compliance of S. 131(IA) is held to be valid. [S. 131(1), 131(IA), 133(6)]**

Dismissing the appeal of the assessee the Tribunal held that not submitting the details called by the ADIT (Inv.) was a deliberate defiance on the part of the assessee for non-submission of the same under the pretext that some of the details are available in the records of the Income Tax Department or that some of the details are available in the Website of the Ministry of Corporate Affairs. Tribunal held that no prejudice would have been caused to the assessee by submitting the details as called for by the ADIT (Inv.), as per the summons u/s 131(1A) if those details are already available in the records of the I.T. Department or in the website of the Ministry of Corporate Affairs. The conduct of the assessee in the instant case, is not at all bona-fide therefore levy of penalty is held to be justified. (AY. 2011-12)

Young Indian v. ADIT (2018) 169 DTR 382 / 195 TTJ 584 (Delhi)(Trib.), www.itatonline.org

2451 **S. 272A : Penalty – Failure to answer questions – Sign statements – Furnish information – Business of production of potable country liquor/Alcohol – Belated TDS returns – TDS was deposited on time – Belated return was due to reasonable cause and revenue has not suffered any loss – Levy of penalty is held to be not justified. [S. 206, 273B, 276BB]**

Tribunal held that merely filing belated returns/statements, revenue had not suffered any loss because tax deducted was already deposited on time and there was mere a technical or venial breach to provisions contained in Act for submitting return/statement of TDS. Penalty was not to be levied. (AY. 2010-11)

Haryana Distillery Ltd. v. JCIT (2018) 172 ITD 532 (Delhi)(Trib.)

2452 **S. 273A : Penalty – Commissioner – Power to reduce or waive – Long term capital gain shown as exempt in the original was accepted by filing the revised computation as income from other sources – Genuine hardship financially or in any manner was not proved – Rejection of application was held go be justified. [S. 10(38), 45, 56, 271(1)(c), 273A((1)(4)]**

Dismissing the petition the Court held that ; genuine hardship financially or in any manner was not proved by the assessee. On facts long term capital gain was shown as exempt, however in the revised computation the assessee accepted the income as income from other sources. Rejection of application was held to be justified. (AY. 2014-15)

Dayaram Khandelwal v. PCIT (2018) 405 ITR 569 / 165 DTR 425 / 302 CTR 441 (MP)(HC)

Sourabh Khandelwal v. PCIT (2018) 405 ITR 569 / 165 DTR 425 / 302 CTR 441 (MP)(HC)

S. 275 : Penalty – Bar of limitation – Takes or accepts any loan or deposit – Repayment of loan or deposit – Limitation period of six months to be reckoned from the end of month initiation of the penalty proceedings by JCIT and not from the date of assessment order – Penalty u/s. 271D is independent under assessment – JCIT is only authority competent to initiate proceedings and impose penalty – Not barred by limitation. [S. 269SS, 269T, 271D, 271E] 2453

Dismissing the petition the Court held that, Limitation period of six months is to be reckoned from the end of month initiation of the penalty proceedings by JCIT and not from the date of assessment order. Penalty u/s 2771D is independent of assessment. In the assessment order dt. 28th Dec. 2016, the AO has only issued show cause to the assessee regarding penalty. In the second notice dt. 22-09-2017 the JCIT initiated penalty proceedings u/s 271D and 271E of the Act, therefore the initiation of penalty proceedings is not barred by limitation. JCIT is only authority competent to initiate proceedings and impose penalty. Initiation of penalty proceedings is not barred by limitation. (AY. 2009-10, 2010-11)

Nitin Agrawal v. JCIT (2018) 302 CTR 484 / 166 DTR 27 / (2019) 212 ITR 309 (MP)(HC)

S. 275 : Penalty – Bar of limitation – Concealment – Notices issued after period of limitation as per first limb of S. 275(1)(a) hence barred by limitation. [S. 271(1)(c), 275 (1)(a)] 2454

Allowing the petition the Court held that for the assessment year 2011-12 the order under S. 143(3) was passed on December 30, 2016. Therefore, the limitation for initiation of penalty proceedings under S. 275(1)(a) was on or before March 31, 2017, in terms of the first limb of the provision. However according to the second limb of the provision it was six months from the end of the month in which the order of the Commissioner (Appeals) was received. In the assessee's case the first limb of the proviso to S. 275(1)(a) would be attracted and the period would be one year from the date on which the order was passed by the Commissioner (Appeals). The assessees had preferred the appeals before the Commissioner (Appeals) on February 1, 2017, and at that point of time, when the penalty notices under S. 271(1)(c) were issued, the appeals were pending. Therefore, the Assistant Commissioner had lost out on the limitation aspect with regard to the first limb of S. 275(1)(a), as the penalty notices had been issued on September 11, 2017 and September 14, 2017, which were after March 31, 2017, which would be the period of limitation for initiating penalty proceedings under S. 275(1)(a). (AY. 2011-12 to 2015-16)

J. Srinivasan v. ACIT (2018) 404 ITR 51 / 303 CTR 827 / 168 DTR 331 (Mad.)(HC)

S. 275 : Penalty – Bar of limitation – Concealment – Time to Be reckoned from date of service of order of Commissioner (Appeals) on Assessee – Penalty proceedings was barred by limitation. [S. 271(1) (c)] 2455

Allowing the appeal of the assessee the Court held that; it was incumbent upon the Department to have completed the penalty proceedings and passed an order within the prescribed period of limitation of six months. The Department's appeal before the Tribunal was never heard, no effective proceedings were held nor was any order passed. The assessee was not notified about the filing of the appeal, its pendency or its withdrawal. According to S. 275(1A), the expiry of six months prescribed was to

be reckoned "from the date of completion of the proceedings or from the end of the month in which the order of the Commissioner (Appeals) or the Tribunal was received". It was an adjudicatory "order" which culminated in "the proceedings", an order that determined, inter alia, the rights of the parties finally, that was to be deemed a terminus a quo for the completion of penalty proceedings. The dependence of the period of the limitation upon whether an order became final at the instance of one party would leave the legal position inchoate and unsatisfactory. An interpretation that permitted certainty had to be adopted. The order of the Commissioner (Appeals) provided a fixed date from which to reckon the end of the period of limitation. The absence of an appeal by the assessee against the order of the Commissioner (Appeals) meant that at least with respect to the amount that it had accepted in the adjudicatory order as an addition, the penalty proceedings survived. There was no occasion for further penalty proceedings given that the issue might have been rendered debatable, even in the eventuality of an order favouring the Department. The order of the Tribunal holding that the penalty order was within the period of limitation was unsustainable. (AY. 1989-90)
Salora International Ltd. v. CIT (2018) 402 ITR 211 / 163 DTR 341 / 303 CTR 616 (Delhi)(HC)

2456 **S. 275 : Penalty – Bar of limitation – Limitation provision is applicable to original assessment proceedings and not set aside proceedings – Not barred by limitation. [S. 271(1) (c), 275(1)(a)]**
AO levied penalty. Assessee contended that as per provisions of Section 275 of Act Assessing Officer was required to pass order within a period of 6 month from date of receipt of order. AO had passed order which was barred by limitation. CIT(A) cancelled levy of penalty. On remand of matter by Tribunal, AO imposed penalty. Assessee contended that the order passed for levy of penalty was barred by limitation. Dismissing the appeal of the assessee the Tribunal held that from plain reading of S. 275(1)(a) it revealed that the limitation provided under this section reckoned either from date of completion of assessment proceedings or from order of appellate authority received by Chief Commissioner. Therefore, S 275(1)(a) stipulated limitation for levy of penalty initiated in pursuant to assessment proceedings or subsequent appeal order by CIT(A) or by Tribunal. Accordingly the limitation provided u/s 275(1)(a) was for levy of penalty originally and not in set aside proceedings of levy of penalty u/s 271(1)(a) by appellate authority. (AY. 2005-06)
Meena Bajaj (Smt) v. ITO (2018) 167 DTR 89 / 192 TTJ 952 (Jaipur)(Trib.)

2457 **S. 276B : Offences and prosecutions – Failure to pay to the credit tax deducted at source – Application for compounding of offence for delay in depositing tax deducted at source was dismissed only on ground that nobody attended proceedings when said application was taken up for hearing – order was to be set aside and, matter was remanded back for disposal on merits. [S. 278B, 279]**
There was delay in depositing the tax deducted at source. An application for compounding of offences was made. Though assessee was served with letters of intimation informing date on which they should present themselves and seek relief in terms of compounding application, they could not depute a representative to remain present Assessee's application was rejected and a criminal complaint was filed. Against said order petition was filed. Allowing the petition the Court held that the respondents had not applied their mind to compounding applications by dealing with merits thereof.

Since application had been dismissed only on ground that nobody attended proceedings when said application was taken up for hearing, impugned order was to be set aside and, matter was to be remanded back for disposal on merits and in accordance with law. *Durgeshwari Hi-Rise & Farms (P.) Ltd v. CCIT (2018) 172 DTR 343 / (2019) 103 taxmannn. com 292 (Bom.)(HC)*

S. 276B : Offences and prosecutions – Failure to pay to the credit of the Government tax deducted at source – Directors in charge, to show that offence occurred without their knowledge or due diligence was exercised by them to prevent commission of offence – Non-issuance of separate notices, does not absolve directors in charge-Order of lower courts acquitting directors is held to be erroneous – Benefit of probation granted to accused directors of assessee and levy of fine. [S. 2(35), 278B] 2458

Court held that S. 278B of the Act, makes the directors of the company in charge of its affairs liable for the offence committed by it unless the presumption is rebutted by such director. For the purpose of S. 278B once the offence is shown to have been committed by the company, then the liability of the directors in charge of its affairs is attracted. The burden then shifts to such directors to show that the offence occurred without their knowledge or that they had exercised all due diligence to prevent the commission of such offence. Allowing the petitions of the revenue, the Court held that,the directors of the company were convicted for the offence under section 276B for the three assessment years in question 1982-83 to 1984-85. Both the lower criminal courts had erred in acquitting the directors of the assessee only because they were not issued separate show-cause notices. Both the directors had signed the company's balance-sheets and therefore their defence that they were not in charge of the affairs of the company was untenable. Considering that the matters pertained to the assessment years 1982-83 to 1984-85 and given the long pendency of the matters, the directors were given the benefit of probation. Accordingly, while sentencing the directors to pay a fine of ₹ 50,000 each for the offence under section 276B for each of the assessment years in question and in default to undergo simple imprisonment for seven days, they were granted the benefit of probation and directed to file a bond of good behaviour in the trial court in the sum of ₹ 10,000 each for the period of six months. The judgments of the District Judge and Additional Sessions Judge and the Additional Chief Metropolitan Magistrate were set aside. (AY. 1982-83 1983-84 1984-85)
ITO v. Anil Batra (2018) 409 ITR 428 (Delhi)(HC)

S. 276B : Offences and prosecutions – Failure to pay to the credit of the Government tax deducted at source – Non-Executive Chairman is not involved in Day-to-Day affairs of company – Managing Director admitting Liability and entering into negotiations with revenue – Prosecution of Non-Executive Chairman is held to be not valid. [S. 2(35), 278AA] 2459

Allowing the petition the Court held that, non-Executive Chairman is not involved In Day-to-Day affairs of company. Managing Director admitting Liability and entering into negotiations with revenue. Prosecution for Failure to pay to the credit tax deducted at source of Non-Executive Chairman is held to be not valid. It was contended that, as per S. 276B, of the Act, a person who is in charge of and is responsible to the company for the conduct of the business of the company can be prosecuted. The test laid down by S. 276B is entirely different and distinct from that laid down by S. 2(35) of the Act. S

2(35) is relevant only for imposing a penalty on a person and is not relevant for deciding whether he should be prosecuted for an offence under the Act. (FY. 2013-14 to 2014-15)
Kalanithi Maran v. UOI (2018) 405 ITR 356 / 256 Taxman 260 / 304 CTR 17 / 168 DTR 385 (Mad.)(HC)

2460 **S. 276C : Offences and prosecutions – Wilful attempt to evade tax Order of penalty was set aside on ground there was no concealment of income – Prosecution was liable to be quashed. [S. 271(1) (c)]**
Allowing the appeal the Court held that the basis for initiating proceedings under the Income-tax laws by imposing penalty and on the criminal side by lodging a criminal complaint is the same. The levy of penalties and prosecution under S. 276C are simultaneous. Hence, once the penalties are cancelled on the ground that there is no concealment, the quashing of prosecution under S. 276C is automatic.
Malti Mishra (Smt.) v. State of Uttar Pradesh (2018) 401 ITR 327 (All.)(HC)

2461 **S. 276C : Offences and prosecutions – Wilful attempt to evade tax – The burden of proving the absence of mens rea is upon the accused and such absence needs to be proved not only to the basic threshold of "preponderance of probability" but "beyond reasonable doubt". In every prosecution case, the Court shall always presume culpable mental state and it is for the accused to prove the contrary beyond reasonable doubt. This presumption is a rebuttable one – Petition to quash the proceedings was dismissed. [S. 133A, 271(1) (c), 277, 278E, Cr.P.C. S.561A]**
The assessment was done under S. 144 and appeal was dismissed. Concealment penalty was paid by the assessee. On the basis of complaint by the Assessing Officer under S. 276C, /277 of the Act, Special Magistrate issued process against the accused. Accused has filed the petition to u/s 561A of the Cr.P.C before the High Court to quash the proceedings. Dismissing the petition, the Court observed that ; The burden of proving the absence of mens rea is upon the accused. The absence needs to be proved not only to the basic threshold of "preponderance of probability" but "beyond reasonable doubt". In every prosecution case, the Court shall always presume culpable mental state and it is for the accused to prove the contrary beyond reasonable doubt. This presumption is a rebuttable one. The criminal court has to judge the case independently on the evidence placed before it. So complaint lodged by respondent and process issued thereon against petitioner does not suffer from any infirmity of law. (AY. 2010-11)
Arun Arya v. ITO (2018) 171 DTR 441 / 305 CTR 919 (J & K) (HC), www.itatonline.org

2462 **S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Pendency of appeal before CIT(A) – Stay – Alleged bogus purchases – During pendency of stay the criminal prosecution should not be launched and, if it has been already launched, the same shall not proceeded. [S. 246]**
Prosecution is launched on the footing that the return was filed, it was selected for scrutiny, assessment was completed and an order was passed assessing income of ₹ 2,49,10,960/-. When the appeal is pending for hearing,the Department proceeds on the footing that the assessee did not disclose his true and correct income while filing his return. The record was perused by the Sanctioning Authority and it came to the conclusion that certain transactions are not genuine but bogus. There were investigations

also launched by the Directorate of Kolkata. This is a case where the tax was attempted to be evaded. On facts though on this show cause notice it is claimed that a hearing was granted, but the eventual order of sanction was not served. On writ Court held that, interest of justice would be served if we dispose of this writ petition by keeping larger and wider question open. In the event, the petitioner seeks a stay of the order passed by the Assessment Officer by making a stay application, then, during the pendency of such application, the criminal prosecution should not be launched and, if it has been already launched, the same shall not proceed. Thus, the ad interim stay granted by this Court would continue till the disposal of the application for stay by the First Appellate Authority. Petitioner will file this stay application within one week from the date of receipt of copy of this order. If that is filed and the Commissioner is seized of it, then, until the stay application is disposed of and the order on same is communicated to the petitioner, the prosecution launched pursuant to the order of sanction shall not proceed. (WP No. 761 of 2018, dt. 04.09.2018) (AY. 2014-15)
Ramchandran Ananthan Pothi v. UOI (Bom.)(HC), www.itatonline.org.

S. 276CC : Offences and prosecutions – Failure to furnish return of income – Superior authority can also sanction prosecution – Imposition of penalty under Section 271F by AO not a pre-requisite for sanctioning prosecution – MD and other directors equally responsible for non-fling of return and hence other directors are also at default. [S. 271F, 278BB, 279] 2463

Held by the High Court that :

a) It is clear from the proviso to Section 279(1) that the prosecution be initiated at the instance of the authorities superior to the Assessing Officer. Hence there is no impropriety on the part of CIT in issuing show cause notice followed by grant of sanction for prosecution

b) It is clear from the provisions of Section 271F of the Act (effective as on 01.07.2012) that omission on the part of Assessing Officer to impose such penalty by itself does not mean that in his opinion the default was no willful

c) It appears, on first blush, that the primary responsibility of furnishing the return of income of the company is that of Managing Director however the relevant provisions of S. 140A noticeably uses the expression "any director thereof" and hence all the other directors are also equally responsible for such default. (AY. 2011-2012)

Arun Mitter v. ACIT (2018) 171 DTR 401 / 305 CTR 577 (Delhi)(HC)
MGF Development Ltd. v. ACIT (2018) 171 DTR 401 / 305 CTR 577 (Delhi)(HC)

S. 276CC : Offences and prosecutions – Companies – Failure to furnish return would not come in way of criminal prosecution – Sanction – Commissioner empowered to *sou moto* initiate penalty even if assessing authority is Additional Commissioner – Return of income – Failure to furnish – Omission on part of the AO to impose penalty by itself does not mean default is not willful – Return of Income – Primary responsibility of furnishing return is of Managing Director – Directors also equally responsible for furnishing return. [S. 139, 140, 271F, 278B, 279] 2464

Assessee failed to file its return of income. AO filed a criminal complaint against the assessee, its directors and managing director alleging offence under section 276CC.

Assessee filed a petition seeking quashing of the proceedings. The High Court held that there was no denial at this stage that there was a failure to furnish return. Whether or not there was justification for such default was a matter of defence which may be agitated during the trial. The assessment proceedings are independent of this matter and they would not come in the way of criminal prosecution. The High Court further held that prosecution can be initiated by issuing notice under section 279 at the instance of the authorities superior to the AO including officer of the level of the Commissioner or even above in hierarchy.. Further the High Court held that penalty as envisaged in section 271F was to be determined by the AO. Omission on part of the AO to impose penalty by itself does not mean that the default was not willful. The High Court also held that the prime responsibility of furnishing return of the company is of the Managing Director. Incase of unavoidable difficulties of the Managing Director to abide by the requirements of the law, responsibility of the other directors cannot be ignored. (AY. 2011-12)

Rakshit Jain v. ACIT (2018) 171 DTR 401 / 305 CTR 577 / 103 CCH 64 (Delhi)(HC)
Shrawan Gupta v. ACIT (2018) 171 DTR 401 / 305 CTR 577 / 103 CCH 64 (Delhi)(HC)

2465 **S. 276CC : Offences and prosecutions – Failure to furnish return of income – Failure to furnish return in response to notice under S. 142(1) – Mere fact that subsequently furnished return of income and no amount of tax was due, would not exempt from liability to be prosecuted – Disobedience of each of said provisions of law itself constitute a distinct offence. [S. 139(1), 142(1), 148, Criminal Procedure Code, 1973, S. 482]**

Dismissing the Criminal revision petition of the assessee and allowing the Criminal revision petition of the revenue, the Court held that, failure to furnish return in response to notice under S. 142(1), initiation of prosecution proceedings is held to be valid. Mere fact that subsequently furnished return of income and no amount of tax was due, would not exempt the assessee from liability of being prosecuted. Disobedience of each provision of law itself constitutes a district offence. (AY. 2003-04 to 2005-06)

Karan Luthra v. ITO (2018) 259 Taxman 209 / (2019) 175 DTR 258 / 309 CTR 114 (Delhi) (HC)

2466 **S. 277 : Offences and prosecutions – False statement – Verification – Principal Assessing Officer – Bogus claim of brokerage – Subscribed her signature in profit and loss account and balance sheet of company for relevant assessment year which were filed along with returns – Assessing Officer was justified in naming her as Principal Officer and accordingly she could not be exonerated for offence under S. 277 of the Act. [S. 2(35), 204(iii), 276C, 278B, CRPC, S. 245]**

Assessee became a Managing Director of a company after death of her husband. In course of investigation, Assessing Officer found that company had claimed a bogus payment of brokerage, a bogus payment of sub-agency commission and a bogus loss. Accordingly, Assistant Commissioner filed a complaint under Indian Penal Code (IPC) and under Income-tax Act treating assessee as Principal Officer of company. Petition to quash the complaint is filed before the High Court and the Assessee contended that she was not in-charge and responsible for carrying on day-to-day affairs of company and that Assistant Commissioner ought to have issued a notice under S. 2(35) expressing

his intention to treat assessee as Principal Officer of company and without such a notice, compliant filed against her was not maintainable. Dismissing the petition the Court held that, since assessee had subscribed her signature in profit and loss account and balance sheet for relevant assessment year which were filed along with returns, Assessing Officer was justified in naming her as principal officer and accordingly she could not be exonerated for offence under S. 277 of the Act. Court also held that for filing a complaint under S. 276(C)(1), 277 and 278B determination of a Principal Officer was not necessary and non-issuance of individual notice before filing of compliant would be of no consequence. (AY. 1985-86)

Sujatha Venkateshwaran (Mrs) v. ACIT (2018) 408 ITR 545 / 257 Taxman 195 / (2019) 173 DTR 327 / 306 CTR 343 (Mad.)(HC)

S. 279 : Offences and prosecutions – Sanction – Chief Commissioner – Commissioner – The expression "amount sought to be evaded" in CBDT's compounding guidelines dated 23.12.2014 means the amount of "tax sought to be evaded" and not the amount of "income sought to be evaded" – Directed the department to refund the excess amount paid by the assessee latest by 31.10.2018. [S. 271(1) (c), 276C] 2467

The Question for consideration is what would be the basic compounding charges that the petitioner must pay in order to avail the offer for compounding the offense. The primary facts are not in dispute. In the assessment of the petitioner's return, an addition of ₹ 8.70 lakhs came to be made. This gave rise to additional tax of ₹ 2.61 lakhs. A penalty of ₹ 2.61 lakhs at the rate of 100% of the tax sought to be evaded was also imposed in terms of section 271(1)(c) of the Act. The revenue calculated the compounding fess at ₹ 10,4900. On the basis of income ought to have been evaded which was paid under protest. The Assessee moved rectification application which was not disposed off. The assessee moved the petition before High Court. Allowing the petition the Court held that, the expression "amount sought to be evaded" in CBDT's compounding guidelines dated 23.12.2014 means the amount of "tax sought to be evaded" and not the amount of "income sought to be evaded". Accordingly the court directed the department to refund the excess amount paid by the assessee latest by 31.10.2018.) (AY. 2008-09)

Supernova System Private Limited v. CCIT (2018) 171 DTR 65 / 305 CTR 326 / (2019) 260 Taxman 345 (Guj.)(HC), www.itatonline.org

S. 279 : Offences and prosecutions – Sanction-Show cause notice – Writ against show cause notice is premature and not maintainable – It is not necessary for the authority to issue a show cause notice before granting an order of sanction. [S. 276(c)(1), 277, Art. 226] 2468

Dismissing the petition the Court held that, the writ petition against show cause notice is premature and not maintainable. The proceeding was only in the form of a show-cause notice and therefore, the assessee had to respond to it and it could not be questioned in a writ petition. However, there was no necessity for the authority to issue a show-cause notice before granting an order of sanction as it was an administrative act. Nevertheless, the Principal Director (Investigation) had issued the show-cause notice with a view to provide an opportunity to the assessee, of which he had to avail. Hence,

the show-cause notice need not be interfered with in a writ petition under article 226 of the Constitution. The Principal Director (Investigation) was one of the authorities enumerated in the proviso to S. 279(1) and therefore, had sufficient jurisdiction to issue the show-cause notice under S. 276C(1). (AY. 2017-18)
Krishnaswami Vijayakumar v. DIT (2018) 404 ITR 442 (Mad.)(HC)

2469 **S. 279 : Offences and prosecutions – Sanction – Chief Commissioner – Late deposit of tax deducted at source – If sanctioning was held to be not as requirement of law summons issued by the Court can be challenged. [S. 276A, 276B, 278AA, 278AB, 278B, Code of Criminal Procedure Code, S 397, 401, 482]**

If the assessee is able to make out that cognizance was not justified and as per law they can challenge and question the summoning order by way of petition u/s 397 read with Section 401 of the Code of Criminal Procedure, 1973 or if permissible, by way of a petition under Section 482 of the Code. Referring various case laws the Court observed that, following principles can be culled out :

(a) It is incumbent on the prosecution to prove that the valid sanction has been granted by the sanctioning authority after being satisfied that a case for sanction has been made out.
(b) The sanction order may expressly show that the sanctioning authority has perused the material placed before it and, after consideration of the circumstances, has granted sanction for prosecution.
(c) The prosecution may prove by adducing the evidence that the material was placed before the sanctioning authority and its satisfaction was arrived at upon perusal of the material placed before it.
(d) Grant of sanction is only an administrative function and the sanctioning authority is required to prima facie reach the satisfaction that relevant facts would constitute the offence.
(e) The adequacy of material placed before the sanctioning authority cannot be gone into by the court as it does not sit in appeal over the sanction order.
(f) If the sanctioning authority has perused all the materials placed before it and some of them have not been proved that would not vitiate the order of sanction.
(g) The order of sanction is a prerequisite as it is intended to provide a safeguard to a public servant against frivolous and vexatious litigants, but simultaneously an order of sanction should not be construed in a pedantic manner and there should not be a hyper-technical approach to test its validity.".

Indo Arya Central Transport Limited v. CIT (TDS) (2018) 404 ITR 667 / 165 DTR 345 / 255 Taxman 50 / 304 CTR 236 (Delhi)(HC), www.itatonline.org

2470 **S. 279 : Offences and prosecutions – Compounding Of Offences – Guidelines fixing compounding fees was held to be valid Application For Compounding twenty years after assessment order and after framing of criminal charges – Determination of compounding fees was held to be valid. Assessee was directed to pay cost of ₹ 50,000/.**

Dismissing the petition the Court held that; the concept of compounding of offences in taxation law is not unique to India. Most jurisdictions of the world do provide for

such measures even when there is wilful non-payment or evasion of tax which is an offence under the respective laws. Compounding of offences cannot be taken as a matter of right. It is for the law and authorities to determine what kind of offences should be compounded, if at all, and under what conditions. (*Y. P. Chawla v. M. P. Tiwari (1992) 195 ITR 607 (SC)*. On facts the application for compounding twenty years after assessment order and after framing of criminal charges. Therefore determination of compounding fees which may be excessive as per assessee was held to be valid. Assessee was also directed to pay cost of ₹ 50,000.
Vikram Singh v. UOI (2018) 401 ITR 307 / 163 DTR 55 / 301 CTR 439 / 253 Taxman 356 (Delhi)(HC)

S. 279 : Offences and prosecutions – Compounding of offences – Guidelines on compounding of offenses dated 23.12.2014 prescribing eligibility conditions and the formula for calculating the compounding fee are valid or unreasonable. [S. 276, 277, 278] 2471

The Guidelines of 2014, under which the last application for compounding was made, and was accepted to be in the prescribed format, has enured to the benefit of the petitioner and the application has rightly been processed under these Guidelines. The petitioner has not raised a challenge either to the 2008 Guidelines or 2003 Guidelines. It is only after the charges were framed in the criminal proceedings and after filing the applications for compounding and after compounding charges have been determined as per the formula prescribed in the 2014 Guidelines, that the challenge has been raised by the petitioner. The petitioner having voluntarily agreed and undertaken to the department to pay the compounding charges and to withdraw his appeal, ought to be directed to be bound down by the same. It is a settlement process voluntarily invoked by the petitioner in order to escape criminal prosecution under the Act. Since an accused may have to suffer severe consequences for non-payment of tax, if he is held to be guilty, it is not open to him to challenge the reasonableness of the same. The petitioner had consciously undertaken to abide by the decision of the Committee constituted for compounding the offences.
Vikram Singh v. UOI (2018) 401 ITR 307 / 163 DTR 55 (Delhi)(HC)

S. 281 : Certain transfers to be void – Property under attachment – Alternative remedy – Purchase of property is held to be void – If petitioner's claim was that property was not liable for such attachment, then she had to make a claim before Tax Recovery Officer – Writ is not maintainable. [Sch. II, R.11, Art.226] 2472

Purchase of property by petitioner was declared void as it was under attachment proceedings for recovery of tax dues of vendor. Petitioner filed writ stating that she was a bona fide purchaser of said property for adequate consideration and as on date of purchase, there were no encumbrances/charge on property. Further, there were no income-tax dues payable by petitioners vendor and to that effect, a certificate was issued by Assistant Commissioner. It was also submitted that Tax Recovery Officer attached petitioner's property for arrears of vendor long after petitioner had purchased property and therefore, notice of attachment would not bind petitioner. Dismissing the petition the Court held that ; if petitioner's claim was that property was not liable for such

attachment, then she had to make a claim before Tax Recovery Officer and for such reason, petitioner could not have approached writ court invoking jurisdiction under Article 226 of Constitution of India.
Champa Devi v. Tax Recovery Officer (2018) 257 Taxman 296 / 170 DTR 36 (Mad.)(HC)

2473 **S. 281 : Certain transfers to be void – Tax Recovery Officer could not declare a transaction of transfer as void, if revenue wants to have transaction nullified, it must go to civil court to seek declaration to that effect. [S. 222, Second Schedule, R.11]**
Allowing the petition the Court held that, Tax Recovery Officer could not declare a transaction of transfer as void, if revenue wants to have transaction nullified, it must go to civil court to seek declaration to that effect. However since in instant case notice under rule 2 of Second Schedule was served on defaulter assessee and sale transactions executed by said defaulter with instant petitioner took place thereafter, it would not be open to petitioner to claim benefit of proviso to S. 281(1) of the Act. The orders impugned in these writ petitions are quashed to the extent indicated above. The stand of the respondent in declining to lift the attachment already made is sustained. The order of the respondent declaring the transactions in question as null and void is quashed.
D. S. Senthilvel v. TRO (2018) 405 ITR 202 / 256 Taxman 179 / 166 DTR 278 / 304 CTR 49 (Mad.)(HC)

2474 **S. 281 : Certain transfers to be void – Failure by Department to bring on record service of notice under Rule 2 – Charge registered by Sub-Registrar six and a half years after sale deed registered in favour of purchaser – Order declaring transfer null and void and notice for auction of property set aside. [S. 179(1) 220, 222 SCH II, RR. 2, 16]**
Allowing the petition, that the petitioner being a bona fide purchaser for consideration after due diligence could not be made to suffer on account of the tax dues that ran in the name of the original owner. The sale deed was for a consideration and the index copy was also issued in connection with the transaction. The public notice for executing the sale deed was issued in vernacular newspaper on October 26, 2007 and thereafter, a search was carried out. The search report dated October 1, 2008 was also on record along with the title clearance certificate of the advocate. It was evident from the documents that the property in question was free from all encumbrances having clear title and was available for transaction. The documents produced along with the additional affidavit being the order under section 179(1), the certificate under section 222, the order of attachment and panchnama drawn were all against the defaulting assessee VCT, and the petitioner was not in the picture. The proviso to section 281 provided that such transfer or charge might not be declared void if such a transfer or charge was made for adequate consideration and without notice of pendency or completion of such proceeding or without the notice of any tax liability or other sum payable by the assessee. According to the procedure for recovery of tax, rule 16 of Schedule II to the Act provides for issuance of notice for recovery of arrears by the Tax Recovery Officer upon the defaulter requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of the service of the notice and intimating that in default, steps would be taken to realize the amount. Rule 16 of Schedule II to the Act provides for private alienation to be considered void in certain

cases and requires service of notice on the defaulter under rule 2. In the affidavit as well as the additional affidavit the Department had not brought on record service of notice under rule 2 of Schedule II. Moreover, it was evident from the affidavit filed on behalf of the Sub-Registrar that for the first time the order of attachment was given effect to by him only on June 26, 2015, when the charge was registered which was six and a half years after the sale deed was registered in favour of the petitioner. The order of the Tax Recovery Officer declaring the transfer null and void and the subsequent communication for auction of the property were to be set aside. (AY. 1998-99)
Rekhadevi Omprakash Dhariwal v. TRO (2018) 406 ITR 368 / 257 Taxman 109 / 304 CTR 430 / 168 DTR 427 (Guj.)(HC)

S. 281 : Certain transfers to be void – Transfer of property by legal heirs of original assessee – Tax recovery officer has no power to declare transfer is void – Department was granted liberty to file a civil suit to declare the sale transaction and sale deed executed in favour of the petitioner, null and void. [S. 222, 226] 2475
Court held that the Tax Recovery Officer could not declare the transfer of the property null and void according to the provisions of the 1961 Act. Granting liberty to the petitioner to approach the Tax Recovery Officer under rule 11 of the Second Schedule seeking adjudication of its claim the order of TRO was set aside and the Department was granted liberty to file a civil suit to declare the sale transaction and sale deed executed in favour of the petitioner, null and void.
Agasthiya Holdings Pvt. Ltd. v. CIT (2018) 403 ITR 288 / 255 Taxman 247 / 166 DTR 300 / 305 CTR 399 (Mad.)(HC)

S. 281 : Certain transfers to be void – Tax Recovery officer ('TRO') has no jurisdiction to declare transaction of transfer of property as null and void in proceedings under rule 16 of Second Schedule to Act. [S. 220, R. 48] 2476
Allowing the petition the Court held that; Tax Recovery officer ('TRO') has no jurisdiction to declare transaction of transfer of property as null and void in proceedings under rule 16 of Second Schedule to Act. Followed, *TRO v. Gangadhar Vishwanath Ranade (1998) 234 ITR 188 (SC)* and co-ordinate bench in case of *Karsanbhai Gandabhai Patel v. TRO (2014)43 taxmann.com 415 (Guj) (HC))* and held that TRO had no power to declare transfer as void and the status of the department being a creditor, will have to file a suit for a declaration that the transaction of transfer is void under S. 281 of the Act.
Nitaben Harishbhai Shah v. TRO (2018) 406 ITR 347 / 253 Taxman 222 / 163 DTR 442 / 302 CTR 406 (Guj.)(HC)

S. 281B : Provisional attachment – Reasonable apprehension that Assessee may default as the transactions discovered to be bogus and net worth of assessee declining accordingly the provisional attachment is held to be Justified. [S. 147] 2477
Dismissing the petition the Court held that, a provisional attachment of properties can be made under S. 281B if there is reasonable apprehension that the assessee may default the ultimate collection of demand, i.e., likely to be raised on completion of the assessment. Court also held that the reasons provided for provisional attachment of

properties had to be viewed in the background of the tax evasion allegedly conducted by the NDTV by floating paper companies to raise approximately ₹ 1,100 crores and later dissolving them. The annual reports and financial statements of the assessee showed that its net worth had constantly declined over the years. The order of provisional attachment of properties was justified. (AY. 2008-09)

New Delhi Television Ltd. v. DCIT (2017) 298 CTR 230 / 156 DTR 217 / 84 taxmann.com 136 / (2018) 405 ITR 132 (Delhi)(HC)

2478 **S. 282 : Service of notice – Reassessment – Service of notice at the factory premises of the Assessee on the security guard was held to be valid,though "service" of notice u/s 147/148 is not a mere procedural requirement, but a condition precedent for initiation of proceedings, the service upon a person who was not authorized to receive notice does not render the proceedings null and void if the assessee complied and entered appearance. [S. 148 254(1), 292B]**

Question before the Court was "Whether the Income Tax Appellate Tribunal is justified in law in holding that service of notice at the factory premises of the Assessee on the security guard was not proper service under the provisions of Section 282(2) of the Income Tax Act, 1961?" After considering the various case laws on the subject the High Court answered the question in favour of the revenue and held that, the assessment proceedings under Section 147/148 of the Act are not invalid or void for want of proper service of notice. However, an order of remand is required to be passed as the Tribunal has not adjudicated and decided the appeal filed by the respondent – assessee on merits. (AY. 1995-96)

CIT v. Sudev Industries Ltd. (2018) 405 ITR 325 / 167 DTR 297 / 256 Taxman 317 / 304 CTR 338 (Delhi)(HC), www.itatonline.org

Editorial : SLP of assessee is dismissed, Sudev Industries Ltd. v. CIT (2018) 259 Taxman 221 (SC)

Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015

S. 10(1) : Offences and Prosecution – Undisclosed Foreign Income – Court cannot extend or reduce time contrary to statutory provisions – Summons issued only after notices were issued – Issue of parallel proceedings is question of fact – A writ of prohibition could not be issued to prevent the authorities from initiating prosecution, as that would render the provisions of section 48 inoperative. [S. 10(3), 11(1), 48, Art. 226] 2479

Dismissing the petition the court held that ; Court cannot extend or reduce time contrary to statutory provisions. Summons issued only after notices were issued. Issue of parallel proceedings is question of fact. The assessee had not placed any materials before the court to show that any order of sanction had been passed under section 55, or steps had been taken to initiate prosecution. Furthermore, the order of sanction to prosecute passed under section 55 being an administrative act, the need to provide an opportunity of personal hearing to the accused did not arise. Section 48(1) stated that Chapter V dealing with offences and prosecution should be independent of any order under the 2015 Act, that might be, or had not been made, on any person and it should be no defence that the order had not been made on account of time limitation or for any other reason. Thus, the language employed in the statute, included "offences and prosecution", as contained in Chapter V, as independent of other proceedings enunciated under the 2015 Act. Section 48 commenced by stating that Chapter V was not in derogation of any other law or any other provision of the 2015 Act. Based on the apprehension of the assessee, a writ of prohibition could not be issued to prevent the authorities from initiating prosecution, as that would render the provisions of section 48 inoperative. (AY. 2015-16)

Srinidhi Karti Chidambaram v. CIT (2018) 404 ITR 578 / 255 Taxman 495 / 166 DTR 17 / 302 CTR 353 (Mad.)(HC)

Editorial : Decision of the single judge is reversed, Srinidhi Karti Chidambaram. v. PCIT (2019) 411 ITR 1 (Mad.)(HC)

S. 55 : Sanction – Return of income has many schedules are part of income referred to S. 139 of the Act – Offence under S. 50 of the Black money Act is made out only if, in the return of income under sub S. (1) or sub S. (4) or sub S. (5) of the income-tax Act, there has been a wilful failure to disclosure any information relating to foreign asset – On facts the asset was disclosed in Schedule FA and in the case of Karti Chidambaram, in the original return of income filed and other three cases in the revised return of income filed with in due date ; sanctioning authority has come to an erroneous conclusion that the case deserve prosecution for non-discloure of the details of the asset in the return of income filed under S. 139(1). Sanction order was set aside, offences under S. 50 is not made out consequently, complaints filed are quashed. However, contention of the assesses that the Principal Director of Income- 2480

tax is not an authority, jurisdiction /competence under S. 55 of the Black Money Act, to sanction prosecution or file a prosecution complaint for offences under S. 50 of the Black Money Act is not accepted.[S. 2(11), 2(12), 4, 49, 50 59, 84, ITACT, S. 139, Art. 14]

The petitions were filed questioning the competence of the PCIT (Tamil Nadu and Puducherry) to sanction prosecution for offences under S. 50 of the Black Money (Undisclosed foreign Income and Assets) and Imposition of Tax Act, 2015 to file the complaint against the petitioners. Petitions declare that S. 48 and S. 50 of the Black Money Act as unconstitutional and violative of Article 14 of the Constitution of India. Allowing the petitions the Court held that, return of income has many schedules are part of income referred to S. 139 of the Act-Offence under S. 50 of the Black money Act is made out only if, in the return of income under sub S. (1) or sub S. (4) or sub S. (5) of the income-tax Act, there has been a wilful failure to disclosure any information relating to foreign asset. On facts the asset was disclosed in Schedule FA and in the case of Karti Chidambaram, in the original return of income filed and other three cases in the revised return of income filed with in due date ; sanctioning authority has come to an erroneous conclusion that the case deserve prosecution for non-discloure of the details of the asset in the return of income filed under S. 139(1). Sanction order was set aside, offences under S. 50 is not made out consequently, complaints filed are quashed. However, contention of the assesses that the Principal Director of Income-tax is not an authority, jurisdiction /competence under S. 55 of the Black Money Act, to sanction prosecution or file a prosecution complaint for offences under S. 50 of the Black Money Act is not accepted. (AY. 2015-16 & 2016-17)

Srinidhi Karti Chidambaram & Ors v. PCIT (2018) 172 DTR 113 / 305 CTR 689 / (2019) 411 ITR 1 (Mad.)(HC)

Editorial : Decision of single judge Srinidhi Karti Chidambaram v. CIT (2018) 404 ITR 578 / 255 Taxman 495/166 DTR 17/302 CTR 353 (Mad) (HC)

Dispute Resolution Scheme, 2016

S. 201(1)((h) : Tax arrear – penalty levied for contravention of S. 269SS and 269T is eligible to claim the benefit of the Scheme. [S. 202(b), 269SS, 271D, 271E] 2481

Single Judge held that penalty levied for contravention of S. 269SS and 269T is eligible to claim the benefit of the Scheme. On appeal by the revenue dismissing the appeal the division bench held that when a specified sum was provided as penalty, such specified sum was the minimum penalty payable. This did not, however, mean that the benefit of the Scheme could be claimed only by those assessees who had been levied penalty under the provisions of the Act providing for minimum Penalty and maximum penalty. Apart from the fact that such a contention was not raised when the writ petitions were heard by the single judge, on the merits also, such contention was rejected. According to S. 271D a person who was liable to pay penalty thereunder was liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit or specified sum so taken or accepted, in contravention of S. 269SS. Similarly, under S. 271E also, the penalty provided was a sum equal to the amount of loan or deposit or specified advance, if so repaid. The assessees could not be denied the benefits of the Scheme.

CIT v. Grihalakshmi Productions And Another. (2018) 405 ITR 75 / 169 DTR 70 / 304 CTR 199 (Ker.)(HC)

Editorial : Decision in Grihalakshmi Productions And Another v. JCIT (2017) 396 ITR 10 (Ker) (HC) is affirmed. SLP of revenue is dismissed CIT v. Grihalakshmi Productions (2018) 405 ITR 76 (SC)

Gift tax-Act, 1958

2482 **S. 4 : Deemed gift – Investment company – Sale of shares at ₹ 10 per share as against book value of shares at ₹ 6. 86 per share cannot be held to be in adequate – Valuation as per Schedule III of the Wealth-tax Act, 1957 cannot be applied. Addition was deleted.**

Allowing the appeal of the assessee the Court held that; In the opinion of this Court both the lower authorities and the AO fell into error in proceeding to apply III Schedule to the Wealth Tax Act (by reason of Rule 11), which is applicable to the investment company, when clearly the findings pointed out to the fact that the necessary pre-conditions of treating M/s Dua Engineering Pvt. Ltd., as an investment company did not exist. If rule was inapplicable, the other mechanism of applying the value of a non-investment company, was to apply. This meant that the book value of the share (₹ 6. 86) had to be applied. Therefore, ₹ 10/- value at which the assessee sold her shares to her husband in 1993 could not be treated as inadequate consideration. The findings of the lower authorities are, therefore, in error of law. The question of law is answered in favour of the assessee. Addition was deleted

Amita Dua v. GTO (2018) 164 DTR 142 (Delhi)(HC)

2483 **S. 4 : Gifts to include certain transfers – Firm – Induction of new partners to develop the business of the firm – Reallocation of shares will not amount to gift hence not liable to gift tax. [S. 4(1)(a), 26(6)]**

Allowing the reference the Court held that Court the specific contention of the assessee that the induction of new partners was in the course of the business to develop the business of the firm was not considered by the Tribunal. The order of the Tribunal was not sustainable either on the facts or in law.

Mani K. Thomas v. CGT (2018) 404 ITR 257 (Ker.)(HC)

2484 **S. 16 : Reassessment-Deemed Gift – No conclusive finding rendered by Appellate Tribunal on question of notional or deemed gift – Order was set aside. [S. 4(1)(a)]**

Allowing the appeals of the revenue the Court held that, in income tax proceedings the Court had reversed the Appellate Tribunal's findings and held that the characteristic of the sale proceeds as a capital loss was sham and brought the amounts into question to tax – either as business receipts or as business losses. Such being the case, a like treatment had to be given in the gift-tax proceedings. The Tribunal had considered only the validity of the proceedings, but had not considered whether the transactions under S. 4(1)(a) amounted to deemed gift. No conclusive finding in that regard was rendered, nor any finding could have been rendered or was given. The orders of the Tribunal were set aside. Matter remanded.

CGT v. Jindal Equipment Leasing. (2018) 402 ITR 184 (Delhi)(HC)
CGT v. Stainless Investments Ltd. (2018) 402 ITR 184 (Delhi)(HC)
CIT v. Mansarover Investment Ltd. (2018) 402 ITR 184 (Delhi)(HC)

Income Declaration Scheme, 2016 – Finance Act, 2016 (2016) 384 ITR 1 (St) (IDS)

S. 183 : Refund of tax – Adjustment of tax paid under the scheme against tax payable on regular assessment-Tax in respect of voluntarily disclosed income not refundable – Application was rejected on the ground that notice u/s 143(2) was already issued – Revenue was to be directed to adjust amount which had been deposited by assessee for the tax liability for the Asst. year 2014-15. [S. 191] 2485

Allowing the petition the Court held that ; under Income Declaration Scheme, 2016, assessee disclosed undisclosed income of ₹ 29,15,156 for assessment year 2014-15 determining total tax payable (including penalty) thereon at ₹ 13,12,271 and paid first instalment amounting to ₹ 3,28,068. Case of assessee was selected for scrutiny for said assessment year 2014-15 and notice under section 143(2) was already issued. As a result revenue rejected assessee's application under Disclosure Scheme. Accordingly the revenue was to be directed to adjust amount which had been deposited by assessee. (AY. 2014-15)

Sangeeta Agrawal (Smt.) v. PCIT (2018) 409 ITR 254/257 Taxman 263 / 304 CTR 330 / 169 DTR 169 (MP)(HC)

Editorial: SLP of revenue is dismissed , PCIT v. Sangeeta Agrawal (Smt.) (2019) 262 Taxman 165 (SC)

S. 183 : Payment of tax – Failure to pay third instalment – Rejection of application was held to be justified – Old age and ill health or forgetfulness to make payment and the assesse was 70 years age cannot be the ground to extension of time for payment of third instalment. [S. 119(2)] 2486

Dismissing the petitions, the Court held that; the time periods fixed for the payment of the third instalment of the remaining 50 per cent of the total tax, surcharge and penalty payable, were mandatory and had to be adhered to. Mere involvement in office work and marketing activities could not be a good justification and ground to seek and ask for extension of time by the assessees. Forgetting to pay the dues was unbelievable and a lame excuse. It was not an extraordinary case which justified invoking writ jurisdiction under article 226 of the Constitution and grant further time beyond the fixed time, even assuming that the time stipulated, under the Scheme of 2016, could have been extended by the Board under section 119(2). In the case of Meena Rastogi, the Court held that old age and ill health or forgetfulness to make payment and the assesse was 70 years age cannot be the ground to extension of time for payment of third instalment.

Siddharth Rastogi v. CBDT (2018) 402 ITR 17 / 301 CTR 545 / 163 DTR 449 (Delhi)(HC)
Dal Chandra Rastogi v. CBDT (2018) 402 ITR 17 / 301 CTR 545 / 163 DTR 449 (Delhi) (HC)
Meena Rastogi v. CBDT (2018) 404 ITR 97 / 301 CTR 548 / 163 DTR 452 (Delhi)(HC)

Editorial : Dal Chandra Rastogi v. CBDT (2019) 264 taxman 83 (SC). Supreme Court permitted the assessee to deposit tax under Income Declaration Scheme belatedly subject interest @12%.

2487 **S. 187 : Time for payment of tax – Power to extend the payment of tax – CBDT has the power to condone the delay in depositing the tax. Matter remanded to CBDT to consider the request of the assessee. [S. 119, 183, 184]**

Allowing the petition the Court held that; the Income Declaration Scheme, 2016 contained a specific provision making the provisions of S. 119 of the Act, 1961, which pertained to the power of the Board to issue instructions to the subordinate authorities, applicable to the Scheme. The Board should judge the relevant facts which included the circumstances under which the assessee claimed incapacity to make the payment of the last instalment and come to the conclusion whether this was a fit case for exercise of powers under S. 119(2) of the Act. If the assessee was willing to deposit the third instalment with reasonable interest as might be directed by the Board, he could indicate so in writing to the Board within 10 days. Matter remanded. (2016) 386 ITR 5(St). (6) (2017) 393 ITR 77 (St)

Yogesh Roshanlal Gupta v. CBDT (2018) 403 ITR 12 (Guj.)(HC)

Interest-tax Act, 1974

S. 2(5B)(vi) : Financial Company – Finance Charges such as interest received from hire purchase transactions and other Interest was held to chargeable to tax. [S. 8(2)] 2488

Allowing the appeal of the revenue the Court held that; Finance Charges such as interest received from hire purchase transactions and other Interest was held to chargeable to tax. (AY. 1997-98)

CIT v. Kerala State Financial Enterprises Ltd. (2018) 402 ITR 25 (Ker.)(HC)

Kar Vivad Samadhan Scheme – Finance Act 1988

2489 **S. 88 : Declaration and prescribed rates of amounts payable – No tax arrears on the date of filing of declaration – Arrears was adjusted without giving an notice of hearing-Rejection of application was held to be valid. [S. 87]**

Dismissing the petition the Court held that; there was no tax arrears on the date of filing of the application as once the assessment was set aside demand gets cancelled. Accordingly rejection of application was held t be valid. As regards the voluntary deposit of the amount the same was directed to be refunded on furnishing of evidence of deposit of tax.

Kapurchand Jethaji & Co. v. CIT (2018) 164 DTR 98 (Bom.)(HC)

Pradhan Mantri Garib Kalyan Yojna 2016 (PMGK Scheme) Finance Act, 2016

S. 199 : PMGK Scheme is self contained complete code-Benefit of credit for advance tax paid at any stage before, during pendency of Scheme or thereafter cannot be given-No provision prohibits or bars an assessee, who had made true and correct disclosure, to partly take benefit of the option under S. 115BBE and partly exercise the second option in the form of declaration under PMGK Scheme. The sections do not prohibit part declarations under both options, provided entire undisclosed income has been accounted for in the declaration made under PMGK Scheme and S. 115BBE. [S. 199A to 199R, S. 115BBE, 216] 2490

Allowing the petition the Court held that, PMGK Scheme is self contained complete code. Benefit of credit for advance tax paid at any stage before, during pendency of Scheme or thereafter cannot be given – No provision prohibits or bars an assessee, who had made true and correct disclosure, to partly take benefit of the option under S. 115BBE and partly exercise the second option in the form of declaration under PMGK Scheme. The sections do not prohibit part declarations under both options, provided entire undisclosed income has been accounted for in the declaration made under PMGK Scheme and S. 115BBE. (Circular No 2 of 2017, dated 18-1-2017 (2017) 390 ITR 125 (St))

Virag Tiwari v. PCIT (2018) 164 DTR 33 / 301 CTR 602 / 256 Taxman 103 (Delhi)(HC)

S. 199C : Declaration under Pradhan Mantri Garib Kalyan Yojana Scheme after search and seizure – Retention was held to be valid – Court directed to release of small part of seized amount. [S. 132, 132B] 2491

The assessee filed a writ petition challenging a portion of Circular No. 2 of 2017 dated January 18, 2017 ([2017] 390 ITR (St.) 125) by which the Board disabled a person from seeking adjustment of the cash seized by the Department and deposited in the public deposit account, towards payment of tax, surcharge and penalty under the Scheme. The Court held that, retention was held to be valid however the Court directed to release of small part of seized amount. The Court also observed that release would not hamper either any investigation or further proceedings on the part of the Department.

Jaya Balajee Real Media Pvt. Ltd. v. CIT (2018) 404 ITR 124 / 167 DTR 465 / 303 CTR 489 (T&AP) (HC)

Securities Transaction Tax (STT) – Finance (No. 2) Act, 2004

2492 **S. 100 : of the Chapter VII of the Finance (No. 2) Act, 2004 – Collection and recovery of Securities transaction tax (STT) – Derivatives-Securities Transaction Tax (STT) at rate of 0.10 per cent on settlement price to be paid by purchaser of futures contract which were settled by way of physical delivery-Not different from transaction in equity shares where contract is settled actual delivery or transfer of shares and rates of STT as applicable to such delivery based equity transactions would also be applicable to such derivative transactions.**

National Stock Exchange of India Limited (NSE) vide circular dated 17-7-2018 had informed members of petitioner – Association that it had decided to levy Securities Transaction Tax (STT) at rate of 0.10 per cent on settlement price to be paid by purchaser of futures contract which were settled by way of physical delivery. It was a grievance of petitioner that in event CBDT in future comes with a policy that rate of STT on such transaction was higher than what was provided in said circular, its members would be put to great prejudice inasmuch as they would not be in a position to recover said STT from parties whose transactions were already over. CBDT had clarified that where a derivative contract was being settled by physical delivery of shares, transaction would not be any different from transaction in equity share where contract was settled by actual delivery or transfer of shares. It further stated that, rates of STT as applicable to such delivery based equity transactions would also be applicable to such derivative transaction. Court held that position is clarified by CBDT that it would not differentiate between transactions which were delivery based equity transaction and delivery based derivative transactions and said communication dated 27th August sufficiently takes care of the stake holders who are aware of the said communication and they are bound by the direction issued by the CBDT. Accordingly the petition is disposed of with the aforesaid clarification.)

Association of National Exchanges Members of India v. Securities and Exchange Board of India (2018) 258 Taxman 362 / 149 SCL 608 (Bom.)(HC)

Wealth-tax Act, 1957

S. 2(ea) : Assets – Remand to Assessing Officer by Tribunal on question of valuation, issue stating that the lands not includible in net wealth cannot be raised, matter remanded. [S. 24(5)] 2493

Court held that, the scope of remand by the Tribunal to the Wealth-tax Officer was only with respect to the specific question of valuation. At that stage, when the Wealth-tax Officer decided on the valuation, the final report of the Departmental Valuation Officer was not available. The findings rendered by the Wealth-tax Officer could not have been interfered with by the Commissioner (Appeals) who entertained the issue of taxability which had been earlier given up. The circumstances that for later years, the Department did not accept the contentions regarding the non-taxability of assets, per se, could not afford a ground to insist that the remand made by the Tribunal ought to and was enlarged so as to include that ground in the earlier order when it was not agitated. Matter remitted for consideration of issue of valuation. (AY. 1993-94, 1994-95)

Lalit Suri Through Legal Representative Jyotsna Suri v. CWT (2018) 402 ITR 104 / 166 DTR 84 / 305 CTR 942 (Delhi)(HC)

Jyotsna Suri v. CWT (2018) 402 ITR 104 / 166 DTR 84 / 305 CTR 942 (Delhi)(HC)

S. 2(ea) : Assets-Valuation of asset – Immoveable property-Lessee sub-leasing property for higher rent and receiving deposit – Value Of Property declared by assessee was correct fair market value as on the relevant valuation date – Amount paid by lessee was not assessable as income of assesse. [S. 5, 7, Wealth-tax Rules, 1957] 2494

Dismissing the appeal of the revenue the Court held that the Tribunal was correct in holding that the value of the property declared by the assessee was the correct fair market value as on the valuation date. The emphasis placed upon the expression "rent received or receivable" in clause (2) of the Explanation to rule 5 of Schedule III to the Wealth-tax Act, 1957, ought not to be given a wide interpretation as sought. (AY. 1992-93

DIT Wealth-Tax v. Hersh W. Chadha (2018) 401 ITR 502 / 165 DTR 52 / 302 CTR 245 (Delhi)(HC)

S. 7 : Valuation of assets – Undisclosed hundis – Valuation under Income-tax Act, 1961 cannot be adopted for purposes of wealth-tax. 2495

Allowing the appeal of the assessee the Court held that undisclosed hundis valued under income-tax Act cannot be adopted for purposes of wealth-tax Act. The value of an asset for the purposes of the Wealth-tax Act, 1957 is to be determined strictly in terms of the provisions of section 7 and not by any other mode. Section 7 lays down that subject to the provisions of sub-section (2), the value of any asset, other than cash, for the purposes of this Act shall be its value as on the valuation date determined in the manner laid down in Schedule III. Rule 14 of Schedule III provides that the value of any asset in its books should be taken as the value for wealth-tax purposes. (AY. 1992-93)

Kishindas Ramchand Nagpal. v. ACWT (2018) 408 ITR 388 / 305 CTR 91 / 170 DTR 276 (Bom.)(HC)

2496 **S. 7 : Valuation of assets – Net Wealth – Valuation of all assets and the valuation operated not on a year-to-year basis but for a four year cycle. The only exception was that where jewellery included gold or silver or any other alloy, the valuation of gold had to be undertaken annually – Deletion of addition was held to be justified. [Wealth-tax Rules, 1957, 18, 19]**

Dismissing the appeals of the revenue the Court held that, it was evident that a conjoint reading of rules 18 and 19 of the Wealth-tax Rules, 1957, required valuation of all assets and the valuation operated not on a year-to-year basis but for a four year cycle. The only exception was that where jewellery included gold or silver or any other alloy, the valuation of gold had to be undertaken annually. Only because the search was an event which per se could not have compelled the assessees to go in for fresh valuation, unless there was a compulsion in law to do so. The assessees acted within their rights in relying upon the prevailing valuation, which had ended on March 31, 2012.

PCWT v. Padma Dalmia (2018) 403 ITR 150 / 165 DTR 57 / 303 CTR 125 (Delhi)(HC)

PCWT v. Raghu Hari Dalmia (2018) 403 ITR 150 / 165 DTR 57 / 303 CTR 125 (Delhi)(HC)

2497 **S. 7 : Valuation of assets – Net Wealth – Vehicle funded by and maintained on behalf of Principal foreign company was held to be not included in net Wealth of Assessee – Principle of consistency was followed. [S. 2(m)]**

Dismissing the appeal of the revenue the Court held that; the appellate authorities, on the facts, had held that though the car was held by the assessee in his name, it was funded and maintained by his foreign principal, on whose behalf the assessee held the car. The foreign principal did not have any office or branch in India. It was also found that for the earlier assessment years, 1986-87, 1987-88, 1990-91 and 1991-92, the value of the car was not included. Being concurrent findings of fact and having had regard to the fact that the car was funded by the assessee's foreign principal and maintained on its behalf, the value of the car could not be included in the net wealth of the assessee. (AY. 1992-93)

DIT Wealth-Tax v. Hersh W. Chadha (2018) 401 ITR 502 / 165 DTR 52 / 302 CTR 245 (Delhi)(HC)

2498 **S. 14 : Return – Failure to file return on due date – Return was filed pursuant to reassessment notice – liable to pay interest from due date till date of filing of return. [S. 17, 17B]**

Dismissing the appeal of the assessee the Court held that; since the assessments were made for the first time, they were "regular assessments" made under the Act. Therefore, all the consequences of such assessments followed under the different sections of the Act. The assessments implied not only the determination of net wealth liable to be taxed under the Act, but also the wealth-tax payable by the assessee on the net wealth assessed including the liability to interest under section 17B, if chargeable. The assessments made for the assessment years 2007-08 and 2008-09 were made for the first time under S. 17 and were regular assessments and therefore attracted S. 17B(1) of the Act. Hence the assessee was liable to pay interest under S. 17B(1) from the due date under S. 14(1) the date of filing of the returns under S. 17 of the Act. (AY. 2007-08 2008-09)

DR. S. F. V. Selvaraj v. ACWT (2018) 403 ITR 213 / 168 DTR 168 / 305 CTR 894 (Mad.)(HC)

S. 17 : Reassessment – Protective basis – Assets – Immovable property – Assessment could not be reopened on basis of certain stand of assessee taken before Assessing Officer in income-tax proceedings. [S. 2(ea), 16(3)] 2499

Dismissing the appeal of the revenue the Court held Assessment could not be reopened on basis of certain stand of assessee taken before Assessing Officer in income-tax proceedings. (AY. 1998-99)

CWT v. Harakchand Uttamchand Khinvasara (HUF) (2018) 97 Taxmann.com 518 / 258 Taxman 151 (Bom.)(HC)

Editorial : SLP of revenue is dismissed ; CWT v. Harakchand Uttamchand Khinvasara (HUF) (2018) 258 Taxman 150 (SC)

Wealth-tax Act, 1957 – Finance Act 1983

2500 **S. 40(3) : Company – Levy of wealth tax on land and building which is not used for the purpose of business was held to be valid – Parliament has legislative competence to tax land and buildings which are in List-II of the 7th Schedule and whether the classification of "companies in which the public are not substantially interested" is neither arbitrary nor violative of Article 14 of the Constitution of India. [Art. 14]**

Dismissing the petition the Court held that, S. 40(3) of the Act bringing to tax land and building which is not used for business purposes by companies in which public are not substantially interested to tax under the Wealth Tax Act and leaving out those land and buildings which are used for business purposes by companies in which public are not substantially interested from the charge of wealth tax under the Act is a reasonable classification. Therefore, the legislation bringing to tax land and buildings owned by the companies in which public are not substantially interested without any reference to the manner in which such companies came into ownership of the land and buildings is a decision taken by the legislature and cannot be faulted on the touchstone of Article 14 of the Constitution of India. The speech of the Finance Minister while introducing the bill points out the mischief which was existing namely persons transferring land and buildings owned by them to closely held companies i.e. companies in which the public are not substantially interested so as to evade payment of wealth tax. Therefore, the legislation to cure the mischief was to bring to tax all companies in which public are not substantially interested to the extent it held land and buildings which are not used for business purposes, without determining the source and manner of acquisition. In fact, the Finance Minister's speech itself indicates that it is proposed to levy wealth tax in case of closely held companies inter alia in respect of land and buildings owned by such companies and not used for the business purposes. The object of introducing the bill was in terms of the Finance Minister's speech not restricted only to bring to tax those companies in which public are not substantially interested to which the land and building has been transferred by its members. The Parliament has decided to bring to tax the land and buildings not used for the purposes of business and owned by the companies in which the public are not substantially interested.

The Parliament has thus made a reasonable classification between the companies in which public are substantially interested from the companies in which public are not substantially interested. This classification cannot be found fault with because the petitioners want further classification to have been done by the Parliament.

The remedy of the petitioners, if any, in matters such as this, is to have the Parliament to amend the law so as to meet what according to the petitioners would be the most just and appropriate classification, by adding further classification and restricting its applicability only where the assets have not been acquired by the company in which the public are not substantially interested out of its own profits.

The legislature has in its wisdom decided that the executive should not be burdened with finding out the manner in which the land and buildings has been acquired by the company, to bring it to tax. The mere fact that there is land and building owned by the

company and it is not used for the purposes of business is sufficient to hold that these assets to be taken into account under Section 40(3) of the Act for the purposes of wealth tax under the Wealth-tax Act. Therefore,the challenge to Section 40(3) of the Act is not sustainable. (AY. 1984-85, 1985-86, 1986-87)

Indian Express Newspapers (Bom.) (P) Ltd. v. IAC (2018) 403 ITR 341 / 164 DTR 233 / 302 CTR 33 (Bom.)(HC), www.itatonline.org

Interpretation of taxing statutes

2501 **Interpretation of taxing statues – Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification. When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue. The ratio in *Sun Export Corporation, Bombay v. Collector of Customs Bombay (1997) 6 SCC 564* is not correct and all the decisions which took similar view as in Sun Export Case stands overruled.**

Full Bench of Supreme Court explained entire law on interpretation of statutes, relating to 'purposive interpretation', 'strict interpretation', 'literal interpretation', etc explained. Difference in interpretation of statutes v. exemption notifications explained. Q. Whether there is doubt or ambiguity in interpretation of a statute or notification benefit of doubt should go to the taxpayer or to the revenue explained. Law on Doctrine of substantial compliance and "intended use" also explained. Court held as under ;

(1) Exemption notification should be interpreted strictly; the burden of proving applicability would be on the assessee to show that his case comes within the parameters of the exemption clause or exemption notification.

(2) When there is ambiguity in exemption notification which is subject to strict interpretation, the benefit of such ambiguity cannot be claimed by the subject/assessee and it must be interpreted in favour of the revenue.

(3) The ratio in *Sun Export Corporation, Bombay v. Collector of Customs Bombay (1997) 6 SCC 564* is not correct and all the decisions which took similar view as in Sun Export Case stand overruled.

The instant civil appeal may now be placed before appropriate Bench for considering the case on merits after obtaining orders from the Hon'ble Chief Justice of India. (CA NO. 3327 of 2007, dt. 30.07.2018)

Commissioner of Customs v. Dilip Kumar (FB)(SC), www.itatonline.org

2502 **Interpretation of taxing statues – "Explanation" and "Proviso" "Exemption"**

In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing to be read in Nothing is to be implied. One can only look fairly at the language used. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the provision. (AY. 2003-04, 2004-05)

New Okhla Industrial Development Authority (NOIDA) (No.1) v. CCIT (2018) 406 ITR 178 / 95 taxmann.com 58 / 303 CTR 448 / 168 DTR 48 (SC), www.itatonlin.org

2503 **Interpretation of taxing statues – Rule against double taxation**

A taxing statue should not be interpreted in such a manner that its effect would be to cast a burden twice over for the payment of tax on the taxpayer unless the language of

the statute is so compelling that the Court has no alternative than to accept it. In a case of reasonable doubt, the construction most beneficial to the tax payer is to be adopted. (Referred, *Laxmipat Singhania v. CIT (1969) 72 ITR 291 (SC) Jain Brothers v. UOI (1970) 77 ITR 107 (SC)*)
Mahaveer Kumar Jain v. CIT (2018) 404 ITR 738 / 165 DTR 113 / 302 CTR 1 / 255 Taxman 161 (SC), www.itatonline.org

Interpretation of taxing statues – Proviso – Amendment to remedy unintended consequences and make provision workable is to be treated as retrospective. [S. 40(a)(ia), 139(1)] 2504
A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the section, is required to be read in to section to give the section a reasonable interpretation and requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as a whole.
CIT v. Calcutta Export Company (2018) 404 ITR 654 / 165 DTR 321 / 302 CTR 201 / 255 Taxman 293 (SC), www.itatonline.org

Interpretation of taxing statues – Intention of legislature must prevail. [S. 10A, 80HHC, 80HHE] 2505
A statute is the intention of the legislature which enacts it after having regard to various facts and circumstances. It is a cardinal principle of law that the interpretation by the court shall be done in such a way that the intention of the Legislature shall prevail and no injustice occurred with the parties. The rule of harmonious construction is the thumb rule to interpretation of any statute. An interpretation which makes the enactment a consistent whole, should be the aim of the courts and a construction which avoids inconsistency or repugnancy between the various sections or parts of the statute should be adopted.
CIT v. HCL Technologies Ltd. (2018) 404 ITR 719 / 165 DTR 305 / 302 CTR 191 / 255 Taxman 313 (SC), www.itatonline.org

Interpretation – Communication of Ministry of Commerce can be relied on – Inland ports. 2506
Term "Inland Ports" is not defined under S. 80IA of the Act. Notification issued by Central Board of Excise and Customs that Inland Container depots can be termed Inland Ports and communication of Ministry of Commerce and Industry confirming that Inland Container Depots are Inland Ports can be relied on for interpreting S. 80IA(4),Explanation.
CIT v. Container Corporation of India Ltd (2018) 404 ITR 397 / 165 DTR 353 / 302 CTR 221 (SC), www.itatonline.org

Interpretation of taxing statutes – Income-tax – General principles – Taxing provisions must be construed strictly so that no person who is otherwise not liable to pay tax, be liable to pay tax. 2507
It is a fundamental principle of law that a receipt under the Act must be made taxable before it can be treated as income. Courts cannot not construe the law in such a way

that brings an individual who otherwise is not liable to pay tax,with in the meaning of the income-tax Act, 1961 to pay tax. In the absence of any such specific provision, if an individual is subject to pay tax, it would amount to the violation of his Constitutional right. Taxing provisions must be construed strictly so that no person who is otherwise not liable to pay tax, be made liable to pay tax. CBDT circulars cannot be used to introduce new tax provision in statute which other wise absent.
ACIT v. Bharat V. Patel (2018) 404 ITR 37 / 165 DTR 218 / 302 CTR 110 / 255 Taxman 324 (SC), www.itatonline.org

2508 **Interpretation of taxing statutes-Interpretation of taxing statutes to be construed harmoniously with object of statute.**
Expression used in a taxing statue would ordinarily be understood in the sense which is harmonious with the object of the statute to effectuate the legislative animation.
B. L. Passi v. CIT (2018) 404 ITR 19 / 165 DTR 143 / 302 CTR 81 (SC), www.itatonline.org

2509 **Interpretation of taxing statutes – Presumption of prospectivity of statute – Machinery provisions.**
Every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation. There is a presumption of prospectivity of a statute. Whether machinery have retrospective effect,depends on content and nature of provisions of a taxing statute have to give effect to its manifest purposes.
CIT v. Essar Teleholdings Ltd. (2018) 401 ITR 445 (SC)(HC)

2510 **Interpretation of taxing statues – Literal interpretations – Black Money (Undisclosed Foreign Income and Assets) and Imposition of tax Act, 2015.**
Unless there is any ambiguity it would not be open to the court to depart from the normal rule of construction which is that intention of the Legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and Constitutional principle and practice.
Srinidhi Karti Chidambaram & Ors v. PCIT (2018) 172 DTR 113 / 305 CTR 689 / (2019) 411 ITR 1 (Mad.)(HC)

2511 **Interpretation – Binding precedent – Interpretations given by High Courts and Tribunals cannot be ignored by the Assessing Officers**
Allowing the reference of the assessee the Court states that in fact, the written submission of revenue, states "Litera leges, certainty concept and the concept that there is no equity on fiscal law irrespective of any judgement of any Honourable Court or Tribunal to go – by cannot be given to the aforesaid interpretations given in this written submission"
The above submission that decision of Court and/ or Tribunal interpreting a provision is to be ignored by the Assessing Officer, if accepted will ring the death knell of Rule of law in the Country. The Assessing Officer is bound by the views of the Court. The

above submission ignores the hierarchical system of jurisprudence in our country. (AY. 1993-94)
Bajaj Auto Finance Ltd. v. CIT (2018) 404 ITR 564 / 166 DTR 379 (Bom.)(HC), www.itatonline.org

Interpretation – Precedent – Merely filing of an SLP would not make the order of this Court bad in law or give a license to the Revenue to proceed on the basis that the order is stayed and/or in abeyance. 2512
Merely filing of an SLP would not make the order of this Court bad in law or give a license to the Revenue to proceed on the basis that the order is stayed and/or in abeyance. (ITXA No. 293 of 2016 dt. 03.08.2018)
PCIT v. Associated Cable Pvt. Ltd. (Bom.)(HC), www.itatonline.org

Interpretation – Precedent – Settlement Commission must follow decision of jurisdictional High Court. [S. 245C, 245D] 2513
It was not open for the Settlement Commission to disturb such ratio of the judgment of the High Court. If the Settlement Commission had noticed a judgment of a larger Bench of the same High Court or a judgment of the Supreme Court which, in an identical situation, laid down law to the contrary, it was open for the Settlement Commission to record that the judgment of the High Court in the case of Shalibhadra Developers (2017) 8 ITR. OL 355 (Guj) (HC) was rendered per incuriam. Except for this proposition, it was simply not open for the Settlement Commission to disturb the conclusions of the High Court on law points reached after detailed consideration. On the dispute about the orders of assessment being actually passed on December 26, 2017 itself or not, the Commissioner had given no finding.
CIT v. Vallabh Pesticides Ltd. And Another. (2018) 408 ITR 54 (Guj.)(HC)
Editorial : SLP is granted to the assessee. Vallabh Pesticides Ltd. v. CIT (2018) 407 ITR 27 (St) (SC)

Interpretation of taxing Statutes – Entries – Depreciation – Precedent – If a particular article would fall within the description by the force of the words used, it is impermissible to ignore the word description. Ratio in Bimetal Bearings Ltd. v. State of Tamil Nadu (1991) 80 STC 167(SC) 2514
Supreme Court in Bimetal Bearings Ltd. v. State of Tamil Nadu (1991) 80 STC 167(SC) explains how an entry has to be interpreted in a taxation statute. If the "entry" to be interpreted is in a taxing statute full effect should be given to all the words used therein and if a particular article would fall within a description, by the force of words used, it is impermissible to ignore the description, and denote the article under another entry, by a process of reasoning. The rule of construction by reference to contemporanea expositio is a well-established rule for interpreting a statute by reference to the exposition it has received from contemporary authority, though it must give way where the language of the statute is plain and unambiguous. If a particular article would fall within the description by the force of the words used, it is impermissible to ignore the word description. (AY. 2003-04, 2004-05)
CIT v. Cactus Imaging India (P.) Ltd. (2018) 406 ITR 406 / 256 Taxman 32 (Mad.)(HC)

2515 **Interpretation of taxing statutes – Income-tax – Provisions of Customs Act And Excise Act are different and not relevant in construing provisions of income-tax Act.**
Provisions of Customs Act And Excise Act are different and not relevant in construing provisions of income-tax Act.
CIT v. Lakshminarayana Mining Company (2018) 404 ITR 522 / 166 DTR 429 / 303 CTR 417 (Karn.)(HC)

2516 **Interpretation – Binding precedent – Appellate Tribunal – Assessing Officer is bound by decision of Tribunal – Pendency of an appeal would not amount to an order of stay. [S. 254(1)]**
Court held that ; Assessing Officer is bound by decision of Tribunal. Pendency of an appeal would not amount to an order of stay. Even assuming appeals have been presented as long as orders passed by the Income-tax Appellate Tribunal has not been stayed or set aside it is binding upon the *Assessing Officer. Referred, UOI v. Kamalakshi Finance Corporation Ltd (1982) AIR 1992 SC 711* (Para 9)
LIC Employees Co-operative Bank Ltd. v. ACIT (2018) 408 ITR 287 / 254 Taxman 119 (Mad.)(HC)

2517 **Interpretation of taxing statutes – Similarity in language used in provisions.**
When language employed in both the sections are similar, interpretation given in one particular section has to be adopted
CIT v. Swapna Enterprise (2018) 401 ITR 488 / 253 Taxman 531 / 166 DTR 51 / 302 CTR 504 (Guj.)(HC)

2518 **Interpretation of taxing statutes – Beneficial Provision – Retrospective application.**
When a provision is made in fiscal statute for the benefit of the assessee, in the absence of any express provision or a provision which by necessary implication gives a different impression, such provision which is beneficial to the assessee must be read and given effect to retroactively.
CIT v. Manoj Kumar Singh (2018) 402 ITR 238 / 303 CTR 294 / 167 DTR 179 (All.)(HC)

2519 **Words and phrases – Meaning of word "The"**
"The" is a word before nouns, with the specifying or particularising effect as opposed to the indefinite or generalising force of "a" or "an". It determines what particular thing is, meant, i.e., what particular thing to assume to be meant. "The" is always mentioned to denote a particular thing or a person". Section 24 of the Act refers to the "Initiating Officer". Therefore, it denotes "a particular officer or a person" and it cannot be generalised and stated that all Deputy Commissioners of Income-tax and Assistant Commissioners of Income-tax can function as the Initiating Officer under section 24.
Cascade Energy Pte Ltd. v. UOI (2018) 405 ITR 614 (Mad.)(HC)

2520 **Words and Phrases-Meanings of-"irregularity" and "illegality".**
While something not conforming to the established rule, method or usage and which is out of the ordinary is termed "irregular", anything which is prohibited by law, against the law, unlawful, illicit and not authorised or sanctioned as by rules is termed "illegal".
ACIT v. Vijay Television Private Ltd. (2018) 407 ITR 642 / 304 CTR 149 (Mad.)(HC)

Advocates Act (25 of 1961)

S. 7 : Functions of Bar Council of India – Code of ethics – Dishonest practice – For misrepresentations before the Court, which should under any and all circumstances be dealt with the iron hand of the judiciary with zero tolerance for such blatantly unethical and *mala fide* behaviour – Exemplary cost of ₹ 10 lakh was to be paid to plaintiffs [Contempt Courts Act, 1971] 2521

Certain Advocates have forgotten the code of ethics. They facilitate the unethical misadventures of their clients, encouraging their clients' dishonest practices, causing grave stress to the Judiciary, and bringing the entire judicial system to disrepute. It has become a vicious and despicable cycle wherein dishonest litigants with *mala fide* intentions seek out unethical Advocates, who for hefty fee and the lure of attracting similar new and unscrupulous clients, choose to disregard all ethics and the code of conduct enjoined upon this august profession. Court observed that; at this point of time, the Judiciary is mired in challenges of a very grave nature, perhaps like never before. It is being observed that there is, amongst some litigants and their Advocates, virtually no fear or hesitation in making false statements and misrepresentations before the Court, which should under any and all circumstances be dealt with the iron hand of the judiciary with zero tolerance for such blatantly unethical and *mala fide* behaviour. Therefore, such unethical and unacceptable behaviour needs to be met with the iron hand of the Court. The Courts must tackle all such unethical conduct fearlessly by taking stern action against litigants, and if need be their unethical Advocates as well. A failure to do so, will result in seriously jeopardising the Judiciary and will erode the Rule of Law, which is absolutely integral to the justice system in the country. The Courts must act swiftly and firmly, without getting intimidated by false and frivolous charges, and utterly baseless, malicious and dishonest allegations that are levelled against the Judges. (Notice of Motion No. 706 of 2017, dt. 05.03.2018)

Anand Agarwal v. Vilas Chandrakant Gaokar (Bom.)(HC), www.itatonline.org

S. 29 : Practice of law – Foreign law firms and foreign lawyers cannot set up offices and practice in India, however they can give advice to Indian clients on 'fly in and fly out' mode on temporary basis. [S. 24(1)(a), 47 (2)] 2522

Dealing with a PIL petition the Court held that, Foreign law firms and foreign lawyers cannot set up offices and practice in India, however they can give advice to Indian clients on 'fly in and fly out' mode on temporary basis. As regards Arbitration proceedings if provisions of Act of 1996 are applicable, foreign lawyers may not be debarred from conducting arbitration proceedings in view of S. 32, 33 of Act of 1961, however, the Bar Council of India and Central Govt. are liberty to make rules in this regard. BPO companies, providing range of customized and integrated services and functions may not violate provision of Act of 1961, only if activities in pith and substance do not amount to practice of law. If their services do not directly or indirectly amount to practice of law, Act of 1961 may not apply. Mere label of such services

cannot be treated as conclusive. If in pith and substance services amount to practice of law, provisions of Act 1961 will apply and foreign law firms or foreign lawyers will not be allowed to do so. This matter which may have to be dealt with on case to case basis having regard to.

Bar Council of India v. A. K. Balaji and others, AIR 2018 SC 1382

2523 **S. 35 : Punishment of advocates for misconduct – Status of Legislator is member of House. Legislator cannot be styled as full time salaried employees – Merely drawing salary or allowances does not result in creation of relationship of employer and employee between government and legislators – Merely because Advocate is elected people's representative, it does not amount to professional misconduct – In the absence of express provision in Act or Rules, Legislators cannot be debarred from practicing as Advocate. [S. 49, Bar Council of India Rules, 1975 R. 49, Art. 14, 32]**

Court held that; Legislator cannot be styled as full time salaried employees. Status od Legislator is member of House. Merely drawing salary or allowances does not result in creation of relationship of employer and employee between government and legislators. Merely because Advocate is elected people's representative, it does not amount to professional misconduct. In the absence of express provision in Act or Rules, Legislators cannot be debarred from practicing as Advocate, it does not amount to professional misconduct.

Ashwin Kumar Upadhyay v. UOI AIR 2018 SC 4633

Benami Property Transactions (Prohibition) Amendment Act, 2016

S. 2(9) : Benami Transactions – Purchase of property from known source in the name of wife will not be a benami property-Husband will be de jure owner and not of his wife who will be de facto owner in whose name title deed exists, it is legally permissible for a person to purchase an immovable property in name of his spouse from his known sources. [S. 2(9)(A)(b)] 2524

Allowing the appeal the Court held that ; purchase of property from known source in the name of wife will not be a benami property. Husband will be de jure owner and not of his wife who will be de facto owner in whose name title deed exists, it is legally permissible for a person to purchase an immovable property in name of his spouse from his known sources. Order of lower Court is set aside.

Manoj Arora v. Mamta Arora (2018) 258 Taxman 1 (Delhi)(HC)

Central Goods and Service Tax Act, 2017

2525 **GST Network : The regime is not tax friendly.**

High Court observed that ; GST was highly publicised and termed as popular but there has been great hue and cry because assessees are unable to obtain access to the GST website. Those in charge of implementation and administration must wake up and put in place the requisite mechanism to preserve the image, prestige and reputation of this country, particularly when we are inviting and welcoming foreign investment in the State and the country. Court also observed that; We would record that similar grievances have been raised before the Allahabad High court in Writ (Tax) No. 67 of 2018 and the order of the Division Bench of that Court dated 24th January 2018 directs the respondents before it to reopen the portal and in the event it is not done, there is further direction to entertain the application of the petitioner before the Allahabad High Court manually and pass orders on it after due verification of the credits as claimed by the petitioner before the Allahabad High Court. We would also be constrained to pass such order and that would not be restricted to the petitioner before us alone. (WP No. 2230 of 2018. dt. 06.02.2018.)

Abicor and Binzel Tecnoweld Pvt. Ltd. v. UOI (Bom.)(HC), www.itatonline.org

Central Sales tax Act, 1956

S. 3. When is a sale or purchase of goods said to take place in the course of inter-state or commerce – When is a sale or purchase of goods said to take place outside a State-The situs of sale of intangible property like trademarks & patents the situs of the owner of an intangible asset, would be the closest approximation of the situs of an intangible asset. On the above reasoning it was held that the exercise of the right to a trade mark or a patent right ; which has been obtained by the assessee, who had their principal places of business in the State of Kerala . When transferring their rights obtained under a statute to another entity having place of business in another state ; from where the transferee intend to exercise such rights thereafter, postulate , a movement of the intangible corporeal goods from one State to another and hence would be an interstate sale assessable to tax under the GST Act. The Transferor's principal places of business being with in the State of Kerala, the sale would be an interstate sale. The transfer is not a transfer of right to use, but a transfer of property in goods vesting the complete rights with the transferee and transferor having no subsisting right thereafter. Accordingly S. 3 of the CST Act applies on all forces and the agreement of transfer of the intangible, incorporeal rights, nay, goods,occasions the movement of the said goods from Kerala to other State where the transferee has their principal places of business. The agreement executed in Gujarat and Puducherry does not make the sale with in that Sate or union Territory , as S. 4 of the CST Act provide that sale of goods is deemed to take place in a State only when the goods are with in the State. Other wise any goods could be taken by the seller to another state and delivered to the purchaser making it an inter-state sale. Accordingly dismissing the petition,sustaining the order of to the extent the transfer of patent right is assessed under the CST Act. [S. 4, Art. 286(1) (a), 366(29A)(d), IT Act, S. 9(1) (i), Kerala Vale added Tax Act, 2003] 2526

The revisions and writ petitions raise an identical issue as to issue as to where the situs of a sale is, when the sale is of a trade mark or patent, admittedly assessable to tax as a sale of intangible, incorporeal goods. Court held that,The situs of sale of intangible property like trademarks & patents the situs of the owner of an intangible asset, would be the closest approximation of the situs of an intangible asset. On the above reasoning it was held that the exercise of the right to a trade mark or a patent right ; which has been obtained by the assessee, who had their principal palaces business in the State of Kerala is exercised from the places of business in the State of Kerala is exercised from the principal places of business. When transferring their rights obtained under a statute to another entity having place of business in another state ; from where the transferee intend to exercise such rights thereafter, postulate , a movement of the intangible corporeal goods from one State to another and hence would be an interstate sale assessable to tax under the GST Act. The Transferor's principal places of business being with in the State of Kerala, the sale would be an interstate sale. The transfer is not a transfer of right to use, but a transfer of property in goods vesting the complete rights with the transferee and transferor having no subsisting right thereafter. Accordingly S. 3 of the CST Act applies on all forces and the agreement of transfer of the intangible,

incorporeal rights, nay, goods,occasions the movement of the said goods from Kerala to other State where the transferee has their principal places of business. The agreement executed in Gujarat and Puducherry does not make the sale with in that Sate or union Territory , as S. 4 of the CST Act provide that sale of goods is deemed to take place in a State only when the goods are with in the State. Other wise any goods could be taken by the seller to another state and delivered to the purchaser making it an inter-state sale. Accordingly dismissing the petition,sustaining the order of to the extent the transfer of patent right is assessed under the CST Act. Likewise the revisions are with respect to the penalty levied and O. T. Rev. 33 of 2009, by the assessee, is allowed finding no cause for penalty on the reasoning above and as a consequence the revision of the State O. T. Rev. No. 19 of 2010 is rejected. W.P.(C) No. 16931 of 2010 is dismissed sustaining the order of assessment to the extent the transfer of patent right is assessed under the CST Act. (W.P(C). No. 13408 of 2009-U, dt. 06.12.2018)

Lal Products v. Intelligence Officer (Ker.)(HC), www.itatonline.org

Chartered Accountants Act, 1949

S. 10 : Failure to append her signatures at places earmarked therefor in nomination form, petitioner's nomination was rightly rejected by ICAI for non-compliance of statutory rules 9, 10 and 11 of Chartered Accountants (Election to Council) Rules, 2006 and petitioner could not contest election-Petition is dismissed. [Rules, 9, 10, 11] 2527

Dismissing the petition the Court held that,failure to sign undertaking, to abide by Act, Rules and Regulations had to be viewed as of a serious character and showed that petitioner, in event of being elected, did not intend to comply with Act, Rules and Regulations. Accordingly once statute provides for rejection of nomination for non-compliance with rules 9, 10 and 11, question of petitioner being permitted to contest election did not arise and, therefore, writ petition was to be dismissed.

Kanta Sharma v. Institute of Chartered Accountants of India (2018) 259 Taxman 376 (Delhi)(HC)

S. 21 : Misconduct – Disciplinary Directorate – Multinational Accounting Firms (MAFs) – Union of India was to be directed to constitute a Committee of Experts in order to look in to function of Multinational Accounting Firms (MAFs) [S. 25, 29] 2528

Direction was given to Union of India to constitute a Committee of experts in order to look in to functioning of MAFs in India, to look in to question whether and what extent statutory frame work to enforce letter and spirit of section 25 and 29 of CA Act and statutory code of conduct for CAs require revisit so as to appropriately and regulate MAFS.

S. Sukumar v Secretary, Institute of Chartered Accountants of India (2018) 254 Taxman 37 (SC)

S. 21 : Professional misconduct – Audit fee was not paid – Allegation that Chartered accountant carried out audit of three companies without intimating and obtaining no objection certificate from previous auditor – Chartered accountant is held of professional misconduct and reprimanded. [S. 22] 2529

Allegation that Chartered accountant carried out audit of three companies without intimating and obtaining no objection certificate from previous auditor. Chartered Accountant has accepted audit of three companies and also accepted that undisputed outstanding professional fee was not paid to complainant before he accepted audit of three companies. Chartered accountant is held of professional misconduct and reprimanded.

Council of Institute of Chartered Accountants of India v. Manoj Harivadan Lekinwala AIR 2018 Guj 166

S. 21 : Misconduct – SEBI and Disciplinary Committee of ICAI have found the respondent Chartered Accountant is guilty of several irregularities in public issue of a company – Removal of name from Register of Members of ICAI for a period of one year was held to be valid. 2530

Court held that SEBI and Disciplinary Committee of ICAI have found the respondent Chartered Accountant is guilty of several irregularities in public issue of a company.

Accordingly the removal of name from Register of Members of ICAI for a period of one year was held to be valid.
Council of the ICAI v. Ashok Kumar (2018) 252 Taxman 129 (Delhi)(HC)

2531 **S. 22 : Professional misconduct – A Chartered Accountant can be held guilty of professional misconduct even when he is acting as an individual in commercial dealings and is not acting as a Chartered Accountant nor discharging any function in relation to his practice as a Chartered Accountant. Under the chartered Accountants Act, any action which brings disrepute to the profession or the Institute is misconduct whether or not related to professional work. [S. 21(3)]**
Apex court held that, a Chartered Accountant can be held guilty of professional misconduct even when he is acting as an individual in commercial dealings and is not acting as a Chartered Accountant nor discharging any function in relation to his practice as a Chartered Accountant. Under the chartered Accountants Act, any action which brings disrepute to the profession or the Institute is misconduct whether or not related to professional work. (CA NO. 11034 of 2018, dt. 16.11.2018)
Council of ICAI v. Gurvinder Singh (2018) 259 Taxman 311 (SC), www.itatonline.org

2532 **S. 22 : Professional misconduct – SEBI and disciplinary committee of ICAI found respondent guilty of several irregularities in public issue of a company – Removal of his name from register of members of ICAI for a period of one year, reference was accepted.**
SEBI and disciplinary committee of ICAI found respondent guilty of several irregularities in public issue of a company. Removal of his name from register of members of ICAI for a period of one year, reference was accepted.
Council of the Institute of Chartered Accounts of India v. Ashok Kumar (2018) 252 Taxman 129 (Delhi)(HC)

2533 **S. 22A : Appellate Authority – Appellate Authority of four members can hear and decide appeal, in spite of recusal of one of members.**
Court held that ;if one of members of Appellate Authority for valid and good reason has recused and does not want to participate, hearing in appeal can proceed and would not suffer invalidity on ground of lack of quorum Temporary absence or recusal of a member in a particular appeal, would not make Appellate Tribunal dysfunctional till a new member is appointed, which as per Act is impermissible. Recusal of one member of five-members of Appellate Authority under section 22A will not stall hearing and decision of appeal. Appellate Authority of four members can hear and decide appeal, in spite of recusal of one of members.
Talluri Srinivas v. UOI (2018) 254 Taxman 261 (Delhi)(HC)

Companies Act, 2013

S. 230 : Amalgamation – GAAR – Objections of the Dept that the scheme of amalgamation is a deliberate measure to avoid tax burden and is an 'Impermissible Avoidance Agreement' because it results in avoidance of Divided Distribution Tax (DDT), tax on business profits and MAT u/s ll5JB etc has merit-The scheme is not in public interest & cannot be sanctioned. [IT Act, S. 115JB, S. 52, 66, 232, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011] 2534

NCLT held that considering the objection of the dept that the scheme of amalgamation is a deliberate measure to avoid tax burden and is an 'Impermissible Avoidance Agreement' because it results in avoidance of Divided Distribution Tax (DDT), tax on business profits and MAT u/s 115JB etc has merit. The scheme is not in public interest & cannot be sanctioned. Incidentally the bench also noted that the common Promoters of petitioner companies are prima-facie required to comply with the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011. As per the report of the Income Tax Department, the proposed scheme would amount to transfer/sale of shares. NCLT held that the scheme appears to be un fair, unreasonable and is not in the interest, accordingly the proposed scheme was not sanctioned. (CSP No. 995 of 20 1 7 AND CSP No. 996 of 20 17 In CSA No. 791 & 792 Of 2017, dt. 30.08.2018)

Gabs Investment Pvt. Ltd v. Ajanta Pharma Ltd. (Mum.)(NCLT), www.itatonline.org

Constitution of India – Jurisdiction

2535 **Art. 226 : High Court – Territorial Jurisdiction of High Court – Company having Registered Office in Delhi – Notice to Non-Executive Chairman in Chennai – Chennai High Court has Jurisdiction to consider Writ petition by non-executive Chairman [S. 2(35), 276B, 278AA]**

Under article 226(2) of the Constitution of India, the power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

Criminal proceedings under section 276B were initiated against a company for non-payment of tax deducted at source. The company had its registered office in New Delhi. Notice was issued to the petitioner who was the non-executive chairman of the company treating him as the principal officer of the company and an order was also passed. On a writ petition ; Court held that admittedly the order was served on the petitioner at his residential address at Chennai. Though the authority was at Delhi, it was clear that part of the cause of action had arisen at Chennai. That apart, though the company's registered corporate office was at Delhi and the tax deduction and collection account number was at Delhi assessment, the petitioner had not challenged the assessment order, but only the order naming him as the principal officer. In these circumstances, the Madras High Court had jurisdiction to entertain the writ petition.

Kalanithi Maran v. UOI (2018) 405 ITR 356 / 256 Taxman 260 / 304 CTR 17 / 168 DTR 385 (Mad.)(HC)

Gold (Control Act) 1968 – Gold (Control) Repeal Act, 1990

S. 74 : Penalty – Repeal of statute – Interpretation of statutes – Pending proceedings – Effect of repeal of a statute – Show cause notice will not service – Given liberty to both parties to add to or amend or delete the questions in the Wealth Tax Reference within a period of eight weeks from today – Once this is done, the writ petitions will taken up and decided on their merits. Considering these writ petitions are of 2005, we request the High Court to hear the same expeditiously – Appeals allowed and set aside the common impugned judgment of the High Court. Wealth tax references are set aside [General Clauses Act, S. 6, 6A] 2536

Show cause notice was issued under Gold Control Act, which was challenged when the stay was continued the Gold Control Act itself was repealed. It was contended that, as the Gold Control Act itself has been repealed without a saving clause, Section 6 of the General Clauses Act would not apply for the reason that the objects and reasons show that the Act was sought to be repealed without any saving clause. It was argued that upon the objects and reasons using the expression "regressive" and the fact that it has given rise to considerable dissatisfaction in the minds of the public as it has caused hardship and harassment to artisans and small self-employed goldsmiths. Accordingly the statement of objects and reasons clearly evinces a contrary intention as a result of which, nothing will survive the repeal of this Act. This being so, a show cause notice which has been upheld by the Delhi High Court would not survive. On behalf the revenue it was contended that once there is a repeal simpliciter, without any savings clause, the whole object of such a repeal was so that the general rule under Section 6 would apply, as a result of which the law laid down in *State of Punjab v. Mohar Singh, [1955] 1 SCR 893*, would apply. Court held that,having heard learned counsel for both sides, we are of the view that the statement of objects and reasons makes it clear that over 22 years, the results achieved under the Act have not been encouraging and the desired objectives for which the Act has been introduced have failed. Following the advice of experts, who have examined issues related to the Act, the objects and reasons goes on further to state that this Act has proved to be a regressive measure which has caused considerable dissatisfaction in the minds of the public and hardship and harassment to artisans and small self-employed goldsmiths. Court also observed that,we are of the opinion that the repeal simpliciter, in the present case, does not attract the provisions of Section 6 of the General Clauses Act as a contrary intention is very clearly expressed in the statement of objects and reasons to the 1990 repeal Act. In this behalf, it would be apposite to refer to *New India Assurance Co. Ltd. v. C. Padma and Another, (2003) 7 SCC 713* (para 10)

8) This Court noticed that, in a parallel instance of simpliciter repeal, Parliament realized the grave injustice and injury that had been caused to heirs of LRs of victims of accidents if their petitions were rejected only on the ground of limitation. This being the case, this Court found that a different intention had been expressed and, therefore, Section 6-A of the General Clauses Act would not in that situation apply. Court also

observed that in a similar situation in the present case. In point of fact, on going through the impugned judgment, it is clear that every time an amendment was made to the Defence of India Rules and/or repeal of the said rules had taken place, there was always an inbuilt savings clause. In fact, Section 116 of the Gold (Control) Ordinance No. 6 of 1968 also made it clear that it went to the extent, in sub-section 2 thereof, by saving show cause notices which, ordinarily, are not saved even if Section 6 were to apply – See *M. S. Shivananda v. Karnataka State Road Transport Corporation and Others, [1980] 1 SCR 684* following Director of *Public Works & Anr. v. Ho Po Sang & Ors., [1961] 2 All. ER 721*. This being the case, we are of the view that the show cause notice dated 01.06.1971, which is the subject matter of this appeal, no longer survives. In this view of the matter, the appeal is disposed of Given the fact that the show cause notice and proceedings thereafter have now disappeared as a result of the repeal of the Gold Control Act, we give liberty to both parties to add to or amend or delete the questions in the Wealth Tax Reference within a period of eight weeks from today. Once this is done, the writ petitions will taken up and decided on their merits. Considering these writ petitions are of 2005, we request the High Court to hear the same expeditiously. Appeals allowed and set aside the common impugned judgment of the High Court. (CA. No. 10824 oF 2018, dt. 30.10.2018)
Sushila N. Rungta v. TRO (SC), www.itatonline.org

Karnataka Value Added Tax Act

Karnataka VAT Act – Strictures – Court is pained by the manner in which the authority has passed the order just ignoring the applicable Notification and throwing it to winds. The said order is nothing less than suffering from malice-in-facts as well as malice-in-law. The responsible officer deserves to pay the exemplary costs of ₹ 50000 for passing such whimsical order from her personal resources or by deduction from salary. 2537

After hearing the learned counsels, this Court is surprised and is pained by the manner in which the authority has passed the impugned reassessment order in the second round of assessment for the period 01.04.0211 to March 2012 just ignoring the applicable Notification and throwing it to winds. The said order is therefore nothing less than suffering from malice-in-facts as well as malice-in-law. Therefore, the said responsible officer deserves to pay the exemplary costs for passing such whimsical order and the writ petition deserves to be allowed. The 1st Respondent – Assessing Authority Ms. K. C. Sujatha, Deputy Commissioner of Commercial Taxes (Audit) – 2.4, Bengaluru, is directed to deposit the costs quantified at ₹ 50,000/-from her personal resources with the Registrar General of this Court within a period of one month from today, failing which, the same may be deducted from her salary by the Commissioner, Commercial Tax Department and the same to be paid to the Registrar General of this Court. The amount upon deposit shall be remitted to the 'Prime Minister's Relief Fund', Delhi, for meeting the costs of relief to sufferers of natural disasters (W.P. Nos. 60480/2016 & 62125-135/2016, dt. 24.09.2018)

Kalyani Motors Pvt. Ltd. v. Deputy Commissioner (Audit) VAT (Karn.)(HC), www.itatonline.org

Maharashtra Co-operative Societies Act, 1960

2538 **Co-operative Housing Society – A co-operative housing Society is not expected to indulge into profiteering business from its members. Transfer fees cannot be charged under the pretext of "voluntary donation" – Amount which is accepted above permissible limits towards transfer fee is illegal and taxable as income in the hands of the society – Amount collected was directed to be returned with simple interest @ 8%.** A co-operative housing Society is not expected to indulge into profiteering business from its members. Transfer fees cannot be charged under the pretext of "voluntary donation". Amount which is accepted above permissible limits towards transfer fee is illegal and taxable as income in the hands of the society. Amount collected was directed to be returned with simple interest @ 8%. (WP No. 4457 of 2014, dt. 31.08.2018)

Alankar Sakhari Griha Rachana Sanstha Maryadit v. Atul Mahadev Bhagat (Bom.)(HC), www.itatonline.org

Editorial : Observation regarding the taxability in the hands of the Society is not good law in view of judgment of Apex Court in ITO v. Venkatesh Premises Co-Operative Society Ltd (2018) 402 ITR 670 (SC)

Prohibition of Benami Transactions Act, 1988

S. 3 : Prohibition of benami transaction – Loan repaid in cash – The existence of the 'benami' transaction has to be proved by the authorities, i.e., the person who alleges the transaction – The authorities have failed to discharge the burden of proof – The authority has purely gone on the premise that cash is transferred from one person to another, with an object to defeat, demonetization. This is insufficient to establish a 'benami' transaction [S. 24] 2539

Appellant was employed as a librarian-cum-sports co-ordinator in a college run by a trust. A search action was conducted in case of said trust in which it was found that Chairman of trust had paid ₹ 15 lakhs to appellant. Said amount was given to appellant to organize a football tournament which in turn was handed over by him to State Football Association. Afterwards, as per directions of Income Tax Department, appellant collected back said amount from Football Association and handed it over to Income Tax Department. Tribunal held that Initiating Officer had wrongly assumed that Chairman had given this amount to appellant to deposit and retain his own money in demonitized currency in guise of loan received, which had to be repaid after some time in new currency, accordingly, order of attachment of accounts of appellant by Initiating Officer was unjustified. The existence of the 'benami' transaction has to be proved by the authorities, i.e., the person who alleges the transaction. The authorities have failed to discharge the burden of proof. The authority has purely gone on the premise that cash is transferred from one person to another, with an object to defeat, demonetization. This is insufficient to establish a 'benami' transaction.

P. Ezhilpandian v. K. Visakh, Dy. CIT (2018) 259 Taxman 583 (PBPTA-AT)

S. 3 : Prohibition of benami transaction – Notice and attachment of property involved in benami transaction – Advance salary – existence of 'benami' transaction has to be proved by authorities i.e. person who allege transaction Authority had purely gone on premise that cash was transferred from one person to another, with an object to defeat, demonetization, which was insufficient to establish a 'benami' transaction – Order of attachment was directed to be released forth with. [S. 24] 2540

Appellant had received advance salary from her employer under oral contract. Respondent passed Provisional Attachment Order under sub-section (3) of section 24 for provisionally attaching bank account of appellant. Appellant submitted that she had used money to repay her debts and returned remaining amount to management upon insistence of Income tax Authorities and did not deposit any amount whatsoever in her bank account and thus was not holding any benami property. However, respondent completely disregarding statements of appellant, passed Attachment order under section 24(4)(a)(i), continuing provisional attachment of property already made. Tribunal held that here was no material on record to show that appellant owned money illegitimately. From entire record, it had not been established that appellant had at any point of time hatched any conspiracy with employer in order to conceal any cash amount. Whether

transaction where cash is paid to person in lieu of a future promise cannot be a 'benami' transaction as there is no lending of name. Existence of 'benami' transaction has to be proved by authorities i.e. person who allege transaction. Authority had purely gone on premise that cash was transferred from one person to another, with an object to defeat, demonetization, which was insufficient to establish a 'benami' transaction. Accordingly order would not be sustainable and attached properties were to be released forthwith.
K. Renuga v. K. Vasakh, ACIT (2018) 259 Taxman 492 (PBPTA-AT)

2541 **S. 3 : Prohibition of benami transaction – Payment of advance salary by employer to its employee to defeat purpose of demonetisation didn't come under purview of Benami Transaction [S. 24, 46]**
Appellant was employed in a College run by a Trust. He received ₹ 50 thousand as advance salary from said Trust. Appellant deposited entire amount in his bank account, which was subsequently withdrawn by him and consumed for his personal purposes. Initiating Officer (I.O) assumed that Chairman of said Trust had forced employees to distribute, deposit and retain his own money in demonetized currency in guise of loan received, which had to be repaid after some time in new currency. I.O, thus, held Chairman of college as beneficial owner and appellant as benamidar and passed order provisionally attaching salary bank account of appellant. However, according to appellant alleged benami property (i.e. cash) did not exist as he had deposited entire amount in his bank account which was subsequently withdrawn and used by him, much before date of attachment of salary account. Tribunal held that the Authorities had purely gone on premise that cash was transferred from one person to another with an object to defeat demonetization, but same was insufficient to establish a benami transaction.
G. Bahadur v. K. Visakh ACIT (2018) 259 Taxman 556 (PBPTA-AT)

2542 **S. 24 : Jurisdiction of Officer – Notification No. S. O. 1620(E), dt. 18-5-2017 uploaded on Website of E-Gazette On 22-5-2017 – Department of publication Certifying date as 18-5-2017 – Notice and order of provisional attachment by Officer not authorised by Notification 19-5-2017 is held to be not valid. [S. 2(8), 2(21), 18(1), 59]**
Allowing the petition the Court held that, notification No. S. O. 1620(E), dt 18-5-2017,uploaded on Website of E-Gazette on 22-5-2017. Department of publication certifying date as 18-5-2017. Notice and order of provisional attachment by Officer not authorised by Notification On 19-5-2017 is held to be not valid. "The" is a word before nouns, with the specifying or particularising effect as opposed to the indefinite or generalising force of "a" or "an". It determines what particular thing is, meant, i.e., what particular thing to assume to be meant. "The" is always mentioned to denote a particular thing or a person". Section 24 of the Act refers to the "Initiating Officer". Therefore, it denotes "a particular officer or a person" and it cannot be generalised and stated that all Deputy Commissioners of Income-tax and Assistant Commissioners of Income-tax can function as the Initiating Officer under section 24.
The de facto doctrine does not come to the rescue of an intruder or usurper or total stranger to the office and the doctrine can have no application to the case of the person, who is not the holder of the office.

Thus, when a person, who has no authority to initiate proceedings under the Benami Act or issue orders of attachment under the Benami Act, does so, the very foundation on which he has done such act collapses and the proceedings have to be held to be wholly without jurisdiction.

Held accordingly, that admittedly the second respondent was not the Deputy Commissioner of Income-tax (Benami Prohibition), but the Deputy Commissioner of Income-tax, Corporate Circle (I). The second respondent lacked inherent jurisdiction to initiate proceedings as on May 19, 2017 and the notice, the prohibitory order and the order of attachment were without jurisdiction and consequently liable to be set aside.

Cascade Energy Pte Ltd. v. UOI (2018) 405 ITR 614 (Mad.)(HC)

Service tax – Finance Act, 1994

2543 **S. 65 : Service-tax on maintenance of property – Under the MOFA, the builder/ developer is under a statutory obligation to look after the day-to-day upkeep, maintenance and repair of the property till conveyance to the co-op society. Such maintenance of the structure is not rendering a taxable service as per S. 65 (64) of the Finance Act, 1994**

Dismissing the appeal of the revenue, the Court held that; Under the MOFA, the builder/ developer is under a statutory obligation to look after the day-to-day upkeep, maintenance and repair of the property till conveyance to the co-op society. Such maintenance of the structure is not rendering a taxable service as per S. 65 (64) of the Finance Act, 1994. (CEA No,. 289 of 2016, dt. 25.01.2018.)

CST v. Shri. Krishna Chaitanya Enterprises (2018) 173 DTR 129 (Bom.)(HC), www.itatonline.org

GST v. Green Valley Developers (2019) 173 DTR 129 (Bom.)(HC), www.itatonline.org

GST v. Kumar Beheary Rathi (2019) 173 DTR 129 (Bom.)(HC), www.itatonline.org

Hindu Succession Act, 1956 (Hindhu Law)

Hindu Succession (Tamil Nadu Amendment) Act, 1989

S. 29A : Married daughters are not co-parceners – As per the amendment Act only daughters of a coparcener who were not married at the time of commencement of the amendment of 1989 are is entitled to claim partition in the Hindu Joint Family Property. Married daughters are not coparceners and are not entitled to institute suit for partition and separate possession. 2544

As per S. 29A the amendment Act only daughters of a coparcener who were not married at the time of commencement of the amendment of 1989 are is entitled to claim partition in the Hindu Joint Family Property. Married daughters are not coparceners and are not entitled to institute suit for partition and separate possession (*Danamma @ Suman Surpur v. Amar 2018 (1) Scale 657* distinguished). Accordingly the appellants are not entitled to any share in coparcenary property since they were not the coparceners in view of 1989 amendment. However, on the death of their father and mother, appellants would get their property through succession in the above manner. (CAA No. 1933 of 2009, dt. 19.04.2018)

Magammal @Thulasi v. T. B. Raju (SC), www.itatonline.org

General law

2545 **National Litigation Policy – Burdening the Court with frivolous litigation – Strictures passed – Union of India has created a huge financial liability by engaging so many lawyers for an appeal whose fate can easily imagined on the basis of existing orders in similar cases. Yet the Union of India is increasing its liability and asking the tax payers to bear an avoidable financial burden for the misadventures. Appeal was dismissed with cost of ₹ 1,00,000/.**

Dismissing the appeal of Union of India the Court held that, Union of India has created a huge financial liability by engaging so many lawyers for an appeal whose fate can easily imagined on the basis of existing orders in similar cases. Yet the Union of India is increasing its liability and asking the tax payers to bear an avoidable financial burden for the misadventures. Appeal was dismissed with cost of ₹ 1,00,000/. (Dairy No. 8754 of 2018 dt. 24-04-2018)

UOI v. Pirthwi Singh (SC) www.itatonline.org

2546 **Service matters – Regularisation of services – Appellants appointed as casual employees in tax department since 1993-94 and were working continuously – Failure by Department to regularize Appellant's services would be illegal in view of Supreme Court's decision in case of Uma Devi (2006) 4 SCC 1.**

Allowing the appeal, Supreme Court held that in view of Supreme Courts' decision in case of Uma Devi (2006) (4 SCC 1), circulars and regularization of similarly situated employees at other places and various recommendations that were made, services of the Appellant ought to have been regularized in year 2006; discriminatory treatment has been meted out to them. They did not serve under the cover of Court's order and hence illegality has been committed by not directing their regularization of services. (CA No. 2795-2796 of 2018 dt. 13-03-2018

Ravi Verma v. UOI (2018) 255 Taxman 73 (SC)

2547 **Adjournment – Delay in filing affidavit of reply-Cost of ₹ 4, 50,000 / was levied.**

For delay in filing affidavit of reply the Court observed that; No more 'tareek pe tareek'. Enough is enough. That a Court will endlessly grant adjournments is not something that parties or advocates can take for granted. Nor should they assume that there will be no consequences to continued defaults and unexplained delay. Court has levied cost of ₹ 4,50,000/ that is ₹ 1000 per day for a period of 450 days. (Notice of Motion No. 1345 of 2014, dt. 27.02.2018)

Ram Nagar Trust No. 1 v. Mehtab L. Sheikh (Bom.)(HC), www.itatonline.org

2018 – Circulars, Notifications & Articles

Referencer – Finance Act, Finance Bill, Circulars, Notifications, DTAA, Schemes Articles.

Finance Act, 2017
Circular No 2 of 2018, dated 15th February, 2018 – Explanatory notes to the provisions of the Finance Act, 2017 (2018) 401 ITR 178 (St)

Finance Bill, 2018
Budget Speech of Minister of Finance for 2018-19:
Part A (2018) 401 ITR 1 (St)
Part B (2018) 401 ITR 23 (St)
Finance Bill, 2018 (2018) 401 ITR 36 (St)
Notes on clauses (2018) 401 ITR 91 (St)
Memorandum Explaining the provisions in the Finance Bill, 2018 (2018) 400 ITR 124 (St)
Circular dated 4th February, 2018 – Frequently asked questions (FAQ) regarding taxation of long- term capital gains proposed in Finance Bill, 2018 – Reg. (2018) 402 ITR 10 (St.)
Finance Bill, 2018 : Notice of amendments (2018) 402 ITR 25 (St)
Finance Act, 2018, (Assent of the President on 29th March, 2018) (2018) 402 ITR 37 (St)
Circular No 8 of 2018, dt. 26-12-2018 – Explanatory notes to the provisions of the Finance Act, 2018 (2019) 410 ITR 1(St)

Circulars, Notifications & Articles

Circular No 27 of 2017, dated 3rd November, 2017 – Clarification on cash sale of agricultural produce by cultivators / agriculturist (2018) 400 ITR 4 (St)

Circular No 28 of 2017, dated 7th November, 2017 – Clarification on indirect transfer provisions in case of redemption of share or interest outside India under the Income -tax Act, 1961 (2018) 400 ITR 5 (St)

Circular No 29 of 2017, dated 5th December, 2017 – Income-tax deduction from salaries during the financial year 2017-18 under Section 192 of the Income-tax Act, 1961 (2018) 400 ITR 13 (St)

Circular No 1 of 2018, dated 10th January, 2018 – Order under Section 119 of the Income-tax Act, 1961 – Processing of income-tax returns under section 143(1) of the Income-tax Act which were filed in Forms ITR-1 to 6 and applicability of section 143(1)(a)(vi) -reg. (2018) 400 ITR 88 (St)

Circular No. dt. 6th February, 2018 – Determination of fair market value of unquoted equity shares of "Start Up" companies under section 56(2) (viib) of the Income-tax Act read with rule 11UA (2) of the Income-tax Rules-Reg. (2018) 401 ITR 175 (St)

Circular No. 2 of 2018, dated 15th February, 2018 – Explanatory notes to the provisions of the Finance Act, 2017 (2018) 401 ITR 178 (St.)

Instruction No 1 of 2018, dated 12th February, 2018 – Conduct of assessment proceedings in scrutiny cases electronically -Reg (2018) 401 ITR 176 (St)

Circular dt. 4th February, 2018 – Frequently asked questions (FAQs) regarding taxation of long term capital gains proposed in Finance Bill, 2018 -reg. (2018) 402 ITR 10 (St)

Order dt. 28th March, 2018 – Sub-Processing of returns under section 143(1) of the Income-tax Act which are pushed to the Assessing Officer by the CPC -reg (2018) 403 ITR 34 (St)

Circular dt. 10th April, 2018 – Sub-Draft notification proposing an amendment to rule 44E, Forms 34C and 34DA as per BEPS action,item 5, for improving transparency in relation to tax rulings – Comments and suggestions -reg (2018) 403 ITR 35 (St)

Circular dt 26th March, 2018 : Order under section 119(1) of the Income-tax Act, 1961 : Office remained open on 29th, 30th and 31st March 2018 for filing returns. (2018) 403 ITR 312 (St)

Circular dt. 27th March, 2018 : Order under section 119(1) of the Income-tax Act, 1961 : Linking of PAN with Aadhar till 30th June, 2018 (2018) 403 ITR 312 (St)

Circular dt. 16th April 2018 : Sub: Processing of returns under Section 143(1) of the Income-tax Act which are pushed to the Assessing Officers by the CPC -reg. (2018) 403 ITR 313 (St)

Circular dt. 16th April 2018: Sub: Notification in respect of assigning jurisdiction to Commissioner (Appeals) under the Black Money (Undisclosed Foreign Income and Assets) and imposition of Tax Act, 2015 (BM Act) -reg. (2018) 403 ITR 313 (St)

Circular dt. 30th June, 2018 : Order u/s 119 of the Income-tax Act, 1961 : Vide its orders date 31-07-2017, 31-08-2017, 08-12-2017 and 27-03-2018, in file of even number the CBDT had allowed time till 30th June, 208 to link PAN with Aadhar while filing the tax -returns .Upon consideration of the matter,the CBDT further extends the time for linking PAN Aadhar till 31 st march,2019 [F. No. 225/270/2017/ITA -II] (2018) 405 ITR 17 (St)

Circular No. 3 of 2018, dt. 11th July, 2018 : Sub: Revision of monetary limits for filing of appeals by the Department before Income-tax Appellate Tribunals, High Courts and SLPs/appeals before Supreme Court – measures for reducing litigation -reg. (2018) 405 ITR 29 (St)

Circular dt. 20th August, 2018 – Amendments to para 10 of Circular Non 3 of 2018, dt. 11th July 2018-reg. (2018) 407 ITR 7 (st)

Circular No. 4 of 2018, dt. 14th August 2018 – Computation of admissible deduction under section 10A of the Income -tax Act -reg. (2018) 407 ITR 1 (St)

Circular No. 5 of 2018, dt. 16th August 2018 – Clarification on the immunity provided under section 270AA of the Income-tax Act, 1961 (2018) 407 ITR 4 (St)

Circular No 6 of 2018, dt. 17 the August 2018 – Order under section 119 of the Income -tax Act, 1961 . (2018) 407 ITR 4 (St)

Circular dt. 13th July 2018 – Framing of income-tax rules relating to Significant Economic Presence as per section 9(1)(i) of the Income-tax Act, 1961, comments and suggestions -reg. (2018) 407 ITR 5 (St)
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Constitution of Task Force – Reappointment of members – Order No. F. No. 370149/230 /2017 dt. 26-11-2018 (2018) Taxman 37 (St)

Circular No. 8 of 2018, dt. 26-12-2018 – Explanatory notes to the provisions of the Finance Act, 2018 (2019) 410 ITR 1(St)

Circular No. 9 of 2018 dt. 26-12-2018 – Order u/s. S. 119 of the Income-tax Act, 1961 (Report u/s. 286 of the Act) (2019) 410 ITR 48 (St)

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No. G.S.R. 221(E), dated 13th March, 2018 – Notification under section 295: Power to make rules: Amendment (2018) 402 ITR 36 (St)

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No. 4 of 2018, dated 5th April, 2018 – Sub-Procedure for registration and submission of statement of financial transactions (SFT) as per section 285BA of the Income tax – Act, 1961, read with rule 114G of the Income-tax Rules, 1962 (2018) 403 ITR 30 (St)

Under S. 115JH((1): Foreign company to be resident in India on account of its place of effective management under S. 6(3) of the Act No. 3039 (E) dt. 22nd June, 2018 (2018) 405 ITR 35 (St)

S. 48: Capital gains – Cost of index for 2018-19 specified for the purpose of computation of capital gains (2018) 405 ITR 15 (St)

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S. 90: India and Hong Kong sign Double Taxation Avoidance Agreement, dt . 19-03-2018 (2018) 402 ITR 34 (St)

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