Azadi Ka Amrit Mahotsav

2021

Digest of

CASE LAWS

Direct Taxes

(For Private Circulation)

Income Tax Appellate Tribunal Bar Association

(Estd. 1965)

Celebrates 57 years of service

Disclaimer

The views expressed in this publication are the personal views of the contributors and the ITAT Bar Association does not necessarily concur with the same. The contents of this digest are solely for educational and reference purposes It and do not constitute professional advice or formal documentation. While due care and sincere efforts have been made in preparing this digest to avoid errors or omissions, the existence of mistakes and omissions cannot be ruled out. Any mistake, error or discrepancy observed may be brought to our notice, and shall be considered in the next publication. Neither the authors, publishers, nor itatonline.org and its affiliates accept any liability for loss or damage of any kind arising out of inaccurate or incomplete information if any in this digest. The reader is advised to cross check all facts, law and contents of the digest with original reports referred to by the authors. No part of this digest should be distributed or copied (except for non-commercial use), without express written permission of itatonlne.org. The digest is prepared from case laws reported in the following journals and magazines. AIR, BCAJ, CTC, CTR, DTR, ITD, ITR, ITR (Trib.), SCC, TTJ, Taxman, itatonline.org, taxmann.com, SCCOnline, manupatra.com, CCHTaxOnline. The contribution by the Editorial Board and Research Team is honorary and made with a view to assist and save precious time of professionals in researching case laws reported in various journals and magazines.

All disputes are subject to Mumbai Jurisdiction.
Compiled by Research team of Research team of ITAT Bar Association, AIFTP Journal Committee and KSA legal Chambers.

Salient features

- ✓ The cases are digested section wise very briefly, carving the ratio of the decision without discussing on facts in the descending order of relevance, i.e., Supreme Court, High Courts, Tribunal and Authority for Advance Ruling.
- ✓ Most of the cases reported in the year 2021
- ✓ Case laws reported in www.itatonline.org.
- ✓ Wherever an SLP is admitted or rejected, the reference is provided as editorial.
- ✓ Case law index is provided in alphabetical order.
- ✓ Wealth tax, Gift tax, etc is also arranged section wise.
- ✓ Interpretation of taxing statues are digested in a separate chapter.
- ✓ Allied laws are arranged in alphabetical order.
- ✓ Reference to circulars and notifications are arranged number wise and date wise.
- ✓ Reference to Articles are arranged section wise and also subject wise.

Acknowledgments

Our sincere thanks to the research team and the editorial team of the ITAT Bar Association, 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 ITAT Bar Association, Mumbai, AIFTP, and KSA Legal Chambers.

Editorial Team

Dr. K. Shivaram, Senior Advocate

Advocates

Arati Vissanji (Mrs)
Ajay R. Singh
Keshav B. Bhujle
K. Gopal
M. Subramanian
Subhash S. Shetty

Chartered Accountants

Anil Sathe
Harish N Motiwalla
Rajan R. Vora

Research Team

Advocates

Arati Sathe(Ms)
Arjun Gupta
Divesh Chawla
Harsh Kapadia
Harsh Kothari
Hiten Chande
Jeet Kamdar
Jitendra Singh
Neelam Jadhav (Ms)
Nishit Gandhi
Paras S. Savla
Rahul Hakani
Shashi Bekal
Suk Sagar Sayal

Chartered Accountants

Aliasger Rampurawala
Deepak R. Shah
Mitesh Modi
Nikhil R.Tiwari
Ninand Patade
Sachin Romani
Ketan Ved
Vikram Udupa

Preface

2021 – Digest of Case Laws on Direct Taxes

We are presenting "**2021 – Digest of case laws on direct taxes**". This year is the 11th-year of our private publication and is published by the ITAT Bar Association Mumbai as a useful aid to professionals who appear before the Supreme Court, High Courts, The Income Tax Appellate Tribunal and faceless regime.

In this publication, our research team has digested section-wise, 2539 cases reported in the year 2021 in various reports, journals, magazines and online media. (ITR 430 to 439, Taxman 276 to 283, CTR 318 to 322, DTR 197 to 208. ITD 186 ITD to 191, ITR (Trib) 88 to 92, DTR (Trib) 197 to 208, TTJ 209 to 214, BCAJ, The Chamber's Journal)) Cases have been digested section wise 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 a decision of the Tribunal is affirmed or reversed by High Courts or where an SLP is granted or rejected by the Supreme Court against the judgments of the High Courts.

Important cases on allied laws and interpretation of taxing statutes have also been included in the digest.

A separate chapter on reference to circulars and articles is also provided which are arranged section wise and subject wise.

Special thanks to editorial team for editing the digest, Research Team of ITAT Bar Association, AIFTP Journal Committee, and KSA Legal Chambers for their valuable contribution.

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:
CIT v. P. Mahalakshmi	P. Mahalakshmi, CIT v. *
PCIT v. Gladder Ceramics Ltd.	Gladder Ceramics Ltd, PCIT v.*
Perfecta Lifestyle v. ITO	Perfecta Lifestyle v. ITO
ITO v. Kidderpore Holdings Ltd.	Kidderpore Holdings Ltd, ITO v.*
ADIT v. Asia Today Ltd.	Asia Today Ltd, ADIT v.*

In the year 2012, we had published "**Digest of case laws – Direct taxes – (2003-2011) – A Tax Companion**" to commemorate 150 years of the Bombay High Court, jointly with the ITAT Bar Association and the AIFTP. All the publications from 2003-11 and from 2012 to 2021 are hosted on www.itatonline.org for the benefit of tax professionals and the public at large. it is possible to download the digest and save it on any device.

If an error or mistake is noticed by readers, they are requested to inform us by e-mail or in writing, Your suggestions 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 Shri Vipul Joshi President of the ITAT Bar Association, Office bearers and the members of the Managing Committee of the ITAT Bar Association who have volunteered to publish the yearly digest from year to year to year basis as one of the educational activities carried on by the ITAT Bar Association Mumbai, for the benefit of their members.

This is one of the unique publication where all important cases laws both reported as well as unreported are digested at one stop, and also contains reference to SLPs admitted, rejected etc
This digest is for private circulation in print format to facilitate quick and easy reference for professional colleagues. We request your valuable guidance. Your suggestion may be sent to itatonline.manager@gmail.com / publications.itat@gmail.com

For Editorial and Research Team,

Yours sincerely,
Dr. K. Shivaram
Senior Advocate
15-8-2022

President message

I, on behalf of the ITAT Bar Association, am pleased to present this fine publication on '2021 - Digest of CASE LAWS - Direct Taxes' on the special occasion of Azadi ka Amrit Mahotsav.

The law regarding income tax is developing at a fast pace. After the lull of a year on account of the pandemic, the momentum is catching up.

But the fact remains that the law is becoming more and more complex with churning out more and more judgments, almost daily. Therefore, it is important to understand the manner and the chronology in which the law evolves during the year. This digest, which is compiled section-wise and topic-wise, will immensely help in easy reference and research to the tax practitioners at large.

This Digest is contributed by eminent professionals (Advocates and Chartered Accountants), which has given it uniqueness - in the quality as well as in the approach. The contributors have pianistically gone through thousands of judgments, not only from professionally subscribed magazines but also from other journals and unreported judgments. One more uniqueness is covering also important cases on allied laws and on the interpretation of taxing statutes, as well as a separate chapter concerning circulars and articles that are arranged section-wise and subject-wise. The feather on the cap is the comments by senior professionals wherever required. The Digest, therefore, has an edge over other similar publications that may be available commercially.

I must congratulate the team led by Dr. K Shivram, which has been coming out with such useful publications untiringly and with great enthusiasm year after year for the last 11 years. This really requires supreme dedication and sincere endeavour to spread knowledge on their part.

Mr. Vipul B. Joshi
President
ITAT Bar Association Mumbai
15-8-2022

ITAT Bar Association Mumbai

Managing Committee Members
(2021-2022)

President
Vipul B. Joshi

Vice President
K. Gopal
Nitesh S. Joshi

Hon. Secretaries
Ajay R. Singh
Paras Savla

Hon. Treasurer
Vishwas V. Mehendale

Imm. Past President
Hiro Rai

Advisors
Y. P. Trivedi
S. E. Dastur
Dr. K. Shivaram

Members
Aarti Sathe
Anil Sathe
Arati Vissanji
Haresh P. Shah
Niraj D. Sheth
P. J. Pardiwalla
Porus F. Kaka
Prakash Jotwani
Rahul Hakani
Rajan R. Vora
Subhash S. Shetty
Dr. Sunil M. Lala

Abbreviations

Journals, Reports, Magazines and online

All India Federation of Tax Practitioners Journal	–	AIFTPJ
All India Tax Tribunal judgements	–	TTJ
All India Reporter	–	AIR
The Bombay Chartered Accountant Journal	–	BCAJ
The Chamber of Tax Consultants	–	The Chamber's Journal
Company Cases	–	Comp-Cas
Current Tax Reporter	–	CTR
Direct Taxes Reporter	–	DTR
Excise Law Times	–	E.L.T.
Goods and Service Tax Reports	–	GSTR
Income-tax Tribunal Decisions	–	ITD
ITR's Tribunal – Tax Reports (ITR (Trib.))	–	ITR (Trib)
Income-tax Reports	–	ITR
Supreme Court Cases	–	SCC
Taxman	–	Taxman

Online

www.ctconline.org
www.itatonline.org
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
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	–	DGI
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	–	PCIT
Principal Director General of Income Tax	–	PDGI
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.)
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)
Madras	–	(Mad.)
Orissa	–	(Orissa)
Patna	–	(Patna)
Punjab & Haryana	–	(P&H)
Rajasthan	–	(Raj.)
Sikkim	–	(Sikkim)
Telangana	–	(Telangana)
Tripura	–	(Tripura)
Uttarakhand	–	(Uttarakhand)
Uttar Pradesh	–	(UP)

Tribunal Benches

Agra	–	(Agra)
Ahmedabad	–	(Ahd.)
Allahabad	–	(All.)
Amritsar	–	(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)

Income Tax Appellate Tribunal Bar Association, Mumbai

The Income Tax Appellate Tribunal Bar Association Mumbai was established on 18th November, 1965. Amongst those who held the office of President were Shri G. A. Gaitonde, erstwhile President of the Income Tax Appellate Tribunal, Shri N. A. Palkhivala (1967-2002), Shri Y. P. Trivedi (2003-06), Shri S. E. Dastur (2007-08), Shri Dinesh Vyas (2009-10). Dr. K. Shivaram (2011-12), Shri Arun P. Sathe (2013-2014) Shri Subhash S. Shetty (2015-16) Mrs Arati Vissanji (2017-18) Shari Hiro Rai (2019-20) Shri Vipul Joshi Advocate has been elected as the President of the ITAT Bar Association for the term 2021-22.

The members of the ITAT Bar Association include Senior Advocates, Advocates, Chartered Accountants and Tax Practitioners practicing before the Income Tax Appellate Tribunal.

The ITAT Bar Association has one of the best equipped tax law libraries in Mumbai. More than 25 magazines and journals covering tax and allied subjects are available. The journals subscribed include virtually every journal in the taxation field published in India, International tax journals, journals of special interest areas, such as company law, excise, sales tax and service tax, AIR and SCC to enable members to keep abreast of the law in other non-tax areas. The ITAT Bar Association Library is considered as one of the finest libraries in India in the field of taxation, both domestic and international. The ITAT Bar Association has a website www.itatonline.org to enable its members and guests to access latest news, judgments, cause lists, etc. It has a lively interactive forum where members can post queries which are discussed and answered. For the benefit of our members Research Team is preparing a digest of important case laws which are regularly hosted in the website of the www.itatonline.org. We are pleased to state that www.itatonline.org has more than 50,000 subscribers. The library is fully air-conditioned. The library was initially funded by Shri Chunilal Karsandas, a past member and has been subsequently supported by the D. M. Harish Foundation. A magnanimous contribution from Shri S. E. Dastur, Past President of ITAT Bar Association, enabled the ITAT Bar Association to set up a separate section on International Law Library dedicated to Late Shri R. J. Kolah. Shri Y. P. Trivedi Past President of the ITAT Bar Association has contributed a substantial amount towards corpus donation for conducting the various

educational activities of the Association. Shri Dinesh Vyas, Past President of ITAT Bar Association has contributed a magnanimous contribution to renovate the library.

The ITAT Bar Association plays an active role in matters of vital importance to the Tribunal. It makes representations to concerned authorities from time-to-time. The Income Tax Appellate Tribunal has always enjoyed judicial independence. When there was a threat of interference from the Executive in the administration of justice, the ITAT Bar Association filed a public interest petition before the Bombay High Court. The judgment of the Supreme Court in *ITAT v. V. K. Agarwal (1999) 235 ITR 175 (SC)* dealt with the scope of administrative supervision by the Ministry of Law over the functioning of the ITAT. On another occasion, there was a move to shift the headquarters of the ITAT to Delhi. It was mainly due to the representations and efforts of the ITAT Bar Association that the Government was persuaded against taking this step and the headquarters continued to be in Mumbai. Again, when there was a proposal to constitute 5 additional Benches of Income Tax Appellate Tribunal at Navi Mumbai, it was the ITAT Bar Association that strongly opposed the move and convinced the Government that setting up additional Benches at Navi Mumbai was not in the interest of the taxpayers or the Government. This would not have been possible but for the PIL filed by the ITAT Bar Association before the Bombay High Court. (*ITAT Bar Association v. UOI WP No 624 0f 1999 dt 28th June, 2000*)

It is of significance that not only did the Government accept this suggestion but allotted additional space previously occupied by the All India Radio to the Income Tax Appellate Tribunal so that the additional Benches now function alongside the then existing five Benches on the same floor.

Honourable Justice Shri V.N. Khare the then Chief Justice of India for the first time in the history of ITAT has visited the premises of the ITAT on invitation of the ITAT Bar Association of Mumbai on 11-1- 2004 and unveiled the portrait of late shri N.A. Palkhivala. On the said occasion three Honourable Judges of Supreme Court, Chief justice of Bombay High Court and large number of judges of Bombay High Court graced the function.

For the development of the Tax Bar, the ITAT Bar Association since 2004 in association with All India Federation of Tax Practitioners and Government Law College has started the “Nani Palkhivala Memorial National Tax Moot Court Competition” and “Research in Tax Law” under the banner of “Palkhivala Foundation” at Mumbai, for a decade. On the occasion of 75 th year of independence to celebrate Azadi ka Amrut Mhaostav the ITAT Bar Association in Association with All India Federation of Tax Practinoers and Maharashtra National University, Mumbai initiated “Padma Vibhushan Dr. N.A. Palkhivala Memorial National (Virtual) Tax Moot Court and Research Paper Competition.

Income Tax Appellate Tribunal Bar Association in association with All India Federation of Tax Practitioners has published a publication “Digest of Case Laws — Direct Taxes

(including allied laws) (2003-2011)" dedicated to Commemorate the 150th Years anniversary of the Bombay High Court.

Income Tax Appellate Tribunal Bar Association in Association with All India Federation of Tax Practitioners have published in the year 2016, a publication dedicated to Honourable Mr, Justice S.H. Kapadia former Chief Justice of India on the subject of **"Interpretation of Taxing Statues – Frequently Asked questions"**

Income Tax Appellate Tribunal Bar Association in Association with All India Federation of Tax Practitioners have published in the year 2017, a publication dedicated to Padma Vibhushan Late Dr. N.A. Palkhivala Senior Advocate on the subject of **"Income Tax Appellate Tribunal – Fine Balance – Law, Practice, procedure and conventions – Frequently asked questions"**

The members of the ITAT Bar Association have adopted a Code of Ethics. A disciplinary Committee was formed by the Bar Association which is headed by three eminent professionals.

The members of the ITAT Bar Association share a very healthy cordial relationship. The logo of ITAT Bar Association is "Justice be our Goal".

Case Laws Index

Section wise Index

Income-tax Act, 1961

S. 2(1A) : Agricultural income – Income derived from sale of saplings and seedling grown in a nursery alone shall deemed to be agricultural income – subsequent operation, i.e., supply of fertilizer, supply of soil, engaging horticulturists, insuring the plant, making pits and other related activities carried out in assessee's nursery but in client's site cannot be termed as secondary operation and hence not agricultural income. [S. 10(1)] 1

The Tribunal observed that the primary operation done in assessee's nursery confine only with regard to growing of plants and saplings. The subsequent operation, i.e., supply of fertilizer, supply of soil, engaging Horticulturists, insuring the plant, making pits and other related activities even assuming it is secondary operation was never carried out in assessee's nursery but in client's site. Plants and saplings are planted in the client's site and became the property of the client. Thereafter the assessee's role is only to tend these plants and saplings. The services so performed are in the nature of maintenance and cannot be termed as secondary operation in the strict sense of the term. The Tribunal held that income derived by the assessee by activities other than sale of plants raised in its own nursery is not in the nature of agricultural income falling within the definition of section 2(1A) of the I.T. Act. (AY. 2016-17)

Jayanti Botanical Gardens v. ITO (2021) 61 CCH 342 / 211 TTJ 15 (UO)(SMC)(Bang.)(Trib.)

S. 2(14)(1) : Capital asset – Property of any kind – Rights or interest in a property – Period of holding is to be reckoned from date of first agreement, while calculating capital gains.[S. 2(42A), 2(42B), 45] 2

Tribunal held that rights or interests in a property are transferable capital assets and hence, booking rights or rights to purchase apartment or rights to obtain title to apartment are also capital assets that can be transferable and therefore, a right in an uncompleted building or a flat is clearly a property. Period of holding is to be reckoned from date of first agreement while calculating capital gain on sale of such property. (AY. 2011-12, 2013-14)

Shiv Kumar Jatia v. ITO (2021) 190 ITD 181 (Delhi)(Trib.)

S.2(14)(iii) : Capital asset – Agricultural land – Land continued to be agricultural land in the revenue records – located 20 kms. away from municipal corporation limits – Cutting and carrying away of rubber trees did not change classification of land from agricultural to non-agricultural land – User by buyer is not relevant for assessing the gain in the hands of the assessee – Not liable to be assessed as capital gains [S. 45] 3

The assesseee sold the agricultural land. As per the condition of MOA the assessee agreed to cut and carry away all rubber trees on said land at his own expenses before sale. Land continued to be agricultural land in the revenue records and the land was located 20 kms. away from municipal corporation limits. The Assessing Officer held

that with cutting and carrying away of rubber trees land became barren land and a barren land could not be treated as agricultural land and, further, KSIDC, in due course of time, upon purchase from assessee, converted said land into an industrial Estate. The Assessing Officer assessed the gain on sale of said land as liable to capital gains tax. The Tribunal held that the sale of agricultural land cannot be assessed as capital gains. On appeal by the revenue land the Court held that the land in question was located 20 kms. away from municipal corporation limits. Assessee had demonstrated that classification of land continued to be an agricultural land in revenue records even as on date of sale. Land was put to use only for agricultural purposes by assessee. The assessee could not be expected to have control over activities of buyer once transfer was completed. Cutting and carrying away of rubber trees did not change classification of land from agricultural to non-agricultural land. Order of Tribunal was affirmed. (AY. 1996-97)

CIT v. Cochin Malabar Estates & Industries Ltd. (2021) 208 DTR 119 / (2022) 440 ITR 121 / 324 CTR 246 / 285 Taxman 69 (Ker.)(HC)

4 **S. 2(14)(iii) : Capital asset – Agricultural land – Land was situated 40 k.m away from municipality – Agricultural activities were carried out in land, there were standing banana crops as well as coconut trees, etc. – Approval from Joint Director, Directorate of Town and Country Planning ['DTCP'] for conversion of land for non-agricultural purpose prior to execution of sale deed-Not liable to capital gain tax [S. 45]**

Assessee sold land to a company and claimed same as exempt under section 2(14)(iii) on ground that same was agricultural land. the AO held that on the date of sale assessees along with their co-owners (sons) had obtained approval from Joint Director, Directorate of Town and Country Planning ['DTCP'] for conversion of land for non-agricultural purpose prior to execution of sale deed and therefore land was no longer agricultural land and assessee was not eligible for claiming exemption u/s 45 of the Act. Commissioner (Appeals) deleted the addition. On appeal Tribunal held that agricultural activities were carried out in land, there were standing banana crops as well as coconut trees, etc, and land was situated 40 k.m away from municipality. Accordingly affirmed the order of CIT(A). On appeal by the Revenue, High Court affirmed the order of the Tribunal) (AY. 2009-10)

CIT v. P. Mahalakshmi (2021) 276 Taxman 224 (Mad.)(HC)

5 **S. 2(14)(iii) : Agricultural income – Agricultural land – Sold to non-agriculturist – Not capital asset – Not liable to be assessed as capital gains – Sold agricultural land and purchased another agricultural land and took possession – Entitled to deduction. [S. 10(1), 45, 54B]**

Tribunal held that land revenue was paid every year to Government as agricultural land. From certificate of Collector it was evident that till date of sale, land was an agricultural land and no non-agricultural activities had been carried on said land till date of its sale. The Assessing Officer was directed to treat the land as agricultural land. Assessee purchased another agricultural land and took possession. Entitled to deduction. (AY. 2012-13)

Suresh Dhulabhai Patel v. ITO (2021) 189 ITD 374 / 211 TTJ 41 (UO)(Surat)(Trib.)

S. 2(22)(e): Deemed dividend – Advance against sale of commercial space – Addition cannot be made as deemed dividend. 6
Dismissing the appeal of the Revenue the Court held that Tribunal had given findings of fact that advance received by assessee from company was not in the nature of loan or advances as contemplated in section 2(22)(e), but was trade advance against booking of commercial place being built by assessee. Deletion of addition was affirmed.
PCIT v. Anumod Sharma (2021) 283 Taxman 564 (Delhi)(HC)

S. 2(22)(e) : Deemed dividend – Commercial transaction – Personal properties as collateral to bank borrowings – Amount received as advance for purchasing property – Not assessable as deemed dividend. 7
Dismissing the appeal of the Revenue the Court held that the advance was not given to assessee merely because he was shareholder with substantial interest but because company had derived benefit from assessee as the assessee has given his personal properties as collateral to bank borrowings. Advance received cannot be assessed as deemed dividend. (AY.2009-10)
CIT v. N.S. Narendra (2021) 282 Taxman 198 (Karn.)(HC)

S. 2(22)(e) : Deemed dividend – Loans and advance – Provision is applicable – Matter remanded to Tribunal to decide on merit. [S.260A] 8
Tribunal deleted the addition made under S. 2(22)(e) of the Act. High Court up held the order of the Tribunal. Revenue filed an application to recall the said order contending that it was settled law that deemed dividend was taxable in hands of recipient. High Court recalled the order and restored the matter back to the Tribunal to decide it on merit.
PCIT v. Gladder Ceramics Ltd. (2021) 280 Taxman 446 / (2022) 440 ITR 459 (Guj.)(HC)

S. 2(22)(e) : Deemed dividend – Loan to share holder – Commercial transaction – Advance for construction of building – Not assessable as deemed dividend. [S.1150] 9
Allowing the appeal of the assessee the Court held that the amount advanced to share holder for construction of building being a commercial transaction the said advance cannot be assessed as deemed dividend.(AY.2007-08)
Jamuna Vernekar (Smt.) v. Dy. CIT (2021) 432 ITR 146 (Karn.)(HC)

S. 2(22)(e) : Deemed dividend – Loan – Not share holder of the Company – Not assessable as deemed dividend. 10
Dismissing the appeal of the Revenue the Court held that since the assessee was not a shareholder in the company from which it received loan, such loan amount could not be treated as deemed dividend. Followed *CIT v. T. Abdul Wahid & Co (2020) 428 ITR 456/275 Taxman 101 (Mad.) (HC)* (AY. 2013-14)
CIT v. Checkpoint Apparel Labelling Solutions (India) Ltd. (2021) 276 Taxman 312 (Mad.) (HC)

11 **S. 2(22)(e) : Deemed dividend – Not shareholder of company which had advanced loan to assessee – Loan cannot be treated as deemed dividend.**
The assessee was not the shareholder one of the partners in the assessee was a shareholder in the company that advanced the loan to the assessee. Addition cannot be made as deemed dividend.(AY. 2013-14)
Perfecta Lifestyle v. ITO (2021) 90 ITR 689 (Bang.)(Trib.)

12 **S. 2(22)(e) : Deemed dividend – Loans and advances to share holders – Common share holder – Not share holder in the company from which it had received loan – Additions cannot be made.**
Held that as the assessee was not a shareholder in said company from which it received loan, such loan amount could not be treated as deemed dividend. Merely because there were common shareholders in payer and payee company, addition cannot be made as deemed dividend. (AY. 2009-10)
ITO v. Bajaj Herbals (P.) Ltd. (2021) 191 ITD 41 (Ahd)(Trib.)

13 **S. 4 : Charge of income-tax – Capital or revenue – Non-compete fee – Sharing customer database and sharing of trained employees – Fee received is not taxable. [S. 28(i)]**
Held the non-compete fee was received for sharing the customer database and sharing of trained employees. The receipt towards the transfer was not attributable to transfer of any assets or right and from the mere fact that the receipt was not attributable to the non-compete covenant, it could not be automatically concluded that the receipt was either from business or income of an activity recurring in nature. The amount was not assessable. (AY.1997-98)
CIT v. ABB Ltd (2021) 439 ITR 554 / (2022) 284 Taxman 350 (Karn.)(HC)

14 **S. 4 : Charge of income-tax – Capital or revenue – Sale of emission reduction credit – Capital receipt [S. 28(i)]**
Dismissing the appeal of the revenue the Court held the sale of certified emission reduction credit, which the assessee had earned on the clean development mechanism in its wind energy operations, is a capital receipt and not taxable.(AY.2009-10)
CIT v. Wescare (India) Ltd. (2021) 439 ITR 657 (Mad.)(HC)
Editorial : Section 115BBG inserted by the Finance Act, 2017 with effect from 1.04.2018

15 **S. 4 : Charge of income-tax – Capital or revenue – Sale of Certified Emission Reduction Credit – Not assessable as business income. [S. 28(i)]**
Dismissing the appeal of the revenue the Court held that the proceeds realized by assessee engaged in wind power project on sale of Certified Emission Reduction Credit, which assessee had earned on Clean Development Mechanism in its wind energy operations was not an off-shoot of business, but an offshoot of environmental concerns and hence being a capital receipt would not be taxable. (AY. 2009-10)
CIT v. Prabhu Spinning Mills (P) Ltd. (2021) 283 Taxman 89 (Mad.)(HC)

S. 4 : Charge of income-tax – Carbon credit – Business of generation of electricity – Capital receipts – Not taxable [S. 28 (i)] 16
Dismissing the appeal of the revenue the Court held that proceeds realized by assessee company, carrying on business of generation of electricity on sale of Certified Emission Reduction Credit (carbon credit) was capital receipts hence not taxable. (AY. 2010-11)
CIT v. Tamil Nadu Newsprint & Papers Ltd. (2021) 282 Taxman 350 (Mad.)(HC)

S. 4 : Charge of income-tax – Income or capital – Sale of Carbon Credits – Capital receipt – No cost of acquisition of production to get entitlement Not assessable under any head of income. [S.28 (i), 56] 17
Held that the Tribunal was right in holding that the proceeds realized by the assessee on sale of certified emission reduction credits, which the assessee earned on the clean development mechanism in its wind energy operations were a capital receipt and not taxable under any head of income.(AY. 2011-12) (AY. 2010-11).(AY. 2009-10 and 2010-11)
PCIT v. Arun Textiles Pvt. Ltd. (2021) 435 ITR 273 (Mad.)(HC)
CIT v. VMD Mills Pvt Ltd (2021) 435 ITR 316 / 280 Taxman 384 (Mad.)(HC)
CIT v. Vedha Spinning Mills Pvt Ltd (2021) 435 ITR 687 / 281 Taxman 288 (Mad.)(HC)

S. 4 : Charge of income-tax – Real income – Mere receipt is not sufficient – Subsidiary of a Government Company – Money belongs to Central Government – Not assessable as income [S. 2(24)] 18
On appeal the Court held that since Government departments were not under obligation to pay Income-tax, merely because the funds were in the hands of the assessee and earned interest, the interest income could not be taxed in the assessee's hands. The interest income for the assessment year 2009-10 was non-computable income of the assessee. (AY. 2009-10, 2011-12)
Brahmos Aerospace Thiruvananthapuram Ltd. v. ACIT (2021) 438 ITR 91 / 208 DTR 185/ 323 CTR 922 (Ker.)(HC)

S. 4 : Charge of income-tax – Sale of Carbon credits – Capital receipts – Not taxable. 19
Dismissing the appeal of the Revenue the Court held that a receipt on sale of carbon emission reduction is a capital receipt. Followed *S.P. Spinning Mills Pvt Ltd v. ACIT (2021) 433 ITR 61 (Mad.) (HC)* (AY. 2010-11)
PCIT v. Lanco Tanjore Power Co. Ltd. (2021)434 ITR 671 (Mad.)(HC)
Editorial : Notice issued in SLP filed against order of High Court, PCIT v. Lanco Tanjore Power Co. Ltd. (2022) 284 Taxman 276 (SC)

S. 4 : Charge of income-tax – Carbon credit – Capital or revenue – Sale of certified emission reduction credit, which the assessee earned on the clean development mechanism in its wind energy operations, was a capital receipt and not taxable 20
Dismissing the appeal of the revenue the Court held that the Tribunal was right in holding that the proceeds received by the assessee towards clean development mechanism by realization of carbon credits in its wind energy operations were a capital receipt and not taxable.(AY.2009-10)
CIT v. Ambika Cotton Mills Ltd. (2021) 433 ITR 193 / 279 Taxman 405 (Mad.)(HC)

Editorial: Order in Ambika Cotton Mills Ltd.v Dy CIT (2013) 27 ITR 44 (Chennai) (Trib.) is affirmed.

21 **S. 4 : Charge of income-tax – State of West Bengal Industrial Policy Scheme – Sales tax or Value added tax subsidy and power subsidy – For setting up new units in State- Capital receipts.**

Held that the object of the West Bengal Incentive Scheme was for encouraging the setting up of new industrial units and expansion of existing industrial units pursuant to which Industrial Promotion Assistance was to be paid in the form of power subsidy, sales tax or value added tax subsidy to the assessee. The assessee had invested in the sponge iron plant and mega project (induction manufacturing units sponge iron, power, billet) according to the Scheme, which made the assessee eligible for subsidy under the Scheme taken out by the Government of West Bengal for making capital investment in the State. Therefore the nature of subsidies received under the State Industrial Scheme was in the capital field not exigible to tax. Followed *CIT v. Chaphalkar Brothers (2018) 400 ITR 279 (SC)*, followed.(AY.2013-14)

Dy. CIT v. Ankit Metal and Power Ltd. (2021) 92 ITR 189 (Kol.)(Trib.)

22 **S. 4 : Charge of income-tax – Subsidy – Exemption from value added tax for Newly set up manufacturing units or existing units for substantial expansion – Capital receipt – Liable to be excluded from computation of book profit.[S.115JB]**

Held that as the object of the subsidy was to accelerate industrial development and generate employment in the State, the incentive received in the form of value added tax exemption was capital in nature and also liable to be excluded from the computation of book profits.(AY.2014-15)

Sunrise Biscuit Co. Pvt. Ltd. v. ITO (2021) 92 ITR 599 / 214 TTJ 785 (Gauhati)(Trib.)

23 **S. 4 : Charge of income-tax – Foreign currency – Convertible bonds – Buy back of foreign currency bonds at discounted price – Foreign currency convertible bond proceeds were utilized for setting up a new manufacturing facility or expansion of manufacturing facility – Discount is capital receipt. [S. 28(i)]**

Held, that the foreign currency convertible bond proceeds were utilized for setting up a new manufacturing facility or expansion of manufacturing facility. The discount received through buy-back of the foreign currency convertible bonds at a discounted price was not income, it has to be treated as capital receipt. (AY. 2009-10, 2010-11)

Paramount Communications Ltd. v. Dy. CIT (2021) 90 ITR 20 (Delhi)(Trib.)

24 **S. 4 : Charge of income-tax – Air craft – Credit given was not incidental to business – Commission- Not chargeable to tax as revenue receipt – Receipt is capital in nature – Credits received by assessee from engine manufacturer for selecting its engine in aircraft would not be taxable as business income. [S.28(i), 28(iv), 43(1)]**

Assessee-company engaged in business of operating airlines in India, entered into a purchase agreement with AIRBUS SAS, France for supply of 100 aircrafts. Assessee was given option to choose engines to be fitted in aircrafts and it chose engines

manufactured by IAE. In return, IAE agreed to give certain amount of credit to assessee for choosing its engines. Assessing Officer held that credits were revenue receipts on ground that aircrafts were not purchased by assessee but hired on lease and nature of credit will change with change in mode of acquisition. On appeal the Tribunal held that credits were received for selection of engines for purpose of support for aircraft acquisition and nature of receipt for 34 aircrafts was accepted to be capital. Since aircrafts were part of fixed capital for assessee and credits were not incidental to or derived from business of operation of commercial aircraft the amount of credit was capital in nature. The Tribunal also held that the aircrafts were assessee's commercial assets and not stock-in-trade, there was no adventure in nature of trade when aircrafts were acquired or engines were selected and therefore, provisions of section 28(i) and 28(iv) would not be applicable and credits received by assessee from engine manufacturer for selecting its engine would not be taxable as business income. (AY. 2012-13)

InterGlobe Aviation Ltd. (IndiGo) v. ACIT (2021) 191 ITD 1 (SB)(Delhi)(Trib.)

S. 4 : Charge of income-tax – Sale of FSI – Development Control Regulation (DCR) – Capital receipt – Not assessable as long term capital gains. [S. 2(24), 45] 25

Held that consideration received for the sale of additional FSI for which no cost was incurred not exigible to long term capital gains. Followed *CIIT v. Kailash Jyoti No. 2 CHS and ors, ITA No.1607 of 2013 dt 24-4-2015 (Bom.)(HC)* (ITA No.. 6228 /Mum/ 2017, dt. 21-5-2021) followed.(AY. 2013-14)

Batliboi Ltd v. ITO (2021) 62 CCH 160 (Mum.)(Trib.)

S. 4 : Charge of income-tax – Diversion by overriding title – Assessee bank under liquidation – Interest income – Interest income earned by assessee post liquidation was diverted at source by overriding title for payment of DICCI and not taxable as its income.[S. 145] 26

Assessee was a co-operative bank and under liquidation with effect from 13-8-2002. Post liquidation assessee through liquidator was to realize debt/assets for making further payment to creditors. Assessee had received amount of interest income net of expenses in year under consideration of Rs. 6.53 crores post liquidation. The assessee set off the interest income against the brought forward business loss. The Assessing Officer has did not allow set off. Before CIT (A) the assessee contended that interest income was not taxable. CIT (A) rejected the claim of the asseessee. On appeal, the Tribunal held that as per understanding with DICGCI, assessee was liable to make payment to DICGCI against amount recovered by it, therefore, amount to be received by assessee had to be paid firstly to DICGCI after making necessary provision for expenses in relation to liquidation and declaration of dividend. Tribunal held that since amount of interest in dispute was not the income of assessee, same could not have been made subjected to tax in hands of assessee. (AY. 2011-12)

Visnagar Nagrik Shakari Bank Ltd. v. DCIT (2021) 191 ITD 681 (Ahd)(Trib.)

27 **S. 4 : Charge of income-tax – Sales tax subsidy Capital or revenue – After commencement of commercial production – Quantum depends upon production and sales – Reimbursement of sales tax paid – Assessable as revenue receipt [S. 28(i)]**

Held that as per the scheme of the State Government assessee was eligible for subsidies only after commencement of commercial production and quantum of subsidy depended upon production, sales and sales tax collected and paid by assessee. Since subsidy was a performance based subsidy, reimbursement received by assessee in form of refund of sales tax paid to the State Government was to be treated as revenue receipt. (AY. 2013-14, 2014-15)

JCIT (OSD) v. Medha Servo Drives (P.) Ltd. (2021) 191 ITD 333 (Hyd.)(Trib.)

28 **S. 4 : Charge of income-tax – Hardship allowance received from the Developer – Capital receipt – Not chargeable to tax. [S. 2(24)(vi)]**

Relying on the decisions in the case of *Delilah Raj Mansukhani (Smt.) v. ITO, ITA No.3526/Mum/2017,dt. 29.01.2021, Kaushal K. Bangia v. ITO ITA No.2349/Mum/2011 dt. 31-1-2012, and Shri Devshi Lakhamshi Dedhia v. ACIT* in ITA No.5350/Mum/2012 held that the benefit received by the assessee in the form of bigger size of flat and amount received as hardship allowance from the developer is are capital receipts. (ITA No.132/Ind/2020 dt. 29-9-2021) (AY. 2011-12)

Shri Lawrence Rebello v. ITO (Indore)(Trib.) www.itatonline.org

29 **S. 4: Charge of income-tax – Reimbursement of Software payments – Licence obtained from third parties – Not royalty – Not taxable [S.9(1)(vii)]**

The assessee entered into a services agreement to provide SAP software and licence to its Indian subsidiary on a cost-to-cost basis without any markup. The assessee has purchased a licence on behalf of the Indian subsidiary and then charged the assessee for these amounts. The Assessing Officer held that once a right had been provided for a cost, the fact that there was no markup or any profit would not take the receipt out of income nature. In such a scenario, the amount cannot be treated as reimbursement and the payments was treated as Royalty.

The Tribunal noted the agreement, and the financial director's certificate held there was no challenge to the factual element of the receipt being a cost to cost reimbursement received by the assessee. The routing of the payments has no bearing on the taxability of the income in the hands of the assessee. The receipt of software licence fees by the assessee from its Indian subsidiary was reimbursement of software licence fees paid to a third party, and it would not constitute income taxable in the hands of the assessee. (AY. 2015-16)

SCA Hygiene Products AB v. Dy. CIT (IT)(2021) 187 ITD 419/ 209 TTJ 545 / 123 taxmann.com 152/ 85 ITR 607/197 DTR 401 (Mum.)(Trib.)

30 **S. 4 : Charge of income-tax – Assessee a Federation of co-operative societies received contribution from its members towards co-operative education fund – Assessee had no discretion to spend amount received – the contribution could not be treated as income of assessee.[S.80P(2)(a)(i)]**

The Appellate Tribunal has held that the contribution was received by the assessee from co-operative societies towards specific purpose and the assessee has no discretion

to spend the contribution received. The utilization of the contribution is to be decided by the Advisory Board consisting of different persons as per the direction of the Government of Karnataka. The donations were for specific purposes which means that the assessee has agreed to act as a trustee for this contribution received from various co-operative societies. Thus, the donations received by the assessee being for specific purposes do not belong to the assessee. Hence, such donations do not form income of the assessee. (AY. 2013-14 to 2015-16)
Karnataka State Co-operative federation Ltd. v. ACIT (2021) 186 ITD 750 (Bang.)(Trib.)

S. 4 : Charge of income-tax – In the absence of transfer of units in a project neither a sale can be recorded in the books of the assessee nor any income can be said to have arisen in the hands of the assessee consequently, no income can be brought to tax in the hands of the assessee – Estimate of profit at 8% as contractor was deleted. [S. 2(47)] 31
Tribunal held that in the absence of transfer of units in a project neither a sale can be recorded in the books of the assessee nor any income can be said to have arisen in the hands of the assessee, consequently, no income can be brought to tax in the hands of the assessee. The AO presumed that the assessee acted as a contractor and estimated profit @ 8% of cost. The Hon'ble Tribunal observed that there was nothing on record that stated the assessee acted as a "work contractor" on behalf of SNCML to construct the building. The contribution agreement referred to by the AO was nothing but assigning the supervision of the construction to the assessee by SNCML. Similarly, the assessee received contribution from the prospective unit buyers and the same was taken into consideration and offered to tax by SNCML. As a result, Revenue's action of taxing 8% of cost of construction presumptively in the hands of assessee was incorrect. (AY. 2011-12)
ITO v. Kidderpore Holdings Ltd (2021) 213 TTJ 6 / 197 DTR 8 (Mum.)(Trib.)

S. 4 : Charge of income-tax – Option price received from joint ventures for getting right to acquire further shares in joint venture company -Advance towards sale price of shares – Capital receipt.[S. 28(i), 45] 32
Tribunal held that option price received from CUIH against to sell the shares of joint ventures company for getting right to acquire further shares in joint venture company is advance towards sale price of shares which is capital receipt which requires an adjustment only at the time of transfer of shares by the assessee to CUIH while working out capital gains. (AY. 2015-16)
Dabur Invest Corp v. JCIT (2021) 210 TTJ 785 / 202 DTR 209 (Delhi)(Trib.)

S. 4 : Charge of income-tax – Capital or revenue – Subsidy received under incentive scheme of Government Scheme of Maharashtra – Capital receipt [S. 28(1)] 33
Held that subsidy granted by the Government of Maharashtra under the Package Scheme of incentives 2007 was to encourage industrial growth in less developed areas of the State and the quantification of the same is linked with the amount of investment made in setting up the eligible unit, therefore the subsidy is capital receipt and not chargeable to tax. (AY. 2014-15)
Hyundai Construction Equipment India (P) Ltd. v. ACIT (2021) 208 DTR 449 (Pune)(Trib.)

34 **S. 4 : Charge of income-tax – Income – Diversion by overriding title- Right to recover gap only on approval – Appeal pending before Appellate Authority and Court – Regulatory Assets under approval received is not taxable on account of diversion of income by overriding title.**

The AAR held that in determining whether there has been diversion of income by overriding title, it is the nature of the obligation which is the decisive factor. There is a difference between an amount which a person is obliged to apply out of this income and an amount which by obligation cannot be said to be part of the income of the assessee. Where an obligation exists, income is diverted at source. Ruled that the regulatory assets under approval received by the assessee would not be taxable in its hands but in the hands of RI on account of diversion of income by overriding title ; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow. The second payment is merely an obligation to pay another a portion of one's income, which has been received and since applied. The first is a case in which the income reaches to the assessee, who even if he were to collect it, does so, not as part of his income, but for and on behalf of the person to whom, it is payable. Accordingly the regulatory assets under approval (RAUA) received by AEML will not be liable to tax in the hands of AEML but will be taxable in the hands of RInfra by overriding title.

Adani Electricity Mumbai Ltd., IN RE (2021) 432 ITR 173 (AAR)

35 **S. 5 : Scope of total income – Wheeling charges – Uncertainty of receiving – Method of accounting - Not assessable as income for the relevant year [S.4, 145]**

Assessee raised demand upon State Electricity Boards of several States towards transmission charges (wheeling charges) for transmission of exchange of electricity by assessee amongst these States, however due to dispute with regard to such wheeling charges amongst all these states and there was an uncertainty of receiving same did not recognise the revenue said wheeling charges as income. The AO made an addition on account of such wheeling charges. Tribunal deleted the addition. Dismissing the appeal of the Revenue the Court held that since there was an uncertainty of receiving wheeling charges due to dispute, income did not accrue to assessee during year and, same could not be subjected to tax. Order of Tribunal was affirmed. (AY. 2001-02)

CIT v. Karnataka Power Transmission Corporation Ltd. (2021) 276 Taxman 439 (Karn.)(HC)

36 **S. 5 : Scope of total income – Accrual of income – Sale proceeds – Memorandum of understanding (MoU) with SIPL to invest in project to be executed by SIPL – Agreement for sale – Project was not completed – whole profit cannot be taxed in the first year of execution of MOU – Matter remanded [S. 145]**

Held that the Assessing Officer could not have brought the whole profit of the project to tax in the first year of the execution of the MoU. Since claim of assessee was not verified by Commissioner (Appeals) and it needed proper verification, matter was to be remitted to file of Assessing Officer to redo assessment de novo and he was directed to verify status of project as it could be taxed only to extent of income which accrued to assessee during the relevant assessment year. (AY. 2013-14)

Pearl Coschem (P.) Ltd. v. DCIT (2021) 190 ITD 569 (Mum.)(Trib.)

S. 5 : Scope of total income – Accrual of income – Interest on overdue payments – Unable to recover outstanding dues – No accrual of income. [S.145, Accounting Standard 9] 37

Dismissing the appeal of the Revenue the Tribunal held that the assessee did not recover overdue interest from financial year 1996-97 and stopped accounting for it from that year onwards. Collectible is different from accrual. Under the mercantile system, interest income accrues with time. Interest charged and debited to account as income is recognised under the accrual system but not in the cash system. As the overdue interest was not collectible from financial year 1996-97, a prudent businessman, following Accounting Standard 9 of the Institute of Chartered Accountants of India, would not recognise the said income ; there was no question of claiming it as bad debt because it was not accountable owing to uncertainty of its collection. (AY.2009-10 to 2012-13)

ITO v. HMT (IT) Ltd. (2021) 85 ITR 18 (Bang.)(Trib.)

S. 5 : Scope of total income – Accrual – Mercantile system of accounting – Advance of loan for construction – Land in dispute – Write off of principal sum advanced as bad debt – Notional interest cannot be taxed on accrual basis [S.4, 145] 38

Allowing the appeal the Tribunal held that according to Accounting Standard 9 on "Revenue recognition", where there was uncertainty regarding realisation of any claim or receipt including interest, it was to be recognised only when there was reasonable certainty as regards its ultimate collection. Since there was uncertainty with regard to the ultimate collection of interest, the assessee had not accounted for it in its books of account for the assessment year 2016-17, though it was following the mercantile system of accounting. The addition of notional interest in the circumstances of the present case, was not justified under the accrual concept of accounting, having regard to the mandatory and binding AS-9. Where the principal was doubtful of recovery, interest thereon could not be said to have accrued and added to income even under the mercantile system of accounting. Therefore, the charge of notional interest was not sustainable.(AY.2016-17)

Red Fort Shahjahan Properties Pvt. Ltd. v. ACIT (2021) 85 ITR 686 (Delhi)(Trib.)

S. 6(1) : Residence in India – Individual – Out side India for a period more than 182 days- Salary income received by assessee outside India from a foreign employer for services rendered outside India could not be brought to tax in India. [S. 5] 39

Held that since the assessee was outside India for a period of more than 182 days, he had became a non-resident and, therefore, salary income received by assessee outside India from a foreign employer for services rendered outside India could not be brought to tax in India. (AY. 2011-12)

Ashish Bhardwaj v. ITO (2021) 190 ITD 867 (SMC)(Delhi)(Trib.)

40 **S. 6(6) : Residence in India – Not-ordinarily resident – Accrual of income – Sale of stock option – Earlier employer – Matter remanded back to the Assessing Officer [S. 5(1) (c)]**

On appeal the assessee contended that he was employee of Google India, returned salary income and claimed that as he came under NOR category for relevant year, he was not liable to pay tax on sale of stock option given to him by his earlier employer in USA and he was liable to pay tax only on income earned in India. Assessing Officer included income from sale of stock options as income of assessee, which was affirmed by the Tribunal. Court held that since NOR status and purchase of stock option of assessee was a mixed question of fact and law, in interest of justice, in order to give one more opportunity to assessee, matter would be remitted back to Assessing Officer. (AY. 2010 -11)

Dr. S. Muthian v. ACIT (2021) 281 Taxman 640 (Mad.)(HC)

41 **S. 9(1)(i) : Income deemed to accrue or arise in India – Representative assessee – Trustee - Business connection -British Virgin Islands by company registered in Jersey-Trust in Jercsey becoming sole beneficiary – Power to make investment in in India – Foreign Trustees recognised by Indian Income-Tax Law – Arrangement for purposes of commercial expediency - Income that accrued to the trust would not be chargeable to tax in India either by virtue of application of section 61 read with section 63 or section 161 of the Act conjointly with the provisions of article 24 of the DTAA. Income accruing – Ruling of AAR was quashed – DTAA-India-UAE [S. 5(2), 10(23FB) 61, 62, 63, 90, 160, 161, 245-0, Indian Trusts Act, 1882, S. 1, 3, Art. 4(2)(d), 24]**

The assessee filed its return of income in India, disclosing therein income that fell within the scope of section 5(2) of the Act but in view of the exemption available in terms of the DTAA, reported nil taxable income. The assessee did not have any permanent establishment or fixed place of business or any other form of presence in India and did not have any business connection or operations in India. According to the assessee income derived from making investment and debt securities in India was not assessable to tax in India having regard to the provisions of article 24 of the DTAA read with sections 61 and 161 of the Act. The assessee applied to the Authority for Advance Rulings constituted under section 245-O to give a ruling on the question. The Authority held that : (a) the trust was registered in Jersey and there was no treaty between India and Jersey, (b) sections 61 and 63 of the Act would apply only to those trusts which fell under the Indian Trusts Act, 1882 and as the trust did not meet the definition, characteristics and features of trust as per Indian law, (c) India had not ratified the Hague trust convention of July 1, 1985 and hence trust laws of foreign jurisdictions were not applicable in India, (d) the settlor could not be the sole beneficiary, (e) sections 60 to 64 were designed to over take and circumvent the counter design by a taxpayer to reduce its tax liability by parting with its property in such a way that the income would no longer be received by him but at the same time he retained certain powers over the property or income, (f) though section 160(1)(i) or (iv) provides that a trustee can be a representative assessee, in this case the trustee being a resident of Jersey could not be an agent of the assessee, (g) no authority or material had been placed before the Authority to suggest that the provisions of section 161 would be applicable to a foreign trust or trustee, (h) the assessee's representative could not satisfactorily answer the query as to why the assessee

would like to route its investment in non-convertible debenture funds through Jersey route for investment in Indian market and the assessee itself being a registered foreign institutional investor could have directly invested in Indian portfolios and taken advantage of article 24 of the DTAA, (i) as the assessee was receiving income through a device and not from direct or immediate receipt the income received from Indian debt investment was not derived by the assessee and did not fall under article 24 of the DTAA, (j) there was a proposed amendment (it has come into effect only from April 1, 2021) which supported the view that if an entity is a resident of the U. A. E. and through this entity the assessee was in receipt of some income then the income would be exempted from tax under section 10 of the Act and the proposed amendment suggested that indirect accrual of income is not eligible for treaty benefit. On a writ, allowing the petition the Court held that ; (a) income earned through the assessee's investment in the Indian debt portfolios directly would have been exempted under article 24 of the DTAA ; (b) the assessee was registered as a foreign institutional investor and later foreign portfolio investor with the SEBI ; (c) the deed of settlement with ETL regarding the trust ; (d) the assessee had made a capital commitment of USD 200 million in the trust in the capacity of the settlor of the trust, ETL was the trustee of the trust and the assessee was also the sole beneficiary of the trust ; (e) the trust was registered as a foreign portfolio investor with the SEBI. Section 61 of the Act provides that any income arising to any person by virtue of a revocable transfer shall be chargeable to tax as the income of the transferor. The deed of settlement and particularly clauses from the deed of settlement showed that there was a revocable transfer by the settlor, i. e, the assessee to the trustee ETL, and as such any income arising to the trustee should be chargeable in the hands of the assessee. The word 'trust' in section 63 covers all trusts within its ambit. The Hague trust convention does not decide the issue one way or the other. There was nothing to even suggest in the ruling of the Authority how the ratification of Hague trust convention would affect the status of foreign trusts in India. Even a foreign trust is a trust under the Act and the Income-tax return form prescribed under the Act requires the details of the trust created under the laws of a country outside India. The trust created in terms of the deed of settlement was consistent with the requirements of both, the Indian Trusts Act as well as Trust (Jersey) Law, 1984 as to what constitutes a trust. The Act does not make any provision that the settlor cannot be a sole beneficiary. Secondly, there is no provision under the Indian Trusts Act which debars the settlor from being beneficiary. In the present instance, the settlor was not the trustee but was the sole beneficiary which was clearly permissible. If the assessee had invested the amount directly, the income derived from such investment would be exempted under article 24 of the DTAA. The assessee had not created the trust to avoid tax. The assessee had routed its investment in certain instruments through the trust only for commercial expediency. This assessee had explained in detail to the Authority why it had routed its investment in non-convertible debentures through the Jersey route for the India market. The Act does not provide anywhere that only a trustee who is resident of India can be an agent under section 160 of the Act. Even if the trust were based out of Jersey and the trust was settled in Jersey, the assessee being the settlor and sole beneficiary of the trust and resident of the U. A. E. in terms of article 24 of the DTAA, the income which arose to it by virtue of investment in Indian portfolio companies would be governed by the beneficial provisions of the DTAA. To take it further, even if the trust structure were to be discarded, it must necessarily follow that the investment must

be regarded as having been made by the assessee and hence the income would arise in the hands of the assessee, and such income would not be taxable in India by virtue of provisions of the DTAA. There was no attempt whatsoever to reduce the tax liability by using the trust structure. When the provisions of the trust deed provided that the assessee had the right to reassume power over the entire income arising on the investments made by the trust in the portfolio companies, the entire income arising therefrom had in terms of section 61 of the Act to be assessed in the hands of the assessee. This would mean the exemption under article 24 of the DTAA would be attracted. Even if the income is taxed in the hands of the trustee in terms of section 161(1), it will be taxed in the "like manner and to the same extent" as the beneficiary. Once again, the assessee was the sole beneficiary of the trust and income assessed in the hands of the trustee would take colour of the assessee's income and thereby, the benefit of the DTAA must be granted. The assessee could reassume the power and hence the contribution to the trust was a revocable transfer thereby making the income arising to the trust taxable in the hands of the assessee which was exempt under article 24 of the DTAA. In the circumstances the ruling dated March 18, 2020 had to be quashed. The income that accrued to the trust would not be chargeable to tax in India either by virtue of application of section 61 read with section 63 or section 161 of the Act conjointly with the provisions of article 24 of the DTAA. Since the ruling was quashed the steps taken in furtherance of the Ruling order passed therein were also quashed and set aside.

ABU Dhabi Investment Authority v. AAR (2021) 439 ITR 437 / 323 CTR 369 / 207 DTR 209 (Bom.)(HC)

Equity Trust (Jersey) Ltd. v. AAR (2021) 439 ITR 437 / 323 CTR 369 / 207 DTR 209 (Bom) (HC)

Editorial : Ruling in Copal Partners Ltd, In re (2021) 431 ITR 379 (AAR) overruled.

42 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – If an Indian agent has been paid an arm's length remuneration, nothing further could be taxed in hands of Assessee – DTAA-India-Mauritius [Art. 5(4)]**

The Assessee being a foreign telecasting company incorporated in Mauritius sold advertising time and collected subscription revenues through its Indian affiliates Zee Telefilms and El Zee. It is the claim of the assessee that it did not have any permanent establishment in India, and so, no part of its income was taxable in India. Further, on without prejudice basis the assessee contended that if that Assessee was held to have a dependent agent permanent establishment, no further profits could be attributed in the hands of the assessee as the agent had been paid arm's length remuneration for the services rendered. Upon appeal by the Revenue, the Tribunal observed that the case of the Revenue is clearly confined to the existence of DAPE on the facts of this case. The existence of dependent agency permanent establishment is wholly tax-neutral, unless it is shown that the agent has not been paid an arm's length remuneration, and when it is not the case of the AO, that the agents have not been paid an arm's length remuneration, the question regarding the existence of dependent agency permanent establishment, i.e., under article 5(4), is a wholly academic question. (AY. 2002-03, 2004-05, 2005-06)

ADIT v. Asia Today Ltd (2021) 210 TTJ 8 (Mum.)(Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India – Business connection – Business of operation of ships in international traffic – Treaty must be extended to entire freight receipts, irrespective of whether earnings are related to feeder vessels or ships in international traffic – DTAA-India-UAE [S.90, Art. 8] 43

The assessee is a company incorporated in and domiciled in the UAE which is engaged in business of operation of ships in international traffic. The asseessee claimed exemption in respect of entire freight receipts. The Assessing Officer allowed only partial exemption. On appeal, the Tribunal held that benefit of article 8 of Indo-UAE Treaty must be extended to entire freight receipts, irrespective of whether earnings are relating to feeder vessels or ships in international traffic. (AY. 2016-17)

Avana Global FZCO v. DCIT (IT)(2021) 191 ITD 627 (Mum.)(Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India – Business connection – Repair and maintenance services – Monitoring under -sea cable system to company (TSL) – Receipts of standby maintenance charges from TCL had to be calculated on basis of apportionment of cable length in India vis-a-vis worldwide cable length- Articles 7 and 12 of OECD Model convention. [S. 9(1)(vii)] 44

Assessee-company was rendering services by way of constantly monitoring under-sea cable systems to a company (TSL) against standby maintenance charges. It claimed that said charges received only to the extent relatable to length of cable in Indian territorial waters vis-a-vis length of cable worldwide was to be taken as total revenue for computing its income accruing or arising in India under section 9(1)(i) of the Act. Lower authorities had concluded that standby maintenance charges was not in nature of Fees For Technical Services (FTS) under section 9(1)(vii) and entire turnover (receipts from Indian parties) was liable to be treated as turnover for purpose of taxation in India. The Tribunal in earlier year in assessee's own case held that standby maintenance charges could not be assessed as FTS and that standby maintenance charges had to be calculated on basis of apportionment of cable length in India vis-a-vis worldwide cable length. The Tribunal held that on facts, view taken by authorities that amounts received by assessee towards standby maintenance charges from TCL were not in nature of FTS, was to be upheld but other view that entire turnover of standby maintenance charges was liable to be treated as turnover for purpose of taxation in India, was to be vacated. (AY. 2014-15, 2015-16)

Reliance Globalcom Ltd. v. DCIT (2021) 191 ITD 648 (Mum.)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Supply of equipments and spare parts to Indian company – Outside India – No portion of income from offshore supply would be taxable in India – DTAA-India-Japan [Art. 5, 7] 45

Held that no portion of income from the supply of equipments and spare parts to Indian company outside India, would be taxable in India. The assessee did not undertake any activity of installation and commissioning of such equipments supplied in India. (AY. 2013-14)

Sumitomo Corporation v. DCIT (IT) (2021) 191 ITD 438 (Delhi)(Trib.)

46 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – No activities carried out from project office in India – No permanent establishment in India – Interest received on income tax refund – Taxable as per article 12(2) of India UK DTAA at rate of 15 per cent of gross amount of interest as income – DTAA-India-United Kingdom [S. 9(1)(v), Art. 5, 12(2)]**

Held that where assessee had entered into a contract for provision of semi submersible deepwater drilling rig and had shown that its rig was moved out of India in earlier years and there were no activities carried out from project office in India, it could not be said that assessee had a permanent establishment in India. Tribunal also held that as the assessee did not have a permanent establishment in India, it will be entitled to take the benefit of article 12 of India UK DTAA. Interest received on income tax refund of assessee would be subject to taxation as per article 12(2) of India UK DTAA at the rate of 15 per cent of gross amount of interest as income. (AY. 2011-12, 2013-14)

Dolphin Drilling Ltd. v. DCIT (IT)(2021) 191 ITD 181 (Dehradun)(Trib.)

47 **S. 9(1)(i): Income deemed to accrue or arise in India – Business connection – Re insurance business – Service /dependent – Agreement with Indian subsidiary – DTAA-India-Switzerland [Art. 5, 7]**

Held that neither assessee had any business connection in India as per Explanation 2 to section 9(1) nor did it have any PE in India and, thus, SRSIPL could not be considered as a service/dependent agent PE of assessee. On facts, SRSIPL was not a PE of assessee, and thus, profits earned from re-insurance business could not be brought to tax in India in terms of article 7. (AY. 2014-15)

Swiss Reinsurance Company Ltd. v. DCIT (IT)(2021) 190 ITD 690 (Mum.)(Trib.)

48 **S. 9 (1)(i) : Income – Deemed to accrue or arise in India – Shipping, Inland waterways transport – Wholly managed or controlled from the UAE – satisfied requirement of article 4 – Entitled to treaty benefit – DTAA-India-UAE [S.90, 144C, Art, 4(1)(b), 8(1), 29]**

Assessee company, a tax resident of the UAE, was engaged in business of services like ship chartering, freight forwarding, sea cargo services, shipping line agents etc. Assessee chartered ships for use in transportation of goods and containers in international waters, including to Kandla and Mundra ports as indeed other ports in India and elsewhere. The AO notinged that as much as 80 per cent of profits of assessee entity were to go to one D, a Greek national, concluded that assessee was not entitled to benefits of Indo UAE tax treaty, and, accordingly, issued a draft assessment order holding that income from operation of ship was taxable in India. The Tribunal held that the Assessee had its office in UAE, it was in business there since 2000, it had expatriate employees who had been given a work permit to work in UAE for Assessee Company, and that main driving force of company and its director was an expatriate resident in UAE. Since assessee company was a resident of UAE, in terms of requirements of article 4(1)(b) of Indo-UAE tax treaty, limitation of benefits provisions of article 29 of Indo-UAE tax treaty could not be pressed into service and, thus, under provisions of article 8(1) of Indo UAE tax treaty, assessee company was protected from taxation of income in question in India. (AY. 2016-17)

Interworld Shipping Agency LLC. v. DCIT (IT)(2021) 189 ITD 213/ 201 DTR 161/ 211 TTJ 385 (Mum.)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Commission to Indian agent – Arm's length remuneration – Income cannot be taxed in India – DTAA-India-UK [S.92C, Art.5(4), 5(5), 7] 49

Held that as long as an agent is paid an arm's length remuneration for services rendered, nothing survived for taxation in hands of dependent agency permanent establishment, and since existence of a dependent agency permanent establishment was wholly tax neutral income of applicant could not be held to be taxable in India. (AY. 2006-07, 2007-08)

Asia TV (UK) Ltd. v. DIT (2021) 188 ITD 676 (Mum.)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Change of domicile from British Virgin Islands to Mauritius – Entitled to benefits of India-Mauritius DTAA – Dependent agency permanent establishment (DAPE) – As long as an agent is paid an arm's length remuneration for the services rendered, nothing survives for taxation in the hands of the dependent agency permanent establishment- DTAA-India-Mauritius [Art, 5(4), 7(2)] 50

Dismissing the appeal of the revenue the Tribunal held that when a company changes its domicile from British Virgin Islands to Mauritius, the company would be entitled to the benefits of India-Mauritius DTAA. Further held that, as long as an agent is paid an arm's length remuneration for the services rendered, nothing survives for taxation in the hands of the dependent agency permanent establishment. Viewed thus, the existence of a dependent agency permanent establishment is wholly tax neutral. (ITA No. 4628-29/Mum/2006, 1877/Mum/2018 and CO No. 123/Mum/2018 dated July 30, 2021 (AY 2000-01, 2001-02)

ADIT (IT) v. Asia Today Limited (Mum.)(Trib.) www.itatonline.org

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Providing information, reservations, transaction processing and related services to airlines, travel agencies and other travel related entities by utilizing a Computerized Reservation System (CRS)- 15% of profit was attributable to India – DTAA-India-USA [Art.5] 51

Tribunal held that since major part of business activities were carried out outside India in U.S.A and only limited activities were attributable to India, 15 per cent of revenue was enough to attribute towards activities done in India. (AY. 2006 07 to 2010-11)

DIT v. Travelport L.P. USA. (2021) 187 ITD 572 (Delhi)(Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India – Business connection – Business of acquiring advertisement time ('Airtime') – Attribution of 30 percent of gross revenue from India is held to be not justified – DTAA-India-Mauritius [Art, 5, 7] 52

Assessee-partnership firm, incorporated under laws of Mauritius, was engaged in business of acquiring and allotting advertisement time ('Airtime') and programme sponsorship in connection with programming via non-standard television from Mauritius. It entered into an agreement with Indian entity which was engaged in business of acquiring airtime from assessee and allotting it to various Indian advertising agencies. Assessing Officer held that said Indian entity constituted Dependent Agent Permanent Establishment (DAPE) of assessee as per Article 5(4) of India-Mauritus DTAA

and attributed 30 per cent of gross revenue from India as profits to said Indian entity. Tribunal held that since said Indian entity was remunerated at arm's length price by assessee, which was also accepted by TPO of both entities, no further attribution of profits was to be made. (AY. 2009-10, 2011-12)
ESPN Star Sports Mauritius v. ACIT (2021) 186 ITD 546/ 197 DTR 190 / 209 TTJ 74 (Delhi)(Trib.)

53 **S. 9(1)(i): Income deemed to accrue or arise in India – Business connection – Indian subsidiary constituted dependent agent permanent establishment, service permanent establishment and fixed place permanent establishment – Income from supply of equipment to be assessed as business income arising from business connection or permanent establishment in India – Survey – Income determined on the basis of statement recorded and also by analyzing the evidence – Assessment valid – DTAA-India-China [S.5 (2), 133A, 195, Art.5]**
The Tribunal held that the facts on record clearly established that the Indian subsidiary was economically dependent on the assessee as it handled the work of installation of telecommunications equipment supplied by the assessee on technical support provided by the assessee. Further, the business of the Indian subsidiary was established wholly and exclusively for equipment supplied by the assessee. In fact, the Indian subsidiary came into existence with an intent to aid the business of the assessee in India. The facts on record clearly showed that the Indian subsidiary was not capable of supplying the equipment that it is bidding for. The products to be supplied must cater to the specific requirement of the customer. In fact, the business of the assessee in India was totally dependent on the Indian subsidiary. Moreover, the Indian subsidiary was not capable of supplying the equipment and since the technology know-how and capability was owned by the assessee, the Indian subsidiary could not have bid on its own, which meant that the Indian subsidiary was economically dependent on the assessee. The Indian subsidiary not only constituted a dependent agent permanent establishment of the assessee but also a service permanent establishment within the meaning of article 5 of the Double Taxation Avoidance Agreement between India and China.. Tribunal also held that, the equipment, i. e., the hardware supplied by the assessee contained the software and the software was not separately supplied. Moreover, the buyer was granted a non-exclusive, non-transferable and non-sub-licensable licence to use the software. The buyer was granted no title or ownership rights or interest in the software. There was only one contract for supply of equipment which included hardware and software both and, therefore, the income from supply of the equipment was to be assessed as business income arising from the assessee's business connection/ permanent establishment in India. Therefore, the Assessing Officer was to work out the assessee's income accordingly. Tribunal held that the assessment was made on the basis of statement recoded in the course of survey as well as considering the documentary evidence hence the assessment is valid. (AY.2009-10 to 2016-17)
Huawei Technologies Co. Ltd. v. Add.DIT (IT) (2021) 85 ITR 170 / 187 ITD 782 (Delhi) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Foreign company – Making supplies from outside India – No income has accrued to it in India – Supervision of installation Received supervision fee separately which is offered to tax in India – No permanent Establishment in India – Income from supplies not taxable in India – DTAA-India-Japan. [Art. 5, 12 (2)] 54

The Hon'ble Tribunal held that as per the agreement between the Maruti Suzuki India Limited ('MSIL'), the assessee does not undertake any activity of installation and commissioning of equipment supplied and was providing supervision services of the installation and commissioning to MSIL. As regards the supplies made by the assessee, no profit had accrued to it in India as it had not undertaken any activity of installation and commissioning of equipment supplied and was independently and separately providing supervision services of the installation and commissioning of such equipment, which is taxable under Article 12(2) of Double Taxation Avoidance Agreement. The same is separately taxed in return of income by the assessee. The assessee had no PE in India under Article 5 of the Double Taxation Avoidance Agreement between India and Japan. The facts of the present case are similar to the earlier years which are also verified by the Assessing Officer in the assessment order. Thus, it is undisputed fact that the assessee, a foreign company has been making supplies from outside India and as such, since no income has accrued to it in India, said income could not be brought to tax. The assessee was making supervision of installation and had received supervision fee separately which is offered to tax in return of income. Transactions of supplies made are independent and separate with the supervisory fee for MSIL. The consideration for supplier and supervision is also separate. Thus, such supplies cannot be brought to tax in India.(AY. 2013-14)

Sumitomo Corporation v. DCIT(IT) (2021) 213 TTJ 137 (Delhi)(Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India – Business connection – Relocation expenses of employees – Profit attributable to PE – Matter remanded – DTAA-India-USA. [S. 90, Art. 7] 55

Tribunal held that employees of the assessee a US company, who were deputed to mange the affairs of the Indian entity and provide technical knowledge to it continued to remain employees of the assessee company and received their salaries in their accounts in USA, therefore PE of the assessee existed in India as per the DTAA between India and USA. As regards profits attributable to assessee's PE in India the matter restored to the AO to verify item of relocation expenses of employees and include only the expenses pertaining to employees seconded to the Indian Company and also verify the global profits of the assessee after examining the documents and then arrive at the net profit attributable to PE.(AY. 2014-15)

Teradata Operations Inc v. Dy.CIT (2021) 209 TTJ 770 / 200 DTR 225 (Delhi)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Non-Resident – Receipts from sale of computer software to Indian distributors and end users with ancillary services not taxable in India. 56

Tribunal held that on a reading of the terms of the agreement, it was clear that there was no right to use the computer software. The receipts from sale of computer software to Indian distributors and end users with ancillary services could not be brought to tax in India.(AY. 2014-15)

Autodesk Asia Pte Ltd. v. Dy. CIT (IT) (2021) 91 ITR 1 (SN)(Bang.)(Trib.)

57 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Offshore supply of equipments – Transferred outside India and entire sale was executed outside India- Revenue received therefrom was not to be taxed in India – Basic engineering design services were intrinsically in respect of setting up of Butane-1 plant and same were rendered through project office of assessee in India, consideration received in respect of said basic engineering design services was liable to tax in India as business income of PE of assessee – DTAA-India-France [Art. 7(1), 12]**

AAR held that with respect to the offshore supply of equipment since property in goods were transferred by assessee outside India and entire sale was executed outside India, consideration received by assessee therefrom could not be taxed in India. As regards basic engineering design services were intrinsically in respect of setting up of Butane-1 plant and same were rendered through project office of assessee in India, consideration received in respect of said basic engineering design services was liable to tax in India as business income of PE of assessee.

Technip Frances SAS, In re (2021) 280 Taxman 117 (AAR)

58 **S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Purchase order in relation to offshore supplies from a port in Japan to DMRC in India – Application admitted – DTAA-India-Japan [S.245R(2), Art. 7]**

Applicant filed an application for advance ruling on whether amount received/receivable by applicant from Delhi Metro Rail Corporation Ltd. (DMRC) under purchase order in relation to offshore supplies of High Efficiency Traction Motors for RS-1 from a port in Japan to DMRC in India, is liable to tax in India under provisions of Act and/or agreement for Avoidance of Double Taxation between India and Japan (Treaty).Revenue submitted that transaction was designed prima facie for avoidance of tax, however had not brought about any material to establish same. AAR held that merely because applicant had taken over responsibility of risk of loss or damage till equipments were delivered and also that of insurance etc; it did not establish that transaction was designed prima facie for avoidance of tax. Application was admitted.

Mitsubishi Electric Corporation In re (2021) 278 Taxman 395 (AAR)

59 **S. 9(1)(i): Income deemed to accrue or arise in India – Business connection – Income will be assessed in the hands of PQR and STU and benefit of article 13 of the India – Netherlands Double Taxation Avoidance Agreement is not admissible to these funds – DTAA-India-Netherlands. [S. 2(17), 5, 60, 61, 62, 63(a), 160 (1)(iv), Art. 13]**

The issues raised in five applications being common the matters were heard together and common orders were passed. The main issue involved for consideration was "Whether the Income arising to PQR and STU investment made in India out of the contributions made by ABC. DEF or GHI will be assessed in the hands of ABC, DEF or GHL, as the contributions made by it to PQR and STU will be considered as, revocable transfer under section 61 of the Act?

After analyzing the various provisions of the Act and DTAA, the AAR held that (Questions 1 to 5) No, it will be assessed in the hands of PQR and STU and benefit of article 13 of the India – Netherlands Double Taxation Avoidance Agreement is not admissible to these funds. Other queries raised.i. e. Whether the contribution made by

participants to the fund will be considered as revocable transfer under section 61 or whether the funds are assessable under section 161 are in the nature of alternative pleas have became infructuous in view of the specific finding that the income is assessable in the hands of the funds.(AAR. Nos. 1358 to 1362 dt 21-1-2020)
ABC, In re (2021) 434 ITR 441 (AAR)

S. 9(1)(i) : Income deemed to accrue or arise in India – Business connection – Non -resident – Capital gains – Share transaction between two non-resident entities are not liable to tax in India – Buyer is not required to deduct tax at source [S.195, ITAT R. 11UB IIUC] 60
AAR held that considering the facts of the case the Share transaction between two non-resident entities are were not liable to tax in India and therefore the buyer was not required to deduct tax at source
Symphony Technology Group Llc, In Re (2021) 432 ITR 165 (AAR)

S. 9(1)(i) : Income deemed to accrue or arise in India – Returns filed after filing of application would not make application infructuous – Business connection – Sale complete outside India therefore no income accrued or is deemed to accrue in India – Fixed place of business is held to be a permanent establishment – Composite contract on turnkey basis for setting up butene-1 Plant – Services taxable in India – Design services inextricably connected with setting up of plant – Profits of permanent establishment to be taxed in India as business Income- DTAA-India-France [S. 245RR, Art, 7(1), 13(4)] 61
AAR held that the returns were filed after the filing of the application and there was no pendency on the date of application. Merely because the assessee had declared income in the returns filed afterwards, it did not make the application infructuous. The details of the amount offered by it in its return of income in different years were not necessary to decide the issues raised.
Considering the facts of the case AAR also held that sale complete outside India therefore no income accrued or deemed to accrue in India. Fixed place of business is held to be permanent establishment income arising from the composite contract on turnkey basis for setting up butene-1 Plant services is taxable in India. Design services are inextricably connected with setting up of plant profits of permanent establishment to be taxed in India as business Income.
Technip France Sas, In Re (2021) 432 ITR 338 / 198 DTR 193 / 319 CTR 113 (AAR)

S. 9(1)(i): Income deemed to accrue or arise in India – Business connection – British Virgin Islands by company registered in Jersey – Value of shares transferred in India less than 50 Per Cent – Income from transfer of shares not subject to tax in India – Foreign company – Minimum alternate tax – Companies not required Registration in India – Not liable to minimum alternative tax. [S. 5(2), 10(23FB) 61, 62, 63, 90, 115JB, 160, 161, 245-0, Indian Trusts Act, 1882, S. 1,3, Art. 4, 24] 62
AAR held that British Virgin Islands by company registered in Jersey and the Value of shares transferred in India less than 50 Per Cent. Income from transfer of shares not subject to tax in India. AAR also held that a Foreign company which is not required

registration in India is not liable to minimum alternative tax. As regards income received or accrued or arising in India to the Trust registered in Jercy is taxable in India,
Copal Partners Ltd., In Re (2021) 431 ITR 379 / 200 DTR 401/ 320 CTR 528 (AAR)
Editorial : Overruled in respect of income received or accrued or arising in India to the Trust registered in Jersey is taxable in India, in In ABU Dhabi Investment Authority AAR (2021) 439 ITR 437 (Bom)(HC), Equity Trust (Jersey) Ltd. v. AAR (2021) 439 ITR 437 (Bom)(HC)

63 **S. 9(1)(ii) : Income deemed to accrue or arise in India – Salaries – Dependent personal services – Non-Resident – Salary and allowance outside India- Failure to produce tax residency certificate – Not taxable in India – DTAA-India-Belgium [S. 5(2), 15, 90(4), Art, 15(1)]**
Held that since assessee qualified as a non-resident in India and salary and allowances were earned by assessee in respect of employment rendered in Belgium due to his foreign assignment, as per article 15, Assessing Officer was directed to allow exemption. (AY. 2014-15)
Ranjit Kumar Vuppu v. ITO (IT)(2021) 190 ITD 455 (Hyd.)(Trib.)

64 **S. 9(1)(iv) : Income deemed to accrue or arise in India – Dividend by Indian company – Person making payment to assessee could be treated as SCB-UK or SCB-India but neither one of them were an Indian resident for purpose of India-Mauritius tax treaty, dividend income could not be brought to tax in India- Domestic depository which was admittedly a branch of foreign company would not be treated as an Indian resident-DTAA-India-Mauritius [S. 9(1)(i), Art. 10, 22]**
Assessee-company was incorporated in Mauritius. Assessee was an investor in Indian Depository Receipts (IDRs) by Indian branch of SCB bank (SCB-India), with underlying assets in form of shares in a UK based company (SCB-UK) held by depository's custodian i.e. BNY-US. IDRs so issued in respect of shares of SCB-UK were listed in India. Assessing Officer held that IDR dividends received by assessee-company for underlying shares would be taxed in hands of assessee under Income-tax Act. Tribunal held that SCB-India was only an Indian branch office i.e. permanent establishment of SCB-UK. Person making payment to assessee could be treated as SCB-UK or SCB-India but neither one of them were an Indian resident for purpose of India-Mauritius tax treaty, dividend income could not be brought to tax in India. Tribunal also held that merely because depository of Indian Depository Receipt (IDR) must only be an Indian company in accordance with law, it would not mean that a domestic depository which was admittedly a branch of foreign company would be treated as an Indian resident. (AY. 2015-16)
Morgan Stanley Mauritius Co. Ltd. v. DCIT (IT)(2021) 191 ITD 88 / 212 TTJ 1/203 DTR 10 (Mum.)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Computer software not royalty – Right to reproduce and right to use computer software separate rights – No liability to deduct tax at source – Agreement has to be read as a whole, real nature of transaction to be seen – DTAA-India-Singapore-India-China-Japan-Kingdom -USA [S. 2(7), 2(37A) 4, 5, 90 (2), 195, 201 (IA), Copyright Act, 1957, S.2(A), 52(1)(aa), Art. 3(2), 12(3), 30] 65

On appeals the Court observed that there were four categories of cases : (a) cases in which computer software was purchased directly by an end-user, resident in India, from a foreign, non-resident supplier or manufacturer ; (b) cases where resident Indian companies were distributors or resellers, purchasing computer software from foreign, non-resident suppliers or manufacturers and then reselling it to resident Indian end-users ; (c) cases where the distributor was a foreign, non-resident vendor, who, after purchasing software from a foreign, non-resident seller, resold it to resident Indian distributors or end-users ; and (d) cases where the computer software was affixed onto hardware and sold as an integrated unit or equipment by foreign, non-resident suppliers to resident Indian distributors or end-users. On the question whether amounts paid by the persons resident in India to non-resident, foreign software suppliers, amounted to royalty, and whether it constituted taxable income deemed to accrue in India under section 9(1)(vi) of the Income-tax Act, 1961 thereby making it incumbent upon all such persons to deduct tax at source and pay such tax deductible at source under section 195 of the Act, Court held that in all these cases, the "licence" that was granted under the end-user licence agreement, was not a licence in terms of section 30 of the Copyright 1957 Act,1957 which transferred an interest in all or any of the rights contained in sections 14(a) and 14(b) of the 1957 Act, but a "licence" which imposed restrictions or conditions for the use of computer software. Thus, none of the end-user licence agreements was referable to section 30 of the 1957 Act, inasmuch as section 30 of that Act spoke of granting an interest in any of the rights mentioned in sections 14(a) and 14(b) of that Act. The end-user licence agreements did not grant any such right or interest, least of all, a right or interest to reproduce the computer software. In fact, such reproduction was expressly interdicted, and it was also expressly stated that no vestige of copyright was at all transferred, either to the distributor or to the end-user. What was "licensed" by the foreign, non-resident supplier to the distributor and resold to the resident end-user, or directly supplied to the resident end-user, was in fact the sale of a physical object which contained an embedded computer programme, and was therefore, a sale of goods. The distributors resold shrink-wrapped copies of the computer programmes already put in circulation by foreign, non-resident suppliers and manufacturers, since they had been sold and imported into India via distribution agreements, and they were thus not hit by section 14(a)(ii) of the 1957 Act. The end-user licence agreements conveyed title to the material object embedded with a copy of the computer software to the distributors or end-users. The distribution of copyrighted computer software, on the facts, would not constitute the grant of an interest in copyright under section 14(b)(ii) of the 1957 Act, thus necessitating the deduction of tax at source under section 195 of the Income-tax Act, 1961. Court also observed that given the definition of "royalties" contained in article 12 of the DTAAs there was no obligation on the persons mentioned in section

195 of the Act to deduct tax at source, as the distribution agreements and end-user licence agreements did not create any interest or right in such distributors or end-users, which would amount to the use of or right to use any copyright. The provisions contained in the Act which deal with royalty, not being more beneficial to the assessees, had no application in the facts of these cases. The amounts paid by resident Indian end-users or distributors to non-resident computer software manufacturers or suppliers, as consideration for the resale or use of the computer software through end-user licence agreements or distribution agreements, was not royalty for the use of copyright in the computer software, and did not give rise to any income taxable in India, as a result of which the persons referred to in section 195 of the Act were not liable to deduct any tax at source under section 195 of the Act. Court also observed that the real nature of the transaction must be looked at upon reading the agreement as a whole. By virtue of section 90 of the Income-tax Act, 1961, once a Double Taxation Avoidance Agreement applies, the provisions of the Act can only apply to the extent that they are more beneficial to the assessee and not otherwise. Further, by Explanation 4 to section 90, Parliament has clarified that where any term is defined in a DTAA, the definition contained in the DTAA is to be looked at. It is only where there is no such definition that the definition in the Act can then be applied.

Indian tax laws use the expression "in respect of" as synonymous with the expression "on" : the expression "in respect of", when used in a taxation statute, is only synonymous with the words "on" or "attributable to". This accords with the meaning to be given to the expression "in respect of" contained in Explanation 2(v) to section 9(1)(vi) of the Income-tax Act, 1961 and would not in any manner make the expression otiose. (AY.1999-2000 to 2002-03)

Engineering Analysis Centre Of Excellence P. Ltd. v. CIT (2021) 432 ITR 471/199 DTR 361/ 319 CTR 497/281 Taxman 19 / 125 taxmann.com 42 (SC)

Citrix Systems Asia Pacific Pte. Ltd v. DIT CIT (2021) 432 ITR 471/199 DTR 361/ 319 CTR 497 / 125 taxmann.com 42 (SC)

DIT v. Ericsson A.B. (2021) 432 ITR 471/199 DTR 361/ 319 CTR 497 / 125 taxmann.com 42 (SC)

Editorial: CIT v. Alcatel Lucent Canada (2015) 372 TR 476 (Delhi)(HC) affirmed, CIT v. Samsung Electronics Co Ltd (2012) 345 ITR 494 (Karn.)(HC) CIT v. Sunray Computers P.Ltd (2012) 348 ITR 196 (Karn.)(HC), AAR in Citrix Systems Asia Pacific Pty Ltd, Inn re (2012) 343 ITR 1 (AAR) reversed.

66 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Sale of telecom equipments. i.e. mobile handsets – Supply of articles or goods – Not taxable as royalty – DTAA-India-China [S. 9(1)(i), Art, 12]**

Dismissing the appeal of the Revenue, the Court held that supply of software was embedded in supply of telecom equipment resulting in sale of copyrighted article, the said transaction was to be treated in nature of supply of articles or goods and thus, payment made towards supply of software was not taxable in India as royalty. (AY. 2013-14)

CIT (IT) v. ZTE Corporation (2021) 130 taxmann.com 128 (Delhi)(HC)

Editorial : SLP of filed by the Revenue dismissed, CIT (IT) v. ZTE Corporation (2021) 282 Taxman 304 (SC)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Sale of software – Not royalty – DTAA-India-UK [Art. 13] 67

Dismissing the appeal of the Revenue, The High Court relying on the case of *DIT v. New Skies Satellite B.V. [2016] 382 ITR 114 (Delhi) (HC) and PCIT v. M. Tech India (P.) Ltd. [2016] 381 ITR 31 (Delhi) (HC)* held that payment made by the reseller for the purchase of software for sale in Indian market could not be considered as royalty within meaning of Article 13 of India UK DTAA. (AY. 2010-11, 2013-14)

CIT(IT) v. Micro Focus Ltd. (2021) 279 Taxman 242/ (2021) 431 ITR 136 /197 DTR 299/ 318 CTR 670 (Delhi)(HC)

Editorial: SLP is granted to the Revenue CIT v. Micro Focus Ltd (2022) 284 Taxman 444(SC)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Sale of software licences to end-users – Not transfer of copyright – Not royalty – Not liable to deduct tax at source – DTAA-India-Australia [S. 9(1)(vi), 195, Art. 12] 68

Held that receipts on account of sale of software licences would not constitute royalty within meaning of DTAA between India and Australia and provisions of section 9(1)(vi) of the Act. Not liable to deduct tax at source. (AY.2010-11)

Atlassian Pty Ltd. v. DCIT (IT)(2021) 191 ITD 731 (Bang.)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Sale of software / licence – Not taxable in India – DTAA-India-Singapore [S. 9(1)(vii), Art. 5, 7, 12] 69

Tribunal held that since receipts were on account of sale of software/license and rendition of services in connection with software and not for parting copyright of software, such receipts could not be brought within ambit of royalty. Receipts would be in nature of business profits, however, since assessee did not have PE in India, income would not be taxable in India. (AY. 2010-11)

BMC Software Asia Pacific Pte Ltd. v. ACIT (2021) 191 ITD 621 (Pune)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Payment to distributor – No right to use any copy right – Not taxable as royalty in India – Matter remanded. 70

Held that distribution agreement did not create any interest or right in assessee, which would amount to use of or right to use any copyright, said payment did not amount to royalty. Not taxable in India. Matter remanded. (AY. 2017-18)

Quest Software International Ltd. v. DCIT (IT)(2021) 191 ITD 243 (Bang.)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Sale of licence to use software – Not assessable as royalty – Not liable to deduct tax at source – DTAA -India-Singapore [S. 9(1)(vii), 90(2), 195, Art. 12] 71

Held that sale of licence to use software could not be termed as royalty within provision of DTAA. Not liable to deduct tax at source.(AY. 2014-15)

IBM Singapore (Pte.) Ltd. v. DCIT (IT)(2021) 191 ITD 486 (Bang.)(Trib.)

72 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Reimbursement of software licence fee – Not liable to be taxed as royalty – DTAA-India-Swedish [Art. 12]**
Held that reimbursement of software licence fee was held to be not taxable as royalty. Followed earlier year order. (AY. 2016-17)
Essity Hygiene and Health AB v. Dy.CIT (2021) 190 ITD 166 (Mum.)(Trib.)

73 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Sale of computer software on a CD – Payment is not royalty – Matter remanded – DTAA-India-USA [S. 9(1)(vii), Art. 12, Copy Right Act, S. 14(b)]**
Held that payment was made for sale/license of computer software on a CD/other physical media and end-user only got right to use computer software under a non-exclusive licence ensuring owner continues to retain ownership under section 14(b) of Copyright Act, payments could not be classified as a royalty. Matter remanded to examine the terms of agreement (AY. 2012-13, 2014-15)
World Courier (India)(P.) Ltd. v. (2021) 191 ITD 264 (Bang.)(Trib.)

74 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Offering income as business income in Terms of Mutual Agreement Procedure – Income cannot be taxed as royalty – Credit for tax deducted at source – Entitled to claim credit for tax deducted at source in the country in which the related income was offered to tax [S. 144C (13), DTA-India-USA [Art. 5(4), 7]**
Held that for the assessment years 2009-10, 2010-11, 2012-13 and 2013-14, the Tribunal having held that the distribution revenue earned by the assessee could not be taxed at royalty, albeit as business income, since the assessee had already offered income as business income in terms of the Mutual Agreement Procedure, the income declared by the assessee in accordance with the Mutual Agreement Procedure had to be accepted, the Assessing Officer was to delete the addition. Tribunal also held that the revenue derived from the two companies was not taxable in India in terms of section 9 of the Act and since the income did not form part of the total income of the assessee the credit for tax deducted at source was denied. The assessee could claim the credit for the tax deducted at source in the country in which the related income was offered to tax. There was no reason to interfere.(AY.2014-15)
Turner Broadcasting System Asia Pacific Inc. v. Dy. CIT (It)(2021) 92 ITR 57 (SN)(Delhi)(Trib.)

75 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Refund of amount – Cannot be taxed – DTAA-India-USA [Art. 12]**
Tribunal held that any part of royalty receipt, which had to be bona fide refunded to payer of royalty, cannot be taxed in hands of assessee as money did not eventually belong to assessee. (AY. 2011-12 to 2016-17)
Gemological Institute of America Inc. v. ACIT (IT)(2021) 189 ITD 254 / 88 ITR 505 / 211 TTJ 521/ 201 DTR 321 (Mum.)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Income from sale of software license – Not assessable as royalty – DTAA – DTAA-India-USA [Art. 5, 7, 12] 76
The AO sought to assess business income earned by the Assessee on sale of software/ license as Royalty income u/s 9(1)(vi) of the Act r.w. Article 12 of the India-USA DTAA. On appeal, the Tribunal held that the transaction was for sale of license/software, where the end-user will have access to and make use of the licensed computer software product and not for parting with copyright the software. Therefore it is not a Royalty income as defined under Article 12 of the India-USA DTAA. Since it is not Royalty, the income is in the nature of business profits of the Assessee. For business profits of a non-resident entity to be taxable in India under Article 7 of the India-USA DTAA, it is necessary that such foreign enterprise must have a permanent establishment ("PE") in India in terms of Article 5 of the said DTAA. The Tribunal noted the decision of the DRP which held that the Assessee does not have a PE in India and therefore held that provisions of Article 7 are not applicable in the case of Assessee and therefore the income earned on sale of license/software is exempt from tax in India. (AY. 2009-10, 2014-15)
Ansys Inc. v. ACIT (IT)(2021) 189 ITD 671 (Pune)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Vessel – Charter hire arrangement – Charges received from such time charter of vessel would not be brought to tax in its hands as royalty – DTAA-India-Singapore [S. 44BB, Art. 12 (4)] 77
Allowing the appeal of the assessee the Tribunal held that when a vessel along with crew under charter hire arrangement for ONGC's project of exploration and exploitation of oil and natural gas, since control of vessel and crew members had throughout remained with assessee and charterer was only concerned with services and charterer was not allowed to use or given any right to use industrial, commercial, or scientific equipment, charges received from such time charter of vessel would not be brought to tax as royalty. (AY. 2014-15)
Smit Singapore Pte Ltd. v. DCIT (2021) 188 ITD 243 (Mum.)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Satellite Telecommunication Services – Not to be assessed as royalty – Liaison and coordination activities – Cannot be treated as permanent establishment – DTAA-India-UK [S. 9(1)(i), Art. 13] 78
Assessee, a UK based company, was engaged in business of providing telecommunication services and leasing of space segment capacity of navigational transponder. It had entered into an agreement with Tata Communications Ltd for providing satellite telecommunication services. The Assessing Officer assessed the total receipt as royalty subjected to tax @ 10 %. DRP upheld the order of the Assessing Officer. On appeal the Tribunal held that amount received by assessee from providing Satellite Telecommunication services to Tata Communications Ltd was not to be treated as royalty. Assessing Officer held that assessee had a PE in India on two grounds, that Liaison Office (LO) of assessee constituted its PE in India; and that Land Earth Stations (LES) also constituted PE of assessee in India. DRP upheld the order of the Assessing Officer. On appeal the Tribunal held that there were no income generating activities carried out by Liaison Office in India. On facts, Liaison office could not be treated as PE of assessee. (AY. 2015-16)
Inmarsat Global Ltd. v. DCIT (2021) 187 ITD 157 (Mum.)(Trib.)

79 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Payment made by assessee for market analysis, maintenance of online data, customer database, etc. – Matter remanded for reconsideration – DTAA-India-USA [Art. 12]**

Assessee-company was engaged in business relating to online advertising like internet based content, communications, etc. It claimed deduction on account of selling and marketing expenses paid to its US subsidiary for rendering services in nature of targeting new customers, carrying out promotional activities and participating in trade shows outside India on behalf of assessee. Assessing Officer held that impugned payments had been made for rendering of managerial, technical or consultancy services and payment was in nature of Fee for Technical Services. Commissioner (Appeals) held that payment for market analysis, maintenance of online data, customer database, etc., was in nature of royalty. Tribunal held that nature of services provided by US subsidiary had not been analysed by Commissioner (Appeals) and Commissioner (Appeals) had rendered decision without bringing on record supporting material. Accordingly the matter remanded to the Commissioner (Appeals). (AY. 2014-15 to 2016-17)

Adadyn Technologies (P.) Ltd. v. DCIT (IT) (2021) 186 ITD 690 (Bang.)(Trib.)

80 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Sale of software to Indian distributors – Not in the nature of copy right – Not taxable as royalty – DTAA-India-Sweden [Art. 12]**

Assessee was a company incorporated in Sweden. During year, assessee was in receipt of certain sum towards sale of software products from its Indian distributors who further sold same to end customers in India. Assessing Officer held that sale of software products by assessee was in nature of transfer of copyright and, therefore, consideration received for same was taxable in hands of assessee as royalty under section 9(i)(vi) as well as under article 12 of India-Sweden DTAA. CIT (A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that sale of software products by assessee to its Indian distributors for further sale to end users was not in nature of transfer of copyright and, therefore, consideration received by assessee for sale of software was not taxable in hands of assessee as royalty' under provision of section 9(1)(vi) and article 12 of India-Sweden DTAA. (AY. 2014-15)

Qliktech International AB v. DCIT (2021) 186 ITD 315 (Delhi)(Trib.)

81 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Non-resident – Consideration from sale of licensed software – Receipts on sale of Copyright article not taxable in hands of assessee – DTAA-India-Singapore [Art. 12 (3)]**

Allowing the appeal, that Explanation 4 was added to section 9(1)(vi) of the Act by the Finance Act, 2012 with retrospective effect from June 1, 1976 to provide that all consideration for use of software was to be assessable as "royalty". However, the definition in the Double Taxation Avoidance Agreement had been left unchanged. Similarly, though Explanation 5 had been inserted in section 9(1)(vi) of the Act no amendment had been made to the definition of the term "royalty" under the Double Taxation Avoidance Agreement and since the provisions of the Double Taxation Avoidance Agreement were beneficial to the assessee, those provisions would be applied to the assessee. Thus, the amended definition of "royalty" under the domestic law even

if amended with retrospective effect could not be extended to the definition of "royalty" under the Double Taxation Avoidance Agreement. As the provisions of the Double Taxation Avoidance Agreement over-ride the provision of the Income-tax Act, 1961 and were more beneficial they would apply and the receipts on sale of copyrighted licence were not taxable in the hands of the assessee as "royalty".(AY.2013-14)
Symantec Asia Pacific P. Ltd. v. Dy. CIT (IT)(2021) 85 ITR 138 (Delhi)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Singapore tax resident providing bandwidth services – Cannot be taxed as royalty as Indo-Singapore DTAA does not include transmission by satellite, cable, optic fiber or similar technology in the definition of 'Royalty' – DTAA-India-Singapore [Art. 12(3)] 82
Assessee, a tax resident of Singapore provided bandwidth services, as standard services, wherein the customer enjoys an uninterrupted 24x7 service to transmit voice and data at standard rate of reliability. In case no service was provided or there is default of regular supply, then there is non-payment of consideration by the payee. The Revenue authorities were of the view that the consideration received by the assessee falls within the definition of Royalty both u/s 9(1)(vi) of the Act and also under provisions of the Tax Treaty. The Tribunal held that the Tax Treaty between India Singapore specifically does not include "transmission by satellite, cable, optic fiber or similar technology" in the definition of 'Royalty' under the Tax Treaty and also further the Tax Treaty had not undergone any amendment, the provisions of DTAA being more beneficial to the assessee were attracted. The Tribunal held that assessee was not liable to tax on the amount received from Indian customers for the provision of bandwidth services outside India. (AY. 2011-12, 2012-13, 2014-15)
Telstra Singapore Pte Ltd. v. Dy. CIT (IT)-(2021) 186 ITD 440/ 123 taxmann.com 124 (Delhi)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Sale of software – No specific finding with regard to licence agreement – Matter remanded. 83
Held, that there was no specific finding by the lower authorities with regard to the licence agreement through which the assessee granted to the parties to use the software to say whether it was just the sale of software or royalty. The Assessing Officer was to consider the issue afresh in accordance with law in the light of judgment of the Supreme Court in *Engineering Analysis Centre of Excellence P. Ltd. v. CIT (2021) 432 ITR 471 (SC)*.(AY. 2013-14)
Nice Systems Technologies Inc. v. JCIT (2021)90 ITR 19 (SN)(Bang.)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Purchase of software products In absence of PE in India, software license fee would not be taxable as business profits – DTAA-India-USA [S. 9(1)(i), 9(1)(vii), Art. 12] 84
Aassessee, a US based company, purchased certain number of licenses of different software and charged, inter alia, Indian entity for licenses issued, in absence of PE in India, software license fee would not be taxable as business profits. Tribunal held that since licensors permitted assessee only to install, operate and use their software products to extent of copies purchased by it, without any right to copy same, it could

not have transferred anything more than that to its entities globally including India and therefore, there could be no question of treating amount received from Indian entity on transfer of copyrighted articles as royalty in hands of assessee within meaning of article 12(3). (AY. 2016-17)
Husco International Inc. v. ACIT (2021) 214 TTJ 751 / 207 DTR 457 / (2022) 192 ITD 273 (Pune (Trib.)

85 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Distributors – Sold specific software products – Not royalty – No permanent establishment in India – Not taxable in India – DTAA-India-USA [S. 90, Art. 12]**
Tribunal held that the assessee sold its software products to distributors / resellers for selling the same to end customers in India without parting with any right or title in the intellectual property used in the software or right to us the copyright in the software hence it constitute business income and not royalty. Since the assessee did not have any PE in India the income is not taxable in India. (AY. 2014-15)
Norton Lifelock Inc. v. DCIT (2021) 210 TTJ 409 / 199 DTR 233 (Pune)(Trib.)

86 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Sale of software – No specific finding with regard to licence agreement – Matter remanded.**
Held, that there was no specific finding by the lower authorities with regard to the licence agreement through which the assessee granted to the parties the license to use the software to say whether it was just the sale of software or royalty. The Assessing Officer was to consider the issue afresh in accordance with law in the light of judgment of the Supreme Court in *Engineering Analysis Centre of Excellence P. Ltd. v. CIT (2021) 432 ITR 471 (SC)*.(AY. 2013-14)
Nice Systems Technologies Inc. v. JCIT (2021) 90 ITR 19 (SN)(Bang.)(Trib.)

87 **S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Premium paid was for imparting commercial information and knowledge and was royalty both under Act and under DTAA – Premium payment could not be treated as fees for technical services – India-Brazil [S. 5, 9(1)(vii), Art. 12(3))]**
AAR held that broadly there was no difference between the meaning of "royalty" under the Act and under the Double Taxation Avoidance Agreement and the premium payment would be covered under article 12(3) of the Double Taxation Avoidance Agreement, i. e., payment for use or right to use information regarding commercial experience. V had kept a database, nurtured by commercial experience, relating to its mobile services and this valuable right had been shared with the applicant on exclusive basis. This was clearly in the nature of commercial information and experience shared with the applicant and the consideration paid was thus covered under article 12(3) of the Double Taxation Avoidance Agreement hence the income deemed to accrue or arise in India in terms of section 9(1)(vi) (b) as royalty.
ON Mobile Global Ltd., In Re (2021)435 ITR 403 (AAR)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Fees – Non-Resident – Providing management support services- Not royalty – Payments received are not business income DTAA-India-UK [S. 9(1)(i), 90, 195, Art. 5, 13(4)] 88

AAR ruled that payment by Indian company would be fees for technical services only in respect of direct technical advice, support and management including implementation service provided under information technology service, it is not royalty. AAR also ruled that while considering service permanent establishment mere stay of employees for periods exceeding 30 days in twelve-month period not sufficient, substantial evidence that service was rendered through employee for 30 days or more necessary. Accordingly the payments received are not business income. The payments made by Aircom India to the applicant would suffer withholding tax under section 195 of the Act only in respect of component of direct technical advice, support and management including implementation service provided under information technology service (IT) at the applicable rate. (AAR No.1329 of 2012 dt 4-2-2021)

Aircom International Ltd., IN RE (2021) 432 ITR 1 /198 DTR 249/ 319 CTR 337 (AAR)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Publishing Information on science in electronic format – Web based information – E-Books, E-Journals, Articles – Not royalty – Indian subscribers not liable to deduct tax at source -DTAA-India-Netherlands [S. 28(i), 90, 195, Art. 7(12)(4)] 89

AAR held that publishing information on science in electronic format Web based information, E- Books, E -Journals, Articles is not royalty Accordingly Indian subscribers are not liable to deduct tax at source under section 195 of the Act.

Elsevier Bv, IN RE (2021) 432 ITR 251 / 201 DTR 209 / 321 CTR 423 (AAR)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Traveling expenses to employees – cannot be treated as fees for technical services [S.92CA] 90

Held that travelling expenses to employees cannot be treated as fees for technical services. (AY.2012-13, 2013-14)

American Express (India) Pvt. Ltd. v. JCIT (2021) 92 ITR 576 (Delhi)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Intermediary services – No technology made available – Not fees for technical services – Not taxable in India – Sale of equipment and payments outside India – Income attributable to Permanent Establishment is not taxable – DTAA-India-Sweden [S. 9(1)(i), Art. 12] 91

Held, that the intermediary services rendered by the assessee did not make available any technical knowledge and skill to BTIN and BTIN was not equipped to apply technology contained in the services rendered by the assessee. Therefore, the intermediary services did not amount to fees for technical services and were not taxable in India. Only income that is attributable to the operations carried out in India can be taxed in India. The Dispute Resolution Panel held that BTIN was the permanent establishment of the assessee in India without appreciating the true facts that the assessee had no place of disposal in India in the office of BTIN from where the assessee could have conducted

its business in India. Therefore, the Assessing Officer was directed to delete the addition of income attributable to permanent establishment. (AY. 2011-12)
Bombardier Transportation Sweden AB v. Dy.CIT (IT)(2021) 90 ITR 405 / 199 DTR 108 / 209 TTJ 804 (Delhi)(Trib.)

92 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Payments for services relating to Hotel Management – Not taxable as fees for technical services – DTAA-India-USA [Art, 7, 12]**
Held that the receipts of the assessee from various activities of hotel management ranging, inter alia, from ticketing, reservation, marketing, advertising, operation, administration, catering, network support services, portal services, imparting of skill sets through trainings, were not taxable as fees for technical services within the meaning and scope of section 9 of the Act or article 12 of the Double Taxation Avoidance Agreement between India and the United States of America.(AY. 2014-15)
ACIT (IT) v. Starwood (M) International Inc. (2021) 90 ITR 9 (SN)(Delhi)(Trib.)
Westin Hotel Management LP (2021) 90 ITR 9 (SN)(Delhi)(Trib.)

93 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Service help agreement – Proof of service was not furnished – Matter remanded – DTAA-India-Sweden [Art. 12]**
Following the earlier year order amount received by a Swedish company from Indian entity for providing IT support services to latter held to be not taxable. With respect to other three entities, since assessee could not furnish proof of correct nature of services with help of any agreement, matter was remitted to file of Assessing Officer for a fresh determination of issue. (AY. 2017-18)
Sandvik IT Services AB. v. ACIT (IT)(2021) 191 ITD 290 / 203 DTR 243 (Pune)(Trib.)

94 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Management fees – Indian subsidiaries – Most favoured Nation (MFN) clause – Not taxable as fees for technical services – Training services – Matter remanded – DTAA-India-Sweden [Art. 10, 12(4)(b)]**
Tribunal following the order passed in earlier assessment years held that management service fees received by assessee from its Indian subsidiaries was not to be taxed in its hands as FTS in India in view of Most Favoured Nation (MFN) clause added in tax treaty. Tribunal also held that leadership training provided by assessee to employees of an Indian company did not result in making available any technical knowledge, experience or skill etc. to said employees which could enable them to use it later on, thus, such training fee could not be considered as FTS for rendering consultancy or technical services. Matter remanded for re-adjudication. (AY. 2016-17)
Sandvik AB. v. ACIT (IT)(2021) 190 ITD 110 (Pune)(Trib.)

95 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – IT support services – Not chargeable to tax – DTAA-India-Swedish [Art. 12]**
Assessing Officer treated IT support services as Fees for technical services and further held that since technology was embedded in hardware and Indian entity was enabled

to use same, it amounted to making available technical services and know-how, etc., and consequently was covered within article 12 of DTAA the amount was, therefore, held to be taxable. Tribunal held that since amount received by assessee from one of four Indian entities, viz., SAPL, in preceding/succeeding years had been held to be not chargeable to tax under article 12 of DTAA, facts for relevant assessment years being similar, amount received by assessee from SAPL was eventually not chargeable to tax under article 12 of DTAA even though same was in nature of Fees for technical services' covered under section 9(1)(vii) of the Act. As regards other three entities were concerned, since assessee could not furnish proof of correct nature of services with help of any agreement, matter was to be remitted to file of Assessing Officer for a fresh determination of issue. (AY. 2016-17)
Sandvik IT Services AB v. ACIT (2021) 187 ITD 872/ 214 TTJ 293 (Pune)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Non-Resident – Leadership training provided to employees of group company – Training fees cannot be assessed as fees for technical services – As there is no permanent establishment in Income cannot be assessed – DTAA-India-Sweden [Art, 5, 7, 12(b)] 96

Tribunal held that the leadership training provided by the assessee did not result in making available any technical knowledge, experience or skill, to the employees of the Indian company, which could enable them to use it later on. The Assessing Officer was not justified in considering the training fee as a consideration for rendering consultancy or technical services within the meaning of article 12(4)(b) of the Double Taxation Avoidance Agreement between India and Portugal. On the facts since the Assessing Officer had himself, in the assessment order, accepted that the assessee did not have any permanent establishment in India, the amount of training fees would also escape tax net as it could not be taxed as "business profits" under article 7 in the absence of there being any permanent establishment in India in terms of article 5.(AY.2014-15)
Sandvik AB v. Dy. CIT (2021) 85 ITR 593 /187 ITD 638 / 210 TTJ 1019 / 201 DTR 172 (Pune)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Non-resident – Receipt of software licence fees from group entity in India – Receipt in nature of reimbursement – Not taxable – Payment received for Information Technology Services – Not taxable – DTAA-India-Sweden [Art. 12] 97

Tribunal held that, in order to decide whether the services rendered by the assessee fit the definition of "fees for technical services" under the India-Sweden Agreement, the question to determine was whether "the technical knowledge or skills of the provider was absorbed by the receiver so that the receiver can deploy similar technology or techniques in the future without depending upon the provider". The services rendered by the assessee did not enable the recipient of the services to perform the same services, in future, without recourse to the assessee. Thus, the "make available clause" was not satisfied in the course of rendition of services by the assessee and the consultancy fees could not be brought to tax under article 12 of India-Sweden Agreement. On the taxability of income on account of information technology services, article 12(4)(a) of the

India-Sweden Agreement would come into play when the person receiving the money as royalty and the person providing service ancillary or subsidiary to the enjoyment of that right were the same. The payment received by the assessee had been held to be in the nature of reimbursement, which was outside the ambit of taxation. The person selling the software was B, of Switzerland, and the person providing the services in question was the assessee. Article 12(4)(a) would not, therefore, come into play at all. Therefore, taxation under article 12 in the present case could not come into play when the "make available" clause was not satisfied.(AY.2015-16)
SCA Hygiene Products Ab v. Dy. CIT(IT)(2021) 187 ITD 419/ 85 ITR 607/ 197 DTR 401/ 209 TTJ 545 (Mum.)(Trib.)

98 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Reimbursement of expenses – Not taxable as fees for technical services – DTAA-India -USA [Art. 12]**
Assessee, a US company engaged in business of providing gem trading services and other allied and technical services. Assessing Officer held that payment for travel being intrinsically linked for providing training and technical services, had to be regarded as FTS. On appeal the Tribunal held that in earlier years Tribunal held that such reimbursement of expenses was not in nature of FTS. Following consistent view of Tribunal, addition made by Assessing Officer is deleted. (AY. 2016-17)
Gemological Institute International Inc. v. CIT (2021) 214 TTJ 393 / (2022) 192 ITD 83 / 211 DTR 139 (Mum.)(Trib.)

99 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Gross amounts paid/payable by applicant to a US Company under Distribution Agreement was in nature of Fees for Technical Services – Application admitted – DTAA-India-USA [S.245R(2), Art. 12]**
Applicant filed an application seeking advance ruling on whether gross amounts paid/ payable by applicant to a US Company under Distribution Agreement dated 1-10-2018 are in nature of Fees for Technical Services as per provisions of Explanation 2 to clause (vii) of section 9(1). Revenue submitted that it had no objection to admission of case Application for advance ruling was admitted.
Turnitindia Education (P) Ltd In re (2021) 278 Taxman 389 (AAR)

100 **S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Majority of services technical in nature – Services were ancillary and subsidiary to application or enjoyment of right, property or information for which royalty paid-Chargeable to tax in India – Liable to withhold tax – DTAA-India-USA-Netherlands [S.90, 92 to 92F, 195, Art. 12(5)(a)]**
After analyzing the agreements and provisions the AAR held that The payment to be made by Perfetti India for the cost to be allotted by the applicant is taxable under article 12 (5) (a) of the DTAC between India and Netherlands. Though some of the services are also taxable article 12 (5) of the DTAC, such services are not segregated as they are already taxable under article 12 (5) (a). Accordingly the payment made by the Indian company would be chargeable to tax in India. That the Indian company was liable to withhold taxes under section 195 of the Act on the payments to be made towards the

costs to be allocated by the assessee. That as the applicant was liable to tax in India, it was required to file a tax return under the provisions of the Act and the transfer pricing provisions of section 92 to section 92F would be applicable in respect of the payment to be made by the Indian company. (AAR No. 869 of 2010 dt 21-6-2019)
Perfetti Van Melle Holding B.V., In Re (2021) 434 ITR 101 (AAR)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Company providing advisory and consultancy services in the field of real estate – Not having permanent establishment in India – Receipts not taxable as business income-DTAA-India-United Kingdom [Art. 7, 13] 101
AAR held that company providing advisory and consultancy services in the field of real estate has no permanent establishment in India. Hence receipts are not taxable as business income considering the article 7 and 13 of DTAA between India and United Kingdom.
DTZ Debenham Tie Leung, In Re (2021) 431 ITR 626 (AAR)

S. 9(1)(vii) : Income deemed to accrue or arise in India – Fees for technical services – Non-Resident – Employees not found to stay in India for more than six months – Income not liable to tax in India – Apportionment of expenses – DTAA-India-Japan [Art. 5, 7, 12] 102
AAR held that the apportionment of profits to the technical services rendered by the applicant could not be done in an arbitrary manner. Such apportionment can be done only out of the "f. o. b. price for main equipment" and not against the other payments. It would be appropriate if the Assessing Officer determined this aspect and gave value to the fees for technical services, as these were included in the sale price of offshore supply of equipment, after making further necessary enquiries and giving a basis thereof.
Toshiba Corporation, In Re (2021) 431 ITR 414 (AAR)

S. 10(2A) : Share income of partner – Firm – Share of profits to partner of firm – Addition is held to be not justified. 103
Share income from firm received by partner was exempt under section 10(2A) and under no circumstances could be taxed in hands of partner. (AY. 2016-17)
S. Seethalakshmi v. ITO (2021) 189 ITD 684 (Chennai)(Trib.)

S. 10(10) : Gratuity – Commencement date – Payment of Gratuity (Amendment) Act, 2010, Notification dt. 24-5-2010 – No retrospective effect – Deduction of tax at source. [Payment of Gratuity Act, 1972, S. 4(5)] 104
Appellants challenged date of commencement of Amending Act as 24-5-2010 as tax had been deducted at source when gratuity was paid to appellants before commencement of Amending Act and contended that it should be made effective from 1-1-2007 and consequently appellants would not be liable for deduction of tax on gratuity amount. High court dismissed the petition. On appeal the Court held that benefit of higher gratuity was one-time available to employees only after commencement of Amending Act and hence, could not be treated to be retrospective.
Krishna Gopal Tiwary v. UOI (2021) 282 Taxman 274/ 204 DTR 433/ 322 CTR 1 (SC)

105 **S. 10(10) : Gratuity – Increase in ceiling by amendment of payment of Gratuity Act with effect from March 29, 2018 – Amendment not violative of provisions of Constitution – Provision not applicable with retrospective effect [S.10(10)(ii), Payment of Gratuity Act, 1972, S 4(3), Art. 14, 226]**

Dismissing the petition the Court held that the terms and conditions of employment vary significantly as between employees of the Central Government and those of public sector undertakings and, even as between different public sector undertakings. Therefore, these classes of employees do not constitute a single homogeneous class. Consequently, the contention that employees of public sector undertakings, should be treated in the same manner as regards gratuity as the employees of the Central Government is not tenable. Court held that when there was no ambiguity either in section 10(10)(ii) of the Income-tax Act, as it stood as on the date of retirement of the assessee, or in the amendment Notification S. O. 1213(E), the applicable exemption limit could not be raised by an order of court to Rs. 20 lakhs as regards the assessee. The assessee had not made out a case that the amendments should be implemented with retrospective effect from January 1, 2016.

G. Srinivasan v. UOI (2021) 430 ITR 189/ 197 CTR 1 / 318 CTR 167 / 279 Taxman 273 (Mad.)(HC)

106 **S. 10(10C) : Public sector companies – Voluntary retirement scheme – Compensation-Not liable to deduct tax at source – Winding up of Government company – Rehabilitating its employees, monetary benefits under special package scheme – Entitled for exemption [S.10(10B), 192, Art. 226]**

Dismissing the appeal of the Revenue, the Court held that Central Government approved a non-budgetary support scheme for this company with view of rehabilitating employees. Said monetary-benefits under special package scheme given to employees of Government company would be in nature of retrenchment compensation though it was styled as VRS. eligible for exemption.

CIT (TDS) v. Hindustan Photo Film Workers `Welfare Centre (CITU)(2021) 282 Taxman 186/ 207 DTR 253/ 323 CTR 707/(2022)441 ITR 661 (Mad.)(HC)

Editorial : Order of Single Judge was affirmed, Hindustan Photo Film Workers `Welfare Centre (CITU)(2017) 249 Taxman 204 /151 DTR 185 / (2018) 400 ITR 299 (Mad.)(HC)

107 **S. 10(10C) : Public sector companies – Voluntary retirement scheme – Exemption not claimed in the return – Exemption claimed on the basis of judgement of Supreme Court – Exemption was allowed – Order shall not be cited as precedent. [S. 143(3), 264, Art. 226]**

The assessee has not claimed exemption in the return of income. The Assessment was completed u/s 143(3) of the Act. On the basis of the judgement of Supreme Court in *S. Palaniappan v. ITO* (CA No. 4411 /2010 dt 28-9-2015, the assessee filed a revision application before PCIT praying for allowing the exemption on the basis of the judgement of Supreme Court. PCIT rejected the claim of the applicant. The assessee filed writ before the High Court. High Court allowed the petition and held that the assessee is entitled for exemption. High Court also observed that this order has been passed in the peculiar facts of the case and shall not be cited as precedent. (AY. 2004-05)

Gopalbhai Babubhai Parikh v. PCIT (2021) 436 ITR 262/ 279 Taxman 464 (Guj.)(HC)

S. 10(10C) : Public sector companies – Voluntary retirement scheme – Deduction under section 10(10C) and relief under section 89 – Simultaneously available. [S.89(1), 264] 108
The assessing officer initiated proceedings on the premise that the appellant was not entitled to claim deduction under Section 10 (10 C) (viii) and also under Section 89 (1) of the Act in respect of amounts received as part of VRS. Revision under section 264 of the Act was also rejected. On Writ, it was observed that the claim came to be rejected on the basis of the instructions/letter issued by the Central Board of Direct Taxes on 23-04-2001, but the said circular was quashed by the Court in State Bank of India v. Central Board of Direct Taxes; 2006 (1) KLT 258. Therefore, the appellant was entitled to the deduction under Section 10 (10C) (viii) of the Income -tax Act and relief under Section 89 (1) (as the provision stood at the relevant point of time) in respect of amounts received by him under the voluntary retirement scheme. (Single Judge)
V. Gopalan v. CCIT (2021) 197 DTR 438 / 318 CTR 712 (Ker.)(HC)

S. 10(10C) : Public sector companies – Voluntary retirement scheme – Exemption available under section 10(10C) and section 89(1) of the Act – Alternate remedy not a bar from entertaining the writ petition – Single judge order of the High Court set aside [S. 10(10C)(viii), 17(3), 89(1), 264, Art, 226] 109
Assessee received certain amount from his employer under VRS scheme which was claimed as exempt under section 10(10C)(viii) as well as section 89(1) r.w.s. 17(3) of the Act. AO rejected the claim of the assessee and an application under section 264 was filed which was rejected by the CIT. Assessee filed a writ petition which was disposed off by a single judge as alternative remedy was available with the assessee by filing an appeal to the CIT(A). However, the Division Bench set aside the order of the Single Judge and held that when proceedings are without jurisdiction, existence of alternate remedy is not a bar for granting relied under Article 226 of the Constitution of India. Reliance was placed on *Calcutta Discount Company Ltd v. ITO (1961)41 ITR 191(SC).* Further, relying on the decision of *State Bank of India v. CBDT (2006 KLT 258),* the High Court held that assessee was entitled to claim deduction under section 10(10C)(viii) and section 89(1) of the Act. (WA No. 1713 of 2020 dt. 5-01-2021) (AY. 2001-02)
V. Gopalan v. CCIT (2021) 431 ITR 76/ 318 CTR 706 / 197 DTR 433 (Ker.)(HC)

S. 10(10C) : Public sector companies – Voluntary retirement scheme – Bank employee – Exit Option Scheme – Ex gratia amount – Tax deducted at source – Not entitled to exemption. [R. 2BA] 110
Assessee a bank employee, retired from service under Exit Option Scheme and received certain ex gratia amount and claimed exemption u/s 10(10)(c) of the Act. AO denied the exemption. Affirming the denial of the exemption the Tribunal held that that there was no reference regarding fulfilment of conditions prescribed under rule 2BA, assessee's claim for benefit of exemption under section 10(10C) in respect of ex gratia amount was to be rejected. The Tribunal also held that the employer-Bank (SBI) has also deducted tax at source including the ex-gratia granted to the employee at the time of retirement. In the certificate also, the retirement scheme is mentioned as exit option scheme and there is no reference regarding fulfilment of conditions prescribed under Rule 2BA of the 1962 Rules, which stipulated the criteria for exemption under section 10(10C). (AY. 2008-09)
Krishnan Achary v. ITO (2021) 186 ITD 73/ 210 TTJ 399/ 199 DTR 169 (Cochin)(Trib.)

111 **S. 10(10D) : Life insurance policy – Keyman insurance policy – Assignment of policy to employee – Amount received by employee on surrender or encashment taxable as perquisite. [S.17 (2)]**

Dismissing the appeal of the assessee the Court held that, Explanation 1 is merely of clarificatory nature and like all other Explanations, which are inserted to clarify certain issues relevant in the parent provision, applies retrospectively to the date of insertion of the main provision itself. The Explanation is not a substantive provision which creates a new tax liability on the assessee and could be normally applied prospectively. On the basis of section 10(10D) of the Act, with its Explanation 1, the clear position of law which emerges is that the character of the keyman insurance policy does not get converted into an ordinary life insurance policy despite its assignment and therefore, any benefit accruing to the employee upon its surrender or encashment will be taxable in the hands of the employee as perquisite.(AY.2007-08)

Allu Arvind Babu v. ACIT (NO. 1)(2021) 430 ITR 172 / 277 Taxman 622/ 320 CTR 444/ 200 DTR 169 (Mad.)(HC)

112 **S. 10(10D) : Life insurance policy – Keyman insurance policy – Amended Explanation 1 – Not eligible to claim exemption – No valid notice was issued – Order was quashed. [S. 143(2), 143(3)]**

Policy was assigned in name of assessee on 2-6-2009, whereas, it matured on 10-2-2015, i.e. during previous year relevant to assessment year 2015-16, at time of maturity of Keyman Insurance Policy, amendment is section 10(10D) by way of Explanation 1, had already been made effective. Therefore, anessee would not be eligible to claim exemption under section 10(10D) on maturity value of Keyman Insurance Policy. Tribunal held that as no valid notice was issued the order was quashed. (AY. 2015-16)

Dy. CIT v. Hothur Mohamed Iqbal (2021) 214 TTJ 996 /208 DTR 385/ (2022) 192 ITD 64 (Bang.)(Trib.)

113 **S.10(22) : Educational institution – Derived from – Deemed income assessed as cash credits whether entitled to exemption – Appeal dismissed due to low tax effect – Question left open [S. 2(24), 68]**

The High Court held that the words derived from or some other similar words do not occur in section 10(22) of the Income-tax Act, 1961, that, therefore, the word income as occurring in section 10(22) cannot be given a restrictive meaning and must be given its natural meaning or the meaning ascribed to it in section 2(24), and that hence, an assessee who is entitled to exemption under section 10(22) can claim the benefit thereof for the purpose of income deemed to be chargeable to tax under section 68. On appeal Supreme Court dismissed the appeal on the ground of low tax effect, keeping the question of law open.(AY. 1987-88, 1998-99)

DIT (E) v. Raunaq Education Foundation (2021) 431 ITR 52/ 199 DTR 344/ 319 CTR 660/ 278 Taxman 186 (SC)

S. 10(23C) : Educational institution – Institution must exist solely for philanthropic purposes – Receipts from in-patient department was distributed across board for doctors – Denial of exemption was held to be justified [S. 10(23C)(via), Art. 226] 114

Dismissing the appeal the Court held that the receipts from the in-patient department were distributed across the board for doctors. Thus, the decision on the facts by the competent authority and as affirmed by the High Court was not perverse nor did it suffer from complete absence of rationality warranting interference. If the assessee rectified the position, that would not preclude it from claiming exemption for subsequent years.

Decision of the Bombay High Court in W.P. No. 6530 of 2005 dt. 5-12-2005, affirmed. (AY. 1999-2000 to 2002-03)

Ashwini Sahakari Rugnalaya and Research Centre v. CCIT (2021) 438 ITR 192 / 206 DTR 201/ 322 CTR 753 / 284 Taxman 16 (SC)

S. 10(23C) : Educational institution – Computation of income – Receipt from education institution was less than 1 Crore – Entitled to exemption – Receipts of educational institution cannot be clubbed with other income of the society for the purpose of computing exemption u/s 10(23C)(iiiad) of the Act. [S. 10(23C)(iiiad), 12AA, IT Rules, 1962, 2BC] 115

Assessee-society established an educational institution. Assessing Officer denied the exemption on ground that excess income over expenditure of said institution run by assessee was carried to account of society for taxation and other purpose and since aggregate of fee receipts of institution and receipts of society exceeded prescribed upper limit of Rs. 1 crore. The order of the Assessing was affirmed by the Tribunal. On appeal the Court held that the receipts of Institution were below Rs. 1 crore. In the computation of income Assessing Officer himself recognized and acknowledged difference between receipts of institution and receipts of society. Allowing the appeal the Court held that the receipts of institution could not be clubbed with other income of assessee-society for purpose of considering benefit of section 10(23C)(iiiad) of the Act. The Court also observed that the Tribunal erred in looking at the provisions of section 12AA of the Act. Exemption was allowed. (AY. 2007-08)

Manas Sewa Samiti v. Add. CIT (2021) 439 ITR 79/ 323 CTR 737 / 208 DTR 41 (2022) 284 taxman 418 (All)(HC)

S. 10(23C) : Educational institution – Denial of exemption – Profit motive – Matter remanded. [S. 10(23C)(vi), Art. 226] 116

Competent Authority has rejected the application for exemption. On writ allowing the petition the Court held that the competent authority has not examined the material whether the petitioner was generating any profit by taking fees for conducting the examination. Matter was remanded. Referred *Islamic Academy of Education v. State of Karnataka (2003) 6697 ; Assam State Tet Book Publication Corporation Ltd v. CIT (2009) 17 SCC 391, Queen's Education Society v. CIT (2015) 8 SCC 47.* (AY. 2013-14)

Bihar Combined Entrance Competitive Examination Board v. CIT (2021) 197 DTR 29 (Pat) (HC)

117 **S. 10(23C) : Educational institution – Diverting funds to another institution which was not existing solely for educational purposes – Not entitled for exemption [S. 10 (23C(vi)]**

Assessee had been funding Diocese of Jalandhar for past 3 years under head of education extension services and submitted that Diocese was engaged in running schools, promoting education in different places in Punjab. Commissioner denied grant of exemption on grounds that MoA of Diocese was not totally educational and funding sum of Rs. 1 crore to same was done with purpose of diverting assessee's funds. High Court affirmed the order of the Commissioner. (AY 2010-11)

St. Francis Convent School v. CBDT (2021) 130 taxmann.com 78 (P&H)(HC)

Editorial : SLP filed by the assessee was dismissed, St. Francis Convent School v. CBDT (2021) 282 Taxman 313 (SC)

118 **S. 10 (23C) : Educational institution – State Examination Board – Charging fees – Denial of exemption is not valid – Matter remanded [S.12AA]**

Allowing the appeal the Court held that, rejection of exemption was held to be not justified merely on the ground that the assessee was generating profit by charging fees for conducting examination. Matter remanded to Commissioner.

Bihar Combined Entrance Competitive Examination Board v. CIT (2021) 278 Taxman 179/ 318 CTR 229 (Pat.)(HC)

119 **S. 10(23C) : Educational institution – Exemption cannot be denied on ground that it does not have independent Memorandum of Association, Bye laws, etc. [S. 10(23)(vi)]**

Dismissing the appeal of the revenue the Court held that so long as assessee adheres to parameters required to be satisfied under section 10(23C) to avail exemption, it is entitled to exemption and, therefore, unless findings of fact are given on basis of evidence that assessee does not meet parameters of section 10(23C), exemption claimed cannot be denied on ground that it does not have independent Memorandum of Association, Bye laws, etc. (AY. 2014-15)

CIT v. Sengunthar Matriculation Higher Secondary School (2021) 277 Taxman 252 (Mad.) (HC)

120 **S. 10(23C) : Educational Institution – Assessee filed an application for grant of exemption – Application was rejected being delayed – Application for AY. 2018-19 was not delayed – Order for the exemption for future years after AY. 2018-19 needs to be passed accordingly – Petitioner to file condonation application with CBDT for current AY 2019-20 [S. 10(23C)(vi), 119(2)(b), Art, 226]**

The CIT(E) rejected the application of the petitioner dated 31-10-2019 for exemption under section 10(23C) (vi) of the Act for the assessment year 2019-20 and AYs thereafter. The application was rejected referring to the 16th proviso to section 10(23C)(vi) which says that an application for exemption or continuance of exemption under section 10(23C)(vi) has to be fled on or before the 30th day of September of the relevant assessment year from which the exemption is sought which date in the instant case would be on or before 30-9-2019, as the due date to file application was 30-9-2019 and CIT(E) had no power to condone such delay. The assessee filed Writ Petition seeking

direction to quash the order of rejection. The Hon'ble High Court held that CIT(E) was not authorized to condone the delay with respect to AY.2019-20 and hence the assessee had to file an application before the CBDT under section 119(2)(b) to authorize CIT(E) to condone the delay in fling its application dated 31-10-2019. With respect to the contention of dealing with grant of exemption with regard to future AYs, the High Court directed the CIT(E) to consider such application as being filed within time limit and take necessary action. (AY. 2009-10)

Sanjay Ghodawat University, Kolhapur v. CIT(E)(2021) 431 ITR 559/ 202 DTR 396 / 280 Taxman 63/ 322 CTR 54 (Bom.)(HC)

S. 10(23C) : Educational institution – Educational college for intermediate, degree and post-graduation courses for women – Erroneous reading of assessment year by prescribed authority in form 56D – Rejection application was set aside. [S.10(23C)(vi) Art, 226] 121

Assessee filed an application dated 26-3-2019 seeking grant of exemption as gross receipts of assessee exceeded Rs. 1 crore in financial year 2018-19. The revenue erroneously read year 2018-19 as assessment year instead of financial year and rejected application of assessee for grant of exemption on ground that same was barred by limitation. The Court held that there was total non-application of mind on part of revenue and it ought to have considered application of assessee, dated 26-3-2019 on merits by treating it for financial year 2018-19 and assessment year 2019-20 instead of rejecting it as barred by limitation. Accordingly the order rejecting the application was set aside. (AY. 2019-20)

Rajamahendri Educational Society v. UOI (2021) 431 ITR 217 / 276 Taxman 18 / 204 DTR 99/ 321 CTR 616 (AP)(HC)

S. 10 (23C) : Educational institution – Surplus re deployed regularly for educational purposes – Lease rent paid to trustees neither excessive nor unreasonable – Denial of exemption was not justified [S. 10(23C)(vi), 13(1)(c)] 122

Held that main object of the institution is educational. Surplus was re deployed regularly for educational purposes. Lease rent paid to trustees neither excessive nor un reasonable. Denial of exemption was not justified. (AY. 2019-20)

Sardar Partapsingh Education Society v. CIT (E)(2021)89 ITR 19 (SN)(Mum.)(Trib.)

S. 10 (23C) : Educational institution – No activity carried on other than educational purposes – Exemption cannot be denied – land sold at fair market value – Approval cannot be denied – Direction of the High Court was not followed – Order barred by limitation [S. 10(23C(vi) 12A, 147, 148] 123

Tribunal held that the assessee has not carried any activity other than educational hence denial of exemption was not valid. The land sold was at fair market value hence approval cannot be denied. The Assessing Officer has not passed the order as per the direction of the High Court and hence the order is barred by limitation.(AY.2005-06 to 2012-13)

Roland Educational and Charitable Trust v. Dy. CIT (2021) 87 ITR 51 (Cuttack)(Trib.)

124 **S. 10 (23C) : Educational institution – Search and seizure – Withdrawal of registration retrospectively with effect from, 2009 – Notification No. SO 3215(E), dated 5-9-2019 came into effect from 5-11-2019 – Order of withdrawal of exemption was held to be not valid [S. 10(23C)(vi)]**

On basis of search conducted in the group Principal Commissioner by an order dated 16-09-2019 withdrew approval granted under section 10(23C)(vi) to assessee retrospectively with effect from 2009 i.e when assessee was granted said approval. On appeal the Tribunal held that the amendment by Notification No. S.O. 3215(E)/ No.60/2019 to give power to Pr. Commissioner to approve or reject exemption under section 10(23C) came with effect from 5-11-2019. Order of PCIT was quashed.

Aurora Educational Society v. PCIT (2021) 190 ITD 481/ 87 ITR 72 (SN)(Hyd)(Trib.)
Tarakarma Educational Society v. PCIT (2021) 190 ITD 481/ 87 ITR 72 (SN)(Hyd)(Trib.)
Church Educational Society v. PCIT (2021) 190 ITD 481/ 87 ITR 72 (SN)(Hyd)(Trib.)
Karshik Vidya Parishad v. PCIT (2021) 190 ITD 481/ 87 ITR 72 (SN)(Hyd)(Trib.)

125 **S. 10 (23C): Educational institution – Filing of audit report along with the return of income is not mandatory – Report can be filed in the course of assessment proceedings or even appellate proceedings [S. 10 (23C)(vi), Form No.10BB]**

Allowing the appeal of the assessee the Tribunal held that, filing of audit report along with the return of income is not mandatory. Report can be filed in the course of assessment proceedings or even appellate proceedings. (AY. 2016-17)

Sanskirit KMV School v. ACIT (SMC)(2021) 190 ITD 29 (Chd)(Trib.)

126 **S. 10 (23C) : Educational institution – Approval from the prescribed authority was not obtained – Denial of exemption was justified [S. 10(23C)(v)]**

Held that denial of exemption was justified as the assessee has not obtained approval from the prescribed authority. (AY. 2011-12)

Gurudwara Kalgidhar Singh Sabha v. ITO (2021) 188 ITD 494 / 86 ITR 46 (SN)(Delhi) (Trib.)

127 **S. 10 (23C) : Educational institution – Solely for educational purpose and not for earning profits – Substantially financed by Government – Eligible for exemption under section 10(23C)(iiiab) of the Act – Explanation to clause 10(23C)(iiiab) w.e.f. 1-4-2015 setting out minimum threshold of 50 per cent for institution to be financed by Government for claiming benefit of exemption under section 10(23C)(iiiab) is prospective in nature.[S. 10(23C)(iiiab)]**

Assessee was a charitable educational institution. Assessing Officer denied exemption. CIT(A) allowed the claim of the assessee. On appeal by the revenue dismissing the appeal the Tribunal held that, from perusal of objectives of assessee, composition of society and rules of utilisation of funds it was undisputed that assessee was solely working for educational purpose and not for purpose of earning profits. There was complete control of State Government over the funds received and spent during year by assessee. Further, almost 50 per cent of grants were given to assessee by State Government. It was substantially financed by Government, assessee was eligible for exemption under section 10(23C)(iiiab). Tribunal also held that Explanation to

clause 10(23C)(iiiab) w.e.f. 1-4-2015 setting out minimum threshold of 50 per cent for institution to be financed by Government for claiming benefit of exemption under section 10(23C)(iiiab) is prospective in nature. Assessee entitled to exemption (AY. 2014 -15)

DCIT v. Shri Vaishnav Polytechnic College Govn by VSK Market Tech Educational Society (2021) 186 ITD 378 (Indore)(Trib.)

S. 10 (23C): Educational institution – Solely for educational purpose and not for earning profits – Substantially financed by Government-Eligible for exemption under section 10(23C)(iiiab) of the Act – Explanation to clause 10(23C)(iiiab) w.e.f. 1-4-2015 setting out minimum threshold of 50 per cent for institution to be financed by Government for claiming benefit of exemption under section 10(23C)(iiiab) is prospective in nature.[S. 10(23C)(iiiab)] 128

Assessee was a charitable educational institution. Assessing Officer denied exemption. CIT(A) allowed the claim of the assessee. On appeal by the revenue dismissing the appeal the Tribunal held that, from perusal of objectives of assessee, composition of society and rules of utilisation of funds it was undisputed that assessee was solely working for educational purpose and not for purpose of earning profits. There was complete control of State Government over the funds received and spent during year by assessee. Further, almost 50 per cent of grants were given to assessee by State Government. It was substantially financed by Government, assessee was eligible for exemption under section 10(23C)(iiiab). Tribunal also held that Explanation to clause 10(23C)(iiiab) w.e.f. 1-4-2015 setting out minimum threshold of 50 per cent for institution to be financed by Government for claiming benefit of exemption under section 10(23C)(iiiab) is prospective in nature. Assessee entitled to exemption (AY. 2014 -15)

DCIT v. Shri Vaishnav Polytechnic College Govn by VSK Market Tech Educational Society (2021) 186 ITD 378 (Indore)(Trib.)

S. 10 (23C): Educational institution – Demerger – Financial help to hospital – No violation of provision – Withdrawal of exemption is not justified [S. 10(23)(vi)] 129

CIT (E) held that the assessee-society continued to divert funds towards non-educational activities by way of huge advances on which no interest was charged, same was against requirement of section 10(23C) and withdrew approval granted to assessee - It was found that RNMCS was earlier a part of assessee but was demerged from assessee due to adverse view taken by department. Allowing the appeal the Tribunal held immediately after demerger all transactions between original and demerged institution could not come to a stand still and, thus, there was nothing wrong if assessee provided funds to RNMCS as financial help for time being, since entire amount taken from assessee-society stood paid back order passed by CIT(E) under section 10(23C)(vi) was not sustainable. (AY. 2017-18)

Seth Ramjidas Modi Vidhya Niketan Society v. CIT (2021) 186 ITD 119/ 197 DTR 33/ 209 TTJ 118 (Jaipur)(Trib.)

130 **S. 10 (23C) : Educational institution – Providing accommodation and food and beverages, Etc – Not commercial activities – Entitle to exemption [S. 2(15), 10(23C) (iv)]**
Tribunal held that the Department's appeal to the High Court, had been dismissed by the High Court and the appeal against the order of the High Court to the Supreme Court had been dismissed by the Supreme Court due to low tax effect. Since the Commissioner (Appeals) followed the order of the Tribunal and the orders of his predecessor for assessment years 2011-12 and 2012-13, which orders had become final, the orders appealed against did not suffer from any illegality or irregularity. (AY.2013-14, 2014-15)
ACIT (E) v. India International Centre (2021) 85 ITR 54 (SN)(Delhi)(Trib.)

131 **S. 10(23C) : Educational institution – exemption if income is applied for educational purpose-alternatively expenditure incurred for earning such income should be allowed under section 57(iii) – eligibility to claim exemption-wholly and substantially financed by the Government. [S.57 (iii)]**
An institution, established for educational purpose and not to earn profit, and substantially financed by the government, is eligible to claim exemption under section 10(23C)(iiiab) of the Act. Inability to furnish details of exemption under section 10(23C)(iiiab) on account of lack of proper columns in the income tax return form will not invalidate such claim, when the income was applied for the purpose of running the college. Alternatively, if the claim for exemption is denied under section 10(23C)(iiiab) and the income is assessed under the residual head of income, then as per section 57(iii) entire expenditure incurred for the purpose of making or earning income should be allowed to the Assessee.
On the question of eligibility of the Assessee to claim exemption under section 10(23C)(iiiab) with respect to the institution being "wholly and substantially financed by the Government" the Tribunal observed that the explanation to clause 10(23C) (iiiab) was inserted via Finance Act, 2014 which came into effect on 01.04.2015, and this explanation was prospective in nature. It held that the Assessee is an education institution running for educational purpose and not for profits and therefore it is eligible for exemption under section10(23C)(iiiab). *CIT v. Jat Education Society, Rohtak (2016) 383 ITR 355 (P &H) (HC)* relied. (AY. 2014-15).
Dy. CIT v. Shri Vaishnav Polytechnic College Govn by VSK Market Tech Educational Society (2021)186 ITD 378 (Indore)(Trib.)

132 **S. 10 (23C) : Educational institution – exemption if income is applied for educational purpose-alternatively expenditure incurred for earning such income should be allowed under section 57(iii) – eligibility to claim exemption-wholly and substantially financed by the Government.[S.57 (iii)]**
An institution, established for educational purpose and not to earn profit, and substantially financed by the government, is eligible to claim exemption under section 10(23C)(iiiab) of the Act. Inability to furnish details of exemption under section 10(23C) (iiiab) on account of lack of proper columns in the income tax return form will not invalidate such claim, when the income was applied for the purpose of running the college. Alternatively, if the claim for exemption is denied under section 10(23C)(iiiab) and the income is assessed under the residual head of income, then as per section 57(iii) entire expenditure incurred for the purpose of making or earning income should be allowed to the Assessee.

On the question of eligibility of the Assessee to claim exemption under section 10(23C)(iiiab) with respect to the institution being "wholly and substantially financed by the Government" the Tribunal observed that the explanation to clause 10(23C) (iiiab) was inserted via Finance Act, 2014 which came into effect on 01.04.2015, and this explanation was prospective in nature. It held that the Assessee is an education institution running for educational purpose and not for profits and therefore it is eligible for exemption under section10(23C)(iiiab). *CIT v. Jat Education Society, Rohtak (2016) 383 ITR 355 (P &H) (HC)* relied. (AY. 2014-15).
Dy. CIT v. Shri Vaishnav Polytechnic College Govn by VSK Market Tech Educational Society (2021)186 ITD 378 (Indore)(Trib.)

S. 10 (23C) : Educational institution – Approval from prescribed authority mandatory – Not entitled to exemption [S. 10(23C)(v)] 133
Dismissing the appeal the Tribunal held that a trust or institution meant for public religious purposes claiming exemption under section 10(23C)(v) had to be approved by the prescribed authority. The prescribed authority under rule 2C of the Income-tax Rules, 1962 was Chief Commissioner or Director General and application under section 10(23C)(v) of the Act shall be filed in form 56. Thus, before claiming exemption under these provisions, the assessee had to obtain the approval of the prescribed authority. It was an admitted fact that assessee did not have any approval of prescribed authority under section 10(23C)(v). The assessee's contention that the requirement of approval under section 10(23C)(v) of the Act was provided by rule 2C only with effect from November 15, 2014 and not during the relevant assessment year was not sustainable. The authorities were justified in denying exemption under section 10(23C)(v)(AY.2011-12)
Gurudwara Kalgidhar Singh Sabha v. ITO(E)(2021)86 ITR 46 (SN)(Delhi)(Trib.)

S.10(26B) : Income of Body Corporation established or wholly financed by Central or State Government for promoting interests of Scheduled castes or Scheduled Tribes – Engaged in work of development of National Safai Karamcharis who were involved in upliftment of Safai Karamcharis and Manual Scavengers who belong to Scheduled Caste, Scheduled Tribe or Other Backward Classes and also in inhumane practice of scavenging and other sanitation activities- Entitled to exemption. 134
Held that the assessee company was fully owned by Government of India and engaged in work of development of National Safai Karamcharis who were involved in upliftment of Safai Karamcharis and Manual Scavengers who belong to Scheduled Caste, Scheduled Tribe or Other Backward Classes and also in inhumane practice of scavenging and other sanitation activities, it would be entitled to claim benefit of section 10(26B) of the Act. (AY. 2017-18)
CIT(E) v. National Safai Karamcharis Finance and Development Corporation (2021) 283 Taxman 576/ 323 CTR 816/ 208 DTR 57 (Delhi)(HC)

135 **S.10(26B) : Income of Body Corporation established or wholly financed by Central or State Government for promoting interests of Scheduled castes or Scheduled Tribes — Government of India owned company in Lakshadweep Union Territory – Entitled for exemption. [S.10, Companies Act, 1956]**

Dismissing the appeal of the Revenue the Court held that the assessee was a 100 per cent. Government of India owned company in Lakshadweep Union Territory. The company was registered under the Companies Act, 1956. The prime object of the assessee was to work for the development and uplifting of the Scheduled Tribe community of the Union Territory of Lakshadweep. The assessee though incorporated under the Companies Act fell within the ambit of exemption envisaged by section 10(26B) and was entitled to the benefit of exemption. (AY. 2011-12, 2012-13)

PCIT v. Lakshadweep Development Corporation Ltd. (2021) 438 ITR 342 / 323 CTR 818/ 208 DTR 59/ (2022) 285 Taxman 291 (Ker.)(HC)

136 **S.10(46) : Body or Authority – Specified income – Standardized manner prescribed by Central Board of Direct Taxes – Directed to file fresh application [Art, 226]**

On a writ the Court directed the assessee to file a fresh application before the Principal Commissioner claiming exemption under section 10(46) in the given format provided in clause 3 of letter No. 196/6/2013-ITA-I, dated June 24, 2013, of the Central Board of Direct Taxes to the Department, which provided for standardising the manner for filing application under section 10(46) and a copy thereof to be given to the Central Board of Direct Taxes.

Assam Building and other Construction Workers Welfare Board v. UOI (2021) 438 ITR 14 / 205 DTR 106 / 322 CTR 436 / 283 Taxman 211 (Gauhati)(HC)

137 **S.10(46) : Body or Authority – Specified income – Modification in application – Directed to process the application [S. 10(23C)(iv) 293C, Art. 226]**

The petitioner has made application to grant exemption u/s 10 (46) of the Act though it was granted exemption under section 10(23C)(iv) of the Act. The exemption was denied. On a writ the Court held that provisions of section 10(46) would be more beneficial and would apply more aptly, revenue was directed to process petitioner's applications for being notified under section 10(46) in accordance with provisions of Act. (AY. 2010-11)

Telangana State Pollution Control Board, Hyderabad v. CBDT (2021) 439 ITR 744/ 282 Taxman 364/ 204 DTR 257/ 322 CTR 83 (Telangana)(HC)

Andhra Pradesh Pollution Control Board v. CBDT (2021) 439 ITR 744/ 282 Taxman 364/ 204 DTR 257/ 322 CTR 83 (Telangana)(HC)(Telangana)(HC)

138 **S. 10A : Free trade zone – Foreign exchange – Software development and consultancy – Technical services – Eligible for exemption – Matter remanded to the Assessing Officer**

The Assessing Officer restricted claim excluding the expenditure incurred in foreign exchange for rendering technical services abroad Tribunal affirmed the view of the Assessing Officer. On appeal the Court held that technical services being integral part of assessee's business of software development is eligible for exemption under S. 10A of the Act. Following the decision in *Polaris Consulting & Services Ltd. v. Dy. CIT (2019) 417 ITR 441 (Mad.) (HC)* the matter was remanded to Assessing Officer. (AY.2003-04)

Cherrytec Interlisolve Ltd v. ACIT (2021) 282 Taxman 86 (Mad.)(HC)

S. 10A : Free trade zone – losses of unit eligible for deduction were already set-off against other business income – Such losses could not be again carried forward and set-off against eligible profits of same unit in subsequent year - Computer software sales made to STP/SEZ units would not be excluded from export turnover for computing deduction under section 10A/10AA – VAT/GST would not be excluded from export turnover and total turnover for computing deduction under section 10A/10AA – Tribunal could not exclude 80 per cent of uplinking charges from turnover when such exclusion was already limited to 5 per cent of telecommunication charges while computing deduction under section 10A.[S.10AA] 139

Court held that since losses of unit eligible for deduction were already set-off against other business income such losses could not be again carried forward and set-off against eligible profits of same unit in subsequent year. Followed *CIT v. Yokogawa India Ltd. (2017) 391 ITR 274 (SC)*. Computer software sales made to STP/SEZ units would not be excluded from export turnover for computing deduction under section 10A/10A. Followed *Wipro Ltd. v. Dy. CIT (2016) 382 ITR 179 (Karn.) (HC)*. VAT/GST would not be excluded from export turnover and total turnover for computing deduction under section 10A/10AA. Followed *Wipro Ltd. v. Dy. (2016) 382 ITR 179 (Karn.) (HC)*, Tribunal could not exclude 80 per cent of uplinking charges from turnover when such exclusion was already limited to 5 per cent of telecommunication charges while computing deduction under section 10A. Followed *CIT v. TATA Elxsi Ltd (2016) 382 ITR 654 (Karn.) and CIT v. HCL Technologies Ltd. (2018)404 ITR 719* (SC (AY. 2006-07)
Wipro Ltd. v. Addl. CIT (2021) 279 Taxman 203 (Karn.)(HC)

S. 10A : Free trade zone – Set off of losses – Other income – Order of Tribunal is affirmed. 140

Dismissing the appeal of the Revenue, the Court held that since Tribunal allowed claim of assessee towards set off of losses of STP/SEZ unit against other income of assessee, no interference was to be called for. Followed *CIT v. Yokogawa India Ltd (2017) 391 ITR 274 (SC).* (AY. 2008-09)
PCIT v. Wipro Ltd. (2021) 278 Taxman 162 (Karn.)(HC)

S. 10A : Free trade zone – Telecommunication and travelling expenses – Foreign currency – Reduced from export turnover were to be reduced from total turnover. 141

Telecommunication expenses and travelling expenses incurred in foreign currency which were reduced from export turnover were to be reduced from total turnover. (AY. 2006 -07)
CIT v. GE India Technology Centre (P) Ltd. (2021) 278 Taxman 261 (Karn.)(HC)

S. 10A : Free trade zone – Foreign exchange – Deductible from both export turnover and total turnover. 142

Dismissing the appeal of the Revenue, the Court held that the Tribunal was right in holding that the expenditure in foreign exchange was to be excluded from both the export turnover and the total turnover while computing the deduction under section 10A. Followed *CIT v. SRA Systems Ltd (2021) 434 ITR 656(Mad.) (HC)* (AY. 2006-07)
PCIT v. Mizpah Publishing Services Pvt. Ltd. (2021) 434 ITR 663 (Mad.)(HC)

143 **S. 10A : Free trade zone – Interest charges attributable to delivery of computer software – Excluded from export turnover – Deducted from total turnover – New unit – Entitled to deduction - Brought forward losses and unabsorbed depreciation – Deduction to be allowed before adjusting brought forward losses and unabsorbed depreciation. [S. 10A(2)(i), 10A(2)(ii)]**

Dismissing the appeal of the Revenue the Court held that the Tribunal was right in holding that the internet expenses incurred in foreign exchange having been excluded from the export turnover should be reduced from the total turnover for the purpose of computing deduction under section 10A. That the Tribunal was right in holding that the assessee was entitled to deduction under section 10A in respect of the new unit. That the Tribunal was right in holding that the assessee's claim for deduction under section 10A was to be allowed before adjusting the brought forward losses and unabsorbed depreciation. (AY.2005-06)

CIT v. SRA Systems Ltd. (2021) 434 ITR 656 (Mad.)(HC)

144 **S. 10A : Free trade zone – Export turnover – Telecommunication expenses and foreign currency expenditure not to be excluded from export turnover.**

Dismissing the appeal of the Revenue the Court held that the Tribunal did not err in holding that the exemption under section 10A should not be computed after excluding the telecommunication expenses and foreign currency expenditure from the export turnover. (AY.2010-11)

PCIT v. HCL Comnet Systems And Services Ltd. (2021) 433 ITR 251 (Delhi)(HC)

145 **S. 10A : Free trade zone – Export turnover – Total turnover – Expenses incurred by assessee in foreign currency were to be excluded from both export turnover and total turnover for computation of deduction.**

Dismissing the appeal of the Revenue, the Court held that, expenses incurred by in foreign currency were to be excluded from both export turnover and total turnover for computation of deduction. (AY. 2006-07)

PCIT v. Infosys BPO Ltd. (2021) 277 Taxman 320 (Karn.)(HC)

146 **S. 10A : Free trade zone – Shifting of undertaking to another place with approval of authorities – Not a case of splitting up or reconstruction of business – Entitled to exemption.[S.10B(2)(ii)]**

Dismissing the appeal of the Revenue the Court held that shifting of undertaking to another place with approval of authorities is not a case of splitting up or reconstruction of business. Entitled to exemption.(AY. 2000-01 to 2002-03)

CIT v. S. R. A. Systems Ltd. (2021) 431 ITR 294/199 DTR 57 / 320 CTR 511/ 280 Taxman 164 (Mad.)(HC)

147 **S. 10A : Free trade zone – Additions agreed under Mutual Agreement Procedure — Entitled to benefit of deduction – Export turnover – Total turnover.**

Held that Additions agreed under Mutual Agreement Procedure is entitled to benefit of deduction. Expenditure reduced from export turnover is to be reduced from total turnover.(AY. 2008-09)

Dell International Services India P. Ltd. v. Add.CIT (LTU)(2021) 90 ITR 61 (SN.)(Bang.)(Trib.)

S. 10A : Free trade zone – Export turnover – Foreign currency – Export proceeds with in six months – General permission to realise export proceeds with in 12 months of export – Matter remanded 148

Held that the question whether the expenditure incurred in foreign currency was to be excluded from the export turnover could not be decided in the absence of the required information and remanded the matter for verification, with the direction that if the entire expenditure incurred in foreign exchange outside India did not relate to providing technical services outside India, it could not be excluded from the export turnover and the matter was restored to the file of the Commissioner (Appeals). That the Commissioner (Appeals) had not adjudicated the assessee's submission that the Reserve Bank of India had granted "general permission" to realise the export proceeds within a period of 12 months from the date of export on or after September 1, 2004. This issue was to be remanded to him for examining the issue afresh considering the circular issued by the Reserve Bank of India. (AY. 2009-10)

Robert Bosch Engineering and Business Solutions Pvt. Ltd. v. Dy. CIT (2021) 89 ITR 33 (SN)(Bang.)(Trib.)

S. 10A : Free trade zone – Computation – Gross total income – Exclusion of Telecommunication expenses from export turnover proper. 149

Held that though section 10A is a provision for deduction, the stage of deduction would be while computing the gross total income of the eligible undertaking under Chapter IV and not at this stage of computation of the total income under Chapter VI. That there was no infirmity in the order of the Assessing Officer allowing exclusion of telecommunication expenses from the export turnover while computing deduction under section 10A. (AY.2010-11)

Dy.CIT v. Altisource Business Solutions P. Ltd. (2021) 88 ITR 135 (Bang.)(Trib.)

S. 10A : Free trade zone – Export oriented undertakings – All profits and gains – Interest on bank deposits or soft loans – Interest income from deposit made towards bank guarantee and temporary parking of surplus funds – foreign exchange gain in EEFC account, etc – Entitled to deduction [S. 10B, 80HHC] 150

Held that interest income from deposit made towards bank guarantee and temporary parking of surplus funds, since assessee had no other activity of earning income except export of ITES through its section 10A unit, benefit of deduction under section 10B would be available on interest income. Benefit of deduction under section 10B would be available on Interest income from deposit made towards bank guarantee and temporary parking of surplus funds. Section 80HHC expressly excludes certain types of income such as foreign exchange gain in EEFC account, etc.; however, no such express provision is there in section 10A/10B and, what is exempted is not merely profits and gains of export but also income from business of undertaking and, thus, since export proceeds kept in EEFC account are income of business undertaking, claim of deduction under section 10A would be allowable.(AY. 2011-12)

Tech Mahindra Business Services Ltd. v. DCIT (2021) 191 ITD 64 (Mum.)(Trib.)

151 **S. 10A : Free trade zone – Export turnover – Communication expenses is to be deducted from both export turnover and total turnover.**
Tribunal held that while computing the deduction communication expenses are to be deducted from both export turnover and total turnover. Followed *CIT v. HCL Technologies Ltd (2018) 404 ITR 719 (SC)* (AY.2011-12)
Infosys Bpm Ltd. v. Dy. CIT (2021) 87 ITR 193 (Bang.)(Trib.)

152 **S. 10A : Free trade zone – Foreign exchange gain – Excluded from export turnover should also be excluded from total turnover – Auxiliary services, claim – Penalty receivable from vendor for delay in delivery, service tax liability written back, sale of scrap – Eligible for deduction – Matter remanded for verification.**
Held that foreign exchange gain excluded from export turnover should also be excluded from total turnover for computing deduction. With respect to penalty on receivables from vendor for delay in delivery, service tax liability written back, sale of scrap, etc. matter was to be remanded back to Assessing Officer for due verification of evidences. (AY. 2011-12)
Safran Engineering Services India (P.) Ltd. v. ACIT (2021) 191 ITD 293 (Bang.)(Trib.)

153 **S. 10A : Free trade zone – Unabsorbed losses – Assessing Officer cannot reject the claim allowable under law even if it was not claimed in the return [S. 32(2), 72, 139(1), 154]**
Allowing the appeal of the assessee the Tribunal held that merely because the assessee in the return has not put forth a claim for relief, he cannot be estopped from getting such a tax relief if he is entitled for the same as per the law. Relied on *Wipro Ltd v. DCIT (2016) 382 ITR 179 (Karn.) (HC),* CBDT Circular No.14 dated 11-4-1955. (ITA No. 1911 to 1914 /Bang/ 2018 dt 19-11-2020) (AY. 2005-06 to 2008-09)
Mistral Solutions Pvt Ltd. v. DCIT (2021) 186 ITD 399 / 211 TTJ 163 / 200 DTR 140 (Bang.)(Trib.)

154 **S. 10A : Free trade zone – Deduction of profits of business of eligible undertaking to be made independently before giving effect to provisions for set off and carry forward. [S.10B, 70, 72, 74]**
Allowing the appeal the Tribunal held that the benefit of deduction was given by the Act to the individual undertaking. The deduction of the profits and gains of the business of an eligible undertaking had to be made independently and before giving effect to the provisions for set off and carry forward contained in sections 70, 72 and 74. The Department was not right in law in holding that the assessee was not entitled to the benefit of deduction given by the Act under section 10A / 10B as amended by the Finance Act, 2003 with retrospective effect from April 1, 2001 qua individual eligible undertaking.(AY. 2011-12)
Loxim Industries Ltd. v. Dy. CIT (OSD)(2021) 86 ITR 5 (SN)(Ahd.)(Trib.)

S. 10A : Free trade zone – Interest income from short term fixed deposits – Cannot be classified profits of the business of undertaking – Not eligible for deduction- Expenditure incurred is reimbursed would be part of qualifying amount – Sale of fixed asset is included in qualifying amount – Not to be reduced for the purpose of qualifying amount – Sale of scrap – Expenses booked – Part of qualifying amount – Provision for leave encashment – Suo moto adjustment – Adjustment in profit is allowable – Amount of foreign exchange should be reduced from export turnover or total turnover. [S. 10AA] 155

Tribunal held that interest income from short term fixed deposits cannot be classified profits of the business of undertaking hence not eligible for deduction. Expenditure incurred is reimbursed would be part of qualifying amount. Sale of fixed asset is included in qualifying amount which is not to be reduced for the purpose of qualifying amount. Sale of scrap for which expenses booked is part of qualifying amount. Provision for leave encashment, suo moto adjustment in profit is allowable. Amount of foreign exchange should be reduced from export turnover or total turnover. (AY. 2010-11)

Barclays Shared Services (P) Ltd. v. ACIT (2021) 202 DTR 185 (Pune)(Trib.)

S. 10A : Free trade zone – Profits and gains – Includes all profits and gains including incidental income of undertaking – Interest Income on fixed deposits kept with Bank as margin for issuing bank guarantee – Exchange gain on dollar sales credited to profit and loss account – Entitled to deduction. [S.10B] 156

The Tribunal for the assessment year 2011-12 had treated the interest income as part of business receipts earned by the assessee on the basis that all profits and gains including incidental income of an export oriented unit even in the nature of interest on bank deposits or soft loans would be entitled for deduction under section 10A or 10B of the Act. The Assessing Officer was to grant deduction under section 10A of the Act in respect of interest income earned on fixed deposits. Followed *CIT v. Hewlett Packard Global Soft Ltd. [2018 403 ITR 453 (FB) (Karn.)(HC) and Cybertech Systems And Software Ltd. v. DCIT [2018 91 taxmann.com 407 (Bom) (HC).* The Tribunal in the assessee's own case for the assessment year 2011-12 had held that the deduction was available on the profits derived by the assessee on the entire profits and gains derived by the undertaking engaged in the business of export of articles or things. Hence the assessee was entitled for deduction under section 10A of the Act in respect of the sums in question. Followed *CIT v. Motorola India Electronics Pvt. Ltd. [2014 2 ITR-OL 499 (Karn.)(HC)*.(AY. 2009-10)

Tech Mahindra Business Services Ltd. v. DCIT (2021) 91 ITR 8 (SN)(Mum.)(Trib.)

S. 10AA : Special Economic Zones – Amount written back on account of unclaimed balances – Brought forward losses not to be reduced from profits of current year. [S. 10A] 157

Held that the income on account of write back of unclaimed expenses accrued to the assessee only due to the export business and there was direct nexus between the export business of the assessee and the accrual of income in respect of which the expenses were shown in the preceding year and such unclaimed expenses were written back for this year. Therefore, the authorities below were not correct in reducing the deduction

under section 10AA of the Act by the amount written back by the assessee on account of unclaimed balances. The Tribunal also held that the provisions of section 10A were pari materia with the provisions of section 10AA and therefore, the claim of the assessee for not reducing the brought forward losses from the profit of business of current year before allowing deduction under section 10AA had to be allowed. *CIT v. Yokogawa India Ltd (2017) 391 ITR 274 (SC)* followed. (AY. 2010-11)
TCS E-Serve International Ltd. v. ACIT (2021) 90 ITR 22 (SN)(Delhi)(Trib.)

158 **S. 10AA : Special economic zones – Additions – Bogus purchases – Enhanced profits – Eligible for deduction**
Allowing the appeal the Tribunal held that in the assessee's own case for assessment years 2009-10 and 2014-15 having held in the assessee's favour, the Assessing Officer was to recompute the deduction under section 10AA taking into consideration the additions made by him.(AY.2013-14)
Amrapali Exports v. Dy. CIT (2021) 85 ITR 48 (SN)(Jaipur)(Trib.)

159 **S. 10AA : Special economic zones – Transfer pricing voluntary adjustments – Entitled to deduction on enhanced income [S.92C]**
The Assessee is engaged in providing back office support services, in the nature of 'Information Technology Enabled Services' (ITES). It adopted TNMM to benchmark its international transaction. It made a voluntary TP adjustment to its financial results and claimed deduction under Section 10AA of the Act against it. The TPO proposed an adjustment by making certain changes in the comparable companies. The DRP directed the AO/TPO to exclude certain comparable companies on the basis that it considered the Assessee company as low end service provider whereas the comparable companies viz. M/s E-Clerx Services Ltd. & M/s Acropetal Technologies Limited were providing high-end services. The Tribunal upheld this direction of the DRP. In respect of disallowance of section 10AA claim on voluntary adjustment, the AO had allowed the said deduction on the voluntary TP adjustment, however, the DRP directed to disallow the claim as- (i)The Assessee has not furnished any details as to how the above said amount was worked out;(ii) Section 10AA mandates the export consideration should be brought into India; (iii) The unit for which deduction has been claimed has actually incurred losses. The Tribunal noted that the first proviso to Section 92C(4) is applicable only to situations where adjustment to the ALP is made by the AO/TPO / DRP. It also appreciated that the Assessee computed the adjustment in a scientific manner by comparing its margins with that of comparable companies selected by the Assessee. The Tribunal observed that artificial income cannot be part of export turnover and hence there could not be any condition for getting such foreign exchange to India. It held that the Assessee was entitled to deduction under Section 10AA of the Act on voluntary transfer pricing adjustment. Apoorva Systems (P) Ltd (2018) (92 taxmann.com 82); I-Gate Global Solutions Ltd. (2007)(112 TTJ 1002) upheld by Hon'ble Karnataka High Court in ITA 453/ 2008 relied. (ITA No. 218 (Bang.) 2015 & 199 (Bang.) 2015 Dt. 20.05.2020) (AY 2010-11)
Dy. CIT v. EYBGS India (P.) Ltd (2021) 186 ITD 765 (Bang.)(Trib.)

S. 10B : Export oriented undertakings – Manufacture – Blending of Tea does not constitute manufacture – Not entitled to exemption – Interpretation of taxing statute – Provision for exemption – In case of ambiguity in an exemption provision the benefit has to go to the revenue. 160

The term "manufacture" was not defined in the substituted provisions as was available before its substitution to include even processing. Explanations to this section define certain terms used. Explanation 3 was added in the section which begins with the words "for the removal of doubts". It is to treat the profits and gains derived from onsite development of computer software outside India as income deemed to be derived from export of computer. Explanation 4 was added by the Finance Act, 2003, with effect from April 1, 2004 to define "manufacture or produce" to include cutting and polishing of precious and semi precious stones. The insertion of Explanation 4 clearly establishes the fact that wherever the benefit was to be extended, the needful was done. It had been authoritatively held by the Supreme Court in *CIT v. Tara Agencies (2007) 292 ITR 444 (SC)* that mixing of different kinds of tea does not fall within the ambit of manufacturing. Court held that blending of tea does not amount to manufacture and the assessee was not entitled to the benefit of section 10B. Court also held that while interpreting the provision for exemption, in case of ambiguity in an exemption provision the benefit has to go to the revenue. *Commissioner Customs v. Dilip Kumar and Co (2018) 6 GSTR-OL-46 (SC)* followed. (AY.2002-03 to 2005-06)

PCIT v. V. N. Enterprises Limited (2021) 439 ITR 624 / (2022) 284 Taxman 612 (Cal.)(HC)
CIT v. Tea Promoters (India) Pvt. Ltd. (2021) 439 ITR 624 (Cal.)(HC)

S. 10B : Export oriented undertakings – Period of tax holiday – Entitled to deduction for ten consecutive years from assessment year in which relief was first claimed and not when manufacture was commenced. [S.10B(7)] 161

Assessee started manufacture in assessment year 1997-98. After amendment under section 10B with effect from 1-4-1999, period of tax holiday was extended from 5 years to 10 years. Assessee started claiming deduction for first time under section 10B from assessment year 1999-2000. Assessing Officer held that tax holiday was no more available as assessee started manufacturing articles in assessment year 1997-98. Tribunal up held the view of the Assessing Officer. On appeal the High Court held that during the assessment year 2008-09 the assessee was still entitled to deduction under section 10B for reason that for purpose of amended section 10B period of ten consecutive years would begin when assessee actually started claiming relief, i.e., from assessment year 1999-2000, and not from assessment year 1997-98 when manufacture was commenced. (AY. 2008-09)

SaintGobainCrystals & Detectors (I) Ltd v. Dy.CIT (2021) 198 DTR 40 / 319 CTR 20 / 123 taxmann.com 206 (Karn.)(HC)

S. 10B : Export oriented undertakings – Manufacture of article – Processing of iron ore amounts to manufacture – Entitle to exemption – Determination of market value required verification by the Revenue – The order of remand was justified. [S. 10B(7), 80IA(8), 80IA(10)] 162

Dismissing the appeal of the Revenue the Court held that the Tribunal was right in holding that the assessee was entitled to the benefit under section 10B. Applied

CIT v. Sesa Goa Ltd (2004) 271 ITR 331 (SC). Court also held that the assessee had also purchased crude ore, run of mines, from outside parties, that is from the mines belonging to other parties. The price paid by the assessee to these outside parties, according to the Tribunal, could be regarded as the best evidence for determining the market value of the crude ore the assessee extracted from its own mine and used. The Tribunal felt that the determination of market value required verification by the Revenue. The order of remand was justified.
CIT v. Sesa Goa Ltd (2021) 436 ITR 17 / 203 DTR 97 / 321 CTR 113 (Bom.)(HC)

163 **S. 10B : Export oriented undertakings – Computer software – Export of customized electronic data relating to engineering and design – Entitled to exemption. [S.10BB]**
Held that the assessee captured the resultant research of the activity in a customized data both in computer aided design and other software platforms and for the purposes of carrying these activities, the assessee employed engineers and other technical staff for various research projects undertaken by them. The assessee exported the software data. The activities carried out by the assessee like analysing or duplicating the reported problems, developing and building, testing products, carrying out tests, design and development had to be treated as falling within the scope of section 10B with or without the aid of section 10BB of the Income-tax Act. Thus, the assessee was eligible for deduction under section 10B. Court also held that it had been accepted by the Department for the AYs. 2006-07 to 2008-09. The assessee was entitled to the deduction. (AY. 2007-08 to 2011-12)
Marmon Food and Beverage Technologies India (P.) Ltd v. ITO (2021) 435 ITR 327/ 205 DTR 153/ 323 CTR 455 (Karn.)(HC)
CIT v. GE India Technology Centre Pvt. Ltd. (2021)435 ITR 327 / 205 DTR 153/ 323 CTR 455 (Karn.)(HC)

164 **S. 10B : Export oriented undertakings – Instruction of CBDT Dated 9-3-2009 Clarifying that approval granted by Software Technology Parks of India has to be ratified by Board of approvals – Instruction valid.**
Dismissing the petition the Court held that instruction of CBDT dated 9-3-2009 clarifying that approval granted by Software Technology Parks of India has to be ratified by Board of Approvals is valid. The assessee had to get an approval from the competent Board as contemplated for claiming exemption under section 10B of the Act. Even if there was a change of authorities/Board by the Ministry, it was for the assessee to approach the Ministry or the Department concerned for the purpose of the procedures, which were in force for claiming exemption.(AY. 2006-07)
Indus Teqsite Pvt. Ltd v. Ministry of Finance (2021) 435 ITR 613 / 204 DTR 224/ 322 CTR 100 (Mad.)(HC)

S. 10B : Export Oriented undertakings – Manufacture or production – Providing contract research services in field of molecular biology and synthetic chemistry – Eligible for exemption. 165

Dismissing the appeal of the Revenue the Court held that the assessee which is engaged in business of providing contract research services in field of molecular biology and synthetic chemistry is eligible for exemption. (AY. 2005-06)

PCIT v. Syngene International Ltd. (2021) 279 Taxman 364 (Karn.)(HC)

S. 10B: Export oriented undertakings – Entire sale proceeds must be received in convertible foreign exchange within stipulated time or should have opened bank account as per the provision of the Act – Part of sale proceeds adjusted against import of raw material – Not entitled to deduction in respect of such part [S.10B(3)] 166

Dismissing the appeal of the assessee the Court held that the material available on record would clearly establish that the assessee had not obtained prior approval from the Reserve Bank of India as contemplated under Explanations 1 and 2 to section 10B(3) of the Act. That apart, form 56G reflected that the foreign inward remittances with regard to the sale proceeds had not been brought into India in foreign currency during the previous year and within the six months period. Order of Tribunal is affirmed. (AY. 2004-05)

Nuovafil Infotech Pvt. Ltd. v. ITO (2021) 431 ITR 313 / 279 Taxman 142 / 198 DTR 1 (Mad.)(HC)

S. 10B: Export oriented undertakings – Submission of declaration to be treated as directory – Provision of the section did not provide for any consequence on non-filing of declaration within the time limit. [S.10B(8), 72] 167

The Assessee was a software company who filed its original return on due date in which exemption under section 10B was claimed. Thereafter, assessee withdrew the said exemption before completion of assessment and filed revised return in which said exemption was not claimed and certain loss was declared. The AO denied assessee's claim of carrying forward of losses under section 72, however same was allowed by Tribunal. Revenue filed an instant appeal against order of Tribunal with the High Court, contending that Tribunal erred in holding that assessee was entitled to said claim of carrying forward of losses even when assessee had filed declaration, after due date of filing original return of income was over. Relying on the decision of *State of Bihar v. Bihar Rajya Bhoomi Vikas Bank Samiti [2018] 9 SCC 472*, the Hon'ble Karnataka High Court held that the requirement of submission of declaration in terms of section 10B(8) of the Act has to be treated as mandatory whereas, the requirement of submission of declaration by a time limit has to be treated as directory as the provision does not provide for any consequence by non-filing of the declaration by the time limit. Accordingly, since assessee had filed the declaration before completion of assessment, appeal filed by Revenue was dismissed. (ITA No.462 of 2017 dt. 30-11-2020) (AY.2001-02)

PCIT v. Wipro Ltd (2021) 123 Taxmann.com 393 / 277 Taxman.com 309 (Karn.)(HC)

168 **S. 10B: Export oriented undertakings – Formed not by reconstruction – Entitled to exemption – Enhancement of claim during assessment proceedings – Direction of Tribunal is held to be justified – Deemed dividend – No accumulated profits – Deletion of addition is held to be justified. [S. 2(22)(e), 254(1)]**

Dismissing the appeal the Court held that the undertaking was not formed by reconstruction hence the order of Tribunal is affirmed. Bajai Tempo Ltd. (1992) 196 ITR 188 (SC) followed. As regards the enhancement of claim the Court affirmed the finding of the Tribunal Court also held that as there were no accumulated profits the provision of section 2(22)(e) can not be made applicable. (AY.2007-08, 2008-09, 2010-11)

PCIT v. Jeans Knit Pvt. Ltd. (2021) 430 ITR 476 (Karn.)(HC)

169 **S. 10B: Export oriented undertakings – Manufacture – Conversion of crude ore into iron ore concentrate fines amounts to manufacture – Entitle to benefit. [S. 2(29BA)]**

Dismissing the appeals of the Revenue the Court held that the assessee purchased run-of-mines, which included a lot of impurities ; it was crude ore, practically of no use unless it was processed and made suitable for its intended end-use. Iron ore concentrates were manufactured by the process of magnetic separation. It essentially amounted to manufacture or processing. The assessee was entitled to the benefit under section 10B of the Act. (AY.2008-09, 2009-10)

CIT v. Ramacanta Velingkar Minerals (2021) 430 ITR 161 / 277 Taxman 299 / 205 DTR 324 / 322 CTR 350 (Bom.)(HC)

170 **S. 10B: Export oriented undertakings – Manufacture or Processing – Marine product – Pasteurized crab meat – Processing and exporting of Crab meat – Remanded to the Assessing Officer to examine the nature of activity. [S.10B(2)(ii), 10B(2)(iii), 80IB(11A) Special Economic Zone Act, 2005, S. 2(r)]**

The assessee manufactured, processed and exported sea foods and was a 100 per cent. export oriented unit. The assessee claimed deduction u/s10B of the Act on the ground that the marine product dealt by it was specifically known as pasteurized crab meat which was distinct from raw meat as manufacturing activities were undertaken with various machinery and with skilled labour, that its operation was recognized as a manufacturing activity and granted the status of 100 per cent. export oriented unit and therefore, definition of the word "manufacture" as contained in section 2(r) of the Special Economic Zone Act, 2005 applied and that conversion of live crab into edible canned product was entitled for deduction under section 10B. Further, it was submitted that the definition of the term "manufacture" was inserted in the 1961 Act with effect from April 1, 2009 and it was only for undertakings which commenced business after April 1, 2009, i. e., with effect from April 1, 2010, that the statute distinguished that the processing, preservation and packaging of marine products would not amount to manufacture or production of article or thing with insertion of section 80IB(11A).The claim was not allowed by the AO and which was affirmed by the CIT (A) and Tribunal. on appeal the Court held that the Assessing Officer, the Commissioner (Appeals) and the Tribunal had abdicated their responsibility as fact finding authorities in not examining the nature of activity of the assessee before referring to the various decisions, which according to the Tribunal resulted in the assessee's appeal being dismissed. The first and

foremost job entrusted to an Officer was to examine the nature of activity done by the assessee, which was claimed to be a manufacturing process. The authorities invariably visit the facility established by the assessee to gain first hand knowledge about the claim made by the assessee. Had the Assessing officer taken such step the finding might have been wholly different or slightly different or it could have been a well reasoned order. The Tribunal as the last fact finding authority, was bound to examine the full facts. The contentions had been extracted verbatim in its order to hold that there was no change in the substance used in live crab or used it as by extracting it as meat from the same live crab by the assessee and that the input and output were the same, which was crab. There was no dispute to the fact that what was canned was crab meat. The matter required to be re-examined in a proper perspective. The orders passed by the Tribunal, Commissioner (Appeals) and the assessment orders were set aside and the matter was remanded to the Assessing Officer. (AY.2005-06, 2006-07, 2008-09 to 2011-12)
Philips Foods India Pvt. Ltd. v. ACIT (2021) 430 ITR 199 (Mad.)(HC)

S. 10B: Export oriented undertakings - Separate books of account – No disallowance could be made – Matter remanded. 171
The Assessing Officer was to verify the books of account maintained, both, for export-oriented units and non export-oriented units and if the salary paid to the employees of both the export-oriented units and non export-oriented units, was found to be on actual basis as per the separately maintained books of account, no disallowance could be made. Matter remanded.(AY. 2009-10)
Progress Software Solutions India P. Ltd. v. Dy. CIT (2021) 90 ITR 70 (SN) / 214 TTJ 1 (SMC)(Mum.)(Trib.)

S. 10B: Export oriented undertakings – Production and Export of pasteurized crab meat – procurement of non-living dead crab and then process into chemical mixed pasteurized crab meat in a series of manufacturing process – Fall under the new definition of manufacture – Deduction allowable [S. 2(29BA)] 172
The AO disallowed deduction claimed u/s.10B stating that, the activities carried out by the assessee for production and export of pasteurized crab meat is not a manufacturing activity because the term 'manufacture' has been defined by insertion of new definition by the Finance Act, 2009 u/s.2(29BA) of the Act.. Tribunal held that, the assessee is a newly established 100% export oriented undertaking, set-up a new manufacturing facility at Madras Export Processing Zone. The EOU set up by the assessee for manufacture and export of pasteurized crab meat was approved by the Development Commissioner, Govt. of India as a 100% export oriented unit for manufacture and export of goods or things. The assessee is also registered under the Central Excise Act, 1944 as a manufacturer and the goods manufactured by the assessee are treated as distinct commodities under Customs and GST laws. Activities carried out by the assessee as a manufacturing or production of goods or article or thing, which qualifies for deduction u/s.10B and there is no change in activities carried out by the assessee in the year 2004-05 when the deduction was first allowed and in the year 2009-10 when the deduction was rejected by the AO by virtue of new word 'manufacture' inserted under clause 2.(29BA) of section 2 of the Act. As per activities undertaken by the

assessee, said activity was considered as manufacture or production for the purpose of deduction u/s.10B of the Act. There is no change in physical activities carried out by the assessee. The purpose of S.10B is to give effect to EXIM policy. Therefore, the statute has provided deduction all units established as 100% EOU as per EXIM Policy u/s 10B of the IT Act. (AY. 2010-2011)
Handy Waterbase India Pvt. Ltd. v. Dy. CIT (2021) 211 TTJ 950 / 202 DTR 1 (Chennai) (Trib.)

173 **S. 10B : Export oriented undertakings – Interest income on FDR and miscellaneous income – Matter remanded.**
Matter was remanded since there were no details.(AY. 2010-11, 2011-12)
Continental Engines (P.) Ltd. v. DCIT (2021) 188 ITD 705 / 85 ITR 413 (Delhi)(Trib.)

174 **S. 10B : Export oriented undertakings – Matter remanded by the Tribunal to the Assessing Officer to examine the claim under section 10A of the Act – CIT (A) allowed the claim under section 10B – CIT (A) was not justified is allowing the deduction u/s 10A of the Act [S.10A, 254(1)]**
Tribunal remitted back to Assessing Officer for de novo consideration of alternative claim for deduction under section 10A of the Act. Pursuant to order of Tribunal, fresh assessment order was passed by Assessing Officer denying exemption under section 10B as well as section 10A on ground that prescribed Form No. 56FF as per Rule 16DD was not filed. Commissioner (Appeals) allowed claim for deduction under section 10B. Revenue contended that there were no positive profits available before making addition which could be claimed as deduction under section 10A or 10B Allowing the appeal of the Revenue the Tribunal held that since issue of allowability of claim under section 10B was neither alive nor it was permissible, as it amounted to overruling decision of Tribunal by Commissioner (Appeals), thus Commissioner (Appeals) was not justified in directing Assessing Officer to allow claim for deduction of provision under section 10B. Order of CIT (A) was reversed (AY. 2009-10)
Dy. CIT v. Wayne Burt Petrochemical (P.) Ltd. (2021) 186 ITD 186 (Chennai)(Trib.)

175 **S. 10B : Export oriented undertakings – Interest income – Matter remanded. [S.10B (4)]**
Tribunal held that there was no detail about the source of miscellaneous income available on record except amount of income. It was also not clear from the order of the Assessing Officer in the instant year, whether the fixed deposits were made for the purpose of the business or for merely earning interest income. No such details had been provided. In view of facts and circumstances, the issue in dispute was to be remanded to the Assessing Officer for deciding in accordance with law after verifying the source of miscellaneous income and the interest income.(AY. 2010-11, 2011-12)
Continental Engines Pvt. Ltd. v. Dy. CIT (2021) 85 ITR 413 (Delhi)(Trib.)

S. 10B : Export oriented undertakings – Data processing – Clinical trials – Cannot be considered as data processing – Not entitled to exemption. 176

Dismissing the appeal of the assessee the Tribunal held that the activity of conducting clinical trials on individuals by administering them drugs and thereafter processing the reactions in computer by applying the various software and then transmitting the same to its clients cannot be considered as data processing as no data is provided by the clients. The assessee is not entitled to exemption. (AY. 2010-11, 2011-12)

Axis Clinicals Ltd v. Dy.CIT (2021) 211 TTJ 128 / 200 DTR 201 (Hyd.)(Trib.)

S. 11 : Property held for charitable purposes – Improve public transport system in the country and the road safety standards – Revenue from laboratory testing and consultancy – Not to earn profit for share holders – Entitled to exemption – Proviso to section 2(15) is not applicable – No substantial question of law. [S. 2(15)] 177

Dismissing the appeal of the Revenue the Court held the association has not been earning any profit as the main object of the assessee-association is to improve the public transport system in the country and the road safety standards. Undoubtedly, the activities of laboratory testing and consultancy are bringing revenue to the assessee-association but the intent of such activities is not to earn profit for its shareholders/ owners.. No question of law Followed *Ram Kumar Aggarwal & Anr. vs. Thawar Das (through LRs), (1999) 7 SCC 303* has reiterated that under Section 100 of the Code of Civil Procedure the jurisdiction of the High Court to interfere with the orders passed by the Courts below is confined to hearing on substantial question of law and interference with finding of the fact is not warranted if it involves re-appreciation of evidence. There is no perversity in the findings of the ITAT. Referred *State of Hayana & Ors v. Khalsa Motor Ltd (1990) 4 SCC 659, Hero Vinoth (Minor)) v. Thawar Das Through LRs (1999) 7 SCC 303.*

CIT (E) v. Association of State Road Transport Undertakings (2021) 208 DTR 313 / 324 DTR 165 /283 Taxman 555 (Delhi)(HC)

S. 11 : Property held for charitable purposes – Running a printing press and publishing a news paper – Profit generated was ploughed back to charitable activities – Entitled to exemption [S. 2(15), 10(23C)(vi), 12A, 80G] 178

Dismissing the appeal of the Revenue the Court held that object of the society is charitable in nature and the profit earned from running a printing press and publishing a news paper was ploughed back to charitable activities. The assessee is entitle to exemption. Proviso to section 2(15) is not applicable.

PCIT v. Servants of People Society (2021) 208 DTR 409/ (2022) 324 CTR 167 / 284 Taxman 461 / 133 taxmann.com 244 (Delhi)(HC)

S. 11 : Property held for charitable purposes – Engaged in promotion of rapid and orderly establishment, growth and development of industries in State and provided for industrial infrastructural facilities – Object of general public utility, proviso to section 2(15) was not applicable – Entitled for exemption [S. 2(15), 12AA] 179

Dismissing the appeal of the Revenue the Court held that the asseessee which is engaged in promotion of rapid and orderly establishment, growth and development of industries

in State and provided for industrial infrastructural facilities. Object of general public utility, proviso to section 2(15) was not applicable. Entitled for exemption. Followed *Karnataka Industrial Areas Development Board v. ADDIT(E) (2020) 277 Taxman 36 (Karn.) (HC) (*AY. 2013-14)

PCIT(E) v. Karnataka Industrial Areas Development Board (2021) 130 taxmann.com 407 (Karn.)(HC)

Editorial : SLP is granted to the Revenue, PCIT(E) v. Karnataka Industrial Areas Development Board (2021) 283 Taxman 10(SC)

180 **S. 11 : Property held for charitable purposes – Construction of building for Government – Commission from Government – Involves carrying on of activity in the nature of trade commerce or business – Denial of exemption is held to be justified [S. 2(15), 12A]**

One of the objects of the assessee is to take up construction work of any nature to establish a chain of retail outlets. In the relevant financial year the assessee completed 34 building projects. The Assessing Officer denied the exemption and this s was affirmed by the Tribunal. On appeal the Court held that purpose of construction of building for Government cannot be accepted as an activity coming within the meaning of advancement of any other object of general public utility. Denial of exemption was held to be justified.(AY. 2019-10, 2013-14)

Nirmithi Kendra v. Dy. CIT (E) (2021) 323 CTR 865 (Ker) / 208 DTR 249 (Ker.)(HC)

181 **S. 11 : Property held for charitable purposes – Running of pharmacy – Pharmacy store was ancillary to the main object of running the hospital – Denial of exemption was held to be not justified. [S 10, 10(22), 10(23C)(via), 11(4A)]**

Dismissing the appeal of the Revenue the Court held that the running of pharmacy store was ancillary to the main object of running of the hospital. Therefore, income accrued therefrom was incidental to the dominant object of the respondent i.e., running of the hospital. The assessing officer was not justified in treating the pharmacy store as business activity and denying the exemption. Tribunal relied on Hiranandani Foundation in I.T.A. No.561/Mum/2016 dt.27-5 -2016, AY. 2006-07, *Aditanar Educational Institution v. Add. CIT (1997) 224 ITR 310 (SC) Baun Foundation Trust v. CIT (2012) 73 DTR 45 (Bom.) (HC)* (AY. 2010-11)

PCIT (E) v. National Health & Education Society (2021) 197 DTR 147 / 318 CTR 500 (Bom.)(HC)

182 **S. 11 : Property held for charitable purposes – Cost of purchase was treated as application of income – Entitled to depreciation.[S. 32]**

Dismissing the appeal of the Revenue the Court held that the assessee is entitled to claim depreciation on assets, in form of application of income, even though cost of purchase of such assets was treated as application of income under section 11. (AY 2009-10)

CIT v. Kongunadu Arts & Science (2021) 282 Taxman 158 (Mad.)(HC)

Editorial : Not applicable after insertion of sub-section (6) in section 11 by Finance (No.2) Act 2014 with effect from 1.04.2015

S. 11 : Property held for charitable purposes – Capital asset – Application of income – Depreciation allowable [S. 12A, 32] 183

Allowing the appeal of the assessee the Court held that though expenditure incurred for acquisition of capital assets was allowed as application of income for charitable purposes under section 11, yet depreciation would be allowable on such assets. (AY. 2008-09 and 2009-10)

Mazdoor Welfare Trust v. Dy. CIT (E) (2021) 282 Taxman 146 (Mad.)(HC)

S. 11 : Property held for charitable purposes – Depreciation – Entitled to set off excess application of income of earlier assessment year- Precedent – Commissioner (Appeals and Tribunal must follow the decision of High Court. [S. (2(24), 11(1)(d)), 12(1), 32] 184

Allowing the appeal the Court held that a charitable institution is entitled to depreciation. Once assessee was allowed depreciation, it would be entitled to carry forward the depreciation. Court held that the charitable trust is entitle to set off excess application of income of earlier assessment years against income of current assessment year. Court also held that if the judgments and orders of the High Courts are applicable to the facts and circumstances of a case pending before the Commissioner (Appeals), he must follow them without any deviation. Similarly the Tribunal must also follow the judgments and orders of the High Courts. (AY. 2009-10)

Anjuman-E-Himayat-E-Islam v. ADIT (2021) 436 ITR 139 / 201 DTR 337 / 323 CTR 601 (Mad.)(HC)

S. 11 : Property held for charitable purposes – Donation made for other charitable purposes – Entitled to exemption [S. 2(15)] 185

Dismissing the appeal of the Revenue the Court held that a cursory glance at the list of beneficiaries would show that there had been donations to charitable and religious institutions only and that philanthropy had been the essence of all the donations. The assessee-trust was entitled to exemption under section 11.(AY.2007-08)

DIT (E) v. Shanmuga Arts, Science, Technology and Research Academy (Sastra)(2021) 436 ITR 633 / 207 DTR 361 / 283 Taxman 135 (Mad.)(HC)

S. 11 : Property held for charitable purposes – Activity of running hostel – Not commercial activity – Denial of exemption is held to be not justified. [S. 2(13), 2(15), 11(4A)] 186

Allowing the appeal of the assessee the Court held that where assessee trust was running a dental college and was also running and managing hostel for residence of students admitted in said college, since, activity of running hostel was not a separate business activity, surplus income from hostel fee could not be treated as profit and gains of a separate business or commercial activity of trust, hence denial of exemption is held to be not justified. (AY. 2010-11)

Daya Nand Pushpa Devi Charitable Trust v. Addl. CIT (2021) 436 ITR 406 / 281 Taxman 455 / 203 DTR 201 / 321 CTR 385 (All.)(HC)

187 **S. 11 : Property held for charitable purposes – Application of income – Expenses of earlier years can be adjusted against income earned in subsequent year. [S. 11(4)]**
Dismissing the appeal of the Revenue the Court held that expenses incurred in earlier years which are adjusted against income earned by trust in subsequent year will have to be regarded as application of income of trust for charitable and religious purposes in subsequent year. A trust can bring forward and set off expenses of earlier years as application of income in subsequent year. (AY. 2013-14)
PCIT v. Karnataka Jesuit Educational Society (2021) 281 Taxman 478 (Karn.)(HC)

188 **S. 11 : Property held for charitable purposes – Application of income – Expenses of earlier years can be adjusted against income earned in subsequent year. [S. 11(4)]**
Dismissing the appeal of the Revenue the Court held that expenses incurred in earlier years which are adjusted against income earned by trust in subsequent year will have to be regarded as application of income of trust for charitable and religious purposes in subsequent year. A trust can bring forward and set off expenses of earlier years as application of income in subsequent year. (AY. 2013-14)
PCIT v. Karnataka Jesuit Educational Society (2021) 281 Taxman 478 (Karn.)(HC)

189 **S. 11 : Property held for charitable purposes – Depreciation – Application of income – Entitled to claim depreciation. [S.32]**
Held that the assessee is entitled to claim depreciation on assets even though cost of purchase of asset was treated as application of income. (AY. 2009-10)
CIT v. Kovai Medical Centre and Educational Trust (2021) 280 Taxman 239 (Mad.)(HC)

190 **S. 11 : Property held for charitable purposes – Accumulation of income – Exemption cannot be denied merely on the ground of delay in filing the form No 10. [S.12A, Art. 226]**
Assessee had not furnished audit report in Form no. 10. The Assessing Officer denied exemption. The assessee filed audit report in Form no. 10 belatedly and requested to condone delay which was rejected. On writ allowing the petition the Court held the assessee should not be denied exemption merely on bar of limitation, especially, when legislature had conferred wide discretionary powers to condone such delay on authorities concerned.(Circular No. 273, dated 3-6-1980 (1981) 126 ITR 27 (St)) (AY. 2014-15)
Trust for Reaching the Unreached through Trustee v. CIT (E)(2021) 279 Taxman 229 / 202 DTR 39 (Guj.)(HC)

191 **S. 11 : Property held for charitable purposes – Educational institutions – Matter remanded for fresh consideration [S. 10(23C), 11(5), 13(1)(d)]**
Allowing the appeal of the assessee the Court held that since several factual aspects to be taken under consideration had been missed out by Assessing Officer, matter was to be remanded to him for a fresh consideration. (AY. 2012-13)
Indian Institute of Engineering Technology v. Dy. CIT (E)(2021) 279 Taxman 199 (Mad.) (HC)

S. 11 : Property held for charitable purposes – Income from business or business held in trust – Main object is for establishing, maintaining and running a hospital for philanthropic purposes and not for the purpose of profit- Entitle exemption. [S. 2(15)] 192

On appeal the High Court held that assessee-trust, carrying on business, was entitled to exemption in respect of income from the business of Chitty/Kurias such income was fully utilized for the purpose of 'medical relief', which is the main object of the assessee-trust, falling under the definition of 'charitable purpose. (AY. 2012-13)

Bharathakshemam v. PCIT (2021) 320 CTR 198 / 199 DTR 113 (Ker.)(HC)

S. 11 : Property held for charitable purposes – Statutory body – Functions of assessee were fully controlled by instructions issued by Government – Assessee was engaged in charitable activity through advancement of an object of general public utility. [S. 2(15), Karnataka Industrial Area Development Act, 1987] 193

On appeal the High Court allowing the appeal held that :

1) main component of income of the assessee is derived in the form of interest and there is no profit element in earning income as interest;
2) that the assessee has been established to promote rapid and orderly development of industries in the State and to assist in implementation of the policy of the Government;
3) to facilitate in establishing infrastructure projects and to function on 'No Profit-No Loss' basis;
4) profit making is not the driving force or objective of the assessee;
5) AO has not disputed that the assessee fulfills all the conditions for allowing exemption except proviso to Section 2(15) of the Act.

Thus, the Tribunal has correctly held that the proviso to section 2(15) of the Act is not applicable to the case of the assessee. (ITA No. 205 of 2016, dt. 30/09/2020) (AY. 2009-10)

Karnataka Industrial Area Development Board.v. Addl DIT (E) (2020) 121 taxmann.com 88 / (2021) 277 Taxman 36 (Karn.)(HC)

S. 11 : Property held for charitable purposes – Since lower authorities had not rendered any finding that activity carried out by assessee-trust was a commercial activity, benefit of exemption could not have been denied to assessee Matter remanded to AO to take fresh decision [S.2(15)] 194

Court held that where the claim of a assessee-trust which is established with a main object to consider all questions concerning relations between employers and employees in Southern India in order to protect their interests have been denied to assessee merely taking the view that substantial sums of money were received by assessee from conducting conferences and seminars which were not incidental to its main objects without the lower authorities having not rendered any finding as to whether activity carried out by assessee was a commercial activity, denial of the benefit of exemption u/s 11 is not justified. Matter remanded to AO to find out facts on the principles enunciated in few decisions referred by the Court. (AY. 2009-10)

Employers Federations of Southern India v. CIT (E)(2020) 122 taxmann.com 87 / (2021) 277 Taxman 266 (Mad.)(HC)

195 **S. 11 : Property held for charitable purposes – School – Exemption – For delay in filing form No 10B denial of exemption is not justified – Petitioner is directed to file an application before the CBDT within a period of three weeks and CBDT shall pass an appropriate order in terms of direction No.1 above within a period of four weeks from the date of receipt of such application with due intimation to the petitioner [S. 2(15), 12, 119(2)(b), Form No 10B, Art. 226]**

The petitioners are charitable trusts providing education to students belonging to middle class families through various schools situated in Mumbai. Both the petitioners are assessed to income tax under the Income Tax Act, 1961(Act).

Challenge made in both the writ petitions is to the orders dated 19.02.2020 passed by the Commissioner of Income Tax (Exemptions), Mumbai declining to condone the delay in filing Form No.10B of the Act for the assessment year 2018-2019.

It is stated that for the assessment year 2018-19, petitioner filed return of income on 25.07.2018 declaring nil income. Form No.10B was obtained on 15.08.2018 from the auditor. It is stated instead of uploading Form No.10B in the income tax portal, petitioner uploaded Form No.10BB because of mistake of the chartered accountant and accountant. The CPC under section 143(1) of the Act raising raised a demand of Rs.1,46,01,489.00 as payable by the petitioner for the assessment year 2018-19 by denying exemptions under sections 11 and 12 of the Act.

Petitioner uploaded Form No.10B on the income tax portal on 06.11.2019 and also filed an application for condonation of delay. As a matter of fact, Petitioner filed Form No.10B for assessment years 2017- 18 and 2018-19.

Respondent No.2 i.e., Central Board of Direct Taxes issued Circular No.2 of 2020 dated 03.01.2020 empowering the Commissioner of Income Tax (Exemptions) to condone the delay in filing Form No.10B for a period upto 365 days from the assessment year 2018-19 onwards.

However, vide the impugned order dated 19.02.2020, Commissioner of Income Tax (Exemptions), Mumbai rejected the application of the petitioner for condonation of delay for the assessment year 2018-19. The said order was passed following Circular No.2 / 2020 of the Central Board of Direct Taxes.

Aggrieved, the related writ petition has been filed for quashing of order dated 19.02.2020 and for a direction to the Commissioner of Income Tax (Exemptions) to condone the delay in filing Form No.10B for the assessment year 2018-19.

In view of the the position and having regard to the mandate of section 119(2)(b), the Court was of the view that even at this stage, petitioner may approach CBDT under the aforesaid provision seeking a special order to the Commissioner of Income Tax (Exemptions), Mumbai to condone the delay in filing Form No.10B for the assessment year 2018-19 which is beyond 365 days and thereafter to deal with the said claim on merit and in accordance with law.

Petitioner shall file an application before the CBDT under section 119(2)(b) of the Act to authorize the Commissioner of Income Tax (Exemptions), Mumbai to condone the delay in filing Form No.10B for the assessment year 2018-19 and to deal with the same on merit in accordance with law;

If such application is filed by the petitioner within a period of three weeks from today, CBDT shall pass an appropriate order in terms of direction No.1 above within a period

of four weeks from the date of receipt of such application with due intimation to the petitioner (AY. 2018-19)
Little Angels Education Society v. UOI (2021) 434 ITR 423 / 320 CTR 331 / 200 DTR 289/280 Taxman 4 (Bom.)(HC)
C.F. Andrews Education Society v. UOI (2021) 434 ITR 423 320 CTR 331 / 200 DTR 289 /280 Taxman 4 (Bom.)(HC)
Editorial: On the basis of the application made by the Trust, the Board has condoned the delay and allowed the exemption.

S. 11 : Property held for charitable purposes – Promotion and protecting trade, commerce and manufacture in Bombay Presidency – Entitled to exemption [S. 2(15), 12A, 12AA(3)] 196
Held that the object of the assessee is promotion and protecting trade, commerce and manufacture in Bombay Presidency. On winding up, the members could not claim any share in the surplus assets. The activities carried out by the assessee-chamber continued to be charitable in nature even under the amended definition under section 2(15) of the Act and the assessee was entitled for exemption under section 11 of the Act.(AY.2009-10)
Bombay Chamber of Commerce and Industry v. ITO (E)(2021) 92 ITR 64 / (2022) 192 ITD 257 (Mum.)(Trib.)

S. 11 : Property held for charitable purposes – Medical research, establishment of hospitals, health promotion – Denial of exemption is not justified [S. 12, 12AA(3)] 197
Held that the findings of the Commissioner (E) were based on surmises because at this stage the commercial angle of any activities could only be decided during the assessment proceedings. It was a matter of fact that medical research had to be carried out in the premises of the hospital/settler company and any such medical research would otherwise facilitate the general public to have a specialised treatment in the hospital of their choice. Medical research could not be branded as a mode of advertisement to enhance the profitability of the hospital because both existed in entirely separate domain. Declining the registration on the ground that medical research to be carried out in the hospital of settler company would convert the charitable activities into commercial activities was mere surmise, and not sustainable in the eyes of law.
Artemis Education and Research Foundation v. CIT(E)(2021) 92 ITR 45 (SN)/ (2022) 192 ITD 173/ 216 TTJ 58 / 210 DTR 113 (Delhi)(Trib.)

S. 11 : Property held for charitable purposes – Excess fees charged – Exemption cannot be denied – Failure to produce depositors – Loans cannot be treated as anonymous donations.[S. 12AA, 68, 115BBC] 198
Held that the Assessing Officer had not doubted the charitable activities of the assessee. The assessee has applied more than 85 per cent of its total receipt for its object. Thus, the predominant object of the assessee had been fulfilled. Merely on the basis of excess fees charged exemption cannot be denied. Tribunal also held that failure to produce depositors, Loans cannot be treated as anonymous donations.(AY. 2014-15)
Dy. CIT (E) v. Ram Nath Memorial Trust Society (2021) 90 ITR 51 (SN)(Delhi)(Trib.)

199 **S. 11 : Property held for charitable purposes – Benefit to related parties – Salary paid to chairman of trust – Held to be reasonable – Denial of exemption was held to be not justified [S.13(1)(c), 13(3)]**

Held that salary paid to trustee cannot be compared with the quality of work rendered by the employees of the Trust. The salary being reasonable the denial of exemption was set aside. (AY. 2015-16)

Mukat Educational Trust v. Dy. CIT (E) (2021) 90 ITR 63 (SN.)(Chd.)(Trib.)

200 **S. 11 : Property held for charitable purposes – Authority constituted under Urban Planning and Development Act – Local authority – Acquisition and Development of Land – Discharging statutory and sovereign function – Activities having direct nexus with obligations – Charitable activities – Entitled to exemption [S. 2(15), 10(20A), 12A]**

Held that the predominant character of the activities continued to be that of the State and therefore the element of welfare and charity was inbuilt in them. The giving of buildings on rent, parking space, sale of tender document for the purpose of development, had direct nexus with the obligations of the assessee under the Act. These activities were undertaken by the assessee without any discrimination and on the basis of the guidelines issued by the State Government and other authorities in this regard. The activities of the assessee in receipt of amount from such activities could not be examined in isolation, as the assessee was propelled to do all these activities under the statutory obligation under 1973 Act, and therefore even if the receipts were more than the threshold limit, these activities which were driven by the 1973 Act could not be held to be in the nature of trade, commerce or business.(AY.2009-10 to 2011-12)

Agra Development Authority v. Dy CIT (2021) 89 ITR 490 (Agra)(Trib.)

201 **S.11 : Property held for charitable purposes – Amount spent on construction of buildings for its medical college would be treated as application of income for objects of trust and, hence, would qualify for exemption under section 11 – factum of incurring such expenses by way of cash alone could not be a ground to hold that those expenses were related to non-specified purpose – Denial of exemption was held to be not justified – No violation. Section. 13 of the Act [S. 2(15), 12A, 13 69C, 132(4)]**

The assessee is a charitable trust registered under Section 12A of the Act. A search was carried out at the premises of the assessee on 18th July, 2013. It was held that:

i) Amounts paid to contractors in cash or for other non-specified purposes cannot be added as unexplained expenditure under Section 69C of the Act simply because they have been paid in cash, and without any material to sustain the addition and merely if the assessee has not produced evidence in addition to the books of account, if the assessee has accounted for the expenditure in its books of account, and the same has been audited as genuine and the Assessing Officer has not rejected the books of account, the addition is to be deleted. Even if the expenditure is deemed to be for non-specified purposes, the assessee must have the benefit of the Explanation to Sections 11(1) and 11(2) of the Act.

ii) Information found during the course of search pertaining to amounts given as unsecured loans cannot be added to the income of the assessee since the CIT(A) has given a clear finding that the amounts do not belong to the assessee. Also, the

matter was remanded to the Assessing Officer for the limited purpose of verifying the bank statement showing payments of the amounts not from the assessee but from an account of a third party viz. Hotel Solitaire.

iii) Amounts withdrawn by the assessee from the bank and alleged to have been made to three parties cannot form the basis of addition since additions cannot be made on surmises and conjectures. The amounts were recorded in the books of account and there was nothing to show that payments had been made to the three parties mentioned. Also, the break-up of payments were not provided the Assessing Officer. The Assessing Officer ought to have made an enquiry pursuant to the books of account but none was made and hence the addition is deleted.

iv) Amounts received as development fee over and above that prescribed by the government cannot be termed as capitation fee is the Assessing Officer has no material to show that the amounts received were not in the nature of voluntary donations. Reliance placed on statements of persons that the assessee collected capitation fee cannot be accepted since no opportunity of cross examination was provided to the assessee. Also, there was no evidence to show that payments were made de hors the books of account. Hence, the additions on account of capitation fee are to be deleted and exemption under Section 11 to be given.

v) A statement made during course of search under Section 132(4) of the Act cannot form basis of addition even if the same is not retracted since neither the assessee nor the AO could justify the addition and in fact the assessee has produced evidence through books of account that the payment was made towards construction. It is the duty of the Assessing Officer to prove the same with corroborative documentary evidence and failure to do so would warrant deletion of addition. Also, the assessee had made the statement under a wrong notion of law and to buy peace with the department. (AY. 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015)

Sri Srinivasa Educational & Charitable Trust v. ACIT (2021) 211 TTJ 663 / 182 ITD 554/ 204 DTR 265 (Bang.)(Trib.)

S. 11 : Property held for charitable purposes – Non registration of trust does not render activities as non charitable advance to charitable object – Exemption cannot be denied – Diversion of fund – Only income which is violation of the provision can be taxed at maximum marginal rate and not whole income of the Trust. [S. 13(1)(c)] 202

Held that non registration of trust does not render activities as non charitable advance to charitable object. Exemption cannot be denied. Tribunal also held that when the income is diverted which is violation of the provision the said income can be taxed at maximum marginal rate and not whole income of the Trust. Followed *CIT v. Working Women's Forum (2014) 365 ITR 353 (Mad.) (HC).* (AY.2011-12, 2012-13)

ACIT (E) v. Mahendra Educational Trust (2021) 88 ITR 370 / 210 TTJ 350 / 200 DTR 81 (Chennai)(Trib.)

203 **S. 11 : Property held for charitable purposes – Registered under Companies Act, 1956 – No profit motive – Collection of fees or cess – No requirement that the applicant must be trust –Denial of exemption is held to be not justified. [S. 2(15), 12AA(3), Companies Act, 1956, S. 25, 617]**

The assessee is a public sector undertaking working under Ministry of Railways in the Government of India and registered under section 617 of the Companies Act 1956. The assessee is engaged in developing plans and implementation of rail infrastructure projects. The Assessing Officer denied the exemption on the ground that registration u/s 12A of the Act was cancelled and receipt of the assessee was more than 25 lakhs. The CIT(A) deleted the addition following the order in Mumbai Railway Vikas Nigam Ltd. ITA No. 1057/Mum/ 2014 and ITA No. 2626 /Mum/2014 dt 3-8-2016. Revenue preferred an appeal before the Tribunal. Dismissing the appeal of the Revenue the Tribunal held that there is no requirement that the assessee must be trust for availing the exemption. Followed the order of earlier year. (AY.2012-13)

Dy.CIT (E) v. Mumbai Railway Vikas Nigam Ltd. (2021) 87 ITR 1 (Mum.)(Trib.)

204 **S. 11 : Property held for charitable purposes – Donation to another charitable trust – Objects of donor and donee are not same – Cannot be allowed as application of income – Not entitle to exemption [S. 11(1)(a), 12A, 12AA]**

Held that the object of the donor and done are different hence the donation given to another charitable trust cannot be allowed as application of income. (AY.2012-13)

Nazareth Hospital Society v. Dy.CIT (E)(2021) 88 ITR 44 / 212 TTJ 951 (All.)(Trib.)

205 **S. 11 : Property held for charitable purposes – No changes in the nature of activities – Principle of consistency should be followed – Mutuality – Once the activities of the assessee-society were charitable, the principle of mutuality became superfluous [S. 2(15) 12, 12A, 13]**

Held that the nature of activity and objects of the assessee-society were the same as had been considered in earlier years. For the assessment year 2012-13, the Tribunal had held that the income of the assessee-society was entitled to exemption under section 11. The Tribunal order was challenged by the Revenue before the High Court which had dismissed the appeal holding that the assessee-society was entitled to claim relief under sections 11, 12 and 13. Once the activities of the assessee-society were charitable, the principle of mutuality became superfluous. Relied on *CIT (E) v. India Habitat Centre (2020) 424 ITR 325 (Delhi)(HC)* (AY. 2014-15)

ACIT (E) v. India Habitat Centre (2021) 86 ITR 290 (Delhi)(Trib.)

206 **S. 11 : Property held for charitable purposes – Running Hospital, Pharmacy and Diagnostic Centre – Maintaining separate books of account – Receiving subsidies from Government – Denial of exemption was not justified. [S. 2(15), 12AA, 13]**

Dismissing the appeal of the Revenue the Tribunal held that running a pharmacy in the hospital was an independent business activity, and therefore, the profit earned ought to be separately assessed. The hospital provided various services for 24-hours in various medical fields. Therefore, it was more necessary and was a duty on the part of the trust to run its medical stores to provide medicines to patients as prescribed by the

doctors. The hospital ran medical shops for 24-hours in order to meet the emergency requirements of patients, who were admitted in the emergency. The assessee had maintained separate books of account and these were produced before the Assessing Officer. The maintenance of a pharmacy had been considered as ancillary to the object of running a hospital for the past more than 12-13 years. Therefore, it was to be considered as an integral part of the hospital activity. No change of facts. Denial of exemption was not justified.(AY. 2014-15)
Dy.CIT (E) v. Punjab Medical Foundation Charitable Trust (2021) 86 ITR 495 (Chad.)(Trib.)

S. 11 : Property held for charitable purposes – Donation received for Corpus fund with specific direction – Capital receipt – Not assessable as income – Provision for gratuity – Allowable as application of income. [S. 10(23C)(vi), 11(1)(d)] 207
Held that corpus donation with specific direction is a capital receipt and cannot be assessed as income of the assessee. Provision for gratuity, allowable as application of income. (AY. 2012-13)
Apeejay Education Trust v. DCIT (2021) 191 ITD 359 (Kol.)(Trib.)

S. 11 : Property held for charitable purposes – Educational trust – Return and form No 10 was not filed within due date prescribed u/s 139(1)) of the Act – Reasonable cause – Return and form no 10 was filed before competition of assessment u/ s 139 (4)- Application for condonation of delay was pending before CBDT – Denial of exemption was held to be not valid. [S. 13, 119, 139(1), 139(4), Form No. 10] 208
Assessing Officer denied the exemption on ground that assessee had not filed its return of income and required Form No. 10 within due date of furnishing return under section 139(1). Application for condonation of delay was pending disposal before CBDT. Tribunal held that the assessee had filed return within due date specified under section 139(4) and also filed Form No. 10 electronically for both assessment years before completion of assessment. Rejection of exemption was held to be not valid. (AY. 2016-2017, 2017-18)
Jaya Educational Trust v. DCIT (2021) 191 ITD 107 / 213 TTJ 418 (Chennai)(Trib.)

S. 11 : Property held for charitable purposes – Education – Publishing and selling of books and CDs relating to different fields – Classical education – Held to be charitable in nature and not advancement of any other object of general public utility – Denial of exemption was held to be not justified [S. 2(15)] 209
Main object of assessee-trust was promotion of education in field of art, culture and literature by various modes. The Assessing Officer denied the exemption on the ground that the assessee was not engaged in imparting education but in publishing and selling of books and CDs relating to different fields which did not fall within ambit of term education. Tribunal held that trust was created as a public charitable trust for preservation and promotion of art, culture, literature, science and encouraging creativity and art initiatives and that it was hived off from National Centre for Performing Arts (NCPA) committed to preserving and promoting India's rich and vibrant artistic heritage in fields of music, dance, theatre, film etc. and assessee-trust, in pursuance of its charitable objects, had resorted to come out with various publications of books,

magazines/journals which would depict rich cultural heritage of India. For publications by assessee-trust, grants were received from Ministry of Culture, Government of India. Activities of assessee-trust fell within purview of Classical education and were to be held to be charitable in nature and not advancement of any other object of general public utility and, hence, proviso to section 2(15) did not apply to assessee. (AY. 2011-12, 2012-13)
Marg Foundation v. ITO (E) (2021) 191 ITD 299 (Mum.)(Trib.)

210 **S. 11 : Property held for charitable purposes – Application of income – Fixed deposit – Not shown as earmarked fund for a charitable purposes – Not eligible exemption – Form No.10 was filed before completion of assessment – Eligible deduction – Time limit for furnishing Form No.10 was prescribed by Finance Act, 2015 with effect form 1-4-2016. [S. 11(1))(a), 11(2)(c), Form No. 10]**
Held that fixed deposit was not shown as earmarked fund for a charitable purposes hence not eligible for exemption. Form No.10 was filed before completion of assessment, hence income eligible for exemption Time limit for furnishing Form No.10 was prescribed by Finance Act, 2015 with effect form 1-4-2016. (AY. 2012-13)
Ursuline Franciscan Congregation Generalate Somarpann Declaralakatte v. ITO (2021) 191 ITD 238 (Bang.)(Trib.)

211 **S. 11 : Property held for charitable purposes – Accumulation of income – Filing of form no 10 manually before jurisdictional officer is mandatory – As per CBDT Circular No. 7/2018, dated 20-12-2018, Commissioner could condone delay in filing Form 10 electronically with department but could not exempt assessee from filing said Form manually with jurisdictional Assessing Officer -Additional ground was dismissed – Denial exemption was upheld [S. 139(1), 143(1), 154, Rule,17, Form No. 10]**
Held that it is mandatory on part of assessee to file Form 10 manually with jurisdictional Assessing Officer, though not electronically before due date of filing of return of income. As per CBDT Circular No. 7/2018 dated 20-12-2018, Commissioner could condone delay in filing Form 10 electronically with department but could not exempt assessee from filing said Form manually with jurisdictional Assessing Officer. Denial of exemption was up held. Whether the adjustment in intimation was justified or not additional ground was not admitted by the CIT (A) hence dismissed as not emanating from the order. (AY. 2015-16)
Navodaya Education Trust v. DCIT (2021) 190 ITD 829 (Bang.)(Trib.)

212 **S. 11 : Property held for charitable purposes – Depreciation – Application of income – Cost of purchase was treated as application of income – Depreciation is allowable – Excess amount spent in earlier year – Allowed to be carried forward and set off [S. 32, 72]**
Held entitled to claim depreciation on assets, in form of application of income, even though cost of purchase of such assets was treated as application of income. Excess amount spent by assessee-trust towards religious and charitable purposes in an earlier year could be carried forward and set off against income of assessee in succeeding years. (AY. 2014-15)
Rama Naick Charitable Trust v. ITO (E)(2021) 190 ITD 647 (Chennai)(Trib.)

S. 11 : Property held for charitable purposes – Trust was not registered – Corpus donation – Includable in total income [S. 2(15), 12A] 213

Held that the assessee charitable trust was not registered under section 12A, voluntary donations received by it with a specific direction to be formed part of corpus of trust would fall within ambit of income of a trust derived from property held under trust and, hence, includible in total income of trust. (AY. 2014-15)

Veeravel Trust v. ITO (2021) 190 ITD 520 (Chennai)(Trib.)

S. 11 : Property held for charitable purposes – Education – Survey – Capitalisation on fee – Surplus was incidental to educational activities – Denial of exemption was held to be not justified [S. 2(15), 12AA, 133A] 214

Held that the surplus earned by assessee was incidental while carrying out main objects of trust and same was ploughed back for educational purposes only. Commission payment was for liasoning to make public aware about education courses offered by assessee which was very much essential in these days especially considering number of educational institutions available. Denial of exemption was held to be not justified (AY. 2010-11, 2011-12)

DCIT v. JMJ Education Society (2021) 190 ITD 496 (Bang.)(Trib.)

S. 11 : Property held for charitable purposes – Depreciation – Carry forward of deficit – Depreciation allowed. [S.12A, 32, 70, 74] 215

Tribunal held that depreciation was allowed and deficit was allowed to be carry forward. (AY. 2012-13)

Dy. CIT (E) v. Nav Nirman Sewa Samiti (2021) 88 ITR 4 (SN)(Delhi)(Trib.)

S. 11 : Property held for charitable purposes – Principle of consistency – Exemption was allowed. [S. 2(15), 12A] 216

Tribunal held that no material has been brought on record by the ld. DR to demonstrate that the view taken by the Tribunal in the earlier years was on different set of facts. Admittedly, there is no change in facts and circumstances as compared to the previous years and subsequent years, and therefore, principle of consistency squarely applicable to the present case on hand. Therefore, the AO was directed to treat the assessee as a charitable institution and allow exemption under section 11 of the Act. (AY.2013-14 to 2015-16)

Dy. CIT (E) v. Paramount Charity Trust (2021) 88 ITR 26 (SN)(Ahd.)(Trib.)

S. 11 : Property held for charitable purposes – Rental income derived from letting out studio to artists for teaching Indian classical music comes within the ambit of "education" – Assessee is entitled to exemption. [S. 2(15), 11(4A)] 217

The assessee is a charitable trust registered u/s 12A and 80G of the Act. In the relevant AY, the assessee-trust received studio charges of Rs 16,72,197/- from various artists. The AO held that the studio was rented to the artists with an intention to make profits in the shield of charitable activities and taxed such studio charges as business income of the Assessee under S.11(4A) of the Act. CIT(A) upheld the order of the AO. The Tribunal observed that Assessee is a charitable trust engaged in teaching Indian

Classical Music which falls within the field of "education". Since the trust is engaged in education, the proviso to section 2(15) does not apply as clarified by CBDT Circular No. 11 dated 19.12.2008 even if it involves the carrying a commercial activity. The tribunal noted the history of the Trust observed that the receipts of Rs. 16,72,197/- are at a subsidized fees and the activities of the studios are carried on in order to achieve the main object of the Trust and cannot be construed as a business. Reliance has been placed on the judgement of Madras High Court in the case of *Sri Thyaga Brahma Gana Sabha 188 ITR 160 (Mad.)(HC)*. (AY. 2010-11, 2012-13)
Acharya Jiyalal Vasant Sangeet Niketan v. ITO (E)(2021) 189 ITD 1 / 211 TTJ 655/ 200 DTR 289 (SMC)(Mum.)(Trib.)

218 **S. 11 : Property held for charitable purposes – Accumulation of income – Not specifying the specific purpose – Exemption cannot be denied [S.11(2), Form No 10]**
Allowing the appeal the Tribunal held accumulation of income cannot be denied on the ground that the purpose specified in Form No. 10 is vague and general in nature. (AY. 2012-13)
Arhatic Yoga Ashram Management Trust v. ITO (2021) 188 ITD 14 (Chennai)(Trib.)

219 **S. 11 : Property held for charitable purposes – Exemption denied and income assessed as income from other sources – All incidental expenditure laid out by assessee wholly or exclusively for purpose of making or earning such income were also to be allowed under section 57(iii) [S. 10(23C)(iiiab), 12A, 12AA, 57(iii)]**
Assessee was a charitable educational institution. It filed its return of income showing gross total income at Rs. 5.98 crores and claiming expenditure of Rs. 7.27 crores as an amount applied to charitable purposes. Thus, net income was claimed as a loss of Rs. 1.28 crores. Assessee also claimed that its income would any way be exempt under section 10(23C)(iiiab). The Assessing Officer denied exemption under section 10(23C) on ground that assessee was not registered under section 12A/12AA and its income was brought to tax under head income from other sources. However while computing income, Assessing Officer did not allow abovesaid expenditure claimed by assessee. CIT (A) allowed the Claim of the assessee. On appeal by Revenue the Tribunal held that even if Revenue brought to tax receipts during year as income from other sources, it was not justified in denying benefit of genuine claim of incidental expenditure under section 57(iii) being expenditure (not been in nature of capital expenditure) laid out by assessee institution wholly or exclusively for purpose of making or earning such income, accordingly expenditure was to be allowed under section 57(iii) of the Act. (AY. 2014-15)
DCIT v. Shri Vaishnav Polytechnic College Govn by VSK Market Tech Educational Society. (2021) 186 ITD 378 (Indore)(Trib.)

220 **S. 11 : Property held for charitable purposes – Assessee is engaged in educational activities to spread education in matters relating to tax laws, other laws and accountancy – Entitled to exemption – Order of CIT (A) denying the exemption was reversed. [S. 2(15), 12A, 80G]**
The Assessee is a Charitable Organization which was established on November 1, 1976. The assessee is the Apex body of Tax Practitioners of India. The members of the Association include Advocates, Chartered Accountants and Tax Practitioners across the

Country. The appellant organizes seminars, Lectures, publishes journals, AIFTP Times, publications etc. The appellant has conducted more than 100 webinars during the period of COVID-19, any tax practitioner or public at large are allowed to attend the meetings. All the meetings were without any charges. The said Trust is registered under Bombay Public Charitable Trust Act, 1950, Society Registration Act, 1860 also registered under section 12A of the Act on January 29, 1999 and having certificate of Exemption under section 80G of the Act.

The main object of the Assessee is "to spread education in matters relating to tax laws, other laws and accountancy."

The Ld. AO held that the income of the Assessee as a Mutual Concern rather than a Charitable Organization, thereby denying the exemption under section 11 of the Income-tax Act, 1961. CIT(A) affirmed the order of the Assessing Officer.

Tribunal held that proviso to Section 2(15) of the Act i.e., any other activity or object of general public activity, will not apply to the assessee as the assessee is engaged in educational activity.

Further, assuming if the assessee is engaged in general public activity, if the Assessee while carrying out charitable objects earns some profit from any commercial activity to supplement, its main object, it cannot be said that the assessee has engaged itself in trade commerce and business so as to attract proviso to section 2(15) of the Act.

Further, the assessee has been granted exemption under section 11 of the Act since many years and the same has been accepted. Therefore, applying the rule of consistency the exemption has to be allowed. (AY. 2011-12, 2013-14)

All India Federation of Tax Practitioners v. ITO (SMC)(2021) 190 ITD 172 (Mum.)(Trib.)

S. 11 : Property held for charitable purposes – Development of minor ports in its State – Entitled to exemption [S. 2(15)] 221

Tribunal held that the activities carried out by the assessee were not in the nature of trade, commerce or business. The Gujarat Maritime Board is under legal obligation to apply the income which arises directly and substantially from the business held under trust for the development of minor ports in the State of Gujarat. The fees collected by the assessee were incidental to the object and purpose of attainment of the main object for development of mining ports as enumerated in the provisions of the Gujarat Maritime Board Act, 1981. The activities of the assessee were for advancement of any other object of general public utility and not hit by the proviso to section 2(15).Entitle to exemption.(AY. 2014-15)

Gujarat Maritime Board v. ACIT (E) (2021) 85 ITR 344 (Ahd.)(Trib.)

S. 11 : Property held for charitable purposes – Hospital – Closure of loss making unit – Rule of consistency applied – Entitled to exemption and registration.[S. 2(15), 11(1), 11(4A), 12AA, 13(1)(c), 13(3)] 222

Tribunal held that the maintenance of a pharmacy had been considered as ancillary to the object of running a hospital for the past more than 12-13 years. Therefore, it was to considered an integral part of the hospital activity. That the Assessing Officer had compared the profit rate of hospitals who were provided subsidies from the Government. The rates of such hospital could not be compared with the rates of the assessee, which had to take care of day-to-day operational expenses, and future expansion in the area

of investigative tools, viz., x-ray machines, CT-scan, etc. These items of equipment required higher outlay of capital, and therefore in order to remain in competition with the hospitals, and to provide the best facility to the patients, and to provide medical help, the assessee had to upgrade its investigative tools. Therefore, the rates considered by the Assessing Officer were not relevant rates for determining higher range of profit in the hands of the assessee. The unit of advance gastroenterology set up in March, 2012 on rented premises became unviable, and therefore it was to be closed down, which was very much part of the assessee-hospital. The Assessing Officer had not pointed out any defect in the books of account and had not brought any material on record on account of disallowance of expenses. On the one hand, the Assessing Officer accepted the receipt of Rs. 5,09,900, but on the other hand, disallowed the entire expenditure incurred by the trust at Rs. 1,72,42,642. The assessee also submitted that a similar loss for the assessment years 2013-14 and 2015-16 was accepted by the Assessing Officer. Therefore, the Assessing Officer was not justified in denying the claim in the absence of any material finding.(AY. 2014-15)

Dy.CIT (E) v. Punjab Medical Foundation Charitable Trust (2021) 86 ITR 495 (Chd.)(Trib.)

223 **S. 11 : Property held for charitable purposes – Microfinance to self help groups – No profit motive – Denial of exemption is not justified [S. 2(15), 12A]**

Allowing the appeal the Tribunal held that so long as the assessee had been utilising its income derived from the property held under the trust for its charitable objectives, the provisions of section 11 did not deny exemption to a charitable trust. Hence, mere generation of surplus could not be a reason to deny exemption under section 11 of the Act. (AY.2009-10)

Janodaya Trust v. ACIT (E) (2021) 86 ITR 1 (SN)(Bang.)(Trib.)

224 **S. 11 : Property held for charitable purposes – Funds in equity of a non profit company to carry on its objectives more effectively on account of Central Government policy – Denial exemption is not justified. [S. 11(5), 12, 12AA, 13(1)(d), Companies Act, 1956, S. 25]**

In order to carry on its objective more effectively the assessee promoted another non-profit organization (Broadcast Audience Research Council) (BARC) under section 25 of the Companies Act, 1956 with the object of the conducting market research and studies using appropriate research methodologies with a view to provide accurate, up to date and relevant findings relating to audience of television, in a completely transparent and objective manner. The assessee subscribed its shares and became one of the share holders of the said company. The AO invoked the provision of section 13(1) (d) of the Act and denied the exemption under section 11 and 12 of the Act. In appeal CIT (A) allowed the claim of the assessee. On appeal by the Revenue the Tribunal held that since the assessee did not intend to earn any profits / dividends but held the shares with the sole object to carry on its objectively, the activity of holding shares by the assessee cannot per se termed as investment and the assessee cannot be said to have committed any violation within the meaning of the provisions of section 11(5) r.w.s 13(1) (d) of the Act. Appeal of the revenue was dismissed. (AY. 2013-14, 2014-15)

ACIT v. Indian Broadcasting Foundation (2021) 186 ITD 241 /122 taxmann.com 123 (Delhi)(Trib.)

S. 11 : Property held for charitable purposes – Society engaged in promotion and development of Fine Arts and Crafts in India – Entitled to exemption – Order passed without giving an opportunity of hearing – Matter remanded. [S. 2(15), 12, 251] 225

Dismissing the appeal of the revenue the Tribunal held that the society engaged in promotion and development of Fine Arts and Crafts in India is entitled to exemption. The order was passed without giving an opportunity of hearing hence the matter was remanded. (AY. 2013-14, 2014-15)

All India Fine Arts & Crafts Society v. ITO (2021) 214 TTJ 68 / 207 DTR 17 (Delhi)(Trib.)

S. 11 : Property held for charitable purposes – Economic and efficient transport system to the public – Charging fares – Dominant object is not profit making – Entitled to exemption.[S. 2(15), Companies Act, 1956, S. 25, Road Transport Corporation Act, 1950 S. 22] 226

Tribunal held that the assessee is a statutory corporation established under the RTC Act, 1950 for providing transportation facilities to public by charging fares fixed by the State Government. The dominant and prime objective is not profit making hence proviso to section 2(15) is not applicable hence entitled to exemption under section 11 of the Act. (AY. 2010-11 to 2014-15)

Karnataka State Road Transport Corporation v. ACIT (2021) 214 TTJ 355 / 207 DTR 281 / 63 CCH 59 (Bang.)(Trib.)

S. 11 : Property held for charitable purposes – Capital gains – Reinvesting sale consideration for acquiring another capital asset – Exemption allowable – Accumulation of income – Filing Form 10 before Commissioner (Appeals) – Commissioner (Appeals) ought to have considered – Entitled to accumulation of income. [S.11(1A), 11(2), 143(1), Form No. 10] 227

Held that once the assessee had reinvested the sale consideration for acquiring another capital asset, the whole capital gains are exempt under section 11(1A) of the Act. The assessee is eligible for exemption. Tribunal also held that an appeal being a continuation of original proceedings, the appellate authority had co-terminus and co-extensive powers as the Assessing Officer. Therefore, when the assessee had filed form 10 before the Commissioner (Appeals), he ought to have admitted it to consider accumulation of income under section 11(2) of the Act. Accumulation of income under section 11(2) of the Act is a beneficial provision allowed to an assessee in case the assessee-trust or institution is not able to apply its income in full during the relevant financial year. Therefore, while considering the beneficial provision, the Commissioner (Appeals) should have considered the issue without going into technicalities or procedural lapses. Followed *CIT v. Hardeodas agarwalla trust (1992) 198 ITR 511 (Cal.)(HC)* (AY.2015-16)

Ceylon Pentecostal Mission v. ACIT (2021) 214 TTJ 651/ 91 ITR 54 (SN) / 207 DTR 249 (Chenai)(Trib.)

228 **S. 11 : Property held for charitable purposes – Proviso to section 2(15) which restricts scope of term charitable purpose applies only in respect of any other object of general utility and not in respect of relief to poor, education, medical relief, etc. – Imparting education entitled for exemption [S. 2(15), 12A]**

The assessee is a trust registered under the Bombay Public Trust Act and also under section 12A of the Act. The Assessing Officer treated the trust as mutual association and denied the exemption. On appeal the CIT(A) held that receipt from non -members are not eligible for exemption on the principle of mutuality, denied the exemption u/s 11 and treated the receipt as business income within the meaning of the proviso to section 2(15) of the Act. On appeal the Tribunal held that the activities of the Trust cannot be termed as commercial activities. Tribunal also held that proviso to section 2(15) which restricts scope of term charitable purpose applies only in respect of any other object of general utility and not in respect of relief to poor, education, medical relief etc. The exemption cannot be declined merely on ground that assessee has received consideration for sale of training material or journal etc. incidental to furtherance of its objective of imparting education. (AY. 2011-12)

Association of Physician of India v. ADIT(E) (2021) 91 ITR 669 / (2022) 192 ITD 608 (Mum.)(Trib.)

229 **S. 11 : Property held for charitable purposes – Accumulation of income – Issue set aside to file of Assessing Officer to be adjudicated afresh – Due date for filing Form 10 extended to 17-10-2016 for Assessment Year 2016-17 – Submission of form belatedly but before completion of assessment. [S. 11(2), 12AA(1)(b)(i)), Form N0.10]**

Accumulation of income issue set aside to the file of Assessing Officer to adjudicate afresh. As regards delay in filing of return it was held that in the light of Circular Nos. 7 of 2018, dated December 20, 2018 [1 and 6 of 2020, dated February 19, 2020], the form 10 furnished by the assessee during the course of assessment proceedings before completion of the assessment was to be considered by the Assessing Officer while considering the claim for benefit under section 11(2) of the Act. (AY.2016-17)

Institution of Civil Engineers Society v. ACIT (E)(2021) 91 ITR 56 / 213 TTJ 33 (UO)(Chd.) (Trib.)

230 **S. 11 : Property held for charitable purposes - Payment to entity in U.S.A. – Portion of income to extent not applied in India is not eligible for exemption. [S.11(1)(c), 12]**

During the previous years relevant to the assessment years 2011-12 to 2014-15 the assessee made payments towards subgrant to the University of Texas with its principal place of business at Houston, Texas, U. S. A. The assessee was denied the benefit of sections 11 and 12 because the University of Texas, not being registered for purposes of foreign contributions, transfer of funds to that entity attracted the provisions of section 11(1)(c) of the Income-tax Act, 1961, rejecting the assessee's contention that the funds had been spent out of the funds received earlier from the National Institute of Health which had already been included in the receipts side of the income and expenditure account. The Commissioner (Appeals) gave the finding that for the assessment years 2011-12, 2012-13, 2013-14 and 2014-15 only the portion of income to the extent not applied in India will not be eligible for exemption. Order of CIT(A) is affirmed. (AY. 2010-11 to 2014-15)

Hariday v. ACIT (E)(2021) 91 ITR 74 (SN.)(Delhi)(Trib.)

S. 12A : Registration – Trust or institution – Delay in filing Form No 10B – Denial of exemption is held to be not justified [S. 119, Art. 226] 231

Allowing the petition the Court held that since assessee was a public charitable trust for past 30 years and substantially satisfied condition for availing benefit of exemption, assessee could not be denied exemption merely on bar of limitation to submit Form no. 10, especially, when legislature had conferred wide discretionary powers to condone such delay on authorities concerned. (AY. 2016-17)

Sarvodaya Charitable Trust v. ITO (E) (2021) 278 Taxman 148 (Guj.)(HC)

S. 12A : Registration – Trust or institution – Development and maintenance of ports – General public utility – Entitle to registration [S. 2(15)] 232

Dismissing the appeal of the Revenue the Court held that assesseee trust which is engaged in development and maintenance of ports, said activities being in nature of general public utility within meaning of section 2(15), Trust was entitled to registration.

CIT v. Tuticorin Port Trust (2021) 278 Taxman 364 (Mad.)(HC)

S. 12A: Registration – Trust – Exemption cannot be denied merely because certificate could not be produced as the same was destroyed during floods of 1978 – Matter remanded [S.11, 12A, 12AA and 143(3)] 233

The assessee did not have a copy of the registration certificate granted to it as the same was destroyed during floods of 1978. AO insisted on a copy of the registration certificate for granting benefit under section 11. A fresh certificate of registration was granted from AY. 2017-18 onwards. However, department refused to grant exemption for AY. 2013-14 to AY. 2016-17 in absence of the registration certificate. The High Court held that the trust should not be denied the benefit of exemption under section 11 only on account of its disability to produce the necessary records which got destroyed during the floods. Further, the High Court did not find anything suspicious with regard to the trust. High Court directed assessee to produce entire records available with it to the department and directed the department to look into the same. (AY.2013-14 to 2016-17)

Morbi Plot Jain Tapgachh Sangh v. CIT (2021) 433 ITR 1 / 202 DTR 385 / 321 CTR 198 (Guj.)(HC)

S. 12A : Registration – Trust or institution – Order of Tribunal directing to grant registration is up held with the observation that department at liberty to cancel registration if conditions violated. 234

On appeal by the Revenue the Court held that the trust stood registered for the last ten years in pursuance of the order of the Tribunal. It was open to the Department to take steps for cancellation of the registration, if there was any material against the assessee or it had violated the conditions of registration or the provisions of the Act in any manner. Since that course was open to the Department no useful purpose would be served by remanding the case to the Commissioner. If any breach or violation on the part of the assessee was found, the Department could proceed against the assessee

CIT v. Vasavi Manikandan Hospital Trust (2021) 432 ITR 393 (Mad.)(HC)

235 **S. 12A : Registration – Trust or institution – Trust deed amended and registration granted with effect from 1-4-2015 – Application filed on 23-02-2016 – Registration would not have retrospective effect and be applicable from assessment Year 2013-14.**
Court held that the assessee was precluded from contending that the first proviso under section 12A of the Income-tax Act, 1961, should be made applicable to it and that it should be granted with the benefit from the assessment year 2013-14, because only after the deed of trust was amended, was the application considered and registration had been granted with effect from April 1, 2015 only. Therefore, the Tribunal rightly held against the assessee, stating that there was nothing on record to show that the exemption activities and operations and genuineness of its claims for the assessment year 2013-14 was examined. Since registration had been granted only after the deed of trust was amended, the assessee could not claim the benefit of registration from the assessment year 2013-14.(AY.2013-14)
Soundaram Chokkanathan Educational and Charitable Trust v. ITO (2021) 430 ITR 440 / 197 DTR 440 / 279 Taxman 210 (Mad.)(HC)

236 **S. 12A : Registration – Trust or institution – Medical education and medical relief to medical students and medical doctors in Malwa Region – Entitled for registration [S. 2(15)]**
Held that every professional person will have to remain up to date with new technology where such knowledge is acquired or gained through web conferences which are being held online through webinars. The activities of the association of holding conferences amount to charitable activities. Association entitled for registration. (AY.2016-17)
Association of Physicians of India v. CIT (E) (2021) 92 ITR 642 / 207 DTR 169 (Amritsar) (Trib.)

237 **S. 12A : Registration – Trust or institution – School – Lease hold land – Fee concession – Commercial activity – Denial of registration was held to be not proper [S. 2(15), 11, 12AA]**
Held that the main object of the Trust was only education. Refusal of registration was not justified on the ground of lease hold land and fee concession. (AY. 2017-18)
Lord Shiva Educational Welfare Society v. CIT (2021) 92 ITR 419 / 208 DTR 250 / (2022) 194 ITD 159 / 216 TTJ 80 (Amritsar)(Trib.)

238 **S. 12A : Registration – Trust or institution – Genuineness of activities was not in doubt – Turnover exceeded Rs. 10,00,000 – Not mandatory to cancel registration already granted under section 12AA to a charitable institution merely on ground that cut-off specified in proviso to section 2(15) is exceeded in a particular year – Cancellation of registration was held to be not valid [S. 2(15), 12AA(3)]**
The assessee trust was granted registration u/s 12A with effect from 1-4-2002 from the Assessment year 2003-04. Commissioner held that by virtue of second proviso to section 2(15) as assessee's threshold limit of turnover exceeded sum of Rs. 10,00,000, assessee was hit by provisions of section 2(15), and objects of assessee were no longer charitable and, accordingly, cancelled registration granted to it w.e.f 1-4-2009. On appeal the Tribunal referred the Circular No. 21/2016, dated 27-5-2016 (2016) 384 ITR 180 (St),

wherein it has clarified that it is not mandatory to cancel registration already granted under section 12AA to a charitable institution merely on ground that cut-off specified in proviso to section 2(15) is exceeded in a particular year. Tribunal held that there was no dispute with regard to genuineness of activities and there was no finding of Commissioner with regard to not carrying on activities as per objects of trust. Order of Commissioner for cancelling of registration was set aside.
Visakhapatnam Port Trust v. CIT (2021) 191 ITD 541 (Vishakha)(Trib.)

S. 12A : Registration – Trust or institution – Condition precedent for claiming exemption – Change in the By-laws and memorandum – Registration granted considering the changes – Registration cannot be granted for earlier years – Repeals and savings – Exemption granted under section 4(3) (i) of the 1922 Act is not valid for getting registration under section 12A of the Act. [S. 11, 12, 297(2)(k), 1922 Act, S.4(3)(i))] 239

Held that for claiming exemption under sections 11 and 12 registration is mandatory. Registration was granted after Trust had amended its By-laws and Memorandum of Association whereby certain terms and conditions had been changed and constitution of trust did not remain same as it was prior to amendment, benefit of proviso to section 12A would not be available to assessee for assessment year preceding to year in which such registration was granted. Tribunal also held that exemption granted under section 4(3) (i) of the 1922 Act is not valid for getting registration under section 12A of the Act, provision being inconsistent with corresponding provisions under the 1961 Act, saving clause under section 297(2)) (k) cannot be invoked. (AY. 2011-12)
Bharatpur Royal Family Religious & Ceremonial Trust Moti Mahal v. CIT (2021) 191 ITD 367 (Jaipur)(Trib.)

S. 12A : Charitable or religious trust – Registration – Cancellation of registration – Assessee unwilling to avail benefit of registration obtained u/s. 12A cannot be bound to, by action of or by inaction of Revenue authorities, continue with said registration-Benefit could not be forced upon the assesseee. [S.12A(3), 13(1)(d)] 240

The Assessee trust registered u/s. 12A in year 1976 sought cancellation of registration u/s.12A in 2015 which was eventually granted in 2019 due to reasons not attributable to assessee. Assessee trust claimed that it had surrendered its registration and, therefore, should not be treated as registered charitable trust, for application of s. 11 tax exemption, with effect from AY 2015-2016. However, Revenue authorities submitted that since registration was cancelled vide Pr. Commissioner's formal order, such cancellation will only have a prospective effect, and, accordingly, trust was required to be treated as a registered trust, for application of section 11 tax exemption, for assessment years 2015-16, 2016-17, 2018-19 and 2019-20, as also assessment year 2020-21. Held that, registration having been obtained u/s. 12A was in nature of a benefit to assessee, and if it did not wish to avail that benefit for some reason, benefit could not be forced upon him. Therefore, assessee trust's voluntary surrender of registration u/s.12A was to be effective from date on which hearing on first show-cause notice proposing to cancel/ withdraw trusts registration u/s. 12A was concluded.
Navajbai Ratan Tata Trust v. PCIT (2021) 189 ITD 535 / 88 ITR 170 / 210 TTJ 921 / 200 DTR 9 (Mum.)(Trib.)

241 **S. 12A : Registration – Trust or institution – Held declining registration on the ground of Indian Premier League (IPL) activities are in the nature of commercial activities is held to be not justified. [S. 2(15), 12AA]**

Where the Department declined registration of a Charitable Organization on the ground that Indian Premier League (IPL) activities are in the nature of commercial activities. It was held that merely because a sports tournament is structured in such a manner so as to make it more popular, resulting in more paying sponsorships and greater mobilization of resources, the basic character of the activity of popularizing cricket is not lost. Therefore, the assessee was entitled to the continuance of its registration under section 12 A of the Act.

Board of Control for Cricket in India v. PCIT (2021) 214 TTJ 702 / (2022) 192 ITD 230 (Mum.)(Trib.)

242 **S. 12AA : Procedure for registration – Trust or institution – Bogus donations – Misuse of registered status – Cancellation of registration is held to be justified [S. 12AA(3), 133A, 80G(v)]**

Allowing the appeal of the Revenue the Court held that the answers given to the questionnaire by the managing trustee of the assessee-trust showed the extent of misuse of the status enjoyed by the assessee by virtue of registration under section 12AA of the Act. These answers also showed that donations were received by cheque out of which substantial money was ploughed back or returned to the donors in cash. The facts thus clearly showed that those were bogus donations and that the registration conferred upon it under sections 12AA and 80G of the Act was completely being misused by the assessee. An entity which is misusing the status conferred upon it by section 12AA of the Act is not entitled to retain and enjoy such a status. The authorities were therefore, right and justified in cancelling the registration under sections 12AA and 80G of the Act.

CIT (E) v. Batanagar Education and Research Trust (2021) 436 ITR 501 / 204 DTR 217/ 321 CTR 633 / 282 Taxman 1 (SC)

Editorial : Order of High Court Batanagar Education and Research Trust v. CIT (E) (2021) 129 Taxman.com 29 (Cal.) (HC), set aside. (ITA NO 116 of 2018 dt 8-10-018), Order in Batanagar Education and Research Trust v CIT (E) (2017) 59 ITR 81 (SN) (Kol.) (Trib.) is affirmed.

243 **S. 12AA : Procedure for registration – Trust or institution – Mixed objects – Religious as well as charitable objects – Refusal of registration was held to be not justified. [S. 11, 80G(v), 80G(vi)]**

Dismissing the appeal of the Revenue the Court held that Section 11 of the Act deals with the income from the property held for charitable or religious purposes. In *Fazlul Rabbi Pradhan v. State of West Bengal AIR 1962 SC 1722,* while dealing with the expression charitable purpose and religious purpose, the Supreme Court held that for satisfying the test for charitable purpose, there must always be some element of public benefit. In *Ramchandra Shukla v Shri Mahadeoji AIR 1970 SC 458* the Supreme Court has held that in Hindu system there is no line of demarcation between religion and charity is regarded as part of the religion. In *CIT v. Barkate Saiflyah Society (1995) 213 ITR 492 (Guj.) (HC)* by placing reliance on aforesaid decisions of the Supreme Court,

the Court held that the words 'trust for charitable purpose' would include even trust for advancement of religion. It may be noted that if the object of the trust is partly religious and partly charitable, so long as no part of income or corpus is utilized for a purpose, which is not either charitable or religious, a trust is entitled to exemption under Section 11(1)(a) of the Act and such a trust is entitled for registration under Section 12AA of the Act.
CIT (E) v. Sri Maramaa Temple Seva Trust (2021) 320 CTR 353 / 200 DTR 282 (Karn.)(HC)

S. 12AA : Procedure for registration – Trust or institution – Educational institution – Excess of income over expenditure – Registration cannot be denied [S. 2(15)] 244
Dismissing the appeal of the Revenue the Court held that, mere excess of income over expenditure by itself was not a reason to hold that assessee-trust was not engaged in charitable activities and there was no finding that trustees had applied monies of trust for their personal benefit or for any other purpose other than education.
CIT v. Angels Educational Trust (2021) 282 Taxman 450 / 208 DTR 134 / (2022) 440 ITR 449 (Mad.)(HC)

S. 12AA : Procedure for registration – Trust or institution – Capitalisation fee – Misuse of funds – Cancellation of registration is held to be valid. [S.11, 12, 12A, 12AA(3), Art.226] 245
Dismissing the writ petition the Court held that Commissioner has considered merits and demerits of case and assigned reason for cancellation of registration. Order of Commissioner is affirmed. (SJ) (WPNo. 7110 of 2008 dt 26-4-2021)
Vellore Institute of Technology v. CIT (2021) 436 ITR 483 / 201 DTR 385 / 320 CTR 799 / 280 Taxman 402 (Mad.)(HC)

S. 12AA : Procedure for registration – Trust or institution – Failure to furnish date of registration – Instrument of amendment of Bye-Laws with effect from 14-6-2009 submitted subsequently – Rectification and amendments made to the bye-laws of the society would only operate prospectively – Registration could not be granted with retrospective effect. 246
The assesseee filed an application for registration with condonation of delay and sought registration with retrospective effect being the original date of creation of the assessee-society by condoning the delay. The Commissioner after taking into consideration the case of both sides, rejected the case of the assessee. However the Tribunal directed the Commissioner to grant registration with retrospective effect. On appeal by the Revenue the Court held that the rectification and amendments made to the bye-laws of the society would only operate prospectively while granting registration under section 12AA.
CIT v. Young Women's Christian Association (2021) 432 ITR 397 / 202 DTR 169 / 281 Taxman 537 (Mad.)(HC)

247 **S. 12AA : Procedure for registration – Trust or institution – First application was pending – Second application was filed – Retrospective registration could not be granted based on the first application. [Rule, 17A, Form No 10A]**

Assessee-trust filed application in Form 10A for grant of registration on 11-3-2009. Same remained pending, on 28-6-2011 assessee filed another application. Commissioner granted registration with effect from 1-4-2011. On appeal the Tribunal held that the assessee is deemed to have abandoned or waived their claim made in the first application dated 11-3-2009 owing to the fact that they made the second application dated 28-6-2011, which is a fresh application. On appeal the Court held that since assessee did not take any steps to dispose of first application from 2009 to 2011 and similar to first application, second application was also filed in Form 10A in accordance with rule 17A, second application was a fresh application and not merely a letter in continuation of first application and, thus, assessee would be deemed to have abandoned or waived off their claim made in first application. Accordingly Commissioner was justified in granting registration with effect from 1-4-2011 by taking into consideration second application and retrospective registration could not be granted in view of first application. (AY. 2012-13)

Carmel Educational and Charitable Trust v. ITO (2021) 277 Taxman 165 (Mad.)(HC)

248 **S. 12AA : Procedure for registration – Trust or institution – Immovable properties held by assessee – Neither registered under Indian Registration Act, 1908 nor under Societies Registration Act – Rejection of application was held to be proper [S. 13(9), Indian Registration Act, 1908, Indian Trust Act, 1882 S. 5, Societies Registration Act, 1860]**

Held that the assessee-society should have been registered under Societies Registration Act, 1860,especially when immovable properties were held by the society. The Commissioner (E) further held that section 5 of the Indian Trusts Act, 1882, says that no trust in relation to immovable property is valid, unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee. The provisions of the 1882 Act, though applicable to the private trusts, can be extended to public charitable trusts and also to societies. The assessee had neither registered under the Indian Registration Act, 1908 nor under the Societies Registration Act. Rejection of exemption was held to be valid.

Arya Vysya Samajam v. ITO (E) (2021) 92 ITR 13 (SN)(Chennai)(Trib.)

249 **S. 12AA : Procedure for registration – Trust or institution – Dismissal of application without stating any facts – Matter remanded to the CIT (E) to pass an order in accordance with law.**

Held that the assessee in its own interest was to ensure full proper participation and place all necessary documents before the adjudicating authority. The assessee who seeks registration cannot be allowed to claim inability to engage counsel, participate in the proceedings and avoid making available the relevant documents. Without ensuring that the documents were placed on record the onus placed upon the assessee could not be said to be properly discharged in law. In the absence of proper compliance before the

Commissioner (E) on the part of the assessee the Commissioner (E) shall be at liberty to pass an order on the basis of material available on record. Matter remanded (AY.2017-18)
Sadhna Ashram Trust v. CIT(E) (2021) 92 ITR 49 (SN)(Delhi)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Running Dharmarth Aushadhalaya, Gaushala, Bhandara and carrying out satsang and bhakti lectures — Charitable activity – Entitled for registration [S. 2(15), 11, 12A] 250
Held that running Dharmarth Aushadhalaya, Gaushala, Bhandara and carrying out satsang and bhakti lectures is charitable activity. Entitle for registration. (AY.2017-18)
Shri Baba Balakpuri Dharmarath Aushadhalaya Trust v. CIT(E) (2021) 92 ITR 1(SN) (Delhi)(Trib.)

S. 12AA : Procedure for registration – Gratuity payment to employees – Matter remanded for re examination. [S. 2(15), 11] 251
Held that the Competent Authority has not examined the activities carried out by Trust, source of funds and how they were distributed to employees. Matter remanded. (AY. 2018-19)
ICRW Group Gratuvity Trust v. CIT (2021) 92 ITR 357 (Delhi)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Order refusing to registration was set aside 252
Order refusing registration was remanded to CIT(E) to adjudicate according to law considering the details, evidence and documents to be filed before him or which may have been filed before him by the assessee while complying with the principles of natural justice.
Arare Foundation v. CIT (E) (2021) 90 ITR 45 (SN)(Pune)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Advancement of any other object of general public utility – Campaign for promotion of trade and commerce – Activities are not in nature of trade, commerce or business – Entitle for registration. [S. 2(15), 11, 12A] 253
Held that section 2(15) defines charitable purpose as including, inter alia, the advancement of any other object of general public utility. The proviso to this section provides that the advancement of any other object of general public utility shall not be charitable purpose if it involves the carrying on of any activity in the nature of trade and commerce or business etc. subject to certain conditions. The assessee had been set up to promote and protect the interests of trade and commerce. Thus, it satisfied the first condition of being in advancement of any other object of general public utility. Entitle for registration. (AY. 2014-15)
Federation of Trade Association of Pune v. CIT(E) (2021) 90 ITR 79 / 207 DTR 243 / (2022) 192 ITD 138 / 215 TTJ 131 (SN.)(Pune)(Trib.)

254 **S. 12AA : Procedure for registration – Trust or institution – Fund to promote welfare and recreational activities of personnel of Delhi Police – Entitle to registration [S. 2(15)]**

Held that the assessee, charitable in its objects and was a body that constituted a section of the public, and so, the fund founded for the benefit of such section should be treated as charitable in its objects, attracting the exemption from the exigibility to tax. The assessee was eligible for registration under section 12A of the Act.

Delhi Police Welfare and Recreational Club Fund v. CIT (E) (2021) 89 ITR 39 (SN)(Delhi)(Trib.)

255 **S. 12AA : Procedure for registration – Trust or institution – Colleges and hospitals – cancellation of registration – CBI report – No independent enquiry – Creditworthiness of donors and genuineness of transaction was established – Cancellation of registration was quashed [S. 2(15), 12AA(3) 132, 133(6), Madhya Pradesh Societies Registration Act, 1973, S. 2]**

Held that the assessee had supplied all necessary information to prove the identity and genuineness of the donors and their creditworthiness to give donations to the assessee-trust which prima facie showed that the donors were not fictitious. Secondly, the donors were trusts or institutions having sufficient funds to give donations and in reply to the notices under section 133(6) of the Act they had confirmed having given donations. Once the funds were received they were utilised for carrying out charitable activities. The transactions were carried out through banking channels and the genuineness and creditworthiness of the donations received by the assessee during various years could not be doubted as a basis for denying the registration under section 12AA of the Act. Cancellation of registration merely on the basis of CBI report was quashed.

Chirayu Charitable Foundation v. PCIT (2021) 88 ITR 451 (Indore)(Trib.)

256 **S. 12AA : Procedure for registration – Trust or institution – Documentary evidence – Genuineness of activities – Matter remanded. [S. 2(15)]**

Held that the assesee had furnished requisite detail and instead of referring all those documentary evidences, Commissioner (E) has rejected application. Order of CIT (E) was set aside to decide in accordance with law.

Bilimora Modh Ganchi Samast Panch v. PCIT (2021) 191 ITD 609 (Surat)(Trib.)

257 **S. 12AA : Procedure for registration – Trust or institution – Object and genuineness is not in doubt – Refusal of registration is not valid.**

Held that when the object and genuineness is not in doubt, refusal of registration is not valid.

Har Nihal Charitable Trust v. CIT (2021) 191 ITD 587 / 90 ITR 191 / 213 TTJ 266 / 205 DTR 41 (Chd.)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Alleged ingenuine donations from donors – Information from investigation wing – Cancellation was held to be not valid – Remanded to pass a speaking order after making objective analysis in accordance with law. 258

Held that not a single instance was recorded by Commissioner (E) that assessee-trust was generating any unaccounted cash by any means, which had been allegedly transferred to donor in lieu of receiving donation. There was no tangible material to effect that assessee had received ingenuine donation, registration of charitable trust per se could not be withdrawn and cancelled. Order of cancellation was set aside and issue was restored back to file of Commissioner (E) to pass a speaking order after making objective analysis in accordance with law. (AY. 2011-12)

Shree Jainarayan Hariram Goel Charitable Trust v. CIT (2021) 191 ITD 137 (Raipur)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Education – Aryans school – Approval was examined by Board – Denial of exemption was not justified. 259

Allowing the appeal the Tribunal held that the assessee was having approval under Central Board of Secondary Education as well as assessee was complying with Right to Education Act, 2010 and was also having necessary approval/affiliation from respective authorities and said permissions had been filed before Board at time of affiliation. Denial of registration was held to be not justified. If expert body in field of education, i.e., CBSE, granted affiliation to an school, then approval/permission which had already been examined by Board, should not be a subject matter of fresh examination by CIT (E).

Doctor Madan Lal Atri Charitable Trust v. CIT (E) (2021) 191 ITD 190 / 90 ITR 199 / 206 DTR 69 (Agra)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Generation of revenue – Can not be considered as commercial organisation – Matter remanded [S. 12A] 260

Tribunal held that merely because it was generating huge revenue from year to year could not be held to be commercial organisation. Matter remanded for de novo consideration) for de novo consideration.

Maharashtra Ex-Servicemen Corporation Ltd. v. CIT (2021) 190 ITD 119 (Pune)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Construction of chambers for lawyers – Supervise and regulate for benefit of lawyers community at large – Denial of registration was held to be not justified [S. 2(15)] 261

Society was formed by lawyers which work for construction of chambers to its members, its allotment, besides environment protection viz. growing trees, and that of saving people from drug addictive disorder, to save and educate girl child and also to spread legal awareness among general public. On appeal the Tribunal held that society was working to control, supervise and regulate a profession for benefit of lawyers community at large and it was clear that primary or dominant purpose of assessee-society was advancement of object of general public utility within meaning of section 2(15). Denial of registration was held to be not justified.

Building Committee (Society) Barnala v. CIT (2021) 190 ITD 138 / 89 ITR 1/ 212 TTJ 128 / 202 DTR 121 (Chd.)(Trib.)

262 **S. 12AA : Procedure for registration – Trust or institution – Failure to examine the documents filed – Matter remanded.**
Tribunal set aside the rejection order of the CIT(E) on the ground that the Commissioner has failed to examine the genuineness of the documents produced before him.
Panchkuva Cloth Merchant Association v. CIT (2021) 190 ITD 1 (Ahd.)(Trib.)

263 **S. 12AA : Procedure for registration – Trust or institution – Application of income outside India – Rejection of application is held to be not justified [S. 11(1)(c), 12]**
Tribunal held that rejection of application for registration was held to be not valid only on the ground that one of the object was application of income outside India. (AY. 2020-21)
Sarbat The Bhala Gurmat Mission Charitable Trust v. CIT (2021) 189 ITD 353 (Chd.)(Trib.)

264 **S. 12AA : Procedure for registration – Trust or institution – Registration was directed to be granted from assessment year following financial year in which application seeking registration was made [S. 11, 12]**
Tribunal directed the CIT (E) to grant registration under section 12AA from assessment year following financial year in which application seeking registration was made Effective from assessment year 2020-21, instead of assessment year 2021-22.
Ess Kay Foundation v. CIT (2021) 188 ITD 903 / 210 TTJ 899 (Jaipur)(Trib.)

265 **S. 12AA : Procedure for registration – Trust or institution – Surplus fund invested in fixed deposit – Registration cannot be denied on the ground that some of the objects were religious [S. 2(15), 11]**
Tribunal held that registration cannot be denied on the ground that some of the objects were religious.
Brahman Sabha Karveer v. CIT (2021) 188 ITD 474 / 212 TTJ 1001 / 204 DTR 241 (Pune) (Trib.)

266 **S. 12AA : Procedure for registration – Trust or institution – Cancellation merely on ground that cut-off specified in the proviso to section 2(15) has exceeded in a particular year held as not sustainable [S. (2(15), 12AA(3)]**
Assessee trust was granted registration w.e.f. 01.04.2002, and was carrying on its activities in accordance with its objectives and genuineness was also not disputed. The registration was cancelled on ground that cut-off specified in the proviso to section 2(15) has exceeded specified limit in year under consideration. Tribunal held that, there was no case for cancellation of registration based on circular no 21 of 2016, and restored the registration on grounds that, as per the circular, it is not mandatory to cancel the registration already granted u/s 12AA, and further that the A.O was not barred from examining the benefits of exemption claimed/s 11 and 12 in terms of S. 13(8) or 2(15) of the Act.
Visakhapanam Port Trust v. CIT (2021) 87 ITR 27 (SN) (Vishakha)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Accumulation of income – Applied more than 85 per cent of total income towards charitable purposes – Registration granted by Commissioner validly in operation – Form filed requesting for carry forward of amount for utilization in subsequent years – Entitled to exemption. [S.11, 12] 267

In the return of income the assessee claimed profit (surplus) as exempt under the provisions of sections 11 and 12 of the Income-tax Act, 1961. The AO examined the activity of the assessee and concluded that its activities were in the nature of trade, commerce or business in view of the dominant activity of acquisition and sale of immovable properties, that they were being carried out with the motive for profit and thus the assessee was not entitled for exemption u/s. 11 of the Act. He, accordingly, assessed the surplus as income from business. Further, observed that certain amount received for infrastructure fund was directly credited to a separate account of fund, without crediting towards income of the assessee. Therefore, the said amount added to the total income. The AO further made an addition by way of disallowance for depreciation. Tribunal held that (i) the activity of authority of developing of land was charitable in nature and eligible for registration u/s.12AA. The claim of the assessee for exemption u/s. 11 in order and observed that the assessee had applied more than 85 per cent. of the total income towards charitable purposes. The registration granted by the Commissioner u/s.12AA of the Act was validly in operation in the relevant year and thus, the assessee was entitled to exemption u/s.11 subject to fulfilling the conditions contained therein. The assessee had produced the prescribed form as laid down in the Rules, with the request for carry forward of the amount for utilization in subsequent years and, thus, had fulfilled the requirement as prescribed in Explanation 1 to section 11 of the Act. Assessee entitled to claimed exemptions. (AY. 2014-15)

Dy. CIT v. Aligarh Development Authority (2021) 87 ITR 82 (SN)(Delhi)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Functioning from Temple premises – Matter remanded – Time limit for passing order granting approval – Period of six months to be calculated from end of month in which application received – Order with in limitation period [S. 2(15), 80G, R. 11AA] 268

Tribunal held that the assessee-trust had moved its application on August 1, 2019 and therefore, the limitation period had to be counted from the end of the month in which the application was filed and the period expired on February 28, 2020. Since the order was passed on February 19, 2020, it was passed within the limitation period. Tribunal also held that the assessee was operating out of the premises of a temple and it was necessary to determine whether the activities of running the temple were for the benefit of a particular religious community or the public at large and the quantum of expenditure which had been incurred in respect of such activities and whether the provisions of sub-section (5B) of section 80G were violated in the instant case. It was essential to examine the exact nature of the activities undertaken by the assessee-trust. The matter was to be remanded for the purposes of examining the activities of the assessee including the activities in relation to the temple and deciding the matter afresh in accordance with law.

Bgsal CF Try v. CIT(E) (2021) 85 ITR 51 ((SN)(Jaipur)(Trib.)

269 **S. 12AA : Procedure for registration – Trust or institution – Non-payment of taxes not a criteria for denial of registration – Registration is directed to be granted.[S. 11(1)(d), 12A, 139(4A)]**

Tribunal held that registration under section 12AA could not be denied for non-payment of taxes on the income. While granting registration, the only issue to be examined by the Commissioner (E) was whether the trust was for a charitable purpose or not. The Department had not disputed the objects of the trust or genuineness of activities conducted by the assessee-trust nor disputed the charitable nature of the activities conducted by the assessee-trust. All the requirements of registration under section 12AA of the Act having been satisfied by the assessee-trust, the Department was to grant registration under section 12AA of the Act to the assessee-trust. Whether taxes were due to be paid on any income received had to be looked into only at the time of assessment proceedings. It was open to the Assessing Officer to decide the issue at the time of assessment proceedings.

Lad Shakhiya Wani Samaj Kalyan v. CIT(E) (2021) 85 ITR 57 (SN)(Pune)(Trib.)
Shikshan Prasarak Mandal v. CIT(E) (2021) 85 ITR 57 (SN)(Pune)(Trib.)

270 **S. 12AA : Procedure for registration – Trust or institution – Object to develop training and research centre to facilitate skill development to entire chain of work force engaged at various levels in garment and textile industry – Entitle for registration [S. 2(15), 11, Companies Act, 2013, S. 8]**

Assessee incorporated under provisions of section 8 of Companies Act, 2013, was established with main object to develop training and research centre to facilitate skill development to entire chain of work force engaged at various levels in garment and textile industry. It had filed an application seeking registration under section 12AA of the Act. CIT (E) held that assessee's objects had elements of commercial/business nature activities, thus, proviso of section 2(15) would apply, and, accordingly, he rejected assessee's application for registration. On appeal the Tribunal held that objects were not for private or personal interest of members but same were to promote garment industry in general. The assessee by virtue of being incorporated under section 8 of Companies Act, 2013, had committed to have activities for promotion of its objects and intended to apply its profits or income in promoting its objects and prohibited payment of any dividends to its members. Registration was granted.

Gear Training and Research Foundation v. CIT (E) (2021) 92 ITR 28 (SN) / (2022) 192 ITD 655 / 216 TTJ 456 (Jaipur)(Trib.)

271 **S. 12AA : Procedure for registration – Trust or institution – Providing ambulances – Primary and dominant object is to provide medical relief to poor and needy people – Entitled to registration [S. 2(15), 11(4A)]**

Tribunal held that primary and dominant object is to provide medical relief to poor and needy people. Recovering certain nominal fees to meet its operational and administrative expenses will not disqualify it from being involved in carrying on charitable activities. Entitled to registration.

Mahaveer Charitable Society v. CIT (2021) 214 TTJ 327 / 63 CCH 379 /(2022) 209 DTR 153 (Jodhpur)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Directed to decide application afresh, after verifying whether objectives of assessee trust were charitable in nature and whether activities carried out were genuine during year for which registration was sought – Matter remanded.[S. 2(15), 11] 272

The Tribunal set aside the order of CIT(E), refusal of registration with the observation to verify that whether the objectives of the assessee trust are charitable in nature and activities carried out are genuine during the year for which the registration is sought for by the assessee society in the light of evidences prima facie relevant, for the year under consideration for the purpose of grant of registration. Matter remanded.

Baba Banda Bahadur Memorial and Educational Society v. CIT (E) (2021) 213 TTJ 10(UR)/ (2022) 192 ITD 333/ (Amritsar)(Trib.)

S. 12AA : Procedure for registration – Trust or Institution – Deemed registration – Assessee who obtains registration during the pendency of appeal is entitled for exemption claimed under section 11 of the Act [S. 11, 12A(2), 13] 273

Tribunal held that the assessee's case is covered under "deemed registration". Further, the first proviso to section 12A(2) of the Act (providing that once registration is granted in a subsequent year, the benefit of the same has to be applied in the earlier assessment years for which assessment proceedings are pending before the AO unless the registration granted earlier is cancelled or refused for specific reasons.) was brought in the statute retrospectively with a view not to affect genuine charitable trusts and societies carrying on genuine charitable objects in the earlier years and substantive conditions stipulated in section 11 to 13 have been duly fulfilled by the said trust. Tribunal held that an appeal is continuation of original proceedings and even otherwise the powers of CIT(A) are co-terminus with that of the AO and accordingly following the principle of purposive interpretation of statues, an assessment proceeding which is pending in appeal before the appellate authority should be deemed to be 'assessment proceedings pending before the assessing officer'. Tribunal also held that by not taking cognizance of the intention to amend section 12A of the Act and not failing to adopt a liberal view, the ld. CIT(A) has defeated the very purpose of the amendment to section 12A of the Act. (AY. 2008-09, 2011-12)

Prem Prakash Mandal Sewa Trust v. ITO(E) (2021) 213 TTJ 129 / (2022) 192 ITD 109 / 204 DTR 425 (Raipur)(Trib.)

S. 12AA : Procedure for registration – Trust or institution – Effective date of registration – Application was made on 4 th February, 2020 – Exemption is eligible from 1 st April, 2020 i.e. Assessment year 2020-21 and not from the assessment year 2021-22 [S. 11, 12, 80G(5)(vi)] 274

The assessee trust made an application for registration on 4 th February, 2020. The affidavit was filed explain the objects of the Trust on 11 th September 2020. CIT(E) granted exemption from the Assessment year 2021-22. On appeal the Tribunal held that the assessee is eligible for exemption from the assessment year 2020- 21 instead of Assessment year 2021 -22. CIT (E) is also directed to grant registration under section 80G(5) (vi) effective from assessment year 2020-21 instead of assessment year 2021-22.

Ess Kay Foundation v. CIT (2021) 199 DTR 225 (Jaipur)(Trib.)

275 **S. 12AA : Procedure for registration – Trust or institution – Effective date of registration – Application was made on 4th February, 2020 – Exemption is eligible from 1st April, 2020 i.e. Assessment year 2020-21 and not from the assessment year 2021-22 [S. 11, 12, 80G(5)(vi)]**

The assessee trust made an application for registration on 4th February, 2020. The affidavit was filed explain the objects of the Trust on 11th September 2020. CIT(E) granted exemption from the Assessment year 2021-22. On appeal the Tribunal held that the assessee is eligible for exemption from the assessment year 2020-21 instead of Assessment year 2021-22. CIT(E) is also directed to grant registration under section 80G(5) (vi) effective from assessment year 2020-21 instead of assessment year 2021-22.
Ess Kay Foundation v. CIT (2021) 199 DTR 225 (Jaipur)(Trib.)

276 **S. 12AB: Procedure for fresh registration – Charitable Trust – Show cause notice for cancellation of registration – New procedure with effect from 1-4-2021 – Application on 4-5-2021 – Show cause notice dated 10-8-2021 – Lack of jurisdiction – Writ is maintainable – Show cause notice was kept in abeyance till order passed on application as per new procedure. [S. 12A, Art, 226]**

On writ against the show cause notice for cancellation of registration the Court held that the application of assessee had to be first looked into and should be disposed of by the Principal Commissioner or the Commissioner as the case may be under section 12AB for granting registration in writing to the trust or institution concerned for a period of five years. Once such registration is granted for five years under the new regime, it was open to the Department to invoke sub-section (4) or (5) of section 12AB, to verify whether any contravention or violation was noticed from the trust, and cancellation of registration can very well be taken as per the procedure established under section 12AB. Hence the notice dated August 10, 2021 issued under section 12AA(3) of the Act, could not be proceeded further and it could be kept in abeyance for the time being, till an order was passed by the Principal Commissioner or the Commissioner as the case may be on the application of the assessee dated May 4, 2021 under section 12AB(1)(a) of the Act and once such an order was passed granting such registration for another terms of five years as referred to or contemplated under the new regime, then, it was open to the Department to proceed against the assessee and from that stage, the proceedings dated August 10, 2021 could be proceeded with in accordance with law, especially under sub-section (4) of section 12AB. (AY. 2009-10 to 2015-16) (SJ)
S. R. Trust v. PCIT (2021) 438 ITR 511 / 208 DTR 329 / 323 CTR 1051 (2022) 285 Taxman 162 (Mad.)(HC)

277 **S. 13 : Denial of exemption – Trust or institution – Investment restrictions – Advance of money to group trust which are having similar objection – Denial of exemption is held to be not valid [S. 11(5), 13(1)(d)]**

Dismissing the appeal of the Revenue the Court held that there is no violation in the temporary advance of money to group trust which has the similar objects hence the Tribunal was justified in allowing the exemption. (AY. 2008-09)
CIT v. Daughters of Marry Immaculate & Collaborators (2021) 200 DTR 210 (Mad.)(HC)

S. 13 : Denial of exemption – Trust or institution-Investment restrictions – Survey – Only to extent of income which was violative of section 13(1)(d) and not total denial of exemption. [S. 11, 12A, 13(1)(d), 133A, Art. 226] 278

During survey it was found that the trust had made certain payments to a company in which the trustees being specified persons were having substantial interest and also found that substantial honorarium was paid to trustees and their family members. The notice was issued against for denial of exemption under section 11 on ground that payment out of income from property held under trust was paid directly for benefit of persons referred to in section 13(3) of the Act Assessee filed an writ petition against said show cause notice for reason that impugned notice threatened to cancel primary exemption enjoyed by trust. The Court held that it is a settled law that denial of exemption under section 11 should only be to extent of income which is violative of section 13(1)(d) and not total denial of exemption. Accordingly the Revenue was to be directed to only forfeit exemption under section 11 in respect of offending payments. (AY. 2016-17)

St. Xavier Educational Trust v. CIT (E) (2021) 281 Taxman 193 (Mad.)(HC)

S. 13 : Denial of exemption – Trust or institution – Investment restrictions – Exemption cannot be denied to entire income – Denial should be confined to amount diverted for benefit of persons mentioned in S. 13 [S.11, 13(1)(c) (ii), 13(2)] 279

Dismissing the appeal of the Revenue the Court held that in accordance with the provisions of section 13(1)(c)(ii) read with section 13(2) of the Income-tax Act, 1961, if any part of the income or any property of the trust or institution is directly or indirectly used or applied for the bene-fit of any specified person referred to in sub-section (3) of section 13, the disallowance is limited only to the amount which the assessee has diverted. Followed *CIT v. Fr. Mullers Charitable Institutions (2014) 363 IITR 230 (Karn.)(HC), CIT (E) v. Audyogik Shikshan Mandal (2019) 261 Taxman 12 (Bom.)(HC)* (AY. 2011-12)

CIT (E) v. Rajkot Diocese Trust (2021) 435 ITR 367 (Guj.)(HC)

S. 13 : Denial of exemption – Trust or institution – Investment restrictions – Interest free loan given to two consultants asper terms of employment – No violation – Exemption cannot be denied – Benefit to interested persons in violation of section 13(1)(c) – Only that part of income which is in violation of section is chargeable to tax at maximum marginal rate of tax; but not whole income of trust.[S. 11, 13(1)(c), 13(3)(cc)] 280

Held that Consultants were appointed for a specific period of 5 years for a specific remuneration. Except providing consultancy services with regard to specific project, they were not involved in any kind of day to day managerial functions. Tribunal held that the consultants could not be considered as managers of trust falling within ambit of section 13(3)(cc) and they were provided with interest free loan as per terms of their employment. Denial of exemption was held to be not justified. If the trust allows any benefit to interested persons in violation of section 13(1)(c), then only that part of income which is in violation of section 13(1)(c) is chargeable to tax at maximum marginal rate of tax; but not whole income of trust. (AY. 2012-13, 2013-14, 2016-17, 2017-18)

Jaya Educational Trust v. DCIT (2021) 191 ITD 107 / 213 TTJ 418 (Chennai)(Trib.)

281 **S. 13 : Denial of exemption – Trust or institution – Salary and remuneration to trustees – Specified persons – Members possess requisite qualification – Past years remuneration was allowed after verification – Work involve selection of teachers, interaction with parents, management of capital expenditure, providing resources to schools etc. – Members have paid taxes at 30% – Addition confirmed by the CIT (A) is directed to be deleted [S. 11, 12, 13(1)(c) 147, 148, 164(2)]**

The Assessing Officer reopened the assessment and denied the exemption by applying the provision of section 13 of the Act. Order of reassessment and denial of exemption was affirmed by the CIT(A). On appeal the Tribunal held that specified persons to whom remuneration paid are members who possess requisite qualification, past years remuneration was allowed after verification, work involve selection of teachers, interaction with parents, management of capital expenditure, providing resources to schools etc. Members have paid taxes at 30%. Addition confirmed by the CIT (A) is directed to be deleted. As the addition is deleted on merit, the issue of reassessment is not decided. (AY. 2010-11, 2014-15, 2015-16)

Heritage Educational Society v. Dy.CIT(E) (2021) 209 TTJ 188 / 197 DTR 201 (Chd.)(Trib.)

282 **S. 14A : Disallowance of expenditure – Exempt income – Scheduled bank – Stock in trade – Investment in shares and securities – Shares and securities are held as stock in trade – No disallowance can be made – Common funds – Non interest bearing funds more than the investment – There is no statutory provision which obligated the assessee to maintain separate accounts which might justify proportionate disallowance – Proportionate disallowance of expenses cannot be made. [R.8D]**

Allowing the appeals the Court held that if investments in securities were made out of common funds and the assessee had available, non-interest-bearing funds larger than the investments in tax-free securities, disallowance under section 14A could not be made. An assessee definitely has the obligation to provide full material disclosures at the time of filing of the return but there is no corresponding legal obligation upon the assessee to maintain separate accounts for different types of funds held by it. There was no statutory provision which obligated the assessee to maintain separate accounts which might justify proportionate disallowance. The disallowance under section 14A of the Act for the investment made by the assessees in bonds and shares using interest-free funds, would be legally impermissible. Shares and securities held by a bank are stock-in-trade, and all income received on such shares and securities must be considered to be business income. That is why section 14A would not be attracted to such income. Central Board of Direct Taxes Circular No. 18 of 2015 dated November 2, 2015 (2015) 378 ITR (St.) 39 (AY. 2001-02)

South Indian Bank Ltd v. CIT (2021) 438 ITR 1 / 205 DTR 337 / 322 CTR 465 / 283 Taxman 178 (SC)

Catholic Syrian Bank Ltd. v. CIT (2021) 438 ITR 1 / 205 DTR 337/ 322 CTR 465 (SC)

Federal Bank Ltd. v Dy. CIT (2021) 438 ITR 1 / 205 DTR 337 / 322 CTR 465 (SC)

Editorial : PCIT v. State Bank of Patiayala (2017) 393 ITR 476 (P&H)(HC) approved, Maxopp Investment Ltd v. CIT (2018) 402 ITR 640 (SC) discussed.

S.14A : Disallowance of expenditure – Exempt income – Failure to examine the contention that no expenses were incurred to earn exempt income – Matter remanded [S. 254(1), R.8D] 283

Court held that though the assessee specifically took the stand that it did not incur any expense to get the tax-free income and had interest-free funds for investing in the securities which yields the tax-free income, the Commissioner (Appeals) did not examine such aspect, but merely directed the Assessing Officer to restrict the disallowance to 2 per cent. on tax-free bonds, finding it to be reasonable. Further, the decisions relied on by the assessee were not available when the Tribunal decided the matter since they were rendered during the year 2018-19. Since the assessee should not be denied the benefit of those decisions and the opportunity to put forth its submissions the matter was to remanded back to the Tribunal. Matter remanded. (AY. 1999-2000 to 2002-03, 2004-05 to 2006-07)

Karur Vysya Bank Ltd. v. CIT (2021) 438 ITR 465 (2022) 284 Taxman 692 (Mad.)(HC)

S.14A : Disallowance of expenditure – Exempt income – Onus on revenue to prove that disallowance was erroneous – Without examining the accounts disallowance is not justified [R.8D] 284

Court held that the onus on Revenue to prove that disallowance was erroneous and without examining the accounts disallowance is not justified (AY.2007-08, 2008-09)

Coforge Limited v. ACIT (2021) 436 ITR 546 / 204 DTR 273 / 322 CTR 10 (Delhi)(HC)

S.14A : Disallowance of expenditure – Exempt income – Enhancement of disallowance is held to be not valid [R.8D] 285

Dismissing the appeal of the Revenue the Court held that the Assessing Officer had accepted that the assessee had not borrowed funds. The assessee had deducted certain proportionate expenditure, which the Assessing Officer had not disbelieved or disputed. Volume of investment, the assessee was said to have received charge-free services from banks and other financial institutions with whom it had invested. The Tribunal had correctly deleted the disallowance of Rs. 12.29 crores under section 14A of the Act in accordance with rule 8D of the Income-tax Rules.

CIT v. Sesa Goa Ltd (2021) 436 ITR 17 / 203 DTR 97 / 321 CTR 113 (Bom.)(HC)

S.14A : Disallowance of expenditure – Exempt income – No exempt income – Disallowance cannot be made [R.8D] 286

When there is no exempt income, no disallowance can be made. (AY. 2007-08 to 2010-11, 2012-13 and 2013-14)

CIT v. Tamilnadu Road Development Company Ltd. (2021) 436 ITR 323 / 279 Taxman 125 (Mad.)(HC)

Tamilnadu Road Development Co. Ltd. v. Dy. CIT (2021) 436 ITR 298 (Mad.)(HC)

PCIT v. Nam Estates (P) Ltd. (2021) 281 Taxman 7 (Karn.)(HC)

PCIT v. Novell Software Development (India) Pvt. Ltd. (2021) 434 ITR 154 / 202 DTR 370/ 278 Taxman 390/ 321 CTR 458 (Karn.)(HC)

Biocon Ltd v. Dy. CIT (2021) 431 ITR 326 / 202 DTR 364 / 278 Taxman 121 / 321 CTR 452 (Karn.)(HC)

287 **S. 14A : Disallowance of expenditure – Exempt income – Ad-hoc disallowance cannot be made.**

Court held that ad hoc disallowance of 2.5 per cent could not be made of dividend income as expenditure incurred on exempt income, when assessee had identified expenditure to be disallowed. Followed *Godrej & Boyce Manufacturing Company Ltd. v. Dy. CIT [2017] 394 ITR 449 (SC)* (AY. 2006-07)

Wipro Ltd. v. Addl. CIT (2021) 279 Taxman 203 (Karn.)(HC)

288 **S.14A : Disallowance of expenditure – Exempt income – Non-recording of satisfaction – Disallowance is held to be unjustified [R. 8D]**

Non-recording of satisfaction disallowance is held to be unjustified. (AY. 2009-10)

Hindustan Aeronautics Ltd v. ACIT (2021) 278 Taxman 266 (Mad.)(HC)

289 **S. 14A : Sufficient interest free funds available – investment are presumed to be out of interest free funds – Only those investments to be considered which yield exempt income for the purpose of calculation [R.8D(2)(ii)]**

The assessee made suo-moto disallowance under section 14A of the Act. However, the AO did not concur with the calculation of the assessee and made additional disallowance under Rule 8D(2)(ii) of the Act. The CIT(A) gave partial relief to the assessee.

On appeal before the Tribunal, it was held that when the assessee had sufficient owned (interest free) funds, it was to be presumed that the investments were made from such interest free funds. Hence, there was no scope to disallow interest under Rule 8D(2)(ii)of the Act. Reliance in this regard was placed on the decision in the case of *CIT v. Reliance Utilities and Power Ltd. (2009) 313 ITR 340 (Bom) (HC)* which in turn followed the decision of in the case of *East India Pharmaceutical Works Ltd. v. CIT (1997) 224 ITR 627 (SC).*

Further, following the decision in the case of *ACIT v. Vireet Investments (P) Ltd. (2017) 165 ITD 27 (SB) (Delhi)(Trib.)* it was held that while computing the administrative expenditure disallowance under Rule 8D(2)(iii)only such investments were to be considered which yielded exempt income. (AY. 2003-04)

Nandi Steels Ltd v. ACIT (2021) 320 CTR 432 / 201 DTR 37 (Karn.)(HC)

290 **S. 14A : Disallowance of expenditure – Exempt income – Disallowance not to exceed exempt income. [R.8D]**

Disallowance under section 14A cannot exceed the exempt income earned during the year. (AY. 2008-09, 2009-10)

PCIT v. EWS Finance & Investments Pvt Ltd. (2021) 433 ITR 23 (Mad.)(HC)

PCIT v. Envestor Ventures Ltd. (2021) 431 ITR 221/ 268 Taxman 377 (Mad.)(HC)

291 **S.14A : Disallowance of expenditure – Exempt income – Only to the extent of expenses incurred in relation to exempt income [R.8D]**

Dismissing the appeal of the revenue the Court held that section 14A could only be invoked if the assessee had earned exempted income during the relevant assessment year, that the disallowance could be only to the extent of expenses in relation to earn

exempted income and in interpreting Circular No. 5 of 2014 ([2014] 361 ITR (St.) 94) of the Central Board of Direct Taxes which clarified the true scope and meaning of section 14A.(AY.2010-11)
PCIT v. HCL Comnet Systems and Services Ltd. (2021) 433 ITR 251 (Delhi)(HC)

S.14A : Disallowance of expenditure – Exempt income – Interest income more than interest expenditure – Deletion of disallowance is held to be justified. [R.8D] 292
Dismissing the appeal of the Revenue the Court held that as the interest income more than interest expenditure therefore deletion of disallowance is held to be justified. (AY.2011-12)
PCIT v. Adani Infrastructure And Developers Pvt. Ltd. (2021) 432 ITR 113 (Guj.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – No expenditure was incurred directly or indirectly – No disallowance can be made. 293
Dismissing the appeal of the Revenue the Court held that, Tribunal on meticulous appreciation of evidence on record found that no expenditure was incurred by assessee directly or indirectly to earn exempt dividend income, no disallowance was to be made under section 14A. (AY. 2006-07)
PCIT v. Infosys BPO Ltd. (2021) 277 Taxman 320 (Karn.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Recording of satisfaction is mandatory [R.8D] 294
Dismissing the appeal of the Revenue the Court held that the Tribunal had found that the Assessing Officer had worked out disallowance on the basis of a formula. He failed to note that interest free funds available with the assessee were far more than the gross investment. The deletion of disallowance under section 14A was justified.(AY. 2005-06 to 2011-12)
PCIT v. Gujarat Fluorochemicals Ltd. (2021) 431 ITR 160 (Guj.)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Restriction off disallowance by Appellate Authorities to 0.5 Per Cent of average investment income irrespective of whether such exempt income was received during relevant assessment year – Justified-Prior period income and expenses net off – Held to be justified [S.4, 145, R.8D] 295
Dismissing the appeal of the Revenue restriction off disallowance by Appellate Authorities to 0.5 Per Cent. of average investment income irrespective of whether such exempt income was received during relevant assessment year is held to be justified. Court also held that the Tribunal did not err in deleting the addition made by the Assessing Officer on account of prior period income and remanding this issue directing the Assessing Officer to net off prior period income and the prior period expenditure and tax only the net income, since the factual aspects had to be verified. (AY. 2011-12)
PCIT (LTU) v. Mahanagar Telephone Nigam Ltd. (2021) 431 ITR 541 (Delhi)(HC)

S. 14A : Disallowance of expenditure – Exempt income – Recording of satisfaction is mandatory – Disallowance was deleted. [R.8D] 296
Allowing the appeal of the assessee the Court held that from a perusal of the order passed by the Assessing Officer it was evident that the Assessing Officer had not

determined the amounts of the expenditure and had not recorded any reasons with regard to correctness of the claim made by the assessee in respect of expenditure, in relation to the income which did not form part of the total income. The disallowance under section 14A was not justified.(AY. 2009-10)
Kodagu District Co-Operative Central Bank Ltd. v. ACIT (2021) 431 ITR 356 (Karn.)(HC)

297 **S. 14A : Disallowance of expenditure – Exempt income – Disallowance is held to be justified even though the assessee has not earned any exempt income. [R.8D]**
Disallowance is held to be justified even though the assessee has not earned any exempt income. Referred Circulars and Notifications: Circular No. 5/2014, dated 11-2-2014. Followed *CIT v. Essar Teleholdings Ltd (2018) 401 ITR 445 (SC), Maxopp Investment Ltd v. CIT (2018) 402 ITR 640 (SC)* (AY. 2008-09)
CIT v. Kingfisher Finvest India Ltd. (2021) 434 ITR 150/ 276 Taxman 128 / 202 DTR 361/ 321 CTR 448 (Karn.)(HC)

298 **S. 14A : Disallowance of expenditure – Exempt income – Investment in subsidiary companies – When there is no exempt income – No disallowance can be made [R.8D]**
Dismissing the appeal of the Revenue the Court held that the investments were made in subsidiary companies. When the investments were made in wholly owned subsidiary companies, it could not be construed that investment was made for earning exempt income. Investment made in the wholly owned company was only for the purpose of business. The Tribunal rightly held that the provisions of section 14A would not stand attracted.(AY.2013-14)
CIT v. Continuum Wind Energy (India) Pvt. Ltd. (2021) 430 ITR 52 / 276 Taxman 286 (Mad.)(HC)
Editorial : Contrary view of the Supreme Court in Maxopp Investment Ltd. v. CIT (2018) 402 ITR 640 (SC) rejecting the dominant purpose test for investment.

299 **S.14A : Disallowance of expenditure – Exempt income – Investment from interest free funds – Shares held as stock in trade – Matter remanded [S. 36(1)(iii), R. 8D]**
Matter remanded to the Assessing Officer to decide issue afresh and apportionment of expenses towards dividend income from shares held as stock in trade.(AY 2013-14)
Add. CIT v. PNB Gilts Ltd. (2021) 90 ITR 16 (SN)(Delhi)(Trib.)

300 **S.14A : Disallowance of expenditure – Exempt income – Interest free funds – Presumption that the investment was made from own funds – Disallowance of interest is not warranted – Book profit – Only actual expenses incurred is liable to be excluded [S. 115JB(2), R. 8D (2)(ii), 8(2)(iii)]**
Held that when the interest free funds are available the presumption is that the investment was made from own funds hence disallowance of interest is not warranted. While computing the book profit only actual expenses incurred are liable to be excluded. (AY. 2014-15)
Nirmal Industrial Control P. Ltd. v. ACIT (2021) 90 ITR 34 (SN)(Mum.)(Trib.)

S.14A : Disallowance of expenditure – Exempt income – Administrative expenditure – Suo motu disallowance made by the assessee was allowed – Followed earlier year order – Book profit – Expenses Incurred To Earn Exempt Income – Not To Be Added For Computing Book Profits [S.115JB, R. 8D (2)] 301

Held that suo motu disallowance made by the assessee was allowed Followed earlier year order. While computing book profit, expenses incurred to earn exempt income not to be added for computing book profits.(AY. 2013-14 to 2015-16)

Rasna Pvt. Ltd. v. Dy. CIT (2021) 90 ITR 39 (SN)(Ahd.)(Trib.)

S.14A : Disallowance of expenditure – Exempt income – Own funds are more than value of investment in firm, mutual funds and shares – No disallowance can be made – Charging net amount to profit and loss account – Lump sum disallowance of 15 lakhs was held to be proper. [R. 8D(2)(ii), 8D(2)(iii)] 302

Held that own funds are more than value of investment in firm, mutual funds and shares hence no disallowance can be made. Lump sum disallowance of 15 lakhs made by the assessee was held to be proper. (AY. 2009-10)

ACIT v. Century Real Estate Holdings Pvt. Ltd. (2021) 89 ITR 36 (SN)(Bang.)(Trib.)
Dy. CIT v. India Infoline Finance Ltd. (2021) 89 ITR 9 (SN)(Mum.)(Trib.)
Viney Corporation Ltd. v. ACIT (2021)92 ITR 59 (SN)(Delhi)(Trib.)
Hindustan Associated Engineers Pvt. Ltd. v. ITO (2021) 92 ITR 33 (SN)(Delhi)(Trib.)

S.14A : Disallowance of expenditure – Exempt income – Interest – Expenditure not incurred – No disallowance can be made – Other Expenses at 0.5 Per Cent of average value of investments – Only investments which earned exempt income to be considered for computing average value of investments [R.8D] 303

Held that interest expenditure not incurred no disallowance cannot be made. Other Expenses at 0.5 Per Cent of average value of investments,only investments which earned exempt income to be considered for computing average value of investments. (AY.2003-04 to 2005-06, 2009-10)

ACIT v. Investment Trust of India Ltd. (2021) 88 ITR 566 / 211 TTJ 777 (Chennai)(Trib.)
Dy.CIT v. HFCL Infotel Ltd. (2021) 88 ITR 566 / 211 TTJ 777 (Chennai)(Trib.)

S.14A : Disallowance of expenditure – Exempt income – Not earned any exempt income – No disallowance can be made [R.8D] 304

Held, that since the assessee had not earned any exempt income during the year under consideration addition could not be made under section 14A of the Act. (AY.2009-10 to 2011-12)

Dy.CIT v. Trinetra Super Retail Pvt. Ltd. (2021)88 ITR 116 / 210 TTJ 350 (Mum.)(Trib.)
Golf View Homes Ltd. v. ACIT (2021)88 ITR 423 / 212 TTJ 472/ 207 DTR 199 (Bang.)(Trib.)
JCIT (OSD) v. Medha Servo Drives (P.) Ltd. (2021) 191 ITD 333 (Hyd.)(Trib.)
ACIT v. Claridges Hotels Pvt. Ltd. (2021)86 ITR 402 (Delhi)(Trib.)
Paramount Communications Ltd. v. Dy. CIT (2021)90 ITR 20 (Delhi)(Trib.)
DCIT v. Agile Electric Sub Assembly (P.) Ltd. (2021) 188 ITD 780 (Chennai)(Trib.)
Dy. CIT v. Dee Development Engineers Ltd. (2021) 87 ITR 38 (SN)(Delhi)(Trib.)
ACIT v. Claridges Hotels Pvt. Ltd. (2021)86 ITR 402 (Delhi)(Trib.)
Amadeus India Pvt. Ltd. v. ACIT (2021) 87 ITR 371 (Delhi)(Trib.)

305 **S.14A : Disallowance of expenditure – Exempt income – Dissatisfaction – Discussion made in the assessment order would satisfy requirement of recording of dissatisfaction. [R.8D]**

Held that discussion made in assessment order showed that Assessing Officer was not satisfied with claims of assessee, this would satisfy requirement of recording of dissatisfaction by Assessing Officer as per section 14A of the Act. Disallowance was restricted to Rs.50000. (AY. 2007-08, 2009-10 to 2015-16)

Hindustan Aeronautics Ltd. v. ACIT (2021) 190 ITD 721 (Bang.)(Trib.)

306 **S.14A : Disallowance of expenditure – Exempt income – Disallowance cannot exceed the exempt income [R.8D]**

Tribunal held that disallowance cannot exceed exempt income earned by assessee during year. (AY. 2009-10 to 2011-12)

Jaswantlal J. Shah. v. ACIT (2021) 190 ITD 157 (Mum.)(Trib.)
MKJ Enterprises Ltd. v. DCIT (2020) 212 TTJ 507 (Kol.)(Trib.)
ACIT v. Madura Garments Lifestyle Retail Co. Ltd. (2021) 92 ITR 11 (SN)(Mum.)(Trib.)
JCIT v. T. V. Today Network Ltd. (2021)92 ITR 53 (SN)(Delhi)(Trib.)
Century Real Estate Holdings Pvt Ltd v. Dy.CIT (2021) 92 ITR 32 (Bang.)(Trib.)
Nitesh Estates Ltd. v. Dy. CIT (2021) 85 ITR 421 (Bang.(Trib.)

307 **S.14A : Disallowance of expenditure – Exempt income – Expenses in respect of investments that yielded income alone can be disallowed – Matter remanded – Interest free funds exceeded the investment made – Interest disallowance cannot be made. [R. 8D]**

Tribunal directed the Assessing Officer to re-compute expenses disallowance under rule 8D after considering only those investments which had yielded exempt income during year. When the interest free funds exceeded the investment made interest disallowance cannot be made. (AY. 2012-13)

K. Raheja Corp. (P.) Ltd. v. DCIT (2021) 190 ITD 749 (Mum.)(Trib.)

308 **S.14A : Disallowance of expenditure – Exempt income – Purpose for which the investment was made is not relevant for disallowance [R. 8D]**

Tribunal held that with respect to interest expenditure it is apparent that assessee has huge interest free funds in form of share capital and free reserve of approximately Rs. 983 crores against the investment in equity shares of Rs. 53 crores. Therefore, in absence of any contrary evidence, the presumption lies in favour of the assessee that investment in such equity shares have been made out of interest free funds. That dominant purpose for which investment into shares are made is not relevant for disallowance u/s 14A of the Act. There was no justification for reducing the sum of Rs. 22.67 crores being investment in subsidiaries out of total investment in equity shares of Rs. 53.51 crores. (AY.2011-12)

DLF Universal Ltd. v. Dy. CIT (2021) 88 ITR 33 (SN)(Delhi)(Trib.)

S.14A : Disallowance of expenditure – Exempt income – Not subjected to MAT adjustment – More non-interest bearing funds – No disallowance can be made – Only exempt income yielding investments have to be taken into consideration whilst computing administrative expenses [S.11JB, R.8D(2)(iii)] 309

Exempt income is not subject to MAT adjustment. Where non-interest bearing funds were more than investment made in investments yielding no proportionate interest disallowance to be made. Only exempt income yielding investments have to be taken into consideration whilst computing administrative expenses disallowance. (AY. 2012-13, 2013-14)

Electrosteel Castings Ltd. v. DCIT (2021) 189 ITD 183 (Kol.)(Trib.)

S.14A : Disallowance of expenditure – Exempt income – Disallowance is restricted to extent of exempt income [R.8D] 310

Disallowance is restricted to extent of exempt income earned by assessee-company during relevant year. (AY. 2009-10)

Pricewaterhouse Coopers (P.) Ltd. v. ACIT (2021) 189 ITD 329 (Kol.)(Trib.)

DCIT v. Edelweiss Financial Advisors Ltd. (2021) 188 ITD 834 (Ahd)(Trib.)

S.14A : Disallowance of expenditure – Exempt income – Investment from interest free funds – No disallowance of interest could be made [R.8D] 311

Held that interest free funds available with assessee were sufficient to meet its investment hence no disallowance of interest should be made to that extent. (AY. 2013-14)

Suresh Chunnilal Sharma v. ITO (2021) 188 ITD 487 / 213 TTJ 409 / 86 ITR 22 (SN)/ 205 DTR 31 (SMC)(Pune)(Trib.)

Alliance Infrastructure Projects Pvt. Ltd. v. ACIT (2021) 90 ITR 12 (SN)(Bang.)(Trib.)

S. 14A: Disallowance of expenditure – Exempt income – Share of loss from the firm – No disallowance can be made if no exempt income is earned[R.8D] 312

The assessee being a partner in a Partnership Firm had a share of loss from the firm during the year under consideration. The AO invoked disallowance under section 14A of the Act. On appeal, the CIT(A) confirmed the disallowance by holding that even though the Partnership Firm returned a loss, it was a case of negative income and not Nil income.On further appeal, the Hon'ble Tribunal held that there is no qualitative difference between two situations, first, where the exempt income is Nil and second, where there is negative income for the year. It was also held that the assessee has not earned any exempt income during the year and therefore no disallowance can be made. Reliance in this regard was made on the decision of Hon'ble Bombay High Court in the case of *Pr. CIT v. HSBC Invest Direct (India) Ltd. (2020) 421 ITR 125 (Bom.)(HC)* (AY.2013-14)

Kumar Properties and Real Estate P. Ltd. v. Dy.CIT (2021) 190 ITD 212 / 87 ITR 169 (SN)/ 212 TTJ 227 / 202 DTR 425 (Pune)(Trib.)

313 **S.14A : Disallowance of expenditure – Exempt income – Netting of interest expenditure [R.8D]**
Tribunal held that disallowance of interest has to be carried out after netting of interest income and interest expenditure. (AY. 2009-10, 2010-11)
Doha Bank QSC v. DCIT (2021) 187 ITD 125 / 209 TTJ 716 (Mum.)(Trib.)

314 **S.14A : Disallowance of expenditure – Exempt income – Own interest free funds in the form of share capital and free reserve – Interest disallowance is not justified [R.8D]**
Tribunal held that where assessee had sufficient interest-free funds of its own in form of share capital and free reserves to meet its investment yielding exempt dividend income, then it could be presumed that such investments were made from interest-free funds available with assessee and not from interest bearing borrowed funds. Accordingly the addition of interest was deleted. (AY. 2104-15)
DCIT v. Century Plyboards (I) Ltd. (2021) 187 ITD 35 (SN) / 209 TTJ 273 / 203 DTR 229 (Kol.)(Trib.)

315 **S.14A : Disallowance of expenditure – Exempt income – No disallowance can be made when exempt income earned during the year – No addition of disallowance under section 14A is called for while computing income under section 115JB of the Act. [S.115JB, R.8D]**
Tribunal held that where there is no exempt income earned by assessee, no disallowance under section 14A shall be made. Tribunal also held that no addition of disallowance under section 14A is called for while computing income under section 115JB. (AY. 2011-12)
Vivimed Labs Ltd. v. DCIT (2021) 187 ITD 665 (Hyd.)(Trib.)

316 **S.14A : Disallowance of expenditure – Exempt income – Interest free funds is more than investments made – No disallowance of interest can be made – Administrative expenses – Disallowance is restricted only to investments giving rise to exempt income. [R.8D]**
Tribunal held that where assessee had interest free funds which is more than investments made giving rise to exempt income, no disallowance of interest expense could be made under section 14A read with rule 8D. Tribunal also held that disallowance under rule 8D(2)(iii) should be restricted only to investments giving rise to exempt income (AY. 2009-10)
Tata Power Co. Ltd. v. PCIT (2021) 186 ITD 82 (Mum.)(Trib.)

317 **S.14A : Disallowance of expenditure – Exempt income – Net interest could be disallowed – Book Profit – Computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to computation as contemplated under section 14A read with rule 8D. [S.115JB, R.8D]**
Tribunal held that for the purpose of Rule 8D(2)(ii), 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. Tribunal also held that for computation under clause (f) of Explanation 1 to section 115JB(2) is to be made without resorting to computation as contemplated under section 14A read with rule 8D. (AY. 2012-13)
DCIT v. Edelweiss Commodities Services Ltd. (2021) 186 ITD 189 / 198 DTR 234/ 210 TTJ 914 (Mum.)(Trib.)

S.14A : Disallowance of expenditure – Exempt income – Interest – Interest paid on loans to be set off against interest income from term deposits [R.8D] 318

Tribunal held that Interest paid on loans to be set off against interest income from term deposits.(AY.2014-15)

Sudhir S. Mehta v. Dy. CIT (2021) 85 ITR 8 (SN)(Mum.)(Trib.)

S.14A : Disallowance of expenditure – Exempt income – Not recording of satisfaction – Disallowance was restricted to sum claimed by assessee.[R.8D] 319

Tribunal held that under section 14A(2) of the Act, the Assessing Officer has to record satisfaction that the disallowance of expenses made by the assessee suo motu is not correct. Without recording such a finding, he cannot make disallowance under section 14A of the Act resorting to rule 8D of the Rules. The disallowance under section 14A of the Act was to be restricted to a sum of Rs. 72,000 as claimed by the assessee. (AY.2015-16)

United Telelinks (Bangalore) Ltd. v. Dy. CIT (2021) 85 ITR 36 (SN)(Bang.)(Trib.)
ACIT v. MVL Credits Holdings and leasing Ltd (2021) 92 ITR 373 (Delhi)(Trib.)

S.14A : Disallowance of expenditure – Exempt income – Presumption that the investment was made with interest free funds – Matter remanded [R.8D] 320

Tribunal held that where interest-free funds available with the assessee were sufficient to meet his investment and at the same time loan was raised, it can be presumed that the investments were made from interest-free funds and hence, no disallowance of interest should be made to that extent. The Assessing Officer was to examine the assessee's contention that interest-free funds were available with him and then decide the amount of interest disallowable under section 14A. The disallowance of Rs. 91,398, being one half per cent. of average value of investment was properly disallowed.

Suresh Chunnilal Sharma v. ITO (2021) 86 ITR 22 (SN)(Pune)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Ad-hoc disallowance – Deleted. [R.8D] 321

The Tribunal noted that the Assessing Officer accepted that no expenditure has been incurred for earning the dividend income and therefore no disallowance under section 14A was called for. Without appreciating this aspect, the Assessing Officer disallowed Rs. 3 lacs under section 14A of the Act on an ad-hoc basis, and while doing so the Assessing Officer had not established any nexus between the expenditure and earning of dividend income. The Tribunal deleted the disallowance. (ITA Nos. 1955 TO 1959/ Del/2016; dt. 06-08-2020) (AY. 2001-02 to 2005-06)

Triveni Engineering & Industries Ltd. v. ACI (2020) 118 taxmann.com 301 / (2021) 186 ITD 353 (Delhi)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Even suo motu disallowance made need to be restricted to the extent of exempt income [R.8D] 322

The assessee during the year has eared dividend income of Rs 13, 17, 233 and suo motu computed the disallowance of Rs 5, 86, 52 973. On appeal the CIT(A) restricted the disallowance to the amount suo motu computed by the assessee. On appeal the Tribunal

held that,ven suo motu disallowance made need to be restricted to the extent of exempt income. (ITA No. 3747/Mum/2019 dt 11-1-2021) (AY. 2015-16)
Chalet Hotels Ltd v. DCIT (2021) BACJ-March – P. 40 (Mum.)(Trib.)

323 **S.14A : Disallowance of expenditure – Exempt income – Provision is not applicable in case of insurance business which is governed by specific provisions of section 44 and Schedule.I – Foreign tax credit – Foreign tax credit in respect of taxes paid abroad could never exceed Indian tax liability in respect of related income taxed abroad as also in India – Right of respondent under Rule 27 of the ITAT Rules 1963 – Appellant cannot be worse off visa-a-vis the position when he was when the appeal was presented [S. 44, 90, R. 8D, ITAT Rule 27]**
Dismissing the appeal of the revenue the Tribunal held that,provision of section 14A is not applicable in case of insurance business which is governed by specific provisions of section 44 and Schedule I Tribunal also held that right of respondent under Rule 27 of the ITAT Rules 1963 cannot be worse off visa-a-vis the position when he was when the appeal was presented. Foreign tax credit in respect of taxes paid abroad could never exceed Indian tax liability in respect of related income taxed abroad as also in India. (AY. 2009-10)
ACIT v. Life Insurance Corporation of India Ltd (2021) 214 TTJ 148 / 206 DTR 273 / (2022) 192 ITD 8 (Mum.)(Trib.)

324 **S.14A : Disallowance of expenditure - Exempt income – Assessing Officer has arrived at objective satisfaction – Disallowance is justified – Voluntary disallowance made by the Assessee is to be reduced.[R. 8D(2)(iii)]**
Tribunal held that the Assessing Officer has arrived at objective satisfaction hence disallowance is justified, however voluntary disallowance made by the Assessee is to be reduced.(AY. 2014-15, 2013-14, 2014-15)
Shahrukh Khan v. DCIT (2021) 209 TTJ 356 / 197 DTR 1 (Mum.)(Trib.)

325 **S.14A : Disallowance of expenditure – Exempt income – Investments made from own funds – No disallowance to be made [R. 8D]**
Held that investments were made from own funds hence no disallowance can be made. (AY.2009-10)
Dy. CIT v. Daawat Foods Ltd. (2021) 91 ITR 110 (Delhi)(Trib.)

326 **S. 14A: Disallowance of expenditure – Exempt income – Interest – Not earning any exempt income during year – No disallowance of interest [R. 8D]**
Held that when the assessee has not earned any exempt income during year no disallowance of interest can be made. (AY.2014-15).
JCIT v. Reliance Life Sciences Pvt. Ltd. (2021) 91 ITR 468 (Mum.)(Trib.)

S. 14A : Disallowance of expenditure – Exempt income – Reserves and surplus funds more than investments – Presumption that such investment was made from interest-free funds available with assessee – No interest disallowance warranted [R. 8D] 327
Held that reserves and surplus funds more than investments. Presumption that such investment was made from interest-free funds available with assessee. No interest disallowance warranted. (AY.2007-08 to 2013-14)
N. R. Agarwal Industries Ltd. v. ACIT (2021) 91 ITR 503 (Surat)(Trib.)

S. 14A: Disallowance of expenditure – Exempt income – Interest – Not earning any exempt income during year – No disallowance of interest [R. 8D] 328
Held that when the assessee has not earned any exempt income during year no disallowance of interest can be made. (AY.2014-15).
JCIT v. Reliance Life Sciences Pvt. Ltd. (2021) 91 ITR 468 (Mum.)(Trib.)
DCIT v. East Coast Imports and Exports (2021) 91 ITR 6 (SN)(Vishakha)(Trib.)

S.14A : Disallowance of expenditure – Exempt income – Disallowing more than 50 Per Cent of total expenditure claimed – No further disallowance called for – Deletion of disallowance while computing book profits is held to be proper [S. 115JB, R.8D] 329
Held that when the assessee had disallowed more than 50 per cent. of the total expenditure claimed, no further disallowance was called for. Tribunal also held that the deletion of disallowance made under section 14A read with rule 8D while computing the book profits under section 115JB of the Act was proper.(AY. 2015-16)
ACIT v. Cyrus Investments Pvt. Ltd. (2021) 91 ITR 49 (SN)(Mum.)(Trib.)

S.14A : Disallowance of expenditure – Exempt income – Interest expenditure – Sufficient own funds – Disallowance is not valid – Direction to consider only those investments upon which exempt income earned – Held to be proper. [R.8D] 330
Held that when the assessee had sufficient own funds, disallowance of interest is not valid. Direction of CIT(A) to consider only those investments upon which exempt income earned is held to be proper. (AY. 2012-13)
Kanoria Chemicals and Industries Ltd. v. ACIT (2021) 91 ITR 82 (SN)(Kol.)(Trib.)

S.14A : Disallowance of expenditure – Exempt income – Interest expenditure – Balance-Sheet of assessee showing assessee's own funds available in excess of investments – Interest cannot be disallowed [R.8D (2)(iii)] 331
Held that the balance-sheet of the assessee showed that the assessee's own available funds were far in excess of the investments made by the assessee. No disallowance out of interest expenditure was called for.(AY. 2014-15)
Tejas Networks Ltd. v. DCIT (2021) 91 ITR 52 (SN)(Bang.)(Trib.)

S. 17(2) : Perquisite – Permission for providing COVID treatment – Show cause notice – Revocation of permission was lifted – Order was set aside [S. 15, 17(ii)(b), ITATR, 1962, R. 3A, Art. 226] 332
Petitioner-hospital filed application seeking renewal of approval under clause (ii)(b) of proviso to section 17(2)(viii) of the Act. Revenue issued show cause notice and rejected

the application on ground that State Government had cancelled permission granted to petitioner for providing COVID treatment. On writ allowing the petition the Court held that since revocation of permission was later lifted by the State Government and petitioner was permitted to provide treatment, very basis of show cause notice stood removed order was to be set aside.
Park Health System (P) Ltd. v. PCIT (2021) 439 ITR 643 / 323 CTR 628 / 208 DTR 12 / (2022) 284 Taxman 319 (Telangana)(HC)

333 **S. 17(2) : Perquisite – Valuation of perquisites – Salary – Deduction at source – Rent as per Rule 3 – Accommodation provided by Central Government and State Government to its employees – Not applicable to undertakings controlled by Central or State Governments [S. 15, 192, ITR, 1962, R. 3]**
Held that the assessee was a body or an undertaking controlled by the Central Government governed by the rules governing the service conditions of the employees of the Central Government. The assessee may be an instrument of the State for the purpose of article 12 of the Constitution of India. However, merely because the assessee was a body or undertaking owned or controlled by the Central Government, it could not be elevated to the status of the Central Government. The assessee could not claim that valuation of perquisites in respect of residential accommodation should be computed as in case of an accommodation provided by the Central Government. Therefore, entry 1 of Table 1 of rule 3 of the Rules would not apply to the assessee. (AY. 2010-11)
Indian Institute of Science v. Dy. CIT (2021) 438 ITR 400 / 204 DTR 329 / 322 CTR 217 (Karn.)(HC)

334 **S. 17(2) : Perquisite – ESOP benefits granted to an assessee when he was resident and in consideration for services rendered in India is taxable even though the assessee is a non-resident in the year of exercise- DTAA-India-UAE [S.15, Art.15]**
Tribunal held that ESOP benefits granted to an assessee when he was resident and in consideration for services rendered in india is taxable even though the assessee is a non-resident in the year of exercise. S. 17(2)(Vi) decides the timing of the income to be the year of exercise of the ESOPS but does not dilute or negate the fact that the benefit had arisen at the point of time when the ESOP rights were article 15 of the India-UAE DTAA permits taxation of ESOP benefit, which is included in the scope of the expression "other similar remuneration" appearing immediately after the words "salaries and wages", in the jurisdiction in which the related employment is exercised. Thus, an assessee who gets ESOP benefits in respect of his service in U.A.E. And he exercises these options at a later point of time, say after returning to India and ceasing to be a non-resident, will still have the treaty protection of that income under article 15(1). Conversely, when the assessee gets the ESOP benefit on account of rendering services in India, he cannot have the benefit of article 15 in respect of the said income. (AY.2013-14, 2014-15)
V. S. Unnikrishnan v. ITO (IIT) (2021) 86 ITR 11 (SN) / 198 DTR 73/ 209 TTJ 681 (Mum.) (Trib.)

S. 22 : Income from house property – Building under construction – Pendency of an occupancy certificate – Addition cannot be made on notional basis [S. 23] 335

During year, assessee had let out a part of an under construction school building on rent to an educational foundation. Assessing Officer held since building was completed in part, 50 per cent of annual letting value was to be brought to tax as income from house property. Order of the Assessing Officer was affirmed by the Tribunal. On appeal the Court held that building would legally come into existence only on issuance of an occupancy certificate. On facts, notional income by way of annual letting value could not be assessed on such building under construction during year. Followed *Sharan Hospitality (P) Ltd v. Dy.CIT (2020) 268 Taxman 443 (Bom.)(HC)* (AY. 2010-11)
Brigade Enterprises Ltd. v. ACIT (2021) 279 Taxman 219 (Karn.)(HC)

S. 22 : Income from house property – Income from business – Rental income from leasing of flats – Assessable as income from house property. [S. 28(i)] 336

Held that the rental income of an assessee in infrastructure development and rental services is assessable as income from house property.(AY. 2011-12, 2013-14)
Dy. CIT v. Cache Properties Pvt. Ltd. (2021) 89 ITR 38 (SN)(Hyd.)(Trib.)

S. 22 : Income from house property – Leasing of the property – Additional common facilities like, lift, security, fire-fighting system common area facilities, car parking terrace use, water supply etc – License fees and amenities fees – Assessable as income from house property and not as income from other sources.[S. 56] 337

Dismissing the appeal of the Revenue the Tribunal held that nature of service provided was linked to the premises and the auxiliary services which are directly linked to the leasing of property the gross receipts on account of amenities / services provided by the assessee is taxable under the head income from house property and not income from other sources. (dt. 19-1-2021)(AY. 2013-14)
ACIT v. XTP Design Furniture Ltd. (2021) BCAJ-May-P. 50 (Mum.)(Trib.)

S. 22 : Income from house property – Rent – From installation of antenna tower on the terrace assessable as income from house property and not as income from other sources – Deduction allowable as per S. 24(a) of the Act. [S. 24 (a), 56] 338

The assessee is a cooperative housing society that entered into an agreement to rent out the terrace to install an antenna tower. The AO held that income earned will not fall under the head "income from house property" as the annual value of the property consists of building or land appurtenant and income from installation of antenna will be considered "income from other sources". The Hon'ble Tribunal noted that the assessee had not provided any services by granting access to the terrace. Further, the Hon'ble Tribunal followed the Tribunal's decision in *Manpreet Singh v. ITO (2015) 67 SOT 426 (Delhi) (Trib.)*, wherein the Tribunal noted that rent paid was for the roof to install the antenna. The roof was part of the building, and thus the revenue earned will be considered income from house property. (AY. 2014-15)
Maker Tower Premises Co. Op. Society Ltd. v. ACIT (2021) 187 ITD 653 (Mum.)(Trib.)

339 **S. 22 : Income from house property – Notional addition of rental income by making an adhoc increase of 10% over and above value assessed in previous year is without any basis – Addition is deleted [S. 23, 24]**
Tribunal held that notional addition of rental income by making an adhoc increase of 10% over and above value assessed in previous year is without any basis. Directed to be deleted. (AY. 2014-15, 2013-14, 2014-15)
Shahrukh Khan v. DCIT (2021) 209 TTJ 356 / 197 DTR 1 (Mum.)(Trib.)

340 **S. 23 : Income from house property – Annual value – Annual letting value of house property is to be determined on the basis of Municipal rateable value [S.22]**
Allowing the appeal of the assessee the Tribunal held that annual letting value of house property is to be determined on the basis of Municipal rateable value. (ITA No. 6716/ Mum/ 2018 dt. 18-1-2021).(AY. 2015-16)
Anand J. Jain v. DCIT (2021) BCAJ- May – P. 50 (Mum,)(Trib.)

341 **S. 23 : Income from house property – Annual value – Vacancy allowance – Deemed rent – Property which could not be let out during the year annual value would be nil [S. 22, 23(1)(c), 24(a)]**
Held that when the property could not be let out during the year annual value would be nil. Followed *Metaxide Pvt Ltd v. ITO (2018) 170 ITD 235 (Mum.)(Trib.)* (dt. 13-10-2021) (AY. 2016-17)
Puruushotamdas Goenka v. ACIT (2022) BCAJ- January-P. 35 (Mum.)(Trib.)

342 **S. 23 : Income from house property – Annual value – Builder – Unsold stock – Deemed income – Assessable as income from house property – Estimate at 8.5% of investment was held to be not justified – Remanded for compute valuation of deemed rent. [S. 22]**
Assessing Officer assessed deemed income from unsold units in hands of assessee as per provisions of sections 22 and 23 at 8.5 of investment. On appeal the Tribunal held that though deemed rent on unsold stock is exigible to tax under head 'Income from house property but since Assessing Officer had made an ad hoc estimate of 8.5 per cent of investment on plea that assessee had not been able to provide municipal ratable value and not computed deemed rent on municipal ratable value or any nearly similar instance, Assessing Officer was directed to compute valuation of deemed rent afresh. (AY. 2015-16)
Dimple Enterprises v. DCIT (2021) 190 ITD 199 (Mum.)(Trib.)

343 **S. 23 : Income from house property – Annual value – Deemed rental income – Addition held to be justified [S. 22]**
Following the earlier year order additions on account of deemed rental income was up held (AY. 2009-10 to 2011-12)
Jaswantlal J. Shah v. ACIT (2021) 190 ITD 157 (Mum.)(Trib.)

S. 23 : Income from house property – Annual value – Deemed rent on unsold flats lying as inventory – Not taxable as income from house property – The amendment in Finance Act, 2017 w.e.f. 1 April 2018 is prospectively applicable from AY 2018-19 onwards. [S.22] 344

The assessee is engaged in the business of development of properties and had in its inventory certain unsold flats/bungalows at the year end. The AO opined that deemed notional rental income on such vacant flats/bungalows should be taxed and accordingly taxed the same under Section 22 of the Act. The CIT(A) upheld the order of the AO. On appeal before the Hon'ble Tribunal, the Tribunal held that 4 conditions must be satisfied so as to fall under the exclusion clause.

In relation to the first condition being that the property or its part should be occupied by the assessee as an owner, the Tribunal held that the word occupy has not been defined anywhere and hence relied on the meaning provided under the Oxford Dictionary of Law as the physical possession and control of land. Since there is no one other than the assessee having physical possession and control over such flats, the assessee is deemed to be the sole occupant and the first condition is thereby satisfied.

In relation to second condition being that any business or profession should be carried on by the assessee-owner, the Tribunal held that the assessee has returned income from its business under the head of PGBP and hence was engaged in the business of property development satisfied the second condition.

In relation to the third condition being that occupation of the property should be for the purpose of business or profession, The Tribunal observed that "purpose of occupation of the flats" means to hold them either for readying them for final sale or holding them during the interregnum from the ready stage to sale stage. The Tribunal held that this activity was performed by the assessee and thereby the third condition was also satisfied.

In relation to the fourth condition being that profits of such business or profession should be chargeable to income-tax, the Tribunal held that it is indisputable that the profits of the business of property development by the assessee are chargeable to income-tax the fourth condition is also satisfied

Therefore, the Tribunal noted that all the four conditions for exclusion from Section 22 of the Act are cumulatively satisfied in the present case. Further relying on the decision of Hon'ble Gujarat High Court in the case of *CIT v. Neha Builders (Pvt.) Ltd. (2008) 296 ITR 661 (Guj.) (HC)* the Tribunal held that no income from house property can result in respect of unsold flats held by a builder at the year end. Further the amendment in Finance Act, 2017 w.e.f. 1 April 2018 is prospectively applicable from AY 2018-19 onwards. In view of the same the Tribunal deleted the addition made on account of deemed rent on unsold stock. (AY. 2013-14)

Kumar Properties and Real Estate P. Ltd. v. Dy.CIT (2021) 190 ITD 212 / 87 ITR 69 (SN)/ 212 TTJ 227 / 212 DTR 425 (Pune)(Trib.)

S. 23 : Income from house property – Annual value – Builder – Stock in trade – Addition of notional rent estimated by the Assessing Officer in respect of unsold flats which are held as stock-in trade is held to be not valid. [S. 22, 23(5), 24] 345

The assessee is in the business of construction of housing flats. The Assessing Officer assessed the unsold stock in trade of the assessee under section 22 of the income – tax Act 1961 on notional basis by estimating 8% of the value of closing stock shown the

books of account. CIT(A) deleted the addition. On appeal by the Revenue, considering all the case laws on the subject,Tribunal affirmed the view of the CIT(A).Tribunal also referred the amendments by the Finance Act, 2017, w.e.f. 1-4-2018. (AY. 2013-14) (ITA No. 4369 /Mum/ dt 22-3-2021)

Case laws referred in the order are;

1. *Osho Developers v. ACIT, ITA Nos. 2372 & 1860/M/2019, A.Ys. 2014-15 & 2015-16, dt. 3/11/2020 (Mum.)(Trib.)*
2. *C.R. Developments Pvt. Ltd. v. JCIT ITA No. 4277/M/2012 dt. 13/5/2015 (Mum.)(Trib.)*
3. *Runawal Constructions v. ACIT ITA No. 5408/M/2016 dt. 22/2/2018 (Mum.)(Trib.)*
4. *CIT v. Neha Builders (P) Ltd. (2008) 296 ITR 661 (Guj.)(HC)*
5. *CIT v. Ansal Housing Finance & Leasing Company Ltd. (2013) 354 ITR 180 (Delhi) (HC)*

DCIT v. Bengal Shapoorji Housing Development Pvt Ltd (Mum.)(Trib.) www.itatonline.org

346 **S. 23 : Income from house property – Annual value – Annual value should be restricted to municipal rateable value – Estimate at 6% of cost of value of flat was held to be not justified. [S. 22, 23(1)(c)]**

The Assessing Officer adopted 8% of the cost of flat while computing the notional value of the house property. On appeal the CIT (A) restricted to 6 % of the cost of flat. On appeal the Tribunal held that the CIT (A) should not have ignored the ratio laid down by the Jurisdictional High Court in *CIT v. Tip TOP Typography (2014) 368 ITR 330 (Bom) (HC)* and accordingly directed to adopt municipal ratable value. (ITA NO 2660 & 2180 /Mum/ 2019 dt 12-7-2021 (AY. 2011-12 & 2015-16)

Amit Balakrishna Jalan v. ACIT (Mum.)(Trib.) www.itatonline.org

347 **S. 24 : Income from house property – Deductions – Borrowed money was used for the purpose acquisition and construction of school building – Interest allowable as deduction [S. 24(b)]**

Held that borrowed money was used for the purpose of acquisition and construction of school building. Interest allowable as deduction. (AY. 2013-14)

Vidya Education Investment Pvt Ltd v. Dy.CIT (2021) 90 ITR 6 (SN)(Delhi)(Trib.)

348 **S. 24 : Income from house property – Deductions – Property co habited as let out – Interest on borrowed capital – Eligible deduction.[S. 22, 23]**

The assessee let out property to a company in which her husband was director. The Assessing Officer treated 50% of the property as let out and balance 50% as self occupied, as the assessee was also residing in the property. Accordingly AO restricted the deduction u/s 24 of the Act to 50%. CIT (A), affirmed the order of the AO. On appeal the Tribunal held that when the property was given on rent to the company it cannot be held that the assessee was herself is occupying the property. The assessee is eligible for deduction, including interest on borrowed capital in computing income from house property income. (dt. 3-5-2021) (AY. 2009-10)

Hima Bindu Putta v. ITO (2021) BACJ – July -P. 50 (Hyd.)(Trib.)

S. 24 : Income from house property – Deductions – Interest paid on borrowed capital – Possession of property is not a mandatory condition for claiming the deduction [S. 22, 23(2), 24(b)] 349

Allowing the appeal the Tribunal held that for claiming deduction of interest paid on borrowed capital for purchasing residential property under section 24(b) of the Act, possession of property is not a mandatory condition. (AY. 2015-16)

Abeezar Faizullabhoy v. CIT (2021) 191 ITD 509 / 214 TTJ 382 / 207 DTR 193 (Mum.)(Trib.)

S. 24 : Income from house property – Deductions – Annual value – Society maintenance charges – Not allowable as deduction [S. 22, 23(1)(b), 24(a)] 350

Assessee earned rental income from a commercial property and claimed deduction on account of society maintenance charges from rental income. Assessing Officer disallowed the same on the ground that the assessee was already allowed deduction of 30 per cent under section 24(a) of the Act. Tribunal held that since society maintenance charges paid by assessee could not be held to be taxes paid to local authority hence not allowable as deduction. (AY. 2012-13)

Rockcastle Property (P.) Ltd. v. ITO (2021) 190 ITD 339 / 88 ITR 28 (SN)(Mum.)(Trib.)

S. 24 : Income from house property – Deductions – Business of real estate – Interest – Amount borrowed for repayment of earlier loan – Allowable as deduction [S. 22, 24(b)] 351

Allowing the appeal the Tribunal held that when a sum was taken to repay an earlier loan taken for construction of a property, interest paid on such loan was also deductible in computing deduction under section 24(b) if loan was borrowed for the purpose of Constructing Commercial property. (AY. 2011-12)

Indraprastha Shelters (P.) Ltd. v. DCIT (2021) 187 ITD 306 / 212 TTJ 674 / 202 DTR 434 (Bang.)(Trib.)

S. 24 : Income from house property – Deductions – Rental income from property in America Property tax – Property tax and interest on loan – Mortgage interest statement – Allowable as deduction – Cash credits – Matter remanded. [S. 22, 23, 24(b), 68] 352

Held that once the assessee had paid the property tax of USD 2,151.71 through banking channels which was reflected as property tax in the bank statement, merely because no evidence or proof from the property tax authority for the payment was obtained, that should not have been a ground for denying the deduction. (AY. 2016-17)

Nitin Gupta v. ITO (2021) 91 ITR 47 (SN) / 214 TTJ 247 / 207 DTR 159 (SMC)(Delhi)(Trib.)

S. 28(i) : Business income – Sale of technical know how – Cost was claimed as revenue expenditure – Receipt assessable as business income. [S. 56] 353

Court held that in the first round of litigation, after rejecting the claim of the assessee that the transaction was a slump sale, the Tribunal held that if the assessee treated the cost and expenses relating to acquisition and improvement and development of intangible non-depreciable assets in the revenue field the gains arising as a result of sale thereof would have to be necessarily treated in the revenue field either under section 28 or section 56. The order passed by the Tribunal at the first instance had reached finality. Hence the amount was assessable.(AY.1997-98)

CIT v. ABB Ltd (2021) 439 ITR 554 / (2022) 284 Taxman 350 (Karn.)(HC)

354 **S. 28(i) : Business income – lease rent – Scheme sanctioned by BIFR – Assessable as business income [S. 14]**
Dismissing the appeal of the Revenue the Court held that the assessee was obligated to work under a statutory approved scheme; the lease of eight years was to ATL, which was in the same business and the lease was for utilising the plant, machinery, etc. for manufacturing tyres ; the actuals were reimbursed to assessee by ATL ; the work force of the assessee had been deployed for manufacturing tyres ; the total production from the assessee unit was taken over by ATL ; overall affairs of assessee company were made viable by entering into settlement ; coupled with all other primary circumstances, the assessee employed commercial assets to earn income. The scheme was for providing a solution to the business problem of the assessee. The claim of lease rental receipt as income of business was justifiable for the assessment years.(AY.1996-97 to 2003-04)
CIT v. Premier Tyres Ltd (2021) 439 ITR 346 / (2022) 285 Taxman 596 / 212 DTR 404 / 326 CTR 282 (Ker.)(HC)
CIT v. PTL Enterprises Ltd. (2021) 439 ITR 346 / (2022) 212 DTR 404 / 326 CTR 282 (Ker.) (HC)

355 **S. 28(i) : Business income – Income from lease – Exploitation of property and not exploitation of business assets – Assessable as income from other sources – Quality loss – No business carried on – Not allowable as deduction. [S.2(14), 56]**
Assessee continuing lease agreement and renewing it every year. The assessee claimed the income from lease as business income. The Assessing Officer treated the income from other sources. Appellate Tribunal affirmed the view of the Assessing Officer. On appeal the High Court affirmed the order of the Tribunal and held that lease rental was rightly assessed as income from other sources. The Court observed that the assessee exploited the property and not exploitation of business assets. Relied on *Universal Plast Ltd v. CIT (1999) 237 ITR 454 (SC)*. Claim of quality loss was not allowed as no business was carried on during the relevant years.(AY.2004-05 to 2009-10)
PTL Enterprises Ltd. v. Dy. CIT (2021) 439 ITR 365 / (2022) 212 DTR 404 / 326 CTR 282 (Ker.)(HC)
Editorial : Affirmed in PTL Enterprises Ltd. v. Dy. CIT (2022) 443 ITR 260 (SC)

356 **S. 28(i) : Business income – Income earned by letting out of property for running software Technology park – Assessable as business income. [S. 22, 56]**
Dismissing the appeal the Court held that the Tribunal was right in holding that the income derived from letting out property to tenants for the purpose of running a software technology park was income from business. Followed *CIT v. Tidel Park Ltd (2020) 15 ITR-OL502 (Mad.)(HC).* (AY.2007-08)
CIT v. Tidel Park Ltd. (2021)437 ITR 311 (Mad.)(HC)

357 **S. 28(i) : Business income – Income from house property – letting out building along with other amenities in industrial park – Assessable as income from business [S. 22]**
Allowing the appeal of the assessee the Court held that the income earned from letting out building along with other amenities in industrial park was chargeable to tax under

head 'income from business and profession' and not as income from house property. (AY 2009-10, 2010-11)
Rao Computer Consultants (P) Ltd. v. Dy. CIT (2021) 281 Taxman 236 (Karn.)(HC)
Rao Computer Consultants (P) Ltd. v. Dy. CIT (2021) 281 Taxman 319 (Karn.)(HC)

S. 28(i) : Business income – Income from house property – Leasing, operating and maintaining mall – Rental income assessable as business income and not as income from house property – Interest expense, depreciation and other expenses allowable as business expenditure [S. 22, 37(1)] 358
Held that the receipts from infrastructure support services were to be taxed under the head profits and gains from business or profession and not as income from house property, the interest expense, depreciation and other expenses were also to be treated as business expenses.(AY.2014-15)
ACIT v. Ruchi Malls Pvt. Ltd. (2021) 92 ITR 62 (SN)(Delhi)(Trib.)

S. 28(i) : Business income – Business expenditure – Software development – Expenses, depreciation and set off of brought forward loss and unabsorbed depreciation – Matter remanded to Commissioner (Appeals). [S. 68] 359
Held that whether the assessee had carried on software development activity, either with the same client or any other client, in subsequent assessment years had to be seen. If the assessee had continued with such business activity in subsequent years, the assessee's claim could be accepted. The assessee's claim to deduction towards expenses, depreciation and set off of brought forward loss and unabsorbed depreciation would ultimately depend upon the outcome of the issue whether or not the assessee had carried out any business activity. Matter remanded to the Commissioner (Appeals).(AY 2006-07)
Simto Property Developers Ltd. v. ACIT (2021) 89 ITR 7 (SMC)(SN)(Mum.)(Trib.)

S. 28(i) : Business income – Maintenance charges of common areas from tenants – Assessable as business income and not as income from house property [S. 22] 360
Dismissing the appeal of the Revenue the Tribunal held that maintenance charges received by assessee from tenants for undertaking maintenance of common areas of property was to be assessed as income from business and profession and not as income from house property. (AY. 2013-14)
DCIT v. Arham IT Infrastructure (P.) Ltd. (2021) 190 ITD 657 (Delhi)(Trib.)

S. 28(i) : Business income – Firm – Partner – Set off of loss – Interest, salary, bonus, commission or remuneration received or receivable from firm by partners – Assessable as business or profession – Expenditure incurred to earn such income allowable as deduction [S.37 (1), 70] 361
Held that interest, salary, bonus, commission or remuneration received or receivable from firm by partners was assessable in hands of partners as income from business or profession and partner was entitled to all expenditure which is incurred to earn such income. On the facts since there was loss under head profits and gains from business and profession the assessee was entitled to set off said loss against other income under same head (AY. 2016-17)
Suresh Sreeram v. ITO (2021) 188 ITD 599 (Bang.)(Trib.)

362 **S. 28(i) : Business income – Licence to run the hotel along with fully furnished hotel – Assessable as business income and not as income from house property [S.22]**
Allowing the appeal of the assessee the Tribunal held that license fee received by assessee engaged in business of running a hotel, for licensing a fully furnished hotel along with license to run hotel is a business receipt, which is assessable under head 'income from business or profession' but not a rental income, assessable under head 'income from house property. (AY. 2014-15)
Dodla International Ltd. v. ACIT (2021) 187 ITD 693 (Chennai)(Trib.)

363 **S.28(i) :Business income – Provision for carbon credit – No sale of carbon credits during year – provision for carbon credits inadvertently included in taxable income, – Remand report that provision written off in subsequent year and disallowed in assessment for that year – Provision not taxable. [S.143(3), 145]**
In respect of the carbon credit amount being wrongly recorded as income, the assessee submitted before the CIT(A) that it could not get the credit certified from the concerned authority during the assessment proceedings and accordingly the management created a provision at the year-end which increased the net profit and closing stock by the amount. The certification report and calculation of carbon credits were placed before the CIT(A) and he deleted this addition. The Tribunal held, that the assessee admitted that the provision of carbon credits was inadvertently included in the taxable income of the assessee, though it was not taxable under the Act. Besides no sale of carbon credits took place during the year under consideration. The calculation of provision, the basis therefor and the certification report were verified by the Assessing Officer. (AY. 2011-12).
Dy. CIT v. Dee Development Engineers ltd. (2021) 87 ITR 38 (SN)(Delhi)(Trib.)

364 **S. 28(i) : Business income – AIR information – Addition cannot be made solely on the basis of AIR information. [S.145, From No.26AS]**
Allowing the appeal of the assessee the Tribunal held that only on the basis of AIR information reflected in Form No 26AS of the assessee addition cannot be made. Followed *Arati Raman v. DCIT (ITA No 245 /Bang / 2012 dt 5-10-2012)* in which FAQ and Press Release it has been stated that no addition can be made only on the basis of AIR. On the facts since the assessee reconciled the difference addition made solely on the basis of information reflected in AIR was deleted. (ITA No. 10/ Bang/2019 dt 20-2-2019)(AY. 2009-10)
BRR (India) Pvt. Ltd. v. ITO (2021) The Chamber's Journal-March-P.188 (Bang.)(Trib.)

365 **S. 28(i) : Business Loss – Foreign exchange fluctuation loss – Mark to Market basis – SLP of revenue is dismissed. [S.37(1)]**
SLP of Revenue is dismissed, foreign exchange fluctuation loss. Mark to Market basis. From the Judgement of Gujarat High Court (ITA No. 1000 of 2017 dt 27-6-2018 (AY. 2009-10)
PCIT v. Suzlon Energy Ltd. (2021) 276 Taxman 85 (SC)
Editorial: Followed, PCIT v. Suzlon Energy Ltd. (SLP No. 1422 of 2019 dt 17-1-2020 (SC)

S. 28(i) : Business loss – Recording notional loss or profit – Method of accounting – Current assets – Loss on revaluation and sale of bonds – Consistent method – Allowable as business loss [S. 37(1), 145] 366

Dismissing the appeal of the Revenue the Court held that the assessee had got cash only upon sale of the bonds. Till such time the bonds could not be treated as capital asset and not even as stock-in-trade. The assessee had recorded notional loss or profit on revaluation of the earlier years and had followed such procedure in the subject assessment year 1996-97 also. There was consistency in the pattern followed by the assessee and considering the nature of business it was doing the bonds were rightly treated as current assets. The findings of facts recorded by the Tribunal were proper and correct. The option of treating the receivables converted as bonds realisable at a future point of time was tenable and running out of cash reserves the decision to treat the bonds also as receivables had been taken. On the facts, the treatment of an entry in a particular method needed to be appreciated.(AY.1996-97)

CIT v. Bhageeratha Engineering Ltd. (No. 1)(2021) 439 ITR 704 283 Taxman 110 (Ker.)(HC)

S.28(i):Business loss – Chit business – Bid loss – Mercantile system of accounting – Remanded to the Assessing Officer [S. 37(1)), 145] 367

Appeal by the Revenue the Court held that the Assessing Officer had recorded a finding that the assessee had failed to substantiate its claim by producing evidence. However, this aspect of the matter was neither considered by the Commissioner (Appeals) nor the Tribunal. The matter was remitted to the Assessing Officer and the assessee was to be granted an opportunity to substantiate its claim for deduction of bid loss by adducing cogent material and to decide the issue in the light of the decision of the Supreme Court in the case of *Taparia tools v. JCIT (2015) 372 ITR 605 (SC).* (AY.2005-06)

CIT v. Shriram Chits (Karnataka) Pvt. Ltd. (2021) 430 ITR 414 (Karn.)(HC)

S. 28(i) : Business loss – Foreign exchange forward contract cover from Bank – Maturity date falling on April, May and June 2013 – Entitle to claim loss only in the year of actual loss [S. 37(1), 143(3), 145] 368

Held that the assessee had booked the loss in the profit and loss account considering the closing marked to market rate as on March 31, 2013. But the maturity date mentioned in the contract fell on April, May and June 2013. The loss calculated by the assessee as on March 31, 2013 was only notional loss and the actual loss arose only when it failed to fulfil the terms of the contract on the respective contract maturity date. Therefore, this loss actually fell on April, May and June 2013. It pertained to the next assessment year, and the assessee could claim this loss only in the year of actual loss.(AY.2013-14)

ACIT v. Madura Garments Lifestyle Retail Co. Ltd. (2021) 92 ITR 11 (SN)(Mum.)(Trib.)

S. 28(i): Business loss – Speculation Loss – Loss on purchase of commodities on National Spot Exchange for which delivery receipts issued but not delivered – Allowable as business loss – Unsettled contract of purchase or sale is not speculative transaction [S. 43(5)] 369

Held that the Assessing Officer had erred in treating the transaction of purchase and sale as commodity derivative transactions and a speculative transaction not fitting into exception provided in clause (e) of the proviso to section 43(5) of the Act. The

Assessing Officer erred in interpreting the proviso enacted to give different meaning for certain types of contracts listed in clauses (a) to (e) which otherwise would be treated as speculative transaction in terms of section 43(5) of the Act. The proviso to section 43(5) of the Act was meant to exclude certain types of transactions from the definition of speculative transaction by treating them as non-speculative. It therefore follows that for any transaction to be treated as deemed/non-deemed speculative transaction, it has to first fit into the definition of speculative transaction as defined in section 43(5) of the Act before the proviso. Since a contract of purchase or sale itself does not fall into definition of speculative transaction" as they were not settled, the question does not arise at all of treating transaction as commodity derivative not qualifying or fitting into clause (e) of the proviso to section 43(5) of the Act. Accordingly the Loss on purchase of commodities on National Spot Exchange for which delivery receipts issued but not delivered, allowable as business loss. Unsettled contract of purchase or sale is not speculative transaction. (AY. 2014-15, 2016-17)
Dy.CIT v. Nirshilp Securities Pvt. Ltd (2021) 90 ITR 338 (Mum.)(Trib.)
Dy.CIT v. Dolat Investment Ltd. (2021) 90 ITR 338 (Mum.)(Trib.)

370 **S. 28(i): Business loss – Foreign exchange loss – No depreciable assets – Allowable as revenue expenditure – Foreign exchange gain to be assessed as business income.**
Held that Foreign exchange loss on depreciable assets allowable as revenue expenditure and Foreign exchange gain to be assessed as business income. (AY. 2009-10, 2010-11)
Paramount Communications Ltd. v. Dy. CIT (2021) 90 ITR 20 (Delhi)(Trib.)

371 **S. 28(i) : Business loss – Advance to subsidiary – Amount written off – Allowable as business loss – Conversion of capital asset in to stock in trade – Loss on sale of stock in trade – Allowable as business loss.**
Held that advance to subsidiary for setting up of thermal power plant. Project was rejected by Ministry of Environment and Forest. Loss written off was held to be allowable as business loss. Loss of sale of stock in trade allowable as business loss. (AY.2011-12 to 2017-18)
Sinnar Thermal Power Ltd. v. Dy CIT (2021) 89 ITR 263 (Mum.)(Trib.)

372 **S. 28(i) : Business loss – Foreign exchange losses – Marked-to-market losses on hedging contracts – Allowable as deduction – Tribunal admitted additional grounds. [S. 37(1)]**
Held that Marked-to-market losses on hedging contracts. Allowable as deduction. Tribunal admitted additional grounds. (AY.2012-13)
KEC International Ltd. v. Dy.CIT (2021) 88 ITR 246 (Mum.)(Trib.)

373 **S. 28(i) : Business loss – Client code modification – Alleged bogus loss – National stock exchange – Less than 1 percent of total**
Held that number of transactions in respect of which client codes were modified were less than 1 per cent of total transactions carried out by assessee. Client code could not be called a colourable device adopted for shifting out and shifting in profit/loss. Deletion of addition was held to be justified. (AY. 2010-11)
DCIT v. Kaizen Stock Trade (P.) Ltd. (2021) 191 ITD 222 (Ahd.)(Trib.)

S. 28(i): Business loss – Forward contract – Hedge against fluctuation in foreign exchange – Marked to market loss arising on valuation of forward contract on closing date of accounting year was to be allowed as business loss – Accounting Standard 11. [S.43(5)] 374

Assessing Officer following the CBDT Instruction No. 3 of 2010 disallowed loss claimed by assessee holding that same being marked to market loss was speculative and notional in nature. On appeal the Tribunal held that since assessee-company had been consistently following mercantile system of accounting and accounting standard-11 over years and applying closing rate of foreign currency at year end, marked to market loss (MTM Loss) arising on valuation of forward contract on closing date of accounting year was to be allowed as business loss under section 28(i) of the Act. (AY. 2016-17)

VVF (India) Ltd. v. ACIT (2021) 190 ITD 843 (Mum.)(Trib.)

S. 28(i) : Business loss – Real estate business – Earnest money forfeited – Allowable as business loss – Commission paid to agent for purchase of plots of land – Transaction not materialise due to failure to pay full amount of consideration – Allowable as business loss. [S. 37 (1)] 375

Tribunal held that earnest money forfeited was allowable as business loss. Commission paid to agent for purchase of plots of land. Transaction did not materialise due to failure to pay full amount of consideration. Allowable as business loss. (AY. 2013-14)

ACIT v. K.B. Developers (2021) 189 ITD 344 (Kol.)(Trib.)

S. 28(i) : Business loss – Forward contract – Hedging loss – Foreign exchange loss – Allowable as business loss [S.37 (1)] 376

Tribunal held that forward contracts were incidental to carrying on business of export of assessee and were done to cover up losses on account of difference in foreign exchange valuation, hedging loss was allowable as business loss. (AY. 2013-14)

DCIT v. GBTL Ltd. (2021) 189 ITD 704 / 212 TTJ 526/ 203 DTR 353 (Mum.)(Trib.)

S. 28(i) : Business loss – Loss on securities – Mark-to-Market loss – Unrealised foreign exchange loss allowable as business loss. [S.37 (1)] 377

The AO's view that unrealized forex loss was neither an accrued loss nor an actual loss and it does not fit into any of the criteria prescribed for allowability of an expenditure or loss as per the provisions of the Act. Part D of the Ch. IV of the Act prescribes provision for computation of income under the head profits and gains from business and profession. None of the provisions of Part D of the Act specified any allowances or deductions of the unrealized forex loss computed on MTM basis by the assessee and therefore, the AO added back to the total income of the assessee. While allowing the appeal of the Assesee the CIT(A) and Tribunal held that loss on securities marked to market, unrealised foreign exchange loss is allowable. (AY. 2011-12)

Dy CIT v. KEC International Ltd. (2021) 87 ITR 587 (Mum.)(Trib.)

378 **S.28(1) : Business loss – Bad debt – Business of Financing and investing – Giving Guarantees was one of the object – Borrowers for whom guarantee given, defaulted and assessee repaid the loan amount – Assessee recovered partial amount from borrowers and balance unrecovered amount written off, was held allowable as business loss. [S. 36(2)]**

Assessee Company stood as guarantee by mortgaging its Land on behalf of borrower companies. On default by borrower companies assessee re-paid the loan amounts, but could recover only partial amount on settlement with borrowers. Assessee wrote off the balance unrecovered amount u/s 36(2). The A.O disallowed the claim stating that the conditions of section 36(2) are not fulfilled as the assessee had not received any guarantee commission from the borrower. Held that, the entire transaction cannot be considered as a colourable device, as all the transactions were in the ordinary course of business undertaken with third parties through bank accounts and registered mortgage deeds spread over a period of 5 years. The balance written off though may not fulfill condition of section 36(2), but is allowable as business loss suffered in carrying out its ordinary course of business. (AY. 2015-16)

WGF Financial Services Pvt. Ltd. v. CIT (2021) 87 ITR 14 (SN)(Delhi)(Trib.)

379 **S. 28(i) : Business loss – Trading activities in stock and commodities – Provision for loss mark to market loss on trading in derivative – Allowable as business loss [S.37 (1)]**

The assessee made provision for mark to market loss on trading in derivative instruments. Assessing Officer disallowed the said loss holding that mark to market loss at best could be an unascertained liability or a provision for loss which might or might not incur at time of settlement of contract at future date. Commissioner (Appeals) deleted the addition The Tribunal held that even though loss was not finally crystallized as per prudent and regular system of accounting, loss had to be accounted for and, thus, same should be allowed (AY. 2012-13)

DCIT v. Edelweiss Commodities Services Ltd. (2021) 186 ITD 189 / 198 DTR 234 / 210 TTJ 914 (Mum.)(Trib.)

380 **S. 28(i) : Business loss – Commencement of business – Purchase and sale – A single transaction may constitute business – Business expenditure are allowable and loss is entitle to carryforward. [S. 2(13) 37(1), 79]**

The Assessing Officer disallowed the loss on the ground that the assessee had only shown a single purchase and sale during the first quarter, and thereafter no business transaction had been made in the whole financial year to generate revenue. CIT (A) affirmed the order of the Assessing Officer. On appeal the Tribunal held even a single transaction may constitute business as defined in section 2(13). It is not necessary that there should be a series of transactions both of purchase and sale to constitute trade. The assessee had filed a list of employees hired by the assessee, form 6 of the chief executive officer of the company, invoices of fixed assets such as computer and other peripherals, and a table of its purchase and sale. The assessee had commenced its business in the assessment year as it had made its sale and purchase. Loss is allowed to be carried forward. (AY. 2016-17)

IFFCO E-Bazar Ltd v. ACIT (2021) 85 ITR 38 (SN)(Delhi)(Trib.)

S. 28(i) : Business loss – Goods lost due to burning – Estimate made per consumption and production of goods accurate – Addition made on estimate basis rejected. [S.143 (3)] 381

Tribunal held that there was no standard percentage of burning loss in furnace, which varied from furnace to furnace ; as a single kind of scrap could not be used, the percentage of loss varied from scrap to scrap. Moreover, the assessee's record of the burning loss agreed with the consumption and production of finished goods. The Assessing Officer's addition made on estimate basis was not sustainable..(AY.2014-15)

Shri Anant Steel Pvt. Ltd. v. ITO (2021)85 ITR 60 (SN)(Delhi)(Trib.)

S.28 (i): Business loss – Sales return – Allowable as business loss – Failure to challenge the revision order is not a bar for filing an appeal against the order passed pursuant of revision [S. 250, 263, 254(1)] 382

Dismissing the appeal of the Revenue the Tribunal held that that there was no conclusive finding given by the Principal Commissioner on the issue of allowability of the claim of Rs. 13 lakhs on account of sales return. Hence, when the Assessing Officer had to take a decision based on the outcome of the enquiry conducted in the proceedings pursuant to the revision order under section 263 then the finding of the Assessing Officer was subjected to challenge in the appeal and non-challenge of the revision order passed under section 263 would not operate as a bar for filing the appeal against the order passed by the Assessing Officer. Distinguished *Hardillia Chemicals Ltd. v. CIT (1996) 221 ITR 194 (Bom.)(HC)*. On merit the Tribunal held that the business loss is allowable deduction in respect of sales returned.(AY.2011-12)

ITO v. Elegant Buildhome P. Ltd. (2021) 85 ITR 239 (Jaipur)(Trib.)

S. 28(iiic) : Business income – Duty Customs or Excise repaid – Capital asset – Project was not in operation Reduce cost of project – Cannot be assessed as income. [S.4, 145] 383

Dismissing the appeal of the Revenue the Court held that as the project was not in operation during said year and it lodged a claim for refund of excise duty with Director General of Foreign Trade as deemed export benefits, since amount of excise duty related to cost of acquisition of capital assets/project, refund of excise duty would ultimately reduce cost of project and could not be treated as business income. (AY. 2011-12)

PCIT v. Maithon Power Ltd. (2021) 124 taxmann.com 204 (Delhi)(HC)

Editorial : SLP of Revenue is dismissed, PCIT v. Maithon Power Ltd. (2021) 277 Taxman 406 (SC)

S. 28(iv) : Business income – Value of any benefit or perquisites – Converted in to money or not – Amalgamation – Excess of net consideration over value of companies taken over – Not assessable as income. [S. 4] 384

Dismissing the appeal of the Revenue the Court held that the provisions of section 28(iv) of the Act make it clear that the amount reflected in the balance sheet of the assessee under the head reserves and surplus cannot be treated as a benefit or perquisite arising from business or exercise of profession. The difference in amount post amalgamation was the amalgamation reserve and it cannot be said that it was out of normal transaction of the business being capital in nature, which arose on account

of amalgamation of four companies, it cannot be treated as falling under section 28(iv). Followed *CIT v. Stads Ltd. (2015) 373 ITR 313 (Mad.)(HC)*.(AY.2006-07)
CIT(LTU) v. Areva T & D India Ltd. (2021) 434 ITR 604 (Mad.)(HC)

385 **S. 28(iv) : Business income – Value of any benefit or perquisites – Converted in to money or not – One time settlement with bank – No reply was received from bank in response to notice issued under section 133(6) – Failure to produce books of account – Matter remanded to the Assessing Officer [S. 41(1), 133(6)]**
Assessee owed a sum towards loan to bank. Subsequently, in one time settlement programme said loan was waived off by bank. Assessing Officer held that waived amount was income of assessee under section 28(iv). Assessing Officer assessed the waiver amount as income. Order of the Assessing Officer is affirmed by CIT (A) and Tribunal. On appeal the Court held that
Assessing Officer had also called for information from bank under section 133(6) in this regard, however, no reply was received. Therefore in absence of any particulars pertaining to previous years books of account, it was difficult to arrive at a decision and, therefore, in order to grant one more opportunity to assessee for production of books of account to substantiate its case, matter was to be remanded back to Assessing Officer. (AY. 2004-05)
Kothari International Trading Ltd. v. ACIT (2021) 277 Taxman 644 (Mad.)(HC)

386 **S. 28(iv) : Business income – Value of any benefit or perquisites – Converted in to money or not – Co-owner – Excess share of land received on partition – Not assessable as business income [S. 2(47), 45]**
Firm purchased a vacant land along with another firm by making equal contribution of investment. Land was retained for 34 months and later both assessee and co-owner entered into a partition deed. In partition, assessee got excess land than co-owner. The Assessing Officer assessed the excess land received as an extra benefit and same was chargeable to tax under section 28(iv) of the Act. On appeal the Tribunal held that the land was shown as capital asset and it remained as capital asset till its partition.-No business activity was carried on by co-owners. Therefore extra land received by assessee on partition cannot be assessed as business income u/s 28 (iv) of the Act. (AY. 2014-15)
ITO v. Undavalli Constructions. (2021) 191 ITD 749 (Vishakha)(Trib.)

387 **S.28 (iv): Business income – Grant received for specific purpose i.e., for procuring a capital asset, this receipt being in cash could not have been taxed u/s. 28(iv) [S.4]**
Held that, grant received for specific purpose i.e., for procuring a capital asset, is in nature of a capital receipt, not subject to tax, and this receipt being in cash could not have been taxed u/s. 28(iv). (AY. 2009-10)
Pricewaterhouse Coopers (P.) Ltd. v. ACIT (2021) 189 ITD 329 (Kol.)(Trib.)

388 **S. 28(iv) : Business income – Value of any benefit or perquisites – Forfeiture of advance money – Benefit or perquisite arising from the business shall not be in monetary form – Not taxable – Amount would go to reduce the cost of property. [S. 51]**
A sum of Rs. 3 Crores advanced as loan by the director of the Assessee Company for its projects was converted into advance money for sale of property of the Assessee

as it was unable to repay the loan. Subsequently the director was unable to pay the balance amount for purchase of the said property and therefore the advance money was forfeited by the Assessee company in terms of sale agreement. The AO held that the sale agreement was a colorable device and that the forfeited amount represents income u/s 28(iv) in the hands of the Assessee. The Tribunal followed the decision of the Mahindra & Mahindra Ltd. (2018) 404 ITR 1 and held that the provisions of section 28(iv) of the Act would not have application to any transaction involving money. In the present case, Rs.3 crores represented advance money forfeited by the assessee and the same also represents cash received on forfeiture of advance money, therefore, section 28(iv) is not applicable to the case. The Tribunal further allowed the claim of the Assessee that the amount would go to reduce cost of the property under section 51 of the Act. (AY. 2011-12)
Archana Traders Pvt. Ltd. v. ITO (2021) 189 ITD 626 / 214 TTJ 231 / 206 DTR 393 (Bang.) (Trib.)

S. 28(va) : Business income – Compensation received for refraining from carrying on competitive business – Capital receipt – Prior to 1-4 2003. [S. 4] 389
Held compensation received for refraining from carrying on competitive business was capital receipt and not taxable prior to 1-4 2003. (AY. 2002-03)
CIT v. M. Ranjan Rao (2021) 280 Taxman 59 (Mad.)(HC)

S. 28(va) : Business income – Cash or kind – Compensation received for pre closure of contract manufacturing agreement – Capital receipt for loss of business or investment [S. 4] 390
Held that compensation received for termination of a manufacturing agreement is a receipt for loss of investment in business or loss of profit from business and cannot be treated as a revenue receipt liable to be taxed under section 28(va)(a) of the Income-tax Act, 1961. Relied on *CIT v. Parle Soft Drinks (Bangalore P. Ltd.) [2018 406 ITR (St.) 33 (SC)*.(AY.2007-08)
Sai Mirra Innopharm P. Ltd. v. ITO (2021) 87 ITR 235 (Chennai)(Trib.)

S. 32 : Depreciation – Unabsorbed depreciation – Amendment of Section 32(2) by Finance Act, 2001 – Unabsorbed depreciation or part – Carry forward and set of permitted till final set-off [S.32(2)] 391
High Court dismissed the Department's appeal from the order of the Tribunal directing the Assessing Officer to allow carry forward of depreciation which has been allowed to the assessee because unabsorbed depreciation up to 1997-98 would become depreciation of the current year and to be treated in accordance with law, on a petition for special leave to appeal, dismissing the petition, the Court held that in view of the judgments of the Delhi, Gujarat, Madras and Bombay High Courts on the interpretation of section 32(2) of the Income-tax Act, 1961 having been upheld by dismissal of Special Leave Petitions therefrom by the Supreme Court, the question of law did not have to be determined in these special leave petitions.
PCIT v. Petrofils Co-Operative Ltd. (2021) 431 ITR 501 (SC)

392 **S. 32 : Depreciation – Roads – Improvement and development of State Highways – Entitle was entitled depreciation prescribed to building.**
Dismissing the appeal of the Revenue the Court held that the Tribunal was justified in holding that although road is not a plant or machinery, it was eligible for depreciation as a building, as per Appendix prescribing rate of depreciation which says building includes roads. Following *CIT v. Tamil Nadu Road Development Co Ltd (2021) 279 Taxman 125 (Mad.)(HC))*(AY. 2002-03 to 2005-06)
CIT v. Tamil Nadu Road Development Co. Ltd. (2021) 283 Taxman 168 (Mad.)(HC)
Editorial :Tamil Nadu Road Development Co. Ltd v. ACIT (2009) 120 ITD 20 (Chennai)(Trib.) is affirmed

393 **S. 32 : Depreciation – Plant and machinery – Ponds and reservoirs – Pollution control equipments – Aerators – Depreciation allowable at 25% as against 100% claimed by the assessee – Approach road, drainage, borewells, reservoirs etc – Depreciation allowable at 10 % as against 25% claimed by the assessee. [S. 43(3)]**
The assessee is in the business of prawn cultivation. The assessee claimed depreciation on ponds and reservoirs at 100% treating the same as pollution control equipments. Tribunal affirmed the order of Assessing Officer who allowed the depreciation at 25%. High Court affirmed the order of Tribunal. The assessee also claimed depreciation at 25% on approach road, drainage, borewells, reservoirs etc. The Assessing Officer allowed the depreciation at 10%. The Tribunal affirmed the order of the Assessing Officer. On appeal High Court affirmed the order of Tribunal. (AY. 1994-95, 1995-96)
Industrial Incubators (P) Ltd v. Dy. CIT (2021) 323 CTR 1001 / (2022) 209 DTR 277 / 284 Taxman 465 (Orissa)(HC)

394 **S. 32 : Depreciation – Part of building let out to sister concern – Disallowance of depreciation is held to be justified [S. 22]**
Court held that the disallowance of part depreciation claimed by the assessee of the building rented out to its sister concern, the Tribunal had merely followed its earlier view and rejected such claim. (AY. 2003-04)
Apollo Tyres Ltd. v. Dy. CIT (2021) 438 ITR 526 / 283 Taxman 427 (Ker.)(HC)

395 **S. 32 : Depreciation – Business of mining and transportation – Dumpers – Higher rate of depreciation of 30% is allowable – No substantial question of law [S.260A]**
Tribunal held that the assessee engaged in providing equipment and motor vehicles for hire had received contracts which included transportation of excavated minerals, was eligible for higher depreciation. High Court affirmed the order of Tribunal (AY.2011-12 to 2013-14)
PCIT v. H.D. Enterprises (2021) 130 taxmann.com 289 (Guj.)(HC)
Editorial : SLP of Revenue dismissed, PCIT v. H.D. Enterprises (2021) 282 Taxman 382 (SC)/ (2021) 438 ITR 2 (ST)(SC)

S. 32 : Depreciation – Unabsorbed depreciation – Set-off – Allowed to be carried forward and set off after a period of eight years without any limit as per section 32 (2) as amended by Finance Act, 2001 [S. 32 (2)] 396

Dismissing the appeal of the Revenue the Court held that unabsorbed depreciation pertaining to assessment year 1997-98 could be allowed to be carried forward and set off after a period of eight years without any limit whatsoever in accordance with section 32(2) as amended by Finance Act, 2001. Followed General Motors India (P) Ltd (2013) 354 ITR 244 (Guj.)(HC)) (AY. 1997-98)

PCIT v. Petrofils Co-op. Ltd. (2021) 130 taxmann.com 190 (Guj.)(HC)

Editorial : SLP of Revenue was dismissed; PCIT v. Petrofils Co-op. Ltd. (2021) 282 Taxman 319 (SC)

S. 32 : Depreciation – Carry forward and set off – Unabsorbed depreciation on 1-4-2002 can be carried forward and set off without taking into account number of years of such carry forward.[S. 32 (2)] 397

Dismissing the appeal of the Revenue the Court held that unabsorbed depreciation relating to the assessment year 1997 -98 to 200-01 was eligible for set off against income for the assessment year 2005 -06. Circular No. 14 of 2001 dated November 9, 2001 ([2001] 252 ITR (St.) 65, 90).(AY.2007-08)

CIT v. KMC Speciality Hospitals India Ltd. (2021) 436 ITR 534 / 283 Taxman 13 (Mad.) (HC)

S. 32 : Depreciation – Building – Road – Entitle to depreciation at 10% – Depreciation on property held on lease – Depends on terms of lease – Matter remanded. [S. 32(1)(ii)] 398

Tribunal is justified in allowing the depreciation at 10% on roads. Court also held that the land on which the facility had been developed by the assessee, was owned by the SIPCOT and the development consisted of providing roads inside the IT Park, establishment of a multi-level car parking, etc. Under the agreement, the assessee had to develop these facilities and maintain them and the period was stated to be 99 years, which is virtually perpetual. Therefore, a deeper examination of the factual issue was warranted. The matter had to be readjudicated by the Assessing Officer, for which purpose, the Assessing Officer had to analyse the agreement dated September 21, 2005 entered into between the assessee and the SIPCOT and not go merely by the nomenclature.(AY. 2007-08 to 2010-11, 2012-13 and 2013-14)

CIT v. Tamilnadu Road Development Company Ltd. (2021) 436 ITR 323 (Mad.)(HC)

S. 32 : Depreciation – Additional depreciation – Machinery was put to use for less than 180 days – Balance depreciation of 50% is allowable in subsequent year. [S. 32(1)(iia)] 399

Dismissing the appeal of the Revenue the Court held that in terms of section 32(1) (iia), there is no restriction on assessee to carry forward additional depreciation and, thus, where assessee claimed 50 per cent of additional depreciation in year of purchase of machinery as it was put to use for less than 180 days during said year, there is no restriction in Act to deny benefit of balance 50 per cent in subsequent year.(AY.2007-08, 2009-10, 2010-11)

CIT v. Hinduja Foundries Ltd. (2021) 281 Taxman 448 (Mad.)(HC)

400 **S. 32 : Depreciation – Computer system – Switches and routers – Part of peripherals of computer system – Entitled to depreciation at rate of 60 per cent**
Dismissing the appeal of the Revenue the Court held that computer accessories such as switches and routers form part of peripherals of computer system. Entitled to depreciation at rate of 60 per cent. (AY. 2004-05)
PCIT v. Mphasis Ltd. (2021) 281 Taxman 206 (Karn.)(HC)

401 **S. 32 : Depreciation – Use of asset for purposes of business – Income need not be earned – Depreciation is allowable – Block of asset – Remand to CIT(A) is held to be justified [S. 2(11), 254 (1)]**
Court held that the Tribunal had agreed that no income need be earned by use of the asset to claim depreciation. However the Tribunal had remitted the matter back to the Commissioner (Appeals) to inquire into the question whether the assets were put to use in the relevant year before adding them to the block of assets. This was a relevant factor to be established by the assessee. The order remanded was justified.(AY. 2011-12, 2012-13)
Rato Dratsang v. ITO (E) (2021) 435 ITR 372 (Karn.)(HC)

402 **S. 32 : Depreciation – Road developed and maintained by it – Entitle to depreciation at 10 percent – Depreciation on Lease hold rights in land – Matter remanded back to Assessing Officer with the direction to analyse contents of agreement entered in to between assessee and SIPCOT and not go merely by nomenclature or title of document.**
Court held that the assessee was entitled to claim depreciation at rate of 10 per cent on roads developed and maintained by it under an agreement with State Government treating same as building. As regards depreciation on Lease hold rights in land matter remanded back to Assessing Officer with the direction to analyse contents of agreement entered in to between assessee and State Industries Promotion Corporation of Tamil Nadu (SIPCOT) and not go merely by nomenclature or title of document. (AY. 2007-08 to 2010-11 & 2013-14)
CIT v. Tamilnadu Road Development Company Ltd. (2021) 436 ITR 323 / 279 Taxman 125 (Mad.)(HC)

403 **S. 32 : Depreciation – Property acquired in exchange of extinguishment of tenancy rights – Depreciation allowable – Non-Compete fee – Depreciation allowable on principle of consistency.**
Dismissing the appeal of the Revenue the Court held that depreciation is allowable in respect of property acquired in exchange of relinquishment of tenancy rights in another property. Court also held that depreciation on non-compete fees is allowable. Followed *CIT v. Areva T & D India Ltd. (2012) 26 taxmann.com 266 (Mad.)(HC)*.(AY.2006-07)
CIT(LTU) v. Areva T & D India Ltd. (2021) 434 ITR 604 (Mad.)(HC)

404 **S. 32 : Depreciation – Windmill – Generated a small amount of electricity – Entitle to depreciation.**
Dismissing the appeal of the Revenue the Court held that though the assessee's windmills were said to be connected with the grid at 2100 hours, on March 31, 1999,

the meter reading practically showed 0.01 unit of power and the Assessing Officer disallowed 50 per cent depreciation claimed by the assessee on the ground that the machines were not actually commissioned during the assessment year 1999-2000. The Tribunal held that the assessee was entitled to 50 per cent depreciation on two windmills. The Court held that Trial production by machinery kept ready for use can be considered to be used for the purpose of business to qualify for depreciation it would amount to passive use and would qualify for depreciation. (AY.1999-2000)
CIT (LTU) v. Lakshmi General Finance Ltd. (2021) 433 ITR 94 / 282 Taxman 82 (Mad.) (HC)

S. 32 : Depreciation – Assets leased – Search and seizure – Depreciation allowed is up held [S.132] 405
Dismissing the appeal of the Revenue the Court held that the assessee has discharged the onus to prove genuineness of transaction by furnishing necessary documents viz., copies of sanction letter, lease agreements, invoices, inspection records on various dates and inspection reports pertaining to pre-search and post-search period in support of its claim. Order of Tribunal is affirmed. (AY. 1997-98)
CIT v. Canara Bank (2021) 277 Taxman 440 (Karn.)(HC)

S. 32 : Depreciation – Machinery – Put to use less than 180 days – Additional depreciation – Allowable in subsequent assessment year [S. 32 (1)(iia)] 406
Dismissing the appeal of the Revenue when plant and machinery acquired by assessee in second half of financial year 2007-08 was put to use for less than 180 days 10 per cent of additional depreciation under section 32(1)(iia) is allowable in that year, balance additional depreciation of 10 per cent could be allowed on these assets in relevant subsequent assessment year 2009-10 (AY. 2009-10)
CIT v. Aztec Auto (P.) Ltd. (2021) 277 Taxman 273 (Mad.)(HC)

S. 32 : Depreciation – Unabsorbed depreciation – Carry forward and set off – Amendment of section 32(2) W.E.F. 1-4-1997 – Limitation for carry forward and set off is eight Years.[S.32 (2)] 407
Court held that in view of the amended provisions of section 32(2) of the Income-tax Act, 1961, with effect from April 1, 1997, the deeming fiction of treating the earlier years' unabsorbed depreciation as the current year's depreciation was removed and the period available for absorbing the unabsorbed depreciation against the profit of the succeeding years is limited to eight years. Accordingly the Tribunal was right in law in holding that the unabsorbed depreciation relating to assessment years 1997-98 to 2000-01 was eligible for set off against income of the assessee for the assessment year 2005-06.(AY. 2005-06)
Harvey Heart Hospitals Ltd. v. ACIT (2021) 431 ITR 83 (Mad.)(HC)

S. 32 : Depreciation – Asset put to use for less than 180 days – additional depreciation of 10% allowed in the year and balance 10% would be allowed in the subsequent year [S. 32(1)(iia)] 408
Assessee acquired plant and machinery in the second half of FY 2007-08 and the asset was put to use for less than 180 days in that year. Additional depreciation at 10% was

allowed in AY 2008-09 under section 32(1)(iia) of the Act and the balance additional depreciation at 10% was allowed in the subsequent year i.e. AY 2009-10. The High Court relied on the decision of DCIT v. Brakes India Ltd (IT Appeal No. 1069 (Mds) of 2010 dt. 6-1-2012) which has been approved by the Supreme Court. (AY.2009-10)
CIT v. Aztec Auto (P.) Ltd (2020) 119 taxmann.com 215 /(2021) 277 Taxman 273 (Mad.) (HC)

409 **S. 32: Depreciation – Granted in earlier years and latter years – Order set aside for fresh consideration**
A scheme of arrangement had been sanctioned by this Court in respect of the Petitioner, viz., Ponni Sugars (Erode) Limited, with a specific provision entitling it to claim depreciation in its tax returns on the basis of fair market value of fixed assets as on 01.04.1999. The AO disallowed depreciation for AY 2003-04. It was held that there is no justification to deny the Petitioner of the same benefit for the assessment year 2003-2004, which has been granted for the assessment years 2001-2002, 2002-2003, 2004-2005, 2005-2006 and 2006-2007. Matter remanded for fresh consideration, reasonable opportunity for hearing and a reasoned order on merit. (AY. 2003-04)
Ponni Sugars (Erode) Ltd. (2021) 197 DTR 133 / 318 CTR 676 (Mad.)(HC)

410 **S. 32 : Depreciation – Finance lease – Lessor of assets leased in course of leasing business – Depreciation allowable.**
Allowing the appeal of the assessee the Court held that the lessor of assets leased in course of leasing business is entitled to depreciation.(AY.2004-05) (AY. 2000-01)
Hewlett-Packard India Sales Pvt Ltd v. CIT (2021) 430 ITR 460 / 277 Taxman 524 / 202 DTR 293/ 279 Taxman 355 (Karn.)(HC)

411 **S. 32 : Depreciation – Assets leased to three companies – Search – Assets were not found – Transaction genuine or not is a question of fact – Order of Tribunal allowing the depreciation is affirmed. [S.132]**
Assessing Officer disallowed depreciation claimed on ground that assets were not found to be in existence in a search conducted under section 132 in premises of said companies. On appeal the CIT (A) held that the assessee had discharged onus to prove genuineness of transaction by furnishing necessary documents viz., copies of sanction letter, lease agreements, invoices, inspection records on various dates and inspection reports pertaining to pre-search and post-search period in support of its claim and Assessing Officer did not rebut corroborative evidence filed by assessee. Tribunal up held the order of the CIT (A). On appeal by the Revenue dismissing the appeal the Court held that since issue whether or not assets leased out by assessee to various companies were in existence at relevant time and whether transactions in question were genuine or not were a pure questions of fact, no question of law arose out of impugned order. (AY. 1999-2000)
CIT LTU v. Canara Bank (2021) 431 ITR 303 / 276 Taxman 392 (Karn.)HC)

S. 32 : Depreciation – Intangible asset – Concession agreement with Highways Authority – Engaged in construction and maintenance of by-Pass on build, operate and transfer basis – Eligible for depreciation [S. 32(1)(ii)] 412

Held that High way Authority of India Act under which the Authority had granted exclusive right, licence and authority to the assessee during the subsistence of the concession agreement to implement the project for a period of 20 years. The assessee had incurred cost on construction and development of the highway, and classified such cost incurred and the right to receive annuity on the toll road as an intangible asset eligible for depreciation under section 32(1)(ii) of the Income-tax Act, 1961. (AY.2013-14 to 2015-16)

Dy. CIT v. Gorakhpur Infrastructure Co. Ltd. (2021)92 ITR 42 (SN)(Mum.)(Trib.)

S. 32 : Depreciation – Policy administration software – Entitled depreciation at 60% as computer. 413

Held that Policy administration software is Entitled depreciation at 60% as computer. (AY. 2014-15)

Dy.CIT v. Indian Mortgage Gurantee Corporation Pvt Ltd (2021) 92 ITR 20 (SN)(Delhi) (Trib.)

S. 32 : Depreciation – Sale-cum-lease back transaction – Entitled to depreciation. [S. 43(1)] 414

Held that sale-cum-lease back transaction, entitled to depreciation. (AY. 2015-16)

Brace Iron and Steel Pvt. Ltd. v. Add. CIT (2021) 90 ITR 582 (Delhi)(Trib.)

S. 32 : Depreciation – Goodwill – Non-compete payment – Technical knowhow and other assets – Eligible for depreciation [S. 32 (1)(ii)] 415

Held that Goodwill, Non-compete payment, Technical knowhow and other assets are eligible for depreciation. (AY. 2012-13)

Johnson Matthey Chemicals India P. Ltd. v. Dy. CIT (2021) 90 ITR 75 (SN)(Pune)(Trib.)

S. 32 : Depreciation – Biometric system' is a 'Computer' and depreciation is to be allowed @60% 416

The Hon'ble Tribunal held that, if the biometric system is detached from the computer, the same does not serve the purpose for which it is intended. Therefore, held that biometric system is a computer and the depreciation required to be allowed is at higher rate. (AY. 2013-14)

Instrument Technologies v. ACIT (2021) 209 TTJ 675 (Vishakha)(Trib.)

S.32 : Depreciation – Goodwill – Capitalized goodwill on account of excess consideration – Commercial rights – Eligible depreciation. [S. 32(1)(ii)] 417

The Hon'ble Tribunal relying on the SC decision of *CIT v. Smifs Securities Ltd. (2012) 348 ITR 302 (SC)* and Hyderabad Tribunal in case of M/s SKS Micro Finance Ltd held that depreciation could not be denied to the Assessee merely because the assets were classified as 'goodwill' in the books of account without appreciating the true nature of the assets if they can fall under the scope of 'any other business or commercial rights

of similar nature'. It was further held that the specified intangible assets acquired under slump sale agreement were in the nature of "business or commercial rights of similar nature" specified in section 32(1)(ii) of the Act and were accordingly eligible for depreciation under that section. (AY.2015-16)
JX Nippon Two lubricant India Pvt Ltd v. DCIT (2021) 210 TTJ 722 / 202 DTR 59 (Delhi) (Trib.)

418 **S. 32 : Depreciation – Westland Helicopters – Block of asset User of asset – The concept of user of assets has to apply upon block of asset as a whole instead individual assets – Denial of depreciation is held to be not valid. [S. 2(11)]**
Held that when a particular asset is part of block of assets even when that particular asset is not used in the relevant assessment year, the depreciation is allowable. Followed *Sony India (P) Ltd v. CIT (2017) 88 taxmann.com 580 (Delhi)(HC), CIT v. Oswal Agro Mills Ltd (2011) 341 ITR 467 (Delhi)(HC)*(AY. 1995-96)
Pawan Hans Helicopters Ltd. v. DCIT (2021) 212 TTJ 1010 / 204 DTR 347/ (2022) 192 ITD 142 (Delhi)(Trib.)

419 **S. 32 : Depreciation – Rate of depreciation – Printer, Router, Scanner, Switches Forming Integral Part Of Computer System – Entitled To Depreciation At High Rate Of 60 Per Cent. – Bizerba weighing scales – Not part of computer – Not entitled to depreciation at 60 Per Cent.**
Held that printer, router, scanner, switches forming integral part of computer system. Entitled to depreciation at 60 Per Cent. Bizerba weighing scales are not part of computer and not entitled to depreciation at 60 Per Cent. (AY.2009-10 to 2011-12)
Dy.CIT v. Trinetra Super Retail Pvt. Ltd. (2021) 88 ITR 116 (Mum.)(Trib.)

420 **S. 32 : Depreciation – Uninterrupted power supply system – Part of computer – Entitled to depreciation at 60 Per Cent – Civil structure for water supply and drainage – Part of plant and machinery – Entitled to depreciation at 15 Per Cent.**
Held that UPS (uninterrupted power supply system) is entitled to depreciation at the rate of 60 per cent. on the ground that it was not a part of computer system. Civil structure for water supply and drainage is part of plant and machinery hence entitled to depreciation at 15 Per Cent. (AY.2013-14, 2014-15)
NLC India Ltd. v Dy. CIT (2021) 87 ITR 121 (Chennai)(Trib.)

421 **S. 32 : Depreciation – Computer software – Intangible asset – Entitled to depreciation at 60%.**
Dismissing the appeal of the revenue the Tribunal held that computer software being intangible asset entitled to depreciation at 60%. (AY. 2011-12)
Dy.CIT v. MPS Infotecnics Pvt. Ltd. (2021) 86 ITR 141 / 211 TTJ 230 / 201 DTR 209 (Delhi) (Trib.)

S. 32 : Depreciation – Car parked at premises of managing director – Gym Equipment – Depreciation cannot be disallowed on the ground that it was used by the managing director. 422

Held that depreciation on cars which are owned by the Company cannot be disallowed merely because they were parked in the premises of the managing director. Similarly Gym Equipment appearing in fixed assets in the balance sheet of the company depreciation on such assets cannot be disallowed on the ground that it was used by the managing director.(AY. 2011-12 to 2013-14)

ACIT v. Claridges Hotels Pvt. Ltd. (2021) 86 ITR 402 (Delhi)(Trib.)

S. 32 : Depreciation – Temporary discontinuance of business – Lull in the business – New assets acquired during the year – Depreciation allowable. 423

Held that new assets acquired during the year were used for the purposes of business hence depreciation is allowable. (AY. 2012-13 to 2014-15)

Suumeru Enterpises v. ITO (2021) 86 ITR 425 (Jaipur)(Trib.)

S. 32 : Depreciation – Intangible – Right to collect toll is an intangible asset – Entitle for depreciation at 25%. 424

The Assessing Officer following the decision in *CIT v. Noida Toll Bridge Co Ltd (2013) 213 taxman 333 (All)(HC)* restricted the depreciation on toll road to 10 %. The Tribunal following the decision in *ACIT v. West Gujarat Expressway Ltd (2017) 390 ITR 400 (Bom) (HC)* and *ACIT v. Progressive Construction Ltd (2018) 161 DTR 289/ 63 ITR 516/ 191 TTJ 549 (SB)(Hyd.)(Trib.)*, held that the assessee is entitled to depreciation at 25%. (dt. 18-5-2021)(AY. 2012-13, 2013-14)

BSC C & C Krunnli Toll Road Ltd v. DCIT (2021) BCAJ- July – P. 49 (Delhi)(Trib.)

S. 32 : Depreciation – Good will – Slump sale – Business transfer agreement – Succession, amalgamation, demerger – Depreciation is allowable on good will. 425

The Tribunal held that the payment made over and above the net asset value constitute goodwill. Upon considering the language of the fifth proviso to section 32(1), the Tribunal held that the said proviso is applicable to the cases of succession, amalgamation, and demerger i.e. transactions between related parties. On the facts the transactions not being related parties purchase would not fall under the categories of succession,amalgamation and demerger. Accordingly the scope of the fifth proviso to section 32(1) cannot be extended to transactions of purchases between two unrelated parties. The matter was remanded for verification. (dt. 1-11-2021)(AY. 2016-17)

TUV RRheinland Nife Academy Pvt Ltd v. ACIT (2022) BCAJ- January -P. 35 (Bang.)(Trib.)

S. 32 : Depreciation – Professional choreographer – Office-cum residence – Flats used office-cum residence – Proportionate depreciation is allowable. 426

Held that since flat as well as furniture was owned by assessee and was used for professional purpose, proportionate depreciation claimed by assessee was to be allowed. (AY. 2013-14)

ACIT v. Farah Khan (Ms.)(2021) 191 ITD 633 (Mum.)(Trib.)

427 **S. 32 : Depreciation – Car registered in the name of Director – Depreciation, expenses and interest is held to be allowable [S. 37(1)]**
Held that since car was reflected as an asset of company and car loan also appeared as a liability in balance sheet of company and car was used for business of assessee, depreciation is allowable even though it was bought by company in name of its director. (AY. 2009-10)
ITO v. Bajaj Herbals (P.) Ltd. (2021) 191 ITD 41 (Ahd.)(Trib.)

428 **S. 32 : Depreciation – Leased assets – Failure to claim due to mistake – Matter remanded.**
Held that since mistake of not claiming depreciation was realized during year by assessee and tax auditor while finalizing tax audit report incorporated these assets at opening WDV and certificate of tax auditor was also furnished, claim was allowable in terms of section 32 and matter be remitted back. (AY. 2012-13)
K. Raheja Corp. (P.) Ltd. v. DCIT (2021) 190 ITD 749 (Mum.)(Trib.)

429 **S. 32 : Depreciation – Additional depreciation – Collection centres – Additional depreciation is held to be allowable on assets used in collection centres.**
Tribunal held that the collection centres of assessee were also integral part of whole process of business of diagnostic and report making central facilities. Additional depreciation on assets used by assessee in those collection centres should also be allowed. (AY. 2012-13, 2014-15)
Metropolis Healthcare Ltd. v. DCIT (2021) 190 ITD 331 (Delhi)(Trib.)

430 **S. 32 : Depreciation – Plant and machinery – Installed and ready to use – Depreciation is allowable.**
Held plant and machinery was installed and ready for use in business even if asset was not put to use in business, depreciation is allowable. (AY. 2013-14)
DCIT v. Agile Electric Sub Assembly (P.) Ltd. (2021) 188 ITD 780 (Chennai)(Trib.)

431 **S. 32 : Depreciation – Vehicles – Registration was in the name of individual directors – Depreciation cannot be denied.**
Held that depreciation on vehicles and wealth tax paid on said vehicles cannot be denied on the ground that the registration of the vehicle was in the name of directors. (AY. 2009-10)
DCIT v. Edelweiss Financial Advisors Ltd. (2021) 188 ITD 834 (Ahd.)(Trib.)

432 **S. 32 : Depreciation – Stock exchange card – demutualized/corporatized into shares in earlier year – Depreciation is held to be allowable.**
Held that depreciation on stock exchange card is allowable. Followed the order of earlier year. (AY. 2009-10)
DCIT v. Edelweiss Financial Advisors Ltd. (2021) 188 ITD 834 (Ahd.)(Trib.)

S. 32 : Depreciation – iPad is a communicating device and not a computer, hence, ineligible for higher rate of depreciation of 60 per cent. 433
Dismissing the appeal of the assessee the Tribunal held that iPad is a communicating device and not a computer, hence, ineligible for higher rate of depreciation of 60 per cent. Referred *Commissioner of Customs v. Dilip Kumar (2018) 95 taxmann.com 327 (SC)* (AY. 2012-13, 2013-14)
Kohinoor Indian (P) Ltd v. ACIT (2021) 191 ITD 593 (Amritsar)(Trib.)

S.32: Depreciation – Software – Capital or revenue – If assessee's claim allowed, claim to depreciation for following year would become infructuous. [S.37 (1)] 434
The assessee had claimed expenditure incurred on software in the earlier assessment year as revenue expenditure. The AO treated it as capital expenditure and granted statutory depreciation at 25 per cent. The assessee claimed depreciation on the opening WDV. The CIT(A) refused to entertain the claim for the current year on the ground that the assessee had not accepted the Department's stand in the matter for the earlier year and could not in the same breath claim depreciation on such disputed item of expenditure in the subsequent year. Tribunal held that the assessee had challenged the decision of the AO in earlier year and the appeal was pending. If so, in case the assessee's claim was allowed, its claim on this issue would become infructuous. (AY. 2012-13)
Dy. CIT v. Sisecam Flat Glass India Ltd. (2021) 87 ITR 1 (SN)(Kol.)(Trib.)

S. 32 : Depreciation – Computer software – Intangible asset – Entitled to depreciation at 60% Per Cent. 435
Dismissing the appeal of the revenue the Tribunal held that computer software was entitled to depreciation as intangible asset at 60%.(AY.2011-12)
Dy.CIT v. MPS Infotecnics Pvt. Ltd. (2021) 86 ITR 141 (Delhi)(Trib.)

S. 32 : Depreciation – Biometric devices – Computer – Eligible depreciation at a higher rate [S. 32(1)(ii)] 436
Held that Biometric system is a computer hence is eligible for depreciation at a higher rate. (AY. 2013-14)
Instrument Technologies v. ACIT (2021) 198 DTR 17 (Vishakha)(Trib.)

S. 32 : Depreciation – Computer peripherals – Entitled for higher depreciation [S. 32(1(ii) 437
Held that computer peripherals is entitled for higher depreciation. (AY. 2010-11)
Barclays Shared Services (P) Ltd. v. ACIT (2021) 202 DTR 185 (Pune)(Trib.)

S. 32 : Depreciation – New assets purchased – Disallowance of depreciation is not proper. [S.44AB] 438
Held that when the financials of the assessee-company were audited under section 44AB of the Income-tax Act, 1961 and the date of purchase of the assets had been brought on record, it was evident that no new assets were purchased during the year under assessment, there was no illegality or infirmity in the findings given by

the Commissioner (Appeals). However, the deletion of addition of Rs. 28,76,386 was subject to verification by the Assessing Officer as to the date of purchase of the assets as claimed by the assessee. (AY. 2012-13)
DCIT v. N E Television Network Pvt. Ltd. (2021) 91 ITR 59 (SN)(Delhi)(Trib.)

439 **S. 32: Depreciation – Home-Theatre – Used for exhibiting technological developments in field of software to employees and customers – Depreciation is allowable.**
Held that home-Theatre is used for exhibiting technological developments in field of software to employees and customers. Depreciation is allowable. (AY. 2014-15)
DCIT v. Tally Solutions Pvt. Ltd. (2021) 91 ITR 66 (SN)(Bang.)(Trib.)

440 **S. 35 : Scientific research – Amount spent by 100 Per Cent. Export Oriented Industrial undertaking – Entitle to deduction [S.10A, 10B, 35(2AB)]**
Allowing the appeal of the assessee the Court held that the deduction under section 10B of the Act is qua the undertaking and is given in respect of the profits of business of the undertaking whereas the deduction under section 35(2AB) of the Act is given effect at a later stage while computing the total income of the assessee at the entity level. Therefore, the deductions granted under section 10B and section 35(2AB) of the Act are independent. The deduction under section 35(2AB) of the Act is an expenditure-based deduction whereas the deduction under section 10B of the Act is an income-based deduction. Sub-section (6) of section 10B as amended by the Finance Act, 2003 with effect from April 1, 2001 provides that after April 1, 2001, units entitled to deduction under section 10B of the Act are to be treated on par with other units and will also be entitled to deductions available under the Act under sections 32, 35, etc. Hence a 100 per cent. export-oriented company is entitled to deduction of the amount spent on scientific research under section 35(2AB) (AY. 2004-05)
Biocon Ltd v. Dy. CIT (2021) 431 ITR 326 / 202 DTR 364 / 278 Taxman 121/ 321 CTR 452 (Karn.)(HC)

441 **S. 35 : Scientific research expenditure – Weighted deduction – Not allowable in respect of expenditure incurred outside India – Expenditure of capital nature is eligible for deduction under section 35(1))iv). [S. 35(1)(iv), 35(2AB]**
Held that the expenses incurred by the assessee outside India had been incurred not on in-house research and development facility as approved by the prescribed authority, but for availing of services from the research and development facilities of its overseas associated enterprises. Since such facilities were neither of the assessee nor approved by the prescribed authority weighted deduction is not available. Expenditure on capital nature is eligible for deduction under section 35(1)(iv) of the Act. (AY.2011-12)
Mahle Behr India P. Ltd. and Formerly Known as Mahle India Ltd. v. Dy. CIT (2021) 190 ITD 852 / 92 ITR 726 / 213 TTJ 481 / 206 DTR 262 (Pune)(Trib.)

442 **S. 35 : Scientific research expenditure – Research and development facility was approved by the DSIR – Entitle to weighted deduction [S. 35(2AB)]**
Held that once an expenditure was incurred for development of research and development facility (both revenue and capital expenditure) and such research and

development facility was approved by the DSIR, the assessee would be entitled to weighted deduction under section 35(2AB) of the Act.(AY. 2014-15)
Nirmal Industrial Control P. Ltd. v. ACIT (2021) 90 ITR 34 (SN)(Mum.)(Trib.)

S. 35 : Scientific research expenditure – Quantification prescribed by prescribed authority – Amended clause (b) of rule 6(7A) which was brought in effect from 1-7-2016 is not applicable to assessment year 2011-12 – Capital expenditure DSIR 2014 guidelines – Not applicable for the year under consideration – Capital expenditure – International transaction of payment of R&D facilities availed from its AEs – Weighted deduction under section 35(2AB), however same was eligible for deductions under section 35(1)(iv) [S. 35(1)(iv), 35(2AB)] 443

Held that since assessment year in consideration was 2011-12, amended clause (b) of rule 6(7A) which came into effect from 1-7-2016 was not applicable, thus, restriction of weighted deductions to quantification by prescribed authority in view of same was not justified. Since Assessing Officer denied said claim relying on clause (xi) of DSIR guidelines for approval in Form 3CM of in-house R & D centres issued in May 2014 w.r.t. assessment year 2011-12, same was not applicable and impugned order passed was to be overturned. R&D facilities for which assessee incurred costs outside India were neither on in-house R&D facility of assessee nor approved by prescribed authority, same could not be granted weighted deduction under section 35(2AB); however, said R&D expenditure incurred outside India was eligible for deduction under section 35(1)(iv) of the Act. (AY. 2011-12)
MAHLE Behr India (P.) Ltd. v. DCIT (2021) 190 ITD 852 / 92 ITR 726 / 213 TTJ 481 / 206 DTR 262 (Pune)(Trib.)

S. 35 : Scientific research expenditure – Research and development in defence aviation system – Allowable deduction u/s 35(1)(iv) of the Act. [S.35(1)(iv), 37(1)] 444

Held that the grants were given to enable assessee to conduct research and development in defence aviation system so that necessary technical know-how could be acquired for subsequent manufacture of defence equipments. Research was related to business of assessee, expenditure incurred towards research and development activities would be allowed under section 35(1)(iv) of the Act. (AY. 2007-08 & 2011-12 to 2015-16)
Hindustan Aeronautics Ltd. v. ACIT (2021) 190 ITD 721 (Bang.)(Trib.)

S. 35 : Scientific research expenditure – Deduction could not be denied merely because prescribed authority failed to send intimation in Form 3CL in respect of expenditure incurred by R&D unit for relevant assessment year [S.35(2AB)] 445

Allowing the appeal the Tribunal held that prior to 1-6-2016, only requirement to claim deduction under section 35(2AB) was to receive recognition from prescribed authority, since said recognition was obtained by assessee on 26-3-2013, deduction could not be denied merely because prescribed authority failed to send intimation in Form 3CL in respect of expenditure incurred by R&D unit for relevant assessment year (AY. 2013-14)
DCIT v. STP Ltd. (2021) 187 ITD 538 / 86 ITR 14 (SN)(Kol.)(Trib.)

446 **S. 35 : Scientific research – Approval by department of Scientific and Industrial Research – No provision at relevant time requiring approval of expenses by department of scientific and industrial research – Amendment is not retrospective as it introduces additional condition and affects substantive rights of assessee – Delay of filing of appeal due to Covid-19 Pandemic, was condoned. [S. 35(2AB), 37(1))**

Tribunal held that from a reading of section 35(2AB), it was clear that once the research and development facility was approved by the Department of Scientific and Industrial Research, the expenses incurred by the assessee had to be allowed under section 35(2AB). If the law required the expenditure to be approved by the prescribed authority, that would have been expressly provided. In other words, for the purpose of section 35(2AB), it was provided that facility was to be approved and not the expenditure. Nowhere under the Act, was it stipulated that the deduction under section 35(2AB) was allowable only after approval by the Department of Scientific and Industrial Research. Rule 6(7A) of the Income-tax Rules, 1962 was amended by the Finance Act, 2016 with effect from July 1, 2016, wherein it provided that the prescribed authority had to quantify the expenditure incurred in the in-house research and development facility by the company. Prior to this amendment, no such power was vested with the Department of Scientific and Industrial Research. Since the present case related to a period prior to the amendment, deduction under section 35(2AB) had to be allowed on the basis of the expenditure as recorded by the assessee in the books of account. The amendment to rule 6(7A) was not procedural since the amended rule stipulated an additional condition and affected the substantive right of the assessee. Delay of filing of appeal due to Covid-19 Pandemic, was condoned. (AY.2016-17)

Natural Remedies Pvt. Ltd. v. ACIT (2021) 85 ITR 28 (SN) / 212 TTJ 261 / 203 DTR 91 (Bang.)(Trib.)

447 **S. 35 : Scientific research expenditure – Weighted Deduction – Amendment brought by Income-tax (Tenth Amendment) Rules, 2016 with effect from 1-7-2016 – New provision brought for certifying amount of expenditure from year to year – Prior to amendment in 2016, no such procedure prescribed – Curtailing expenditure and weighted deduction is not proper – Entitled to weighted deduction.[S. 35(2AB]**

Dismissing the appeal of the revenue, the Tribunal held that by the amendment brought in by the Income-tax (Tenth Amendment) Rules, 2016 with effect from July 1, 2016 (2016) 384 ITR (St.) 125), a separate part had been inserted for certifying the amount of expenditure from year to year and the amended form 3CL laid down the procedure to be followed by the prescribed authority. Prior to the amendment in 2016, no such procedure was prescribed. Therefore, the Assessing Officer was not justified in curtailing the expenditure and consequent weighted deduction claim under section 35(2AB) of the Act.(AY. 2014-15)

Dy. CIT v. Force Motors Ltd. (2021) 91 ITR 8/ (2022) 193 ITD 344 (Pune)(Trib.)

S. 35 : Scientific research expenditure – Claim made in the revised computation during assessment proceedings – Assessing Officer is directed to allow the claim. – Research and development expenditure – Weighted deduction – Allowable. [S. 35(1))(iv), 35(2AB) 139] 448

Held that the claim of the assessee in the course of assessment proceedings deserved admission and restoration to the Assessing Officer for examination in accordance with law. Research and development expenditure,weighted deduction is allowable. Followed *Tejas Networks Ltd. v. DCIT [2015 5 ITR-OL 240 (Karn.)(HC).* (AY. 2014-15)
Tejas Networks Ltd. v. DCIT (2021) 91 ITR 52 (SN)(Bang.)(Trib.)

S. 35 : Scientific research expenditure – Claim made in the revised computation during assessment proceedings – Assessing Officer is directed to allow the claim. – Research and development expenditure – Weighted deduction – Allowable. [S. 35(1))(iv), 35(2AB) 139] 449

Held that the claim of the assessee in the course of assessment proceedings deserved admission and restoration to the Assessing Officer for examination in accordance with law. Research and development expenditure,weighted deduction is allowable. Followed *Tejas Networks Ltd. v. DCIT [2015 5 ITR-OL 240 (Karn.)(HC)*. (AY. 2014-15)
Tejas Networks Ltd. v. DCIT (2021) 91 ITR 52 (SN)(Bang.)(Trib.)

S. 35 : Scientific research expenditure – Weighted deduction – Subsequent withdrawal of approval granted to institution with retrospective effect – Approval valid and subsisting on date of donation – Entitled to weighted deduction. [S. 35(1)(ii)] 450

Held that at the time of making the donation to the school, the latter had valid approval granted by the Central Board of Direct Taxes. According to the Explanation to section 35(1)(ii), the subsequent withdrawal of such approval could not form a reason to deny deduction claimed by the donor. Therefore, if the assessee, acting upon a valid registration or approval granted to an institution, had made a donation of which he claimed deduction, such deduction could not be disallowed if, at a later point of time, the approval was cancelled with retrospective affect. As a result, the order of the Commissioner (Appeals) was set aside and the disallowance of the assessee's claim of deduction under section 35(1)(ii) was vacated. Relied on *CIT v. Chotatingrai Tea [2002) 258 ITR 529 (SC), National Leather Cloth Manufacturing Co. v. Indian Council of Agricultural Research (2000) 241 ITR 482 (Bom.)(HC) and Pooja Hardware Pvt. Ltd. v. ACIT (I. T. A. No. 3712/mum/2018, dated October 28, 2019*.(AY.2014-15)
Kushal Virendra Tandon v. CIT (2021) 91 ITR 610 / (2022) 215 TTJ 630 (Mum.)(Trib.)

S. 35D : Amortisation of preliminary expenses – Share premium expenses – Not part of capital employed – Cost of acquisition does not constitute cost of project – cost of acquisition of companies could not be treated as asset for allowing deduction under section 35D. 451

Dismissing the appeal the Court held that the Tribunal was right in holding that the share premium collected on the issue of share capital by the assessee could not be taken as part of the capital employed for allowing deduction under section 35D. Followed *Berger Paints India Ltd. v. CIT (2017) 393 ITR 113 (SC).* Court also held that there is

a vast difference between expansion and extension. The Tribunal was right in law in holding that the cost of acquisition of companies could not be treated as asset for allowing deduction under section 35D.(AY.2008-09)
Subex Ltd. v. CIT (2021) 439 ITR 495 / (2022) 285 Taxman 350 (Karn.)(HC)

452 **S. 35D : Amortisation of preliminary expenses – Demerger – Spin Off – Entitled to amortisation of expenses on demerger.**
The Legislature has used the word assessee having regard to the various ways in which the schemes are structured. Secondly, having regard to the fact that the deduction claimed by the assessee under the provisions of section 35DD of the Act was allowed in the assessment years 2004-05 to 2006-07, it should not have been disallowed in the assessment years 2007-08 and 2008-09. The amounts were deductible. (AY.2007-08, 2008-09)
Coforge Limited v. ACIT (2021) 436 ITR 546 / 204 DTR 273 / 322 CTR 10 (Delhi)(HC)

453 **S. 35D : Amortisation of preliminary expenses – Amortisation of preliminary expenses – Entitled to deduction at one-Fifth of expenditure.**
Held, that the preliminary expenses were incurred by the assessee-company solely as fees for registering the company under the provisions of the Companies Act, 1956. The law was amended after March 31, 1998, in the proviso to section 35D(1) of the Act which stipulated grant of deduction at the rate of one-fifth of expenditure incurred thereon. Therefore, there was no infirmity in the order of the Commissioner (Appeals). (AY.2011-12 to 2017-18)
Sinnar Thermal Power Ltd. v. Dy CIT (2021) 89 ITR 263 (Mum.)(Trib.)

454 **S. 35E : Expenditure on prospecting – Minerals – Business loss – Accumulation of expenses – Matter remanded [S.37(1))]**
Tribunal held that since activity of exploration and extraction of minerals is a long process, assessee would be entitled for deduction of revenue expenses once business is set up and generation of revenue could not be criteria for determining date of setting up of business. The Assessing Officer had not examined case of assessee in terms of section 35E, matter was to be remanded for fresh consideration. (AY. 2012-13, 2013-14)
Indo Gold Mines (P.) Ltd. v. DCIT (2021) 190 ITD 862 /89 ITR 42 (SN)(Bang.)(Trib.)

455 **S. 36(1)(ii) : Bonus or commission-Commission paid to director – Director paying taxes at maximum marginal rate – Allowable as deduction.**
Held that the Tribunal was right in holding that the director in his return had offered the entire commission for taxation and paid tax at the maximum marginal rate without claiming any deduction and therefore, the motive of tax avoidance was also absent. No disallowance can be made. (AY. 2008-09)
CIT v. True Value Homes (India) Pvt. Ltd. (2021) 435 ITR 391 (Mad.)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Commercial expediency – Borrowed funds not diverted to sister concerns – Allowable as deduction [S. 37(1))] 456
Dismissing the appeal of the revenue the Court held that borrowed funds not diverted to sister concerns. Allowable as deduction. Followed *S. A. Builders v. CIT (A)(2007) 288 ITR 1 (SC)*(AY.2008-09)
CIT v. GMR Energy Ltd. (2021) 437 ITR 240 (Karn.)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Presumption that investment was made from interest-free funds – Disallowance of interest is held to be not justified – Expansion and Extension of business – Proviso to Section 36(1)(iii) applies only to extension of business – Proviso does not have retrospective operation – Res judicata is not applicable to income tax proceedings but principle of consistency must be followed. 457
The Court held that interest on borrowed capital is held to be allowable. Presumption that investment was made from interest-free funds. Court also observed that proviso to Section 36(1)(iii) applies only to extension of business and not expansion of business. Further the proviso does not have retrospective operation. Res judicata is not applicable to income tax proceedings but principle of consistency must be followed.(AY.2010-11)
Coffeeday Global Ltd. v. Add. CIT (2021) 433 ITR 321 / 202 DTR 217 / 322 CTR 336 (Karn.)(HC)
PCIT v. Amalgamated Bean Coffee Trading Co. Ltd. (2021) 433 ITR 321 / 202 DTR 217 / 322 CTR 336 (Karn.)(HC)

S. 36(1)(iii) : Interest on borrowed capital – Loan advanced to subsidiary out of own funds – No disallowance can be made. 458
Held that loan advanced to the subsidiary out of own funds, hence no interest disallowance can be made. (AY.2014-15)
Viney Corporation Ltd. v. ACIT (2021) 92 ITR 59 (SN)(Delhi)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Amalgamation – Interest paid after amalgamation – Matter remanded. 459
Held that the additional expenditure and all the documents required the Assessing Officer's necessary factual verification. Matter remanded. (AY. 2013-14)
Chiranjeevi Traders Pvt. Ltd. v. Dy. CIT (2021) 89 ITR 46 (SN)(Hyd.)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Fresh loan taken for repaying loan taken earlier – Interest paid on fresh loan allowable as deduction. 460
Held that interest paid on fresh loan taken for repaying loan taken earlier was allowable as deduction. (AY. 2012-13 to 2014-15)
Suumeru Enterpises v. ITO (2021) 86 ITR 425 (Jaipur)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Professional choreographer – Office – cum residence – Flats used office-cum residence – Interest paid on acquisition of flats allowable as deduction. 461
Held that interest paid on capital borrowed for acquisition of flats which were used for professional purpose and were put to use, allowable as deduction. (AY. 2013-14)
ACIT v. Farah Khan (Ms.)(2021) 191 ITD 633 (Mum.)(Trib.)

462 **S. 36(1)(iii) : Interest on borrowed capital – Trial run – Interest attributable from the date of trail run till date of commercial production allowable as revenue expenditure [S. 43(1), ICDS IX and AS-16]**

Held that as per Explanation 8 to section 43(1), interest paid shall be added in actual cost of asset till asset was first put to use for claiming depreciation. Accordingly the interest attributable from the date of trail run till date of commercial production allowable as revenue expenditure. Order of CIT (A) is affirmed. (AY. 2010-11)

ACIT v. Nilkanth Concast (P.) Ltd. (2021) 191 ITD 73 (Delhi)(Trib.)

463 **S. 36(1)(iii) : Interest on borrowed capital – Business of real estate – Borrowed money for the purpose of business – Lent idle money to third parties at same rate of interest – Interest expenses allowable as deduction – Alternative interest expenses allowable as deduction u/ s 57(iii) of the Act. [S.37(1), 57(iii)]**

The assessee borrowed money for the purpose of business -Keeping in mind utilisation of funds lying idle with them, assessee lent a sum of Rs. 17 crores to ABW Infrastructure at same rate of interest as was paid. Interest income was shown as income from other sources and interest paid was claimed as expenditure. The AO disallowed the interest expenditure, which was affirmed by the CIT (A). On appeal the Tribunal held that transactions were driven by business considerations and were part of commercial expediency, disallowance of interest expense on loan taken for purposes of business against which interest income had been earned and offered to tax, was unwarranted and same qualified to be allowed under section 36(1)(iii)/section 37(1). Tribunal also held that even in alternative, such an expense qualified as a deduction under section 57(iii) against interest income offered to tax, being an expenditure incurred in relation to earning of interest income on loan taken from one company and then given to another. Referred, *S.A. Builders Ltd v. CIT (2007) 288 ITR 1 (SC), Madhav Prasad Jatia v. CIT (1979) 118 ITR 200 (SC), CIT v. Malayalam Plantations Ltd (1964) 53 ITR 140(SC).* (AY. 2013-14)

Mason Infrastructure (P.) Ltd. v. DCIT (2021) 191 ITD 29 (Delhi)(Trib.)

464 **S. 36(1)(iii) : Interest on borrowed capital – Acquisition of capital asset is not an extension of existing business – Advance less than available free funds – Interest cannot be disallowed.[S. 37(1)]**

Where interest paid for the acquisition of the asset and the asset is not for extension of existing business of the Assessee, it was held that the disallowance of interest expenses cannot be sustained. *Dy.CIT v. Core Health Care Ltd (2008) 298 ITR 194 (SC)* referred. (AY. 2014-15, 2015-16)

Golf view Homes Ltd. v. ACIT (2021) 212 TTJ 472 / 88 ITR 423 / 207 DTR 199 (Bang.) (Trib.)

465 **S. 36(1)(iii) :Interest on borrowed capital – Advance to sister concern – Interest free funds more than the advance to sister concern – No disallowances can be made.**

Held that the assessee's own funds were way more as against interest free advances. No disallowances can be made (AY. 2009-10)

DCIT v. Edelweiss Financial Advisors Ltd. (2021) 188 ITD 834 (Ahd.)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Amount of revenue generation does not, in any manner, affect the claim of deduction 466

The Tribunal held that Section 36(1)(iii) allows deduction of the amount of interest paid in respect of capital borrowed for the purpose of business or profession. As per section 36(1)(iii) of the Act, any interest expense which has been incurred for the purpose of business is allowed as an expenditure under the head Business and Profession irrespective whether the assessee has generated any corresponding income or not. The AO himself had allowed the same for earlier year and thus following the rule of consistency and on merits of the case the disallowance was deleted. (AY.2013-14)

Trimurty Buildcon Pvt. Ltd. v. ITO (2021) 87 ITR 505 / 211 TTJ 249 (Jaipur)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Borrowed funds used for investment in shares for business purposes – Allowable as deduction [S.37 (1)] 467

Tribunal held that borrowed funds used for investment in shares for business purposes is allowable as deduction. (AY.2016-17)

Tirupati Procon Pvt. Ltd. v. ITO (2021) 85 ITR 76 (SN)(Delhi)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – External commercial borrowing loan – Expansion of existing business – Disallowance cannot be made. 468

Allowing the appeal the Tribunal held that purchase of land for construction of new office premises could not be said to be for extension of the assessee's business and the disallowance of interest was not justified because the funds were borrowed for continuation or expansion of existing business and not for extension of existing business. The proviso to section 36(1)(iii) was not applicable because the amendment in the proviso was made by the Finance Act, 2015, with effect from April 1, 2016 in accordance with which the words "for extension of" were omitted and up to the assessment year 2015-16, the proviso was applicable only in those cases where borrowed funds was used for acquisition of asset for extension of existing business. For the assessment year 2009-10, this proviso was not applicable and the disallowance was to be deleted. (AY.2011-12)

Maxim India Integrated Circuit Design Pvt. Ltd. v. Dy. CIT (2021) 187 ITD 547 / 86 ITR 26/ 212 TTJ 986 / 204 DTR 332 (Bang.)(Trib.)

S. 36(1)(iii) :Interest on borrowed capital – Loan for purchase of Office – Interest not allowable for period till asset put to use. 469

Tribunal held that disallowance of interest is held to be justified till the asset is put to use. (AY.2016-17)

United Teleservices Ltd. v. ACIT (2021)86 ITR 36 (SN)(Kol.)(Trib.)

S. 36(1)(iii): Interest on borrowed capital – Interest free advances made-availability of sufficient own funds – addition deleted by the Tribunal-delay in payment to the account of Provident Fund-disallowance upheld-delay in pronouncement of order by the Tribunal-90 days period should exclude at least the lockdown period. [S.254 (1), ITATR. 34(5)] 470

Delay on the part of the Assessee to file an appeal before the CIT(A) pursuant to Notification no. 11/2016 dated 01.03.2016 on account of technical difficulty faced by

the Assessee in filing the appeal electronically within the prescribed time limit was condoned by the Tribunal.

Further, the Assessing Officer made certain disallowance under section 36 (1)(iii) assuming that interest bearing funds were utilized for making interest-free advances by the Assessee. The Tribunal observed that upon perusal of records, the company had sufficient interest free funds and in fact it made such interest free advances to the tune of only 20.43% of the total interest free funds available with the Assessee company and therefore deleted the addition.

On the question of delayed payment by the Assessee to the account of Provident Fund after the expiry of the due date as prescribed by the relevant Act was not allowed by the Tribunal.

Lastly, the Tribunal touched upon the topic of delay in pronouncement of an order by the Tribunal taking into consideration the lockdown imposed by the government during the unprecedented COVID19 pandemic. Where the Tribunal acknowledged the time limit of 90 days prescribed under Rule 34(5) of the Appellate Tribunal Rules, 1963, and usage of the word "ordinarily" therein. It held that a pedantic view of the rule cannot be taken since these are extra-ordinary situations and that such period of 90 days must be computed by excluding at least the period during which the lockdown was in force. It also concluded that this does not create any bar on the discretion of benches to re-fix the matters for clarifications because of the considerable time gap between hearing a case and finalizing an order thereon. *Eagle Steel Industries P. Ltd. v. ITO [ITA No. 3151/Ahd/2016 (Trib.), CIT v. Dalmia Cement (P.) Ltd. (2002) 254 ITR 377 (Delhi)(HC), DCIT v. JSW Ltd. (ITA Nos. 6264 & 6103/Mum/2018 (Mum.)(Trib.)* relied upon. (AY. 2013-14, 2014-15)

Balaji Electrical Insulators (P) Ltd. v. Dy. CIT (2021) 186 ITD 1 (Ahd.)(Trib.)

471 **S. 36(1)(iii) : Interest on borrowed capital – loans and advances utilised for business purpose – Order of CIT(A) is affirmed.**

Held that no material was placed by the Department to controvert the finding given by the Commissioner (Appeals) that disallowance of interest was only to the extent Rs. 24,58,998. Order of CIT(A) is affirmed. (AY. 2012-13)

DCIT v. East Coast Imports and Exports (2021) 91 ITR 6 (SN)(Vishakha)(Trib.)

472 **S. 36(1)(iii) : Interest on borrowed capital – Foreign currency convertible Bonds – Premium on maturity – Allowable as deduction.**

Held that the Department having admitted that the accounting entries were made in accordance with the Companies Act, 1956, that the expenditure claimed on account of premium was otherwise admissible under the relevant provisions of the Act and that this issue had been decided in favour of the assessee in the earlier assessment year by the Tribunal, the order of the Commissioner (Appeals) is affirmed. (AY. 2012-13)

Kanoria Chemicals and Industries Ltd. v. ACIT (2021) 91 ITR 82 (SN)(Kol.)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital – Advance to sister concern – No advances made during the year – Sufficient interest free funds – Addition is not valid on notional basis. 473

Held that there was no nexus between the borrowed funds and the amounts outstanding in the case of the sister concern. In such factual situation, there could not be any addition. (AY. 2014-15)

DCIT v. Tally Solutions Pvt. Ltd. (2021) 91 ITR 66 (SN)(Bang.)(Trib.)

S. 36(1)(v) : Contribution to approved gratuity fund – Approval of Commissioner – Non-approval of scheme after more than 14 years – Contribution made cannot be disallowed [S. 40(a)(ia)] 474

Assessee paid certain amount towards a gratuity scheme benefit of its employees and applied for approval of gratuity scheme in year 2007. While completing assessment for assessment years 2011-12 and 2014-15 the Assessing Officer had allowed deduction claimed towards provision created for gratuity. Relevant year the Assessing Officer disallowed the claim. Tribunal held that non-approval of scheme even after more than 7 years, would not disentitle assessee to claim deduction. (AY. 2013-14)

Tata Securities Limited v. DCIT (2021) 191 ITD 1 (Mum.)(Trib.)

S. 36(1)(va): Any sum received from employees – Cheque deposited before due date – Cheque cleared after due date – Relevant date is date of deposit of cheque – Allowable deduction. 475

Held that the relevant date to be considered for the purpose of section 36(1)(va) of the Act was the date of deposit of cheque in the bank, and not the date of clearance of the cheque. Allowable as deduction. (AY. 2014-15)

Pearey Lal and Sons (E. P.) Pvt. Ltd. v. ACIT (2021) 90 ITR 96 (SN)(Delhi)(Trib.)

S. 36(1)(vii) : Bad debt – Advances made in the course of business – Interest income was assessed as business income in earlier year – Advances written off – Allowable as bad debt. [S.36(2)(i), 37 (1)] 476

Dismissing the appeal of the revenue the Court held that the bad debts or part thereof were taken into account in computing income of the assessee for an earlier assessment year before such debt or part thereof was written off was satisfied. Order of Tribunal is affirmed. Referred *CIT v. Pudumjee Pulp and Paper Mills Ltd I.T.A No. 1590 of 2013 dated 5-8 2015 (Bom.)(HC), CIT v. Shreyas S. Morakhia (2012) 342 ITR 285 (Bom.)(HC)* (AY.2005-06)

PCIT v. Mahindra Engineering and Chemical Products Ltd. (2021)439 ITR 399 (Bom)(HC)

S. 36(1)(vii) : Bad debt – Advance paid for acquisition of capital asset – Amount written off – Not allowable as bad debt [S. 37(1)] 477

Court held that the write off of expenditure did not satisfy the test laid down by the Supreme Court. (AY. 2003-04)

Apollo Tyres Ltd. v. Dy. CIT (2021) 438 ITR 526 / 283 Taxman 427 (Ker.)(HC)

478 **S. 36(1)(vii) : Bad debt – Provision made for bad debts – Banking company – Allowable as deduction though not debited in profit and loss account. [S. 145]**
Dismissing the appeal of the revenue the Court held that,in respect to banking companies provision made for bad debts is allowable as deduction though not debited in profit and loss account. (AY.2006-07)
CIT, LTU v. Vijay Bank (2021) 130 taxmann.com 148 (Karn.)(HC)
Editorial : SLP was granted to revenue, CIT, LTU v. Vijay Bank (2021) 282 Taxman 296 (SC)

479 **S. 36 (1)(vii): Bad debt – Writing off of irrecoverable loan in books of account sufficient to claim deduction for bad debts – Money lending licence is not required to be in money lending business to claim said deduction – Matter remanded to Appellate Tribunal. [S. 37(1)]**
Assessee was engaged in business of manufacturing and trading of electronic goods and developmental activities. The assessee has written off the loan in the books of account as bad debt. Assessing Officer held that the assessee was not a bank or a money lender, hence not entitled to write off outstanding loan amount and claim deduction under section 36(2) or under section 37(1) of the Act. Order of the Assessing Officer was affirmed by the Appellate Tribunal. On appeal it was contended that the objects of assessee included money lending and it was engaged in lending business since financial year 2004-05. Also schedule of loans and advances in books of account of assessee was a continuing feature in all previous years which had been accepted and taxed by revenue as part of business income. Allowing the appeal the Court held that holding of money lending licence was not a prerequisite for allowing a claim of bad debts, it was enough if irrecoverable debt was written off in books of account. Since, claim of assessee under section 37(1) had not been examined, matter was to be remitted to Tribunal for fresh decision. (AY. 2010-11)
Pranava Electronics (P.) Ltd v. Dy.CIT (2021) 278 Taxman 175 (Karn.)(HC)

480 **S. 36(1)(vii) : Bad debt – TDS payment – Sales promoters – Order of Tribunal allowing the claim as bad debt is affirmed. [S.260A]**
Dismissing the appeal of the revenue the Court held that the debt was written off as irrevocable in accounts of assessee. Accordingly the Tribunal was justified in allowing claim of assessee towards bad debt on account of TDS payments on behalf of its promoters. (AY. 2003-04)
CIT v. Shaw Wallace Distilleries Ltd. (2021) 277 Taxman 145 (Karn.)(HC)

481 **S. 36(1)(vii) : Bad debt – Amount written off in accounts – Allowable as deduction – Res Judicata – Not Applicable – Principle of consistency is applicable. [S,36(2)]**
Allowing the appeal the Court held that the Revenue had not challenged the order passed by the Tribunal and had accepted the view in favour of the assessee. Admittedly, the assessee had written off the bad debts to the tune of Rs. 3,33,79,791 in its books of account and had complied with the mandate contained in section 36(2). The amount was deductible for the assessment year 2010-11.(AY.2010-11)
Big Bags International (P.) Ltd. v Dy CIT (2021) 430 ITR 434 (Karn.)(HC)

S. 36(1)(vii) : Bad debt – Written off as irrecoverable in accounts – Allowable as deduction. [S. 36(2)] 482
Court held that the bad debt actually written off as irrecoverable in the accounts of the assessee, on the basis of an authorisation by the board of directors at a meeting held to approve the accounts after the close of the year, could not be disallowed.(AY.1997-98)
Sesa Goa Ltd. v. CIT (NO. 1)(2021)430 ITR 109 (Bom.)(HC)

S. 36(1)(vii) : Bad debt – Co-Operative Bank – Fixed deposit with another Bank – Liquidation – Amount written off – Allowable as bad debt. 483
Held that the amount written off as the Bank in which the fixed deposit was kept went in to liquidation. Allowable as bad debt. (AY. 2014-15)
ACIT v. Himatnagar Nagrik Sahkari Bank Ltd. (2021)90 ITR 64 (SN)(Ahd.)(Trib.)

S. 36(1)(vii) : Bad debt – Non-banking finance company – Interest income offered to tax in earlier years – Referral fee paid to group entity – Matter remanded for verification [S. 37(1)] 484
Held that the bad debt is allowable as deduction provided interest income was offered for taxation in earlier years. Similarly the referral fee paid to group entity is allowable as deduction. Matter remanded to CIT(A) for verification. (AY. 2014-15)
Monarch Networth Finserve P. Ltd. v. ITO (2021)89 ITR 50 (SMC)(SN)(Mum.)(Trib.)

S. 36(1)(vii) : Bad debt – Provision made in respect of doubtful debts – Reduced from balance sheet from sundry debtors/ trade receivable. 485
Held that since assessee-company has debited provision made in respect of doubtful debts to profit and loss account and also reduced same amount in balance sheet from sundry debtors/trade receivable, such simultaneous reduction from sundry debtors amounted to actual write off of debt and hence same was to be allowed as deduction under section 36(1)(vii) of the Act. (AY. 2014-15)
Vidras India Ceramics (P.) Ltd. v. DCIT (2021) 190 ITD 551 (Ahd)(Trib.)

S. 36(1)(vii) : Bad debt – Trading commodities – Amount not recoverable was written off – Allowable as bad debt – Matter remanded. 486
Due to sudden closure of trading, assessee could not recover outstanding payments to extent of certain amount from brokers. The Assessee claimed the said amount as bad debt. The Assessing Officer disallowed the amount as premature. On appeal the Tribunal held that it was sufficient if bad debts were written off as irrecoverable in accounts of assessee. Matter remanded. (AY. 2014-15)
Jay Ashkaran Shah. v. ITO (2021) 190 ITD 208 (Mum.)(Trib.)

S. 36(1)(vii) : Bad debt – Commodity trading – Purchase and sale on the platform of National Spot Exchange Ltd (NSEL) – Scam 2013 – Profits offered as business income – Write off of 25% of the outstanding amount – Amounts written off in the books of account – Allowable as bad debt [S.36(2)] 487
The assessee is engaged in the business of financing trading etc. The assessee has claimed bad debt out of purchase and sale of on the platform of National Spot

Exchange Ltd (NSEL) through Motilal Oswal Commodities Brokers Pvt Ltd. The scam was unearthed in July 2013 which revealed that NSEL had defaulted in its payment obligations to various investors and traders from August 2013. The management of the assessee decided to write off 25% of the outstanding amount as bad debt on 30-9-2013 in the books of account. The AO has disallowed the claim which was affirmed by the CIT (A). On appeal by the assessee the Tribunal held that the NSEL had started functioning since 2007. Due to scam in July 2013 the NSEL defaulted in its payment obligations to various investors and traders from August 2013. Writ petition was filed before Bombay High Court and Gujarat High Court and a committee was appointed for monitoring the recovery. Following the ratio in *TRF Ltd v. CIT (2010) 323 ITR 397 (SC),* the Tribunal held that amount written off in the books of account is allowable as bad debt. (ITA No. 3649/Mum/ 2018 dt. 10-1-2020) (AY. 2014-15)
Remi Securities Ltd v. ACIT (2021) The Chamber's Journal -March -P. 185 (Mum.)(Trib.)

488 **S. 36(1)(vii) : Bad debt – Sale of unit by way of slump sale – Deliberately keeping entries in accounts to claim loss at end of year – Not allowable as bad debt.[S. 50B]**
Held that the unit in question was sold out by way of slump sale on May 23, 2011, whereas, the assessee had calculated the net worth of the unit as on March 31, 2011 and claimed bad debts in the assessment year 2012-13. On a slump sale, the assets and liabilities get transferred to the purchaser. The assessee deliberately kept the entries continued in its accounts so as to claim the loss on account of bad debts at the end of the year, which was not justified. The order of the Assessing Officer is affirmed. (AY. 2012-13)
Kanoria Chemicals and Industries Ltd. v. ACIT (2021) 91 ITR 82 (SN)(Kol.)(Trib.)

489 **S. 36(1)(vii) : Bad debt – Sale of unit by way of slump sale – Deliberately keeping entries in accounts to claim loss at end of year – Not allowable as bad debt.[S. 50B]**
Held that the unit in question was sold out by way of slump sale on May 23, 2011, whereas, the assessee had calculated the net worth of the unit as on March 31, 2011 and claimed bad debts in the assessment year 2012-13. On a slump sale, the assets and liabilities get transferred to the purchaser. The assessee deliberately kept the entries continued in its accounts so as to claim the loss on account of bad debts at the end of the year, which was not justified. The order of the Assessing Officer is affirmed. (AY. 2012-13)
Kanoria Chemicals and Industries Ltd. v. ACIT (2021) 91 ITR 82 (SN)(Kol.)(Trib.)

490 **S. 36(1)(viia) : Bad debt – Provision for bad and doubtful debts – Schedule bank – Deductible – Accrued interest on non-performing assets – Not taxable [S.4, 145]**
Dismissing the appeal of the revenue the Court held that, though the assessee had used the nomenclature as provision for non-performing assets, in pith and substance, the provision had been created for bad and doubtful debts and in doing so the assessee had followed the guidelines framed by the Reserve Bank of India. Court also held that the Tribunal was right in law in deleting the interest accrued on non-performing assets from the computation of taxable income for the assessment year under consideration. (AY.2007-08)
CIT v. Davangere District Central Co-Operative Bank Ltd. (2021) 430 ITR 29 / 277 Taxman 218 (Karn.)(HC)

S. 36(1)(viia) : Bad debt – Provision for bad and doubtful debts – Schedule bank – One time settlement (OTS) scheme – Provision for bad and doubtful debt was higher than amount of such bad debt claimed by it – First set off against such credit balance available in balance sheet. 491

Tribunal held that as per proviso to section 36(1)(viia) amount of loss on OTS would be first set-off against credit balance available in balance sheet. (AY. 2014-15)

Cuttack Central Co-operative Bank Ltd. v. PCIT (2021) 188 ITD 109 (Cuttack)(Trib.)

S.37(1) : Business expenditure – Penalty – Not compensatory in nature – Not allowable as deduction [Kerala General Sales tax Act, 1963, S.45A] 492

Dismissing the appeal of the assessee the Court held that in the absence of any material to show that any element of compensation was involved in the penalty imposed under section 45A of the Kerala Act the amount of Rs. 52 lakhs could not be termed as an expenditure for the year 2004-05.(AY. 2004-05)

PTL Enterprises Ltd. v. Dy. CIT (2021) 439 ITR 365 / (2022) 212 DTR 404 / 326 CTR 282 (Ker.)(HC)

Editorial : Affirmed in PTL Enterprises Ltd. v. Dy. CIT (2022) 443 ITR 260 (SC)

S.37(1) : Business expenditure – Interest – Prepayment premium – Corporate debt restructuring – Allowable as deduction. 493

Held that one time payment made by assessee towards pre-payment premium and interest component to banks for agreeing to reduce rate of interest on loan pursuant to Corporate Debt Restructuring was business expenditure to be allowed deduction as revenue expenditure. (AY. 2007-08)

CIT v. Thiru Arooran Sugar Ltd. (2021) 283 Taxman 156 (Mad.)(HC)

S.37(1) : Business expenditure – Discount on issue of ESOP – Allowable as deduction. 494

Held that discount on issue of ESOP was not a contingent liability but an ascertained liability hence the discount on issue of ESOP was an allowable deduction under section 37(1) as the same was to be treated as remuneration to employees for their continuity of service. (AY. 2003-04)

CIT(LTU) v. Biocon Ltd. (2021) 131 taxmann.com 187 (Karn.)(HC)

Editorial : Notice is issued in SLP filed by the revenue, CIT(LTU) v. Biocon Ltd. (2021) 283 Taxman 290 (SC)

S.37(1) : Business expenditure – Statutory obligation – Contribution to common good fund – Special assistance fund – Allowable as deduction. 495

Dismissing the appeal of the revenue the Court held that the amounts had been spent only out of statutory obligation, amount expended on funds will be allowable as deduction while computing income of assessee co-operative bank, even when said expenditure did not come under section 37(1) of the Act. (AY. 2007-08)

PCIT v. Karnataka State Co-op. Apex Bank Ltd. (2021) 283 Taxman 106 / (2022) 441 ITR 312 (Karn.)(HC)

Editorial : Order in Karnataka State Co-Operative Apex Bank Ltd. v. Dy.CIT (2016) 46 ITR 728 (Bang.)(Trib.) affirmed.

496 **S. 37(1) : Business expenditure – Salary, professional fees etc – Allowable as revenue expenditure**

Dismissing the appeal of the revenue the Court held that the expenses were incurred in connection with existing business and admittedly were of routine nature like salary, professional fees, etc., and these expenses were otherwise clearly of revenue in nature as they did not bring into existence any new asset, same would be allowable as business expenditure.

PCIT v. Rediff.com India Ltd. (2021) 283 Taxman 552 / (2022) 441 ITR 195 (Bom.)(HC)

497 **S.37(1) : Business expenditure – Estate developer – Payment made to settle the dispute to clear the title – Joint venture agreement – Tribunal has no power to rewrite the agreement – Allowable as deduction.**

Court held that the amount paid to clear the title of the property is allowable as deduction. The court also held that the Tribunal has no power to re-write the agreement and if the parties have modified the agreement, the same could not have been ignored when the amount was paid to the parties. (ITA No. 136 of 2018 dt. 18-2-2021)

Maya Ventures Pvt Ltd v. ACIT (2021) The Chamber's Journal – April – P. 99 (Karn.)(HC)

498 **S.37(1): Business expenditure – Scientific expenditure paid to research association – Condition not satisfied – Alternative claim – Allowable as business expenditure [S. 35(1)]**

Dismissing the appeal of the revenue, the Court held that since there was no dispute that said expenditure was incurred in ordinary course of business, Tribunal was right in allowing alternate claim of assessee toward scientific expenses under section 35(1) as revenue expenditure under section 37(1) (AY. 2007-08)

PCIT v. HIS Automotive Ltd [2020] 119 taxmann.com 445 / (2021) 205 DTR 242 (Mad. (HC)

499 **S. 37(1): Business expenditure – Capital or revenue – Software expenses – Arrears of wages – Ex-gratia payment – Allowable as business expenditure – Payment made to Registrar of Companies for increasing authorised capital – Not allowable as revenue expenditure.**

Court held that the Tribunal was not justified in confirming the disallowance of software expenses as being relatable to capital field. Arrears of wages, Ex-gratia payment are allowable as business expenditure. Payment made to Registrar of Companies for increasing authorised capital is not allowable as revenue expenditure. (AY. 1999-2000 to 2002-03, 2004-05 to 2006-07)

Karur Vysya Bank Ltd. v. CIT (2021) 438 ITR 467 (Mad.)(HC)

500 **S.37(1): Business expenditure – Ex gratia payments to employees – Allowable as deduction.**

Court held that ex-gratia payments to employees is allowable as deduction. (AY. 2006 -07)

CIT v. Karur Vysya Bank Ltd. (2021) 438 ITR 465 / (2022) 284 Taxman 692 (Mad.)(HC)

S.37(1): Business expenditure – Provision for commission – Ad-hoc basis – Not deductible. 501

The disallowance of commission was upheld by the Tribunal after considering all the facts. This was a finding of fact upon re-examination of all circumstances. Hence, there was no question of law, much less a substantial question of law, warranting interference. The provision for commission was not deductible. (AY. 2009-10)

Apollo Tyres Ltd. v. ACIT (2021) 438 ITR 536 (Ker.)(HC)

S.37(1): Business expenditure – Capital or revenue – Acquisition of equipment – Used by dealer in showrooms – Not allowable as revenue expenditure [S. 32] 502

Court held that that the Tribunal was correct in treating the expenditure as capital expenditure on the ground that ownership of the assets was retained by the assessee (AY. 2003 -04)

Apollo Tyres Ltd. v. Dy. CIT (2021) 438 ITR 526 / 283 Taxman 427 (Ker.)(HC)

S.37(1): Business expenditure – Club membership fees – Club service charges – Membership fee allowable as deduction – Amount spent on services is held to be not allowable. 503

Held that the expenditure incurred on account of payments towards club membership and service charges, the assessee was entitled to claim only the membership fee but not the amount spent by it for availing of the services of goods etc. in the club. (AY. 2003-04)

Apollo Tyres Ltd. v. Dy. CIT (2021) 438 ITR 526 / 283 Taxman 427 (Ker.)(HC)

S.37(1): Business expenditure – Expenditure incurred in violation of statutory provisions – Not allowable as deduction – Explanation 1 [Mines And Minerals (Development And Regulation) Act, 1957, S. 4(1a), 21] 504

Held that the finding of the Assessing Officer that the assessee's trade and business in iron ore during the relevant period was carried on by him without the permits as required under section 4(1A) of the 1957 Act and therefore, such business was being run contrary to law, could not be faulted. The object of Explanation 1 to sub-section (1) of section 37 is to discourage the businesses and professions that are tainted with illegality. Therefore, the expenditure incurred for purchasing the iron ore by the assessee could not have been deducted under section 37(1) of the 1961 Act. Relied on *Maddi Venkataraman and Co. (P.) Ltd. v. CIT [1998] 229 ITR 534 (SC)*

PCIT v. M. Abdul Zahid (2021) 437 ITR 132 (Karn.)(HC)

PCIT v. Jay Minerals (2021) 437 ITR 132 (Karn.)(HC)

S.37(1): Business expenditure – 10% ad-hoc disallowance – Transport charges – Self made vouchers – Matter remanded for de novo consideration for verification of all documents [S. 145] 505

Court held that considering nature of transportation industry computer generated vouchers may not be issued by transporters unless they are an organization owning a large fleet. If Assessing Officer had any doubt with regard to genuinity of any voucher, he could have drawn sample vouchers and called upon assessee to establish its

genuineness. Since Assessing Officer made ad hoc disallowance without assigning any specific reason to a voucher or bunch of vouchers, matter was to be remanded for de novo consideration and assessment was to be redone after a thorough verification of all documents. (AY. 2014-15)
V.C. Arunai Vadivelan v. ACIT (2021) 282 Taxman 90 (Mad.)(HC)

506 **S.37(1): Business expenditure – Credit card expenses – Not produced evidence – Business development expenses – Foreign Travel Expenses – Not allowable as deduction.**
Court held that since directors of assessee were unable to adduce evidence that said credit card expenses had been incurred for business purpose of assessee-company the expenses are held to be not allowable as deduction. Court also held that the assessee failed to produce evidence the business development expenses are held to be not allowable. Foreign travel expenses were made for business purpose of assessee-company, same could not be allowed as deduction. (AY. 2010-11)
Swan Silk (P) Ltd. v. ACIT (2021) 282 Taxman 191 (Karn.)(HC)

507 **S. 37(1) : Business expenditure – Capital or revenue – Commuted and discounted lease rent – Allowable as revenue expenditure.**
Court held that the Tribunal was wrong in applying the matching principle and directing that one-time lease rent should be spread equally over the tenure of the lease. The matching principle, which is an accounting concept, requires entities to report expenses, at the same time, as revenue. The assessee chose to incur the liability of a crystallised amount in the period relevant to the assessment year 2007-08 and the amount allowable as deduction.(AY.2007-08, 2008-09)
Coforge Limited v. ACIT (2021) 436 ITR 546 / 204 DTR 273 / 322 CTR 10 (Delhi)(HC)

508 **S.37(1): Business expenditure – Prior period expenditure – Held to be allowable**
Dismissing the appeal of the revenue the Court held that Commissioner (Appeals) and Tribunal after considering a remand report submitted by AO regarding said expenses and considering audited books of account of assessee allowed said expenses. Order of Tribunal is affirmed. (AY. 2006-07)
CIT v. Karnataka Power Corporation Ltd (No. 2)(2021) 436 ITR 292/ 281 Taxman 600 (Karn.)(HC)

509 **S.37(1) : Business expenditure – Monetary incentive to its members – Allowable as deduction**
Allowing the appeal the Court held that monetary incentive provided to its members is allowable as deduction. Referred Circular No 117 dated 22-8-1973. (AY. 2009-10)
Karnataka State Co-op. Apex Bank Ltd v. Dy. CIT (2021) 281 Taxman 2 / 207 DTR 351/ 323 CTR 730 (Karn.)(HC)

510 **S.37(1): Business expenditure – Foreign travel expenses – Personal in nature – Disallowance is held to be justified.**
Dismissing the appeal the Court held that The Tribunal was right in law in confirming the order of the lower authorities to the effect that the expenses incurred on foreign

travel claimed by the assessee under section 37 (1) of the Income-tax Act, 1961 were to be restricted to one fifth of the total amount claimed.(AY. 2005-06)
P. Amarnath Reddy v. ACIT (2021) 435 ITR 176 / 281 Taxman 411 (Mad.)(HC)

S.37(1): Business expenditure – Clearing and forwarding business – Speed money to port labourers – Trade practice – Self made vouchers – Books of account not rejected – 10% ad hoc disallowance is held to be not justified [S.145] 511
Allowing the appeal the Court held that the books of account had not been doubted by any of the authorities. The Tribunal was not justified in sustaining the disallowance of expenses at 10 per cent of the expenses paid to port workers as incentives. Addition was deleted. (AY. 2007-08 to 2009-10)
Ganesh Shipping Agency v. ACIT (2021) 435 ITR 143 / 281 Taxman 637 (Karn.)(HC)

S.37(1): Business expenditure – Premium for Keyman Insurance policies – Failure to prove for the purpose of business – Matter remanded to CIT (A) [S.254 (1)] 512
Court held that the Tribunal without giving any acceptable finding, had come to the conclusion that a sum of Rs. 1,89,08,394 should be treated as business expenditure. That apart, the assessee also failed to produce any documentary evidence to justify its claim under section 37(1). Matter remanded to Commissioner (Appeals).(AY. 2005-06)
CIT v. Soundarya Decorators Pvt. Ltd. (2021) 435 ITR 70 / 281 Taxman 345 (Mad.)(HC)

S. 37(1) : Business expenditure – Manufacturer of sports products – Advertisement – Training to pace bowlers – Allowable as business expenditure. 513
Held that expenditure towards establishing a Pace Foundation for training pace bowlers is held to be allowable as revenue expenditure. (AY. 2006-07, 2007-08)
MRF Ltd. v. Dy. CIT (2021) 280 Taxman 439 (Mad.)(HC)

S. 37 (1): Business expenditure – Year of allowability of expenditure – Setting up of business setting up of business – Lease agreement – Previous year [S. 3, 145] 514
Court held that the assessee did all that was necessary to set up the insurance broking business. The assessee, after its incorporation opened a bank account, entered into an agreement for deputing employees (who were to further its insurance business), gave necessary training to the employees, executed operating lease agreements, and resultantly, set up offices at 29 different locations across the country. Besides this, the application for obtaining a licence from Insurance Regulatory and Development Authority was also filed on December 1, 2010. The Authority took more than a year in dealing with the assessee's application for issuance of a licence. The licence was issued only on February 2, 2012 although the assessee was all primed up, i.e., ready to commence its business, if not earlier, since June 1, 2011. The assessee was entitled to deduction of the expenses incurred for the business in the AY. 2012-13.(AY. 2012-13)
Maruti Insurance Broking Pvt. Ltd. v. Dy. CIT (2021) 435 ITR 34 / 203 DTR 225/ 281 Taxman 139 (Delhi)(HC)

515 **S. 37(1) : Business expenditure – Provision for wage arrears – Allowable as deduction. [S.28 (i), 145]**
Held that provision for wage arrears was an ascertained liability and allowable as deduction notwithstanding the fact that thee said provision has been accounted on cash basis. Followed *Bharat Earth Movers v. CIT (2000) 245 ITR 428 (SC) Calcutta Co Ltd v. CIT (1959) 37 ITR 1 (SC)*(AY. 2006-07)
CIT v. Metropolitan Transport Corp (Chennai) Ltd. (2021) 280 Taxman 249 (Mad.)(HC)

516 **S. 37(1) : Business expenditure – Consultancy fees- Studying and preparing a strategy to reduce cost of production- Allowable as revenue expenditure.**
Held that expenditure on account of consultancy fees paid for purposes of studying and preparing a strategy to reduce cost of production by assessee is held to be revenue expenditure. (AY. 2007-08)
CIT v. Telco Construction Equipment Co. Ltd. (2021) 280 Taxman 78 / 203 DTR 49/ 322 CTR 458 (Karn.)(HC)

517 **S. 37(1) : Business expenditure – Compensation paid to employee through trust – Allowable as revenue expenditure [S. 36(1)(iv), 36(1)(v)), 40A(9)]**
Court held that compensation paid to employee through trust is held to be allowable as revenue expenditure. Followed, *Wipro. Ltd. v. Dy. CIT (2015) 382 ITR 179 (Karn.)(HC)* (AY. 2006-07)
Wipro Ltd. v. Addl. CIT (2021) 279 Taxman 203 (Karn.)(HC)

518 **S. 37(1) : Business expenditure – Sales commission – Failure to prove service rendered – Disallowance is held to be justified.**
Court held that since the assessee had failed to prove that commission expenditure was incurred by assessee in connection with its business order of Tribunal disallowing the commission is affirmed. (AY. 2009-10)
Chariot International (P.) Ltd. v. Dy. CIT (2021) 279 Taxman 477 (Karn.)(HC)

519 **S.37(1): Business expenditure – Claim not made in original return – Prior period expenses – Allowable as deduction – Issue not to be remitted back to the Asseessing Officer [S. 43B, 254(1) R. 46A(3)]**
Dismissing the appeal of the revenue the Court held that the Tribunal had rightly dealt with claims of assessee on merits and had rightly allowed deduction even though the same was not claimed in original return and there was no need to remand matter as claim was not adjudicated earlier. (AY. 2002-03)
CIT v. Shaw Wallace Distilleries Ltd. (2021) 278 Taxman 67 (Karn.)(HC)

520 **S.37(1): Business expenditure – Research and development – Allowable as revenue expenditure.**
Expenditure incurred for research and development is held to be allowable as revenue expenditure. (AY. 2009-10)
Hindustan Aeronautics Ltd v. ACIT (2021) 278 Taxman 266 (Mad.)(HC)

S. 37(1) : Business expenditure – Setting up and commencement of business – lease deed executed – Business set up – Pre-Operative expenses allowable. 521

Where the assessee had executed lease deeds for its premises, obtained Importer Exporter Code, engaged senior employees and carried out local purchase and sale, it was to be held that its business had been set-up and expenditure incurred by it could not be disallowed as being pre-operative in nature. Further, expenditure incurred on advertisement, if incurred wholly and exclusively for the purposes of business will be allowable as long as no capital asset is created and the extent of the advertisement expenditure is irrelevant. (A.Y. 2010-11)

PCIT v. Miele India Pvt Ltd (2021) 433 ITR 286 / 281 Taxman 100 / 203 DTR 65 / 322 CTR 828 (Delhi)(HC)

S.37(1): Business expenditure – Capital or revenue – Licence fee paid to Department of Telecommunications is allowable as revenue expenditure – Loan for revenue purposes – Fluctuation loss – Allowable in year of increase in rate – Question cannot be raised even without taking in the grounds raised before the High Court [S.260A] 522

Dismissing the appeal of the revenue the Court held that the Tribunal was right in holding that the licence fee paid to the Department of Telecommunications by the assessee was not capital expenditure but revenue expenditure following the view taken in the assessee's own case for assessment year 2007-08.. Court also held that the Department, having not laid the foundation for its case that any of the conditions as stipulated by the Supreme Court in *CIT v. Woodward Governor India P Ltd. [2009] 312 ITR 254 (SC)* had not been fulfilled, could not, for the first time, without even taking a ground in the appeal, contend that the loss which accrued to the assessee on account of the foreign currency fluctuation could not be claimed by it as a business loss under section 37 (1) of the Act.(AY.2010-11)

PCIT v. HCL Comnet Systems and Services Ltd. (2021) 433 ITR 251 (Delhi)(HC)

S.37(1): Business expenditure – Provision for warranty on scientific basis – Allowable as deduction – Payment of market support fee and transmission fee for smooth running of business – Allowable as revenue expenditure. 523

Dismissing the appeal of the revenue the Court held that provision for warranty on scientific basis, allowable as deduction. Court also held that payment of market support fee and transmission fee for smooth running of business is allowable as revenue expenditure. Applied the ratio in *Empire Jute Co Ltd v. CIT (1980) 124 ITR 1 (SC), Rotork Controls India (P) Ltd (2019) 314 ITR 62 (SC)*.(AY.2007-08)

PCIT v. Lenovo India Pvt. Ltd. (2021) 433 ITR 117 / 203 DTR 306 / 280 Taxman 72 / 323 CTR 723 (Karn.)(HC)

S. 37(1) : Business expenditure – Postage, stationery, courier charges, etc., cost of which were to be recovered from various clients – Allowable as business expenditure. 524

The assessee incurred postage, stationery, courier charges, etc., in the course of winding up proceedings. The expenses were incurred as per SEBI directions, change of address was to be communicated to individual investors both by advertisement in prominent newspapers and also by individual communications. Due to closure of business in

2000, efforts were made to recover all expenses and fee payable before handing over records; however, it could not recover expenses incurred. Assessee claimed deduction of such expenditure. Assessing Officer disallowed the expenses which was affirmed by the Tribunal. On appeal the Court held that since incurring of those expenditures was not doubted or disproved by revenue authorities in hands of assessee, such expenditure was required to be allowed by assessing authority. (AY. 2001-02)
Share Aids (P.) Ltd. v. ITO (2021) 277 Taxman 517/ 319 CTR 177 /198 DTR 63 (Mad.)(HC)

525 **S. 37(1) : Business expenditure – Foreign travel expenses – promotion of business – legal and professional fees – Expenditure for replacement of part of machine – Held to be allowable as business expenditure.**
Allowing the appeal of the assessee the Court held that the subsidiaries in foreign country were exclusive companies, which dealt only with products of assessee holding company and thus, expenditure had been incurred for promotion of business of assessee holding company and the assessee had been able to produce their annual report along with accounts prepared in accordance with AS-18 and also proved that there was a gradual increase in sales compared to early years by subsidiary companies in foreign country. Further, bona fides and genuineness of expenses incurred by assessee towards foreign travel were never in doubt before lower authorities. Court held that expenditure incurred by assessee in nature of legal and professional fees for various services in connection with acquisition of a french company towards expansion of assessee's business in Europe, incurred wholly and exclusively in connection with business would be allowable. Court also held that expenditure for replacement of part of machine and whole of existing machine had not been replaced, said expenditure being revenue in nature would be allowable. (AY. 2010-11)
Elgi Equipments Ltd. v. JCIT (2021) 276 Taxman 141 (Mad.)(HC)

526 **S. 37(1) : Business expenditure – Miscellaneous expenses – Adhoc disallowance – Not substantiated by producing evidence – Ad hoc disallowance is held to be justified.**
Dismissing the appeal of the assessee the Court held that the assessee could not substantiate the miscellaneous expenses by producing relevant evidence, i.e., vouchers, Assessing Officer was justified in making adhoc disallowance. (AY. 2005-06)
Tata Coffee Ltd. v. Dy. CIT (2021) 276 Taxman 215/ 198 DTR 380 (Karn.)(HC)

527 **S. 37(1) : Business expenditure – Discount in issue of ESOP is an allowable deduction – Contingent liability. [S.4, 143(3), 145, Companies Act, 1956, S. 2(15A)]**
Assessee-company issued Employee's Stock Option Plan (ESOP) and claimed difference between market price and exercise price as deduction under section 37(1), spread equally over vesting period of four years, on basis of SEBI Guidelines and accounting principles. Assessing Officer disallowed same, holding it as a contingent liability or a short receipt of share premium. On appeal the Tribunal held that where liability in respect of ESOP is incurred at end of each year, which is quantified at end of vesting period when employees become entitled to exercise options, discount on ESOP is an ascertained liability and not a contingent liability accordingly the discount on ESOP being a general expense, is an allowable deduction under section 37(1) during years

of vesting on basis of percentage of vesting during such period, subject to upward or downward adjustment at time of exercise of option. On appeal by the revenue dismissing the appeal of the revenue the Court held that discount on issue of ESOP is an allowable deduction in computing the income under the head profits and gains of the business. (AY.2004-05)
CIT (LTU) v. Biocon Ltd. (2021) 430 ITR 151/ 276 Taxman 1 / 197 DTR 209 / 318 CTR 728 (Karn.)(HC)
Editorial : Bicon Ltd v. Dy CIT (2013) 35 taxmann.com 335 / 144 ITD 21 / 155 TTJ 649/ 90 DTR 289 / 25 ITR 602 (SB)(Bang.)(Trib.)

S.37(1): Business expenditure – Capital or revenue – Public issue – Capital expenditure. 528
Dismissing the appeal the Court held that the expenditure incurred for augmenting the capital of a company by public issue has an enduring effect and therefore, has to be treated as capital expenditure. (AY.1994-95)
Tatia Sky Line and Health Farms Ltd. v. ACIT (2021) 432 ITR 123 / 279 Taxman 18 (Mad.) (HC)

S.37(1): Business expenditure – Real estate business – Provision made in account for security deposit – Amount forfeited due to breach of contract – Neither allowable as business expenditure nor as bad debt. [S.36(1)(vii)] 529
Dismissing the appeal the Court held that, the creation of provision for expenditure which is not yet incurred and is only intended to be written off as compensation paid to the land owner for the admitted failure of the assessee to complete the contract in the manner as agreed between the parties, did not entitle the assessee to claim the sum either as bad debt or as business expenditure merely by making a book entry creating a provision for future expenditure or compensation, the assessee could not be permitted to claim deduction under section 36 or 37 of the Act.(AY.2006-07)
Allu Arvind Babu(No. 2) v. ACIT (NO. 2)(2021) 430 ITR 183/ 197 DTR 93/ 318 CTR 102 (Mad.)(HC)

S. 37(1) : Business expenditure – Capital or revenue – Expenditure on acquisition of technical know-how – Enduring benefit – Not allowable as revenue expenditure. 530
Dismissing the appeal the Court held that from a perusal of the relevant clauses of the agreement, it was clear that the assessee was a joint venture company and under the agreement had been granted a non-transferable licence to manufacture and assemble etc Even after the expiry of 11 years from the date of commercial production, the assessee was entitled to continue the manufacture and sale of the licence products. Accordingly Under the agreement, the assessee had incurred an expenditure which gave it an enduring benefit, and therefore, the expenditure had to be treated as capital expenditure.(AY.2008-09)
Telco Construction Co. Ltd. v. ACIT (2021) 430 ITR 22 / 277 Taxman 137 (Karn.)(HC)

531 **S. 37(1) : Business expenditure – Take over of business – Scheme for voluntary retirement of employees – Allowable as business expenditure. [S. 10(10C]**

Dismissing the appeal of the revenue the Court held that the sum was paid as retirement benefit to employees who availed of the benefit of the scheme. Under the scheme, compensation was paid not only for past services but also for the remaining years of service with the company. The employees had also filed a complaint against the assessee under the labour laws and therefore, the assessee had to offer a scheme to avoid any kind of future problems. The scheme was sanctioned by the Chief Commissioner for the exemption under section 10(10C) of the Act and it was a contractual obligation and was an ascertained liability. The genuineness of the scheme was not doubted by any of the authorities, rather it had been approved by the Chief Commissioner. The expenditure incurred by the assessee under the scheme had been incurred solely and exclusively for the purposes of business and was eligible for deduction under section 37(1).(AY.2000-01)

CIT v. G. E. Medical Systems (I.)(P.) Ltd. (2021) 430 ITR 494 / 197 DTR 449/ 277 Taxman 315 (Karn.)(HC)

532 **S.37(1): Business expenditure – Freebies to doctors – Matter referred to larger bench of three or more members to consider question as to allowability of expenditure. [S.143(3), 153A Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. S. 20A]**

Co-ordinate bench in *Dy CIT v. PHL Pharma (P.) Ltd. [2017] 78 taxmann.com 36* held that expenditure incurred by assessee Pharma Company for customer relationship management, key account management, gift articles, free medicine sample, advertisement and sales promotion could not be considered as freebies given to doctors, they were purely for brand recognition; allowable as business expenditure and were not impaired by Explanation 1 to section 37(1). Tribunal held that in view of fact that regulations prohibiting acceptance of freebies by medical professionals under section 20A of Indian Medical Council Act, 1956 read with rule 6.8 of Indian Medical Council (Professional conduct, Etiquette and Ethics) Regulations, 2002, that such freebies cannot be lawfully accepted by medical professionals, and, therefore, any expenditure incurred for extending these freebies to medical professionals is for a purpose which is prohibited by law, Explanation to section 37(1) is clearly attracted. Thus, conclusions arrived at by co-ordinate bench decision did not reflect correct legal position, and same was position with respect to a large number of other co-ordinate bench decisions following said decision or following line of reasoning in said decision - Whether therefore a bench of three or more Members was to be constituted to consider question as to whether or not an item of expenditure on account of freebies to medical professionals, which is hit by rule 6.8.1 of Regulations, 2002, read with section 20A of Indian Medical Council Act, 1956, could be allowed as a deduction under section 37(1) read with Explanation thereto, in hands of pharmaceutical companies. Matter referred to larger bench. (AY. 2011-12, 2012-13)

DCIT v. Macleods Pharmaceuticals Ltd. (2021) 206 DTR 337 / (2022) 192 ITD 513 (Mum.) (Trib.)

Editorial : Refer, Apex Laboratories Pvt. Ltd. v. DCIT (2022) 442 ITR 1 (SC), and also Finance Act, 2022 amended the section 37 with effect from 1-4 -2022, explanation 3, clarifying that the expression " expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law

S. 37(1) : Business expenditure – Provision made for site restoration is a contingent liability – Allowable as deduction on the principle of commercial expediency.[S.145] 533
Allowing the appeal of the assessee the Court held that, provision made for site restoration is a contingent liability hence allowable as deduction on the principle of commercial expediency. Referred *Calcutta Company Ltd v. CIT (1959) 37 ITR 1 (SC), Bharat Earth Movers v. CIT (2000) 245 ITR 428 (SC), Rotork Controls India (P) Ltd. v. CIT (2009) 314 ITR 62 (SC)*(TCA.No. 2117 to 2019 of 2008 dt 23-1-2020)(AY. 1996-97, 1997-98, 1998-99)
Vedanta Ltd v. JCIT (2021) BCAJ-January P. 58 (Mad.)(HC)

S.37(1): Business expenditure – Capital or revenue – Lease hold land – Amount spent on construction – Allowable as revenue expenditure – Explanation to section 32(1) [S. 32] 534
Held that the Tribunal, considering an identical issue, had held in favour of the assessee and deleted the additions made by the Assessing Officer. Appeal of revenue dismissed. (AY.2011-12, 2012-13)
Dy. CIT v. Eastman Exports Global Clothing Pvt. Ltd. (2021) 92 ITR 343 (Chennai)(Trib.)

S.37(1): Business expenditure – Mining business – Stopped by order of Supreme Court – Guarantee payments for resuming mining activity – Expenditure on discharging social responsibility – Contributions to flood relief work – Legal fees to Federation of Mining Industries – Allowable as revenue expenditure. 535
Held that expenditure incurred on guarantee payments for resuming mining activity, expenditure on discharging social responsibility,contributions to flood relief work, legal fees to Federation of Mining Industries are allowable as revenue expenditure. (AY.2012-13 to 2014-15)
Zeenath Transport Company v. ACIT (2021) 92 ITR 460 (Bang.)(Trib.)

S.37(1): Business expenditure – Periodic maintenance of road every five years – Matching concept – Provision for periodic maintenance – Allowable as revenue expenditure – Provision not includible in book profit [S. 115J] 536
Held that under the matching concept of income and expenditure, the assessee had merely discharged its contractual obligation by making provision for periodic maintenance cost and since accounts were maintained by the assessee on mercantile basis, the provision had to be made by the assessee in its books and accordingly, became an allowable expenditure under section 37(1) under the normal provisions of the Act. Accordingly, the expenditure attributable to each year has been claimed as deduction both under the normal provisions of the Act as well as in the computation of book profits under section 115JB of the Act. It would not fall under the category of provision made for a contingent liability or unascertained liability.(AY.2013-14 to 2015-16)
Dy. CIT v. Gorakhpur Infrastructure Co. Ltd. (2021)92 ITR 42 (SN)(Mum.)(Trib.)

S.37(1): Business expenditure – Manufacturer of Automotive Switchgears – Expenditure on development of designs and tools – Capital expenditure. 537
Held that as a result of the expenditure designs and tools were created which were used for the purpose of business run by the assessee. It was the settled position of law that

any expenditure incurred on the development of tools and designs could not be termed as revenue expenditure. Oder of CIT (A)) was reversed. (AY.2008-09)
Dy. CIT v. Sutham Electric Ltd. (2021) 92 ITR 35 (SN)(Pune)(Trib.)

538 **S.37(1): Business expenditure – Media business selling advertisement airtime on its Channel – Discount allowed – Allowable as revenue expenditure – Unpaid leave and encashment – Directed the Assessing Officer to verify actual payment [S. 43B(f)]**
Discount allowed to advertisers allowable as revenue expenditure. As regards unpaid leave and encashment, Tribunal directed the Assessing Officer to verify actual payment. (AY.2013-14)
JCIT v. T. V. Today Network Ltd. (2021) 92 ITR 53 (SN)(Delhi)(Trib.)

539 **S.37(1): Business expenditure – Foreign Exchange loss – Allowable as revenue expenditure.**
Held that foreign exchange loss allowable as business loss. (AY.2014-15)
Viney Corporation Ltd. v. ACIT (2021) 92 ITR 59 (SN)(Delhi)(Trib.)
Carlson Hospitality Marketing (India) Pvt Ltd v. Dy.CIT (2021) 92 ITR 27 (SN)(Delhi)(Trib.)

540 **S.37(1): Business expenditure – Consultancy charges paid to technical persons – Expenditure cannot be disallowed on estimate basis.**
Held that the books of account produced by the assessee had not been rejected by the lower authorities. The assessee had furnished all the relevant documents that could be filed to prove the genuineness of consultancy charges from its side. The Assessing Officer had not pointed out any defect in these details nor found any defect in the books produced by it together with supporting evidence. Disallowance of expenses on estimate basis was deleted.(AY.2006-07)
Lauren Software Pvt. Ltd. v. ITO (2021) 92 ITR 47 (SN)(Mum.)(Trib.)

541 **S.37(1): Business expenditure – Fines and penalties – Interest on arrears of Service tax – Not penal in nature – Allowable as deduction.**
Held that interest on arrears of Service tax is not penal in nature, allowable as deduction. (AY. 2013-14)
Dy.CIT v. PLR Projects Pvt Ltd (2021) 92 ITR 23 (SN)(Hyd.)(Trib.)

542 **S.37(1): Business expenditure – Upfront fee – Term loan for acquiring fixed asset – Interest on loan taken on equipment – Allowable as revenue expenditure.**
Held that upfront fee on term loan for acquiring fixed asset and interest on loan taken on equipment allowable as revenue expenditure. (AY. 2015-16)
Brace Iron and Steel Pvt. Ltd. v. Add. CIT (2021) 90 ITR 582 (Delhi)(Trib.)

543 **S.37(1): Business expenditure – Computer expense – Without pointing out any defects, ad hoc disallowance was held to be not justified.**
Held that when all these details were already on the record of the Assessing Officer, there was no necessity for the assessee to file any application for admission of additional evidence. The ad hoc disallowance confirmed by the CIT (A) was directed to be deleted. (AY. 2012-13)
C. S. Datamation Research Services Pvt. Ltd. v. ITO (2021) 90 ITR 2 (SN.)(Delhi)(Trib.)

S.37(1): Business expenditure – Capital or revenue – Repair and renovation of leased premises – Allowable as revenue expenditure – Ex-gratia payment – Matter remanded [S. 43B] 544

Held that repair and renovation of leased premises, allowable as revenue expenditure. Ex -gratia payment which was filed in the revised computation, the matter was remanded to the Assessing Officer. (AY 2014-15)

Karnataka Soaps and Detergents Ltd. v. ACIT (LTU)(2021) 90 ITR 85 (SN)(Bang.)(Trib.)

S.37(1): Business expenditure – Interest for delayed payment of service tax – Allowable as deduction – Remanded for verification. 545

Held, that the expenditure on interest for delayed payment of service tax was eligible for allowance as revenue expenditure. The Assessing Officer was to verify whether the assessee had followed the inclusive or exclusive method of accounting for service tax and then decide in accordance with law. (AY.2006-07 to 2010-11)

Central Warehousing Corporation v. ACIT (2021) 89 ITR 208 (Delhi)(Trib.)

S. 37(1): Business expenditure – The expenditure necessary to maintain Assessee's corporate personality would be an allowable expenditure even when no business was undertaken. 546

Tribunal held that the expenditure which was quite necessary to maintain Assessee's corporate personality would be an allowable expenditure since without incurring the same, the Assessee could not have remained into existence. Therefore, directed the learned AO to identify such expenditure and allow the same to that extent. (AY. 2008-09 to 2014-15)

Sir Pratap Heritage Hotels (P) Ltd v. ACIT (2021) 209 TTJ 1 (UO)(Jodhpur)(Trib.)

S.37(1): Business expenditure – Premium payable on redemption of debentures – Spread over period of debenture 547

Held that premium payable on redemption of debentures to be spread over period of debenture. Amount pertaining to assessment year in question deductible even though paid on redemption. (AY.2003-04 to 2005-06, 2009-10)

ACIT v. Investment Trust of India Ltd. (2021) 88 ITR 566 / 211 TTJ 777 (Chennai)(Trib.)
Dy.CIT v. HFCL Infotel Ltd. (2021) 88 ITR 566 / 211 TTJ 777 (Chennai)(Trib.)

S.37(1): Business expenditure – Bank guarantee to execute project – Bank recovering from the assessee – Loss in the ordinary course of business – No element of fines or penalties – Allowable as business expenditure. 548

Held that encashment of bank guarantee was incurred in the normal course of business and did not involve any penalty element at all.(AY.2014-15)

Ogene Systems India Ltd. v. ITO (2021) 88 ITR 2 (SN)(Hyd.)(Trib.)

S. 37(1): Business expenditure – Capital or revenue – Expenses for insurance spare consumption – Revenue expenditure. 549

Held, that insurance spare consumption was to be treated as revenue in nature. (AY.2013-14, 2014-15)

NLC India Ltd. v. Dy. CIT (2021) 87 ITR 121 (Chennai)(Trib.)

550 **S.37(1): Business expenditure – Debit of claim charges – Self made vouchers – No disallowance can be made – Ad hoc disallowance of 10 per cent – Not sustainable [S. 145]**
Held that disallowance cannot be made merely on the ground that the it was supported by self made vouchers. Ad hoc disallowance of 10 per cent expenses without pointing out specific instances of unverifiable element is held to be not sustainable. Relied *Ravi Marketing Pvt Ltd v. CIT (2006) 280 ITR 519 (Cal.) (HC)* (AY.2011-12)
Bajaj Parivahan P. Ltd. v. ITO (2021) 87 ITR 74 (SMC)(SN)(Kol.)(Trib.)

551 **S.37(1): Business expenditure – Employees' Stock option plan – Loss on account of stock options – Allowable as deduction – Provision for gratuity – Allowable as deduction – Provision for approved gratuity fund – Allowable as deduction – Advance to employees welfare fund – Interest not disallowable. [S. 36(1)(iii), 40A(7), 43B]**
Held that loss on employee stock option plan, provision for gratuity, provision for approved gratuity fund are held to be allowable as deduction. Advance to employees welfare fund are made from internal accruals, interest paid not disallowable. (AY.2012-13, 2014-15)
Bharat Financial Inclusion Ltd. v. Dy.CIT (2021) 87 ITR 80 (SN)(Hyd.)(Trib.)

552 **S. 37(1): Business expenditure – Prior period interest – Omission to book expenditure to closing work-in-progress rectified during year – No disallowance warranted. [S. 145]**
Allowing the appeal the Tribunal held that on the facts the assessee omitted to book expenditure to closing work in progress which was rectified during the year, disallowance was directed to be deleted.(AY.2013-14)
Citywood Builders Pvt. Ltd. v. Dy.CIT (2021) 87 ITR 83 (SN)(Mum.)(Trib.)

553 **S.37(1): Business expenditure – Capital or revenue – Market research expenses – Allowable as revenue expenditure.**
Held that market research expenses are allowable as revenue expenditure. (AY. 2008-09, 2009-10)
Add.CIT v. Bunge India Pvt. Ltd. (2021) 87 ITR 34 (SN)(Mum.)(Trib.)

554 **S.37(1): Business expenditure – Payment to sub – broker – Statement of third party was not confronted – No disallowance can be made.**
Dismissing the appeal the Tribunal held that the documentary evidence on record clearly suggested that the assessee entered into the genuine business activities with the sub-broker and sub-broker rendered services for the business activity of the assessee. In the group case the Commissioner (Appeals) had already deleted a similar addition finding the commission payment made to the same sub-broker genuine. Order of CIT (A) was affirmed. (AY.2008-09)
Dy.CIT v. Realistic Realitors Pvt. Ltd. (2021) 87 ITR 30(SN)(Delhi)(Trib.)

S. 37(1) : Business expenditure – Provision for warranty claims – Estimate of provision on basis of past historical trend of warranty claims not reliable – Provision not allowable. [S. 145] 555

Dismissing the appeal the Tribunal held that it clearly established that assessee had not been strict in making the provision for warranty at the end of the financial year under consideration. The assessee's warranty provision equally lacked proper accounting/ calculating factors and, therefore, the claim of the assessee was not sustainable. Order of CIT (A) is affirmed (AY.2012-13)

Senior India P. Ltd. v. Dy.CIT (2021) 87 ITR 62 (SN)(Delhi)(Trib.)

S. 37(1): Business expenditure – Interest rate hedging contract – Underlying transaction was interest payable on loan – Loss or gain from interest rate swap arrangement is revenue. 556

Held that any loss or gain which arose from the interest rate swap arrangement was in the revenue field since the underlying transaction for such an arrangement was the interest payable on the loan which was a revenue item. Therefore, the Commissioner (Appeals) was right in deleting the disallowance of loss on interest rate hedging contract. (AY.2012-13)

Dy.CIT v. Sisecam Flat Glass India Ltd. (2021) 87 ITR 1 (SN)(Kol.)(Trib.)

S.37(1): Business expenditure – Rents – Proportionate disallowance of lease rentals – Held to be not valid – Supplementary Rent (SR) paid to lessors – Not reimbursement – Allowable as deduction. 557

Assessee-company paid lease rentals to lessor for aircrafts acquired on operating lease and claimed. The Assessing Officer disallowed the expenses. On appeal Commissioner (Appeals) held that credits received by assessee from engine manufacturer for selecting its engine in aircraft were not transferred to lessors hence the expense of lease rentals was partly attributable to credits received by assessee and made proportionate disallowance of expenditure claimed by assessee. Tribunal held that since agreement to receive credit and payment of lease rentals under lease agreement which was executed much later for obtaining aircrafts on operating lease were separate transactions, proportionate disallowance of lease rentals could not be made. Tribunal also held that lease agreement that SR was calculated based upon flying hours attributable towards critical parts of aircraft and post incurring maintenance expenditure, assessee was entitled to reimbursement only to extent SR funds was maintained by lessor. Since SR was determinable as per terms of lease agreement and was a mandatory payment, same could not be said to be reimbursable and once business liability of SR was ascertained it was to be allowed as expenditure. (AY. 2012-13)

InterGlobe Aviation Ltd. (IndiGo) v. ACIT (2021) 191 ITD 1 (SB)(Delhi)(Trib.)

558 **S. 37 (1): Business expenditure – Power and fuel expenses – No defect in books of account – Financial statement audited – Ad Hoc Disallowance is held to be not justified. [S.145]**

Tribunal held that the Assessing Officer has not found any defects in the books of account, financial statement is audited, hence, ad-hoc disallowance is held to be not justified. (AY. 2011-12, 2015-16, 2016-17)

ACIT v. Ariba Foods Pvt. Ltd (2021) 86 ITR 174 (Indore)(Trib.)
ACIT v. Vyanktesh Plastics and Packaging Pvt. Ltd. (2021) 86 ITR 174 (Indore)(Trib.)
ACIT v. Famous Vanijya Pvt. Ltd. (2021) 86 ITR 174 (Indore)(Trib.)

559 **S.37(1): Business expenditure – Chartered Accountants firm – Payment of subscription fees and reimbursement of its share to international group entity – Allowable as deduction – Criminal complaint filed against partner of firm related to business of firm – Professional fees paid towards defending suit in the name of partner – Allowable as business expenditure.**

Held that payment of subscription fees and reimbursement of its share to international group entity was allowable as deduction. Tribunal also held that it could not be said that defending the case was not a part of the business activity for the assessee inasmuch as the reputation and goodwill of the assessee were at stake. The criminal complaint was filed against the partner of the assessee-firm in a matter which related to the business of the firm. In such circumstances, the expenditure incurred by the assessee towards defending the action in the name of the partner was deductible business expenditure. (AY. 2010-11)

Deloitte Haskins and Sells v. ACIT (2021) 86 ITR 121 / 211 TTJ 89 / 202 DTR 349 (Delhi) (Trib.)

560 **S.37(1): Business expenditure – Salaries paid – Relative of promoter – No disallowance can be made – The Assessing Officer is not entitle to decide reasonableness and commercial expediency of expenditure.**

Held that salaries paid to relative of promoter cannot be disallowed merely because he is relative of promoter. The Assessing Officer is not entitled to decide reasonableness and commercial expediency of expenditure. Followed *S.A Builders Ltd v. CIT (A)(2007) 288 ITR 1 (SC) CIT v. Dalmia Cement (B) Ltd. (2002) 254 ITR 377 (Delhi)(HC)*.(AY. 2011-12 to 2013-14)

ACIT v. Claridges Hotels Pvt. Ltd. (2021) 86 ITR 402 (Delhi)(Trib.)

561 **S.37(1): Business expenditure – Appointment of consultant as per agreement – Failure to get the business – Disallowance cannot be made – Not liable to deduct tax at source – DTAA-India-UAE [S. 40(a)(i), Art, 14(7), 22(1)]**

Held that the payment for consultant was made as per agreement. The assessee was not able to get the business cannot be the ground to disallowance the expenditure. Tax is not liable to be deductible as per the DTAA between India and UAE.(AY. 2011-12 to 2013-14)

ACIT v. Claridges Hotels Pvt. Ltd. (2021) 86 ITR 402 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Provision for advertisement – Liability crystalised in the following year – Not allowable – Provision for warranty – Directed to verify and allow. 562

Held that provision for advertisement, as the liability crystalised in the following year, not allowable deduction for the year under consideration. As regards disallowance of the warranty provision, the Dispute Resolution Panel directed the Assessing Officer to verify whether the expenditure has actually been claimed for the year, in order to be allowed, which verification was not carried out by the Assessing Officer.(AY. 2012-13)

A. O. Smith India Water Products Pvt. Ltd. v. Dy. CIT (2021) 86 ITR 38 (SN.)(Bang.)(Trib.)

S.37(1): Business expenditure – Capital or revenue – Lease holder – Repair and maintenance – Allowable as revenue expenditure. 563

Held that the assessee is a lease holder, hence the maintenance and repair charges are allowable as revenue expenditure. (ITA No. 1223 /Mum/ 2017 dt. 9-2-2021) (AY. 2013 -14)

Shree Nirmal Commercial Ltd v ITO (2021) The Chamber's Journal-June-P 128 (Mum.) (Trib.)

S.37(1): Business expenditure – Real estate business – Pre-Operative expenses – Set – up of business – General administration and selling expenses are allowable as deduction though no revenue was generated. 564

Allowing the appeal of the assessee the Tribunal held that once the business is set -up general and selling expenses are allowable as deduction though no revenue was generated. (ITA No. 3014 / Delhi / 2018 dt. 17-9-2-2021) (AY. 2013-14)

Logix Buildtech (P) Ltd v. ACIT (2021) The Chamber's Journal – December – P. 68 (Delhi) (Trib.)

S.37(1): Business expenditure – Payment made for reclamation and rehabilitation of mine area – Direction of Supreme Court – Allowable as deduction. 565

Allowing the appeal of the assessee the Tribunal held that the payment was made as per the direction of the Supreme Court to lease holders of various mines for restoration and rehabilitation of damage to ecology owing to mining operations. The payment cannot be hit by explanation to section 37 (1) of the Act. (AY. 2014-15)

P. Venganna Setty and Brothers v. ACIT (2021) 133 taxman 368 (2022) 192 ITD 541 (Bang.) (Trib.)

S.37(1): Business expenditure – Ad-hoc disallowance – Self – made vouchers – Held to be not justified. 566

Held that the ad-hoc disallowance of 20 % of to total cash expenses is held to be not justified merely because it was supported by self-made vouchers. (ITA No. 1253/Mum/ 2020 dt. 23-9-2021 (AY. 2011-12)

Kanti Beverages Pvt Ltd v. DCIT (2021) The Chamber's Journal-October-P. 110 (Mum.) (Trib.)

567 **S.37(1): Business expenditure – Swap charges – Converting floating rate loan to a fixed rate loan – Allowable as deduction.**
Held that swap charges paid to convert a floating rate loan to a fixed rate loan are allowable as deduction. (dt. 25-6-2021) (AY. 2003-04)
Owens-Corning (India) Pvt. Ltd. v. ITO (2021) BCAJ-September-P. 40 (Mum.)(Trib.)

568 **S.37(1): Business expenditure – Corporate Social responsibility (CSR) – Allowable as deduction – Explanation to section 37(1) is prospective w.e.f. AY. 2015-16]**
Held that the amount spent on corporate Social responsibility (CSR) is allowable as deduction. Explanation 2 to section 37 (1) which is prospective in nature and applies w.e.f AY. 2015 -16. (dt. 11-8-2021) (AY. 2014-15)
National Building Construction Corporation Ltd v. Addl. CIT (2021) BCAJ-October-P. 54 (Delhi)(Trib.)

569 **S.37(1): Business expenditure – Professional choreographer – Office-cum residence – Electricity – Service charges – Compensation and electricity paid to society in respect of portion of residence used as office – Allowable as business expenditure.**
Held that the assessee produced a video recording and photographs to prove that a clearly demarcated part of premise was used as office, such compensation and electricity charges related to flats used as office were to be allowed as revenue expenditure. (AY. 2013-14)
ACIT v. Farah Khan (Ms.)(2021) 191 ITD 633 (Mum.)(Trib.)

570 **S.37(1): Business expenditure – Expansion of existing business – Capital or revenue – New project of starting a hotel chain – Allowable as revenue expenditure.**
Held that expenditure incurred expansion of existing business of new project of starting a hotel chain is allowable as revenue expenditure. (AY. 2013-14)
ITO v. Blue Coast Infrastructure Development Ltd. (2021) 191 ITD 643 / 90 ITR 294 / 213 TTJ 28 (UO)(Chd.)(Trib.)

571 **S.37(1): Business expenditure – Funds borrowed for setting up a thermal plant – Interest expenses till date of commissioning of power production i.e., prior to use of assets, was to be capitalized to cost of asset – Interest expenses incurred after commencement of power production – Allowable as revenue expenditure. [S.43(1)].**
Held that interest expenses incurred by assessee till date of commissioning of power production i.e. prior to use of assets, was to be capitalized to cost of asset in terms of Explanation 8 to section 43(1) of the Act. Interest expenses incurred after commencement of power production i.e. post assets were put to use, was to be allowed as revenue expenditure. (AY. 2013-14)
ACIT v. India Power Corporation Ltd. (2021) 191 ITD 250 (Kol.)(Trib.)

S.37(1): Business expenditure – Business of real estate developer – Setting up of business – Acquired land in the year 2007 – No business income – Expenses allowable as deduction – Interest earned from bank deposits – Assessable as income from other sources and not as business income [S. 28(i), 56] 572

Held that the assessee had started acquiring lands in 2007 itself and, thus, it could be said that business of assessee had already been set up. Expenses incurred for running of business allowable as deduction, though no income was earned during the relevant year. Held that the assessee, had failed to demonstrate business compulsion for making deposits with banks, interest income on bank deposits be assessed under head Income from other sources and not as business income.(AY. 2012-13, 2014-15)

Bengal Shriram Hitech City (P.) Ltd. v. ACIT (2021) 191 ITD 466 / 86 ITR 719 (Bang.)(Trib.)

S.37(1): Business expenditure – Commission – Foreign agents and local agents – Held to be allowable. 573

Held that the commission agent had introduced new customers to assessee, procured export order and, accordingly, assessee carried out business and, thus, there was a direct nexus between income generated and commission payment. Agreements between assessee and agents were duly signed and accepted by respective parties and, assessee had also furnished copies of commercial Invoice, confirmation of accounts, copy of Form 15CB in case of foreign party and in case of Indian company, TDS was deducted, addition on account of disallowance of commission was held to be not justified. (AY. 2016-17)

DCIT v. Ganges International (P.) Ltd. (2021) 190 ITD 755 (Chennai)(Trib.)

S.37(1): Business expenditure – Brokerage expenditure – Deferred expenditure in books of account – Allowable as business expenditure. 574

Held that expenditure is wholly and exclusively for purpose of business. The expenditure could not be categorized in capital field on plea of enduring benefit. The expenditure incurred on brokerage was to be allowed. (AY. 2013-14)

DCIT v. Axis Asset Management Co.Ltd. (2021) 190 ITD 682 (Mum.)(Trib.)

S.37(1): Business expenditure – R&D expenditure – Automobile industry – Claimed 70 percent as capital and 30 percent as revenue – No matching concept – Held to be capital in nature – Entitle for depreciation.[S. 32] 575

Held that capitalization of 70 per cent of expenditure was not due to matching concept as submitted by assessee but was due to fact that a French company acquired 70 per cent shares of assessee. Tribunal observed that the expenditure having been allowed as revenue expenditure in earlier assessment years 2010-11 and 2011-12, same should be followed as per principle of consistency, was not acceptable as facts being different, decision taken by Assessing Officer in one assessment year would not constitute binding precedent in any subsequent assessment year. Expenditure is capital in nature and would be eligible for depreciation. (AY. 2012-13 to 2016-17)

Sogefi Engine Systems India (P.) Ltd. v. ACIT (2021) 190 ITD 525 (Bang.)(Trib.)

576 **S.37(1): Business expenditure – Plant repair and maintenance expenses – Failure to produce supporting documents – 5% of disallowance was held to be proper.**
Held that the assessee had failed to prove that expenditure incurred by it on account of repair and maintenance was a genuine claim, therefore, impugned 5 per cent disallowance of such expenses made by Assessing Officer was justified. (AY. 2010-11)
Universal Stone Crushing Co. Dala. v. ITO (2021) 190 ITD 415 (SMC)(All.)(Trib.)

577 **S.37(1): Business expenditure – Telephone expenditure – Disallowance for alleged use by partners was deleted.**
Held that except suspicion of Assessing Officer regarding possible personal use of telephone by partners nothing was brought on record by him to substantiate such suspicion of personal use. Addition of telephone expenses was deleted. (AY. 2010-11)
Universal Stone Crushing Co. Dala. v. ITO (2021) 190 ITD 415 (SMC)(All.)(Trib.)

578 **S. 37 (1(): Business expenditure – Dividend distribution tax – Not allowable as deduction.**
Held that the dividend distribution tax paid by assessee was not an expenditure incurred by assessee wholly and exclusively for purposes of business. Not allowable as deduction. (AY. 2012-13, 2014-15)
Metropolis Healthcare Ltd. v. DCIT (2021) 190 ITD 331 (Delhi)(Trib.)

579 **S.37(1): Business expenditure – Foreign exchange loss – Hedging – Mark to market on foreign exchange forwards – Allowable as business loss [S. 28(i)]**
Tribunal held that loss on account of foreign exchange difference is allowable as deduction. Referred CBDT Instruction No. 3 of 2010 dt. 23-3-2010. (AY. 2012-13)
HSBC Electronic Data Processing India (P.) Ltd. v. ACIT (2021) 189 ITD 312 (Hyd.)(Trib.)

580 **S.37(1): Business expenditure Land acquired by Metro – Commercial obligation – Parking space to shop owners – Cost of land allowable as deduction. [S. 28(1)]**
Tribunal held that though the assessee may not have a legal obligation to transfer the plot of land used for parking space by the shop owners, the commercial obligation is established that assessee has given that plot, handed over to the operating agency, which is maintaining the shopping mall to be used for parking space. Full consideration received by the assessee would be income of the assessee as assessee has already taken the cost of the plot as a deduction u/s 37 (1) or u/s 28 of the income tax act. By providing the plot of land assessee has incurred a cost of the project for providing the parking space to the shop owners, which was a commercial obligation on the assessee, the above cost is required to be granted as deduction to the assessee. Thus assessee has also legal obligation to provide parking spaces to buyers of shopping complex. The expenditure was allowable as deduction. (AY.2014-15)
Crown International v. ACIT (2021) 190 ITD 132 / 88 ITR 23 (SN) / 212 TTJ 219 / 202 DTR 81 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Penal in nature – Contributed 15 per cent of sale proceeds to SPV account, these payment did not fall under category of penalty – Allowable as deduction [Explanation 1 to section 37 (1)] 581

The AO disallowed said SPV deduction by observing that as per observations of Supreme Court amount of sale proceeds deducted and retained towards SPV was penal in nature attracting Explanation 1 to section 37(1). The Supreme Court's decision clearly held that 15 per cent contribution to SPV account was guarantee payment for implementing of R & R plan, which would be deducted from sale proceeds and this was one of conditions for resuming mining operations under Category 'B' mine.

Held that, since 15 per cent of sale proceeds was payable to SPV account, after it accrued to assessee, and fact that, assessee was obliged to part with such portion of income, by virtue of directions of Supreme Court, as a precondition to resume mining operations under Category 'B' mine would be application of income and, therefore, should be considered as expenditure incurred for carrying out its business activity. Contribution towards SPV being a requirement to be incurred to continue its business activities, these payments did not fall within category of penalty within ambit of Explanation to section 37(1). (AY. 2013-14)

Muneer Enterprises v. ACIT (2021) 189 ITD 7 / 213 TTJ 361 / 205 DTR 241 (Bang.)(Trib.)

S. 37(1) : Business expenditure – Commission – AO failed to considered the letter submitted by recipient wherein confirmed that entire commission paid was for relevant assessment year, matter needs remanded for consideration. [S.254(1)] 582

Assessee claimed expenditure towards sales commission paid to bring foreign tourists to shop of assessee. The AO noted that commission paid for period of 15 months and out of which only 12 months related to year under consideration and remaining 3 months were related to preceding assessment year. Held that, AO had not considered letter submitted by Assessee wherein confirmed that amount paid for financial year 2008-09. Hence matter remanded to file of AO for deciding issue afresh. (AY. 2009-2010)

Jaipur Boutique Carpet v. ITO (2021) 189 ITD 305 (Jaipur)(Trib.)

S.37(1) : Business expenditure – Factory shifting expenditure – Transportation expenditure from one site to another site, did not give any enduring benefit, same could not be treated as capital in nature. 583

Transportation expenditure for shifting its factory from one site to another site, did not give any enduring benefit to assessee, same could not be treated as capital in nature, its revenue expenditure in the hands of the Assessee. (AY. 201-11, 2012-13)

Jayant Packaging (P.) Ltd. v. DCIT (2021) 189 ITD 321 (Chennai)(Trib.)

S.37(1) : Business expenditure – Foreign exchange loss – neither speculative loss within meaning of s.43(5), nor same was notional or contingent in nature, same being loss on foreign exchange derivatives allowed. [S.43 (5)] 584

The AO passed order u/s. 143(3) disallowing claim of assessee of loss incurred on foreign exchange. Held that, loss incurred on foreign exchange was neither speculative loss within meaning of section 43(5), nor same was notional nor contingent in nature, therefore, said sum being loss on foreign exchange derivatives deserved to be allowed. (AY. 2009-10)

Pricewaterhouse Coopers (P.) Ltd. v. ACIT (2021) 189 ITD 329 (Kol.)(Trib.)

585 **S.37 (1): Business expenditure – Non-compete fees – Paid to individuals who had experience in business of consultancy for not to engage themselves in similar kind of business activities for a period of 3 years, such consideration was independent and not part of cost of acquisition of business, such fee was to be allowed as revenue expenditure.**

The AO passed order u/s. 143(3) and made additions on account of disallowance of non-compete fee. Held that, non-compete fees was paid to individuals who had experience in business of consultancy for not to engage themselves in similar kind of business and activities for a period of 3 years, these consideration was independent and not part of cost of acquisition of business paid to shareholders. Therefore, payment of non-compete fees was revenue in character and allowed as business expenditure. (AY. 2009-10)

Pricewaterhouse Coopers (P.) Ltd. v. ACIT (2021) 189 ITD 329 (Kol.)(Trib.)

586 **S.37(1): Business expenditure – Prior period expenditure – CENVAT credit on passenger service fee (PSF)/user development fee (UDF) and advertisement fee was not actually received offered as income – Entitle to deduction in subsequent year by reversal of entries – Service tax on chartered flight – Interest payment for delayed payment of service tax – Allowable as deduction – Legal expenses – Aborted project – Allowable as deduction. [S.43B]**

Income offered though not received. Entitle to deduction in subsequent year by reversal of entries. Service tax on chartered flight and discount received on PSF/UDF to government account allowable as deduction in the year of payment. Interest paid on delayed payment of service tax is compensatory in nature hence allowable as deduction. Expenditure incurred for meeting fees paid towards legal services provided by a law firm in relation to proposed issuance of IPO, which was later aborted is allowable as deduction. (AY. 2012-13)

Go Airlines (India) Ltd. v. DCIT (2021) 188 ITD 938/ 213 TTJ 549 / 205 DTR 121 (Mum.) (Trib.)

587 **S.37(1): Business expenditure – Purchase of mobile phone – Allowable as revenue expenditure [S. 32]**

Held that since it has nowhere been defined that mobile phone is machinery in absence of any specific entry in Appendix-1 of Act, the expenditure on purchase of mobile phone is allowable as revenue expenditure. (AY. 2010-11)

DCIT v. Edelweiss Financial Advisors Ltd. (2021) 188 ITD 834 (Ahd.)(Trib.)

588 **S.37(1): Business expenditure – Brokerage paid to broker who was not registered with stock exchange – Service rendered not proved – Payment was made against violation of SEBI rules – Not allowable as deduction.**

Held that since the assessee had not brought anything on record suggesting nature of services rendered by such brokerage and also the said payment was made against violation of rules of SEBI. Not allowable as deduction. (AY. 2010-11)

DCIT v. Edelweiss Financial Advisors Ltd. (2021) 188 ITD 834 (Ahd.)(Trib.)

S.37(1): Business expenditure – Penalties – Delay in compliance procedure – No disallowance can be made. 589
Held that penalties were levied on by stock exchanges for delay in complying procedures allowable as deduction. (AY. 2009-10)
DCIT v. Edelweiss Financial Advisors Ltd. (2021) 188 ITD 834 (Ahd.)(Trib.)

S.37(1): Business expenditure – ad-hoc addition – Held to be not sustainable in eyes of law. 590
Held that ad hoc additions without assigning any reason would not be sustainable in eyes of law. (AY. 2014-15)
ACIT v. Vanesa Cosmetics. (2021) 188 ITD 787/ 212 TTJ 712/ 204 DTR 393 (Delhi)(Trib.)

S.37(1): Business expenditure – Sales promotion – Expenses incurred in various locations – Burden is on assessee to prove that the expenses incurred was wholly and exclusively for the purpose of business – Matter remanded. 591
Held that burden is on the assessee to prove that sales promotion expenses and expenses incurred in various locations was wholly and exclusively for the purpose of business. Matter remanded. (AY. 2005-06, 2009-10)
Bhola Food Products (P.) Ltd. v. JCIT (OSD)(2021) 188 ITD 653/87 ITR 10 (SN)(All)(Trib.)

S.37(1): Business expenditure – CENVAT – Input service tax credit written off in books of account – Allowable as deduction. 592
Held that input service tax credit written off in books of account is allowable as deduction. Matter remanded for verification. (AY.2010-11)
FIH India (P.) Ltd. v. DCIT (2021) 188 ITD 124 / 198 DTR 250/ 210 TTJ 1 (Chennai)(Trib.)

S.37(1): Business expenditure – Brand promotion expenses – Contribution to school for construction of swimming pool – Held not allowable as deduction – Sales promotion – Gift items given to Ayurvedic doctors – Allowable as deduction. 593
Held that main objective of making contribution to school for construction of swimming pool could not be related to business activity carried on by assessee. Followed earlier year order. Not allowable as deduction. Held that gift items given to Ayurvedic doctors is held to be allowable as sales promotion expenses (AY. 2014-15)
Himalaya Drug Company. v. DCIT (2021) 188 ITD 201 (Bang.)(Trib.)

S. 37(1) : Business expenditure – Capital or revenue – Major renovation – Expenditure on repairs & renovation of office premises held to be allowable as business expenditure. [S.30] 594
Assessee Company had incurred expenses on expansion and renovation for 3 of its premises, out of which 2 were leased premises and 1 was owned premises. The expenses incurred were stated to be towards accommodating managing director and executive directors at one of its premises, at other premises it was towards reconfiguring the space to accommodate more employees, and were claimed under the head Repairs & maintenance expenses u/s 37(1) of the Act. A.O held that the expenses were in the

nature of capital expenditure leading to major renovation or erection of assets. Held that the expenditure incurred for maintaining its business, for increasing its efficiency and for preserving its already existing asset, and thus revenue in nature, and allowable (AY. 2008-09)
UHDE India (P) Ltd. v. ACIT (2021) 190 ITD 777 / 211 TTJ 339 (Mum.)(Trib.)

595 **S. 37 (1) : Business expenditure – Interest rate hedging contract – Underlying transaction was interest payable on loan – loss or gain from interest rate swap arrangement is allowable as revenue expenditure.**
Held that any loss or gain which arose from the interest rate swap arrangement was in the revenue field since the underlying transaction for such an arrangement was the interest payable on the loan which was a revenue item. Therefore, deletion the disallowance of loss on "interest rate hedging contract" is correct. (AY 2012-13)
Dy. CIT v. Sisecam Flat Glass India Ltd. (2021) 87 ITR 1 (SN)(Kol.)(Trib.)

596 **S. 37(1) : Business Expenditure – Investment in shares only 11 Per Cent of own funds, no proportionate disallowance of interest warranted.**
The assessee made investment in shares from which tax-free dividend income was earned. The assessee's total investment in shares was 12 per cent. of the borrowed funds. Therefore, the Assessing Officer disallowed being the proportionate interest at the rate of 12 per cent. of the total interest paid. The Commissioner (Appeals) deleted the addition. Tribunal held that CIT(A) had noted after perusal of the balance-sheet of the assessee for the assessment year 2004-05 that the assessee had own funds whereas investment in shares is 11 per cent. of the assessee's own funds and therefore there cannot be disallowance based on the reasoning of AO. (AY. 2004-05)
Dy. CIT v. EIH Associated Hotels Ltd. (2021) 87 ITR 5 (SN)(Mum.)(Trib.)

597 **S.37(1) : Business expenditure – Advances given to subsidiary – Advance made as a measure of commercial expediency –Interest is allowable.**
The assessee had given interest-free advances amounting to its subsidiary company. The assessee filed a chart indicating the sources of funds for advances made to the subsidiary company in different years to support its view that the advance was given out of its own generated funds. The Assessing Officer did not accept the figures and disallowed proportionate interest on interest-free advances at 26 per cent. of the total interest paid on borrowings. Tribunal held that, CIT(A) had noted that the advances were out of its own funds and it was given to its own subsidiary company which was in the same line of hotel business as a measure of commercial expediency. (AY. 2004-05).
Dy. CIT v. EIH Associated Hotels Ltd. (2021) 87 ITR 5 (SN)(Mum.)(Trib.)

598 **S. 37(1) : Business expenditure – Advertisement – details furnished in respect of two out of three units – Disallowance restricted to 2 per cent of estimate.**
The assessee only furnished details in respect of the Agra and Udaipur units, and not in respect of the Jaipur unit. The AO made a disallowance of 10 per cent of the total expenditure. The CIT(A) deleted the disallowance.

Tribunal following the earlier order of Tribunal in own case restricted disallowance on 2 % of the advertising expenses. ((AY. 2004-05).
Dy. CIT v. EIH Associated Hotels Ltd. (2021) 87 ITR 5 (SN)(Mum.)(Trib.)

S. 37(1) : Business expenditure – Staff welfare expenses, staff recruitment expenses, expenses pertaining to employees meals on duties, medical expenses, medical insurance, uniform expenses are incidental to carrying on business – Expenditure wholly and exclusively for purpose of business is allowable. 599
During Assessment the AO noted that a substantial part of the expenses booked by different units of the assessee-company related to employees' meals on duty, medical expenses, mediclaim insurance, uniform expenses, recruitment expenses, employees' relation expenses. According to him, recruitment expenses and employees' relation expenses did not relate to staff welfare, nor were expenses on account of festival gift. Therefore, he disallowed certain expenditure out of the purported staff welfare expenses. The CIT (A) deleted the additions. Tribunal held that staff recruitment expenses were incurred only exclusively for the purpose of business and hence allowable expenditure. The expenses on account of employees' relation expenses was incurred for efficient functioning of the business which pertained to employees meals on duties, medical expenses, medical insurance, uniform expenses, etc., and these expenses were incidental to carrying on the business which was crucial in the hotel industry. It was expended wholly and exclusively for the purpose of business and thus allowable under section 37(1) of the Act. (AY. 2004-05)
Dy. CIT v. EIH Associated Hotels Ltd. (2021) 87 ITR 5 (SN)(Mum.)(Trib.)

S.37(1) : Business expenditure – Corporate social responsibility expenditure, change of law – Expenses prior to amendment prohibiting deduction not to be disallowed. (Expln. 2) 600
The assessee incurred expenditure for community development and corporate social responsibility. The assessee submitted a note stating that it had incurred expenses on account of scholarship and tuition fees for girl children of junior employees since financial year 2009-10 and provided scholarships to 48 girl children in financial year 2011-12. The AO disallowed the expenses, CIT(A) allowed the same. Tribunal held that, that Explanation 2 to s.37(1) was inserted with effect from April 1, 2015 and could not be construed to the assessee's disadvantage in respect of the period prior to this amendment. The expenses were allowable. (AY. 2011-12).
Dy. CIT v. Dee Development Engineers ltd. (2021) 87 ITR 38 (SN)(Delhi)(Trib.)

S.37(1) : Business Expenditure – Sales promotion and diwali expenses are held to be allowable as business expenditure. 601
The AO disallowed expenses claimed by the assessee under the head sales promotion and Diwali expenses on the ground that they were personal in nature. Tribunal held that the assessee had given details as to how these expenses were related to the business. The AO not justify the reasoning that the sales promotion expenses and Diwali expenses were personal in nature. (AY 2011-12)
Dy. CIT v. Dee Development Engineers ltd. (2021) 87 ITR 38 (SN)(Delhi)(Trib.)

602 **S.37(1):Business expenditure – Proportionate drop in vehicle maintenance account in profit and loss statement – Addition not tenable.**
Tribunal held that the carriage outward was paid towards dispatch of finished goods to different locations with the freight therefor ; payments were duly supported by biliti, copies of which served as proof of payment. On mere comparison with the previous year, the Assessing Officer had disallowed the expense without noting the proportionate drop in expenditure debited to the profit and loss account under the head "vehicle running and maintenance". The addition was deleted as not being tenable.(AY.2014-15)
Shri Anant Steel Pvt. Ltd. v. ITO (2021) 85 ITR 60 (SN)(Delhi)(Trib.)

603 **S.37(1): Business expenditure – Delayed payment of sales tax – non collection of Form No C from buyers – Not in nature of penalty, allowable as deduction.**
Allowing the appeal the Tribunal held that differential amount of tax and interest on delayed payment of such tax deposited by assessee due to non-collection of Form No C is held to be allowable as deduction. (AY. 2016-17)
Gem Electro Mechanicals (P.) Ltd. v. ACIT (2021) 187 ITD 361 (Jaipur)(Trib.)

604 **S. 37(1) : Business expenditure – CSR – Allowable as business expenditure – Penalty – Composition fee paid for regularising deviation in building structure was allowable as revenue expenditure – Capital or revenue – Repairs and maintenance of plant and machinery – Allowable as revenue expenditure – Acquisition of chairs – Capital expenditure – Advertisement expenses – Signage for display of name of Company at dealer's premises – Expenditure to extent shared is allowable as revenue expenditure – Sales tools/fixtures – Allowable as revenue expenditure – Lumpsum royalty – Additional ground – Capitalised in books – Claimed in return – Allowable as revenue expenditure. [S.32]**
Assessee claimed that expenditure had been incurred towards maintenance charges of a Government school for benefit of children of employees of assessee-company. Expenditure was on certain renovation work at training centre at Mohindergarh including providing chairs and tables by assessee. The expenses were debited on account of tools for training center lab. Tribunal held that since all expenses were incurred for efficiently carrying out business of assessee, same fulfilled condition of 'wholly and exclusively for purpose of business'. Tribunal held that expenditure incurred towards composition fee for regularizing deviation in building structure and issuance of occupancy certificate,. Regularisation was within permissible limits. In case irregularity was continued, structure had to be broken down. Not penalty allowable as revenue expenditure. Expenditure incurred on repair and maintenance of existing structure was to be allowed as revenue expenditure. Expenditure incurred on acquisition of chairs is held to be capital in nature. Assessee-company, engaged in manufacture of two wheelers had debited certain expenditure in respect of glow sign board/signages which were displayed at location of dealers. Tribunal held that once signage was fixed at dealer's site, it would not satisfy test of ownership with assessee; expenditure to extent it was shared by assessee was to be allowed in hands of assessee; entire expenditure would not be allowed to assessee. Expenditure was incurred by assessee-company on sales tools fixtures which were placed at dealer's outlets Assessee incurred such expenditure to maintain standard format of displaying its products all over India in order to induce

prospective customers to clearly identify exclusive dealers of assessee's products in India. These were specifically manufactured by third party manufacturers in accordance with specifications provided by assessee. As per terms of agreement between assessee and third party manufacturers, 50 per cent of price of 'sales tools' was directly paid by assessee as advance and balance 50 per cent was paid by authorized dealers at time of delivery at dealer's outlet. Expenditure incurred was on account of running of business hence allowable as business expenditure. Assessee capitalised lump sum royalty payment in its books of account and same was not claimed as an expenditure in return of income. Tribunal held that since there is no estoppel in income tax law, impugned expenditure could be allowed in additional ground of appeal though assessee had not claimed same in return. Followed *CIT v. Hero Honda Motors Ltd (2015) 230 taxmann. com 58 (Delhi)(HC).* (AY. 2012-13)
Honda Motorcycle and Scooter India (P.) Ltd. v. DCIT (2021) 187 ITD 264 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Repairs – Replacement of part of machinery – Allowable as revenue expenditure. 605
Assessee had incurred Expenditure on replacement of Gripper which was part of robotic arms forming part of high pressure die casting machines. It was held by the tribunal that as only a part was replaced and necessity of replacement had arisen as part became old and there was no increase in productivity or capacity after replacement as a result of said expenditure, thus, expenditure incurred on replacement of Gripper should be allowed as revenue expenditure. (AY. 2010-11)
Jaya Hind Industries Limited v. Dy. CIT (2021) 187 ITD 659 (Pune)(Trib.)

S.37(1): Business expenditure – Reimbursement expenses with 15 per cent mark up – Allowable as revenue expenditure 606
Tribunal held that expenditure incurred by assessee on purchase of RSA tokens was to be allowed as revenue expenditure. (AY. 2012-13)
DCIT v. Barclays Technology Centre India (P.) Ltd. (2021) 187 ITD 632/ 198 DTR 241/ 210 TTJ 128 (Pune)(Trib.)

S. 37(1) : Business expenditure – Management support services – Valuation of stock – cost or net realisable value – Sales promotion expenses – Allowable as deduction [S.145] 607
Tribunal held that the management support services expanses, sales promotion expenses are allowable as business expenditure. As regards valuation of stock as the assessee has followed consistently valuing the stock at cost or net realizable value the same may be directed to be accepted. (AY.2008-09)
Michelin India P. Ltd. v. JCIT (2021) 85 ITR 86 (Delhi)(Trib.)

S. 37(1) : Business expenditure – Bogus purchases – Failure to fie quantitative details – Matter remanded to Assessing Officer to give an opportunity of cross examination and to file quantity details. 608
Tribunal held that the assessee could not file qualitative and quantitative details such as the opening stock, purchases, total sales, closing stock, item-wise and party-wise

month-to-month details. In the absence of the current mailing addresses of the parties, it was not possible to summon those parties for cross-examination, which was required to resolve the issue. The order of the Commissioner (Appeals) was set aside and the matter restored to the file of the Assessing Officer for a de novo order after giving the opportunity of cross-examination to the assessee. The assessee was directed to file the relevant documents and evidence before the Assessing Officer.(AY.2011-12)
Kaka Rayon v. ACIT (2021) 85 ITR 32 (Mum.)(Trib.)

609 **S. 37(1) : Business expenditure – Real estate business – Land acquired for development – Expenditure allowable as the business commenced though no business income is declared – Expenses for development of residential or commercial project to be considered as work-in-progress.**
Tribunal held that the commencement of real estate business would start with the acquisition of land by an assessee whose intention was to develop it. There was no dispute with regard to the fact that the assessee had started acquiring lands in 2007 itself. Accordingly, the assessee had already set up its business and expenses incurred in running the business were allowable as deduction, even though no business income was declared. Followed, *CIT v. Dhoomketu Builders and Development P. Ltd (2014) 368 ITR 680 (Delhi)(HC)* and *ACIT v. Valmark Developers Pvt. Ltd. (2018)(4) TMI 1565 (Bang.)(Trib.)*. As regards all the expenses related to development of residential and commercial projects ought to be taken to the work-in-progress account and could not be claimed as deduction. The remaining expenses should be allowed as deduction. If any common expenses had been incurred, they could be split into project-related items and general items on a rational basis. The issue was to be restored to the Assessing Officer for this purpose. (AY. 2012-13, 2013-14, 2014-15).
Bengal Shriram Hitech City Pvt. Ltd. v. ACIT (2021) 86 ITR 719 (Bang.)(Trib.)

610 **S. 37(1) : Business expenditure – Power and fuel expenses – No defects in the books of account – Ad hoc disallowance is held to be not justified – Employees' contribution to provident fund and employees' state insurance corporation – Delay in depositing – Deduction allowable [S.36(1)(va)]**
Tribunal held that as no defects were found in the books of account maintained by the assessee ad-hoc disallowance of power and fuel expenses is held to be not justified. Employees' contribution to provident fund and employees' state insurance corporation though there was delay in depositing the said payment is allowable as deduction. (AY.2011-12, 2015-16, 2016-17)
ACIT v. Ariba Foods Pvt. Ltd (2021) 86 ITR 174 (Indore)(Trib.)
ACIT v. Vyanktesh Plastics and Packaging Pvt. Ltd (2021) 86 ITR 174 (Indore)(Trib.)
ACIT v. Famous Vanijya Pvt. Ltd. (2021) 86 ITR 174 (Indore)(Trib.)

611 **S. 37(1) : Business expenditure – Payee relative of promoter – AO can not decide the reasonable and commercial expenditure – Payment to consultant – Failure to procure business – No disallowance can be made – DTAA-India-UAE [S.40(a)(i), Art.14(7),22(1)]**
Tribunal held that, merely because the payee is relative of promoter salary paid cannot be disallowed. AO cannot decide the reasonable and commercial expenditure. As regards

payment to consultant the assessee had filed the general sales agent agreement between the assessee-company and AE and the agreement appointing this company as the consultant. Apart from this, correspondence between AE and the hotel was submitted before the lower authorities. The Assessing Officer had not brought any material on record to show that no services were rendered by AE. Moreover, no tax was required to be deducted at source on the payment in view of articles 14(7) and 22(1) of the Double Taxation Avoidance Agreement between India and the U. A. E. The Commissioner (Appeals) observed that there was evidence to indicate that efforts were made by AE towards the fulfilment of the terms of the agreement and failure to procure business did not lead to the conclusion that the transaction was not genuine. (AY.2011-12 to 2013-14
ACIT v. Claridges Hotels Pvt. Ltd. (2021) 86 ITR 402 (Delhi)(Trib,)

S. 37(1) : Business expenditure – Firm of Chartered Accountants – Part Payment of subscription fees through Mumbai entity as reimbursement of its share to international group entity – Allowable as deduction – Legal and professional fees – Criminal complaint filed against partner in matter related to business of firm – Allowable as business expenditure. [S.195] 612

Tribunal held that by becoming part of global network of professional firms, it was easier to get work of international clients which were referred by firms of other companies from other countries. Similarly, the assessee may also refer its clients to its associated firm in other countries where the clients may require professional services. The use of the name D was in itself sufficient to justify the business necessity of the subscription charges. Once these were reimbursement of expenses, the assessee was not liable to deduct tax at source under section 195 of the Act. The assessee produced debit notes issued by DHS, Mumbai as supporting evidence. The assessee had to pay subscription fees through DHS, Mumbai for this purpose to DTT. However, as DHS Mumbai made the payment after deducting tax at source and the assessee only reimburses its share of expenses, tax was not required to be deducted again in respect of its reimbursement of share of expenses. Tribunal also held that the criminal complaint was filed against the partner of the assessee-firm in a matter which related to the business of the firm. In such circumstances, the expenditure incurred by the assessee towards defending the action in the name of the partner was deductible business expenditure. (AY. 2010-11)
Deloitte Haskins And Sells v. ACIT (2021) 86 ITR 121 (Delhi)(Trib.)

S. 37(1) : Business expenditure-Provision for sales and advertisement expenses – Liability crystallising only in the following year – Disallowance is held to be proper – Advertisement expenses – Matter remanded – Provision for warranty – Allowable only if amount is claimed during year. [S.145] 613

Tribunal held that the provision made for sales and advertisement would crystallise not during the year under consideration but in the following year. The Panel's observation was correct. That as the disallowance of advertisement expenditure was confirmed by the Assessing Officer on the ground of there being no documentary evidence therefor, the issue was remanded back to him to allow the assessee the opportunity to provide the necessary documents. That as regards disallowance of the warranty provision,

the Dispute Resolution Panel directed the Assessing Officer to verify whether the expenditure has actually been claimed for the year, in order to be allowed, which verification was not carried out by the Assessing Officer. (AY. 2012-13)
A. O. Smith India Water Products Pvt. Ltd. v. Dy. CIT (2021) 86 ITR 38 (SN)(Bang.)(Trib.)

614 **S. 37(1) : Business expenditure – Expenditure incurred on affixing adhesive stamps on conveyance deed-held, it is revenue expenditure-provision for warranty-provision for present obligation due to past event-not a contingent liability-expenditure allowed-Depreciation on goodwill and customer contracts-held in nature of intangible assets, therefore eligible for depreciation [S. 32]**
Assessee's claim for expenditure of Rs. 59,17,000/- for cost of adhesive stamp in connection with preparation of deed of transfer and assignment for acquisition of receivables was allowed by the Tribunal as the same was incurred for receivables which is a part of current asset and therefore revenue expenditure. CIT(A)'s observation that the payment of stamp duty was in connection with acquisition of industrial steam turbine i.e. an industrial unit or a capital asset and therefore it is a capital expenditure set aside.
In respect of provision for warranty of Rs. 2,76,18,000/-. The Assessing Officer and CIT(A) denied this claim on the ground that it is an unascertained and a contingent liability and the CIT(A) restricted this disallowance only for provision made during the year. The Tribunal noted that the claim was allowed in subsequent years. It held that when an expenditure or obligation is anticipated on the basis of past experiences, provision for such expenditure cannot be held as contingent liability and allowed the claim of assessee.
In respect of claim of depreciation on customer contracts made by the Assessee by referring to the provisions of section 2(11) & 32(1)(ii). the lower authorities denied the claim and held that depreciation under section 32(1)(ii) cannot be allowed as customer contracts were not in the nature of 'intangible assets' as contemplated under section 2(11). Assessee raised an additional ground for depreciation on goodwill under section 32 before the Tribunal. On the basis of judicial precedents, the Tribunal observed that goodwill was an intangible asset entitled for depreciation under section 32. It noted the claim of the Assessee that goodwill arising out of slump sale agreement and customer contract which were similar to goodwill being an intangible asset were also eligible for depreciation. On the basis of judicial precedents, it concluded that goodwill and customer contracts were eligible for depreciation under section 32. *Rotork Controls India P. Ltd. v. CIT (2009) 314 ITR 62)(SC)]; Techno Shares and Stocks Limited v. CIT (2010) 327 ITR 323 (SC); CIT v. Smifs Securities Ltd. (2012) 348 ITR 302 (SC), Areva T&D India Ltd. v. CIT [ITA No. 315/2010]* relied. (AY.2004-05, 2005-06)
Demag Delaval Industries Turbomachinery (P.) Ltd v. ACIT (2021) 186 ITD 228 (Mum.) (Trib.)

615 **S. 37(1) : Business expenditure – expenditure on implementation of a new software package – Allowable as revenue expenditure**
The assessee was a public limited company engaged in the business of manufacture and sale of Turbine, Gear and Gear Boxes, sugar plants, water treatment plants, mini hydel power projects, etc. The assessee had, during the relevant previous year, inter alia,

incurred an expenditure aggregating to Rs. 1,16,60,400 on implementation of new ERP package which was treated as deferred revenue expenditure in the books of accounts. Though in the books of account, the expenses were treated as deferred revenue expenditure, the said expenses, being revenue in nature, were claimed as deduction in the return of income. The Assessing Officer disallowed the said expenses holding the same to be capital expenditure on the ground that it resulted an enduring benefit to the assessee and allowed depreciation @ 60% on the same. The Tribunal noted that no ownership of any software was acquired by the assessee as a consequence of the ERP expenditure. The assessee had only limited right to use the concerned software product which the assessee acquired without acquiring the right of transferring the said software. Thus, no benefit of an enduring nature had been derived by the assessee as result of said expenditure and the said expenditure was incurred only for smooth working and for improving the functioning of the organization. The Tribunal thus allowed the expenditure. (AY.2001-02 to 2005-06)
Triveni Engineering & Industries Ltd. v. ACIT (2021) 186 ITD 353 (Delhi)(Trib.)

S.37(1): Business expenditure – Professional fees paid for incorporation of company – Web site expenses – Allowable as revenue expenditure. 616
Professional fees paid for incorporation of company purchase of share transfer stamps, consultation paid fees paid for drafting investment agreement, professional fees paid for structuring various documents, and due diligence for investment agreement are allowable as revenue expenditure. (AY. 2012-13)
IFMR Rural Channels & Services (P) Ltd. v. Dy. CIT (2021) 214 TTJ 28 (UO)(Chennai) (Trib.)

S.37(1): Business expenditure – Ad-hoc disallowance – Not pointed out any specific defect – Not justified in making 20 percent ad-hoc disallowance [S. 143(3)] 617
Tribunal held that Assessing Officer has not pointed out any specific defect in the bills and purchase vouchers hence the ad-hoc disallowance of 20 per cent is not justified. (AY. 2008-09)
ITO v. Guru Homes (2021) 214 TTJ 17 (UR)(Chennai)(Trib.)

S.37(1): Business expenditure – Ad-hoc disallowance – Not pointed out any specific defect – Not justified in making 20 percent ad-hoc disallowance [S. 143(3)] 618
Tribunal held that Assessing Officer has not pointed out any specific defect in the bills and purchase vouchers hence the ad-hoc disallowance of 20 per cent is not justified. (AY. 2008-09)
ITO v. Guru Homes (2021) 214 TTJ 17 (UR)(Chennai)(Trib.)

S.37(1): Business expenditure – Weighted deduction – R&D facility – Allowable as revenue expenditure – Interest on borrowed amount – Matter remanded – Exempt income – While computing disallowance under section 14A only average value of such investment from which yielded exempt income is to be considered. [S.14A, 35(2AB), 36(1)(iii), R.8D(2)(iii)] 619
Held that expenditure towards professional charges and rent payment were incurred is allowable as revenue expenditure. Interest on borrowed capital matter remanded.

Tribunal also held that while computing disallowance under section 14A only average value of such investment from which yielded exempt income is to be considered. (AY. 2014-15)
Biological E Ltd. v. DCIT (2021) 91 ITR 201 / (2022) 192 ITD 475 (Hyd)(Trib.)

620 **S.37(1): Business expenditure – Arrears of wages on the basis of sixth Pay Commission – Quantified and paid latter years – Allowable as deduction [S. 40(a)(ia), 145]**
Dismissing the appeal of the revenue the Tribunal held that provision for arrears of wages are made on the basis of sixth Pay Commission. The amount was quantified and paid latter years. Allowable as deduction (AY. 2009-10, 2010-11)
ACIT v. Chennai Central Co-Operative Bank Ltd. (2021) 209 TTJ 652 / 198 DTR 61 (Chennai)(Trib.)

621 **S.37(1): Business expenditure – Designing and development expenses – Capital or revenue – Capital expenditure – Directed to allow the depreciation – R&D expenditure – Failure to produce evidence not allowed – Directed the AO to allow depreciation – Reassessment order passed beyond four years – Order was quashed. [S. 32, 35(1)(iv), 147, 148]**
Reassessment order passed for one of the year beyond four years was quashed. On merit the Tribunal held that designing and development expenses is held to be capital expenditure and directed to allow the depreciation. R&D expenditure is disallowed for failure to produce evidence and directed the AO to allow depreciation. (AY.2005-06, 2008-09 to 2015-16)
Tata Advanced Materials Ltd v. DCIT / (2021) 209 TTJ 242 /197 DTR 97 (Bang.)(Trib.)

622 **S.37(1): Business expenditure – Capital or revenue – Expenditure incurred on buy back of shares – Allowable as revenue expenditure.**
Held that expenditure on buy back of shares is allowable as revenue expenditure. (AY. 2009-10)
Dy.CIT v. Supreme Industries Ltd (2021) 197 DTR 241 (Mum.)(Trib.)

623 **S.37(1): Business expenditure – Capital or revenue – Tenancy agreement – Stamp duty and registration charges – Allowable as revenue expenditure.**
Tribunal held that expenditure incurred towards stamp duty and registration charges for registering the tenancy agreement is allowable as revenue expenditure. (AY. 2013-14)
Hickson & Dadajee {P) Ltd. v. ITO (2021) 201 DTR 75 (Mum.)(Trib.)

624 **S.37(1): Business expenditure – Capital or revenue – Conversion of debentures in to equity shares – Documents and stamp charges on conversion – Capital expenditure – Provision of section 35D is not applicable in respect of expenditure incurred after commencement of business.[S. 35D]**
Held that on conversion of debentures in to equity the assessee deriving enduring benefit therefore the expenditure incurred on documents and stamp charges is capital expenditure. As regards the alternative contention of allowability of claim u/s 35D is concerned, the said section does not contemplate allowance of expenditure for

conversion of debentures in to equity share capital hence the alternative claim of deduction u/s 35D of the Act is also not allowable. (AY. 2014-15)
Sacmi Engineering India (P) Ltd. v. Dy. CIT (2021) 207 DTR 293/(2022) 215 TTJ 1029 (Ahd)(Trib.)

S. 37(1): Business expenditure – Ad-hoc disallowance of 20 percent of expenses – Not sustainable. 625
Held that the assessee had produced the requisite details, viz., bills, vouchers, and payment details to substantiate the genuineness and veracity of the expenses, and also to drive home the fact that they had been incurred wholly and exclusively in the normal course of his profession. The lower authorities had neither pointed out which of the expenses claimed by the assessee were not supported by documentary evidence nor earmarked those items whose genuineness they doubted. There was nothing discernible from the records to show which of the expenses had not been incurred by the assessee wholly and exclusively for the purpose of his profession. As the disallowance of expenses was made in an arbitrary and ad hoc manner hence deleted. (AY.2014-15)
Kushal Virendra Tandon v. CIT (2021) 91 ITR 610 / (2022) 215 TTJ 630 (Mum.)(Trib.)

S.37(1): Business expenditure – Ad-hoc basis – Expenses relating to Telephone, Mobile, Vehicle Running and maintenance and depreciation on car – Lump sum disallowance of Rs. 20,000 purely on an ad hoc basis – Not sustainable. 626
Held that the lump sum disallowance of Rs. 20,000 out of certain expenses claimed relating to telephone, mobile, vehicle running and maintenance and depreciation on car confirmed by the Commissioner (Appeals) was purely on an ad hoc basis and was to be deleted. (AY. 2012-13)
Anil Kumar Garg v. ITO (2021) 91 ITR 68 (SN)(Jaipur)(Trib.)

S.37(1): Business expenditure – Capital or revenue – Expenditure related to stock-in-trade to be allowed as revenue expenditure. [S. 2(14)(i)] 627
Held that the legal expenses concerned the acquisition of properties or right, title and interest in the properties transferred to the assessee by the erstwhile Nizam. By virtue of the directions of the High Court, certain properties belonging to the Nizam were transferred to the assessee. However, the properties were acquired either by the State Government or some other Government agencies. In respect of some of the properties, compensation had been paid by the Government/Government agencies for acquiring the property. For the assessment years 1990-91 and 1991-92, the first appellate authority had very clearly and categorically held that the immovable properties located at Hyderabad were stock-in-trade of the assessee and this decision had been approved by the Tribunal. Thus, once the immovable properties located at Hyderabad had been held as stock-in-trade, they could not be treated as capital asset in terms of section 2(14)(i) of the Income-tax Act, 1961. Any expenditure related to stock-in-trade has to be considered as revenue expenditure. (AY. 2015-16)
ACIT v. Cyrus Investments Pvt. Ltd. (2021) 91 ITR 49 (SN)(Mum.)(Trib.)

628 **S.37(1): Business expenditure – Additional wages paid in terms of Notification of Central Government – Allowable as deduction, though the payment was made in subsequent year. [S. 145]**

Held that the Wage Board for Working Journalists and other Newspaper Employees set up by the Central Government submitted its report and the Central Government issued consequential notification on November 11, 2011 accepting the recommendations. In terms of the notification the assessee recomputed the wages pertaining to the year under consideration and claimed deduction thereof by means of the revised return. The assessee was admittedly following the mercantile system of accounting. Since the additional wages pursuant to the notification pertained to the year under consideration they had to be allowed under the mercantile system of account followed by the assessee. The fact that the payment was made in a subsequent years could not affect the deductibility of the amount. (AY. 2012-13, 2013-14)

DCIT v. Sakal Papers Ltd. (2021) 91 ITR 69 (SN)(Pune)(Trib.)

629 **S.37(1): Business expenditure – Commission – Matching principle – Under agreement Commission shall accrue as and when sales finalised – Claim is allowable when sales are accounted. [S. 145]**

Held that under agreement Commission shall accrue as and when sales finalised therefore claim is allowable when sales are accounted. (AY. 2014-15)

Tejas Networks Ltd. v. DCIT (2021) 91 ITR 52 (SN)(Bang.)(Trib.)

630 **S.37(1): Business expenditure – Method of accounting – Cash system – Tax Deduction at source payables – Paid on due date – Disallowance is not justified.[S. 145]**

Held that the assessee is constantly following the cash system. In the preceding assessment years, no additions were made except in assessment year 2011-12 which was deleted by the Commissioner (Appeals). Thus, the Department had been continuously taking the stand that the tax deducted at source payables outstanding were proper. The assessee had paid the amount within the due date prescribed by the Act. Thus, the disallowance was to be reversed. Followed, *Deloitte Haskins and Sells v. ACIT* (I. T. A. No. 3715/Delhi/2017, dated January 15, 2021). (AY. 2012-13, 2014-15)

Walker Chandilok and Co. LLP v. ACIT (2021) 91 ITR 19 (SN)(Delhi)(Trib.)

631 **S. 37(1) : Business expenditure – Service tax paid to Government though not recovered allowable as business expenditure – Difference between invoiced amounts and foreign exchange rate fluctuation declared as income – Allowable as bad debt – Liquidated damages claimed whether revenue or capital – Dismissal of claim – Question is academic [S.36(1)(vii), 36(2), 43B, 115JB, 245R]**

AAR held that that the invoiced amounts and the foreign rate fluctuation difference was declared as income in financial 2014-15 and the service tax though not recovered from SPL was paid to the credit of Government to avoid demand and penalty and was therefore claimed as business expenditure under section 37, or alternatively, as trading loss or bad debt. The amount of Rs.5,19,38,309 comprising the invoice amount and foreign exchange rate fluctuation difference was allowable as bad debt under section

36(1)(vii) and service tax paid but not realised was allowable as business expenditure under section 37 of the Act. As regards Liquidated damages claimed whether revenue or capital as the arbitration award became final dismissal of claim. Question is academic. *North American Coal Corporation India Pvt. Ltd., In Re (2021) 431 ITR 53 (AAR)*

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Commission paid – Export of software – Not liable to deduct tax at source – DTAA-India-Switzerland. [S. 5(2), 9(1)(vii), 195 Art, 12] 632

Allowing the appeal of the assessee the Court held that the Commission paid to non-resident by an Indian company for effecting export of software to foreign buyers was by way of fee for technical services payable for purpose of making or earning income from a source outside India is not taxable in India hence not liable to deduct tax at source. (AY. 2009-10)
Device Driven (India)(P) Ltd. v. CIT (2021) 279 Taxman 302/ 208 DTR 413/ 323 CTR 333 (Ker.)(HC)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Commission paid outside India for obtaining orders outside India – Not liable to deduct tax at source [S.5 (2)(b), 9(1)(i)] 633

Dismissing the appeal of the revenue the Court held that the associated enterprises had rendered services outside India in the form of placing orders with the manufacturers who were already outside India. The commission was paid to the associated enterprises outside India. No taxing event had taken place within the territories of India and the Tribunal was justified in allowing the appeal of the assessee. Followed *CIT v. Toshoku Ltd. (1980) 125 ITR 525 (SC)* while dealing with non-resident commission agents has held that if no operations of business are carried out in the taxable territories, the income accruing or arising abroad through or from any business connection in India cannot be deemed to accrue or arise in India. (AY.2013-14)
PCIT v. Puma Sports India P. Ltd. (2021) 434 ITR 69/ 205 DTR 375/ 323 CTR 583 / 127 Taxmann.com 169 (Karn.)(HC)
Editorial: SLP of revenue is dismissed PCIT v. Puma Sports India P. Ltd.(2022) 285 Taxman 191 (SC) / 443 ITR 5 (St)(SC)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Commission charges to overseas agents – Service rendered outside India – Cannot be considered as fees for technical services – Not liable to deduct tax at source – Art, 12-OECD Model convention [S.9(1)(vii)), 195] 634

Dismissing the appeal of the revenue the Court held that the assessee had paid commission charges to overseas agents for services rendered outside India and not any lump sum consideration for rendering managerial, technical or consultancy services, such payments could not be considered as fees for technical services under section 9(1)(vii) of the Act. Not liable to deduct tax at source. (AY.2013-14, 2014-15)
PCIT v. Gopakumaran Nair (2021) 283 Taxman 173 (Mad.)(HC)

635 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Purchase of intellectual property – Depreciation is not an expenditure – No disallowance can be made for failure to deduct tax at source. [S.32, 37(1), 40(a)(ia)]**

Dismissing the appeal of the revenue the Court held that the payment had been made by the assessee for an outright purchase of intellectual property rights and not towards royalty. Depreciation is not an expenditure hence No disallowance can be made for failure to deduct tax at source.(AY.2009-10 to 2011-12)

PCIT v. Tally Solutions Pvt. Ltd. (2021) 430 ITR 527/278 Taxman 357 (Karn.)(HC)

636 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Aircrafts – Supplementary rent in respect of cross border lease agreements – Exempt from tax – No disallowance can be made for failure to deduct tax at source – Shipping, inland waterways transport and air-transport – In respect of agreement executed after 1-4-2007 as per articles 12 and 8 of DTAA between India and Ireland, profits derived by an enterprise of contracting State from rental of aircrafts were taxable only in State of residence of lessor – DTAA-India-Ireland [S.9(1)(i), 10(15A), 195, Art. 8, 12]**

Held that cross border lease agreements for aircrafts which were executed prior to 1-4-2007, since supplementary rent was determined taking into consideration number of flying hours and had character of basic rent, said payment would be exempt from tax in hands of lessors in India as per section 10(15A) and disallowance under section 40(a)(i) could not be made. Tribunal also held that by introduction of Finance Act, 2005 exemption under section 10(15A) was withdrawn for cross-border leasing agreements of aircrafts entered into after 1-4-2007 and provisions of bilateral tax treaties would apply - Whether as per articles 12 and 8 of tax treaty with Ireland, profits derived by an enterprise of contracting State from rental of aircrafts were taxable only in State of residence of lessor, thus, supplementary rent paid for lease agreements executed after 1-4-2007 would not be chargeable to tax in India (AY. 2012-13)

InterGlobe Aviation Ltd. (IndiGo) v. ACIT (2021) 191 ITD 1 (SB)(Delhi)(Trib.)

637 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Purchase of computer – Not royalty – Not liable to deduct tax at source [S.9(1))(vi), 195]**

Held, that the terms of the agreement made it clear that the assessee was purely a distributor or reseller of a shrink-wrapped or off the shelf software having no right to make any value addition. Any unauthorised use of the software licence or product would expose the assessee to legal consequences. Thus, the assessee had purchased a copyrighted article for distribution. The assessee had not purchased any copyright either for its internal use, consumption or resale. The computer software purchased by the assessee was not a customised product for a particular customer in India but a standardised product which could be sold to any person who was willing to buy it, a product which could be bought and sold in the open market. The payment was not in the nature of royalty, there was no requirement for deduction of tax at source under section 195 of the Act and the disallowance made by the Assessing Officer and sustained by the Commissioner (Appeals) was not sustainable. (AY. 2009-10)

Progress Software Solutions India P. Ltd. v. Dy. CIT (2021) 90 ITR 70 (SN) / 214 TTJ 1 (SMC)(Mum.)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Fees for technical services – Payment per head is not in excess of threshold limit – Not liable to deduct tax at source [S. 91(1)(vii), 194J] 638

Held that the payment per head is not in excess of threshold limit hence not liable to deduct tax at source. No disallowance can be made.(AY.2010-11 to 2013-14)

Kiran Infertility Central Private Ltd. v. ITO (2021) 89 ITR 434 (Hyd)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Training, printing and staff welfare expenses – Reimbursement of expenses without any profit element – Receipts not chargeable to tax – Not liable to deduct tax at source – Article 7 of OECD Model Convention – DTAA-India-Singapore. [S. 9(1)(i), 195] 639

Tribunal held that training, printing and staff welfare expenses which are reimbursed without any profit element. Receipts not chargeable to tax. Not liable to deduct tax at source referred Article 7 of OECD Model Convention. (AY. 2016-17)

BYK Asia Pacific Pte. Ltd. v. ACIT (IT)(2021) 189 ITD 362 (Pune)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Commission – Service rendered outside India – article 7 of OECD Model Convention – Not liable to deduct tax at source – No disallowance can be made [S.4, 5(2), 9(1)(i), 195] 640

Held that since services in respect of commission expenses were stated to be rendered outside India as well as utilized outside India, income arising by way of commission against rendition of agency services could not be deemed to accrue or arise in India in hands of recipients of such commission payments. Not liable to deduct tax at source. (AY. 2015-16)

DCIT v. Inox India (P.) Ltd. (2021) 188 ITD 918 (Ahd)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Royalty – Licence fee – Second proviso to section 40(a)(i) inserted with effect from 1-4-2020 is curative in nature and has retrospective effect – DTAA-India-Israel [S.195, 201(1), Art 5] 641

Held that second proviso to section 40(a)(i) inserted with effect from 1-4-2020 is curative in nature and has retrospective effect. The assessee was not liable to deduct tax at source in respect of licence fee paid.(AY. 2014-15)

Celltick Mobile Media (India)(P.) Ltd. v. DCIT (2021) 188 ITD 883 / 87 ITR 32 (SN)(Mum.)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Testing and certification fees paid outside India Not chargeable to tax in India – Not liable to deduct tax at source – DTAA-India-Netherland [S. 9(1)(1), Art, 12] 642

Allowing the appeal of the assessee the Tribunal held that, Testing and certification fees was paid outside India which is not chargeable to tax in India hence not liable to deduct tax at source. Followed order of earlier year. (AY. 2007-08). (AY. 2008-09)

Havells India Ltd. v. ACIT (2021) 188 ITD 439/ 209 TTJ 214 (Delhi)(Trib.)

643 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – payment for purchase of software without deducting TDS – Not affected by subsequent court ruling – No disallowance can be made for failure to deduct tax at source.[S. 9(1)(vi), 194I, 195]**

The tribunal held that where assessee had not deducted tax on payment for purchase of software as the financial year in question fell prior to date of decision of the Karnataka High Court in the case of *CIT v. Samsung electronics co. Ltd. (2012) 345 ITR 494 (Karn.) (HC)* holding tax was deductible at source, no disallowance for earlier year based on subsequent development of law was called for. (AY 2011-12)

Infosys Bpm Ltd. v. Dy. CIT (2021) 87 ITR 193 (Bang.)(Trib.)

644 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Commission payment – Mere rendering of service of procurement of export orders by a non-resident company for Indian company does not fall in category of managerial/ consultancy services – Not liable to deduct tax at source – DTAA-India-Japan [S. 40(a)(1), 195]**

Assessee-company being into export business paid certain amount of commission to TEI, Japan for procuring order for supplying, installing and successful commissioning of cold rolling mill to a Kenyan company. The Assessing Officer disallowed the amount for failure to deduct tax at source. Commissioner (Appeals) affirmed the order of the Assessing Officer. On appeal the Tribunal held that mere rendering of service of procurement of export orders by a non-resident company for Indian company does not fall in category of managerial/consultancy services as explained in Explanation 2 to section 9(1)(vii). Accordingly disallowance made under section 40(a)(i) of commission paid by assessee was unjustified. (AY. 2016-17)

Digi Drives (P.) Ltd. v. ACIT (2021) 186 ITD 459 (Delhi)(Trib.)

645 **S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident Fees for technical services – Technical/consultancy services from three non-resident entities against certain fee – Not fees for technical services – Not liable to deduct tax at source – DTAA-India-Singapore. [S. 9(1)(vii), Art, 12(4)]**

Assessee was developing a residential project and had availed technical/consultancy services from three non-resident entities against certain fee. Assessing Officer held that fee paid to non-resident entities would qualify as FTS under section 9(1)(vii) and also under article 12(4) hence liable to deduct tax at source, the payment was disallowed. CIT (A) deleted the addition. On appeal the Tribunal held that terms of agreement showed that design, drawing, etc, would remain intellectual property of said entities and were intended for use solely with respect to project and it further restrained assessee from utilizing such intellectual property for any other project and while providing such services neither any technical knowledge, skill, etc., was made available to assessee for utilizing them in future, independently nor any developed drawing or design had been provided to assessee which could be applied by assessee independently. On facts the Tribunal held that conditions of article 12(4) of tax treaty were not fulfilled and, thus, said fee could not qualify as FTS. (AY. 2015-16)

DCIT v. Forum Homes (P.) Ltd. (2021) 91 ITR 38 (SN) / (2022) 192 ITD 184 (Mum.)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Fees for technical services – Professional fees paid for advocate to Foreign Attorneys in connection with IPR services – Directed to examine the taxability of provision with reference to DTAA – Payments were in the nature of pure reimbursement was not accepted. [S. 9(1)(vii)(b), 195] 646

Tribunal held that professional fees paid for advocate to foreign attorneys in connection with IPR services, the payments were in the nature of pure reimbursement was not accepted. The Assessing officer was directed to examine the taxability of provision with reference to DTAA. (AY. 2011-12)

ACIT v. Subhatosh Majumder (2021) 200 DTR 113 (Kol.)(Trib.)

S. 40(a)(i) : Amounts not deductible – Deduction at source – Non-resident – Service rendered outside India – Fees for technical services – Not taxable in India – DTAA-India-Mauritius – Liability for tax deduction at source could not be fastened on basis of subsequent amendment to law with retrospective effect – Payment not liable to be disallowed for failure to deduct tax at source. [S. 9(1)(i), 9(1(vii), Art, 7, 22] 647

Held that between provisions in the DTAA and the Indian laws, the provisions more beneficial to the assessee should be considered. The payment made by the assessee to a non-resident entity for services rendered outside India should be considered as per the DTAA between India and Mauritius. The DTAA did not cover fees for technical services. By virtue of residual clause, article 22, in the case of anything not expressly provided in the DTAA, it could not be taxed in India, even if the sum came under the definition of "fees for technical services" under the Indian tax laws. Since the non-resident did not have permanent establishment in India, the payment could not be taxed as business profits. However, the issue was not taxability of the payment made by the assessee to non-resident entity for services rendered outside India as fees for technical services in terms of section 9(1)(vii) of the Act. The issue was disallowance of the sum paid to a non-resident without tax deduction at source under section 40(a)(i) of the Act. Although, the definition of "fees for technical services" was amended by the Finance Act, 2010 with retrospective effect from June 1, 1976 but, the law prevailing at the time of payment by the assessee to the non-resident was, as declared by the Supreme Court, that payment made to a non-resident for services rendered outside India cannot be brought to tax in India as fees for technical services in the absence of place of business or permanent establishment in India. The liability towards tax deduction at source could not be fastened on the assessee on the basis of a subsequent amendment to law with retrospective effect, because it was impossible of compliance. The Assessing Officer as well as the Commissioner (Appeals) erred in disallowing payment made to a non-resident under section 40(a)(i) of the Act for failure to deduct tax at source under section 195 of the Act.(AY. 2005-06)

TVS Electronics Ltd. v. ACIT (2021) 91 ITR 30 (SN)(Chennai)(Trib.)

648 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Payment of freight and carriage charges for previous year 2006-07 (1-4-2006 to 31-3-2007) – Disallowance is held to be not valid – Commission payment disallowance is held to be justified. [S.194C]**

Assessing Officer had disallowed the payment of freight and carriage charges for failure to deduct tax at source. The Order was affirmed by the Tribunal. On appeal the Court held that since liability for deducting tax at source for payments made to individual contractors above monetary limits arose only with effect from 1-6-2007, for failure to deduct tax at source for previous year 2006-07, (i.e. 1-4-2006 to 31-3-2007), assessee should not be made liable to deduct TDS and, consequently, disallowance made under section 40(a)(ia) for non-payment of TDS under section 194C was to be deleted. As regards commission and brokerage and claimed deduction for same but failed to furnish record or material to show that commission or brokerage was paid to different individuals and each one of such payment was less than monetary limit of Rs. 20,000, said sum was to be disallowed for non-deduction of TDS under section 194H of the Act. (AY. 2007-08)

Sudarsanan P.S. v. CIT (2021) 283 Taxman 84 (Ker.)(HC)

649 **S. 40(a)(ia): Amounts not deductible – Deduction at source – Payment to contractor – Payment of rent – Vehicles on lease for use by employees – No liability to deduct tax under S.194C or under S. 194I of the Act [S.194C, 194I]**

Held that the lease financing company did not provide any particular service as a driver or otherwise for the purpose of usage of the car. On the car having been provided, the maintenance thereof was to be carried out by the employee of the assessee, and the lease-financing company had no role to play in it. The only transaction entered into between the assessee and the lease-financing company was to make payment of the amounts due to the company, and the car would be handed over to the employee through the assessee. There being no work as such being carried out by the lease-financing company nor any service as such being rendered by the company, neither section 194C nor section 194-I of the Act was applicable. No violation of the provisions and section 40(a)(i)/(ia) of the Act. (AY. 2008-09)

CIT (LTU). v. Texas Instruments India Pvt. Ltd. (2021) 435 ITR 1 / 321 CTR 34 / 203 DTR 1 (Karn.)(HC)

650 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Provision on account of commission payment to an agent – Accepted in earlier years – Deletion of disallowance is held to be justified.**

Held that that when similar provision was made for the assessment years 2005-06, 2006-07, 2008-09 and 2009-10 revenue had not made any disallowance. Deletion of addition is held to be justified. Followed, *Radhasoami Satsang v. CIT (1992) 193 ITR 321* (SC)

Parashuram Pottery Works Co Ltd v. ITO (1977) 106 ITR 1 (SC)(AY. 2007-08)

CIT v. Telco Construction Equipment Co. Ltd. (2021) 280 Taxman 78 / 203 DTR 49 / 322 CTR 458 (Karn.)(HC)

S. 40(a)(ia): Amounts not deductible – Deduction at source – Transport charges – Amendment inserted by the Finance Act, 2010 is applicable to earlier years – No disallowance can be made. [S.139 (1)] 651

Dismissing the appeal of the revenue the Court held that the Tribunal was right in deleting the disallowance made under section 40(a)(ia) of the Income-tax Act, 1961 for non-deduction of tax at source on transport charges was to be allowed and in holding that the amendment to section 40(a)(ia) introduced in the year 2010 was applicable retrospectively to the assessment year 2005-06. Followed *CIT v. Calcutta Export Co (2018) 404 ITR 654 (SC)*(AY.2005-06)

CIT v. Western Agencies (Madras) Pvt. Ltd. (2021) 434 ITR 613 / 280 Taxman 308 (Mad.) (HC)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Handling charges paid to persons for in turn paying multiple labourers – TDS provisions not applicable – matter remanded back to CIT(A) for re-examining evidence which he refused to accept. 652

Assessee was engaged in the business of clearing and forwarding agency for ACC Ltd. Assessee made payment towards handling charges to three people who in turn paid labour charges to multiple labourers. AO disallowed by the amount paid due to non deduction of tax. The CIT(A) refused to accept the evidence produced by the assessee. Hight Court upheld Tribunal's order of remanding the matter back to the CIT(A) for re-examination. (AY.2006-07)

C.S. Raghoji (Bellary) v. DCIT (2021) 277 Taxman 61 (Karn.)(HC)

S. 40(a)(ia): Amounts not deductible – Deduction at source – Acquisition of software – Treated as capital expenditure – Failure to deduct tax at source – No disallowance can be made 653

Held that acquisition of software treated as capital expenditure, for failure to deduct ta at source, no disallowance can be made. (AY. 2011-12)

UKN Properties Pvt. Ltd. v. Dy. CIT (2021) 90 ITR 1 (Bang.)(Trib.)

S. 40(a)(ia) : Amounts not deductible – Deduction at source – Filing certificate before the Tribunal – Certificate of Chartered Accountant stating that recipient had filled return including the amount received – Matter remanded for verification. [S.194A, 201(1))] 654

Held that the assessee filed before the Tribunal, the certificate of a chartered accountant under the first proviso to section 201(1) of the Act certifying that the non-banking finance company in question had filed the return of income for the AY 2014-15 and had included the income received from the assessee in such return of income. In the light of the certificate of the chartered accountant filed by the assessee, the Assessing Officer was to consider the certificate filed by the assessee and decide whether or not disallowance under section 40(a)(ia) of the Act should be made, after affording the assessee opportunity of being heard. Matter remanded.(AY. 2014-15)

Munivenkatappa Shivanna v. ACIT (2021)90 ITR 60 (SN)(Bang.)(Trib.)

655 **S. 40(a)(ia): Amounts not deductible – Deduction at source – Running infertility clinic carrying out in vitro Fertilisation – Payee not maintaining proper accounts – Disallowance is held to be justified [S. 194C]**
Held that the payee has not maintained proper accounts for failure to deduct tax at source the disallowance is held to be justified. (AY.2010-11 to 2013-14)
Kiran Infertility Central Private Ltd. v. ITO (2021) 89 ITR 434 (Hyd)(Trib.)

656 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Contractor – Disallowance section is not warranted where the payee furnishes the return of income taking into account the sum(s) received from the payer, tax due on the return income has been paid and certificate of a Chartered Accountant to that effect has been furnished.[S. 194C]**
Tribunal held that Pfizer Ltd. had taken into account the sum received from the assessee and has appropriately discharged it tax liability on its returned income. Further, it had also furnished a certificate from a Chartered Accountant to this effect. Accordingly, the Hon'ble Tribunal following the order of Assessee's own case for AY 2009-10 and deleted the disallowance made by the AO by holding that the disallowance section 40(a)(ia) is not warranted in view of the second proviso read with the first proviso to section 201(1) inserted vide Finance Act, 2012 and which has been held to be retrospective by the Hon'ble Delhi High Court in *CIT v. Ansal Land Mark Township (P.) Ltd*, ITA No. 160/ 2015 dt. 26-8-2015. (AY. 2006-07)
DCIT v. Pfizer Products (India) Pvt. Ltd. (2021) 198 DTR 273 / 210 TTJ 908 (Mum.)(Trib.)

657 **S. 40(a)(ia): Amounts not deductible – Deduction at source – Software purchase – Nature of trade – Not liable to deduct tax at source.**
Held that software purchase being nature of trade is not liable to deduct tax at source. (AY.2010-11)
Dy.CIT v. Altisource Business Solutions P. Ltd. (2021) 88 ITR 135 (Bang.)(Trib.)

658 **S. 40(a)(ia): Amounts not deductible – Deduction at source – Interest on deposits – Tax not deducted – Declaration was furnished by depositors – Disallowance was deleted [S.194A, 197A(1), Form No. 15G]**
Held that the obligation under section 194A of the Act stood discharged for the purposes of section 40(a)(ia) of the Act where the prescribed form was furnished by the payee to the assessee. The disallowance under section 40(a)(ia) of the Act was not justified. (AY.2012-13)
B. Nanji A. v. ITO (2021)88 ITR 29 (SN)(Ahd.)(Trib.)

659 **S. 40(a)(ia): Amounts not deductible – Deduction at source Tax deducted from payments to contractor – Tax was deposited with interest for delay prior to competition of assessment – Disallowance is not justified. [S.37(1) 201(IA)]**
Held that the assessee had already deposited the tax deducted at source with interest before completion of assessment. A person is liable to pay interest under section 201(1A) for failure to deduct tax at source or delay in payment of tax deducted at source. The assessee had already deposited the tax deducted at source along with interest to the

Government exchequer. In view of this, no loss was caused to the Revenue and the disallowance was not called for. (AY.2014-15)
Srabani Constructions Pvt. Ltd. v. ACIT (2021) 87 ITR 7 (SN)(Cuttack)(Trib.)

S. 40(a)(ia): Amounts not deductible – Deduction at source – Settlement of loan shown in profit and loss account – No expenditure was claimed – No disallowance can be made. 660
Held, that the assessee had not shown expenditure in its profit and loss account. Since no such expenditure had been claimed by the assessee against the Revenue for the year and this fact remained undisputed at the end of both the parties, the disallowance made under section 40(a)(ia) of the Act was uncalled for. (AY. 2012-13, 2014-15)
ACIT v. Parag Fans and Cooling System Pvt. Ltd. (2021) 86 ITR 598 (Indore)(Trib.)

S. 40(a)(ia): Amounts not deductible – Deduction at source – Asset valuer's fees paid by the lender bank and recovered from the assessee – Not liable to deduct tax at source [S. 194J] 661
Held that the services of the consultant were utilised for the purposes of SBI in order to secure the assets mortgaged to it. The bank settled the fee and recovered it from the assessee. The TDS provision would be applicable only when the services are utilised and payments are made directly to the service provider. On the facts the assessee neither appointed the consultant nor paid the consultancy charges hence the provision of section 40(a)(ia) of the Act is not applicable. (dt. 30-9-2021)
Hindustan Organic Chemicals Ltd. v. DCIT (2021) BCAJ-November – P. 33 (Mum.)(Trib.)

S. 40(a)(ia): Amounts not deductible – Deduction at source – Transport charges – Copies of PAN along with copies of invoices were furnished – Disallowance is not justified merely for technical lapse u/s 194 (7) of the Act. [S.194(7), 194C] 662
Held that in respect of transport charges when the assessee has filed copies PAN along with copies of invoices were furnished, disallowance is not justified merely for technical lapse u/s 194(7) of the Act. (AY. 2012-13)
Mohammed Shakil Mohamed Shafi Mutawalli v. ITO (2022) 192 ITD 130 (Ahd)(Trib.)

S. 40(a)(ia): Amounts not deductible – Deduction at source – Rent paid – Chartered accountant certifying that recipient of impugned receipt had included said receipt in their gross income and had paid tax thereon – Disallowance is held to be not valid [S. 194I] 663
Assessee a co-operative society engaged in business of procurement, processing and marketing of milk, milk products, cattle feed, etc paid rent to a Dudh Utpadak Mandli but had not deducted tax at source. Assessing Officer disallowed the claim. On appeal the Tribunal held that the assessee has filed certificate of chartered accountant certifying that recipient of impugned receipt had included said receipt in their gross income and had paid tax thereon. Disallowance was deleted. (AY. 2014-15)
Surat District Co-op. Milk Producer's Union Ltd. v. DCIT (2021) 191 ITD 612 (Surat)(Trib.)

664 **S. 40(a)(ia): Amounts not deductible – Deduction at source – Freight charges – Non-resident ship owner – Not liable to deduct tax at source [S. 172, 194C]**
Held that in view of special provisions of section 172, no TDS deduction under section 194C was required on payment of freight charges to an agent of non-resident ship owner or charter on such charges. (AY. 2009-10)
ITO v. Bajaj Herbals (P.) Ltd. (2021) 191 ITD 41 (Ahb.)(Trib.)

665 **S. 40(a)(ia) : Amounts not deductible – Deduction at source – Commission – Agents residing outside India – Not liable to deduct tax at source [S. 9(1)(i), OECD Model Tax Convention, Art. 7]**
The assessee failed to deduct TDS on the commission paid to agents located outside India, hence the AO made a disallowance under section 40(a)(ia) of the Act. It was observed that the commission was paid outside of India. There was no situs in India and also he assessee's modus operandi showed that he received income in India after deducting of commission made by the buyer outside of India. As a result, no income had been received or paid within India that was liable to TDS deduction, and therefore assessee was not required to deduct TDS in India. In light of the foregoing, the disallowance made u/s 40(a)(ia) was deleted. (AY. 2013-14)
Ajay Kumar Singh Gaur v. ITO (2021) 189 ITD 696 (Agra)(Trib.)

666 **S.40(a)(ia): Amounts not deductible – Software purchase – Not royalty – Not liable to deduct tax at source [S.9(1), (vi), 195, 201(1), 201(IA)]**
The Assessee was granted a user-license to use the software for its internal business purpose. The Assessee submitted that what is transferred is a copyrighted article and not a copyright itself. Hence, consideration paid is not taxable as royalty under the provisions of the Act. The tribunal observed from the order of AO and CIT(A) that there was only purchase of software which is a copyrighted article and no transfer of copyright and thus such income is not a Royalty income under the relevant tax treaty. Reliance was placed on the decision of Supreme Court in case of Engineering Analysis Centre of Excellence Pvt. Ltd. (CA Nos.8733- 8734/2018) wherein it is held the end user can only use the computer programme by installing it in the computer hardware and cannot reproduce the same for sale or transfer and the licence granted vide the End-User License Agreements is not a license in terms of section 30 of the Indian Copyright Act, 1957 (CA) but is a license which imposes restrictions or conditions for the use of the computer software. Therefore, amounts paid by the assessee to the non-resident computer software manufacturers/ suppliers as consideration for the resale/use of computer software, is not payment of royalty for use of copyright in the computer software and it is not liable for deduction of tax at source u/s 195 of the Act. (AY. 2010-2011, 2011-2012, 2012-2013)
Altisource Business Solutions Private Ltd. v. ACIT (2021) 189 ITD 369 (Bang.)(Trib.)

667 **S. 40(a)(ia): Amounts not deductible – Deduction at source – Monitoring fees paid to German bank is interest – Not liable to tax under Act – No disallowance warranted for failure to deduct tax at source – DTAA-India-Germany [Art. 11(3)b)]**
The AO passed an order determining the total income of the assessee at a loss under normal provisions, inter alia, making disallowances of loss on interest rate (hedging contract) and monitoring fees for failure to deduct tax at source u/s. 40(a)(ia).

Tribunal held that the monitoring fees paid by the assessee to DEG Bank, Germany qualified as "interest" both under the Act as well as the Double Taxation Avoidance Agreement between India and Germany and the payment made in question was not liable to tax under the Act in terms of the specific exemption granted under article 11(3) (b) of the DTAA. Hence, no deduction of tax at source was required to be made u/s. 195 hence no disallowance can be made u/s.40(a)(ia) of the Act.(AY 2012-13)
Dy. CIT v. Sisecam Flat Glass India Ltd. (2021) 87 ITR 1 (SN)(Kol.)(Trib.)

S.40(a)(ia) : Amounts not deductible – Deduction at source – Commission – Brokerage – No disallowance on non-deduction of TDS on commission paid by assessee for immovable property. 668
Section 40 clearly stipulates that "Notwithstanding anything to the contrary in sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession". Hence it is evident that the provisions of Section 40(a)(ia) is applicable while computing income chargeable under the head "Profits and gains of business or profession" and it is not applicable to any other heads of income. The disallowance made under section 40(a) will only go to enhance the business profit of an assessee whose income is assessable under section 28 and not otherwise. (AY. 2014-15)
R. K. Associates v. ITO (2021) 187 ITD 827 (Bang.)(Trib.)

S. 40(a)(ia): Amounts not deductible – Deduction at source – Leased line charges – Not liable to deduct tax at source – Before insertion of amendment covering leased charges within definition of royalty by Finance Act, 2012 though with retrospective effect from 1-6-1976. [S.9 (1) (vi), 194J] 669
Tribunal held that when assessee paid leased charges there was no such provision requiring deduction of TDS on payment of leased line charges being royalty, such subsequent retrospective amendment could not be enforced upon assessee so as to make disallowance under section 40(a)(ia) of the Act. Leased line charges paid for transmission by any technology, got covered within definition of royalty by insertion of Explanations 4 to 6 to section 9(1)(vi) made by Finance Act, 2012 with retrospective effect from 1-6-1976. (AY. 2012-13)
DCIT v. Barclays Technology Centre India (P.) Ltd. (2021) 187 ITD 632/198 DTR 241/ 210 TTJ 128 (Pune)(Trib.)

S.40(a)(ia): Amounts not deductible – Deduction at source – commission expenses in respect of commission paid to overseas agents – Services are not rendered by foreign agent in India – Not liable to deduct tax at source [S. 9(1) (vii), 195] 670
Assessee claimed commission expenses in respect of commission paid to overseas agents. The AO disallowed the expenses for failure to deduct tax at source. Following the decision rendered by Delhi High Court in *DIT v. Panalfa Autoelektrik Ltd. (2014) 272 CTR 117 (Delhi), (HC)* the ITAT observed that the overseas agent received their commission for rendering services not to the assessee in India but to the foreign buyers and if at all foreign agents are liable for making payment of income-tax, they are liable to pay the same in their own countries where they are working for gains and earned

their income by way of commission from the assessee. Accordingly the addition was deleted. (AY. 2014-15)
ACIT v. Kapoor Industries Ltd. (2021) 187 ITD 603 (Delhi)(Trib.)

671 **S. 40(a)(ia): Amounts not deductible – Deduction at source – Presumptive taxation scheme – Interest – No disallowance can be made for failure to deduct tax at source [S. 44AB, 44AD, 194A]**
Allowing the appeal the Tribunal held that provisions of section 44AD overrides all other provisions contained in section 28 to 43C of the Act. Since turnover/sales of assessee for relevant assessment year was to tune of Rs. 92 lakhs approx., which was below threshold limit of one crore rupees as prescribed in section 44AD, assessee was entitled to take benefit of provisions of said section. Accordingly the assessee was not liable to deduct TDS on interest payments and impugned disallowance under section 40(a)(ia) was to be deleted. (AY. 2007-08)
Bipinchandra Hiralal Thakkar. v. ITO (2021) 187 ITD 477 / 211 TTJ 496 / 201 DTR 227 (Surat)(Trib.)

672 **S. 40(a)(ia): Amounts not deductible – Deduction at source – Interest expenditure – Recipients have shown income in their respective returns – No disallowance could be made – Second proviso to section 40(a)(ia) is declaratory and curative and it has retrospective effect from 1-4-2005. [S.194A]**
Tribunal held that recipients have shown income in their respective return, hence no disallowances can be made. Second proviso to section 40(a)(ia) is declaratory and curative and it has retrospective effect from 1-4-2005. (AY. 2012-13)
ARSS Infrastructure Project Ltd. v. DCIT (2021) 187 ITD 727 (Cuttack)(Trib.)

673 **S. 40(a)(ia): Amounts not deductible – Deduction at source – Commission to non-resident entities – Services rendered out side India – Not liable to deduct tax at source – Article 7 of the OECD Model Convention. [S.195]**
Allowing the appeal of the assessee where assessee had paid commission to non-resident entities for sales services rendered by them wholly outside India not liable to deduct tax at source. (AY. 2014-15, 2015-16)
Modern Threads India Ltd. v. ACIT (2021) 187 ITD 815/ 211 TTJ 1 (UO)(Jaipur)(Trib.)

674 **S. 40(a)(ia): Amounts not deductible – Deduction at source – Long term capital gains on sale of immoveable property – Commission paid without deduction of tax at source – No disallowance can be made while computing the income under the head capital gain [S.45, 194H]**
Assessee sold a immovable property and declared Long-Term Capital Gain. Assessee had paid commission of certain amount in connection with sale of said property. Assessing Officer held that as the assessee did not deduct tax at source under section 194H on such commission paid, made disallowance under section 40(a)(ia) of the Act. On appeal the Tribunal held that provisions of section 40(a)(ia) would not be applicable while computing income under head capital gain. Accordingly the disallowance was deleted] (AY. 2006-07)
R. K. Associates. v. ITO (2021) 187 ITD 827 (Bang.)(Trib.)

S. 40(a)(ia): Amounts not deductible – Deduction at source – Transportation charges – Hiring cabs from cab owners – Liable to deduct tax at source – Payment made to petrol pumps not liable to deduct tax at source. [S.194C] 675

Assessee received an amount from its customers and made payments to these cab owners on account of hire charges. Tribunal held that since cab owners had received payments from assessee towards hire charges, presumption would be that there was a contract for hiring of vehicles and; therefore, if assessee had made payment for hiring vehicles, provisions of section 194C were applicable. Tribunal also held that amount customers towards petrol and diesel charges, since assessee paid said amount received directly to petrol pumps instead of paying same to cab owners, assessee was not liable to deduct TDS under section 194C on same.

Sri Balaji Prasanna Travels. v. ACIT (2021) 186 ITD 534 / 199 DTR 209/ 210 TTJ 970 (Bang.)(Trib.)

S. 40(a)(ia): Amounts not deductible – Deduction at source – Recipient has declared the payment in return and paid tax thereon – No disallowance can be made – Matter remanded. 676

Tribunal held that since the Bombay High Court had held that the second proviso to section 40(a)(ia) (which provides that no disallowance was to be made if the assessee was not deemed to be an assessee-in-default under the first proviso to section 201(1) of the Act) is retrospective in nature, the matter was restored to the file of the Assessing Officer to examine the applicability of the second proviso to section 40(a)(ia) to the assessment year 2010-11. (AY. 2010-11 to 2012-13)

Nitesh Estates Ltd. v. Dy. CIT (2021) 85 ITR 421 (Bang.)(Trib.)

S. 40(a)(ia): Amounts not deductible – Deduction at source – Settlement of loan provision of deduction at source is not applicable – Amount of sales written as bad debt which is reflected in profit and loss account – Allowable as deduction subject to verification [S.36(1)(vii)] 677

Tribunal held that the assessee had not shown expenditure of Rs. 25.95 lakhs in its profit and loss account. Since no such expenditure had been claimed by the assessee against the Revenue for the year and this fact remained undisputed at the end of both the parties, the disallowance made under section 40(a)(ia) of the Act was uncalled for. Thus, there was no reason to interfere in the finding of the Commissioner (Appeals) who had rightly deleted the disallowance. Amount of sales written as bad debt which is reflected in profit and loss account is allowable as deduction subject to verification (AY.2012-13, 2014-15)

ACIT v. Parag Fans and Cooling System Pvt. Ltd. (2021) 86 ITR 598 (Indore)(Trib.)

S. 40(a)(ia): Amounts not deductible – Deduction at source – Payees declaring payments in returns and paying tax thereon – AO was directed to verify and decide according to law. 678

Tribunal directed the Assessing Officer to verify whether the two concerns for the assessment year in question and have paid taxes thereon. If so, no deduction on the section 40(a)(ia) was warranted. (AY.2016-17)

United Teleservices Ltd. v. ACIT (2021)86 ITR 36 (SN)(Kol)(Trib.)

679 **S. 40(a)(ia): Amounts not deductible – Deduction at source – Amendment by Finance (No. 2) Act, 2014 limiting disallowance to 30 per cent. of sum payable – Cannot be applied to Assessment Year 2009-10 – Disallowance sustained.**
Held that disallowance of payments for failure to deduct tax at source thereon was to be sustained. The amendment made to the provisions of section 40(a)(ia) of the Act by the Finance (No. 2) Act, 2014 do not have retrospective application. Relied on Shree Choudhary Transport Company v. ITO (2020) 426 ITR 289 (SC)(AY.2009-10)
Dy. CIT v. Daawat Foods Ltd. (2021) 91 ITR 110 (Delhi)(Trib.)

680 **S. 40(a)(ii) : Amounts not deductible – Rates or tax – Education Cess – Allowable as deduction – Transfer pricing adjustment – Matter remanded [S. 37(1), 92C]**
Held, that education cess was not a disallowable expenditure under section 40(a)(ii) of the Income-tax Act, 1961. Transfer pricing adjustment, matter remanded to the Assessing Officer. (AY. 2016-17)
Emerson Climate Technologies (India) P. Ltd. v. Add. CIT (2021) 89 ITR 69 (SN)(Pune)(Trib.)

681 **S. 40(a)(ii) : Amounts not deductible – Rates or tax – Education cess is not income tax – Allowable deduction [S. 37(1)]**
Held that education cess is not an income-tax and same is an allowable deduction. (AY. 2013-14)
ACIT v. India Power Corporation Ltd. (2021) 191 ITD 250 (Kol)(Trib.)

682 **S. 40(a)(ii) : Amounts not deductible – Rates or tax – Education cess is not income tax – Allowable deduction [S. 37(1)]**
Held that education cess is not an income-tax and same is an allowable deduction. (AY. 2013-14)
ACIT v. India Power Corporation Ltd. (2021) 191 ITD 250 (Kol)(Trib.)
Tasty Bite Eatables Ltd v. ACIT (2021) 89 ITR 699/ 214 TTJ 643 / 205 DTR 289 (Pune) (Trib.)

683 **S. 40(a)(ii) : Amounts not deductible – Rates or tax – Education cess and, higher and secondary education cess is not tax – Allowable as deduction.[S. 37(1)]**
Amount of education cess and higher and secondary education cess is not tax as covered under section 40(a)(ii) and accordingly allowable as deduction in computing income from business or profession. (AY. 2008-09)
UHDE India (P.) Ltd. v. ACIT (2021) 190 ITD 777/ 211 TTJ 339 (Mum.)(Trib.)

684 **S. 40(a)(ii) : Amounts not deductible – Rates or tax – Education cess – Allowable as deduction [S.37 (1)]**
Held that the education cess is allowable as business deduction.(AY. 2012-13, 2014-15)
Metropolis Healthcare Ltd. v. DCIT (2021) 190 ITD 331 (Delhi)(Trib.)

S. 40(a)(ii) : Amounts not deductible – Rates or tax – Business expenditure – deduction for foreign taxes paid allowed while computing its income, to the extent that such tax was not entitled to the benefit of section 91 of the Act.[S.37(1), 91] 685

The assessee-company claimed deduction of state taxes paid overseas of Rs. 13,22,52,218/- in the return of income. The Assessing Officer held that the payments were not liable to be allowed as deduction either u/s 37(1) or section 40(a)(ii) of the Act. The Tribunal held that Assessee was entitled to deduction for foreign taxes paid on income accrued or arisen in India in computing its income, to the extent that such tax was not entitled to the benefit of section 91 of the Act. The Tribunal directed the AO to verify whether the State taxes paid by the assessee overseas are eligible for any relief u/s 90 of the Act and if it is not found to be so, assessee's claim of deduction should be allowed. However for interest / penalty for delay in payment of federal or state taxes overseas, the Tribunal observed that assessee had not filed the details with supporting documents on the penal interest and hence it was not possible to decipher whether the penal interest was compensatory in nature or not. Hence the Tribunal restored the issue to the AO for deciding it afresh and directed the assessee to file the documents/evidence before the AO.(AY. 2007-08)

Tata Consultancy Services Ltd v. ACIT (2020) 121 taxmann.com 190 (2021) 186 ITD 721 (Mum.)(Trib.)

S. 40(a)(ii) : Amounts not deductible – Rates or tax – Education cess is an allowable expenditure 686

The Tribunal admitted the additional ground filed by the appellant on the premise that it is only a pure question of law. Further, following the decision of Jurisdictional High Court in case of *Sesa Goa Ltd. v. JCIT (2020) 423 ITR 426 (Bom.) (HC) and Chambal Fertilisers Ltd v. JCIT (2008) 102 CCH 202 (Raj)(HC)* the deduction of education cess and secondary and higher education cess was allowed. (AY.2014-15)

Kalyani Steels Ltd. v. DCIT (2021) 87 ITR 3 (SN)(Pune)(Trib.)

DCIT v. Century Plyboards (I) Ltd. (2021) 187 ITD 35 (SN)/ 209 TTJ 273/ 203 DTR 229 (Kol)(Trib.)

Gloster Ltd. v. ACIT (2021) 187 ITD 626 (Kol.)(Trib.)

Advik Hi-Tech Pvt. Ltd. v. Dy. CIT (2021) 85 ITR 535 (Pune)(Trib.)

S. 40(a)(ii) : Amounts not deductible – Rates or tax – Education cess is not tax – Allowable expenditure [S. 37(1)] 687

The Tribunal held that the education cess paid on Income-tax doesn't come under the purview of the definition of tax as it is levied on the amount of Income Tax, but not on profits of business. The Tribunal dismissed the revenue appeal relying on the CIT(A) order, CBDT Circular No. 91/58/66-ITJ (19) dated 18-5-1967, judgments of the Rajasthan High Court in *Chambal Fertilizers and Chemicals Ltd. v. Jt. CIT [2019] 107 taxmann.com 484* and jurisdictional High Court in the case of *Sesa Goa Ltd. v. Jt. CIT [2007] 294 ITR 101 (Bom)(HC).*(AY. 2015-16)

ACIT v. Shree Pushkar Chemicals & Fertilisers Ltd (2021) 213 TTJ 273/ 206 DTR 313/ (2022) 192 ITD 618 (Mum.)(Trib.)

688 **S. 40(a)(ii) : Amounts not deductible – Rates or tax – Education Cess – Allowable as business expenditure. [S.37(1)]**
On appeal by the assessee, held that the Assessing Officer was to grant deduction on account of education cess paid by the assessee as an allowable business expenditure. (AY. 2009-10)
Tech Mahindra Business Services Ltd. v. DCIT (2021) 91 ITR 8 (SN)(Mum.)(Trib.)

689 **S. 40(a)(ii) : Amounts not deductible – Rates or tax – Education Cess – Additional surcharge levied on Income-tax – Not deductible.**
On appeal, held that on perusal of the provisions of the Finance Act, 2004 and the Finance Act, 2011 would show that they specifically provide that "education cess" is an additional surcharge levied on the Income-tax. Therefore, the additional surcharge is part of the Income-tax and not deductible.(AY. 2012-13)
Kanoria Chemicals and Industries Ltd. v. ACIT (2021) 91 ITR 82 (SN)(Kol)(Trib.)

690 **S. 40(a)(iia) : Amounts not deductible – Wealth tax – Matter remanded.**
Court held that since the assessee has already added back provision made for wealth tax into his income, matter was to be remanded. (AY. 2010-11)
Swan Silk (P) Ltd. v. ACIT (2021) 282 Taxman 191 (Karn.)(HC)

691 **S. 40(a)(iii) : Amounts not deductible – Deduction at source – Outside India – Non-Resident – Reimbursement of salary – Not taxable in India – Not liable to deduct tax at source – DTAA-India-Netherlands [S. 5, 6, 9, 192, Art. 14, 15]**
Allowing the appeal of the assessee the Tribunal held since employees to whom salaries were paid were non-residents as none of them were in India for a period of 182 days or more and salary was actually paid by head office of assessee in Netherlands, such salary amount was not taxable in India and assessee was not liable to deduct TDS on reimbursement of such salary expenses made by its project office to its head office. (AY. 2011-12)
Ecorys Netherlands B. V. v. ADIT (IT) (2021) 188 ITD 264 / 87 ITR 317 / 213 TTJ 833 (Delhi)(Trib.)

692 **S. 40(b) : Amounts not deductible – Partnership – Remuneration payable to partners. Partnership Deed not specify manner of computation. Disallowance accepted. [S.40(b)(v)]**
Assessee debited Rs. 2,88,000/- as remuneration to partners. AO and CIT(A) disallowed on the basis of section 40(b). Assessee claimed within limits under S.40(b)(v). On appeal, Tribunal accepted the disallowance as partnership deed did not specify any quantum or procedure to quantify remuneration to partners. AO and CIT(A) order confirmed. (AY 2015-16)
Quality Traders v. ITO (2021) 87 ITR 26 (SN)(Delhi)(Trib.)

S. 40(b) : Amounts not deductible – Book profit – Remuneration – Interest income – included for computation of Book profit for computing partner's remuneration. [S.40(b)(v)] 693

It is abundantly clear that for the purpose of section 40(b)(v) read with Explanation there cannot be separate method of accounting for ascertaining net profit and/or book profit. Therefore, the interest income earned by the assessee-firm from the fixed deposit receipts should. not be ignored for the purpose of working-out the book profit to ascertain the ceiling of the partners' remuneration. For the purpose of ascertaining such ceiling of the partners' remuneration on the basis of book profit, the profit shall be in the profit and loss account and is not to be classified in the different heads of income under section 40 (b) (v) of the Act. The interest income, therefore, cannot be excluded for the purposes of determining the allowable deduction of remuneration paid to the partners under section 40b of the Act. (AY. 2009-10)

Mac Industries v. ITO (2021) 187 ITD 322 /211 TTJ 597 / 201 DTR 264 (Surat)(Trib.)

S. 40(b)(iv) : Amounts not deductible – Partner – Interest – Pro-rata basis – Average opening and closing balance [S. 36(1)(iii), 37(1)] 694

Tribunal held that substantial amount except a meager sum was withdrawn by partner out of opening balance and said amount was not available with partnership firm for its business purpose. Hence, claim of interest for full year at rate of 12 per cent was otherwise not allowable in terms of section 36(1)(iii) or section 37(1). Order of Assessing Officer allowing the claim on pro-rata basis was held to be justified. (AY. 2010-11)

Universal Stone Crushing Co. Dala v. ITO (2021) 190 ITD 415 (SMC)(All)(Trib.)

S. 40(b)(iv) : Amounts not deductible – Partner – Interest – Deed providing for payment of interest – Assessing Officer to calculate interest payable to partner in terms of section and directed to allow. 695

Held that the partnership deed clearly provided for allowance of such interest and the issue had been examined in earlier years and the issue had been restored to the file of the Assessing Officer. For the years in question also, the Assessing Officer was to calculate the interest payable to the partner in terms of the provisions of section 40(b)(iv) of the Act.(AY. 2012-13, 2014-15)

Walker Chandilok and Co. LLP v. ACIT (2021) 91 ITR 19 (SN)(Delhi)(Trib.)

S. 40A(2): Expenses or payments not deductible – Excessive or unreasonable – Remuneration to director – Matter remanded to CIT (A) 696

Allowing the appeal of the revenue the Court held that the Commissioner (Appeals) as well as the Tribunal had completely failed to establish that material was produced by the assessee to demonstrate that the managing director had secured the business of the company from Italy and other European countries. The provisions of section 40A(2) which were applicable to the fact situation of the case had also not been taken into account by the Commissioner (Appeals) as well as the Tribunal. The order of the Tribunal setting aside the order of the Assessing Officer was not justified. Matter remanded to the Commissioner (Appeals).(AY. 2006-07)

CIT v. Fibres and Fabrics International Pvt. Ltd. (2021) 431 ITR 339/ 278 Taxman 204/ 206 DTR 196 (Karn.)(HC)

697 **S. 40A(2): Expenses or payments not deductible – Excessive or unreasonable – Professional fees – Onus shift on revenue to show expenses excessive and not legitimate – Assessing Officer cannot contend that the expenditure is not required at all. [S. 37(1))]**
Held that professional fees paid to hold it excessive or unreasonable and not legitimate the burden is on revenue. The Assessing Officer cannot contend that the expenditure is not required at all. (AY.2008-09, 2010-11)
ACIT v. Lifestyle International (P.) Ltd. (2021) 88 ITR 79 (Bang.)(Trib.)

698 **S. 40A(2): Expenses or payments not deductible – Excessive or unreasonable – Commission paid to subsidiary at lower rate than others – No disallowance can be made.**
Held that the Commission paid to subsidiary at lower rate than others. No disallowance can be made. (AY.2011-12)
DLF Universal Ltd. v. Dy. CIT (2021) 88 ITR 33 (SN)(Delhi)(Trib.)

699 **S. 40A(2): Expenses or payments not deductible – Excessive or unreasonable – Consultancy and technical services from sister concern – Disallowance was restricted only to 10 per cent of total expenses.**
Held that since no comparable instance of third party rendering similar services was brought on record so as to show that said expenses incurred by assessee were excessive disallowance was to be restricted only to 10 per cent of total expenses. (AY. 2013-14, 2014-15)
Bright Enterprises (P.) Ltd. v. DCIT (2021) 191 ITD 740 / 90 ITR 394 (Amritsar)(Trib.)

700 **S. 40A(2): Expenses or payments not deductible – Excessive or unreasonable – Commission – Brokerage – Related party – Comparable with market rate – No disallowance can be made.**
The Tribunal held that the commission was paid was comparable with market rate for same services provided by unrelated parties. Addition was held to be not justified. (AY.2011-12)
DLF Universal Ltd. v. Dy. CIT (2021) 88 ITR 33 (SN) (Delhi)(Trib.)

701 **S. 40A(2): Expenses or payments not deductible – Excessive or unreasonable – Related parties – Fair market value of rent – Failure to conduct any enquiry – No disallowance can be made – Sister-in-law of an individual does not fall under definition of relative under section 2(41) – Rental payment on account of godowns/shop made to sisters-in-law could not be disallowed.[S. 2(41), 56 (2)]**
Assessee-individual was engaged in paper business. Assessing Officer held that assessee had paid to related parties excessive rent for various godowns/shop. Assessing Officer compared rent paid by assessee in previous year to rent paid and applied the provision of section 40A(2)(b) of the Act. Tribunal held that when Assessing Officer had not conducted any enquiry to ascertain fair market rent of particular property so as to hold such rental payment excessive or unreasonable, disallowance made by Assessing Officer was contrary to provision of section 40A(2) of the Act. Provisions of section 40A(2) could not be invoked in respect of transaction of payment of rent to sisters-in-laws who

were not falling in definition in term of 'relative' provided under section 2(41) of the Act. Definition of term 'relative' as provided under section 56(2) is only for said clause of section 56(2) and therefore, same cannot be applied in respect of provisions of section 40A(2); in matter of section 56(2), a general definition of term 'relative' as provided under section 2(41) would be applicable. (AY. 2013-14, 2014-15)
Rajesh Bajaj v. DCIT (2021) 187 ITD 230 / 211 TTJ 750/ 201 DTR 310 (All)(Trib.)

S. 40A(2): Expenses or payments not deductible – Excessive or unreasonable – Diversion of income – Matter remanded – lockdown was in force was to excluded for purpose of time limits set out in rule 34(5) of ITAT Rules for pronouncement of orders. [ITAT R. 34 (5] 702

Tribunal held that documents showed the assessee had paid professional fees to CCCPL for carrying out research work and non-research work, however, Commissioner (Appeals) confirmed disallowance under section 40A(2)(b) considering it as diversion of income by assessee to CCCPL and from CCCPL to its directors. Matter was remanded for adjudication afresh. Tribunal also held that period of lockdown is to be excluded for purpose of time limits set out in rule 34(5) of ITAT Rules for pronouncement of orders. (AY. 2012-13)
CIMS Hospital (P.) Ltd. v. DCIT (2021) 187 ITD 449 (Ahd)(Trib.)

S. 40A(2): Expenses or payments not deductible – Excessive or unreasonable – 775 Per Cent increase in remuneration to Directors – Assessing Officer not pointing out comparables to demonstrate that salary paid to directors was excessive – No evasion of tax – CBDT circular No. 6-P dated July 6, 1968 is binding – No disallowance can be made [S.40A(2)(b)] 703

Allowing the appeal the Tribunal held that there had been a 775 per cent increase in the remuneration to the directors as compared to the earlier assessment years and the objective of section 40A(2) was to prevent evasion of tax through excessive or unreasonable payments, this provision should not be applied in a manner which would create hardship in bona fide cases. The Assessing Officer had not brought any comparable cases on record to establish his allegation that the salary paid to the directors was excessive as compared to the salary being paid similar persons with similar qualifications and experience. Though the Commissioner (Appeals) had given partial relief to the assessee by limiting the disallowance to Rs. 12,60,000 he also did not consider this aspect of the case and had reduced the disallowance in an ad hoc manner. The assessee-company and its directors were both in the same tax bracket, the highest and, therefore, there could be no question of any evasion of tax by paying remuneration to the directors. CBDT Circular No. 6-P dated July 6, 1968 clearly states that no disallowance was to be made under section 40A(2)(b) in respect of payments made to relatives and sister concerns where there was no attempt to evade tax. This circular was binding on the Department and since clearly no case of evasion of tax was made out and the Assessing Officer had not pointed out any comparables to demonstrate that the salary paid to the directors was excessive, the entire addition was liable to be deleted.(AY.2012-13)
Orange Associates Pvt. Ltd. v. ACIT (2021)85 ITR 33 (SN)(Delhi)(Trib.)

704 **S. 40A(2): Expenses or payments not deductible – Excessive or unreasonable – Rent paid to daughter of managing Director – Matter remanded to the Assessing Officer [S.40A(2)(b)]**

Tribunal held that adopting the annual rental value fixed by the municipality as the basis for making the disallowance under section 40A(2)(b) of the Act was not correct in the context of the provisions of section 40A(2)(b) of the Act. What was important under the provision was the excessiveness of expenditure having regard to the fair market value. Since neither the Assessing Officer nor the Commissioner (Appeals) had examined the fair market value of rent for the building in question, the issue needed to be remanded to the Assessing Officer for consideration afresh. The assessee was to furnish evidence to establish the fair market value of the rent for the building in question and the Assessing Officer was to examine the claim in accordance with law, after affording the assessee opportunity of being heard.(AY.2015-16)

United Telelinks (Bangalore) Ltd. v. Dy. CIT (2021) 85 ITR 36 (SN)(Bang.)(Trib.)

705 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Purchases from unregistered dealers – Matter remanded.**

Court held that there were foundational facts warranting invocation of the provisions of section 40A(3) of the 1961 Act was a matter for the fresh consideration of the Commissioner (Appeals). The matter was remanded to the Commissioner (Appeals).

PCIT v. M. Abdul Zahid (2021) 437 ITR 132 (Karn.)(HC)
PCIT v. Jay Minerals (2021) 437 ITR 132 (Karn.)(HC)

706 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Payment genuine – Necessitated by circumstances – No disallowance can be made – Block assessment – Addition deleted on facts – No question of law [S. 260A]**

Court held that disallowance under section 40A(3) for the assessment year 2007-08, the decision was made on the facts. Hence no question of law arose. As regards the relief granted to the assessee was on the facts and on the merits of the disallowances made and not on the ground that no incriminating material was available. In one of the cases, the correctness of this decision was tested by the Tribunal and the view taken by the Commissioner (Appeals) had been affirmed. Since the entire dispute revolved on the factual matrix, no question of law, much less a substantial question of law, arose from the order of the Tribunal. (AY.2007-08, 2008-09, 2011-12 to 2014-15)

CIT v. Jubilee Plot and Housing Pvt. Ltd. (2021)436 ITR 424 (Mad.)(HC)

707 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Issue remanded to CIT(A) [S.40(a)(ia), 254(1)]**

Court held that the matter stood remitted by the Tribunal with regard to section 40A(3) of the to determine whether there was a contract of agency agreement between the assessee, an individual and the company Since both the issues were inter-related and since the matter stood remitted by the Tribunal for section 40A(3), the issue with regard to section 40(a)(ia) also ought to have been restored to the file of the Commissioner (Appeals).(AY.2008-09, 2009-10)

R. Venugopal v. Dy. CIT (2021) 430 ITR 471 / 278 Taxman 182 (Mad.)(HC)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Aggregate of payments in a day did not exceed Rs.20000 – No disallowance can be made. 708

Held that aggregate cash payments in a day did not exceed Rs 20000, no disallowance can be made.(AY.2014-15)

Viney Corporation Ltd. v. ACIT (2021)92 ITR 59 (SN)(Delhi)(Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Not claimed as expenditure – Books of account not rejected – No disallowance can be made – Additional payment for purchase of land – Deduction not claimed – No disallowance can be made [S. 37(1), 145] 709

Held that payment in cash not claimed as expenditure and books of account not rejected no disallowance can be made. Similarly when additional payment of purchase of land was not claimed as deduction, no disallowance can be made. Followed, *Westland Developers Pvt Ltd v ACIT* (ITA No. 1752 / Delhi/ 2013 dt 22-8 2014 (Delhi)(Trib.). (AY.2005-06, 2006-07)

USG Buildwell Pvt. Ltd. v. Add. CIT (2021) 87 ITR 151 (Delhi)(Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Purchase of capital asset or investment – No disallowance can be made. 710

Tribunal held that where the assessee has made cash payments exceeding prescribed limits in respect of purchase of capital asset or investment, no disallowance can be made.(AY. 2008-09)

ACIT v. Arvind Srinivasan (2021) 86 ITR 84 (Chennai)(Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Purchase of land – Not debited to profit and loss account – Disallowance cannot be made. 711

Held that as the amount paid for purchase of land was neither debited to the profit and loss account nor claimed as expenditure in the computation of taxable income as the assessee had got reimbursements of the amounts paid for purchase of land, the disallowance was held to be not justified (AY.2006-07, 2007-08)

Green Valley Tower Pvt. Ltd. v. ACIT (2021) 86 ITR 1 (Delhi)(Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Pond and farm maintenance expenses – No evidence was produced to prove that the payments had been made to cultivator, grower or produced – Disallowance was confirmed. [R.6DD (e)] 712

Tribunal held that since no evidence had been placed on record to prove that payments had been made to cultivator, grower or producer as per rule 6DD(e) in order to exclude said payments from provision of section 40A(3), pond and farm maintenance expenses' could not come under exclusion provided under rule 6DD(e). Disallowance was affirmed. (AY. 2012-13)

Oceanic Bio Harvest Ltd. v. DCIT (2021) 190 ITD 765 (Chennai)(Trib.)

713 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Real estate developer – Purchase of agricultural land – Disallowance was held to be not justified. [R.6DD(e)(i)]**
Held that the lands sold were agricultural lands and sellers were agriculturists and had insisted on cash payments and their identities were also not in dispute and payments in cash were also made for purchase of agricultural lands only. Rule 6DD(e)(i) covers payment made for purchase of agricultural or forest produce, disallowance under section 40A(3) was to be deleted. (AY. 2012-13)
Mohammed Ali Shaik v. ITO (2021) 190 ITD 771 (Vishakha)(Trib.)

714 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Transfer of amount for payment to workers at site – All payments are below Rs.20,000 to each individual – No disallowance can be made.**
Tribunal held that revenue has not found any defects in the books of account maintained by the assessee. Each payment was less than Rs.20000, disallowance was held to be not valid. (AY. 2015-16)
Gali Subba Raju v. ACIT (2021) 189 ITD 681 (Vishakha)(Trib.)

715 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Failure to verify relevant documents – Matter remanded [R. 6DD]**
Tribunal held that documents submitted by the assessee had remained unverified by lower authorities, matter was to be remanded to Assessing Officer and assessee was to be directed to furnish all these evidences demonstrating that he had fulfilled mandatory conditions for getting benefit of rule 6DD. (AY. 2009-10)
Shri Ishtiyaq Ahmed Anurag Maheshwari & Co. v. CIT (2021) 189 ITD 73 (Delhi)(Trib.)

716 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Purchase of plots as stock in trade – Disallowance is held to be justified [R.6DD]**
Held that since assessee as well as seller of plots had bank accounts at material time and still transaction was carried out in violation of section 40A(3) without bringing case in any of specific clauses of rule 6DD. Disallowance is held to be justified. (AY. 2013-14)
Suresh Chunnilal Sharma. v. ITO (2021) 188 ITD 487 / 213 TTJ 409/ 86 ITR 22 (Pune) (Trib.)

717 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Travel agency – Cash payments exceeding prescribed limits – business contingency – Payment genuine – Not disallowable. [Rule 6DD]**
Assessee was running a travel agency and it made payments in cash exceeding Rs. 20,000 to two entities on account of purchase of flight tickets for his clients. Assessing Officer disallowed such payment by invoking provisions of section 40A(3). It was held by ITAT that from records it was found that Assessing Officer had not questioned genuineness of payment or credential of receivers and further, these entities had insisted for cash payment for arranging tickets and this amounted to business contingency for assessee. Hence, since genuineness of said transactions were not disbelieved by revenue

and assessee made out a case of business contingency, impugned payment could not be disallowed under section 40A(3). (AY 2011-12)
ITO v. Suresh Kumar (2021) 187 ITD 311 (Delhi)(Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Purchase of capital asset or investment – No disallowance can be made. 718
Tribunal held that cash payment exceeding prescribed limit for purchase of capital asset or investment, the provision of S.40A (3) is not attracted.(AY. 2008-09)
ACIT v. Arvind Srinivasan (2021)86 ITR 84 (Chennai)(Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Purchase of land – Amount paid neither debited to profit and loss account nor claimed as deduction. 719
The Tribunal held that the amount paid for purchase of land was neither debited to the profit and loss account nor claimed as expenditure in the computation of taxable income as the assessee had got reimbursements of the amounts paid for purchase of land from CPPL on assignment of development rights in land purchased by the assessee in favour of CPPL. The issue of disallowance was decided by the Tribunal in various cases of group companies of BPTP in favour of the respective assessees. Therefore the disallowance made by the Assessing Officer of Rs. 12,31,160 was to be deleted. (AY.2006-07, 2007-08)
Green Valley Tower Pvt. Ltd. v. ACIT (2021) 86 ITR 1 (Delhi)(Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Purchase of stock-in-trade – Disallowance is affirmed. [R.6DD] 720
Dismissing the appeal the Tribunal held that the assessee had patently violated the prescription of section 40A(3) by incurring expenditure of Rs. 9,52,000 on purchase of stock-in-trade otherwise than by an account payee cheque. Going by the mandate of section 40A(3), disallowance was required in respect of such expenditure. The assessee had neither demonstrated nor was it its case before the authorities below that there was a bank holiday or the bank was closed because of strike on the date on which the transaction took place for the transaction to fall within the ambit of rule 6DD(j) of the Rules. The genuineness of transaction would not be a case for non-disallowance. It was the admitted position that the assessee as well as the seller of the plots had bank accounts at the material time and still the transaction was carried out in violation of section 40A(3) without bringing the case in any of the specific clauses of rule 6DD. The disallowance was to be affirmed. Followed *Madhav Govind Dhulshete v. ITO (2018) 259 Taxman 149 (Bom)(HC)*
Suresh Chunnilal Sharma v. ITO (2021) 86 ITR 22 (SN)(Pune)(Trib.)

S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – purchase of lands from farmers – Disallowance deleted. [R.6DD] 721
Assessee company during the year purchased vide six separate registered sale deeds, certain portion of land. Assessee, out of above total six purchases of land made cash payments in part in five purchases of land. The A.O. held that assessee had contravened

provisions of section 40A(3) and there was no escape through rule 6DD therefore he disallowed 20% part of total expenditure (Rs. 2,12,50,000) incurred in cash amounting to Rs. 42,50,000/- and added the same to total income in the hands of the assessee company. The Tribunal observed that the identity of the persons from whom the purchase of various land parcels have been made by the assessee has been established and the source of cash payments was clearly identifiable in form of the withdrawals from the assessee's bank accounts and the said details were submitted before the lower authorities which has not been disputed by them. The Tribunal observed that it was not the case of the Revenue either that unaccounted or undisclosed income of the assessee has been utilized in making the cash payments. The Tribunal held that genuineness of the transaction was established as evidenced by registered sale deeds wherein the payments through cheque as well as cash has been duly mentioned and lastly, the test of business expediency was met as the initial payments as insisted by the sellers most of whom were farmers have been made in cash to secure the transaction. Considering entire facts Tribunal held that no disallowance is called for under section 40A(3) of the Act and the same was deleted.(IT No. 980/JP/ 2018; dt. 27-10-2020) (AY. 2007-08)
Vijayeta Buildcon Pvt. Ltd v. ACIT (2021) 186 ITD 493 / 123 taxmann.com 133 (Jaipur)(Trib.)

722 **S. 40A(3) : Expenses or payments not deductible – Cash payments exceeding prescribed limits – Freight payments made to transporters for purchase of paddy – Disallowance sustained.**
Held that freight payments made to transporters for purchase of paddy. Disallowance sustained. Followed earlier year order, *Daawat Foods Ltd. v. ACIT* (I. T. A No. 4158/ Delhi/2013 dated January 19, 2021)(AY.2009-10)
Dy. CIT v. Daawat Foods Ltd. (2021) 91 ITR 110 (Delhi)(Trib.)

723 **S. 40A(9) : Expenses or payments not deductible – Bonus to employees – Payments to external agencies for employees welfare – Allowable as deduction u/s 37(1)) of the Act. [S. 37(1)]**
Held that payments made to Geleyara Balga and SC / ST welfare Association for the purpose of festival celebration and general Welfare of its employees. Allowable as deduction. Provision of section 40A(9) is not applicable. (AY. 2011-12)
Karnataka State Industrial Infrastructure Development Corporation Ltd v. Dy.CIT (2021) 199 DTR 139 (Bang.)(Trib.)

724 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Tax deducted and interest not refunded – Cannot be assessed as cessation of liability [S. 41(1)(a)]**
On reference by the assessee High Court held that the interpretation of the words employed in section 41(1) required a deeper analysis and whether the section contemplates the net amount or the gross amount, was certainly a matter of debate. The question raised by the assessee was a debatable issue. The amount of tax deducted at source and interest could be deemed to be profits and gains and chargeable to tax only on refund. The amounts paid as tax had not been obtained in 1995-96 as they had not been refunded. Until the amount of tax deducted at source was refunded, that amount

could not be treated as an amount obtained by the assessee. The addition made by the Assessing Officer was not justified.(AY.1995-96)
Carbon and Chemicals (India) Ltd. v. CIT (2021) 433 ITR 14 (Ker.)(HC)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Payment was not made due to supply of inferior quality goods – Recovery of proceedings were pending – Addition cannot be made as cessation of liability. 725
Held that since proceedings against assessee with respect to recovery of the amounts were still in progress, such amount could not be treated as ceased liabilities under section 41(1)(a) of the Act. (AY. 2014-15)
Dy. CIT v. Surbhit Impex (P.) Ltd. (2021) 191 ITD 711 / 206 DTR 105 / 214 TTJ 406 (Mum.) (Trib.)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Sundry creditors – Not claimed as deduction in earlier years – Addition cannot be made. 726
Held that when no deduction was claimed in earlier financial years addition cannot be made under section 41(1) of the Act. (AY. 2014-15)
Ravindra Arunachala Nadar v. ACIT (2021) 191 ITD 520 (Chennai)(Trib.)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Presumptive taxation – Remission of income tax liability of employees borne by assessee pertaining to earlier years – Not chargeable to tax – Claimed deduction and allowed -The income would be chargeable to tax – Matter remanded.[S.44BB(2))] 727
Held that where the assessee has offered the income by applying the provision of section 44BB of the Act than once again the remission of liability cannot be taxed u/s 41 (1) of the Act. However if remission of income tax liability pertained to earlier years for which assessee was claiming set-off of losses by offering its income based on its regular accounts, it would be chargeable to tax in instant year under section 41(1).Matter remanded. (AY. 2011-12, 2013-14)
Dolphin Drilling Ltd. v. DCIT (IT) (2021) 191 ITD 181 / 204 DTR 209 / 212 TTJ 662 (Dehradun) (Trib.)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Purchases – Not claimed as expenditure – Matter remanded. 728
Held that as the opportunity to prove that the assessee has not claimed as expenditure was not provided to the Assessee, the matter was remanded.(AY. 2013-14)
Kumar Properties and Real Estate (P.) Ltd. v. DCIT (2021) 190 ITD 212 / 87 ITR 69 (SN)/ 212 TTJ 227/ 212 DTR 425 (Pune)(Trib.)

S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Advance against sale of property – Continued to remained as liability in the balance sheet – Addition cannot be made as cessation of liability. 729
Dismissing the appeal of the revenue the Tribunal held that the amount received as advance for sale of property was a capital receipt and it could not be construed as a

trading liability. Since the liability continued to remain in balance sheet of assessee, it could not be treated as cessation of liability. (AY. 2015-16)
ACIT v. Ashish Indur Chowdhry (2021) 190 ITD 435 (Mum.)(Trib.)

730 **S. 41(1) : Profits chargeable to tax – Remission or cessation of trading liability – Purchaser written off Advance paid as bad debts – Advance received is taxable.**
Assessee received Rs 10 crores as Advance from ILC for supply of iron Ore. Assessee paid Rs 5.60 crores to its suppliers and showed ILC as creditor for Rs 4.17 crores. ILC refused to take delivery. ILC wrote off advanced paid to Assessee as bad debts. Assessing Officer treated Rs 4.17 crores as income of Assessee u/s 41(1). The tribunal held that the amount of Rs. 10 crores had been received by the assessee for business purposes, i.e., for supply of iron ore fines by the assessee and for purchase of iron ore from ILC by the assessee. When the money was received by the assessee in the course of carrying on of business, even if it was treated as a loan at the time of receipt, it was in the nature of revenue, and on the waiver it became the assessee's own money, though it was not taken into the profit and loss account. The money had been received in the course of day to day affairs of the assessee. There was no purchase of any capital asset. The loans received by the assessee from ILC were for circulating capital and not for fixed capital. Since the advance was taken in the course of normal business affairs of the assessee and it was unclaimed amount and not required to be returned by the assessee it would be its trade receipts. Though the amount received originally was not of income nature, the amount remained with the assessee for a long period unclaimed by ILC and became a definite trade surplus and was to be treated as taxable income. The amount changed its character when the amount became the assessee's own money because of having been written off by ILC in its books of account and there was no contractual obligation on the part of the assessee to perform its obligation and it should be treated as income of the assessee. The amount of Rs. 4,17,71,395 was income of the assessee under section 41 of the Act.(AY. 2011-12)
Hothur Traders v. ACIT (2021) 87 ITR 20 (SN) (Bang.)(Trib.)

731 **S. 41(2) : Profits chargeable to tax – Business loss – Balancing charge – Block of assets – Winding up – Sale value less than written down value – Allowable as business loss [S. 2(11), 28 to 44DB, 50]**
The asseessee in the process of winding up sold some of its depreciable assets and suffered losses thereon as same were sold below written down value of those assets in books of account. The assessee claimed the said loss as business loss. Assessing Officer rejected assessee's claim. On appeal the Tribunal held that section 41(2) is applicable only where sale value along with scrap value exceeds written down value and since in instant case, sale value realized was less than written down value, section 41(2) would not apply. On appeal the High Court held that even if sections 28 to 44DB talk only of taxability on excess received by assessee over written down value of assets, it cannot exclude or ignore minus figure or loss occurring on such sale transactions. Since certain assets of block of assets, not being immovable property of assessee, were sold during regular course of business, before it was wound up during relevant previous year, loss occurring on such sale at a figure less than written down value of assets should be treated as Business Loss under section 41(2) of the Act. (AY. 2001-02)
Share Aids (P.) Ltd. v. ITO (2021) 277 Taxman 517 / 319 CTR 177 (Mad.)(HC)

S. 43(1) : Actual cost – Financial assistance for rehabilitation of tsunami damaged roads and bridges, ports and harbours – Interest free loan – Not to be reduced from actual cost [S.32 43(1), Explanation 10] 732

Dismissing the appeal of the revenue the Court held that since Government Order clearly mentioned that what was sanctioned to assessee was a loan and not in nature of grant, Tribunal was right in granting relief to assessee by treating receipt in question viz. grants-received from Government, as interest free loans and allowing depreciation claimed against assets acquired from said receipts. (AY. 2014-15, 2015-16)

CIT v. Tamilnadu Martime Board (2021) 277 Taxman 15 / 323 CTR 987 (Mad.)(HC)

S. 43(1) : Actual cost – Subsidy – Depreciable assets – Subsidy cannot be reduced from actual cost. [S. 32] 733

Absence of any specification in scheme as to utilization of subsidy for purpose of acquiring depreciable fixed assets, subsidy cannot be reduced from actual cost of fixed assets under Explanation 10 to section 43(1) of the Act. (AY. 2012-13, 2013-14)

Electrosteel Castings Ltd. v. DCIT (2021) 189 ITD 183 (Kol.)(Trib.)

S. 43(1): Actual cost – Depreciation – Expenses on rent and under other heads incurred during construction of hotel building prior to commencement of business is to be capitalised and depreciation is allowable. [S. 32] 734

Held that the Accounting Standard 10 regarding "accounting for fixed assets" issued by the Institute of Chartered Accountants of India specifies the components of cost of a fixed asset. Thus, the purchase price of an asset includes import duties, levies, non-refundable taxes and any other cost directly attributable to the asset for bringing it to the working condition. The preliminary project expenditure, indirect expenditure relating to construction and other indirect expenditure not related to construction have been included in the cost of the asset. Accordingly, the expenses had to be capitalised and that the allocation had been made by the assessee on a reasonable basis in the ratio of cost of the asset to the total cost. Section 43(1) of the Act defines "actual cost" to mean actual cost of the asset to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority. The expenses incurred by the assessee were required to be capitalised.(AY. 2012-13)

Waterline Hotels Pvt. Ltd. v. DCIT (2021) 91 ITR 2 (SN)(Bang.)(Trib.)

S. 43(5) : Speculative transaction – Foreign exchange fluctuation – Forward contract – Not speculative in nature – Allowable as revenue expenditure [S.37 (1)] 735

Dismissing the appeal of revenue the Court held that loss arising out of foreign exchange fluctuation on forward contract being incurred by assessee in ordinary course of its business would not be considered as speculative in nature. Followed *CIT v. D.Chetan & Co (2017) 390 ITR 36 (Bom.) (HC)* (AY. 2009-10)

PCIT v. Mphasis Ltd. (2021) 281 Taxman 206 (Karn.)(HC)

S. 43(5) : Speculative transaction – Transaction supported by time stamped contract notes issued by stock broker – Not speculative. [S.43(5)(d)] 736

Dismissing the appeal of the revenue the Court held that the contract note clearly revealed that the transactions were supported by time-stamped contract notes issued

by the stock broker in which unique client identity and permanent account number were indicated in accordance with Explanation 1 attached to clause (d) of the proviso to clause (5) of section 43 of the Act. Section 43(5) of the Act was also discussed in the order by the Commissioner (Appeals) and on the basis thereof, the Commissioner (Appeals) had arrived at the conclusion that the assessee had fully satisfied the requirements under clause (d) of the proviso to clause (5) of section 43. In the facts and circumstances, the loss sustained by the assessee from the transaction of purchase and sale of the shares could not be deemed to be speculation loss.(AY. 2007-08)
PCIT v. Diamond Securities Pvt. Ltd. (2021) 431 ITR 201 (MP)(HC)

737 **S. 43(5) : Speculative transaction – Transactions in derivatives and share trading – Loss not from speculative business – Set-Off to be allowed. [S. 72]**
Held, that the business in share trading could not be held to be speculative without any basis and adverse material on record. The assessee was regularly showing the income from the share trading as business income. Loss is allowed to be set off.(AY. 2008-09)
Umesh Chandra Gupta v. Dy. CIT (2021) 90 ITR 79 (Agra)(Trib.)

738 **S. 43(5) : Speculative transaction – Premium onforward cover – Commodity – Foreign exchange cover not contract for purchase of share or stock and does not fall within definition of commodity – Transaction not speculative.**
Held, that a foreign exchange cover was not a contract for the purchase of a share or stock and did not fall within the purview of the term commodity and hence the characteristics of a speculative transaction were not satisfied. Since the definition of speculative transaction itself was not applicable, treating the transaction as speculative in nature was not sustainable in law.(AY.2008-09, 2010-11)
ACIT v. Lifestyle International (P.) Ltd. (2021) 88 ITR 79 (Bang.)(Trib.)

739 **S. 43(5) : Speculative transaction – Speculation loss -Profit from money market transactions – Gains arising out of speculative transactions are eligible to be set-off against loss arising out of share transactions [S. 28, Expln. 2]**
Relying on the decision of the co-ordinate bench in the case of Growmore Research and Assets Management Ltd. (ITA No.1807 & 2192/M/2015 Ltd dt. 28th Feb, 2017), the Hon'ble Tribunal affirmed the assessee's position and allowed set-off of eligible losses from profit from trading in money market securities. (AY. 1992-93)
Cascade Holdings Pvt Ltd v. DCIT (2021) 61 CCH 470 / 213 TTJ 491 (Mum.)(Trib.)

740 **S. 43(5) : Speculative transaction – Sauda settlement for want of substantiation – Loss on account of reversal of oral contract for supply of wheat – Speculative loss – Loss cannot be set off against business income [S. 28]**
Held that Loss on account of reversal of oral contract for supply of wheat is held to be speculative loss. Loss cannot be set off against business income. (AY. 2013-14)
Gopal Agrawal HUF v. ITO (2021) 91 ITR 80 (SMC) (SN)(Jabalpur)(Trib.)

S. 43(6) : Written down value – Block of assets – Waiver of loan – Asset purchased in earlier year – Written back from capital reserve – No adjustment can be made. [S. 2(11), 2(24)(xviii), 32, 41(1), 43(1)] 741

The Assessee transferred certain amount from the Capital Reserve which was made in the year 2006 -07. The Assessing Officer disallowed the depreciation on account of written back from Capital Reserve. Held that written down value under section 43(6) does not encompass any reduction in value of existing asset in block except when it is sold. Making any adjustment in written down value of block on account of waiver of loan in respect of an asset which was purchased in an earlier year is not permissible. Tribunal also observed that subsidy or grant or waiver or concession or reimbursement received in terms of Explanation 10 to section 43 (1) adjusts the actual cost of asset, any amount of such incentive or reimbursement or waiver etc. which does not fall within the realm of the Explanation 10 assumes the character of income directly in the year of its receipts, with effect from 1-4-2016, without disturbing the actual cost or written down value of block of asset. (AY. 2011-12)

Shapers India (P.) Ltd. v. DCIT (2021) 191 ITD 700 / 214 TTJ 238 / 206 DTR 303 (Pune) (Trib.)

S. 43(6) : Written down value – Depreciation – Forfeited on cancellation of agreement for sale of assets – Dubious transaction – Rightly reduced from the WDV of assets. [S. 32, 51, 56(2)(ix)] 742

The Assessing Officer and CIT(A) held that forfeited amount on cancellation of agreement has to be reduced from the purchase value and depreciation was allowed on the after reducing the forfeited amount. On appeal the Tribunal held that the agreement being dubious the CIT(A) is justified in reducing from the WDV of assets. (AY. 2009-10)

Dy.CIT v. Supreme Industries Ltd (2021) 197 DTR 241 (Mum.)(Trib.)

S. 43A : Rate of exchange – Foreign currency – Cancellation of forward contract – Capital receipt – Interest portion assessable as revenue receipt – Actual cost of assets – Amendment with effect from 1-4-2003 is not retrospective – Actual payment not condition precedent for adjustment in cost of fixed asset acquired in foreign Currency. [S.4, 28(1)] 743

The assessee claimed deduction of an amount representing gain on cancellation of forward contracts relating to capital assets lying in capital work in progress. The Assessing Officer disallowed the unrealised foreign exchange gain. The Tribunal held that the assessee had reduced an amount of at the computation stage. The gains on the cancellation of forward contracts are a capital receipt and not a revenue receipt. The High Court while affirming the finding set aside the observation in the order of the Tribunal and held that the foreign exchange fluctuation related to the interest portion was to be treated as revenue receipt and brought to tax. The amendment of section 43A of the Income-tax Act, 1961 by the Finance Act, 2002 with effect from April 1, 2003 is not clarificatory and would apply prospectively. Under the unamended section 43A, adjustment to the actual cost takes place on the happening of a change in the rate of exchange, whereas under the amended section 43A, the adjustment in the actual cost is made on cash basis. In other words, under the unamended section 43A, actual payment

was not a condition precedent for making necessary adjustment in the carrying cost of the fixed asset acquired in foreign currency but under the amended section 43A, with effect from April 1, 2003, such payment of the decreased or enhanced liability on account of fluctuation in foreign exchange rate has been made a condition precedent for making adjustment in the carrying amount of the fixed asset. (AY. 2009-10)
Apollo Tyres Ltd. v. ACIT (2021) 438 ITR 536 (Ker.)(HC)

744 **S. 43A : Rate of exchange – Foreign currency – loan availed for acquisition of fixed assets – Depreciation is held to be allowable on such adjustment – No exempt income – No disallowance can be made [S. 14A,32, R.8D]**
Dismissing the appeal of the revenue the Court held that where assessee converted Indian currency loan availed for acquisition of fixed assets, namely, plant and machinery, into foreign currency loan for saving interest, loss incurred due to foreign exchange fluctuation on such foreign loan was to be adjusted against cost of concerned capital assets in terms of section 43A and depreciation was to be allowed on such adjusted value of capital assets. Court affirmed the order of the Tribunal holding that when there is no exempt income during the year, no disallowance can be made. (AY. 2013-14)
CIT v. Continuum Wind Energy (India) (P.) Ltd. (2021) 430 ITR 52 / 276 Taxman 286 (Mad.)(HC)

745 **S. 43A : Rate of exchange - Foreign currency – Business of charter and hire of oil drilling rig and other allied services – Procedure - calculating receipts currency conversion is Explanation 2(c) to rule 115(1) without taking into account proviso to rule 115(1) [Rule. 115]**
Tribunal held that the CIT (A) is justified in holding that the correct procedure for calculating receipts in case of income from business and profession in case of currency conversion is Explanation 2(c) to rule 115(1) without taking into account proviso to rule 115(1) and remitted matter to Assessing Officer for verification of applicable TT Buying Rate under rule 115(1). (AY. 2014-15)
DCIT v. Global Santafe Drilling Company. (2021) 189 ITD 416 (Mum.)(Trib.)

746 **S. 43A : Rate of exchange – Foreign currency – Fixed asset – Foreign currency loan – Adjustment against foreign exchange gain against capital work in progress and net amount of gain was to be offered to tax.**
Assessee-company purchased fixed assets by taking loan in foreign currency and suffered foreign exchange loss of Rs. 2.16 crores. Against this, foreign exchange gain of Rs. 53.06 lakhs against capital work-in-progress was adjusted and balance of Rs. 1.63 crores was added back in computation of income. Assessing Officer/DRP sought to add said Rs. 53.06 lakhs to income of assessee. On appeal the Tribunal held that foreign exchange loss on acquisition of fixed assets was not allowable as an expenditure in view of section 43A; thus, foreign exchange gain of Rs. 53.06 lakhs was to be adjusted against loss; and net amount of Rs. 1.63 crores was to be offered to tax. (AY. 2012-13)
Honda Motorcycle and Scooter India (P.) Ltd. v. DCIT (2021) 187 ITD 264 (Delhi)(Trib.)

S.43B : Deductions on actual payment – Interest payable to Financial Institutions – Rehabilitation plan and accepting debentures in discharge of outstanding interest – Explanation 3C, cannot be invoked – Interest is allowable as deduction – Interpretation of taxing statutes – Retrospective provision for the removal of doubts Cannot be presumed to be retrospective if it alters or changes law as it stood – Ambiguity in language to be resolved in favour of assessee. [S.43D] 747

Allowing the appeal held that both the Commissioner (Appeals) and the Tribunal had found, as a matter of fact, that under the rehabilitation plan agreed to between the lender and the borrower, the debentures were accepted by the financial institution in discharge of the debt on account of outstanding interest. The issue of debentures by the assessee was, under a rehabilitation plan, to extinguish the liability of interest altogether. In the assessment of the bank, for the assessment year in question, the accounts of the bank reflected the amount received by way of debentures as its business income. It was clear that interest was "actually paid" by means of issuance of debentures, which extinguished the liability to pay interest. No misuse of the provisions of section 43B was found as a matter of fact by either the Commissioner (Appeals) or the Tribunal. Explanation 3C, which was meant to plug a loophole, could not therefore be invoked on the facts of this case. The High Court was in error in concluding that "interest", on the facts of this case, had been converted into a loan. The interest was deductible. Court also held that retrospective provision for the removal of doubts cannot be presumed to be retrospective if it alters or changes law as it stood and Ambiguity in language to be resolved in favour of assessee. (AY. 1996-97)

M. M. Aqua Technologies Ltd. v. CIT (2021) 436 ITR 582/ 204 DTR 337/ 321 CTR 753/ 282 Taxman 281 (SC)

Editorial : Decision of the Delhi High Court in CIT v. M. M. Aqua Technologies Ltd (2015) 376 ITR 498 (Delhi) (HC) and CIT v. M. M. Aqua Technologies Ltd (2016) 386 ITR 441 (Delhi) (HC), reversed.

S.43B : Deductions on actual payment – Tax paid under Kerala Agricultural Income -tax Act – Not allowable as deduction [S. 10(1), 37(1), Kerala Agricultural Income-tax Act, 1991] 748

Dismissing the appeal of the assessee the Court held that Agricultural income is excluded from the scope of s. 10(1) of Central Act. Agricultural income does not form part of computation under Section 14 of the IT Act. Tribunal was justified is holding that agricultural income being exempt from taxation under the Central IT Act, the agricultural income tax paid by the assessee under Kerala Agricultural income Tax Act cannot be allowed as a deduction under the Income tax Act. (AY. 2007-08 to 2010-11, 2012-13)

Oil Palm India Ltd v. Dy. CIT (2021) 208 DTR 345 (Ker.)(HC)

S.43B : Deductions on actual payment – Purchase tax paid on raw materials and packing materials – Set off is allowed against sales tax payable on finished goods manufactured out of them – Deemed actual payment – Allowable as deduction. 749

On appeal the Court held that the law permitted the assessee to set off or adjust the sales tax already paid at the time of purchase of raw materials against the sales tax

collected at the time of sale of finished goods, and the assessee had retained the sales tax amount which had already been paid and claimed a set off. To the extent of the sales tax paid on the raw materials, the assessee had actually been reimbursed by the sales tax collected at the sale of the finished product. Adjustment, by legal fiction, was deemed to be an actual payment of the tax liability and was deductible under section 43B. (AY. 1988-89)
Merck Ltd. v. Dy. CIT (2021) 438 ITR 220 / (2022) 284 Taxman 220 (Bom.)(HC)

750 **S.43B : Deductions on actual payment – Statutory due was paid before filing of return – Inadvertently showing in Audit Report as not paid – Error rectified by filing revised audit report – Disallowance was deleted.[S. 143(1), 143(3)]**
Held that the statutory due was paid before filing of return. Inadvertently showing in Audit Report as not paid. Error rectified by filing revised audit report. The assessment completed under section 143(3) of the Act. In the intimation under section 143(1) of the Act the disallowance was made u/s 43B of the Act. Since the assessment had been completed under section 143(3) of the Act, the demand raised under section 143(1) of the Act would be effaced and the demand raised in assessment completed under section 143(3) of the Act alone survived. Therefore, in the real sense, there was no prejudice caused to the assessee. Even otherwise, a mistake in the audit report, which was subsequently revised by filing a fresh audit report, had to be taken note.(AY. 2018-19)
Kuberan v. Dy. CIT (2021) 90 ITR 82 (SN)(Bang.)(Trib.)

751 **S.43B: Deductions on actual payment – Service tax liability – Not claimed as deduction – Outstanding service tax liability not liable to be added.**
Held that the outstanding service tax liability was not liable to be added under section 43B of the Act, since it had not been claimed as deduction. The order passed by the Commissioner (Appeals) was to be set aside and the Assessing Officer was to delete the addition.(AY.2012-13)
Ken Consulting P. Ltd. v. Dy. CIT (2021) 89 ITR 2 (SN)(Bang.)(Trib.)

752 **S. 43B : Certain deductions only on actual payment – Interest payable to Government of India is crystalized based on facts, even though not accounted in books due to comments of statutory auditor, and hence is allowed as expense on accrual basis even though not accounted for in books.[S. 145]**
The Tribunal held that the liability to pay the interest amount payable to the Government of India is crystalized as evident from the waiver request of Aviation Ministry has been rejected by the Ministry of Finance and hence the deduction for the same cannot be disallowed on the grounds that it has not been accounted in the books of accounts when the same interest expenditure is allowed in the previous years.(AY. 1990-91)
Pawan Hans Helicopters Ltd. v. DCIT (2021) 212 TTJ 1010 / 204 DTR 347/ (2022) 192 ITD 142 (Delhi)(Trib.)

S.43B: Deductions on actual payment – Income from house property – GST – Matter remanded. 753

Tribunal held that there was no finding of fact relating to which component of income such GST payable was related to. Matter was remanded for fresh adjudication. (AY. 2018-19)

Ashok Kumar v. DCIT (2021) 189 ITD 687 (Chd)(Trib.)

S.43B: Deductions on actual payment – Provision for leave salary – Not statutory liability – No disallowance can be made – Provision of section 43B(f) is not applicable [S.43B(f)] 754

Tribunal held that provision for leave salary is not a statutory liability but only a contractual liability. No disallowance can be made by applying the provision of Section 43B(f) of the Act. (AY. 2013-14)

DCIT v. GBTL Ltd. (2021) 189 ITD 704/ 212 TTJ 526/ 203 DTR 353 (Mum.)(Trib.)

S. 43B : Certain deductions only on actual payment – Rent received – Local taxes – GST unpaid – Matter remanded. [S. 22, 23, 254(1)] 755

The audit report for the relevant AY mentioned that GST payable on rent received by the Assessee remained unpaid till the date of Audit report. The Assessee submitted that disallowance u/s 43B could only be made against income from business & profession whereas the GST in his case related to rental income. The return of Income of the Assessee reflected income under both the heads i.e. house property and business and profession. It was further submitted that section 23 of the Act with respect to deduction on payment basis in case of tax paid covered only taxes levied by local authority and it was not relatable to GST levied on rental income. Perusal of computation of income revealed that the assessee reflected rental income excluding the GST component. The Ld. DR was asked as to how any disallowance was possible when the amount of GST itself was not reflected in the return of income. It was observed that The DR requested that these facts needed to be verified. Accordingly, the matter was remanded back to the CIT(A) to determine the above fact as well as whether the income component is rental or from business and profession, if it is rental income whether it has been returned. If it is not returned, there is no occasion of making a disallowance but if it is returned then the issue needs to be determined in the light of section 23 which allows deduction of "local taxes" from rental income on payment basis and if GST is covered under the section. (AY. 2018-19).

Ashok Kumar v. Dy. CIT (CPC)(2021) 189 ITD 687 (Chd)(Trib.)

S. 43B : Certain deductions only on actual payment – certain interest expenses claimed were not deposited before the due date of filing return of income – no documentary evidence of payment made – disallowed – S. 40(a)(ia) – Amounts not deductible – Deduction at source – Interest, Commission, Brokerage – whether proviso to section 40(a)(ia) inserted by Finance Act, 2012 is prospective or retrospective nature – In Ansal Landmark Townships (P) Ltd. 279 CTR 384 (Del), the Delhi High Court has held that second proviso to Section 40(a)(ia) is declaratory and curative and has retrospective effect from 1st April 2005 inserted via Finance (No. 2) Act, 2004 – benefit granted 756

As the assessee was unable to produce any documentary evidence with respect to deposit of interest payments made on its borrowings, such amount was disallowed by

the AO, and it was upheld by the Tribunal.
The AO further observed that the assessee has made certain interest payments but did not deduct TDS as per section 194. The question before the Tribunal was whether proviso to section 40(a)(ia) by the Finance Act, 2012 is prospective or retrospective in nature. The ITAT observed that Assessee has furnished Certificates from Chartered Accountant (CA) in Annexure -A to Form 26A in respect of interest payment to NBFCs which was not disputed by the lower authorities, however they denied the benefit of second proviso to section 40(a)(ia). Following the precedent laid down by the Delhi High Court in CIT v. Ansal Landmark Township where it has held that second proviso to Section 40(a)(ia) is declaratory and curative and has retrospective effect from 1st April 2005, i.e. when sub clause (ia) of section 40(a) was inserted by the Finance (No. 2) Act, 2004, the ITAT allowed the benefit of such proviso to the assessee for the transactions and payment made by it during financial year 2011-12. (AY. 2012-13)
ARSS Infrastructure Project Ltd. v. DCIT (2021) 187 ITD 727 (Cuttack)(Trib.)

757 **S.43B: Deductions on actual payment – Employee's contribution – Paid before due date of filing of return – Allowable as deduction – Faceless assessment – Binding Precedent – Order of Jurisdictional High Court – Binding on AO situated within territorial jurisdiction and respective first appellate authority. [S. 2(24)(x), 36(1)(va), 139(1), 143(3)]**
Allowing the appeal of the Assessee, the Tribunal held that,employee's contribution,paid before due date of filing of return is allowable as deduction - One of the first appeals against the National Faceless Appeal Centre (NFAC) while dealing with the issue of applicability of jurisdictional precedents explained the background and genesis of the Faceless Appeal Scheme, and referred to the article authored by Dr. K. Shivaram, Senior Advocate, and Mr. Shashi Bekal, Advocate (posted on itatonline.org on March 27, 2021). It was held that the NFAC is bound by the binding decision of the Jurisdictional Allahabad High Court, as the assessing officer is situated within the territorial and subjective jurisdiction of the High court. (AY. 2018-19, 2019-20)
Mahadev Cold Storage v. JAO (2021) 190 ITD 273/ 212 TTJ 801/ 205 DTR 145 (Agra)(Trib.)
Vinod Thanwerdas v. JAO (2021) 190 ITD 273/ 212 TTJ 801/ 205 DTR 145 (Agra)(Trib.)
Salzgitter Hydraulics (P.) Ltd v. ITO (2021) 128 taxmann.com 192 (Hyd)(Trib.)
Gopalakrishna Aswini Kumar v. ADIT (2021) 214 TTJ 1018 / 208 DTR 212 / (2022) 192 ITD 562(Bang.)(Trib.)
Continental Restaurant and Café Co. v. ITO (2021) 91 ITR 60 (SN)(Bang.)(Trib.)
K.P. Airtech v. DCIT, (2021) 213 TTJ 54 (UO) (Jaipur)(Trib.)
Dhabriya Polywood Ltd. v. ADIT (2021) 91 ITR 127 / (2022) 192 ITD 298 (Jaipur)(Trib.)
Mohangarh Engineers and Construction Company v. DCIT, (2021) 213 TTJ 298 / 205 DTR 65 /(2022) 192 ITD 309 (Jodhpur)(Trib.)
U & T Tractor Spares (P) Ltd. v. ACIT, (2021) 213 TTJ 298 / 205 DTR 65 (Jodhpur)(Trib.)
Pali Urban Co-Operative Bank Ltd v. Dy.CIT (2021) 213 TTJ 298 / 205 DTR 65 (Jodhpur) (Trib.)
Aroon Facilitation Management Services (P) Ltd. v. Dy. CIT (2021) 208 DTR 226 (SMC) (Delhi)(Trib.)

DCIT v. Maharashtra Tourism Development Corporation (2021) The Chamber's Journal -October-P 110)(Mum.)(Trib.)
Crescent Road ways Pvt Ltd v. ITO (2021) BCAJ- August – P. 49 (Hyd)(Trib.)
Maksat Technologies (P.) Ltd. v. DCIT (2021) 191 ITD 175 (Delhi)(Trib.)
Yogi Ji Technoequip (P.) Ltd. v. DCIT CPC (2021) 190 ITD 517 (Delhi)(Trib.)
Vidras India Ceramics (P.) Ltd. v. DCIT (2021) 190 ITD 551 (Ahd)(Trib.)
ACIT v. Ariba Foods Pvt. Ltd (2021) 86 ITR 174 (Indore)(Trib.)
ACIT v. Vyanktesh Plastics and Packaging Pvt. Ltd. 2021)86 ITR 174 (Indore)(Trib.)
ACIT v. Famous Vanijya Pvt. Ltd. (2021) 86 ITR 174 (Indore)(Trib.)
ACIT v. Ariba Foods Pvt. Ltd (2021) 86 ITR 174 (Indore)(Trib.)
ACIT v. Vyanktesh Plastics and Packaging Pvt. Ltd. 2021)86 ITR 174 (Indore)(Trib.)
ACIT v. Famous Vanijya Pvt. Ltd. (2021)86 ITR 174 (Indore)(Trib.)
DCIT v. Saileela Synthetics Pvt. Ltd. (2021) 199 DTR 201/ 210 TTJ 763 (Jodhpur)(Trib.)
Digiqal Solution Services Pvt. Ltd. v. ADIT (2021)92 ITR 404 (Chd.)(Trib.)
Salzgitter Hydraulics (P.) Ltd. v. ITO (2021) 189 ITD 676 (Hyd)(Trib.)
Dy. CIT v. Dee Development Engineers Ltd. (2021) 87 ITR 38 (SN)(Delhi)(Trib.)

S.43B: Deductions on actual payment – Interest payable to Bank – Provision that conversion of interest into loan not equivalent to actual payment – Payment through overdraft account or cash credit account – Not disqualified. [S.43B(d), 43B(e)] 758
Dismissing the appeal the Tribunal held that as the interest amount paid by the assessee through overdraft or cash credit account was not similar to loan accounts, thus, Explanation 3D to section 43B would not be applicable in so far the interest amount had been actually paid by the assessee through overdraft or cash credit account and had not been converted into loan or advance.(AY. 2015-16)
ACIT v. Ashok Radhakishen Mehra (2021) 188 ITD 663 / 86 ITR 19 (SN)(Mum.)(Trib.)

S.43B: Deductions on actual payment – Restructuring of bank loan – Cash credit – Amounts of credits in cash credit account were much more than amount of interest debited by bank, no disallowance can be made. 759
Bank had charged interest on term loan on month to month basis and same had been recovered by debiting it to cash credit account of assessee. Assessing Officer disallowed interest payable as per provisions of section 43B of the Act. On appeal the Tribunal held that deposit of each month was much more than corresponding interest debited in respective month and as such no part of such interest remained which could be said to have been converted into any loan or advance as on close of previous year so as to be deemed not actually paid. Disallowance is deleted. (AY. 2014-15)
Iceberg Foods Ltd v. ACIT (2021) 91 ITR 1 / (2022) 192 ITD 320 (Delhi)(Trib.)

S.43CA : Transfer of assets – other than capital assets – Full value of consideration-stock in trade – Agreement value – Stamp valuation – Tolerance band from 5 % to 10%- Proviso to section 43CA(1) and the subsequent amendment thereto relates back to the date on which the said section was made effective, i.e. 1st April, 2014 [S.50C] 760
Tribunal held that proviso to section 43CA(1) and the subsequent amendment thereto relates back to the date on which the said section was made effective, i.e. 1st April,

2014. Referred CBDT Circular No.8 of 2018 dt. 26 th December, 2018. The tolerance band was enhanced from 5 % to 10 % by the Finance Act, 2020 w.e.f 1st April, 2021. (dt. 2-7-2021) (AY. 2016-17)
Stalwart Impex Pvt Ltd v. ITO (2021) BCAJ -September-P. 40 (Mum.)(Trib.)

761 **S.43CA: Transfer of assets – Other than capital assets – Full value of consideration-stock in trade – Agreement value – Stamp valuation – Sale of flats with customer prior to 1-4-2013 – Sale deed was executed after 1-4-2013 – Provision is applicable [S. 50C]**
Assessee-firm is engaged in business of real estate development. The assessee contended that at point of time agreement for sale of flats in question were entered into with customer, section 43CA was not in Statute Book and, thus, provisions of section 43CA were not applicable. The Assessing Officer applied the provision of section 43CA. On appeal the Tribunal held though booking was claimed to have been made prior to 1-4-2013, sale deeds were executed after 1-4-2013 which fell in previous year relevant to assessment year provision of section 43CA was rightly applied by the Assessing Officer. (AY. 2014-15)
Spytech Buildcon v. ACIT (2021) 190 ITD 325 (Jaipur)(Trib.)

762 **S.43CB: Construction and service contracts – Percentage completion – Project completion method – Both duly recognized methods of accounting under construction contracts for relevant assessment year. [S. 145]**
Section 43CB which provides that profits and gains arising from a construction contract or a contract for providing services shall be determined on basis of percentage of completion method in accordance with income computation and disclosure standards was inserted by Finance Act, 2018 with effect from 1-4-2017 and thus, assessee could not have been thrust upon percentage of completion method of accounting by Assessing Officer. However, percentage completion method and completed contract method were both acceptable method for accounting of construction contract in impugned assessment year and since project was incomplete and in substance if assessee wished to offer for taxation its gain on completion of project i.e. apply completed contract method, same could not have been rejected. (AY. 2014-15)
Trident Estate (P.) Ltd. v. ITO (2021) 190 ITD 364 (Mum.)(Trib.)

763 **S. 44 : Insurance business – Non obstante clauses – Justified in filing revised return-Provisions override other provisions of Act – Direction given by the CIT (A) which was affirmed by the Tribunal is held to be proper.**
Dismissing the appeal of the revenue the Court held that the assessee was justified in filing the revised computation under section 44 and claiming this as an additional ground before the Commissioner (Appeals). Section 44 read with the First Schedule to the Act provides for the computation of profits and gains from life insurance business. These provisions, which begin with non obstante clauses, override other provisions of the Act. There was no option but to compute the income from insurance business in terms thereof. Accordingly the direction was given by the Commissioner (Appeals) to the Assessing Officer to compute the income under section 44. Order of Tribunal is affirmed. (AY.2004-05, 2005-06, 2008-09, 2010-11)
PCIT v. Sahara India Life Insurance Co. Ltd. (2021) 432 ITR 84 (Delhi)(HC)

S. 44AB : Audit of accounts – Business – Profession – Guidelines issued by the Institute of Chartered Accountants of India – Conflicting judgements of different High Courts-Transfer petition filed before Supreme Court. [Chartered Accountants Act, 1949, S. 22] 764

ICAI filed transfer petition for transfer of various petitions filed in different High Courts. With respect to cap on number of audits, there were conflicting judgments of different High Courts taking different views on similar guidelines Guidelines which were impugned in High Court and consequent disciplinary proceedings initiated against various chartered accountants throughout country was an issue of public importance affecting Chartered Accountants as well as citizens who had to obtain compulsory tax audits and, therefore, to settle law and to clear uncertainty among tax professionals and citizens, it was appropriate that Court might transfer writ petition, to authoritatively pronounce law on subject.

Institute of Chartered Accountants of India v. Shaji Poulose (2021) 278 Taxman 191 (SC)

S. 44AD : Presumptive taxation – Individual partner of firm engaged in eligible business – Remuneration and interest could not be treated as gross receipts – Not entitled to benefit of section 44AD. [S.28(v), 44AD(2)] 765

Dismissing the appeal the Court held that the assessee who was an individual was not carrying on any business. Therefore, the remuneration and interest received by the assessee from the firm could not be termed turnover of the assessee. The assessee had not done any sales nor rendered any services but had been receiving remuneration and interest from the firms which amount had already been debited in the profit and loss account of the firms. Therefore, the remuneration and interest could not be treated as gross receipts. The assessee was not entitled to the benefit of section 44AD.(AY.2012-13)

Anandkumar v. CIT (2021) 430 ITR 391 / 199 DTR 289 / 319 CTR 484 / 278 Taxman 342 (Mad.)(HC)

S. 44AD : Presumptive taxation – Supplier of security guards – Disclosure of profits at 8 Percent of gross receipts – Failure to pay advance tax – Directed to pay at 10 percent. [S.44AA, 44AB, 234C] 766

Held that the assessee did not fall in to the scheme of things since he had defaulted on payment of advance tax and disclosure of the profits at 8 percent on the gross receipts and filing thereof in the return of income. The assessee was directed to pay tax at 10 per cent. (AY. 2014-15)

Shanti Ranjan Biswas v. ITO (2021) 92 ITR 328 (Delhi)(Trib.)

S. 44AD : Presumptive taxation – Contract receipts – Contract and sub-contract – Income to be estimated at 8 percent on contract receipt and 5 percent on sub-contract receipts only – Scrap sales to be treated as business receipts taxable at 8 percent. 767

Held that income to be estimated at 8 percent on contract receipt and only 5 percent on sub-contract receipts. Scrap sales to be treated as business receipts and taxable at 8 percent.(AY.2010-11, 2011-12)

TCI Constructions Ltd. v. Dy.CIT (2021) 87 ITR 45 (SN)(Hyd.)(Trib.)

768 **S. 44AD : Presumptive taxation – Cash credits – Unverifiable cash deposits and bank withdrawals – Duty on assessee to prove – Addition accepted. Limited scrutiny – AO is with in jurisdiction to take up additional issue in limited scrutiny of less than Rs. 10 lakhs. [S.68]**
Assessee, a dealer and broker of old cars made bank deposits and had cash receipts. Assessee claimed deposits were advance payments, subject to refund if deal did not go through. Duty on assessee to prove. Failing which, AO treated 15% of cheque deposit as income. Tribunal accepted. Additional ground that assessment raised for limited scrutiny to verify cash deposit could not estimate income on cheque deposits. Ground allowed following National Thermal Power Co Ltd v CIT (1998) 229 ITR 383 (SC) however ground rejected on merit following Circular No. 20/2015, permitting AO to take up additional issue in limited scrutiny of less than Rs. 10 lakhs. (AY. 2016-17)
Mohammed Sharaq v. ITO (2021) 87 ITR 41 (SN) (Bang.)(Trib.)

769 **S. 44AD : Presumptive taxation – Once business income is offered on the presumption taxation, separate addition cannot be made as cash credits [S.68]**
Allowing the appeal of the assessee the Tribunal held that provision of section 68 cannot be invoked where the income offered u/s 44AD of the Act as the said section does not oblige the assessee to maintain any books of account. Referred *Kokkare Prabhakara v. ITO (Bang.)(Trib.)* (ITA No. 1183/Mum/ 2019 dt 28-12-2020 (AY. 2014-15)
Dineshkumar Verma v. ITO (2021) The Chamber's Journal – January-P 123 (Mum.)(Trib.)

770 **S. 44BB : Mineral oils – Presumptive tax- Amount received on account of equipment lost in hole – Reimbursement of service tax – Not to be included in gross receipts for computation of profits for purpose of presumptive tax.**
Held that the amount received by the assessee on account of equipment lost in hole and receipts on account of service tax was not includible in the gross revenue for the purpose of computation of profits under the presumptive provisions of section 44BB of the Act. (AY. 2012-13)
Dy. CIT (IT) v. Schlumberger Asia Services Ltd. (2021) 89 ITR 56 (SN) (Delhi)(Trib.)

771 **S. 44BB : Mineral oils – Non-resident – Business for prospecting/exploration, mineral oil, etc – Service tax is to be excluded**
Service tax is to be excluded from gross receipts for purpose of computation of income under section 44BB of the Act. (AY. 2014-15)
DCIT v. Global Santafe Drilling Company (2021) 189 ITD 416 (Mum.)(Trib.)

772 **S. 44BB : Mineral oils – Computation – Non-Residents – Vessels – Services in connection with prospecting, extraction or production of mineral oils – Cannot be assessed as fees for technical services [S.9(1)(vii), 44D]**
Payments received under contracts were not chargeable to tax as fees for technical services.. Assessable on a presumptive basis under section 44BB of the Act. (AY. 2011-12) (AY. 2010-11)
Dy.CIT, (IT) v. SBS Marine Ltd. (2021) 189 ITD 621 (Dehradun)(Trib.)
Dy. CIT, (IT) v. Swiber Offshore Marine Pte. Ltd. (2021) 189 ITD 616 (Dehradun)(Trib.)

S. 44BB : Mineral oils – Computation – Providing off shore seismic data acquisition and processing services to ONGC in Bombay High – Payment to non-resident companies – Not royalty – Taxable under section 44BB.[S.9(1)(vi)] 773

AAR held that payment made for providing off shore seismic data acquisition and processing services to ONGC in Bombay High. Payment to non-resident companies is not royalty. Amount taxable under section 44BB of the Act.

Seabird Exploration Fz Llc, In Re (2021) 431 ITR 503 / 198 DTR 313/ 319 CTR 225 (AAR)

S. 44C : Non-residents – Head office expenditure -Allowable whether or not any amount is debited in books of account. 774

Tribunal held that deduction of Head Office expenditure (attributable to business of assessee in India) is allowable in accordance with provisions of section 44C, irrespective of fact, whether or not any amount is debited in books of account. (AY.2009-10, 2010-11)

Doha Bank QSC v. DCIT (2021) 187 ITD 125 / 209 TTJ 716 (Mum.)(Trib.)

S. 45 : Capital gains – Long-term or short-term capital asset – Period of holding – No distinction between unlisted and listed shares for classifying as short-term capital asset [S. 2(42A), Securities Contracts (Regulation) Act, 1956, S(h)] 775

The Assessing Officer treated the sale of shares as short-term capital gains. The Commissioner (Appeals) directed the Assessing Officer to treat the shares as long-term capital asset, allow indexation and tax the resultant capital gains at the special rate of 20 per cent. The Tribunal held that there was no distinction between unlisted and listed shares for classifying them as short-term capital asset under the 1961 Act. On appeal dismissing the appeal held that the Tribunal was right in holding that the shares and debentures not listed could be treated as a long-term capital asset under section 2(42A) of the 1961 Act read with its proviso. Explanatory Notes to the Provisions of the Finance (No. 2) Act, 2014, in Circular No. 1 of 2015, dated January 21, 2015 ([2015] 371 ITR (St.) 22) (AY. 2007-08)

CIT v. Exim Rajathi India Pvt. Ltd. (2021) 438 ITR 19/ 283 Taxman 480 / 206 DTR 249 / 323 CTR 121 (Mad.)(HC)

S. 45 : Capital gains – Penny stocks – Alleged bogus transactions – Denial exemption was held to be not justified [S. 10(38)] 776

Assessing officer denied the claim on grounds that the gains were earned through bogus penny stock transactions and companies to whom sold shares belonged were bogus. On appeal the Tribunal held that assessee by submitting records of purchase bills, sale bills, demat statement, etc., had discharged his onus of establishing said transactions to be fair and transparent, same not being earned from bogus companies was eligible for exemption under section 10(38) of the Act. High Court held that no substantial question of law. (A.Y. 2014-15)

PCIT v. Parasben Kasturchand Kochar (2021) 130 taxmann.com 176 (Guj)(HC)

Editorial: SLP of revenue was dismissed; PCIT v. Parasben Kasturchand Kochar (2021) 282 Taxman 301 (SC)

777 **S. 45 : Capital gains – Transfer – Power of attorney – Since all rights in the property, including constructive possession was handed over by the Assessee to purchaser the transaction has rightly been treated as sale or transfer u/s 2(47) of the Act by lower authorities, giving rise to capital gains. [S. 2(47)(v), 2(47)(vi)]**

Allowing Revenue's appeal, the High Court observed that the relevant clauses of power of attorney suggested that the Assessee has handed over all the rights in the property including constructive possession of property; hence impugned transaction is to be treated as sale / transfer for the purposes of Section 2(47) of the Act giving rise to capital gains. Appeal of revenue is allowed. Followed, *Seshasayee Steels P. Ltd. v. ACIT (2020) 421 ITR 46 / 313 CTR 375 / 187 DTR 241 / 275 Taxman 187 (SC)* (AY. 2006-07)

CIT v. Abdul Wahab (2021) 320 CTR 874/ 201 DTR 118 (Karn.)(HC)

778 **S.45 : Capital gains – Transfer of shares by a series of transactions – Assessee has the right to arrange matters legally to avoid tax Tribunal right in holding that the transactions are genuine [S.49 (1)(e)(xiii)]**

Dismissing the appeal of the revenue the Court held that the Tribunal is right in holding that transfer of shares by a series of transactions as long as there is no violation of nay law. There was a lacuna in law which had been addressed by the Finance Act, 2012 by introducing clause (xiii) to sub-clause (e) of section 49(1) with effect from April 1, 1999. Before the amendment, the assessment was complete. During the previous year relevant to the assessment year 2007-08, there was no transfer of shares by the assessee (individual/HUF) in favour of GBFL. The Tribunal on the basis of meticulous appreciation of evidence on record had recorded a conclusion in favour of the assessee. Court also held that the Assessee has the right to arrange matters legally to avoid tax Tribunal right in holding that the transactions are genuine. Referred *Azadi Bachao Andolan (2003) 263 ITR 706 (SC)* held that as long as arrangement of the assessee to avoid payment of tax does not contravene any statutory provision and is within the four corners of the law it cannot be found fault with. (AY.2007-08)

CIT. v Vikram Reddy (2021) 433 ITR 100 / 200 DTR 249/ 322 CTR 665 (Karn.)(HC)

779 **S. 45 : Capital gains – Purchase and sale of shares – Not assessable as business income. [S.28(i), 88E]**

Dismissing the appeal of the revenue the Court held that, the intention of the assessee, purchases of shares and securities had been shown under the head of investment in the balance-sheet and not as stock-in-trade, the assessee had valued its investment and shares and securities not at the lower of cost or market value but at cost only, the assessee had not claimed any deduction under section 88E of the Act, 1961 for securities transaction tax paid during the year, the assessee had made investment from its own funds and therefore, there was no involvement of borrowed funds for transaction in shares and securities carried out by the assessee. Accordingly the order of Appellate Tribunal assessing the income as capital gain is affirmed.(AY. 2005-06 to 2011-12)

PCIT v. Gujarat Fluorochemicals Ltd. (2021) 431 ITR 160 (Guj.)(HC)

S.45 : Capital gains – Penny stock – Jump of share price of 1849.2 % The Assessing Officer has neither conducted any enquiry nor brought any clinching piece of evidence to disprove the evidence produced – Addition cannot be made as cash credits [S.10(38), 68, 131, 133(6)] 780

Dismissing the appeal of the revenue the Court held that the Assessing Officer has neither conducted any enquiry nor brought any clinching piece of evidence to disprove the evidence produced by the assessee. Merely because share prices were jumped to 4849. 2% within a span of two years cannot be the ground to treat the sale consideration as cash credit, when the assessee has produced all relevant documents before the Assessing Officer. Accordingly the order of Tribunal is affirmed. (AY. 2015-16)
PCIT v. Krishna Devi (Smt) (2021) 431 ITR 361 / 279 Taman 148 (Delhi)(HC)

S.45 : Capital gains – Transfer of shares to subsidiary in Mauritius – Transfer of Shares from subsidiary to Private Equity Fund incorporated in Cayman Islands – Transactions are not genuine – High Court has the power to find out if transactions are genuine. 781

Allowing the appeal of the revenue the Court held that, entire shareholding transferred to subsidiary company and transfer of shares from subsidiary company to private equity fund incorporated in Cayman Islands. All transactions done to evade tax. Transaction is not genuine hence gains arising due to transactions assessable as capital gains. Court also held that the High Court has the power to find out if transactions are genuine.
PCIT v. Redington (India) Ltd. (2021) 430 ITR 298 (Mad.)(HC)

S. 45 : Capital gains – Agricultural land – Barren land – Sold to developer with in short period after purchase – Land not agricultural – Gains not exempt from tax. [S. 2(14)(iii), 10(1) Bombay Tenancy and Agricultural Lands Act, 1948, S,63] 782

Allowing the appeal of the revenue the Court held that the lands were held by the assessee only for a short period of one year and sold to a company, in which the karta of the assessee was the chairman. The land was put to use for construction of a special economic zone. The Village Administrative Officer, who had been examined by the Assessing Officer, stated that the lands were barren land, and therefore, a decision could not be taken merely based on entry in the revenue record. The revenue records were not mutated in the name of the assessee, but stood in the name of the assessee's vendor. The holding period by the assessee was very crucial in the case, as it was only one year, and all these factors were rightly taken note of by the Assessing Officer who held that the land was not an "agricultural land". There was no evidence placed before the Assessing Officer or before the Commissioner (Appeals) or before the Tribunal to establish the character of the land. The lands were not agricultural and the gains from sale thereof were not exempt from tax. Ratio in *Sarifabibi Mohmed Ibrahim (Smt). v. CIT (1993) 204 ITR 631 (SC)* applied. (AY.2008-09)
CIT v. GRK Reddy and Sons (HUF) (2021) 430 ITR 283/ 277 Taxman 127 / 201 DTR 61 (Mad.)(HC)

783 **S. 45 : Capital gains – Joint development agreement – General power of attorney – Possession and complete control of share of property – Part performance of contract – Transfer complete on handing over possession and not on date of Registration – Exemption for reinvestment of consideration is eligible [S. 2(47)(v), 50C, 54G, Transfer of Property Act, 1882, S.53A]**

Held that as per the joint development agreement the assessee has handed over possession and complete control of share of property. Transfer was complete on handing over the possession and not on date of Registration. Entitle to exemption for reinvestment of consideration. Though the assessee had offered capital gains in the assessment year 2012-13, there was no estoppel under the Act. It was incumbent upon the authorities to find out whether particular income was assessable in a particular year or not.(AY.2012-13)

Armatic Engineering (P.) Ltd. v. Dy.CIT (2021) 89 ITR 10 (Bang.)(Trib.)

784 **S. 45: Capital gains – Consideration from sale of land as long term – Transfer of superstructure as short term capital gains – Deposit in specified Bank account and using it only for acquiring new asset Eligible for deduction – Not making claim in return – Appellate Authorities not barred from entertaining fresh claim. [S. 54F, 254(1)]**

Held that the sale consideration received in respect of transfer of land as long-term capital gains and transfer of super structure as short-term capital gains. Tribunal also held that the assessee had made the investment for purchase of the new flat within two years from the end of the relevant financial year as specified under section 54F of the Act. Though the assessee had not made the deposit in the specified account, he had made the deposit in the bank account and used it only for the purpose of acquiring the new asset. Since the deduction under section 54F is a beneficial provision and introduced with an intention to encourage housing accommodation across the country, the assessee was eligible for deduction under section 54F from the long-term capital gains.(AY. 2010-11)

R. Venkata Dhana Lakshmi v. ITO (2021) 89 ITR 28 (SN) (Vishakha)(Trib.)

785 **S. 45 : Capital gains – Amalgamation – sale of shares prior to transfer of business by way of slump sale and amalgamation – scheme of amalgamation approved by High Court and shareholders – allegation of scheme of amalgamation as an afterthought without any basis – capital gains already offered for tax by the amalgamating company – same cannot be taxed again in the hands of amalgamated company.**

In this case the Tribunal held that scheme of amalgamation was duly approved by two High Courts and shareholders, creditors and bankers of both the companies, Registrar of Companies, etc. at two places, after giving due notice by publication in newspapers and, therefore, it could not be said that the scheme of amalgamation was a colourable device and an afterthought. Therefore, consideration received on sale of share of another company by the amalgamating company prior to the scheme of amalgamation can be taxed in hands of amalgamating company only. (AY. 2003-04 to 2005-06).

ACIT v. Investment trust of India Ltd. (2021) 211 TTJ 777 (Chennai)(Trib.)

S. 45: Capital gains – Cost of development paid under tripartite arrangement – Allowable as cost of improvement – Brokerage paid allowable as deduction. [S. 48] 786
Held that amount paid under tripartite arrangement allowable as cost of improvement and brokerage paid was allowable as deduction. (AY.2011-12)
DLF Universal Ltd. v. Dy. CIT (2021)88 ITR 33 (SN)(Delhi)(Trib.)

S. 45 : Capital gains – Full value of consideration – Addition cannot be made on the basis of receipts shown in form No 26AS – Transfer – Matter remanded to verify whether there was transfer of land in Terms of Section 53 A of transfer of property. [S. 2(27)(v), Transfer of property Act, 1882, S. 53A] 787
Held that addition cannot be made merely on the basis of basis of receipts shown in form No 26AS. Matter remanded to verify whether there was transfer of land in terms of Section 53 A of transfer of property Act. That status of the assessee in whose name capital gains to be taxed was kept open.(AY. 2014-15)
Jaya Prakash v. ITO (2021) 87 ITR 64 (SN)(Bang.)(Trib.)

S. 45 : Capital gains – Capital asset – Booking right of flat in a proposed building – Agreement was not registered – Compensation received on extinguishment of rights – Assessable as capital gains and not as income from other sources [S. 2(14)(a), 56] 788
The assessee has booked a flat in a proposed building in the year 2010. The builder could not complete the building due to not getting the permission from competent authority. In the year 2014 the assessee received the refund of amount and also compensation. The assesseee has claimed the said amount as capital gain. The Assessing Officer assessed the amount as income from other sources which was affirmed by the CIT (A). On appeal the Tribunal held that the compensation received on extinguishment of rights assessable as capital gains. The Tribunal also observed that the provision of MOFA cannot regulate the taxability of capital gain/loss. Followed *ACIT v. Ashwin S. Bhalekar* ITA No. 6822/M/ 2016 AY. 2012-13. (ITA No. 6528/ M/ 2028 dt. 21-1-2021) (AY. 2015-16)
Shailendra Bhandari v. ACIT (2021) BCAJ- May – P. 49 (Mum.)(Trib.)

S. 45 : Capital gains – Capital gains accepted in one co-owner – Addition cannot be made in the case of another Co-Owner though accepted u/s 143(1) of the Act [S.50C, 143(1)] 789
Tribunal held that once the capital gains shown in the one of the Co -owner is accepted addition cannot be made in another Co-Owner though accepted u/s 143(1) of the Act. (AY. 2008-09)
Rajeshkumar Shantilal Patel v. ITO (2021) 127 taxmann.com 342 (Surat)(Trib.)

S. 45 : Capital gains – Acquisition of land under National High Act (NHA) 1956 – Compensation received is taxable – No specific exemption under RECTLAAR Act, 2013 [RECTLAAR Act, 2013, S. 96, 105(3)] 790
The assesssee claimed exemption in respect of compensation received in view of land compulsorily acquired by the Government. The Assessing Officer denied the exemption which was affirmed by the Tribunal. Tribunal held that exemption was applicable to

the lands acquired under RFCTLARR Act after 1-1 2014 and it cannot be extended to the lands if acquired under enactments mentioned in fourth schedule of RFCTARR Act. The Tribunal considered the provisions of section. 105 (3) read with fourth schedule and noticed that the provisions of RFCTLARR Act 2013, shall be applicable to the enactments mentioned in the fourth schedule, if the Central Government within one year of passing of the Act, issues notification in that regard mentioning therein that RECTLARR Act, 2013 shall apply with such exceptions or modifications to the enactments. The Tribunal held that in the absence of notification u/s 96 of the RECTALRR Act, 2013, the exemption could not be extended to the assessee. (AY. 2015-16)
Jagdish Arora v. ITO (2021) 127 Taxmann.com 728 / (2022) 93 ITR 233 (Agra) (Trib.)
Sunil Arora v. ACIT (2021) 127 Taxmann.com 728 / (2022) 93 ITR 233 (Agra) (Trib.)

791 **S. 45 : Capital gains – Land dealings – Stock in trade – Shown as investment for seven years – Assessable as capital gains and not as business income [S. 2(13), 28(i)]**
Held that land was purchased from own funds and it was shown as a part of investment in books of account. Realization of investments would not amount to adventure in nature of trade. Mere fact that assessee had generated huge profit ipso facto was not enough to infer that transaction was in nature of adventure in trade. Gains assessable as capital gains. (AY. 2013-14)
JCIT v. Adrus Estate and Properties LLP (2021) 191 ITD 166 / 213 TTJ 1 (UO)(Pune)(Trib.)

792 **S. 45 : Capital gains – Business income – Developer – Sale of land after gap of a decade – Profits assessable as capital gains – Entitle for exemption [S. 28(i), 54F]**
Assessee a developer sold the land after a gap of a decade and treated the profit as long term capital gains and claimed exemption under section 54F of the Act. The Assessing Officer assessed the gain as business income on the ground that the land was sold to 21 different parties. On appeal the Tribunal held that since assessee had sold said land after gap of a decade and same was shown as investment in fixed assets in balance sheet from time of acquisition till sale of land, profit arising out of sold land was assessable to tax under head capital gains and entitle for exemption. (AY. 2015-16)
Mujib Salmanbhai Pathan v. ACIT (2021) 190 ITD 562 (Nag.)(Trib.)

793 **S.45 : Capital gains – Benefit or gain on realization of loan issued in foreign currency on account of foreign exchange fluctuation – In capital field cannot be held to be in the nature of interest and taxed as income from other sources [S. 2(24)(vi), 2(28A), 56]**
The Assessee extended a personal interest free loan of USD 2,00,000 (INR 90,30,758/) to his cousin in Singapore in accordance with the Liberalized Remittance Scheme ("LRS") of the RBI on 29/03/2010 when the exchange rate was INR 45.14. At the time of repayment of loan i.e. on 24th may, 2012, the exchange rate was Rs. 56.18 and therefore, when the loan amount of USD 2,00,000 was repaid, the cousin actually repaid INR 1,12,35,326/-. The Assessee submitted that it was a personal loan and the repayment thereof was a capital receipt in his hands but the AO did not accept this explanation and brought such benefit or gain to tax under the head Income from Other Sources. The Assessee paid the impugned tax of Rs.22,02,286/- as a matter of abundant caution without conceding to the taxability thereof. The CIT(A) upheld the order of AO and

treated the benefit or gain on account of exchange rate fluctuation as interest income of the Assessee which was altogether a different explanation than the one adopted by the AO.

The Tribunal did not accept the reasoning of the lower authority to tax such benefit or gain. It observed that the lower authorities have erroneously proceeded to hold that the benefit or gain on realization of loan partakes the character of an income under the head income from other sources without going into the foundational plea that the scope of income does not include the gains in capital field. S. 2(24(vi) lays down that "income, includes any capital gains chargeable under section 45". Thus a capital gain, which is not chargeable to tax under section 45, cannot be included in the Income. It further observed that in the present case, interest as defined u/s 2(28A) was not payable by the cousin of the Assessee on repayment of loan but only the principal debt amount was repaid. The benefit or gain arising to the Assessee was on account of foreign exchange fluctuation which comes in the capital field and therefore such gain is not taxable as it is a capital receipt in the hands of the Assessee. With respect to the stand adopted by the CIT(A) that under the LRS scheme only Rupee denominated loans were permissible to the non-resident close relatives. The tribunal has taken the stand that nothing turns on the fact that only rupee denominated loans were permitted to be extended by the assessee to his close relative NRI/PIO cousin, that such question was beyond the scope of the CIT(A) or the Tribunal. Therefore, the Tribunal deleted the addition. (AY. 2013-14)

Aditya Balkrishna Shroff v. ITO (2021) 189 ITD 587/ 211 TTJ 935 /203 DTR 33 (SMC) (Mum.)(Trib.)

S. 45 : Capital gains – Failure to make full consideration – Sale deed was cancelled – Capital gains cannot be assessable [S. 2(47)] 794

Allowing the appeal of the assessee the Tribunal held that decree issued by High Court and cancellation deeds of executed in pursuance of order of High Court on record to establish that sale of property under consideration was cancelled. On facts, no capital gain was taxable for the year under consideration. (AY. 2009-10, 2012-13)

Anant Raj Ltd. v. DCIT (2021) 188 ITD 321/ 212 TTJ 836 (Delhi)(Trib.)

S. 45 : Capital gains – Business income – Purchase and sale of shares – No repetitive purchase and sale of shares – Profits assessable as short term capital gains [S. 28(i)] 795

Tribunal held that the shares were shown as investment and there was no repetitive purchase and sale of shares. Profits assessable as short term capital gains. (AY. 2010-11)

Palresha Trading Ltd. v. DCIT (2021) 188 ITD 129 (Bang.)(Trib.)

S. 45 : Capital gains – Date of sale agreement and date of registration – Capital gain is taxable in the year of sale agreement and not in the year of registration [S.50C Indian Registration Act, 1908, S. 47] 796

Allowing the appeal of the assessee the Tribunal held that since sale deed was executed on 10-8-2009, capital gain would be brought to tax in assessment year 2010-11. S. 50C does not operate to change year of transfer as laid down in S.45(1). Followed *Gurbax*

Singh v. Kartar Singh (2002) 254 ITR 112 (SC), wherein the Court held that provisions of section 47 of the Indian Registration Act, 1908 will take effect from the time when it was executed and not from of its registration. (AY. 2011-12)
Ayi Vaman Narasimha Acharya v. DCIT (2021) 188 ITD 1 /212 TTJ 91 /202 DTR 111 (SMC) (Bang.)(Trib.)

797 **S. 45: Capital gains – General power of Attorney – Mere non production of the owner of the property could not, per se, cast liability of tax upon the assessee – The assessee has discharged the onus upon her – General power of Attorney has no right in the property and the General power of Attorney holder is only the agent under the Contract Act, the addition made for the long term capital gain on the assessee (GPA) deleted. [S.148]**
The AO issued the notice u/s 148 of the Act on the basis of the information for the sale of residential property. The residential property in question was purchased by the owner "T" the sister of the assessee. 'T' gave a General Power of Attorney to the assessee, which was registered with Sub-Registrar. By virtue of the valid and alive General Power of Attorney, the conveyance deed for the sale of the property in question has been executed by the assessee as Power of Attorney Holder on 23-09-2009.
During the course of assessment proceedings, in discharge of the onus under the law, the assessee furnished and placed on the records of the AO all the cogent and corroborative documentary evidences demonstrating therein the fact that the assessee is only General Power of Attorney Holder and not the owner of the house property in question. Instead of conducting further inquiry by exercising power u/s 131 of the Act calling the owner 'T' for necessary examination, the AO insisted the assessee to produce the owner 'T' and merely non production or attendance of owner 'T' the AO inferred that the assessee is liable for taxability u/s 45 of the Act and accordingly, passed the order making addition of Rs. 9,22,312/– in the hands of the assessee for the alleged Long Term Capital Gain. Being dissatisfied, the assessee filed the appeal before the CIT (Appeals), but could not succeed. On further appeal before the ITAT, the Hon'ble ITAT observed that the AO has failed to conduct any inquiry and to bring any material or fact to establish anything contrary to the materials/explanations given by the assessee. Following the ratio laid down by the Supreme Court in the case of Shiv Kumar & Anr. v. UOI Civil Appeal No. 8003 of 2019 arising out of SLP No. 24726/2019 D.N 25495 of 2019 and the judgment of the coordinate Bench in the case of *Shri Gyan Chand Saini v. ITO (ITA No. 87/JP/2019 dtd. 25–11–2019)* having the similar issue, the addition made by the AO in the hands of the assessee has been held unwarranted, without jurisdiction and the same is directed to be deleted. (AY 2010-11)
Devender Kaur (Smt) v. ITO (2021) 87 ITR 49 (SN) (Jaipur)(Trib.)

798 **S.45 : Capital gains – Purchase and sale of shares – Investment portfolio – Assessable as short term capital gains and not as business income [S. 28 (i)]**
Assessing Officer treated the gains on investment portfolio as business income. On appeal the Tribunal held that total number of transactions of purchase was only five and sale was barely seven. Accordingly frequency of purchase and sale instances were quite few justifying intention of assessee to purchase shares as capital asset.

Tribunal directed the AO to assessee as short term capital gain. (AY. 2007-08, 2008-09)
Swatiben Anilbhai Shah v. DCIT (2021) 187 ITD 843 / 198 DTR 225 / 209 TTJ 1025 (Ahd) (Trib.)
Atul Hiralal Shah v. Dy.CIT (2021) 187 ITD 843/ 198 DTR 225/ 209 TTJ 1025 (Ahd)(Trib.)

S. 45 : Capital gains – Indexed cost – Allotment letter – Date to be reckoned is date of allotment of property and not date on which possession certificate was issued – Cost of improvement was not allowed. [S. 2(29A), 55] 799
Assessee declared capital gains from sale of property. The assessee computed the capital gains from the date of allotment of property was on 20-5-1986, for which consideration was paid on 29-5-1986. Assessing Officer held that possession certificate was issued on 23-6-1998 and ultimately it was sold on 9-5-2012 - Based on date of possession certificate, Assessing Officer computed cost of inflation indexation to compute capital gains, and, accordingly, made addition. On appeal the Tribunal held that for computing cost of inflation of asset, date to be reckoned was date of allotment of property to assessee and not date on which possession certificate was issued to assessee. However as the assessee could not furnish any revenue record to show existence of building on land on which capital gain was claimed, benefit of related cost of improvement was granted. (AY. 2013-14)
L. Vivekananda. v. ACIT (2021) 187 ITD 238 (Bang.)(Trib.)

S. 45: Capital gains – Transfer – Agreement for Transfer and Registration in two different years – Possession handed over along with Agreement of Transfer – Registration done after 5 years – Held Capital gains chargeable in the year in which Agreement of Transfer took place along with handing over the possession and not in the year of registration. [S. 2(47)(v), Transfer of property Act, S 53A] 800
Assessee entered into an Agreement for transfer of land on 06.05.200 and simultaneously handed over the possession on receiving the substantial part of sale consideration. The sale deed was registered on 03.08.2006. The case was re-opened and A.O during Assessment held that actual date of transfer i.e the date as per registered sale deed viz 03.08.06 is the real date attracting S. 45 of the Act, as against assessee's contention that transfer took place on 06.05.200 i.e. AY 2001-02, and not in the year under consideration viz AY 2007-08. Tribunal held that on assessee's handing over the possession, on receiving the substantial part of consideration in the year 2000, constituted the Transfer as contemplated u/s.2(47)(v)of the Act r.w.s.53A of the Transfer of Property Act attracting taxability of Capital gain in the AY 2001-02. (AY. 2007-08)
Vasant Laxman Khandge v. ITO (2021) 187 ITD 299 (Pune)(Trib.)

S. 45 : Capital gains – Transfer – Sale agreement registered on 26-8-2011 and possession was also handed over on the said date – Capital gains assessable in assessment year 2012-13. [S. 2(47), 54F] 801
Assessee sold an agricultural land which was inherited through her father. Assessing Officer held that since date of transfer of asset was on 26-8-2011, capital gains should be assessed in assessment year 2012-13. The assessee contended that as major portion

of sale consideration were realized on 7-4-2012 and 14-7-2012 respectively, capital gains should be assessed in assessment year 2013-14. Tribunal held that since sale agreement was registered on 26-8-2011 and at same time possession of property was also handed over to purchasers on said date itself, capital gain arising from such sale was to be assessed in year under consideration, i.e. assessment year 2012-13. Since assessee neither purchased one residential house within period of one year before date of transfer or after two years of date of transfer nor constructed house within a period of three years, exemption as claimed by assessee under section 54F was liable to be denied. (AY. 2012-13)
Jayshree Shankar Done. (Smt). v. ITO (2021) 186 ITD 257 (Pune)(Trib.)

802 **S. 45 : Capital gains – Sale of shares – Maintaining separate accounts for investment and stock in trade – Profit assesable as short term capital gains [S.28 (i)]**
Tribunal held that that the assessee was maintaining two separate accounts : one for investment and another for stock-in-trade. Therefore, the assessee's claim that the gains were short-term capital gains was to be allowed. (AY.2011-12)
Advik Hi-Tech Pvt. Ltd. v. Dy. CIT (2021) 85 ITR 535 (Pune)(Trib.)

803 **S.45 : Capital gains – Cost of acquisition – Fair market value – Joint Development Agreement – Sale of flats subsequently – Fair market value of constructed area becomes cost of acquisition and Indexed cost to be deducted in order to arrive at capital gains – Matter remanded for verification. [S.2(22B), 48]**
Allowing the appeal the Tribunal held that capital gains liability would arise at the time of entering into a joint development agreement. For computing capital gains, it is necessary to determine the sale consideration, which is found by the fair market value of the constructed area that the assessee will receive including any other consideration in terms of the joint development agreement. This fair market value shall become the cost of the constructed area. When the constructed area in the form of flats is sold subsequently, the indexed cost of acquisition of flats is required to be deducted in order to arrive at the capital gains, which shall be the fair market value. The Assessing Officer did not allow deduction of the cost of acquisition of flats solely on the ground that the assessee did not declare the capital gains in the year of entering into the joint development agreement. Capital gains arising thereon was assessable only in the year in which the joint development agreement was entered into. If the assessee failed to declare capital gains in the appropriate year, the Assessing Officer may take appropriate action to tax them in accordance with law, but such failure would not disentitle the assessee to claim the cost of acquisition. The Assessing Officer was not right in rejecting the claim of the assessee. The issue of computation of capital gains, particularly the claim for deduction of cost of acquisition of flats, required to be examined afresh by the Assessing Officer. Matter remanded.(AY.2014-15)
Asif Khaleel (Individual) v. ITO (2021) 85 ITR 26 (Bang.)(Trib.)
Ismail Khaleel (Individual) v. ITO (2021) 85 ITR 26 (Bang.)(Trib.)
Mustafa Khaleel (Individual) v. ITO (2021) 85 ITR 26 (Bang.)(Trib.)

S.45: Capital gains – Tenancy rights – Amount received for surrender of tenancy rights assessable as capital gains – Investment in specified assets is eligible for exemption. [S. 55(2)(a), 54EEC, 54F] 804

The assessee has paid construction loan to land lord which was never repaid hence, the payment was rightly claimed as cost of acquisition in the computation of capital gains. As the loan was directly linked to the tenancy rights and it was a consideration for obtaining the rights. Even if the assessee had not paid any amount for purchase of tenancy rights, the nature of rights would remain tenancy rights and this was a capital asset. Section 55(2)(a) of the Act clearly stipulates that in case no price was paid for acquisition of an asset, the cost shall be taken as nil. The assessee had acquired a capital asset in the form of tenancy rights and the transfer of capital asset resulted in capital gains, which were taxable under the head Capital gains. To the extent of investment in specified assets is eligible exemption. (AY.2016-17)

Dy. CIT v. Shikha Roy (Smt.) (2021) 85 ITR 113 / 200 DTR 74/ 211 TTJ 121 (Kol)(Trib.)

S.45: Capital gains – Gift – Company – Family arrangement – Arrangement between members of family – Company separate and distinct entity not part of family – Shares held as stock in trade – Gift of shares to other group companies – Articles empowering gift – Shares disclosed in recipients' annual accounts and recipients assessed – Shares transacted through Dematerialised account – No real income taxable in assessee's hands – Conversion of stock-in-trade into capital asset – Provision for taxation brought with effect from 1-4-2019 – No provision for taxation of gift of stock-in-trade in hands of Donor imputing market value [S. 2(24)(xiia), 2(42A), Expln. 1, 28(via), 45(2), 49(9), Companies Act, 2013, or the Companies Act, 1956. Transfer of Property Act, 1882, S. 122] 805

Allowing the appeal the Tribunal held that the gift made by the assessee-company could not be said to be a part of a family arrangement as a company cannot be a member of a family but a separate juridical entity having its own separate existence. Therefore, whether or not the assessee had produced the family settlement deed or a family memorandum of understanding did not make any difference. A family arrangement is an arrangement between members of the same family intended to be generally for the benefit of the family by compromising doubtful or disputed rights or by preserving the family property for peace and security of the family by avoiding litigation or by saving its honour. Therefore, the family settlement should necessarily comprise a dispute or possible dispute to be settled amicably between the members of a "family". A company being a separate and distinct entity does not form part of a family. The company cannot be said to be in real relation to any of the family members but a separate legal entity. Therefore, if there is a transaction between two family members of the family, a corporate entity is not entitled to get any benefit which a member of the family is entitled to. Relied on *B. A. Mohota Textiles Traders Pvt Ltd. v. Dy. CIT (2017)397 ITR 616 (Bom) (HC)* and *CIT v. Sea Rock Investments Ltd. (2009) 317 ITR 253 (Karn.) (HC)*. Transfer of shares were done by way of gift which was accepted by the donees hence the acceptance of the gift was proper. In view of this the requisite conditions as envisaged under section 122 of the Transfer of Property Act, 1882 were satisfied. As the assessee had gifted the shares, there was no accrual of any revenue to the assessee. As there was no sale of securities by the assessee, there was no inflow of cash, receivables

or other consideration, and there was no question of accrual of any consideration to the assessee. Tribunal also held that there was no provision which provided for taxation of gift of stock-in-trade in the hands of the donor by imputing market value. Relied on *Sir Kikabhai Premchand v. CIT (1953) 24 ITR 506 (SC).* The Tribunal also held that no business income could be charged to tax in the hands of donor assessee on account of the gift made by the assessee to the four different corporate entities, in the absence of any consideration.(AY.2014-15)
Manjula Finance Ltd. v. ITO (2021) 85 ITR 210 / 212 TTJ 444 (Delhi)(Trib.)

806 **S. 45 : Capital gains – Purchase and sale of shares – Long term capital gains – Penny stock – SEBI Registered broker – Investigation report – Burden is on revenue to disprove the documents – Addition as unexplained money is held to be not justified [S.10(38), 69A]**
Allowing the appeal of the assesee the Tribunal held that the shares were purchased by the assessees through a registered broker and the payments were made through banking channels. The shares were held in a dematerialised account for a period of more than one year and securities transaction tax was paid. They were sold through the registered broker through screen based trading and the proceeds were credited to the bank account of the assessees. Copies of transaction statements and statement of account of the broker with copies of contract notes, statements of the bank account from where the payments were made and proceeds were received were placed before the Assessing Officer. The Assessing Officer had not doubted any of these documents. The broker of the assessees was neither investigated nor examined by the Investigation Wing. Where the assessees had filed the entire evidence relating to purchase which was mostly through cheque shown in the earlier years, all the details of sale transactions and the shares which had been routed through dematerialised account and sold through stock exchange on a quoted price on that date, the onus shifted upon the Department to disprove the evidence. The assessees was not found to be beneficiary of accommodation entry under any inquiry or investigation. The money credited in the account of the assessees was from sale of shares and accordingly the benefit of long-term capital gains on sale of listed equity shares had to be given and the addition made under section 69A upheld by the Commissioner (Appeals) on the basis of report of the Investigation Wing that the shares was a penny stock was not sustainable. (AY. 2015-16)
Jawaad Alam and Fawad Alam v. ITO (2021) 86 ITR 66 (Luck)(Trib.)

807 **S. 45 : Capital gains – Long term capital gains – Sale of shares – Purchase and sale through online mechanism, banking channels and through Dematerialised account – Exemption cannot be denied merely on the basis of statement of third parties, without giving an opportunity of cross examination.[S. 10(38), 68, 133A]**
Dismissing the appeals of the revenue the Tribunal held that the assessee's purchase and sale transactions were duly backed by sufficient documentary evidence such as purchase bills, bank statements, dematerialised account statements and sale contract notes. The sales were done in the online mechanism through recognised stock exchanges wherein there was no privity of contract between the assessee and prospective buyers of shares, the funds moved through banking channels and the shares through the assessee's

dematerialised account. These items of evidence were uncontroverted and all conditions prescribed under section 10(38) were duly fulfilled by the assessee. Moreover, the whole basis for disregarding these transactions was merely P's statements recorded during survey under section 133A of the Act, which had no evidentiary value unless backed by cogent corroborative material on record. No opportunity of cross-examination of those making adverse statements was provided to the assessee despite specific request therefor. The assessee was not named in the investigation report or in P's statement. Neither was there any admission or finding of exchange of cash between the assessee and P. No addition could be made based merely on suspicion, conjectures, surmise or third-party statement recorded at the back of the assessee. As the addition made by the Assessing Officer was without basis, it was rightly deleted by the Commissioner (Appeals).(AY. 2013-14, 2014-15)
ITO v. Sajjan Kumar Bajoria (2021) 86 ITR 29 (SN)(Mum.)(Trib.)
ITO v. Sushila Devi Bajoria (Smt) (2021) 86 ITR 29 (SN)(Mum.)(Trib.)

S. 45: Capital gains – Transfer – Development agreement – No real development took place till date – Matter restored to AO to decide the capital gains after verifying whether the possession is taken back by the assessee or not and the assessee cancelled the development agreement or not.[S.2(47)(v)] 808

Assessee entered a Development agreement-cum-GPA with M/s 21st Century Investments & Properties Ltd., wherein he transferred the land admeasuring 0.15 guntas. The developer had to complete the development within 24 months and the Assessee had to receive 5000 square feet built-up area. Since, the assessee has handed over the property as per the agreement to the developer, the AO was of the view that it was hit by section 2(47)(v) of the IT Act and accordingly, determined the short-term capital gains. The Tribunal observed that after entering into agreement, the developer had vanished, and no real development took place till date as verified and confirmed by the AO through the Departmental Inspector. Neither development has taken place nor developed area was received by the assessee and this fact was confirmed by the AO himself. The Tribunal was of the view that there was no real income except notional income as per the development agreement, which was never been received by the assessee. The Tribunal observed that till date development agreement was not cancelled and no public notice was issued by the assessee for cancellation of development agreement. The Tribunal thus restored the matter back to AO to decide the capital gains after verifying whether the possession is taken back by the assessee or not and the assessee cancelled the development agreement or not. In case, the possession is taken back by the assessee and there was no development, there could be no capital gain. (AY. 2007-08)
Santosh Kumar Subbani v. ITO (2021) 186 ITD 217 (Hyd)(Trib.)

S. 45 : Capital gains – Valuation of shares – Sale consideration disclosed in the share purchase agreement ought to be adopted for calculating long term capital gains. [S.48, 50CA] 809

Dismissing the appeal of the revenue the Tribunal held that Sale consideration disclosed in the share purchase agreement ought to be adopted for calculating long term capital gains. There is no provision in the Act authorising the Assessing Officer to refer valuation of shares transferred for the purpose of calculating capital gains. Section 50CA of the Act, inserted w.e.f ist April 2018 indicates that the prior to that date there

was no provision under the Act authorising the Assessing Officer to refer for valuation of shares for the purpose of calculating capital gains. (ITA No. 1710/ Bang /2016 dt 4-1-2021) (AY. 2012-13)
ACIT v. Manoj Arjun Menda (2021) BCAJ- March.P. 38 (Bang.)(Trib.)

810 **S. 45 : Capital gains – Advance received – Sale not materialised for gains – Matter remanded to the Assessing Officer for look in to genuineness of the Transaction. [S.2(47)(v), Transfer of property Act, 1882, S.53]**
The assessee entered in to a Memorandum of understanding on 15-3-2009 with Synergy Consultants Pvt ltd to sell the 4156 sq.ft. built up area for consideration of 4, 50, 0000 out of which a sum of Rs, 3, 05 70n, 826 was received as advance. The AO held that the assessee has parted with possession of the premises hence assessable as capital gains tax. CIT (A) also up held the order of the AO, relying on the decision in *Chaturbhuj Dwakadas Kapadia v. CIT (2003) 260 ITR 491 (Bom)(HC)*. On appeal the Tribunal held that the Authorities must look in to substance of transaction and matter was remanded to the AO to decide the issue in accordance with law. (ITA No. 106/ Bang/ 2020 dt 27-11-2020) (AY. 2012-13)
Shri Tobby Simon v. DCIT (2021) The Chamber's Journal – March -P. 186 (Mum.)(Trib.)

811 **S. 45 : Capital gains – Sale consideration – Valuation determined in respect of both the properties works out to less than 10% of the actual sale consideration as declared by the assessee – AO was directed to accept the sale consideration as declared by the assessee as per the two registered sale deeds [S. 48, 50C]**
Tribunal held that revised valuation determined in respect of both the properties works out to less than 10% of the actual sale consideration as declared by the assessee. Accordingly, the. AO was directed to accept the sale consideration as declared by the assessee as per the two registered sale deeds. (AY. 2008-09)
Banwari Lal Sharma v. ITO (2021) 62 CCH 0504 / 213 TTJ 307 (Jaipur)(Trib.)

812 **S.45 : Capital gains – Transfer of shares of Indian Company to non-resident – Sale consideration as per sale purchase agreement to be adopted – Conversion rate as per 11UA to be adopted – Matter remanded.[S.48, Rule 11UA]**
Assessee computed capital gain on the transfer of shares held and owned by it of M/s SML Isuzu Ltd (Indian Company) to Isuzu Motors Ltd., Japan (non-resident) at based upon the terms of the Share Purchase Agreement (SPA) under which the transfer of the shares was made. During the year, the assessee had transferred 15,91,881 shares for a consideration which was payable in Japanese Yen 90,94,58,648 as agreed in SPA dated 25.11.2011. The Assessing Officer adopted the different sale consideration. The Assessing Officer adopted an aggregate sale consideration as against the sale consideration accruing to assessee. Apart from this the Assessing Officer further adopted conversion rate of yen at Rs. 1.62 per Yen, whereas, the conversion rate on the date of agreement to sell i.e. 25.11.2011 was Rs. 1.49 per Yen as agreed in SPA as the consideration was payable in Yen by non-resident buyer to non-resident seller, both resident of Japan. The sale was made in Yen in Japan and the amount had been paid in Japan. While computing the capital gain, the Assessing Officer had adopted conversion rate (for converting capital gain in Yen to capital gain in Rs) i.e. telegraphic transfer

buying rate at 0.62 instead of 0.6252. But under which method the same is adopted was not demonstrated by the Assessing Officer in the Assessment Order. The Hon'ble Tribunal further agreed to the contentions of the assessee that conversion rate for the purpose of computation of capital gain as per Rule 11UA of Income Tax Rules, 1962 is required to be adopted, the said rate was 0.6252 and as such the computation made by the assessee had been correctly adopted by it, appears to be just and proper. The Tribunal directed the Assessing Officer to adopt the actual rate of conversion i.e. 0.6252 after verifying the same and remanded the matter to file of AO.(AY. 2013-14)
Sumitomo Corporation v. DCIT(IT) (2021) 213 TTJ 137 (Delhi)(Trib.)

S. 45 : Capital gains – Transaction of sale of shares not liable to tax – Motive of tax avoidance not relevant so long as act within the frame work of law – Transaction not with intent to avid tax – DTAA-India – Mauritius [S. 245R(2), Art. 13(4)] 813
The question admitted by the AAR was, "Whether on the facts stated facts and law, the capital gains on the proposed sale of shares of Betcon Dicknson India Private Limited by the applicant to Betcon Dickinson Holdings Pte. Ltd would be chargeable to income tax in India in the hands of the applicant, having regard to the provisions of article 13 of the India-Mauritius tax Treaty.?
The application was admitted on 7-1-2015
The AAR held that having regard to the provisions of article 13 of the India -Mauritius tax Treaty. (AAR No. 1396 of 2012 dt 11-9-2019)
Becton Dickinson (Mauritius) Ltd., In Re (2021) 434 ITR 180 (AAR)

S.45 : Capital gains Buy-back of shares by Indian subsidiary from German holding company – Liable to tax – Final liability would be lesser of that under normal provisions and under section 115JB – Subsidiary liable to deduct tax at source on payment on buy-back [S.46A, 47(iv), 47A, 49, 115JB, 195] 814
AAR held that on the facts of the case, the shares buy-back transaction is taxable under section 46A and exemption under section 46 (iv) is not applicable. As regards the minimum alternative tax liability under section 115JB, the Assessing Officer is required to compute the book profits of the supervisory permanent establishment and the minimum alternative tax liability would be restricted to the profit attributable to such supervisory permanent establishment for the relevant assessment year. The provisions of section 195 would be applicable and PQR India is liable to withhold taxes on the consideration payable for the buy back of shares. (AAR No. 1195 of 2011 dt.3-10-2019)
PQR GMBH, IN RE (2021) 434 ITR 382 / 280 Taxman 205 (AAR)

S.45 : Capital gains – Non-Resident – Gains from transfer taxable only in Singapore – DTAA-India-Singapore [S.90, Art. 13(4)] 815
AAR held that gains from transfer of shares taxable only in country of residence, subject to conditions laid down in protocol to agreement. Transferor gains from transfer taxable only in Singapore.
Bg Asia Pacific Holding Pte. Ltd. In Re (2021) 432 ITR 430 / 199 DTR 306 / 320 CTR 430 (AAR)
Gspc Distribution Networks Ltd., In Re (2021) 432 ITR 430 / 199 DTR 306/ 320 CTR 430 (AAR)

816 **S. 45(2) : Capital gains – Conversion of a capital asset in to stock-in-trade – All sales are recognised and taxed in the holding company – Addition cannot be made in the assessee. [S. 2(47), 45]**

Tribunal held that entire project land was owned by SNCML and it was merely the godown right which was assigned to the assessee-company. Further, even the cost of such godown right was assumed by SNCML in its estimated construction cost of project. The assessee had no right to sell any unit, the godown right was embedded in the cost of the units developed which were sold by SNCML. As far as section 45(2) was concerned, it related to conversion of capital asset into stock-in-trade which is to be chargeable to tax. For that, there must be a transfer u/s 2(47) of the Act. As there was no conversion in the instant case, the same could not be taxed in the hands of Assessee. (AY 2011-12)

ITO v. Kidderpore Holdings Ltd (2021) 213 TTJ 6 / 197 DTR 8 (Mum.)(Trib.)

817 **S.45(5A) : Capital gains – Joint development agreement – Ready reckoner value – Actual consideration – Fair market value – Value of consideration shown as per agreement has to be accepted – Provision of section 45(5A)) cannot be made applicable for the Assessment year 2015-16. [S. 45, 48, 50C]**

Assessee co-owner of a land transferred land under a Joint Development Agreement (JDA) for a consideration of certain amount. Some consideration was paid and balance to be settled by handing over saleable value of constructed area. The assessee computed the capital gains on the basis of actual consideration which was shown as per the joint development agreement. Assessing Officer adopted higher value of consideration by taking ready reckoner value/circle value of saleable area against actual consideration shown by assessee drawing guidance from provision of section 45(5A) of the Act. On appeal CIT (A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that provisions of section 45(5A) which were brought into statute by Finance Act, 2017 with effect from assessment year 2018-19 could not be applied during relevant assessment year. The Tribunal also held that the Assessing Officer should not have adopted ready reckoner value for purpose of determining fair market value of saleable constructed area, inasmuch as, it did not reflect fair market value and since value adopted for stamp duty purpose was lower than agreed consideration, provisions of section 50C also not applicable. Addition was deleted. (AY. 2015-16)

Amit Vishnu Pashankar v. DCIT (2021) 191 ITD 576 (Pune)(Trib.)

S. 47 : Capital gains – Capital asset – Transaction not regarded as transfer – Transfer of land under joint development agreement – Order was set aside. [S. 2(14), 2(15)(iii)(a), 2(15)(iii)(b), 2(47), 246A, 264, Art. 264] 818

Assessee entered into a joint development agreement in respect of a land owned by it. Assessing Officer computed capital gain on account of transfer of land of assessee under said agreement and made addition to income of assessee. Against the order of single judge an appeal was filed. On appeal the Court held that the Assessing Officer had not applied parameters as stipulated under section 2(14)(iii)(a) or (b) so as to determine that whether such land sold by assessee was a capital asset or not. Court also observed that the Assessing Officer has not examined that whether there was 'transfer' of land by assessee as per provisions of section 2(47) or not. Order of the Assessing Officer was set aside. Order of single judge was set aside.

Nataraju (HUF) v. PCIT (2021) 282 Taxman 396 (Karn.)(HC)

S.47: Capital gains – Short term – Transfer – Any transaction involving the allowing of the possession of any immovable property – Invoking section 53 of Transfer of Property Act – not a transfer – Addition was deleted [S. 2(47)(v), 48, Transfer of Property Act, 1882, S 53A] 819

Where the AO has taken cognizance of the definition of 'transfer' u/s 2(47)(v) of the Act read with section u/s 53A of Transfer of Property Act to hold that `transfer' took place in the year 2008 itself. It was held that the Developer was allowed to enter the property only as Licensee. When title to a part of such property itself was disputed and it vested with Government of Maharashtra at the time of the Agreements in 2008 because of the order of the Competent Authority under the ULC Act, there could have been no question of allowing the Developer any possession for the enjoyment of property as its owner. As there was no transfer of possession at the material time, the case of the AO invoking section 53A of the TPA to brand the transaction as a 'transfer' u/s 2(47)(v), automatically fails. Appeal of revenue was dismissed. (AY. 2008-09)

ITO v. Amit Murlidhar Kamthe L/H of Shri Murlidhar Kamthe (2021) 212 TTJ 383 / 88 ITR 17 /202 DTR 329. (SN)(Pune)(Trib.)

S.47(xiii): Capital gains – Transaction not regarded as transfer – Conversion of firm in to limited Liability partnership (LLP) – Conversion of equity shares held in Indian Company Into Partnership Interest in Limited Liability Partnership – Transfer – Capital gains taxable – Condition that total sales, turnover or gross receipts in business of company in any of three preceding years should not exceed Rs. 60 Lakhs not satisfied – Transfer not exempt – Cost of acquisition of shares would be price at which shares were acquired by shareholder. [S. 2(47), 45, 47(xiiib), 47A (4) 50D, Limited Liability Partnership Act, 2008, S. 58(4)] 820

The Assessee has raised three questions before the AAR,

Whether conversion of Domino India in to a limited liability partnership, would be regarded as a transfer of shares within the meaning of section 2 (47) of the Act.

Whether on conversion computation provision under section 48 of the Act are workable and capable of being implemented, or whether the said provisions would breakdown and fail.

Whether as the value for the partners's right or interest in the proposed limited liability partner cannot be said to be more than the value of the share holders' interest in the private limited liability company, would the transaction give rise to any taxable capital gains

AAR held that the inclusive definition of "transfer" in section 2(47) of the Act covered the extinguishment of the shareholder's interest on conversion of the company into a limited liability partnership in its ambit. The rights of the assessee in the shares in the Indian company were extinguished on its conversion into a limited liability partnership. The extinguishment of such right was a transfer under the provision of section 2(47) (ii) of the Act. That the assessee had admitted that clause (e) of the proviso to clause (xiiib) of section 47 which stipulated that total sales, turnover or gross receipts in the business of the company in any of three previous years preceding the previous year in which the conversion took place should not exceed Rs.60 lakhs, was not satisfied in this case. Therefore, the "transfer" was exigible to capital gains tax under the provisions of section 45 of the Act. In terms of section 47A(4) of the Act since the requirement of the proviso to section 47(xiiib) was not complied with in the year of conversion of the company into a limited liability partnership, the profits or gains arising in the hands of the shareholder were chargeable to capital gains tax in its hands in that year itself. That even if the assets of the company were transferred to the limited liability partnership at their book value, the value of the partnership interest in the limited liability partnership would be certainly more than the face value of the shares forgone by the assessee considering the reserves and surpluses transferred. The full value of consideration of the shares forgone by the assessee could be worked out from the accounts of the limited liability partnership and the erstwhile company. If the value of the partnership interest could not be ascertained or determined for any reason, then the fair market value thereof had to be taken as stipulated under section 50D of the Act. That the value of partnership interest in the limited liability partnership could not be taken as the cost of acquisition of shares. The cost of acquisition of the shares would remain the price at which the shares were acquired by the shareholder. That the computation mechanism under section 45 read with section 48 of the Act was workable and capable of being implemented in the present case. The full value of consideration for the purpose of computation of capital gains would be the value of the assessee's partnership interest in the limited liability partnership and the cost of acquisition of shares would be the amount paid by the assessee at the time of purchase of shares. The assessee's partnership interest in the limited liability partnership was capable of being evaluated on commercial and accounting principles and if this could not be done, its fair market value had to be taken as stipulated under section 50D of the Act. That the precise asset of the shareholder that got extinguished on the conversion of a company into a limited liability partnership was his specific shareholding in the company, which was different and distinct from the shareholder's fund as appearing in the books of the company. The reserves and surpluses remained the property of the company as long as they were not distributed to the shareholders as dividend and could not be equated as part of shareholder interest to work out the capital gains in the hands of the shareholders. Further, even if the value of the total shareholder's fund in the company was equal to the value of the total partnership interest in the limited liability partnership, it did not

have an impact on the capital gains arising in the hands of the shareholder. The capital gains had to be worked out by deducting the "cost of acquisition" of the shares from the "full value of consideration" of the shares. The transaction would certainly give rise to capital gains in the hands of the shareholder.
Domino Printing Science Plc., In Re (2021) 433 ITR 215 (AAR)

S. 48 : Capital gains – Computation – Full value of consideration – Retention of money in Escrow account – Possession was handed over – Amount of money in Escrow account has to be considered while computing the capital gain for the purpose of full consideration. [S. 45] 821
Assessing Officer held that amount which was kept in escrow account would only constitute an application of its income and whole consideration had to be deemed to accrue to assessee on execution of agreement for sale. Accordingly, capital gain was recomputed. Order of the Assessing Officer was affirmed by the Tribunal. On appeal the Court affirmed the order of Tribunal. (AY. 2003-04)
Caborandum Universal Ltd v. ACIT (2021) 283 Taxman 312 (Mad.)(HC)

S. 48 : Capital gains – Computation – Compensation paid to lessee to vacate land – Allowable as deduction [S. 45] 822
Assessee claimed compensation paid to lessee to vacate said land as deduction. Assessing officer disallowed deductions claimed on grounds that lessee was still in possession of property even after it being sold, holding same as a non-genuine transaction. Court held that since reference to lease deed was found even in registered sale deed and lessee had offered compensation received by it as income in its return, it was not open for Assessing Officer to deny existence of aforesaid transaction, and thus, amount paid by assessee-company being an expenditure incurred wholly and exclusively for transfer of capital asset, was to be allowed as deduction. (AY. 2009-10)
Trimm Exports (P) Ltd. v. Dy. CIT (2021) 282 Taxman 392 / 204 DTR 393 / 322 CTR 312 (Karn.)(HC)

S. 48 : Capital gains – Computation – Diversion by overriding title – Sale proceeds paid to mortgagee – Not entitled to deduction. [S.45] 823
The assessee and her co-owners offered property owned by them as collateral security for a bank loan and stood as guarantors, for the loan. The mortgage was by deposit of title deeds. Since the loan was not repaid, the assessee and the other two co-owners consented to sale of the property by the bank to realise its dues and the total sale consideration was paid to the bank by the purchaser. The AO has not allowed the deduction in respect of sale proceeds paid to mortgagee which was up held by the Tribunal On appeal dismissing the appeal, the Court held that the Tribunal was right in holding that the assessee was not entitled to claim deduction under section 48 since mortgage was created by the assessee herself and that it was not a case where the property had been mortgaged by the previous owner and the assessee had acquired only the mortgagor's interest in the property mortgaged and by clearing the same he had acquired the interest of the mortgagee in the property.
TMTT. A. H. Zubaida Ummal v. ITO (2021) 431 ITR 112 (Mad.)(HC)
Zubaida Ummal (Smt.) v. ITO (2021) 278 Taxman 131 (Mad.)(HC)

824 **S. 48 : Capital gains – Computation – Transfer of consideration to EMR Mauritius for benefit of certain employees and ex-employees of seller company – Not allowable as deduction [S.45]**

Pursuant to Share Purchase Agreement (SPA) all shareholders of Trident including assessee sold their shares to a Mauritius company EMR for a consideration of Rs. 600 crores. Consideration was received by assessee for sale of his share in Trident, which was to extent of Rs. 27 crores. Company Trident was required to give, in terms of relevant clause of SPA, a sum of Rs. 3.45 crores to a trust proposed to be set up by EMR Mauritius for benefit of certain employees and ex-employees of seller company. While computing long-term capital gains, assessee claimed a deduction under section 48(i) of Rs. 20,97,600 being his contribution to above trust. According to assessee aforesaid sum was an expenditure incurred by assessee wholly and exclusively in connection with transfer of shares. The AO disallowed deduction expenditure which was affirmed by the CIT (A) and Tribunal. On appeal the Court held that claim made by assessee to fund could at best be regarded as voluntary payment and not as expenditure wholly and exclusively with transfer of shares Tribunal after taking note of relevant clause in SPA recorded a finding that, even if assessee made payment as required under share purchase agreement, same could not be termed as expenditure in connection with transfer of shares. Accordingly the order of Tribunal is affirmed. (AY. 2009-10)

Srinivasan Chandira Kumar v. Addl. CIT (2021) 276 Taxman 207 (Karn.)(HC)

825 **S. 48 : Capital gains – Computation – Assignment of rights – No consideration was received from lessor – Not taxable as capital gains. [S. 45]**

Assessee purchased 34 aircrafts and thereafter assigned its rights to purchase remaining aircrafts in favour of lessors who had thereafter purchased and given aircrafts on operating lease to assessee. The Assessing Officer assessed the capital gain on notional basis. On appeal the Tribunal held that there was no sale consideration received by assessee and credits received from IAE would not be taxable as capital gains. (AY. 2012 -13)

InterGlobe Aviation Ltd. (IndiGo) v. ACIT (2021) 191 ITD 1 (SB)(Delhi)(Trib.)

826 **S. 48 : Capital gains – Computation – Charges paid to builder in respect of electricity connection, water, maintenance, interest expenditure – Cannot be allowed as deduction while computing long term capital gain on sale of flat [S. 45]**

Held that electricity connection, water supply, maintenance etc. paid to builder can not be treated as cost of acquisition or cost of improvement hence not allowable as deduction while computing capital gains. As regards the interest payment the assessee failed to prove that it was wholly and exclusively for purpose of sale of flats hence the deduction was not allowed. (AY. 2015-16)

Joseph Mudaliar. v. DCIT (2021) 191 ITD 719 / 214 TTJ 26 / 207 DTR 94 (Mum.)(Trib.)

827 **S. 48 : Capital gains – Computation – Cost of acquisition -Indexation cost – Joint Development agreement – Accounting treatment in books of account cannot determine the taxability under income-tax Act – Indexed cost of acquisition – Indexation was allowed till the taxable event of capital gains and not till the date of entering in to development agreement with developer – Provision of section 45(2) cannot be applicable to the assessee who is not a developer. [S 45, 45(2), 145]**

Assessee, owner of a land, entered into a joint development agreement (JDA) for development of its land and offered consideration received as long-term capital gain (LTCG) after adjusting indexed cost of acquisition of land. Assessing Officer disallowed claim of cost of acquisition on ground that land was still appearing in balance sheet of assessee, thus, benefit of cost could not be given and, accordingly, made addition of LTCG. Tribunal held that merely because land was continued to be reflected in balance sheet of assessee, same would not have any adverse implication on computation of LTCG as accounting treatment in books of account could not override determination of real income under Income-tax Act. While computing indexation cost CIT (A) restricted benefit of indexed cost of acquisition till AY 2008-09 in which JDA was signed as against AY 2011-12 when construction was completed on ground that benefit of indexation could be allowed only till AY 2008-09 when there was conversion of capital asset into stock-in-trade in terms of section 45(2) upon execution of JDA. On appeal the Tribunal held that since assessee was in healthcare business and not in business related to real estate and as such it could not be said that assessee, by entering into JDA had converted land into stock-in-trade, there was no scope of applicability of section 45(2) and, accordingly, assessee was to be allowed benefit of indexation of cost of acquisition till AY 2011-12 when taxable income arose. (AY. 2011-12)

Global Health (P.) Ltd. v. DCIT (2021) 191 ITD 279 (Delhi)(Trib.)

828 **S.48 : Capital gains – Computation – Cost of acquisition – Shares – Interest on investment disallowed will be part of cost of acquisition of shares for determining profit on sale of shares [S.45, 57]**

Tribunal held that, interest on investment disallowed will be part of cost of acquisition of shares for determining profit on sale of shares.(AY.2014-15)

Sudhir S. Mehta v. Dy. CIT (2021) 85 ITR 8 (SN)(Mum.)(Trib.)

829 **S. 49 : Capital gains – Previous owner – Cost of acquisition – Capital asset not having become property of assessee – Gift not proved by registered document – SLP of assessee is dismissed. [S.45]**

During relevant year, assessee sold shares which were stated to have been acquired by assessee through gift from his daughter for Nil consideration. Assessee had not disclosed receipt of gift in original return of income filed and later on claimed loss on sale of shares in return of income filed in response to notice under section 148. High Court held that since assessee had not been able to evidence gift by way of registered document or that his daughter had sufficient source of cash to invest such huge cash in equity shares, thus, capital asset not having become property of assessee, section 49 would not be applicable to assessee. SLP of the assessee is dismissed. (AY. 2009-10)

V. Dwarakanathan v. ACIT (2021) 276 Taxman 78 (SC)

Editorial: Affirmed, Judgement in V. Dwarakanathan v. ACIT (Mad) (HC) (TCA No. 308/ 2019 dt 19-6-2019)

830 **S. 49 : Capital gains – Previous owner – Cost of acquisition – Indexation – Inheritance – Indexed cost of acquisition has to be computed with reference to year in which previous owner first held asset and not year in which assessee became owner of asset- Property outside India – Entitled to exemption under section 54 where investment in purchase of flat outside India was prior to 1-4-2015. [S. 2(42A), 45, 48(iii), 49(1)(iii)(a), 54, 54F]**

Dismissing the appeal of the revenue the Court held that capital gains arising on transfer of a capital asset acquired by assessee by inheritance, indexed cost of acquisition has to be computed with reference to year in which previous owner first held asset and not year in which assessee became owner of asset. Court also held that the assessee would be entitled to exemption under section 54 where investment in purchase of flat outside India was prior to 1-4-2015. (AY. 2010-11)

CIT v. Saroja Naidu (2021) 281 Taxman 305 (Mad.)(HC)

831 **S. 50 : Capital gains – Depreciable assets – Block of assets – Depreciation allowed for 21 years – Not used for business for two years – Asset shown as investment in balance sheet – Gains assessable as short term capital gains [S. 2(11), 2(29A, 2(29B) 45, 50A]**

The High Court held that the depreciable asset forming a part of block of assets within the meaning section 2(11) of the Act would not cease to be a part of the block of assets, that the description of the asset by the assessee in the balance-sheet as an investment asset was meaningless, that so long as the assessee continued business, the building forming part of the block of assets would retain its character as such, no matter that one or two of the assets were not used for the business purposes in one or two years, and that the assessment of the profits on sale of the flat as short-term capital gains was to be confirmed. On appeal Supreme Court affirmed the view of the High Court. (AY.1998-99)

Sakthi Metal Depot v. CIT (2021)436 ITR 1/ 204 DTR 440/ 322 CTR 9/ 282 Taxman 384 (SC)

Editorial: Decision in CIT v. Sakthi Metal Depot (2011) 333 ITR 492 (Ker) (HC) affirmed.Refer, Sakthi Metal Depot v. ITO (2005) 3 SOT 368 (Cochin)(Trib.)

832 **S. 50 : Capital gains – Depreciable assets – Block of assets – Set off of loss – Long term gains can be set off against carried forward capital loss.[S. 70, 74]**

Allowing the appeal the tribunal held that the assessee had acquired electric meters in the assessment year 1996-97, which were disposed of during the year giving rise to capital gains taxable under section 50 of Rs. 39,99,990. The total capital gains earned during the year amounted to Rs. 54,38,407, and the balance capital gains were short-term capital gains on mutual funds. These capital gains were set off against carried forward capital loss for the assessment year 2001-02 of Rs. 90,12,331. Tribunal also held that prior to amendment to sections 70 and 74 by the Finance Act, 2002, the carried forward capital loss was not bifurcated between short-term capital loss and long-term capital loss. The Special Bench of the Tribunal held, inter alia, (i) that provisions of section 74(1) as amended with effect from April 1, 2003, would apply only to long-term capital loss relating to assessment year 2003-04 and onwards and (ii) that restriction imposed therein in terms of setting off of long-term capital loss only against long-term capital gains and not against short-term capital gains is applicable only in relation to

long-term capital loss incurred by the assessee in the assessment year 2003-04 and subsequent years and not to long-term capital loss relating to and brought forward from period prior to the assessment year 2003-04 which shall be governed by provisions of section 74(1) - prior to amendment made with effect from April 1, 2003.(AY. 2005-06)
Apollo Finvest (India) Ltd. v. CIT (2021) 85 ITR 549 (Trib.)(Mum.)

S. 50 : Capital gains – Depreciable assets – Block of assets – Expenditure incurred on account of stamp duty, registration charges and society transfer fee, as per contractual terms is an allowable expenditure [S.45, 50(1)(i)] 833
Dismissing the appeal of the revenue the Tribunal held that Expenditure incurred on account of stamp duty, registration charges and society transfer fee, as per contractual terms is an allowable expenditure. (ITA No. 3019 /Mum/ 2019 dt 11-11-2020) (AY. 2015 -16)
DCIT v. B.E. Billimoria & Co Ltd (2021) BCAJ-January-P 48 (Mum.)(Trib.)

S. 50B : Capital gains – Slump sale – Amalgamation of Companies – Subsidiary – Balance consideration received from escrow agents by subsidiary after amalgamation on behalf of erstwhile Chennai Company – Taxed in hands of erstwhile chennai company at Chandigarh – cannot be taxed again in hands of subsidiary in Chennai [S. 2(19AA), 2(42C) 72A] 834
Held that balance consideration received from escrow agents by subsidiary after amalgamation on behalf of erstwhile Chennai Company which was taxed in hands of erstwhile chennai company at Chandigarh the same amount cannot be taxed again in hands of subsidiary in Chennai.
ACIT v. Investment Trust of India Ltd. (2021) 88 ITR 566 / 211 TTJ 777 /203 DTR 289 (Chennai)(Trib.)
Dy.CIT v. HFCL Infotel Ltd. (2021)88 ITR 566 / 211 TTJ 777 /203 DTR 289 (Chennai)(Trib.)

S. 50B : Capital gains – Slump sale – Short term capital loss – Net worth – Value of asset includes the amounts paid to discharge any liability on the asset. [S. 2(42C), 45] 835
Assessee sold asset (Luxe Cinema) by slump sale to Jazz Cinemas for a consideration of which part consideration was paid directly to the creditors. Balance was only paid to assessee, which filed a short term capital loss. AO disagreed stating that the amount of liability discharged by the buyer must be reduced from the sale consideration, thus leading to a gain. The Tribunal disagreed stating that the value of the asset must include the consideration paid directly to the creditor for removing encumbrances on the property. The Tribunal held that buyer has received the assets without any liability and therefore the net worth of the assest. The Tribunal held that the net worth of the asset has to be further reduced by the liability because the liability has already been discharged by the Assessee only. (AY. 2015-16)
PVR Limited v. ACIT (2021) 197 DTR 372 / 211 TTJ 132 (Hyd.)(Trib.)

836 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Acquiring right in land under purchase agreement – Sale to third party – Provision of section 50C is not applicable – Whether loss is allowable as business loss or capital loss – Matter remanded [S. 2(47), 28(i), 45]**

Court held that acquiring right in land under purchase agreement and sale to third party, provision of section 50C is not applicable. However whether loss is allowable as business loss or capital loss, matter remanded. (AY.2010-11)

V. S. Chandrashekar v. ACIT (2021) 432 ITR 330/ 199 DTR 545 / 320 CTR 339 / 282 Taxman 244 (Karn.)(HC)

837 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Difference between Circle Rate and actual sale consideration less than 10 Per Cent of Stamp Duty valuation – Difference cannot be added. [S. 43CA, 45, 56]**

Held that since the difference between circle rate and the actual sale consideration was about 7.7 per cent. of the circle rate, which was less than 10 per cent. of the stamp duty valuation, the Commissioner (Appeals) was not justified in sustaining the addition made by the Assessing Officer.(AY. 2014-15)

RMG Buildwell (P.) Ltd. v. ITO (2021) 90 ITR 1 SN)(Delhi)(Trib.)

838 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Departmental valuation officer – Objection of the assessee was not considered – Transfer of development rights – Matter remanded [S. 45]**

Held that the Commissioner (Appeals) had not dealt with the merits of the objections of the assessee that there were inherent deficiencies in the piece of land. It was not discernible whether the merits of various objections of the assessee were considered by the Departmental Valuation Officer in his report. It was necessary in the interest of justice that the various objections on the merits of the valuation be dealt with by the Commissioner (Appeals). The objections were not the subject matter of consideration by the Assessing Officer also. The Commissioner (Appeals) was to give opportunity to the Departmental Valuation Officer if he chose to consider the various objections of the assessee and examine how it was dealt with by the Departmental Valuation Officer. On the issue whether the transfer of development rights would come under the sweep of section 50C, was never raised before the Assessing Officer and the claim of the assessee was without filing the revised return of income. The issue was remitted to the file of the Commissioner (Appeals). Followed *Kapurchand Shrimal v. CIT (1981) 131 ITR 451 (SC).* (AY.2012-13)

Radharaman Constructions v. ACIT (2021) 86 ITR 44 (Mum.)(Trib.)

839 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Safe harbour – Variation from 5 percent to 10 percent – Effective from the date on which section 50C was introduced. i.e. 1-4-2003 [S. 50C(1), 45]**

Allowing the appeal the Court held that amendment made in scheme of section 50C(1), by inserting third proviso thereto and by enhancing tolerance band for variations between stated sale consideration vis-à-vis stamp duty valuation from 5 per cent to 10 per cent are effective from date on which section 50C, itself was introduced, i.e 1-4-2003.(AY. 2012-13)

Amrapali Cinema v. ACIT (2021) 190 ITD 36 (Delhi)(Trib.)

S.50C: Capital gains – Full value of consideration – The value adopted by the stamp valuation authority on the date of agreement to be taken as full value of sale consideration [S. 45, 132, 153C] 840

The CIT(A) held that there was no incriminating material found during search in case of buyer nor any material has been brought on record by the AO in the present case during assessment and therefore the AO was not justified in making addition in the present case. It was further held that as per the provisions of section 50C of the Act, where date of agreement and date of registration is different (as in the present case) the stamp duty value can be taken but only in case where consideration or part thereof has been received before the date of agreement. However, in the present case, even though the condition laid down by section 50C was not satisfied, CIT(A) held that Assessee's case is covered by section 50C and hence deleted the addition made by the AO. Tribunal upheld the finding of CIT(A) that no addition could be made in the present case in absence of any incriminating material and accordingly deleted the addition made by the AO. However, on merits of the case, Tribunal held that the Assessee had received a small consideration at the time of agreement and therefore CIT(A) finding to the extent that Assessee would get benefit of proviso of section 50C of the Act was incorrect. In the result, the addition made was deleted by the Tribunal though on merits of the case, Tribunal ruled against the Assessee. (AY. 2010-11)

ACIT v. Himalayan Darshan Developers (Gujarat) Pvt. Ltd. (2021) 212 TTJ 738/ 205 DTR 73 / 88 ITR 94 (Ahd.)(Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – Agreement for sale on 8-3-1993 – Possession was handed over – Sale deed was executed on 9-3-2007 – For computing guidance value of property value as on 8-3-1993 i.e. date of sale agreement to be considered and not value as on 9-3 2007 [S. 2(47), 45] 841

Allowing the appeal of the assessee the Tribunal held that on the facts agreement for sale on entered 8-3-1993 and possession was handed over. Sale deed was executed on 9-3-2007. For computing guidance value of property value as on 8-3-1993 i.e. date of sale agreement to be considered and not value as on 9-3 2007. (AY. 2007-08)

Prakash Chand Bethala v. DCIT (2021) 188 ITD 135 / 88 ITR 290/ 205 DTR 47/ 212 TTJ 720 (Bang.)(Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – Transferrable Development Rights (TDR) – Right in the land and not land – Provision is not applicable – Addition cannot be made as income from other sources. [S.45, 56 (2)(viib)] 842

Assessee purchased Transferable Development Right (TDR) in a land. He further sold a portion of such right for a consideration of Rs. 1.14 crores. Assessing Officer held that as per section 50C sale consideration was recorded at Rs. 5.16 crores. Accordingly he treated differential amount of Rs. 4.02 crores as deemed consideration and liable for taxation under section 56(2)(vii)(b) as income from other sources in hands of assessee. CIT (A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that capital asset transferred by assessee was development rights held by it in a land and not that land itself, provisions of section 50C would not be applied upon impugned transaction. (AY. 2014-15)

Sowmya Sathyan (Smt.) v. ITO (2021) 187 ITD 149 / 202 DTR 198/ 211 TTJ 101 (Bang.) (Trib.)

843 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Land situated in green belt – Matter remanded to CIT (A) – Transfer of development rights – Provision of section 50C is not applicable – Issue raised first time before Appellate Tribunal – Matter remanded to the file of CIT (A). [S.2 (47)(v), 45, 250]**

Tribunal held that the Commissioner (Appeals) had not dealt with the merits of the objections of the assessee that there were inherent deficiencies in the piece of land. It was not discernible whether the merits of various objections of the assessee were considered by the Departmental Valuation Officer in his report. It was necessary in the interest of justice that the various objections on the merits of the valuation be dealt with by the Commissioner (Appeals). The objections were not the subject matter of consideration by the Assessing Officer also. The Commissioner (Appeals) was to give opportunity to the Departmental Valuation Officer if he chose to consider the various objections of the assessee and examine how it was dealt with by the Departmental Valuation Officer. Followed, *Kapurchand Shrimal v. CIT (1981) 131 ITR 451 (SC)*. On the issue whether the transfer of development rights would come under the sweep of section 50C, was never raised before the Assessing Officer and the claim of the assessee was without filing the revised return of income. The issue was remitted to the file of the Commissioner (Appeals).(AY2012-13)

Radharaman Constructions v. ACIT (2021) 86 ITR 44 (Mum.)(Trib.)

844 **S. 50C : Capital gains – Full value of consideration – Stamp valuation – Variation between sale consideration and sale stamp value 5 % to 10% – Amendment curative and thus retrospective – Applicable for earlier years – Determination of land value based on various factors such as water logging, flooding of drainage water, etc. has to be considered – Valuation of assessee accepted [S.45]**

Allowing the appeal the Tribunal held that with regard to the first plot, there was variation of 9.11 per cent between the sale consideration and the value determined by the stamp valuation authority. The amendment to section 50C(1), by insertion of the third proviso thereto and enhancing tolerance band for variations between the stated sale consideration and the stamp duty valuation from 5 per cent. to 10 per cent., was curative in nature, and, therefore, these provisions even though stated to be prospective, ought to be held to relate back to the date when the related statutory provision of section 50C was introduced, that is, from April 1, 2003. The difference in this case was 9.11 per cent. and did not exceed the 10 per cent variation of section 50C. Therefore, capital gains would have to be computed with reference to the actual sale consideration only. As regards for the second plot, the rate had been determined on the basis of various factors such as the presence of a 5 feet deep hole in the ground and a drainage next to the land, a slum cluster next to the plot, drainage water flooding the land and water logging during the monsoon season. The Commissioner (Appeals) had not examined those facts and had simply accepted the report of the District Valuation Officer which was based on estimations. Thus, in view of the facts and the evidence available on record, the assessee was allowed 6 per cent reduction in the difference between the sale consideration and the value determined by the District Valuation Officer. The capital gains were to be computed accordingly.(AY. 2012-13)

Jayrajbhai A. Jodhani v. Dy. CIT (2021) 86 ITR 31 (SN)(Surat)(Trib.)

S. 50C: Capital gains – Full value of consideration – Stamp valuation – Sale Consideration – Third proviso- Retrospective – Difference between the stated consideration vis-a-vis stamp duty valuation is less than 10 % of the stated consideration, section 50C is not applicable. [S.43CA, 45, 56 45] 845

The assessee sold her flat for Rs 75 lakhs, and the capital gain was computed and offered to tax. The valuation of the property for the purpose of stamp duty was Rs 79,91,000/-. The AO applied section 50C and adopted the stamp duty valuation to compute the capital gains.

The Tribunal noted that the third proviso to section 50C was inserted by the Finance Act 2018, providing a tolerance band of 5 percent for the variation between actual sale consideration vis-à-vis the stamp duty valuation with prospectively effect from 1 April 2019. The Finance Act 2020 increased the tolerance band from 5 percent to 10 percent. The Tribunal held that the amendment accepts that these variations could be based on various factors while affecting genuine variations, creating a difference in sale consideration and stamp duty value. Thus, the amendment was to provide a safeguard in a bonafide transaction, are curative amendment that applies retrospectively and not prospectively. CBDT in Circular No 8 of 2018 dt.26-12-2018 (2019) 410 ITR 1 (St) has accepted that there could be various bonafide reasons explaining the small variations between sale consideration of immoveable property as disclosed by the assessee and Stamp duty valuation. Tribunal held that, insertion of the proviso and subsequent enhancement in its limits to 10% were curative in nature and therefore the same relates back to the date when the statutory provision of section 50C was enacted. i. e. 1st April, 2003. (AY. 2011-12)

Maria Fernandes Cherly v. ITO (IT) (2021) 187 ITD 738 / 209 TTJ 850 /198 DTR 137/ 85 ITR 674 (Mum.)(Trib.)

S. 50C : Capital gains – Full value of consideration – Stamp valuation – Addition cannot be made under section 50C on the transfer of leasehold rights in land or building.[S.45] 846

The Appellate Tribunal held the expression 'land or building' in its coverage is quite distinct from the expression 'any right in land or building'. The legislature, in its wisdom, has used the expression 'land or building or both' in section 50C(1) of the Act, and not the expression 'any right in land or building'. Thus, section 50C covers only capital asset being land or building or both and it would not cover transfer of leasehold rights in land and building. (AY. 2015-16)

Noida Cyber park (P.) Ltd v. ITO (2021) 186 ITD 593 (Delhi)(Trib.)

S.50D: Fair market value deemed to be full value of consideration in certain shares – Non-Resident – Capital gains – Sale of share – Not slump sale – Capital gains chargeable to tax at ten percent [S. 45, 55A, 56(2)(viia), 112(1)(c)(iii)] 847

AAR held that the capital gains on transfer of equity shares in IEE would be taxable in the hands of the applicant at the rate of 10 per cent. in accordance with section 112(1)(c)(iii) of the Income-tax Act, 1961 (AY. 2013-14)

Psit Pty Ltd, in re. (2021) 436 ITR 474 (AAR)

848 **S. 54 : Capital gains – Profit on sale of property used for residence – Additional cost – On appeal to division bench from order of single judge – Appeal became infructuous. [S.48, Art, 226]**

Dismissing the writ appeal, that taking cognizance of the direction issued by the High Court, the assessee was heard and pursuant to the judge's decision, the additional cost of construction incurred by the assessee for claiming deduction under section 54 of the Income-tax Act, 1961, was allowed and then, relief had been granted. Therefore the Department could not pursue the appeal after implementing the order passed in the writ petition.(AY.2014-15)

CIT v. Venkata Dilip Kumar (2021) 437 ITR 137 (Mad.)(HC)

Editorial : Decision of single judge in Venkata Dilip Kumar v. CIT (2019) 419 ITR 298 (Mad) (HC), affirmed.

849 **S. 54 : Capital gains – Profit on sale of property used for residence – Amount spent on construction – Mere non compliance of a procedural requirement, exemption should not be denied – Order of single judge is affirmed by division Bench [S.45, 54 (2)]**

Assessee claimed certain sum spent on construction cost as deduction under section 54 of the Act. The Assessing Officer restricted exemption claimed under section 54 proportionately to amount deposited in Capital Gain Account Scheme as required under section 54(2). Assessee filed writ petition against order of revenue and same was allowed by Single Judge, holding that mere non-compliance of a procedural requirement under section 54(2) itself could not stand in way of assessee in getting benefit under section 54, if he was, otherwise, in a position to satisfy that mandatory requirement under section 54(1) was fully complied with within time limit infructuous. (AY. 2014-15)

CIT v. Venkata Dilip Kumar (2021) 437 ITR 137/ 277 Taxman 463/ 201 DTR 9 / 320 CTR 520 (Mad.)(HC)

850 **S. 54 : Capital gains – Profit on sale of property used for residence – Purchase of new residential house – Date of delivery of possession of new property within one year prior to date of execution of sale deed of original Asset – Entitle for Exemption.[S. 45]**

Held that the date of agreement of sale of original asset, i.e., August 10, 2012 and the date of agreement with the builder for purchase of the new residential house property, i.e., August 24, 2011, the new asset was purchased by the assessee within one year before the date of sale of original asset. Even otherwise, going by the date of sale deed of original asset, i. e., November 5, 2012 and delivery of possession of the new property, i.e., April 7, 2012, then also the investment made by the assessee for purchase of the new residential house property was within one year prior to the date of sale of the original asset. Entitle for exemption. (AY.2013-14)

Pushpa Sankar v. ITO (2021) 92 ITR 44 (SN) (Chennai)(Trib.)

851 **S. 54 : Capital gains – Profit on sale of property used for residence – Investing part of sale proceeds – Unable to construct the house due to litigation – Entitled to deduction only to extent of amount used for purchase of site and not for balance. [S. 45]**

Held that the assessee is entitle to deduction only to extent of amount used for purchase of site and not for balance. (AY. 2014-15)

ITO v. Mujeeb Urrahman (2021) 90 ITR 68 (SN)(Bang.)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Allegation that the amount was withdrawn from sellers bank account – Reply by seller showing receipt of full sum – Denial of exemption was held to be not valid [S. 45] 852

Held that a legal notice was sent by the assessee to the seller through her lawyer alleging to have paid Rs. 90 lakhs to the seller and the seller in his reply through his lawyer did not refute the acceptance of Rs. 90 lakhs and offered no objection to perform his part of agreement subject to payment of remaining sale consideration of Rs. 60 lakhs with interest. He said nothing about refund of Rs. 27 lakhs. From the reply of the seller to the notice sent by the assessee, it was clear that the seller was asking for the remaining amount of Rs. 60 lakhs only and had not disputed the receipt of Rs. 90 lakhs, which showed that the question of refund of Rs. 27 lakhs to the assessee by the seller did not arise. The deduction of Rs. 27 lakhs under section 54 of the Act was allowable.(AY. 2014-15)

Atluri Padma (Smt.) v. ITO (2021) 89 ITR 26 (SN)(Vishakha)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Failure to follow the direction of CIT(A) – Assessing Officer is directed to give effect to the order of the CIT(A) [S.45, 250, 254(1)] 853

Held that the Assessing Officer had followed one part of the direction of the Commissioner (Appeals) but not the other part regarding reopening of the assessment or taxability of the correct assessment year. The Assessing Officer failed to give effect to the appeal and the Commissioner (Appeals) mechanically sustained the finding of the Assessing Officer without giving any reason why reopening of the assessment for the purpose of taxability was not given effect to. Hence, the finding of the Commissioner (Appeals) could not be sustained and the order was set aside. The Assessing Officer was directed to give effect to the order of the Commissioner (Appeals) in accordance with law.(AY. 2011-12)

Rita Chandiok v. ACIT (2021) 89 ITR 30 (SN)(Delhi)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Long term or short term – Period of holding to be reckoned from date of allotment [S. 2(29A), 2(29B), 2(42A), 2(42B), 45] 854

Held that the assessee was allotted the flat by letter of the builder dated February 22, 2006 on which date the assessee paid earnest money of Rs. 1 lakh. Based on the allotment letter, the assessee was given permission to mortgage the impugned flat with the bank for availing of bank loan. The assessee got a right to the property on the date of allotment letter, i. e., on February 22, 2006 and payment of instalments in accordance with the terms was only a follow up action and taking delivery of possession was only a formality. Therefore, reckoning the period from February 22, 2006, i. e., the date of allotment, the sale of the flat gave rise to long-term capital gains and not short-term capital gains as held by the lower authorities. The matter was remanded to the Assessing Officer for limited purposes for examining whether the assessee was entitled to deduction under section 54 of the Act (AY.2010-11)

Mahendrasingh Ramsingh Jadav v. ITO (2021) 88 ITR 157 (Bang.)(Trib.)

855 **S. 54 : Capital gains – Profit on sale of property used for residence – Ownership of new property – New residential property was purchased in joint names of assessee, her daughter and son – Entitle to exemption [S. 45]**

Assessee sold a residential property for consideration of certain amount and invested entire amount on purchase of a new residential property in joint names of assessee with her daughter and son in law and that share of three co-owners was 34 per cent, 33 per cent and 33 per cent respectively and claimed exemption. The Assessing Officer allowed exemption to the extent of 34% of total long term capital gain. CIT (A) allowed the claim. On appeal the Tribunal held that since assessee had invested entire sale consideration from sale of old residential property to purchase new residential property, assessee would be entitled to exemption of entire amount invested by her under section 54 even if new residential property was purchased in joint names of assessee, her daughter and son in law. (AY. 2015-16)

ITO v. Rachna Arora (Smt.)(2021) 191 ITD 667/ 90 ITR 575 (Chd.)(Trib.)

856 **S. 54 : Capital gains – Profit on sale of property used for residence – Sale consideration paid to purchase of another residential property prior to due date of filing of return – Entitle to exemption – Purchase of property – Entire consideration was paid for booking flat with in three years from date of transfer of original asset – Entitle to exemption. [S. 139(4)]**

Held that investment in property was made prior to due date of filing of return of income under section 139(4) entitle to exemption. Held that entire payment towards investment in new flat within period of three years from date of transfer of original asset, amount was to be treated as invested in purchase/construction of new residential property. Entitle to exemption. (AY. 2011-12)

Harminder Kaur (Smt) v. ITO (2021) 188 ITD 922 (Delhi)(Trib.)

857 **S. 54 : Capital gains – Profit on sale of property used for residence More than one house – Prior to 1-4-2015 – Eligible exemption [S.45]**

Held that prior to 1-4 -2015 the exemption is allowed for investment in more than one house. (AY. 2011-12)

Nilufer Sayed v. ITO (2021) 188 ITD 603 (Mum.)(Trib.)

858 **S. 54 : Capital gains – Profit on sale of property used for residence – Construction of house within period of three years from the transfer of original asset – Non availability of occupation certificate cannot be the ground to deny the exemption. [S.45]**

Assessee sold residential property and claimed deduction under section 54 on basis that it had within a period of 3 years from date of transfer of original asset, constructed a residential house. Assessee had filed a photograph of property to substantiate its claim that it constructed a residential house. Assessing Officer denied the exemption on the ground of non availability of occupation certificate. CIT (A) also affirmed the order of the Assessing Officer. On appeal the Tribunal held that CIT (A) had ignored other evidences on record which proved construction and completion of construction of a residential house. Further, absence of occupation certificate would not be a ground

to deny claim of assessee for deduction under section 54 as other evidence filed by assessee sufficiently demonstrated that assessee had constructed a residential house within period stipulated by law. Accordingly exemption was allowed. Followed *CIT v. Sardarmal Kothari (2008) 302 ITR 286 (Mad.)(HC)*. (AY. 2010-11)
Estate of Late Dr. S. Zakaulla Masood v. ITO (2021) 186 ITD 326/ 199 DTR 243/ 210 TTJ 779 (Bang.)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – All flats received from builder under joint development agreement situated in same premises – Entitled to exemption on entire built-up area received [S. 2(47)(v), 45, 54F] 859
Allowing the appeal the Tribunal held that all the flats for which the assessee claimed exemption under section 54 of the Act were situated in the same premises. The assessee was entitled to deduction under section 54 of the Act on the entire built-up area received from the builder under the joint development agreement.(AY.2009-10)
Maurice Patrick De Rebello v. ITO (2021)85 ITR 17 (SN)(Bang.)(Trib.)

S. 54 : Capital gains – Profit on sale of property used for residence – Purchase of property within one year before transfer – Possession handed within one year after transfer of second property – Entitled to exemption- CIT (A) Powers – Revised computation was filed before AO – CIT (A) has to consider the claim [S.45, 250] 860
Allowing the appeal of the assessee the Tribunal held that though the purchase of the property was by deed dated February 19, 2013, the assessee had entered into a supplementary agreement on the same date mentioning that the seller had taken back physical possession of the property from the assessee on February 19, 2013 for finishing and completion of the pending work of the property and after completion of the entire work the seller would hand over the physical possession of the property to the assessee. Physical possession of the property after completion of the entire work was handed over to the assessee on April 19, 2014 and this would fall within one year before the date of transfer of the property at Delhi on February 24, 2014. The assessee also filed copies of the bills to show renovation in the property. Considering the entire material on record the assessee was entitled to deduction under section 54 of the Act. Tribunal also held that when the revised computation was filed before AO, the CIT (A) has to consider the claim. (AY. 2014-15)
Ashok Kumar v. ITO (2021) 86 ITR 576 (Delhi)(Trib.)

S. 54B : Capital gains – Land used for agricultural purposes – Directed to apply uniform rate while computing capital gains and grant relief [s. 45, 55A, Art, 12] 861
Relying on Article 12 of the Constitution of India to treat the Citizens equally directed the revenue to apply uniform rate for the purpose of computing capital gains and compute the capital gains. (AY. 2010-11)
Boota Singh v. ITO (2021) 90 ITR 281 (Amritsar)(Trib.)
Babu Singh v. ITO (2021) 90 ITR 281 (Amritsar)(Trib.)
Nachhater Singh v. ITO (2021) 90 ITR 281 (Amritsar)(Trib.)

862 **S. 54B : Capital gains – Land used for agricultural purposes – HUF – Ownership – Land registered in the name of co-parcener – Land purchased out of sale proceeds of sale of agricultural land of HUF – Exemption cannot be denied [S. 45]**

Held that the new land was purchased out of funds of HUF and was shown in books of account of HUF. Denial of exemption was not justified merely because a new land was registered in name of co-parcener of HUF. Referred *CIT v. Gurnam Singh (2010) 327 ITR 278 (P& H)(HC), Laxmi Narayan v. CIT (2018) 402 ITR 117 (Raj)(HC).* (AY. 2013-14)

Babubhai Arjanbhai Kanani (HUF) v. DCIT (2021) 191 ITD 5 (Surat)(Trib.)

863 **S. 54B : Capital gains – Land used for agricultural purposes – HUF – Assessee includes HUF – Amendment brought on by Finance Act, 2013, in section 54B by inserting assessee being an individual or his parent, or a Hindu Undivided Family was classificatory in nature Entitle for exemption [S.2(31), 45, 54F]**

The Tribunal held that assessee HUF is entitled to benefit of S. 54B of the Act for following reasons :

- The word assessee used in S. 54B, had always included HUF, and further the amendment brought in by Finance Act, 2013 by inserting "the assessee being an individual or his parent or an (HUF)" was clarificatory in nature.
- Word 'person' as defined in S. 2(31) includes individual as well as HUF and therefore HUF was entitled to benefit u/s 54B.
- Benefit of any doubt in respect of taxability of exemption should be given to assessee rather than to revenue. (AY. 2012-13)

Sitaram Pahariya (HUF) v. ITO (2021) 190 ITD 239 / 212 TTJ 273 / 203 DTR 137 (Agra) (Trib.)

864 **S. 54EC : Capital gains – Investment in bonds – Amendment Restricting the investment to 50 lakhs is prospective in nature [S.45]**

Dismissing the appeal of the revenue the Court held that amendment to section 54EC brought with effect from 1-4-2015 restricting investment in assets from sale consideration on sale of original asset to Rs. 50 lakhs is prospective in nature, therefore prior to assessment year 2015-16, it was possible for assessee to claim deduction of Rs. 1 crore by investing Rs. 50 lakhs in each of financial years but within six months from date of transfer. Circular No. 3/2008 (AY. 2009-10)

CIT v. Neena Krishna Menon (Smt.)(2021) 277 Taxman 211 (Karn.)(HC)

865 **S. 54EC : Capital gains – Investment in bonds – Invested Rs.50 lakhs in two different financial years – Entitle to deduction in both the years – Amendment is effective from assessment year 2015-16 and not applicable to earlier years.[S. 45]**

Held that the assessee had made an investment of Rs. 50 lakhs in the financial year 2012-13 relevant to the assessment year 2013-14 and another Rs. 50 lakhs in the financial year 2013-14 relevant to the assessment year 2014-15. Thus the assessee was entitled to the benefit of deduction under section 54EC of the Act. The amendment by the Finance (No. 2) Act, 2014 was effective from the assessment year 2015-16 and therefore not applicable to the case of the assessee.(AY.2013-14)

Prima P. Ltd. v. ACIT (2021) 88 ITR 45 (SN)(Pune)(Trib.)

S.54F : Capital gains – Investment in a residential house – Relevant is date of acquisition of property and not on date of payment – It is not necessary that same sale consideration should be used for construction of a new house property – Allowed exemption – Interpretation of taxing statutes- Beneficial provision -Interpreted liberally. [S.45] 866

Assessee transferred shares held by him in two companies on 21-8-2008 and claimed exemption under section 54F on account of purchase of new residential house property for which sale deed was executed on 28-3-2011. Tribunal held that the payment were made prior to one year before date of transfer of shares and, therefore, assessee was not entitled to claim exemption. On appeal the Court held that since sale deed was executed in favour of assessee within a period of three years from date of transfer of shares, finding recorded by Tribunal that payments were made prior to one year before date of transfer of shares was not entitled to claim exemption under section 54F was perverse. Court also observed that for claiming exemption under section 54 of the Act is dependent on date of acquisition of property and not on the date of payment and it is not necessary that same sale consideration should be used for construction of a new house property. Benevolent provision should be interpreted liberally keeping in in mind the purpose for which the provision is enacted.(AY. 2009-10)

M. George Joseph v. Dy. CIT (2021) 282 Taxman 386/ 206 DTR 51/ 322 CTR 563/ (2022) 440 ITR 589 (Karn.)(HC)

S. 54F : Capital gains – Investment in a residential house – investment in a residential house in USA prior to 1-4-2015 – Entitled to claim exemption.[S.45] 867

Dismissing the appeal of the revenue the Court held that assessee having made investment in a residential house in USA prior to 1-4-2015, it would be entitled to claim exemption. CBDT Circular No. 1/2015, dated 21-1-2015 and Circular No. 346, dated 30-6-1982 (AY. 2009-10)

CIT v. Vinay Mishra (2021) 276 Taxman 68 (Karn.)(HC)

S.54F : Capital gains – Investment in a residential house – Construction of residential house within three years – Completion of construction is not mandatory – Once construction started and amount invested the condition of section is fulfilled. [S. 45] 868

Held, dismissing the appeal, that the assessee invested Rs. 2.24 crorre in the construction of the house within a period of three years, which construction was incomplete at the end of the stipulated period, but got actually completed at a later stage. The assessee invested a sum of Rs. 1 crore in the Capital Gains Scheme account. The Commissioner (Appeals) was right in granting exemption under section 54F of the Act.(AY. 2013-14)

JCIT (OSD) v. Santosh Suresh Gupta (2021) 90 ITR 24 (SN)(Pune)(Trib.)

S.54F : Capital gains – Investment in a residential house – Purchased – Constructed – Completion of house within three years is not mandatory – Capital gains Account Scheme – Investment made till date for filing return u/s 139(4) is eligible for exemption [S. 45, 54F(4), 139(4)] 869

Held that the assessee need not complete the construction of the house in all aspects and occupy it. It is enough if the assessee establishes that the investment of the entire

net consideration was made within the stipulated period and the construction is mostly completed. Once it is demonstrated that the consideration received on transfer has been invested either in purchasing a residential house or in construction of a residential house even though the transactions are not complete in all respects and as required under the law, that would not disentitle the assessee from the said benefit. The words used in provisions of section 54F of the Act are purchased or constructed and the condition precedent for claiming benefit under such provision is the capital gains realized from sale of a long-term capital asset should have been invested either in purchasing a residential house or in constructing a residential house.(AY. 2014-15)
Chandrakala Shashidhar (Smt.) v. ITO (2021)89 ITR 67 (SN)(Bang.)(Trib.)

870 **S.54F : Capital gains – Investment in a residential house – Date on which full consideration was paid and possession was taken is the relevant date to be considered [S.45]**
Dismissing the appeal of the revenue the Tribunal held that the date of agreement for purchase of the new residential house was 22-7-2015 and possession was also taken on said date, both dates were within two years from the date of transfer. Eligible for exemption. Relied on *CIT v. Beena K. Jain (1996) 217 ITR 363 (Bom)(HC).* (ITA No. 1043 /Mum/ 2019 dt 3-3-2021)(AY. 2015-16)
ACIT v. Mohan Prabhakar Bhide (2021) BCAJ-June – P. 20 (Mum.)(Trib.)

871 **S.54F : Capital gains – Investment in a residential house – Farm house – Entitle to exemption [S. 45]**
Held that merely because a property is called farm house it does not became a non-residential house property unless otherwise proved. Exemption was allowed. (dt. 16-9-2021) (AY. 2011-12)
ACIT v. Rajat Bhandari (2022) BCAJ -January-P. 36 (Delhi)(Trib.)

872 **S.54F : Capital gains – Investment in a residential house – Amount not utilised before specified date – Amount liable to tax. [S.45, 147]**
Held that though assessee had made payment subsequently, but, he had not utilised capital gain amount lying in capital gain account scheme before specified date. Order of CIT(A) was affirmed. (AY. 2012-13)
Avtar Krishen Jalla v. ITO (2021) 190 ITD 443 (Delhi)(Trib.)

873 **S.54F : Capital gains – Exemptions – investment in house property in name of assessee's widowed daughter was allowable – Direct nexus between sale consideration received and investment in house property – Entitle to exemption. [S.45]**
Held that, there is nothing in S.54F to show that house should be purchased in name of assessee only. Since there was a direct nexus between sale consideration received and utilized investing in residential house in name of married widowed daughter of assessee, exemption u/s. 54F on amount invested in purchase of residential house in daughter's name is allowed. (AY. 2016-17)
Krishnappa Jayaramaiah v. ITO (2021) 189 ITD 15 (Bang.)(Trib.)

S.54F : Capital gains – Investment in a residential house – Entire sale consideration was in construction of house – Exemption cannot be denied on the ground that consideration was not deposited in capital gain scheme [S.54F(4), 139(1)] 874

Assessing Officer disallowed deduction on ground that assessee had violated section 54F(4) by not depositing net sale consideration in capital gain scheme account during intermittent period of construction of residential house. On appeal the Tribunal held that since assessee had invested entire sale consideration in construction of residential house within period stipulated under section 54F(1), exemption could not be denied on ground that sale consideration had not been deposited in capital gains scheme account before due date prescribed under Section 139(1). Assessee would be entitled for exemption. (AY. 2013-14)

Ramaiah Dorairaj v. ITO (2021) 187 ITD 460 (Bang.)(Trib.)

S.54F : Capital gains – Investment in a residential house – Deposit in capital gain account scheme – Gain can be charged to tax after expiry of three years from date of sale of a property if same was not utilised for construction of new residential house as assessee's income for said third year [S.45] 875

The claim of assessee was rejected on ground that no cogent material was placed on record by assessee to show that a residential house was constructed by it within a period of 3 years from sale of original capital asset so as to be eligible for availing deduction under section 54F of the Act. On appeal the Tribunal held that when the assessee had deposited amount in capital gain account scheme, her claim for deduction was to be allowed during year and unutilised capital gain amount, if any, would be charged to tax under section 45 as income only after expiry of three years from date of sale of capital asset as assessee's income for said third year. (AY. 2012-13)

Pratima C. Joshi (Smt.) v. DCIT (2021) 187 ITD 615 (Pune)(Trib.)

S.54F : Capital gains – Investment in a residential house – Sale of land – Assessable as capital gain – Entitle for exemption [S.28(i), 45] 876

Allowing the appeal of the assessee the Tribunal held that when the intention while acquiring land was to construct the house ad thereafter its conversion into sites and obtaining approval and dates of sale by assessee all go to show that his intention at time of acquisition was not with a view to indulge in an adventure in nature of trade, gain on sale of land was to be regarded as income under head capital gain and consequently, assessee would be entitled to all deductions permissible while computing income under head capital gain. (AY. 2013-14)

Babulal v. ITO (2021) 187 ITD 851 (Bang.)(Trib.)

S. 54F: Capital gains – Investment in a residential house – Sale of land – Allotment of flat as per an escrow document – Denial by builder – Assessing Officer taxing the value of flat as deemed consideration and denying the exemption – Since Assessee has performed his part of duty by disclosing the sale prior to its receipt, then it is deemed on the part of the AO to allow deduction on the same, despite the Dispute or delay in getting the flat – Entitle to exemption [S. 45, 133(6)] 877

Assessee sold land to a builder. In addition to sale consideration in money form, there was a parallel understanding to receive additional consideration, in kind, of a ready

made flat in the builders project on the same land. Though there was no agreement for flat but there was an escrow document Assessee in its return declared sale consideration received as well as value of flat receivable and claimed exemption u/s 54F towards value of flat receivable. AO rejected claim u/s 54F on ground that builder denied to have agreed to give any flat in kind and hence under 54F the criteria of having purchased flat failed. On appeal the ITAT held that due to disputes between Assessee and builder this issue of allotment went to court and High Court recognised the validity of escrow and thus the allotment has the Court acceptance though case not finally decided. If AO is taxing the deemed value of flat as sale consideration then it is deemed that Assessee has paid the full value of consideration as required under 54F of the Act. Since Assessee has performed his part of duty by disclosing the sale prior to its receipt, then it is deemed on the part of the AO to allow deduction on the same, despite the Dispute or delay in getting the flat. Accordingly the exemption u/s54F of the Act is allowed. (ITA No. 3642 /M/ 2017 /ITA no. 3888/M/2017 Bench "E" dt 1-6.2021) (AY. 2012-13)
Vinay Ramchandra Somani v. ACIT (Mum.)(Trib.)
Shrilekha Vinay Somani (Smt) v. ACIT (Mum.)(Trib.)

878 **S.54F : Capital gains – Investment in a residential house – Sale consideration was not deposited in a bank as per capital gain account scheme – Investment in acquisition of house was made with in the time prescribed – Denial of exemption was held to be not justified [S.45 54F(4)]**
Allowing the appeal of the assessee the Tribunal held that section 54 (1) are mandatory and substantive in nature, while provision of sub section (4) of section 54F are procedural. Accordingly when sale consideration was not deposited in a bank as per capital gain account scheme however investment in acquisition of house was made with in the time prescribed, denial of exemption was held to be not justified. Followed *CIT v. K. Ramachnndra Rao (2015) 230 Taxman 334 (Karn.)(HC)*, *Vatsala Ashthana v. ITO (2019) 179 ITD 297 110 (Delhi)(Trib.)*(ITA No. 114/ Del/ 2020 dt 2-3-2021 (AY. 2016-17)
Ashok Kumar Wadhwa v. ACIT (2021) BCAJ – April – P. 56 (Delhi)(Trib.)

879 **S.54F : Capital gains – Investment in a residential house – One house – Property was acquired for Metro Rail Project compensation paid within a period of one year – Purchase of two different houses – Not entitle to exemption [S. 45, 54, 54F(1)(ii)]**
The assessee has computed long term capital gain after deducting cost of acquisition and claimed exemption u/s.54F of the Act for purchase of two residential properties amounting to Rs. 83 lakhs and Rs.69 lakhs. The assessee further stated that claim of exemption u/s.54F of the Act was in accordance with law, because before amendment to section 54F by the Finance Act, 2014 w.e.f. 1-4-2015, benefit of section 54F will be applicable to more than one residential house and hence, even if the assessee has purchased two different houses, exemption cannot be denied u/s.54F of the Act. The Assessing Officer was not convinced with the explanation furnished by the assessee and according to him, as per provisions of section 54F of the Act, the assessee is not eligible for exemption u/s.54F, because he has purchased another residential house other than the new asset, within a period of one year after the date of transfer of the original asset and accordingly, rejected the exemption claimed u/s.54F of the Act and recomputed

the long term capital gains from transfer of property. CIT (A) affirmed the order of the Assessing Officer. Tribunal held that the assessee is not entitled for exemption u/s.54F of the Act for purchase of two residential houses at two different locations on two different dates. The position remains same even after amendment to section 54F by the Finance Act, 2014 w.e.f. 1-4-2015. Accordingly the order of CIT (A) is affirmed. Tribunal also observed that as per provisions of section 54, assessee can buy multiple houses, when he sold a residential house and reinvest sale consideration for purchase of another residential house, but there is restriction for purchasing more than one residential house under section 54F. (AY. 2013-14)
M.S. Amaresan. v. ACIT (2021) 186 ITD 715 / 210 TTJ 986 / 200 DTR 1 (Chennai)(Trib.)

S.54F : Capital gains – Investment in a residential house – No clarity as regards date of utilisation of amounts and when assessee incurred expenditure for registration of property – Matter remanded to Assessing Officer for examination [S.45] 880
Tribunal held that the assessee shall be entitled to exemption under section 54F of the Act with regard to utilization of the sale proceeds which were within three years from the date of sale of the original asset. However as there was no clarity as regards date of utilisation of amounts and when assessee incurred expenditure for registration of property. Matter remanded to Assessing Officer for examination (AY.2016-17)
Rajyalakshmi Reguraj v. ITO (2021) 85 ITR 20 (SN)(Bang.)(Trib.)

S.54F : Capital gains – Investment in a residential house – Amount not deposited in a separate capital gains account before due date of filing of return – Capital gain invested for acquiring another property with in specified u/s 54F of the Act – Entitled to exemption [S. 45, 139(1)] 881
Tribunal held that though the amount not deposited in a sperate capital gains account before due date of filing of return, capital gain invested for acquiring another property with in specified u/s 54F of the Act is entitled to exemption. (AY- 2014-15)
Dipal Sureshbhai Patel v. ITO (2021) 211 TTJ 30 (UO)(Ahd)(Trib.)

S.54F : Capital gains – Investment in a residential house – Joint property – Matter remanded [S. 45] 882
Held that none of the documents filed by the assessee in support of his claim that the property at Mysuru was a joint family property, had been considered by the Assessing Officer. The issues to be considered afresh were whether the property at Mysuru belonged to the Hindu undivided family or the assessee, whether the assessee would be entitled to deduction under section 54F of the Act, and the methodology to be adopted while computing long-term capital gains in the joint development project. The third issue may become academic if the second issue was decided in favour of the assessee. (AY. 2019-10)
Ganga Poorna Prasad v. ACIT (2021) 91 ITR 62 (SN)(Bang.)(Trib.)

883 **S. 55 : Capital gains – Cost of improvement – Cost of acquisition – Bombay stock exchange membership card – Indexation of card to be taken from the year 2005-06 [S.45]**

Held since assessee had agreed that indexation cost of shares with respect to said membership card could be taken from year 2005-06 corresponding to AY. 2006-07, order of Commissioner (Appeals) is affirmed. (AY. 2009-10)

DCIT v. Edelweiss Financial Advisors Ltd. (2021) 188 ITD 834 (Ahd.)(Trib.)

884 **S. 55 : Capital gains – Cost of improvement – Cost of acquisition – Payment of commission to agent for purchase of property is allowable as deduction – Cost of construction to developer is to be treated as full value of consideration – Received his share and allotted constructed area – Taxable in the assessment year 2012-13. [S.2(47), 45, 48]**

Tribunal held that payment of commission to agent for purchase of property allowable as deduction. Cost of construction paid to developer is to be treated as full consideration. Assessee has received his share and allotted constructed area in the assessment year 2012-13 it was rightly taxed in the assessment year, 2012-13 (AY. 2012-13)

N.A. Haris v. ACIT (2021) 188 ITD 517 / 210 TTJ 273 / 206 DTR 180 (Bang.)(Trib.)

885 **S. 55A : Capital gains – Reference to valuation officer – Long term capital gains – Valuation as on 1-4-1981 – Amendment to section 55A(a) inserted with effect from 1-7-2012 by Finance Act, 2012 providing for making reference by AO to DVO for determination of value of property sold by assessee was not applicable retrospectively [S. 45, 50C, 55A(a)]**

The assessee adopted the value as on 1-4-1981 at Rs.700 per.sq.mtr. The Assessing Officer referred the valuation to the valuation officer who determined the value at Rs.550 per.sq.mtr. based on the departmental valuation the Assessing Officer determined the value as on 1-4-1981 and difference was added as capital gain. CIT (A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that amendment to section 55A(a) inserted with effect from 1-7-2012 by Finance Act, 2012 providing for making reference by Assessing Officer to DVO for determination of value of property sold by assessee was not applicable retrospectively. Reference made by Assessing Officer to DVO under section 55A(a) was invalid and, accordingly, impugned addition made by Assessing Officer was to be deleted. (AY. 2013-14)

Virendra Natwarlal Jariwala. v. DCIT (2021) 191 ITD 555 (Surat)(Trib.)

886 **S. 55A : Capital gains – Reference to valuation officer – Finance Act, 2012, w.e.f 1-7 2012 – Value as on 1-4-1981 – Less than fair market value – Operates prospectively [S.45]**

Allowing the appeal of the assessee the Tribunal held that amendment to section 55A by Finance Act, 2002 w.e.f 1-7-2012, power to make reference to DVO if value adopted by the assessee as on 1-4-1981 is less than FMV operates prospectively. The year under consideration is Assessment year 2011-12 hence the provision is not applicable. Relied on *CIT v. Puja Prints (2014) 224 Taxman 22 (Bom)(HC), CIT v. Gauranginiben S. Shodhan Indl (2014) 224 Taxman 233 (Guj)(HC)*(AY. 2011-12)

Ranchodbhai C. Patel v. ITO (2021) 186 ITD 523 / 123 taxmmann.com 215 (Surat)(Trib.)

S. 56 : Income from other sources – DCF Method – Receipt of consideration for issue of shares in excess of their market value – Valuation of shares – Following the prescribed method – Addition based on estimate is held to be not justified – Deletion of addition is held to be justified [S.56 (2)(viib), 68, R. 11UA(2)(b)] 887

Dismissing the appeal of the revenue the Court held that the shares had not been subscribed to by any sister concern or closely related person, but by outsider investors. The methodology adopted was a recognised method of valuation and the Department was unable to show that the assessee adopted a demonstrably wrong approach, or that the method of valuation was made on a wholly erroneous basis, or that it committed a mistake which went to the root of the valuation process. The deletion of addition by the Tribunal is held to be was justified.(AY.2015-16)

PCIT v. Cinestaan Entertainment Pvt. Ltd. (2021) 433 ITR 82/ 199 DTR 345 / 320 CTR 381 (Delhi)(HC)

Editorial : Order of Tribunal in PCIT v. Cinestaan Entertainment Pvt. Ltd. (2019) 180 DTR 65/ 200 TTJ 459 / 177 ITD 809 (Delhi)(Trib.) affirmed.

S.56 : Income from other sources – Property received without consideration or for consideration less than its fair market value – Issue of bonus shares by capitalization of reserves does not result in inflow of any funds or property and is not assessable under section 56(2)(vii)(c)[S.56 (2)(vii)(c)] 888

Issue of bonus shares by capitalization of reserves is merely reallocation of company's funds. It does not entail outflow of any funds or change the capital structure of the company. The value of the original share goes down and the intrinsic value of the original and the bonus share remains the same. Therefore, there is no transfer of any property. In any event, there was no allegation of intention to evade taxes, which is the object of the provision. For these reasons, section 56(2)(vii)(c) was not applicable.

PCIT v. Dr. Ranjan Pai (2021) 431 ITR 250 / 197 DTR 314 / 318 CTR 603 / 278 Taxman 138 (Karn.)(HC)

S. 56 : Income from other sources – Interest – Short term deposits – Pre-operative period before commencement of business – Assessable as income from other sources. 889

Dismissing the appeal of the revenue the Court held that interest earned by assessee-company on short-term deposits made by it with bank out of loans borrowed for setting-up of commercial complex in pre-operative period before commencement of business was to be considered as income from other sources. (AY. 2009-10)

Express Infrastructures (P.) Ltd. v. Dy. CIT (2021) 276 Taxman 22 (Mad.)(HC)

S.56 : Income from other sources – Individual – Natural living individuals – Donation received by discretionary Trust – Assessable as income from other sources.[S. 2(24)(xv), 2(31)(v), 56(2)(vii)] 890

Court held that no amount had been received from any relative of the individual beneficiary or on account of marriage of the individual beneficiary and the income was received on behalf of the representative assessee. The assessee was a representative assessee as it represented the beneficiaries who were identified individuals and therefore to be assessed as an individual only. Consequently, the contribution of Rs. 25 crores

was to be assessed as income under section 56(1) under the head Income from other sources.(AY.2014-15)
CIT v. Shriram Ownership Trust (2021) 430 ITR 356 / 197 DTR 153 / 318 CTR 233 (Mad.) (HC)

891 **S. 56 : Income from other sources – Issue of right shares to existing share holders at below market value – Issue of shares at bellow fair market value – Addition was deleted [S. 56 (2)(vii)(c)(ii)]**
Held that as the transactions were carried out in the normal course of business, they would not attract the rigours of provisions of section 56(2)(vii). The provisions of section 56(2)(vii) were introduced as an anti-abuse measure and to prevent laundering of unaccounted income under the garb of gifts. There were no such allegations and no case of tax evasion or tax abuse had been made out against the assessee. In fact, the transactions were ordinary transactions of issue of rights shares to existing shareholders in proportion to their existing shareholding and therefore, no case of abuse or tax evasion could be made out against the assessee. Order of CIT (A) deleting the addition was affirmed. (AY.2014-15)
ITO v. Rajeev Ratanlal Tulshyan (2021) 92 ITR 332 / (2022) 193 ITD 860 (Mum.)(Trib.)

892 **S. 56 : Income from other sources – Bonus shares – Fair market value of the bonus shares computed as per Rule 11U and IIUA of the Income -tax Rules cannot be assessed as income from other sources [S.56(2)(vii)(c)]**
Dismissing the appeal of the revenue the Court held that section 56(2)(vii) of the Act contemplates two contingencies, firstly, where the property is received without consideration and secondly, where it is received for consideration less than fair market value. The issue of bonus shares by the capitalization of reserves is merely a reallocation of companies funds. There is no inflow of fresh funds or increase in the capital employed, which remains the same. In substance, when a share holder gets bonus shares, the value of original shares held by him goes down and the market value as well as intrinsic value of two shares put together will be the same as per the value of original share before issue of bonus shares. The Court was of the view that any profit derived by the assessee on account of receipt of bonus shares is adjusted by the depreciation in the value of equity shares held by him. Court also held that in the instant case, there was no material on record to infer that bonus shares have been transferred to evade tax. Accordingly the Court held that Tribunal rightly held that when there is an issue of bonus shares the money remains with the company and nothing comes to the shareholders as there is no transfer of the property and the provisions of section 56(2) (vii)(c) of the Act are not attracted. Appeal of the revenue was dismissed. (ITA No. 501 of 2016 dt 15-2-2020)
PCIT v. Dr. Ranjan Pai (2021) The Chamber's Journal – February – P. 1

893 **S. 56: Income from other sources – Money kept in capital reserve account was invested in shares – Entire transactions were only in capital field no incidence of tax.[S. 2(47, 45(3), 45(4), 56(2)(viia), 186]**
The Assessee was a partnership firm belonging to Shriram Group and held 100% shares in a group company Novus. Piramal Enterprises Ltd decided to acquire 20% stake in

group company Shriram Capital Ltd ('SCL'). However, since SCL could not allot shares to outsider directly due to restrictions from private equity investors, it decided to do so by joining assessee as a partner and infusing capital which was partly kept in capital reserve. The said money was utilized to make investment in the shares of Novus who inturn invested in shares of SCL and later got merged with SCL. As a result, SCL allotted shares to assessee.

The AO held that Shriram group as a whole should have paid tax on the consideration received and the entire transaction was devised in order to avoid the tax liability and the same should be taxable under section 56(1) or section 56(2)(viia) of the Act.

On assesses appeal the Ld. CIT(A) deleted the addition by holding that the capital reserves are created from capital receipts meant for capital investments and/or large anticipated expenses. As there was no income, section 56(1) is not applicable. The process adopted in assesses case was strategic and systematic investment by one industrial group in another group to synergise their mutual strengths and no colourable devise/tax planning was done.

The Hon'ble Tribunal held that assessee firm even though had acted as an intermediate entity, it could not be construed as a conduit between the group companies and the whole transactions were to be understood in a holistic manner and could not be construed as a colorable device or a sham transaction. Accordingly, Hon'ble Tribunal held that the transaction was capital in nature and no addition under section 56(1) can be made. Further, since it is not the case of the AO that the money received is without any consideration or inadequate consideration, addition under section 56(2)(viia) could not be made. (AY. 2014-15, 2015-16)

ITO v. Shrilekha Business Consultancy Pvt. Ltd. (2021) 210 TTJ 34 / 202 DTR 361 (Hyd.) (Trib.)

S. 56: Income from other sources – Not applicable where the sum has been received from non-resident – Addition was deleted. [S. 56(2)(viib), 68, Companies Act, 2013, S. 102] 894

The Hon'ble Tribunal held that looking at the provisions u/s. 56 (2) (viib), it clearly applies to the resident and not to a sum received from a non-resident. Further looking at the various evidence produced by the Assessee, evidence obtained by the learned AO in terms of article 26 of the DTAA, the Tribunal held to not have found an iota of doubt about the creditworthiness and genuineness of the about transaction of allotment of compulsorily convertible redeemable shares resulting into allotment of shares from K start LLC of Mauritius. (AY. 2016-17)

Usekiwi Infolabs (P.) Limited v. ITO (2021) 209 TTJ 59 / 197 DTR 66 (Delhi)(Trib.)

S.56 : Income from other source – When the Assessee has adopted DCF method, one of the methods prescribed by the Act to determine fair value, then the AO cannot discard the same and adopt other method – The matter was restored back to the file of AO for afresh decision. [S.56 (2)(vii)(b), R. 11UA] 895

The Hon'ble Tribunal held that the AO could scrutinize the valuation report and if the AO is not satisfied with the explanation of the Assessee, he has to record the reasons and basis for not accepting the valuation report submitted by the Assessee and only

thereafter, he can go for own valuation or to obtain the fresh valuation report from an independent valuer and confront the same to the Assessee. But the basis has to be DCF method, and he cannot change the method of valuation which has been opted by the Assessee. For scrutinizing the valuation report, the facts, and data available on the date of valuation only has to be considered and actual result of future cannot be a basis to decide about reliability of the projections. The primary onus to prove the correctness of the valuation Report is on the Assessee as he has special knowledge, and he is privy to the facts of the company and only he has opted for this method. The matter is thus restored back to the file of the AO for a fresh decision with directions as above stated. (AY. 2014-15)

TSI Yatra (P.) Ltd v. ACIT (2021) 209 TTJ 596 (Delhi)(Trib.)

896 **S. 56 : Income from other sources – Transferable Development Rights (TDR) – Shown as stock in trade – Deemed consideration – Provision of section 50C is not applicable – Deemed consideration cannot be assessed as per section 56(2)(vii (b)) of the Act [S. 50C, (2)(vii)(b), 269UA]**

The Assessee purchased the Transfer of Development rights (TDR). The stamp duty payable was higher than the actual consideration paid by the assessee. The Assessing Officer treated the difference as deemed consideration liable to taxed as per provisions of section 56(2)(vii)(b) of the Act which was affirmed by the CIT (A). On appeal the Tribunal held that the capital asset transferred is Development rights in the land and not the land itself. After comparing the provision of section 50C and 269UA, the Tribunal held that the provision of section 50C cannot be invoked. Addition was deleted. (AY. 2014-15)

Sawmya Sathyan (Smt) v. ITO (2021) 211 TTJ 101 (Bang.)(Trib.)

897 **S. 56 : Income from other sources – Acquisition of Agricultural land – Interest on enhanced compensation – Capital receipt – Not chargeable to tax [S. 4, 56(2)(viii), 57(iv)]**

Held that interest on enhanced compensation for acquisition of agricultural land is a capital receipt and not chargeable to tax. Followed, *UOI v. Hari Singh* (C.A. No. 15041/2017 dt 15-9-2017)(SC). (dt. 12-4-2021)(AY. 2014-15)

Narinder Kumar v. ITO (2021) BCAJ-June – P. 27 (Delhi)(Trib.)

898 **S. 56 : Income from other sources – Share premium – Share premium cannot be assessed as revenue receipt. [S. 56(1), 68]**

Dismissing the appeal of the revenue the Tribunal held that share premium cannot be assessed as revenue receipt. Followed *Credit Suisse Business Analysis (India)(P) Ltd v. ACIT (2016) 72 taxmann.com 131 (Mum.)(Trib.) CIT v. Green Infra Ltd (2017) 392 ITR 7 (Bom)(HC).* Order in *Cornerstone Property Investment Pvt Ltd v. ITO* (ITA No. 665/ Bang/ 217 dt. 9-2-2018 was distinguished on the ground that the addition was made u/s 68 by doubting the genuineness. (AY. 2011-12)

ACIT v. Covestro India (P.) Ltd. (2021) 129 taxmann.com 50 (Mum.)(Trib.)

S. 56 : Income from other sources – Purchase of immovable property – Agreement value and stamp valuation was less than 10 per cent – Addition is held to be not justified – Amendment made in section 50C(1) by inserting third proviso by Finance Act, 2018, with effect from 1-4-2019 is curative in nature and same would apply retrospectively. [S. 50C (1), 56(2)(vii)(b)] 899

The assessee purchased four immovable properties. Assessing Officer held that value of properties declared by assessee in sale agreement was lesser than Stamp Duty Value (SDV) of said properties and difference was added by applying the provision of section 56(2)(vii)(b) of the Act. On appeal the Tribunal held that since difference between agreement value and SDV of properties was less than 10 per cent, no addition can be made. Tribunal held that the Amendment made in section 50C(1) by inserting third proviso by Finance Act, 2018, with effect from 1-4-2019 is curative in nature and same would apply retrospectively.(AY. 2015-16)

Joseph Mudaliar v. DCIT (2021) 191 ITD 719 (Mum.)(Trib.)

S. 56 : Income from other sources – Share premium – Discounted Cash Flow (DCF) – Net valuation method (NAV) – Applicable in the assessment year 2013-14 – Addition was set aside. [S. 56(2)(viib)] 900

Assessee issued shares at premium and accordingly followed Discounted Cash Flow (DCF) method for valuation of share premium. Assessing Officer applied Net Asset Value (NAV) method and made addition. On appeal the Tribunal held that DCF method could be applied for valuation of shares during relevant previous year as same was recognized under section 56(2)(viib) which was introduced by Finance Act, 2012 and applicable in current assessment year 2013-14. Addition was set aside. Remanded to the Assessing Officer for decision afresh. (AY. 2013-14)

UKN Hospitality (P.) Ltd. v. ITO (2021) 191 ITD 566 (Bang.)(Trib.)

S. 56 : Income from other sources – Share premium – Business of trading – Discounted cash flow method (DCF) – Net asset value (NAV) method – Assessing Officer cannot adopt different method – Addition was deleted.[S. 56(2)(viib), Rule, 11UA] 901

Assessee-company engaged in business of trading had issued equity shares at premium to different individuals and valued shares adopting discounted cash flow (DCF) method. Assessing Officer rejected assessee's valuation report on ground that no projection in working was made and proceeded to value shares as per net asset value (NAV) method and made addition of excess of fair market value computed under section 56(2)(viib) of the Act. On appeal the Tribunal held that the Assessing Officer cannot adopt different method to determine value of shares. Addition was set aside. (AY. 2016-17)

Town Essential (P.) Ltd. v. CIT (2021) 191 ITD 55 (Bang.)(Trib.)

S. 56 : Income from other sources – Share capital and share premium – Additional evidence – Matter remanded.[S. 56(2)(viib), Rule 11UA] 902

Held that full relevant details, arguments and case law decisions produced by assessee before Tribunal were not produced before Assessing Officer and Commissioner (Appeals). In interest of justice, matter was to be remanded to file of Assessing Officer with a direction to grant one more opportunity to assessee to substantiate its case. (AY. 2014-15)

High Wings Construction (P.) Ltd. v. ITO (2021) 190 ITD 673 (Delhi)(Trib.)

903 **S. 56 : Income from other sources – Method of valuation of shares – Discount Cash Flow method (DCF) – Method of valuation of shares adopted by assessee could be challenged by Assessing Officer only if it was not a recognized method of valuation as per rule 11UA(2) -Matter remanded. [S.56(2)(viib), R. 11UA(2)]**
Held that when the assessee company determined Fair Market Value of shares issued at premium on basis of Discount Cash Flow method in accordance with rule 11UA(2) (b) and had also filed valuation report of share duly certified by Chartered Accountant, the Assessing Officer/CIT (Appeals) was not justified in changing method of valuation of shares at premium on basis of book value of share. Matter remanded. (AY. 2014-15)
Him Agri Fesh (P.) Ltd. v. ITO (2021) 190 ITD 429 / 90 ITR 95 (Amritsar)(Trib.)

904 **S. 56 : Income from other sources – Purchase of property – Part payment was made by cheque next day – Agreement and registration was done after one year – Addition was held to be not justified when the provision was not in exist when the agreement was entered in to. [S. 56(2)(vii)(b)]**
Allowing the appeal the Tribunal held that when a part payment was made on execution of agreement i.e. 20-7-2012 and agreement was registered on 28-5-2013, the addition made on the basis of stamp valuation of registered agreement was held to be not justified. The provision amending the section 56(vii)(2)(b) was introduced by the Finance Act, 2013 w.e.f 1-4-2004. (AY. 2014-15)
Ashutosh Jha. v. ITO (2021) 190 ITD 450 (SMC)(Kol.)(Trib.)

905 **S. 56 : Income from other sources – Amount received as grant from holding company for paying remuneration to directors beyond limits prescribed by Companies Act – Payment was claimed as deduction – Amount received was taxable as income from other sources.[S.37 (1)]**
Tribunal held that remuneration paid to directors which are beyond limits prescribed under the Companies Act, was claimed as business expenditure. Grants received from the holding company for paying remuneration to directors was rightly assessed by the Assessing Officer as income from other sources.(AY. 2013-14)
DCIT v. GBTL Ltd. (2021) 189 ITD 704 / 189 ITD 704/ 203 DTR 353 (Mum.)(Trib.)

906 **S. 56 : Income from other sources – Agricultural income – False documents – Justified in treating alleged agricultural income as income from other sources. [S. 2(IA)]**
Tribunal held that since assessee himself had declared as agricultural income and not able to substantiate, the Assessing Officer was justified in assessing the income as income from other sources (AY. 2010-11, 2011-12, 2013-14 to 2015-16)
Talluri Vijay Rahul v. ITO (2021) 189 ITD 221 (Hyd)(Trib.)

907 **S. 56 : Income from other sources – Share premium – Amalgamation – Issue of shares in pursuance of scheme of amalgamation legally recognized in Court of Law does not fall within scope of section 56(2)(viib) of the Act. [S. 56(2)(viib)]**
Tribunal held that issue of shares at face value by amalgamated company to shareholders of amalgamating company in pursuance of scheme of amalgamation legally recognized in Court of Law does not fall within scope of section 56(2)(viib) of the Act (AY. 2013-14)
DCIT v. Ozone India Ltd. (2021) 189 ITD 476 / 211 TTJ 477/ 203 DTR 161 (Ahd.)(Trib.)

S. 56 : Income from other sources – Interest income – Pre-operative expenses – Income required to be capitalised and to be set off against the pre-operative expenses. [S.4] 908
Tribunal held that since the work of construction of the power plant was under progress, interest incomes are also inextricably linked with the setting up of the power plant and such incomes have gone on to reduce the expenses for setting up of the plant and as there was no surplus funds available with the appellant company, therefore, such income is required to be capitalized to be set off against the pre-operative expenses. The A.O. is not justified in adding the sum of Rs. 1,75,74,129/- as income from other source u/s 56. These receipts are inextricably linked with the setting up of the capital structure of the assessee - company. They must, therefore, be viewed as capital receipts going to reduce the cost of construction. (AY. 2013-14)
ITO v. Nabinagar Power Generating Co. Pvt. Ltd. (2021) 88 ITR 5 (SN)(Delhi)(Trib.)

S. 56 : Income from other sources – Shares issued at premium – Valuation report from Chartered Engineer – Report was not filed at the time of original assessment proceedings however the report was filed before Commissioner (Appeals) – Addition was held to be not justified. [S. 56 (2)(viib) Rule, 11UA] 909
Held that the assessee has filed valuation report to substantiate fair market value of shares as on the date of issue and such valuation report is based on assets of the company, assessee has satisfied conditions prescribed under Explanation (a)(ii) to section 56(2)(viib) and in such situation, there is no scope for the Assessing Officer to invoke provisions of section 56(2)(viib) to tax share premium collected on issue of shares. The Commissioner (Appeals) without appreciating these facts has simply confirmed additions made by Assessing Officer. Hence, the Assessing Officer is directed to delete additions made towards share premium on issue of shares under section 56(2)(viib). Addition was held to be not justified. (AY. 2013-14)
Sri Sakthi Textiles Ltd. v. DCIT (2021) 188 ITD 946 / 212 TTJ 917 / 204 DTR 220 (Chennai)(Trib.)

S. 56 : Income from other sources – Shares at premium – Valuation was done as per the certificate of the Chartered Accountant – Addition was held to be not justified [S.56 (2)(viib), R. 11UA] 910
Held that the no fault was found in method applied by assessee as per the valuation report of the chartered Accountant. Addition was deleted (AY. 2015-16)
Mantram Commodities (P.) Ltd. v. ITO (2021) 188 ITD 687 (Delhi)(Trib.)

S. 56 : Income from other sources – Shares at premium – DCF Method – The Assessing Officer cannot value on Net Asset value (NAV) – Order set aside and remanded to examine the issue afresh. [S. 56(2)(viib), R.11UA] 911
Assessing Officer rejected DCF method of valuation adopted by assessee and determined value of shares on basis of Net Asset value (NAV) method and calculated 3.74 crores as income u/s 56(2)(viib) of the Act. On appeal the Tribunal held that since Assessing Officer had proceeded to determine value of shares by adopting different method without scrutinizing valuation report furnished by assessee under DCF method, impugned order passed by him was to be set aside and matter was to be remanded back to him with direction to examine said issue afresh. (AY. 2016-17)
Innaccel Technologies (P.) Ltd. v. ACIT (2021) 187 ITD 441 (Bang.)(Trib.)

912 **S. 56 : Income from other sources – Agricultural land purchased situated outside 8 km of municipal area is not a capital asset – Addition is not justified [S. 2(14), 56(2)(vii)(b)]**

Assessing Officer added the difference between the purchase price of Agricultural Land and the DLC value as Income from other sources in terms of section 56(2)(vii)(b).

Tribunal held that immovable property being land or building or both should be capital asset for applying S. 56(2)(vii)(b). The clause (iii) of S. 2(14) specifically excludes agricultural land which are outside 8 km of the municipal limit and are not to be held as a capital asset, the addition made was thus deleted as provisions of section 56(2)(vii)(b) are not applicable. (AY. 2015-16, 2016-17)

Yogesh Maheshwari v. DCIT (2021) 187 ITD 618 (Jaipur)(Trib.)

913 **S.56: Income from other sources – Large share premium – Unquoted Equity Shares Discounted Free Cash Flow Method – Addition is not sustainable [S. 56(2)(viib), R.11UA]**

The Tribunal held that the assessee can value the shares for determining its fair market value of unquoted equity shares either at the book value of the assets as per the prescribed formula or as per the discounted free cash flow method. The discounted free cash flow method was one of the acceptable methods under rule 11UA of the Income-tax Rules, 1962 and the Commissioner (Appeals) did not find any fault in it. The Assessing Officer was also supplied with the evidence and did not comment against it. Unless the valuation made by the assessee applying the discounted cash flow method was found fault with by pointing out deficiencies and inadequacies, it could not be rejected at the threshold. Therefore, the addition of Rs. 34,05,360 made under section 56(2)(viib) was not sustainable.(AY.2014-15)

Spooner Industries P. Ltd. v. ITO (2021) 85 ITR 44 (SN)(Delhi)(Trib.)

914 **S.56: Income from other sources – Interest income – Deposits with banks – Assessable as income from other sources [S.28(i)]**

Tribunal held that the assessee had failed to demonstrate the business compulsion for making deposits with banks. Accordingly, the interest income was assessable under the head Income from other sources. (AY. 2012-13, 2013-14, 2014-15).

Bengal Shriram Hitech City Pvt. Ltd. v. ACIT (2021) 86 ITR 719 (Bang.)(Trib.)

915 **S.56 : Income from other sources – Excess over Fair market Value of Shares – Deemed income – Not applicable – shares issued under a scheme of Amalgamation.[S.56 (2)(viib)]**

In the course of assessment proceedings the AO observed that one M/s. Kalavir Estate Pvt. Ltd. (KEPL) amalgamated with the assessee company under the scheme of amalgamation. The AO held that assessee has received excess net asset worth Rs. 39,21,16,156/- on account of amalgamation which was credited by it as capital reserve of the amalgamated company. In the opinion of the AO, the excess value of assets so received by assessee company was liable for taxation in the hands of the assessee being excess consideration for issue of its share. CIT (A) affirmed the order of the AO.On appeal the Tribunal held that the issue of shares at 'face value' by the amalgamated

company (assessee) to the shareholders of amalgamating company in pursuance of scheme of amalgamation legally recognized in the Court of Law neither falls with scope & ambit of clause (viib) to section 56(2) of the Act, when tested on the touchstone of objects and purpose of such insertion (Memorandum Explaining Finance Bill, 2012 and CBDT Circular No. 3 of 2012 dated June 12, 2012) i.e. to deem unjustified premiums charged on issue of shares as taxable income; nor does it fall in its sweep when such deeming clause is subjected to interpretative process having regard to the scheme of the Act. (ITA. Nos. 2081/Ahd/2018 dt 13-4-2021)(AY. 2013-14)
DCIT v. Ozone India Ltd. (Ahd)(Trib.) www.itatonline.org

S. 56 : Income from other sources – Award received in recognition of services to Indian Cricket From BCCI is exempt [S. 12AA,56(2))(vii)] 916
The assessee is a former Indian Cricketer received an award of Rs 75.09 lakhs from BCCI in recognition of his service to Indian Cricket. The assessee claimed the said amount as exempt relying on CBDT Circular No 447 dt 22-1 1986(1986) 157 ITR 52 (St). However the AO relying on Circular No 2 of 2014(2014) 361 ITR 63 (St) held that the said amount is taxable. Order of the AO is affirmed by the CIT (A). On appeal the Tribunal relying on second proviso to section 56 (2) (vii) held that BCCI is registered under section 12AA of the Act hence the amount received is not liable to be taxed. (ITA. No. 6954/ Del/ 2019 dt 6- 1-2021) (AY. 2013-14)
Maninder Singh v. ACIT (2021) BCAJ-February -P.47 (Delhi)(Trib.)

S. 56 : Income from other sources – Land acquisition – Interest on compensation exempt under section 96 of the Act – Not taxable under section 56(2)(vii) of the Act. [10(37). 56(2)(viii), 145A(b), RFCTLAAR Act, 2013, S. 96] 917
Dismissing the appeal of the revenue Tribunal held that after the new Land Acquisition Act, 2013, the law has been changed and any compensation or enhanced compensation including interest if any, is completely exempt from Income-tax by virtue of section 96 of RFCTLARR Act 2013. By overriding nature of the new Land Acquisition Act, 2013, the provisions of Income-tax if any which deals with taxability of compensation or interest if any received by an assessee for compulsory acquisition of land becomes redundant and has no application. Order of CIT(A) is affirmed. (AY. 2016-17)
ACIT v. SV Global Mill Ltd (2021) 61 CCH 0466/ 213 TTJ 232 (Chennai)(Trib.)

S. 56 : Income from other sources – Valuation of shares – DCF method – Assessing Officer cannot change the valuation under net asset value – Order of CIT(A) deleting the addition was affirmed [S. 56(2)(viib), R. 11UA] 918
Affirming the order of the CIT(A) the Tribunal held that the when the assessee followed the valuation of shares as per DCF method, the Assessing Officer cannot change the valuation under net asset value. Excess premium assessed under section 56(2)(viib) was rightly deleted by the CIT(A) (AY. 2015-16)
Dy.CIT v. Avigna Housing (P) Ltd (2021) 209 TTJ 9 (UO)(Chennai)(Trib.)

919 **S. 56 : Income from other sources – Assessing Officer cannot ignore valuation report – Addition on presumptions and surmises – Addition was deleted [S. 56(2) (viib), R. 11UA]**

The assessee had valued its shares according to the valuation certificate issued by a chartered accountant showing the issue of shares at fair market value and their computation in accordance with rule 11UA(a). However, this was rejected by the Assessing Officer ignoring the various assets shown by the assessee in the balance-sheet such as cash and cash equivalent, and short-term loans and advances. The Assessing Officer did not apply the formula provided in rule 11UA nor made any attempt to compute the value of shares in accordance with that rule. Moreover, he found no fault in the method applied by the assessee and made the addition purely on presumptions and surmises. Such action of the lower authorities was unsustainable. The order of the Commissioner (Appeals) was set aside and the Assessing Officer was directed to delete the addition. (AY.2015-16)

Brash Steels Pvt. Ltd. v. ITO (2021) 91 ITR 19 (Delhi)(Trib.)

920 **S. 57 : Income from other sources – Deductions – AO is not justified in disallowing claim for deduction u/s 57(iii) for interest paid when Assessee given names of lenders, loans were availed through banking channels and interest paid was allowed as deduction from year to year – Matter remanded to AO.[S.57(iii)]**

Allowing the appeal, the High Court observed that:

1) Since loans were availed through proper banking channels and interest amounts were paid to lenders who had disclosed same in their respective tax returns and tax was remitted by them on such interest income; and
2) It may be true that the earlier assessments stood concluded upon intimation being issued under section 143(1) of the Act and in none of the years, there was an assessment u/s 143(3), however, the assessments for the previous years had not been disturbed by the Revenue (either u/s 143(3) or reopening u/s 148). Therefore, the assessments could not have been brushed aside and an attempt ought to have been made to examine the genuineness of the stand. Hence, impugned disallowance was unjustified and matter was to be remanded. [TCA No.744 of 2019, dt. 05-10-2020] (AY. 2011-12)

Rajendra Kumar Jain v. ITO (2020) 120 taxmann.com 293 / (2021) 277 Taxman 236 (Mad.)(HC)

921 **S. 57 : Income from other sources – Deductions – Investment in firm – Dispute – Arbitral award – Interest was held to be allowable as deduction.[S.56, 57(iii)]**

Held that investment made by assessee in firm, to that extent remained in existence, though in a different form in the form of flats because of compulsion of a binding arbitration award rather than choice of assessee. Interest paid was held to be allowable as deduction. (AY. 2015-16)

Ashok Raitlal Miyani v. ITO (2021) 191 ITD 734 (SMC)(Mum.)(Trib.)

S. 57 : Income from other sources – Deductions – Interest – Chartered Accountant – Borrowing sum from firm in which he was partner paying interest and advancing sum to unrelated party at lower interest – Assessing Officer disallowing difference between interest earned and interest paid – Order is affirmed. [S.56, 57(iii))] 922

The assessee was a practising chartered accountant who had borrowed the money from his firm for the purposes of his profession at a higher rate of interest and lent it at a lower rate of interest. Tribunal held that borrowing money at a higher rate of interest from a related party and lending it at lower rate of interest to an unrelated party defied all commercial prudence expected from a chartered accountant. The Assessing Officer should have disallowed the entire interest claimed by the assessee. The findings of the Commissioner (Appeals) did not call for interference(AY. 2014-15)

Mukul Gupta v. ITO (2021) 91 ITR 32 (SMC)(SN)(Delhi)(Trib.)

S. 64 : Clubbing of income – Minor child – Interest from firm – Accounting year ended on December 31, 1975 – Income cannot be clubbed for the relevant year. [S.64(1)(iii) 66, 256(1)] 923

The Tribunal held that the share income of the two minor sons of the assessee, which included interest from a firm whose accounting year ended on December 31, 1975, was assessable in the hands of the assessee, their father, in the assessment year 1976-77 under section 64(1)(iii), as amended by the Taxation Laws (Amendment) Act, 1975, with effect from April 1, 1976 when the accounting year of the firm ended on December 31, 1975. On a reference the Court held that the share income including the component of interest of the two minor sons from the firm, would not be assessable in the hands of their father, the assessee in the assessment year 1976-77 under section 64(1)(iii) since the amendment making such income taxable in the hands of their father, came into effect from April 1, 1976, the period prior to the accounting year ending on December 31, 1975.(AY.1976-77)

Alok Goenka v. CIT (2021) 430 ITR 46 | 277 Taxman 527| 207 DTR 235 (Pat.)(HC)

S. 68 : Cash credits – Agricultural income – Cash deposits – Failure to establish the source – Addition was valid. 924

Dismissing the appeal the Court held that the assessee has failed to produce the documentary evidence to prove cultivation of agricultural produce to justify the cash deposits. Order of Tribunal is affirmed.

Rakesh Kumar Gupta v. CIT (2021)439 ITR 360 (All)(HC)

S. 68 : Cash credits – Share application money – Shell companies – Share holders could not explain their source – Addition is held to be justified. 925

Allowing the appeal of the revenue the Court held that the Assessing Officer clearly brought out as to how so-called investors, who were either shell companies or without any financial capacity, had brought in such monies for purpose of investment. Assessee had not established creditworthiness and genuineness of transaction and thus, failed to discharge primary onus cast upon it. Assessing Officer was justified in making addition under section 68 of the Act. (AY. 2003-04)

CIT v. Midas Golden Distilleries (p) Ltd. (2021) 283 Taxman 395 /(2022) 441 ITR 293 (Mad.)(HC)

926 **S. 68 : Cash credits – Foreign gifts – Gift was not genuine – Deletion was held to be not justified – Service of notice was held to be valid [S.148, 149]**
Allowing the appeal of the revenue the Court held that Tribunal had erred in holding that the gift is genuine, when the Donor Shri Umesh Mehndiratta has given statement before the FERA Authorities that the Gift was not genuine. Court also held that the service of notice was held to be valid. (AY. 1994-95)
CIT v. Bhullan Mal Gupta (2021) 125 taxmann.com 103 (P&H)(HC)
Editorial : Appeal was dismissed as not pressed. Bhullan Mal Gupta (HUF) v. CIT (2021) 278 Taxman 275 (SC.)

927 **S. 68 : Cash credits – Share application money – Primary onus on the assessee-Identity of applicants not established – Addition is held to be justified**
The primary onus to demonstrate the nature and source of the credit is on the assessee. Only when such onus is discharged by the assessee, does it shift to the department. Where the assessee only filed a list of investors, which did not even contain their PAN numbers, it could not be said that the assessee had discharged its onus. (AY. 2006-07)
PCIT v. SRM Systems And Software P. Ltd. (2021) 433 ITR 111 (Mad.)(HC)

928 **S. 68 : Cash credits – Long term capital gains from equities – Penny stock – Tribunal – Duties – Tribunal was not justified in remanding the matter to the Assessing Officer – Order of CIT (A) confirming the addition was affirmed – Order of Tribunal set aside [S. 10(38), 45, 254(1)]**
Assessing Officer after verification found that transaction of purchase of shares by assessee was a sham transaction and that assessee could not discharge onus cast upon her to prove genuineness of transaction by producing documentary evidence and accordingly refused to entertain claim made by assessee under section 10(38) towards sale proceeds and made addition u/s 68 of the Act. On appeal CIT (A) affirmed the order of the Assessing Officer. On appeal the Tribunal without finding an error in approach of Assessing Officer or Commissioner (Appeals) remanded the matter Assessing Officer for a fresh consideration of On appeal by the Revenue the Court held that Tribunal was required to record reasons as to why matter should be remanded and as to why Tribunal could not decide factual issue on available material. Accordingly the Court held that the assessee had not discharged the onus cast upon him to prove the genuineness of the transactions. The assessee had entered into engineered transaction to generate artificial long term capital gains and the Explanation offered by the assessee regarding the credit of Rs. 15,86,250/- in its book was found to be unsatisfactory and therefore, the Assessing Officer held the same as unexplained cash credit which was added to the total income of the assessee as per the provisions of section 68 of the Act and assessed under the head Income from other sources. Order of Tribunal set aside and order of CIT (A) is restored. (AY. 2012-13)
CIT v. Manish D. Jain (HUF)(Mrs.)(2021) 277 Taxman 604 (Mad.)(HC)

929 **S. 68 : Cash credits – Purchase of scrap – Recalling the order is held to be justified – Deletion of addition is held to be justified [S.133(6), 254 (2)]**
Assessee purchased scraps from two sundry creditors/sellers. Notice issued u/s 133 (6) of the Act to the sellers was returned un served. The Assessing Officer treated

the purchases as cash credits. The Tribunal up held the addition. On miscellaneous application considering the TIN number, PAN number, invoices, etc. to prove their identity and genuineness of transaction which was lost sight hence passed the rectification order allowing the appeal. On appeal by the revenue the Court held there was a justifiable cause for rectification of its earlier order by deleting additions under section 68 of the Act. (AY. 2007-08)
CIT v. Shree Ganesh Ventures (2021) 277 Taxman 416 / 205 DTR 479 (Mad.)(HC)

S. 68 : Cash credits – Bogus purchases – Trading in ferrous and non-ferrous metal – Stock register produced – Deletion of addition is held to be justified – No question of law [S.260A] 930
Assessee was engaged in business of trading in ferrous and non-ferrous metal. The Assessing held that Rs. 66.76 lakhs as non-genuine. CIT (A) deleted the as submitting its stock register showing monthwise purchases and sales and also by submitting confirmations from parties to whom sales had been made along with their VAT registration. Order of CIT (A) was affirmed by the Tribunal. Appeal of the revenue was dismissed by the High Court.(AY. 2011-12)
PCIT v. Sandeep P. Shah (2021) 124 taxmann.com 206 (Guj.)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Sandeep P. Shah (2021) 277 Taxman 395 (SC)

S. 68 : Cash credits – Sale of shares – Identity of creditors and genuineness of transaction proved – Deletion of addition is held to be justified. [S.10(38), 45] 931
Dismissing the appeal of the revenue the Court held that the Tribunal after considering the entire conspectus of the case and the evidence brought on record, held that the assessee had successfully discharged the initial onus cast upon it under the provisions of section 68 of the Income-tax Act, 1961. It had recorded that the shares of the two companies were purchased online, the payments had been made through banking channels, and the shares were dematerialised and the sales had been routed from the dematerlised account and the consideration had been received through banking channels.(AY. 2014-15, 2015-16)
PCIT v. Krishna Devi (Smt.)(2021) 431 ITR 361/ 198 DTR 177/ 319 CTR 168/ 279 Taxman 148 (Delhi)(HC)
PCIT v. Hardev Sahai Gupta (Garg)(2021) 431 ITR 361 / 198 DTR 177/ 319 CTR 168/ 279 Taxman 148 (Delhi)(HC)
PCIT v. Bindu Garg (Smt.)(2021) 431 ITR 361 / 198 DTR 177/ 319 CTR 168 / 279 Taxman 148 (Delhi)(HC)

S. 68: Cash credits – Opening stock accepted in scrutiny – Sales made from opening stock cannot be treated as bogus. [S. 56, 133A] 932
A survey was conducted in the premises of the assessee the AO held that it was a case of money laundering and a false impression had been created that the entire cash deposits in the bank account of the Assessee were purported sale proceeds. The AO also held that the entire cash deposits found in the bank account of the Assessee were, in fact unexplained income and not sale proceeds. It was held that that the quantum

figure and the opening stock which stood accepted in the earlier years had to be taken as actual stock available with the Assessee. In view of these facts, the sales made by the Assessee out of its opening stock cannot be treated as unexplained income, to be taxed as income from other sources.
PCIT v. Akshit Kumar (2021) 197 DTR 121 / 318 CTR 26 / 277 Taxman 423 (Delhi)(HC)

933 **S. 68 : Cash credits – Block assessment – Matter remanded to the CIT (A) to consider unexplained cash credits. [S. 132, 143(3), 147, 158BA, 254(1)]**
Allowing the appeal of the revenue the Court held that the Tribunal had not decided the issue on the merits and ought to have adjudicated the issue with regard to unexplained credits to the tune of Rs. 50,00,000 and Rs. 65,10,000. The Tribunal was not correct in annulling the reassessment made protectively under section 147 for the assessment years 1996-97 and 1997-98 holding them as infructuous and the order passed by the Tribunal was quashed. The matter was remitted to the Commissioner (Appeals) to determine the issue afresh with regard to the unexplained cash credits. (AY.1996-97, 1997-98)
CIT v. H. E. Panduranga (2021) 430 ITR 70 / 277 Taxman 480 (Karn.)(HC)

934 **S. 68 : Cash credits – Burden to establish identity of creditors, genuineness of loan transaction and capacity of lender – Addition is held to be justified. [S.260A]**
Dismissing the appeal of the assessee the Court held that there was a failure on the part of the assessee to produce any confirmation from the creditor AR and produce him in person before the assessing authority for cross examination. The assessee had obviously failed to establish even the identity of the creditor much less the genuineness of the loan transaction. Merely because two other loan transactions, with two other persons were believed to be genuine and the additions were set aside, that was not a sufficient ground to hold that similar treatment should have been given with respect to the loan transaction of AR also. No question of law arose. (AY.2009-10)
C. V. Ravi v. ITO (2021)430 ITR 449 / 279 Taxman 429 (Mad.)(HC)
Editorial : SLP dismissed, C. V. Ravi v. ITO (2021) 281 Taxman 362 (SC)

935 **S. 68 : Cash credits – Long term capital gains – Opportunity of cross examination was not given – Denial of exemption was not justified – Estimate of expenses was also deleted – Additional evidence was admitted. [S. 10(38), 45, 69C, 132(4), ITAT R. 29]**
Held that without giving an opportunity of cross examination exemption on long term cannot be denied. Addition of estimate of expenditure was deleted..(AY.2011-12, 2013-14, 2014-15)
Sanjay Singal v. Dy. CIT (2021) 92 ITR 214 (Chd.)(Trib.)
Aarti Singal (Smt.) v. Dy. CIT (2021) 92 ITR 214)(Chd.)(Trib.)
Aniket Singhal v. Dy. CIT (2021) 92 ITR 214)(Chd.)(Trib.)
Sanjay Singhal (HUF) v. Dy. CIT (2021) 92 ITR 214)(Chd.)(Trib.)

936 **S. 68 : Cash credits – Penny stock – Long term capital gains – Sale of shares – Broker on SEBI watchlist – Addition was deleted [S. 10(38), 45]**
Allowing the appeal the Tribunal held that the Assessing Officer had not made any adverse comments on the evidence filed by the assessee, but disbelieved it only because

the broker was under the SEBI watchlist for fraudulent and unfair trade practices relating to securities markets. There was no evidence for such a conclusion, which was purely based on suspicion and surmises. Without sufficient evidence, the transaction of sale and purchase of shares through a recognised stock exchange could not be treated as unexplained cash credit under section 68. Addition was directed to be deleted.(AY.2012-13, 2013-14)
Neeta Bothra (Mrs.) v. ITO (2021) 92 ITR 450 (Chennai)(Trib.)

S. 68 : Cash credits – Share capital and share premium – Books of account not produced – Matter remanded before CIT(A) 937
Held that the CIT(A) without verifying the credit entry in the books of the assessee, had deleted the addition merely on the basis of the bank statement of other persons. The matter was to be remanded to the CIT(A) with a direction to examine the matter afresh and find out whether the shares were issued at a premium and if, the answer is yes, whether the amount for issuance of shares were credited in the books of account of the assessee-company for issuing the shares. If the shares were issued and the amounts were received and credited by the assessee-company in earlier years, the addition may be deleted. However, if, the Assessing Officer on factual verification concluded that the amounts were credited in the year under consideration, then onus lay on the assessee to show the identity and creditworthiness of the depositors and genuineness of transactions to the satisfaction of the CIT(A) (AY.2007-08)
ACIT v. P. G. Holiday Inn Pvt. Ltd. (2021) 92 ITR 55 (SN) (Mum.)(Trib.)

S. 68 : Cash credits – Creditors withdrawing and depositing in the bank account of the assessee – Addition cannot be made as cash credits. 938
Held that the assessee has filed the details of the cheque number, address and permanent account numbers, including confirmation letters from loan creditors which matched the credit in the bank account of the assessee on February 28, 2008. Addition is held to be not valid.(AY.2008-09)
Erode Annai Spinning Mills P. Ltd. v. Dy. CIT (2021) 92 ITR 37 (SN)(Chennai)(Trib.)

S. 68 : Cash credits – Creditors – Confirmation and ledger copy was produced – Outstanding balance was written back and offered as income in latter years – Addition was deleted. 939
Held that the assessee has produced the confirmation and ledger copy. Outstanding balance was written back and offered as income in latter years. Addition was deleted. (AY. 2011-12)
Carlson Hospitality Marketing (India) Pvt Ltd v. Dy.CIT (2021) 92 ITR 27 (SN)(Delhi)(Trib.)

S. 68 : Cash credits – Creditors for purchases – Sales made accepted – Payment made in subsequent year was accepted – Books of account not rejected – Addition cannot me made merely because there was increase in creditors. 940
Allowing the appeal the Tribunal held that, sales made accepted Payment which was made in subsequent year was accepted, books of account not rejected. Addition cannot me made merely because there was increase in creditors. (AY. 2012-13)
Godwin Construction Pvt Ltd v. ACIT (2021) 92 ITR 17 (SN)(Delhi)(Trib.)

941 **S. 68 : Cash credits – Share capital and share premium – No cash was deposited – Sufficient bank balances – Need not to prove source of the source.**
Held that no cash was deposited, sufficient bank balances and the assesseee need not prove source of the source for the Assessment years prior to 1-4-2013.(AY. 2008-09, 2009-10)
ACIT v. Sur Buildcon Pvt. Ltd (2021) 90 ITR 300 (Delhi)(Trib.)
ACIT v. BBN Transportation Pvt. Ltd (2021) 90 ITR 300 (Delhi)(Trib.)
ACIT v. Goldstar Cement Pvt. Ltd. (2021) 90 ITR 300 (Delhi)(Trib.)

942 **S. 68 : Cash credits – Books of account – Survey – Diary, notebook and data of deleted entries retrieved from computer central processing unit – Not books of account – Addition cannot be made without any corroborative evidence – Presumption u/s 292C is rebuttable [S.2(12A), 69, 69A, 69C, 133A, 292C]**
Tribunal held that, diary, notebook and data of deleted entries retrieved from computer central processing unit are not books of account. Addition cannot be made without any corroborative evidence. Presumption u/s 292C is rebuttable. (AY.2011-12 to 2016-17)
Dy.CIT v. GSNR Rice Industries Pvt. Ltd (2021) 90 ITR 114 / 213 TTJ 17 (Chennai)(Trib.)
Dy. CIT v. Kanakkilianallur Narayana Reddiyar Manivannan (2021)90 ITR 114/ 213 TTJ 17 (Chennai)(Trib.)
Dy. CIT v. Kanakkilianallur Narayana Nehru (2021) 90 ITR 114/ 213 TTJ 17 (Chennai) (Trib.)

943 **S. 68 : Cash credits – No evidence was produced – Addition is held to be justified – Disallowance of agricultural income was also up held.**
Held that failure to produce the evidence addition as cash credits and disallowance of agricultural income was affirmed. (AY. 2009-10)
Balasahev Vyankat Gaikwad v. ACIT (2021)90 ITR 66 (SN)(Pune)(Trib.)

944 **S. 68: Cash credits – Confirmation was filed – Identity, creditworthiness and genuineness of transaction was established – Addition was held to be not justified [S. 133(6)]**
Held that during the remand proceedings the assessee had furnished the complete addresses with the permanent account number details of sundry creditors. During the assessment proceedings the confirmations under section 133(6) were received directly from the creditors along with the details of their Income-tax returns from the respective wards of the Department. Thus, the identities, creditworthiness and genuineness of the creditors was established and filed. Addition was held to be not justified. (AY. 2007-08)
Swarn Gems P. Ltd. v. ITO (2021)90 ITR 14 (SN)(Delhi)(Trib.)

945 **S. 68 : Cash credits – Loose sheets and data retrieved from mobile phones are not books of account – It may be assessed as business receipts and not as cash credits [S. 2(12A)]**
Held that loose sheets and data retrieved from mobile phones could not be brought within the scope of the definition of books or books of account as defined in section 2(12A) of the Act to be considered books of an assessee maintained for any previous

year. Therefore, no addition in respect of notings therein as regards on-money received by the assessee could have been made under section 68 of the Act. Since the notings indicated on-money received by the assessee on sale of flats and shops in the building projects undertaken by the assessee, the sum was liable to be assessed as a "business receipt" and not as income under section 68 of the Act. Relied *CIT v. Bhaichand H. Gandhi (1983) 141 ITR 67 (Bom)(HC)*(AY.2013-14, 2014-15, 2015-16, 2016-17)
Ekta Housing Pvt. Ltd. v. Dy. CIT (2021) 89 ITR 56 (Mum.)(Trib.)

S. 68 : Cash credits – Share application money – Summons Issued twice returned unserved – Report of inspector that no companies existed at given address – Forfeiture of share application money in immediately succeeding year – Addition is held to be proper. 946
Held that the summons issued twice by the Assessing Officer were returned unserved and the report of the inspector proved that no such companies existed at the address given by the assessee. The assessee did not give any other addresses of the shareholders. The financial position of the share applicants lacked any credence. Even the director of the assessee was not produced. The reason for surrender of the sum by the assessee and forfeiture of the share application money immediately in the succeeding year was not explained. The order of the Commissioner (Appeals) was not sustainable.(AY. 2012-13)
Dy. CIT v. Gogoal Hydro Pvt. Ltd. (2021) 89 ITR 65 (SN)(Delhi)(Trib.)

S. 68 : Cash credits – Loans – Alleged accommodation entries – Opportunity of cross examination was not provided –Summons was not issued – Loans received and repaid by account payee cheques – Tax was deducted at source – Addition was held to be not valid – Interest on said loans are allowable as deduction [S. 36(1)(iii), 133(6)] 947
Held that loans received and repaid by account payee cheques. Tax was deducted at source, summons not issued and opportunity of cross examination was not provided. Addition was held to be not valid. Interest on said loans are allowable as deduction. (AY. 2013-14)
Nisarg Lifespace LLP v. ITO (2021) 89 ITR 22 (SN)(Mum.)(Trib.)

S. 68 : Cash credits – Loan – Revenue has accepted loan as genuine in earlier year – News reports in public domain stated that enforcement Directorate stated net worth of party was more than Rs. 1,000 Crores – Addition is held to be not valid. [S. 153A] 948
Held that Revenue has accepted loan as genuine in earlier year. News reports in public domain stated that enforcement Directorate stated net worth of party was more than Rs. 1,000 Crores. Addition is held to be not valid.(AY. 2012-13)
Rajesh Katyal v. Dy. CIT (2021) 89 ITR 71 (SN)(Delhi)(Trib.)

S. 68 : Cash credits – Share application money – All 16 Investor companies replied to notice u/s 133(6) of the Act – Managing Director was not produced due to ill health – Matter remanded to the Assessing Officer- Order passed by the CIT(A) was cryptic and not speaking order – Order was set aside. [S. 131(1(d), 133(6), 250] 949
Held that Managing Director was not produced due to ill health. Matter remanded to the Assessing Office. Order passed by the CIT(A) was cryptic and not speaking order,order was set aside. (AY. 2014-15)
Shivam Securities Pvt. Ltd. v. Dy. CIT (2021) 89 ITR 61 (SN)(Kol.)(Trib.)

950 **S. 68 : Cash credits – Rotation of disclosed funds between group entities – Addition cannot be made as cash credits – Proof of creditworthiness was supplied – Addition cannot be made without making further enquiry [S. 133(6)]**

Held that as regards rotation of funds between group entities addition cannot be made as cash credits. The Tribunal also held that when the assessee has filed the proof of creditworthiness of the parties, the addition cannot be made as cash credits without making further enquiry. (AY.2012-13 to 2014-15)

ITO v. Angel Cement Pvt. Ltd. (2021) 88 ITR 616 (Delhi)(Trib.)

951 **S. 68 : Cash credits – Unsecured loan – Confirmation and bank statement was filed – Interest was paid after deduction of tax at source – Addition was held to be not valid [S. 12AA]**

Allowing the appeal the Tribunal held that the assessee has filed confirmation and bank statement, interest was paid after deduction of tax at source. Having common directors or sharing the same address may not be relevant criteria to decide the issue on cash credits. Relied *CIT v. Bharat Engineering and Construction Co. (1972) 83 ITR 187 (SC)* (AY.2010-11)

Society For Institute For Professional Studies v. JCIT (2021)87 ITR 269 (Delhi)(Trib.)

952 **S. 68 : Cash credits – Investment in earlier years – Selling during the year – Addition cannot be made [S. 132]**

Held that when the investment was made in earlier years and sale was made during the year addition cannot be made as cash credits. Followed *CIT v. Kabul Chawla (2016)) 380 ITR 573 (Delhi)(HC)*(AY.2005-06, 2006-07)

USG Buildwell Pvt. Ltd. v. Add. CIT (2021) 87 ITR 151 (Delhi)(Trib.)

953 **S. 68 : Cash credits – Shares allotted – Investment by managing director – Discharged the burden – Addition held to be not valid.**

Held that the assessee discharged the burden by producing bank statement and source of investment. Investment by managing director. Addition is held to be not valid.(AY.2010-11, 2011-12)

TCI Constructions Ltd. v. Dy.CIT (2021) 87 ITR 45 (SN)(Hyd.)(Trib.)

954 **S. 68 : Cash credits – Gold smith – Depositing cash in the Bank – Cash withdrawal – Marriage gifts – one third of deposit was accepted as withdrawal – Remanded for verification.**

Held that the entire procurement of gold ornaments was not only through auction from the bank, but from other customers as well. The assessee had filed before the Tribunal, a copy of the bank account of the assessee and confirmation letters stating that the assessee had paid the loan amount and after release of gold, the gold was sold and the sale consideration was given to the assessee in cash. None of these letters was considered or verified by the Assessing Officer. If the assessee was able to prove the transfer of money from the assessee's bank account to the bank account of the customers and if the gold loans were repaid on the same date, then taking the confirmation from the parties into consideration, the sale consideration of those transactions should be accepted as source for cash deposits. Therefore, this issue was to be remanded to the

Assessing Officer with a direction to verify the bank account of the assessee and of the other parties and reconsider the issue in accordance with law. Similarly, 50 per cent of sum claimed as marriage gifts as against one third of the cash gifts was to be accepted as source for cash deposits (AY.2015-16)
Venkatesh Soutoor v. ITO (2021) 87 ITR 36 (SN)(Hyd.)(Trib.)

S.68 : Cash credits – Unsecured loans – Failure to follow principle of natural justice – Failure to provide an opportunity of cross examination – Addition is held to be not justified. 955
Tribunal held that the merely on the basis of statement without making an independent inquiry and opportunity of cross examination, addition is held to be not justified. *Kishinchand Chhellarm v. CIT (1980) 125 ITR 713 (SC), Andaman Timber Industries v. CCE (2016) 38 GSTR 117 (SC), CIT v. Sunita (Smt) Dhadda (2018) 406 ITR 220 (Raj)*(HC) (AY. 2011-12, 2015-16, 2016-17)
ACIT v. Ariba Foods Pvt. Ltd (2021) 86 ITR 174 (Indore)(Trib.)
ACIT v. Vyanktesh Plastics and Packaging Pvt. Ltd. (2021) 86 ITR 174 (Indore)(Trib.)
ACIT v. Famous Vanijya Pvt. Ltd. (2021) 86 ITR 174 (Indore)(Trib.)

S. 68 : Cash credits – Convertible warrants – Receipts of money over three years – Genuineness of and creditworthiness of transaction was established – Deletion of addition was justified. 956
Dismissing the appeal of the revenue the Tribunal held that the assessee has established genuineness and creditworthiness of transaction, deletion of addition was held to be justified. (AY. 2011-12)
Dy.CIT v. MPS Infotecnics Pvt. Ltd. (2021) 86 ITR 141/ 211 TTJ 230/ 201 DTR 209 (Delhi)(Trib.)

S. 68 : Cash credits – Share application money – Genuineness not established – Addition was justified – Un secured loan – Onus discharged – Addition was not justified.[S. 131] 957
Held that the assessee failed to prove the genuineness of the money received from these two persons, the authorities were justified in making the addition.
As regards loans the initial burden upon the assessee to prove the identity and creditworthiness of the creditors and the genuineness of the transaction stood discharged. The Assessing Officer had not brought any evidence to disbelieve the explanation of the assessee or the documentary evidence on record. Addition was held to be not justified. (AY. 2009-10)
Garima Polymers Pvt. Ltd. v. ACIT (2021) 86 ITR 261 (Delhi)(Trib.)

S. 68 : Cash credits – Loans – Lender companies replied to the Assessing Officer in response to notice received by them and also filed the documents called including balance sheet – Inspectors report stating that lender companies are not traceable – Statement of parties taken in the course of survey was neither given nor given an opportunity of cross examination – No adverse inference can be drawn against the asseesee – Deletion of addition was held to be justified [S.133(6), 133A] 958
Dismissing the appeal of the revenue the Tribunal held that Lender companies replied to the Assessing Officer in response to notice received by them and also filed the

documents called including balance sheet. Statement of parties taken in the course of survey was neither given nor given an opportunity of cross examination. Inspectors report stating that lender companies are not traceable cannot be the basis to draw adverse inference against the asseesee. Deletion of addition was held to be justified. (AY. 2015-16)
ACIT v. Sreeleathers (2021) 86 ITR 7 (SN)(Kol.)(Trib.)

959 **S. 68 : Cash credits – Statement of Mr Praveen Kumar Jain which was retracted – Addition cannot be made on presumptions that the assessee has routed its own cash in the form of unsecured loans. [S. 132]**
Allowing the appeal of the assessee the Tribunal held that addition cannot be made on presumptions that the assessee routed its own cash in the form of unsecured loans, when the statement of Mr Parveen Kumar Jain was retracted. (ITA.No. 629/ Mum/ 2020 dt. 11-6 2021) (AY. 2013-14)
Nisarg Lifespace LLP v. ITO (2021) The Chamber's Journal – August – P. 92 (Mum.)(Trib.)

960 **S. 68 : Cash credits – Regular books of account maintained – Commission income cannot be assessed as unexplained cash credits. [S. 132]**
Held that when the assessee has maintained regular books of account and party-wise purchaser and seller with their address and amount of commission was furnished, commission income shown by the assessee cannot be assessed as cash credits. (AY. 2011-12 to 2013-14)
Amitbhai Manubhai Kachadiya v. DCIT (2021) 191 ITD 759 (Surat)(Trib.)

961 **S. 68 : Cash credits – Bank account – Cash flow statement – Unexplained income – Peak credit – Directed to grant peak credit.**
Tribunal held that assessee filed copies of ownership of land holdings of about fifty bigha of land. No adverse evidence was acquired by Assessing Officer except assuming and presuming deposit in bank account as unexplained income. Tribunal restored the matter to the Assessing Officer to grant benefit of peak credit and grant appropriate relief. (AY. 2011-12)
Renukaben Umedsinh Parmar. (Smt.) v. ITO (2021) 191 ITD 672 / 87 ITR 707 (Surat)(Trib.)

962 **S. 68 : Cash credits – Unsecured loan – Confirmation, financial statements and bank statements of creditors were produced – Addition is held to be not justified.**
Held that when the assessee has produced confirmation, financial statements and bank statements of creditors. Addition is held to be not justified. (AY. 2009-10)
K.P. Manish Global Ingredients (P.) Ltd. v. (2021) 191 ITD 548 / 212 TTJ 375/ 203 DTR 1 (Chennai)(Trib.)

963 **S. 68 : Cash credits – Brought forward creditors from earlier financial year – Addition cannot be made as cash credits for the relevant assessment year.**
Held that credits not received during current financial year but were brought forward from earlier years addition cannot be made as cash credits. (AY. 2014-15)
Ravindra Arunachala Nadar v. ACIT (2021) 191 ITD 520 (Chennai)(Trib.)

S. 68 : Cash credits – Unproved purchases – Reconciliation statement was filed – Custom duties paid – No addition can be made [S. 143(3)] 964
Dismissing the appeal of the revenue, the Tribunal held that the assessee has explained the difference in reconciliation statement due to custom duties paid. Order of CIT(A) deleting the addition was affirmed. (AY. 2010-11)
ACIT v. Nilkanth Concast (P.) Ltd. (2021) 191 ITD 73 (Delhi)(Trib.)

S. 68: Cash credits – Share application and share premium – Received earlier year – Addition cannot be made in the current financial year. 965
Held that share application and share premium which was received earlier year, addition cannot be made in the current financial year. Followed *Ivan Singh v. ACIT (2020) 272 Taxman 36 (Bom)(HC).* (AY. 2009-10)
Geeri Fashion (P.) Ltd. v. ITO (2021) 191 ITD 155 (Surat)(Trib.)

S. 68 : Cash credits – Non-Resident – Remittance from abroad – Money brought in India for investment – Addition cannot be made as cash credits [S. 5] 966
Held that the assessee adduced evidence in form of copies of invoices in support of sale of gold, copies of cheques issued by buyer of gold bar and had also filed confirmation letter from bank that credit appearing in account represented maturity proceeds of FDs. Primary burden was discharged addition was held to be not justified. (AY. 2014-15)
Iqbal Ismail Virani v. ITO (IT)(2021) 191 ITD 316 / 87 ITR 654 / 211 TTJ 913 / 204 DTR 354 (Panaji)(Trib.)

S. 68 : Cash credits – Sundry creditor – Confirmation filed before the CIT(A) was rejected – The addition was deleted. 967
Held that when confirmation filed was wrongly rejected by the CIT(A), the addition was directed to be deleted. (AY. 2013-14)
Mega international (P.) Ltd. v. DCIT (2021) 190 ITD 559 (Delhi)(Trib.)

S. 68 : Cash credits – Share capital and share premium – Copy of bank statements, confirmation of parties copy of ITR along with balance sheet was furnished – Deletion of addition was held to be justified. 968
Held that the assessee had furnished necessary details such as confirmation of parties, copy of ITR and bank statement of parties along with their balance sheet, share certificate, etc. in support of identity and creditworthiness of parties and genuineness of transaction – Further, all transactions were carried out through banking channel. Details filed by assessee were cross verified by revenue from respective parties and no infirmity was pointed out in the same. The order of CIT (A) deleting the addition was affirmed. (AY. 2010-11)
DCIT v. Mahalaxmi TMT (P.) Ltd. (2021) 190 ITD 582 (Pune)(Trib.)

S. 68 : Cash credits – Share capital – Share premium – Share subscriber did not appear for personal attendance – Matter remanded. 969
The assessee contended that Assessing Officer passed assessment order without giving proper opportunity to assessee or to share subscriber companies to comply. Tribunal held that the assessee had filed an affidavit and submitted that it undertook to produce

directors of subscriber companies and also to file all necessary evidence as required by Assessing Officer. Matter was remanded for fresh adjudication. (AY. 2012-13)
Sweet Sales (P.) Ltd. v. ITO (2021) 190 ITD 461 (Kol.)(Trib.)

970 **S. 68 : Cash credits – Share capital at premium-Valuation report – Real estate – Identity, creditworthiness and genuineness of transactions was proved – Addition was held to be unjustified.**
Allowing the appeal the Tribunal held that all shareholders were independent assessees and had confirmed transaction of having made investments in assessee and had also filed their respective bank accounts and had explained nature and source of funds in their bank account out of which share subscription including premium was paid to assessee. The Assessing Officer had not doubted share premium of Rs. 490/ per share as same was supported by valuation report as per Income-tax Rules. Addition was held to be not justified. (AY 2016-17)
Renu Proptech (P.) Ltd. v. ACIT (2021) 190 ITD 378 (Delhi)(Trib.)

971 **S. 68 : Cash credits – Foreign bank account of deceased father – Information from investigation wing – Failure to provide certified copy of bank account and bank statement – Addition was deleted – Remanded with specific direction to provide certified copy of bank statement and nexus with bank deposits. [S. 5(1)), 147, 148]**
Assessee individual was not an ordinary resident. On the basis of information received from Investigation wing that amount deposited in foreign bank account of deceased father of assessee which was received by assessee as his legal heir was undisclosed to IT authorities of India the reassessment notice was issued. In the course of reassessment proceedings the Assessing Officer could not provide nature of entries in said account or how same were related to undisclosed income under provisions of Income-tax Act. The authenticity of alleged bank statement or quantum or nature of deposits therein and its relevance for year under consideration could not be verified. The Assessing Officer has made the addition which was confirmed by the CIT (A). On appeal the Tribunal held that mere discovery of a foreign bank account was not sufficient to thrust tax liability without bringing on record chargeability of same under provisions of Act. Tribunal also held that the Assessing Officer made addition on basis of peak credit in month of January 2006, however, when father of assessee expired on 11-8-2005, it was not understood as to how any credit in January 2006 could be attributed to deceased. Tribunal held that addition made by Assessing Officer on account of balance in bank account in question was unjustified and was set aside. Same was to be set aside. Matter remanded to the Assessing Officer to provide the certified copy of bank statement and also to verify any nexus with bank deposit. (AY. 2006-07, 2007-08)
Karamjit S. Jaiswal v. DCIT (2021) 190 ITD 394 (Delhi)(Trib.)

972 **S. 68 : Cash credits – Gifts – Identity and creditworthiness was established – Addition was held to be not justified.**
Allowing the appeal the Tribunal held that the assessee has discharged the primary onus to establish identity and creditworthiness of concerned donors as well as genuineness of relevant transactions of gifts. Addition was deleted. (AY. 2004-05)
Tapasi Singh (Smt.) v. ITO (2021) 190 ITD 7 (Kol.)(Trib.)

S. 68 : Cash credits – Share capital – Primary onus on assessee – No addition can be made on the basis of allegation, suspicion, conjectures or surmises. 973

Tribunal held that nothing had been brought on record by the Department to substantiate the fact that the assessee's unaccounted money was routed in the books in the garb of share capital. It is trite law that no addition could be made merely on the basis of allegation, suspicion, conjectures or surmises. Upon perusal of these documents, it could be said that the primary onus cast on the assessee in terms of the requirement of section 68, was duly fulfilled and the onus was on the Department to controvert the evidence furnished by the assessee. Nothing had been brought on record by the Department to substantiate the fact that the assessee's unaccounted money was routed in the books in the garb of share capital. (AY. 2010-11)

Bini Builders P. Ltd. v. Dy. CIT (2021) 88 ITR 15 (SN)/ 211 TTJ 869 (Mum.)(Trib.)

S. 68 : Cash credits – Bank deposits – Cash was deposited without the authority – Account was misused by bank personnel – Matter remanded. 974

Tribunal held that the assessee alleged that cash was deposited without the authority and account was misused by bank personnel. Matter remanded to pass a speaking order in accordance with law. (AY. 2011-12)

Ashok Kumar v. ITO (2021) 189 ITD 634 (SMC)(Chd.)(Trib.)

S. 68 : Cash credits – Cash deposit in bank – Survey – Jewellery business – Post-demonetisation – No defects in purchase and sales – Outgo of stock matching with stock – Addition is held to be not valid [S.44AB, 133A] 975

Tribunal held that there was no defect in purchases and sales and same were matching with inflow and outflow of stock. Audit report under section 44AB and financial statements clearly showed reduction of stock position matching with sales which clearly showed that cash generated represented sales. Deletion of addition is held to be justified. (AY. 2017-18)

ACIT v. Hirapanna Jewellers (2021) 189 ITD 608 / 212 TTJ 117 / 202 DTR 337 (Vishakha) (Trib.)

S. 68 : Cash credits – Share capital – Good will – Allotment of shares in lieu of goodwill – No movement of actual money either cash or through bank – Addition cannot be made as cash credits. 976

Tribunal held that allotment of shares in lieu of goodwill there was no movement of actual money either cash or through bank. Addition cannot be made as cash credits (AY. 2014-15)

ITO v. Zexus Air Services (P.) Ltd. (2021) 189 ITD 434 / 88 ITR 1 (Delhi)(Trib.)

S. 68: Cash credits – Unexplained investments – Seizure of Banakhat duly signed by the assessee – Addition U/s 68 on account of non-availability of ROI and Bank account of lender – Held that AO has not brought any material or evidence to disprove the genuineness of information submitted by the assessee – The appeal of the revenue is dismissed. [S.69, 153A] 977

The Hon'ble bench upheld the order passed by the CIT(A) which states that considering the nature of transaction only substantive addition can be made in the hands of the buyer and the seller on the reasoning that if payments were made by the buyer not

out of disclosed sources, the amount has to be added as undisclosed income to the total income of the buyer on substantive basis and at the same time if the receipt of consideration is not disclosed by the seller,the amount has to be added as undisclosed income to the total income of the seller on substantive basis only. Further,it is undisputed fact that Shri Mehul Mehta in whose hands the addition was made on substantive basis had made relevant disclosure in the application for the settlement which has been considered by the Settlement Commission. Therefore, this ground of appeal of the revenue stands dismissed. In case of second ground with respect to Addition of Rs 4 Lacs U/s 68 of the Act, the Hon'ble Bench held that because of non-availability of return of income and copy of bank account of the lender the Assessing Officer has treated the unsecured loan amount of Rs 4lacs as unexplained and added to the total income of the assessee U/s 68 of the act. However, assessee furnished additional evidences before CIT(A) in the form of bank statement, confirmation containing the lender full address, documentary evidences of the ownership of agricultural land and it was also explained that since lender was an agriculturist therefore, he was not liable to file any return of income. The assessing officer has not brought any material or evidences on record to disprove the aforesaid facts and evidences submitted by the assessee in support of genuineness of the loan transactions. Therefore, appeal of the revenue is dismissed. (AY. 2012-13)

ACIT v. Shri Karsangiri Buddhgiri Goswami (Diamond Petroleum)(2021) 189 ITD 227 / 213 TTJ 449 / 205 DTR 324 (Ahd)(Trib.)

978 **S. 68 : Cash credits – Addition is not sustainable where the assessee-company has been able to prove the identity of the investor, its creditworthiness and genuineness of the transaction. [S.69C, 147, 148]**

The Tribunal observed that the Assessee Company had placed substantial material before the AO to establish the identity of the creditors, their creditworthiness and the genuineness of the transaction. It further observed that the Assessee was not provided an opportunity to rebut the statement made by the third person Shirish Shah and the Promoter of Prraneta Industries Ltd. by stating them to be "confidential" in nature and therefore they cannot be read in evidence against the Assessee. It was also submitted by the Assessee that the Promoter of Prraneta Industries Ltd. later on retracted from his statement and therefore there was no case for reopening of the assessment. It was further submitted that the Indore bench of the tribunal had dismissed the group departmental appeals in case of certain other companies in respect of the same Investor Company, Prraneta Industries Ltd. based on the same information received in search in cases of the third person, Shirish C. Shah and deleted the additions on the merits of the case. The order was further upheld by the Madhya Pradesh High Court and ultimately the Supreme Court. Similar judgments were passed by the Delhi Bench of the tribunal in case of other companies and therefore it was submitted that the present case was covered by these decisions on identical facts. Thus on the basis of facts of the case and law as well as relying upon the decisions of the coordinate benches, the Tribunal ultimately concluded that the Assessee Company has adequately established the identity of the creditors, their creditworthiness and the genuineness of transaction and therefore deleted the addition made u/s 68 of the Act. (AY. 2010-11).

Ancon Chemplast P. Ltd. v. ITO (2021) 189 ITD 156 (Delhi)(Trib.)

S.68 : Cash credits – Various evidences filed including financial statement of creditor to prove his identity and creditworthiness and genuineness of transactions, merely for reason that loan were received in cash was unjustified. 979

The AO made addition u/s. 68 on account of said loan on ground that assessee had failed to explain receipt of said loan amount in cash in its bank account - It was noted that assessee had filed various evidences including financial statement of creditor to prove his identity and creditworthiness and genuineness of transactions - From financial statement of creditor, it was found that amount advanced to company was recorded in loans and advances - Assessee had also explained creditworthiness of creditor by filing his income tax return for relevant assessment year - Assessing Officer except stating that loan was received in cash, made no other observations to reject arguments of assessee that creditor was having creditworthiness to provide loan. Whether on facts, impugned addition under section 68 made by Assessing Officer merely for reason that loan was received in cash was unjustified and same was to be set aside. (AY. 2010-11, 2012-13]

Jayant Packaging (P.) Ltd. v. DCIT (2021) 189 ITD 321 (Chennai)(Trib.)

S. 68 : Cash credits – Share capital – Submitted share application form, copy of share certificates, copy of board resolution, certificate of incorporation etc. with respect to all investor and all investor entities had sufficient net worth to make investment, additions as unexplained cash credit was unjustified. [S.147, 148] 980

Held that, when share application form, copy of cheque, cheque deposit slips, copy of bank statement, copy of share certificates, copy of source of funds, copy of board resolution, certificate of incorporation, copy of Memorandum of Association (MOU) etc. were filed with respect to all investor entities, further, all investor entities had sufficient net worth to make investment, its proves assessee had successfully discharged onus cast upon it u/s. 68. Additions were unjustified. (AY. 2011-12)

Moongipa Dev. & Inf. Ltd. v. DCIT (2021) 189 ITD 388 (Mum.)(Trib.)

S. 68 : Cash credits – Share application money – Accommodation entries – Statement of Shri Shirish C. Shah – Investor companies have responded to the notices issued u/s 133(6 and summons issued u/s 131 of the Act – Deletion of addition is held to be justified [S. 131, 132(4), 133(6)] 981

Dismissing the appeal of the revenue the Tribunal held that the assessee had provided all the evidences and documents to substantiate the identity of the share holders, credit worthiness and genuineness of the transactions. The investor companies have responded to the notices issued u/s 133(6 and summons issued u/s 131 of the Act. The Tribunal held that merely on the basis of statement of Shri Shirish C. Shah addition cannot be made without giving an opportunity of cross examination. (ITA No. 2890/ Mum/ 2017 dt. 13-8-2021) (AY. 2012-13)

ITO v. Nita Jajoo Ventures Pvt Ltd (2021) The Chamber's Journal – September-P. 76 (Mum.) (Trib.)

982 **S.68: Cash credits – Share application money – Shell company – The DCF method adopted is incorrect and fallacious- the two investing companies held to fit the description of a shell company – The burden is on the assessee to prove the identity, capacity and genuineness and nature and source of credits in his books of accounts, to the satisfaction of the Assessing Officer even if confirmations are filed and the persons are assessed to tax – Theory of human probability applied – Addition as cash credits is held to be justified on the facts of the case – Reassessment is held to be justified. [S. 133(6), 143(3), 147, 148, Rule 27 ITAT Rules, 1963]**

The assessee is a private limited company. As per the information received from the investigation wing, indicated that the assessee has received monies, in the form of share application money, subjected to routing through several layers. The facts of the case cannot be considered in isolation from the ground realities. The assessee has received share application money through a complex web of shell entities and multiple layering of the transfers from one company to another. The only thing which sets it apart a shell company from a genuine business entity is lack of genuineness in its actual operations. Further, on perusal of the share valuation report, the cash flow shown in the valuation report is overstated by 13,000% vis-à-vis the actual facts of the case. Thus, the DCF method adopted is incorrect and fallacious. Therefore, the two investing companies held to fit the description of a shell company. Addition as cash credits held to be justified. On the issue of reopening it was held that merely because the matter has been examined in the original assessment proceedings, it cannot be said that the reassessment proceedings cannot be initiated. Where the transaction itself on the basis of subsequent information, is found to be a bogus transaction, the mere disclosure of that transaction at the time of original assessment proceedings, cannot be said to be a disclosure of the 'true' and 'full' facts in the case and the Assessing Officer would have the jurisdiction to reopen the concluded assessment in such a case. All case laws on the subject are discussed in details. (AY.2011-12)

DCIT v. Leena Power Tech Engineers Pvt. Ltd. (2021) 213 TTJ 1058 / 207 DTR 33 (Mum.) (Trib.)

983 **S. 68 : Cash credits – Unsecured Loans – Initial burden is discharged by assessee – Low profit in return of income doesn't mean no creditworthiness – Addition deleted.**

Allowing the appeal of the assessee the Tribunal held that,the initial burden upon the assessee to prove the identity and creditworthiness of the creditors and the genuineness of the transaction had been discharged by the assessee. It was well settled law that the assessee need not to prove the source of the source. The Assessing Officer had not conducted any enquiry on the documentary evidence filed by the assessee and had merely disbelieved the entries in the bank accounts of the creditor without any justification. The low income declared in the return by the creditors was not a ground to reject the explanation of the assessee because their creditworthiness was proved by the assessee beyond doubt. (AY. 2010-11).

Hindon Forge (P.) Ltd. v. Dy. CIT (2021) 87 ITR 258 Delhi)(Trib.)

S. 68 : Cash credits – Share capital- Established identity and creditworthiness by filing copy of confirmation of accounts, copy of PAN card, bank statement ITR acknowledgement and financial statements – Addition is held to be not justified. 984
Allowing the appeal of the assessee the Tribunal held that the assessee had furnished all documentary evidences such as copy of confirmation of accounts by lender/investor, copy of PAN Card, bank statement, ITR acknowledgement and copy of financial statements of all investor/lender entities,all six entities had filed their return of income after paying taxes. They had also duly confirmed transactions carried out with assessee. All funds were transferred to assessee through proper banking channels and there was no immediate cash deposits in their accounts. Addition is held to be not justified. (AY. 2012-13)
Abhijavala Developers (P.) Ltd. v. ITO (2021) 187 ITD 222 (Mum.)(Trib.)

S. 68 : Cash credits – Sale of shares – Neither assessee nor his brokers were named as illegitimate beneficiaries to bogus LTCG in any reports/orders of investigation wing – Assessable as long term capital gains. [S.10 (38), 45, 115BBE] 985
Allowing the appeal the Tribunal held that the asseessee has produced necessary documentary evidences to prove genuineness of its transaction. The Assessing Officer simply rubbished all documentary evidences by referring to report of investigation wing. The Assessing Officer failed to produce any material/evidence to dislodge or controvert genuineness of conclusive documentary evidences produced by assessee in support of his claim, neither assessee nor his brokers were named as illegitimate beneficiaries to bogus LTCG in any reports/orders of investigation wing Accordingly the as cash credit was held to be unjustified. (AY.2015-16)
Ritu Jain (Smt) v. ACIT (2021) 187 ITD 671 (Delhi)(Trib.)

S. 68 : Cash credits – Capital gains – Penny stocks – STT paid – Denial of exemption is held to be not justified [S. 10(38), 45, 69] 986
The assessee purchased of CCL International Ltd from Suktara Trade Links pvt Ltd. The shares were sold through Edelweiss Broking Ltd. The shares were sold after holding the share one and half years. The Assessing Officer on the basis of report of the investigation wing, Kolkota held that capital gain being bogus hence not entitle exemption. Allowing the appeal of the assessee the Tribunal held that the documents demonstrates that the assessee had purchased shares through Brokers for which the payment was made through banking channels. The assessee had sold shares through an authorized stock broker and payment was received through baking channels after deduction of STT. The AO has not doubted any of the documents. The only objection raised is that the script from which the assessee had earned Long Term Capital Gain has been held by the Investigation Wing of the Revenue to be a paper entity and that this scrip was being used for creating artificial capital gain. The objection is not acceptable (Udit Kalra v ITO ITA No. 220/ 2019 dt 8-3 2019 (Delhi High Court) distinguished). (ITA No. 501,502,504 &505/LKw/2019, dt,16.12.2020)(AY. 2015-16)
Achal Gupta v. ITO (Luck)(Trib.). www.itatonline.org
Udit Gupta v. ITO (Luck)(Trib.) www.itatonline.org
Rakesh Narain Gupta HUF v. ITO (Luck)(Trib.) www.itatonline.org

987 **S. 68 : Cash credits – Agriculturist – Cash deposited – Sale deed – Matter remanded – Tax authorities should not take an easy route and place an impossible burden upon assessee- Duty of tax authorities to assist tax compliance which means giving correct advice and following best practices and to attempt collecting tax on basis of ignorance of citizen is not expected from a tax administration. [S.119]**

Assessee, an illiterate agriculturist, sold his agricultural land and deposited said amount in his bank account. Assessing Officer held that registration of land was done for a lesser value treated difference between sum deposited in bank and that shown in sale deed as unexplained cash credit. CIT (A) affirmed the order of the Assessing Officer. Matter remanded to the Assessing Officer. Tribunal also observed that Tax authorities should not take an easy route and place an impossible burden upon assessee and it is duty of tax authorities to assist tax compliance which means giving correct advice and following best practices and to attempt collecting tax on basis of ignorance of citizen is not expected from a tax administration. (AY. 2011-12)

Mahinder Singh v. ITO (2021) 186 ITD 331 (SMC)(Chd)(Trib.)

988 **S. 68 : Cash credits – Share Premium – Additional evidence – Assessing Officer was not given sufficient time – Matter remanded [S.133 (6) R.46A]**

Tribunal held that the CIT (A) has admitted the additional evidence and deleted the addition without giving sufficient time to the Assessing Officer to file the reply. Matter remanded to the Assessing Officer, relied on *Bharat Fire and General Insurance Ltd. v. CIT (1964) 53 ITR 108 (SC) and CIT v. Allahabad Bank Ltd. (1969) 73 ITR 745 (SC).* (AY.2009-10)

Dy. CIT v. Pipal Tree Ventures Pvt. Ltd. (2021) 85 ITR 78 / 199 DTR 129 (SN)(Mum.)(Trib.)

989 **S.68: Cash credits – Loan received through proper banking channel – Addition is held to be not justified.**

Tribunal held that the loan taken from B was received through proper NEFT banking channels ; B was an Income-tax assessee and a relative of the director of the assessee-company ; the cash and bank statements of B along with her Income-tax return, computation of income and balance-sheet showed the genuineness of the transaction ; the assessee was not required to prove the source of the source, the onus being on the Revenue to prove the non-genuineness of the transaction, which they failed to do. The addition was to be deleted. (AY.2014-15)

Shri Anant Steel Pvt. Ltd. v. ITO (2021)85 ITR 60 (SN)(Delhi)(Trib.)

990 **S. 68 : Cash credits – Share application moneys – Shares issued at premium – Share applicant had enough funds to subscribe to shares – Addition cannot be made merely on the ground share applicant did not appear in response to summons.[S.131]**

Dismissing the appeal of the revenue the Tribunal held that the share applicant had enough funds to subscribe to shares hence addition cannot be made merely on the ground that share applicant did not appear in response to summons..(Ay.2012-13)

ACIT v. Nirnidhi Marketing Pvt. Ltd. (2021) 85 ITR 297 (Kol.)(Trib.)

S. 68 : Cash credits – Unsecured Loan – Identity, capacity and genuineness established – Addition is held to be not valid – Ad-hoc disallowance without rejecting the books of account is held to be not proper – Reassessment is held to be valid [S.133 (6), 147, 148] 991

Allowing the appeal of the assessee the Tribunal held that the assessee has discharged the burden by proving identity, capacity and genuineness of the loan transaction hence the addition as cash credit is held to be not proper. Tribunal also held that ad-hoc disallowance without rejecting the books of account is held to be not justified. Reassessment is held to be valid as the original assessment was completed u/s 143 (1) of the Act. (AY.2007-08)

Khetan Twist Net Pvt. Ltd. v. ITO (2021) 85 ITR 47 (Mum.)(Trib.)

S. 68: Cash credits – Bogus purchases – Addition of entire amount payable to six sundry creditors is held to be not justified – GP estimate of 16% on unsubstantiated purchases from six creditors was up held. Adoption Of Gross Profit Rate Of 16 Per Cent. 992

The Tribunal held that the addition of the entire amount payable to the six creditors was unjustified. However, the assessee had not produced the creditors and had made purchases from parties who were not maintaining proper records or who had made adverse statements and, therefore, the assessee could not be equated with assessees who were maintaining records meticulously and not making purchases from the grey market. Since the assessee had shown a gross profit rate of less than four per cent., considering the totality of the facts of the case, the adoption of a gross profit rate of 16 per cent on the unsubstantiated purchases from the six creditors under section 68 of the Act would meet the ends of justice as against addition of the entire amount payable to the six parties. The Assessing Officer was to restrict the addition to Rs. 48,85,485 as against Rs. 3,05,34,283 made by him and sustained by the Commissioner (Appeals).(AY.2014-15)

Manju Sharma v. ITO (2021) 85 ITR 388 (Delhi)(Trib.)

S. 68 : Cash credits – Unsecured loans – Statement in the course of survey and search – No nexus with loan transaction of year under consideration – Failure to issue summons – No addition can be made – Receipt of investment made in earlier years – Had sufficient funds to make investments – Addition is held to be not justified [S.131, 133(6)] 993

Tribunal held that the Assessing Officer was duty-bound to provide an opportunity to the assessee to comment upon the statement of such persons and to cross-examination of them, if requested by the assessee. During the course of the assessment proceedings, the assessee had specifically requested the Assessing Officer to issue summons under section 131/133(6) to the loan creditor companies, but, the Assessing Officer remained silent and did not even apprise the assessee that the statements of the directors of these companies had already been recorded by the Investigation Wing. Thus there was no infirmity in the finding of the Commissioner (Appeals) that the Assessing Officer failed to follow the principles of natural justice. Relied on *Kishinchand Chellaram v. CIT (1980) 125 ITR 713 (SC), Andaman Timber Industries v. CCE (2016) 38 GSTR 117 (SC), CIT v. Sunita Dhadda (Smt)(2018) 406 ITR 220 (Raj)(HC) and ACIT v. Ei Dorado Biotech Pvt. Ltd. [2020 60 CCH 233 (Ahd)(Trib.).* The assessee has discharged the burden

of proving identity and also creditworthiness. As regards receipts of investments the assessee had sufficient funds to make various investments and therefore, any subsequent realisation of such investments could not again be subjected to tax under section 68 of the Act. Once it was found that the assessee-company had received some funds, whether through explained sources or unexplained sources, they had to be regarded as available for making further investments. Merely because the assessee had agitated the addition made under section 68 of the Act against the addition made for the assessment year 2008-09, its claim regarding availability of funds raised in that year could not be denied. (AY.2011-12, 2015-16, 2016-17)
ACIT v. Ariba Foods Pvt. Ltd (2021) 86 ITR 174 (Indore)(Trib.)
ACIT v. Vyanktesh Plastics and Packaging Pvt. Ltd (2021) 86 ITR 174 (Indore)(Trib.)
ACIT v. Famous Vanijya Pvt. Ltd. (2021) 86 ITR 174 (Indore)(Trib.)

994 **S. 68 : Cash credits – Issue of convertible warrants – Receipt of total money over three years – Deletion of addition justified.**
Tribunal held that the assessee, having submitted complete details before the Assessing Officer, had discharged the initial onus cast on it. Moreover, in the subsequent year, after a complete examination of the identity and creditworthiness of the parties, the Assessing Officer passed the assessment order under section 143(3) without making any addition with respect to the same parties. The Assessing Officer's satisfaction in the subsequent year, following his enquiries about the creditworthiness and genuineness of the transactions, showed that there was no infirmity in the order of the Commissioner (Appeals) in deleting the additions. (AY.2011-12)
Dy.CIT v. MPS Infotecnics Pvt. Ltd. (2021) 86 ITR 141 (Delhi)(Trib.)

995 **S. 68 : Cash credits – Share application money – Genuineness of transaction not established – Addition is held to be justified – Unsecured loan – Onus discharged – Addition is held to be not justified.[S.131]**
Tribunal held that the assessee has not established the genuineness of share application money received hence addition as cash credit is held to be justified. As regards the unsecured loans the initial burden upon the assessee to prove the identity and creditworthiness of the creditors and the genuineness of the transaction stood discharged. The Assessing Officer had not brought any evidence to disbelieve the explanation of the assessee or the documentary evidence on record. As a result, the orders of the authorities were set aside and the addition on account of the credits was deleted. (AY. 2009-10)
Garima Polymers Pvt. Ltd. v. ACIT (2021) 86 ITR 261 (Delhi)(Trib.)

996 **S.68 : Cash credit – Share capital – Manipulated accounts by way of bogus/fictitious entries, transactions did not involve actual cash inflow, it was unrealizable for assessee to discharge onus of establishing identity and creditworthiness of parties and genuineness of transaction, addition cannot be made as cash credits – maxim is "Lex non cogitadimpossibilia" – theory of impossibility of performance applied – Addition was deleted.**
During relevant years, assessee-company had shown certain additions to share capital in its books of account; It was revealed that assessee, through involvement of cashier of Bank

manipulated accounts by way of bogus/fictitious entries in compliance of provisions as prescribed by SEBI in order to facilitate public issue. No actual cash inflow carried out by assessee for enhancing share capital, the Assessing Officer held that such increase in share capital represented unexplained cash credit and made additions under section 68. Held that, a legal fiction is created under section 68 on basis of which an entry in books of account is deemed to be income of assessee chargeable to tax in event assessee fails to discharge onus imposed upon it u/s. 68. However, such legal fiction could be applied only in case of actual transactions incorporated in books, therefore, transactions were fictitious/bogus, did not involve real cash inflow, and it was impracticable for assessee to discharge onus of establishing identity and creditworthiness of parties and genuineness of transaction, hence s.68 was not invocable. Followed the guidance from the Judgement of Supreme Court in *Krishna Swamy S.PD v. UOI (2006) 281 ITR 305 (SC)* when in it was held that, "The other relevant maxim is Lex non cogitadimpossibilia – The law does not compel a man to do what he cannot possibly perform. The law itself and its administration is understood to disclaim as in its general aphorisms all intention of compelling impossibilities,and the admiration of law must adopt that general exception in the consideration of particular cases [See : *U.P.S.R.T.C v. Imtiaz Hussain 2006 (1) SCC 380, Shaikh Salim Haji Abdul Khayumusab v. Kunar & Ors 2006 (1)SCC 46, Mohammod Gazi v. State of M.P. & Bros 2000 (4)SCC 342 and Gurusharan Singh v. New Delhi Munnicipal Committee 1966 (2) SCC 459]*. (AY. 1995 -96 to 1997-98)
Rich Paints Ltd. v. ITO (2021) 186 ITD 425 / 210 TTJ 532 / 199 DTR 249 (Ahd)(Trib.)

S. 68 : Cash credits – Nature and source fund in a notebook pertaining business concern – Addition cannot be assessed as undisclosed income – Tax cannot be computed under section 115BBE of the Act.[S. 115BBE] 997
Tribunal held that the assessee explained the Nature and source fund in a notebook pertaining business concern. Addition cannot be assessed as undisclosed income tax cannot be computed under section 115BBE of the Act. (AY. 2017-18)
Harish Sharma v. ITO (2021) 207 DTR 475 (Chd.)(Trib.)

S. 68 : Cash credits – Books of account not maintained – Addition as cash credits not sustainable – Turnover more than Rs. 40 Lakhs – Gross profit rate of 8 Per Cent can be applied. [44AD, 44AF] 998
Tribunal held that only a small amount of cash was deposited in the bank, and the remaining amounts were debited to the assessee's accounts either by cheque, or clearing, or any other mode. Therefore, the assessee's income was required to be computed treating the entire deposits in the bank as business receipts and applying the gross profit rate over that. The assessee had applied a 5 per cent rate relying upon section 44AF of the Act. For applying section 44AF, the total turnover of the assessee must be less than Rs. 40 lakhs. The turnover of the assessee was more than Rs. 40 lakhs. Therefore the rate of 5 per cent could not be applied as claimed by the assessee. The Assessing Officer had not brought on record that the assessee had any other source of income. Thus, according to section 44AD of the Act, the best rate that could be applied would be 8 per cent on the turnover in all the assessment years.(AY.2009-10 to 2011-12)
Sardari Lal v. ITO (2021) 214 TTJ 767 / 62 CCH 607 / 91 ITR 651/ 207 DTR 225 (Amritsar)(Trib.)

999 **S. 68 : Cash credits – Identity, creditworthiness and genuineness of the transaction was proved – Addition was held to be not justified.**
Tribunal held that the assessee had furnished various evidences to establish the identity, creditworthiness and genuineness of the transaction and the party giving loan to the assessee had also personally appeared before the AO and confirmed the transaction. Therefore, addition could not be made merely because the assessee was a small company and loan transaction was huge and AO could not prove any fault in the various documents furnished by assessee. Accordingly, addition was deleted.
Naveen Infradevelopers & Engineers Pvt Ltd v. Dy.CIT (2021) 213 TTJ 344/ 205 DTR 271 (Delhi)(Trib.)

1000 **S. 68 : Cash credits – Share application money – Proviso inserted to section 68 by Finance Act, 2012 with effect from 1-4-2013 – Not retrospective in nature – Discharged the initial burden – Addition is not justified [S. 69C]**
Assessee had discharged initial onus of proving share application transactions in terms of requirements of section 68, onus had shifted on Assessing Officer to dislodge assessee's documentary evidences and bring on record cogent material to establish that assessee generated unaccounted money and routed same through banking channels in garb of share-application money. Unless such an investigation is shown to have been carried out, additions would not be sustainable in law since it is trite law that no addition could be made on basis of mere suspicion, conjectures and surmises. (AY. 2009-10 to 2012-13)
Adhoi Vyapar (P.) Ltd. v. ITO (2021) 91 ITR 582 / (2022) 192 ITD 695 (Mum.)(Trib.)

1001 **S. 68 : Cash credits – Share capital – Share premium – Denial of opportunity to cross -examine witness – Principle of natural justice is violated – Entire addition solely on the basis of statement is deleted – The assessee has discharged by furnishing copes of PAN memorandum of association bank account details etc-Order of CIT(A) deleting the addition was affirmed. [S. 131]**
Tribunal held that principle of natural justice require that the department has to allow the assessee an opportunity of cross -examination of witness if it seeks to rely on the statement of said witness to make an addition. Addition is not accepted order is nullity. The Tribunal also held that The assessee has discharged by furnishing copes of PAN memorandum of association bank account details etc-Order of CIT(A) deleting the addition was affirmed. (AY. 2009-10)
ACIT v. El Dorado Biotech Ltd (2021) 198 DTR 23 (Ahd.)(Trib.)

1002 **S. 68 : Cash credits – Income from undisclosed sources – Non-Resident – Balance in bank accounts abroad – HSBC in Geneva – Addition as peak addition is held to be not valid [S. 5(2), 69]**
Dismissing the appeal of the revenue the Tribunal held that CIT(A) recorded a finding on the basis of evidences that money was transferred in the bank account out of income earned in Abhu Dhibai, UAE as a non -resident Indian since 1976. Tribunal up held the order of the CIT(A) (AY.2006-07)
Dy. CIT v. Ganpat Singhvi (2021) 207 DTR 181 (Mum.)(Trib.)

S. 68 : Cash credits – Share application money – Notice issued to share applicants u/s 133(6) of the Act – Matter remanded.[S.133(6)] 1003

The share premium received from the two parties, neither party responded to the notice under section 133(6) nor did the assessee file any supportive documents to satisfy the lower authorities. To explain any cash credit as genuine, the onus was always on the assessee to substantiate with evidence, to the satisfaction of the Assessing Officer, the identity and creditworthiness of the share applicants and the genuineness of the transactions. The assessee had failed to do so. As a result, it was proper to restore the issue to the file of the Assessing Officer with direction to give opportunity of hearing to the assessee to substantiate its stand. (AY.2015-16)

Brash Steels Pvt. Ltd. v. ITO (2021) 91 ITR 19 (Delhi)(Trib.)

S. 68 : Cash credits – Share Application Money – Shares issued at premium – Identity of parties, genuineness of transactions and creditworthiness proved – Additions cannot be made merely on the basis of inferences.[S. 131(1)(d)] 1004

Held that all the share applicants were Income-tax assessees and filed their returns of income. The share application form and allotment letter was available on record, the share application money was made by account payee cheques, the details of the bank accounts belonged to the share applicants and their bank statements, in none of the transactions the Assessing Officer found deposit in cash before issuance of cheques to the assessee-company, and the applicants had substantial creditworthiness which was represented by capital and reserves. Therefore, the assessee had discharged its onus to prove the identity and creditworthiness of the share applicants and genuineness of the transactions. Thereafter the onus shifted to Assessing Officer to disprove the documents furnished by the assessee could not be brushed aside by the Assessing Officer. In the absence of any investigation, much less gathering of evidence by the Assessing Officer, the addition could not be sustained merely based on inferences drawn by circumstances. (AY.2012-13)

Kritiprada Fashion Pvt. Ltd. v. ITO (2021) 91 ITR 149 (Surat)(Trib.)

S. 68 : Cash credits – Gift from father – Addition is held to be not justified. 1005

Held that no attempt had been made by the lower authorities to disprove the genuineness and veracity of the assessee's claim of having received the amount as a gift from his father. The Assessing Officer had, on the basis of half-baked facts and premature observations, rejected the assessee's claim of having received the gift from his father. The Commissioner (Appeals) had summarily accepted the Assessing Officer's view without making any proper enquiry or verification. The addition made in this regard could not be sustained. (AY.2014-15)

Kushal Virendra Tandon v. CIT (2021) 91 ITR 610 / (2022) 215 TTJ 630 (Mum.)(Trib.)

S. 68 : Cash credits – Income from undisclosed sources – Bank statement of assessee showing loan from non-resident individual – During appeal proceedings filing confirmation of lender with his passport, copy of bank account and affidavit of seller – Addition not justified.[S. 69] 1006

Held that during the course of appellate proceedings, the assessee filed the confirmation by NA confirming the lending of USD 15,000. The remand report showed that the assessee

had furnished a confirmation from the lender NA during the course of appeal proceedings and the passport of NA as evidence with a copy of the bank account of NA, an affidavit of NA, copy of bank account of his son GA giving loan of USD 5,000 to the assessee. The Commissioner (Appeals) was not justified in sustaining the addition. (AY. 2016-17)
Nitin Gupta v. ITO (2021) 91 ITR 47 (SN) / 214 TTJ 247 (SMC)(Delhi)(Trib.)

1007 **S. 69 : Unexplained investments – Revised computation of income was not considered – Order of Tribunal set aside – Matter remanded to the Assessing Officer [S.254(1), 260A]**
Allowing the appeal the Court held that the findings rendered by the Tribunal confirming the disallowance of Rs. 30 lakhs as undisclosed investment under section 69 and in not considering the revised computation filed by the assessee categorically admitting the income received by him in the specific assessment year were to be set aside and the matter was remitted to the Assessing Officer in open remand. (AY.2002-03)
S. J. Suryah v. ITO (2021) 432 ITR 119 (Mad.)(HC)

1008 **S. 69 : Unexplained investments – Gifts from relatives – Evidence not produced – Order of Tribunal is affirmed. [S.254 (1)]**
Dismissing the appeal the Court held that the Tribunal an attempt was made to bring on record the so-called gift deeds by way of additional evidence. To bring additional evidence on record at the stage before the Tribunal, the concerned party had to demonstrate the reasons why it was not done earlier. The Tribunal found no justification in this respect. The entire issue was thus based on facts and not question of law arose.(AY.2015-16)
Sujit Chakraborty v. UOI (2021) 433 ITR 57 (Tripura)(HC)

1009 **S. 69 : Unexplained investments – Bogus purchases – Purchase and sale of diamonds – Report of investigation wing – Addition of 100 percent of total transactions was deleted, only addition of Rs. 20,000 was confirmed. [S. 143(3)]**
Held that the authorities had not discarded the documentary evidence furnished by the assessee and had solely relied upon the report of the Investigation Wing and had made addition of 100 per cent. of purchase without making any independent investigation. Tribunal held that to avoid the possibility of revenue leakage, the disallowance of an amount of Rs. 20,000 would meet the ends of justice.(AY.2009-10)
Dhirajlal Popatlal Shah v. ITO (2021) 92 ITR 647 (Surat)(Trib.)

1010 **S. 69 : Unexplained investments – Cost of construction of residential property – Amount spent from out of salary savings – Addition was held to be not justified.**
Held that the assessee has explained the amount spent for cost of construction of residential property was from out of salary savings. Addition was deleted.(AY.2007-08)
Anant Gurprasad v. ACIT (2021) 92 ITR 7 (SN)(Bang.)(Trib.)

1011 **S. 69 : Unexplained investments – Paintings – Price details and mode of payment was disclosed – Gold jewellery, Diamond jewellery and Silver Utensils – Quantity less than threshold limit for wealth-tax – Deletion of addition is held to be justified [S. 132]**
Held that in respect of paintings, price details and mode pf payment was disclosed. In respect of Gold jewellery, Diamond jewellery and Silver Utensils the quantity less than

threshold limit for wealth-tax Deletion of addition is held to be justified. (AY. 2006-07, 2007-08, 2009-10 to 2012-13)
ACIT v. Parminder Singh Kalra (2021) 90 ITR 419 (Delhi)(Trib.)

S. 69 : Unexplained investments – On money – Purchase of property from developer – Charge sheet filed by the Central Bureau Of Investigation (CBI) in case of developer – No additional evidence was brought by the revenue – Deletion of addition is held to be justified. 1012
Held that no addition could be made only on the basis of charge sheet filed by the Central Bureau of Investigation, when proceedings were still pending before the Central Bureau of Investigation Special Court. The Revenue had failed to bring on record any evidence to prove that the findings of fact recorded by the Commissioner (Appeals) were incorrect or opposed to the facts. The findings of the Commissioner (Appeals) were liable to be confirmed.(AY. 2009-10)
ACIT v. Ramcharan Tej Konidala (2021) 89 ITR 15 (SN)(Chennai)(Trib.)

S. 69 : Unexplained investments – Search and seizure – Finance broker – Interest income – No cash loan – Deletion of addition is justified. [S. 132] 1013
Dismissing the appeal of the revenue the Tribunal held that, the assessee being a finance broker no cash loan was given the CIT(A) was justified in deleting the addition as unexplained investment and interest.(AY. 2011-12)
ACIT v. Dilip Kumar Mahendra Kumar Jain (2021) 86 ITR 390 (Indore)(Trib.)

S. 69 : Unexplained investments – Benami transaction – Purchased land for 1.59 crores and sold for Rs. 1.62 crores – Land was transferred for taking care – Addition was deleted – Assessing Officer directed to make in depth investigation. [S.147, 148] 1014
The assessee purchased the land and sold to another buyer. Seller has given affidavit stating that the land was transferred for taking care. Addition was deleted. The Assessing was directed to make in depth investigation. (AY. 2010-11)
Didar Singh v. ITO (2021) 190 ITD 664/ 205 DTR 249 / 213 TTJ 473 (Amritsar)(Trib.)

S. 69 : Unexplained investments – Purchase of immoveable property – Source of investment is not doubted – Addition is held to be not valid. 1015
Dismissing the appeal of the revenue the Tribunal held that when the source of payment was not doubted, deletion of payment was held to be justified.(AY. 2011-12)
ITO v. Atmiya Infrastructure (2021) 190 ITD 11 (Ahd.)(Trib.)

S. 69 : Unexplained investments – A Non Banking Finance Company (NBFC) engaged in providing loans and investment activities in India – Loan was not advanced to Foreign Company – Addition was held to be not justified. 1016
Dismissing the appeal of the revenue the Tribunal held that the findings of Assessing Officer that assessee had advanced loans from undisclosed sources was merely based on surmises and conjectures. (AY. 2006-07, 2007-08)
DCIT v. Rabo India Finance Ltd. (2021) 189 ITD 420 (Mum.)(Trib.)

1017 **S. 69: Unexplained investments – Income from undisclosed sources – Survey – Addition based on statement given to survey team on documents found indicating receipt of large amounts – No retraction – Addition upheld.[S.133A]**
Assessee in the statement to survey party, admitted the sum of large receipts as undisclosed receipts, based on documents found during survey. No explanation was offered, nor, the statement was retracted by the assessee, before any authorities, or during the course of assessment proceedings by way of plausible evidence or by any other mode. On appeal Tribunal held that the findings recorded by the AO as well as CIT(A), are based on reasonable basis and credible evidences, and assessee not having retracted the statement given to survey team, nor has produced any evidences, the addition made is upheld. (AY.2012-13)
Sanjay Sultania v. ITO (2021) 212 TTJ 539 / 202 DTR 323 (SMC)(Cuttack)(Trib.)

1018 **S. 69 : Unexplained investments – Immoveable property – Valuation report – Difference was less than 15 % – Addition is held to be not valid [S. 132, 153C]**
Tribunal held that addition cannot be made on the basis of valuation report when the difference is less than 15% as per the books of account and valuation report. (AY. 2013 -14, 2014-15, 2016-17)
Ahmed Shareef v. Dy. CIT (2021) 189 ITD 522 (Bang.)(Trib.)

1019 **S. 69 : Unexplained investments – Non-resident – On money – Foreign Resident cannot be taxed under section 69 of the Act – DTAA India-UAE. [S. 132(4), Art. 22]**
Where the assessee is a non-resident Indian, the assessee had paid cash amounts, as 'on money' to certain Builders in India. This amount was treated as an "unexplained investment" under section 69 of the Act. It was held that as per Article 22 of DTAA between India and UAE, as the unexplained investments are not made out of incomes generated in India, they have to be taxed in the Resident jurisdiction. Order of CIT(A) deleting the addition was affirmed. (AY. 2010-11)
ITO v. Rajeev Suresh Ghai (2021) 214 TTJ 921/ 208 DTR 377 / (2022) 192 ITD 348 (Mum.) (Trib.)

1020 **S. 69: Unexplained investments – Income from undisclosed sources – Information coming to assessing officer of bank accounts in switzerland relating to assessee – Interest on balance in accounts computed and treated as undisclosed income – Tribunal for earlier year holding assessee not owner of amount in accounts and interest cannot be added in assessee's hands.**
The AO took note that information had been received which related to the assessee having accounts in a bank in Geneva. The assessee in his statement recorded during the course of search, replied in the negative to a specific query whether the assessee had maintained any bank accounts abroad. The AO took the view that it was evident from the records that the assessee had opened or operated accounts in a bank in Switzerland, and that there were four such undisclosed accounts linked to the assessee, and computed the interest income from these four bank accounts for the year and brought it to tax u/s.69 of the Income-tax Act, 1961 as undisclosed interest income. The CIT(A) deleted the addition.

Tribunal held that for AY 2014-15, if the assessee was not owner of the amount lying in the bank account, the interest income could not be added in the hands of the assessee and that even otherwise if the Department got any information with respect to the ownership of the money lying in the bank account with the bank in Geneva, the provisions of Expl 2(d) to s.148 enabled the interest income to be added in the hands of the assessee and the time limit available was 16 years. (AY. 2012-13)
Dy. CIT v. Anurag Dalmia (2021) 87 ITR 51 (SN)(Delhi)(Trib.)

S. 69: Unexplained investments – Cash deposited in bank account – Remand report – Once the AO has examined the document so produced by the assessee and recorded his satisfaction regarding the identity of the donors, genuineness of the gifts and sources of such gifts, the assessee has discharged the necessary onus cast on her and the addition directed to be deleted. 1021

Allowing the appeal the Tribunal held that the assessee had discharged initial onus placed on her with the production of gift deed and identity of the donors and the genuineness of the transaction of gift on marriage. The ITAT further held that the document is to be read as a whole and it is not open to the authorities to accept the particular content and to reject the other, to suit its purpose. The Hon'ble ITAT has also referred the ratio laid down by the Apex Court in the case of *Mehta Parikh & Co. v. CIT (1956) 30 ITR 181 (SC)* and in the case of *Behari Lal Ram Charan v. ITO (1981) AIR 1585* as also the decision on the similar lines rendered by the Delhi High Court in the case of *CIT v. Silver Streak Trading Pvt. Ltd. (2010) 326 ITR 418* and the decision of Allahabad High Court in the case of *L. Sohanlal Gupta v. CIT (1958) 33 ITR 786 (All)(HC)*. The Hon'ble ITAT held that once the AO has examined the documents so produced i.e. the original affidavits of the donors and their custodian and recorded his satisfaction regarding the identity of the donors, the genuineness of the gift and the source of such gift, the assessee has discharged the necessary onus cast on her and accordingly, the addition of Rs.5,00,000/– is directed to be deleted. (AY. 2010-11)
Shweta Goyal (Smt.) v. ITO (2021) 87 ITR 57 (SN)(Jaipur)(Trib.)

S. 69 : Unexplained investments – NRI purchasing property in India – Gave satisfactory explanation of source of fund – Even if explanation was not satisfactory no addition can be made. [S.68] 1022

The assessee was a non-resident Indian individual and acquired two properties in Mumbai for a total consideration of Rs. 16,63,21,060. The purchase consideration was discharged by the assessee partly by way of direct remittance from abroad to the vendor and partly through banking channels from the Bank of Baroda, Dubai account held by the assessee to the SBI NRE SB Account. The assessee explained that the sources for deposit in the Bank of Baroda were sale proceeds of gold bars to two companies namely, SJ and VG, Dubai and maturity proceeds of fixed deposits belonging to a company owned by the assessee and his wife. The Assessing Officer disbelieved the explanation of the assessee on the ground that the activity of selling gold in Dubai was unusual and there was no proof of existence of stock of gold in Dubai and rejected the certificates as not reliable since they were not signed by the director. The tribunal held that the conclusion reached by both the Assessing Officer and the Commissioner (Appeals) was

based on conjectures, surmises and presumptions. The assessee had filed copies of the certificate of incorporation of the company in 2007 and of the certificate from the Bank of Baroda certifying that an amount of AED 99,83,455 equivalent to Rs. 16,97,18,735 was credited to the account of assessee and his wife. The assessee had discharged the primary onus upon him, by explaining the sources of the deposits, credits in the bank from where the remittances were brought to India by evidence such as confirmation from the Bank of Baroda, Dubai that the deposits represent maturity proceeds of fixed deposits held in the name of the company and purchase invoices of gold by the two companies and as well as copies of cheques issued in favour of the assessee. Both the Assessing Officer as well as the Commissioner (Appeals) had merely rejected the explanation without giving any cogent reasons and without rebutting the evidence led by the assessee. Therefore, it could not be said that the assessee had failed to render a plausible and credible explanation as to the source of money for the acquisition of the two properties. Even if, in the opinion of the Assessing Officer the explanation given by the assessee was not satisfactory, no addition could be made.(AY. 2014-15)
Iqbal Ismail Virani v. ITO (2021) 87 ITR 654 /211 TTJ 913 / 204 DTR 354 (Panaji)(Trib.)

1023 **S. 69 : Unexplained investments – Finance broker – Transaction through account payee cheques – Addition cannot be made on the presumption that providing loan in cash and interest received in cash. [S.132]**
Dismissing the appeal of the revenue the Tribunal held that no enquiry was made by the Assessing Officer with the concerns or names of persons appeared in the seized document. The Assessing Officer had not called for necessary information from the various parties whose names were mentioned in the seized document. The assessee had filed ledger account of various parties and the names of most of them appeared in the seized document BS-28 and the confirmation accounts clearly revealed that there were regular transactions with these parties through account payee cheques with regard to the loans given by the lenders and received by the borrowers and the repayment thereafter. No evidence had been brought on record that any of loans were advanced by cash and also receipt of interest. (AY.2011-12)
ACIT v. Dilip Kumar Mahendra Kumar Jain (2021) 86 ITR 390 (Indore)(Trib.)

1024 **S. 69 : Unexplained investments – Post dated cheque – No evidence to show that there was transfer of money – Addition is held to be not valid.**
Tribunal held that there was no corroborative evidence to show that there was in fact transfer of money. The addition confirmed by the Commissioner (Appeals) in respect of the interest paid on post-dated cheques outside the books was to be deleted. Followed *CIT v. Ved Prakash Choudhary (2008) 305 ITR 245 (Delhi)(HC)*(AY.2006-07, 2007-08)
Green Valley Tower Pvt. Ltd. v. ACIT (2021) 86 ITR 1 (Delhi)(Trib.)

S. 69 : Unexplained investments – Bank deposit – Non-Resident – Two bank accounts in HSBC Geneva – Non-Resident – Income earned in Abu Dhabi and savings made in UAE as a non-resident – Addition cannot be made merely on the basis of information received from DIT [S. 147] 1025

Assessee-individual is a Chartered Accountant During assessment year 2006-07, he resided in India for period of 45 days and, accordingly, claimed that he was non-resident for assessment year 2006-07 and assessment was completed. A note was received from office of DIT mentioning that assessee had two bank accounts in HSBC Geneva and one account was in name of company (Blueridge) and other account was in joint names of assessee and his brother and amount in said account was not disclosed in his returns. The Assessing Officer issued re assessment notice and assessment was made by making peak balances of both the bank Accounts. On appeal the CIT(A) held that department has failed to bring any evidence on record to show that the assessee is having any beneficial interest in the Company. CIT (A) also held that the assessee was not beneficial owner of bank account held by Blueridge with HSBC Geneva and similarly, in joint account of assessee with his brother in HSBC Geneva, money was transferred in bank account out of income earned in Abu Dhabi and savings made by assessee during his stay in Abu Dhabi, UAE as a non-resident Indian since 1976. CIT(A) deleted the addition. On appeal by the revenue Tribunal affirmed the order of the CIT(A). (AY. 2006-07)

Dy. CIT v. Ganpat Singhvi (2021)214 TTJ 137 / 91 ITR 420 / (2022) 192 ITD 567 /207 DTR 181 (Mum.)(Trib.)

S. 69 : Unexplained investments – Addition at rate of 4% assuming saving bank account interest rate earned on bank balances with HSBC, Geneva – Illogical to compute interest rate prevailing in India as there was no documentary evidence to support presumption of AO- Same amount taxed twice in two assessment years amounts to double taxation deleted addition. [S. 153A] 1026

The Tribunal observed that action of AO defies the taxability of concept of real income. It is an undisputed fact that in the alleged sheets of bank deposits received from the French government under DTAC, there is no mention of any interest paid by bank to the assessee. The Tribunal dismissed revenue appeal and held that it is illogical to compute interest and that too at the rate prevailing in India as there is no documentary evidence to support the presumption of the AO. The Tribunal on examination of the computation of income for AY 2007-08 observed that once the assessee had returned the undisclosed income and paid taxes thereon there should not be any quarrel to bifurcate the disclosed amount in two assessment years when tax rate in both the assessment years is the same and there is no loss to the revenue. The Tribunal deleting addition held that there is no merit in bifurcating the income in two assessment years when the assessee had paid taxes. Making the addition of same income in two assessment years amounts to double taxation. (AY. 2006-07 to 2012-13)

ACIT v. Krishan Lal Madhok (2021) 213 TTJ 734/ 206 DTR 123 (Delhi)(Trib.)

1027 **S. 69: Unexplained investments – Acquisition and sale without consideration – Transferred by uncle is retransferred – Addition is held to be not justified.**
Tribunal held that land was transferred in the name of the assessee by his uncle was retransferred to him without consideration. The assessee produced the documentary evidence to support the contention. The Assessing Officer in other co-purchasers on identical facts have been accepted. Addition is held to be not justified. (AY. 2012-13)
Baljit Singh Bachal v. ITO (2021) 207 DTR 121 / 91 ITR 100 / 214 TTJ 220 (Chd.)(Trib.)

1028 **S. 69 : Unexplained investments – Failure to explain the source of investment – Addition is confirmed – Delay in filing of appeal is condoned.[S. 254(1)]**
Held that the assessee failed to explain the source of investment hence the addition was confirmed. Delay in filing the appeal was condoned as neither assessment order nor demand notice was served upon assess at correct address.(AY.2009-10)
Parminder Kaur v. ITO (2021) 91 ITR 216 (Amritsar)(Trib.)

1029 **S. 69 : Unexplained investments – Failure to furnish explanation for source of funds for purchase of car – Addition is justified – Income surrendered not disclosed in the return – Addition as unexplained investment is proper – Addition on account of foreign tour expenses of minor and assessee is held to be justified. [S.69C, 132(4)]**
Held that failure to furnish explanation for source of funds for purchase of car. Addition is justified. Income surrendered not disclosed in the return. Addition as unexplained investment is proper. Addition on account of foreign tour expenses of minor and assessee is held to be justified (AY. 2003-04 to 2005-06, 2007-08)
Gautam Kumar v. ACIT (2021) 91 ITR 28 (SN)(Delhi)(Trib.)

1030 **S. 69A : Unexplained money – Burden is on assessee – Raid by the CBI No satisfactory explanation addition is held to be justified.**
Dismissing the appeal of the assessee the Court held that the observations of the tax authorities were on independent examination of the case and not entirely resting on the case which had been set up by the CBI. As far as the Income-tax proceedings were concerned, since the explanation offered by the assessee had not been found to be satisfactory, the addition was in accordance with law.(AY.2011-12)
Jatinder Pal Singh v. Dy. CIT (2021) 432 ITR 293 / 201 DTR 353/ 320 CTR 830/ 281 Taxman 624 (Delhi)(HC)

1031 **S. 69A : Unexplained money – Cash found at office premises – Group companies – Accounted in the books of account – Addition is held to be not valid [S. 132]**
Held that cash found at the office premises which are accounted in the books of account, addition is held to be not justified. (AY.2011-12 to 2017-18)
Sinnar Thermal Power Ltd. v. Dy CIT (2021) 89 ITR 263 (Mum.)(Trib.)

S. 69A : Unexplained money – Salary income – Cash in hand was deposited in bank – Addition cannot be made as unexplained money.[S. 153A] 1032
Held that there was proper and satisfactory explanation from the assessee in respect of the cash deposits. The burden is on the revenue to prove otherwise. Addition was deleted.(AY. 2014-15 to 2018-19)
Ashite Kumar Singh v. ACIT (2021)89 ITR 5 (SN)(Delhi)(Trib.)

S. 69A : Unexplained money – Survey – Undisclosed income was offered net of expenses excluding expenses claimed in profit and loss account – Set off of business loss and depreciation is to be allowed – Matter remanded. [S. 32, 72, 133A] 1033
Held that the Assessing Officer was to exclude the proportionate expenses from the undisclosed income and allow the assessee the benefit of set off of business loss/ depreciation in accordance with law. Matter remanded.(AY.2010-11)
Shanti Enterprises v. Dy. CIT (2021) 88 ITR 31 (SN)(Surat)(Trib.)

S. 69A : Unexplained money – Capital gains – Penny stock – Accommodation entry – Purchase and sale of sales through SEBI Registered Broker – Merely on basis of Investigation report that shares were penny stock – Addition not sustainable. [S.10 (38) 45] 1034
Allowing the appeal the Tribunal held that the Assessing Officer had not doubted any of these documents. The broker of the assessees was neither investigated nor examined by the Investigation Wing. Where the assessees had filed the entire evidence relating to purchase which was mostly through cheque shown in the earlier years, all the details of sale transactions and the shares which had been routed through dematerialised account and sold through stock exchange on a quoted price on that date, the onus shifted upon the Department to disprove the evidence. The assessees was not found to be beneficiary of accommodation entry under any inquiry or investigation. The money credited in the account of the assessees was from sale of shares and accordingly the benefit of long-term capital gains on sale of listed equity shares had to be given and the addition made under section 69A upheld by the Commissioner (Appeals) on the basis of report of the Investigation Wing that the shares was a penny stock was not sustainable. (AY. 2015-16)
Jawaad Alam v. ITO (2021) 86 ITR 66 (Luck.)(Trib.)
Fawad Alam v. ITO (2021) 86 ITR 66 (Luck.)(Trib.)

S. 69A : Unexplained money – Cash found during search – Sale of scrap – Cash was reflected in the balance sheet – Addition cannot be made. [S. 153A] 1035
Held that the seized cash had been separately reflected in the audited balance-sheet and included in the income from sale of scrap offered to tax the cash found and seized stood duly accounted for. Deletion of addition is held to be justified. (AY. 2011-12 to 2013-14)
ACIT v. Claridges Hotels Pvt. Ltd. (2021) 86 ITR 402 (Delhi)(Trib.)

S. 69A : Unexplained money – Alleged on-money – Power of attorney holder – Addition cannot be made in the assessment of power of attorney holder [S. 143(3)] 1036
Held that the assessee being a power of attorney holder cannot be treated as the rightful owner of the income which has been arisen on sale of property. He was only a representative capacity. Addition was deleted. (dt. 19-5-2021) (AY. 2003-04, 2004-05
Bamkimbhai D. Patel v. ITO (2021) BCAJ-September – P. 38 (Ahd.)(Trib.)

1037 **S. 69A : Unexplained money – Search and Seizure – Jewellery seized – Below limit prescribed by CBDT Circular No 1916, dt. 11-5-1994 – Addition was deleted.[S. 132]**
In the course of search Gold seized was 636.790 grams embedded with diamonds of 7.95 carats, and in assessee's family there were three married ladies. The Assessing Officer assessed the seized gold as unexplained investment. On appeal the Tribunal held that in assessee's family there were three married ladies who may hold gold up to 1500 grams, which need not to be explained by assessee, as per CBDT Instruction No. 1916, dated 11-5-1994. Gold seized was below limit prescribed by CBDT addition was deleted. (AY. 2013-14)
Ankit Manubhai Kachadiya v. DCIT (2021) 191 ITD 618 (Surat)(Trib.)

1038 **S. 69A : Unexplained money – Cash credits – Amounts deposited in the bank – Cash withdrawal and redeposit – Sale of computer parts – Explanation was not satisfactory – Addition was held to be justified – Addition on account of salary was held to be not justified [S.68]**
Dismissing the appeal of the assessee the Tribunal held that as the amount deposited in the bank was not properly explained the addition is held to be justified. As regards the addition on account of salary the addition was deleted as the revenue has not made any enquiry with the employer. (AY. 2009-10 to 2011-12)
Arpit Goel v. ITO (2021) 190 ITD 42 (Delhi)(Trib.)

1039 **S. 69A : Unexplained money – Immoveable property – Purchase of property jointly with wife – Stamp valuation – Paid by wife – Addition was held to be not justified [S. 148]**
Held that the stamp duty was paid by the wife, addition was held to be not justified. (AY. 2011-12)
Ashish Bhardwaj v. ITO (2021) 190 ITD 867 (SMC)(Delhi)(Trib.)

1040 **S. 69A : Unexplained money – Demonetization – Exempt limit of income -tax – Housewife – Bank deposits were made was less than 2.50 lakhs – No addition can be made.**
Tribunal held that as per Instruction No. 3/2017, dated 21-2-2017, housewife having no business income would not be questioned if bank deposits made by her during demonetization were found to be less than Rs. 2.50 lakhs. Addition was deleted. (AY. 2017-18)
Uma Agrawal. (Smt.) v. ITO (2021) 189 ITD 659/ 212 TTJ 427/ 203 DTR 404 (Agra)(Trib.)

1041 **S.69A : Unexplained moneys – Loan – Confirmation from such two persons from whom money was received as 'temporary loan' was not produced – Matter remanded back to decide afresh. [S. 254(1)]**
Held that, since two parties could not deliver required results, advance which was paid by assessee through account payee cheques was repaid by them in small amounts out of their own earnings further assessee had never claimed that it had received temporary loan from these two parties. Therefore, matter remanded back to decide issue afresh. (AY. 2009-2010)
Jaipur Boutique Carpet v. ITO (2021) 189 ITD 305 (Jaipur)(Trib.)

S. 69A : Unexplained money – Unexplained jewellery – Family members explained the source of investment – Addition is held to be not justified – Renovation of house property out of withdrawals from bank – Addition is not valid [S.69C, 132, 153A] 1042

Allowing the appeal the Tribunal held that family members have explained the source of investment and considering the financial strength and status of family addition is held to be not justified. Tribunal also held that renovation of house property out of withdrawals from bank hence the addition is not justified. (AY. 2006-07)

Anila Rasiklal Mehta (Mrs.) v. Dy. CIT (2021) 214 TTJ 849 / 63 CCH 491 (Mum.)(Trib.)

S. 69A : Unexplained money – Cash deposited in bank account – Received from tuition fees – Explanation not accepted – Working of peak credit – Matter remanded – Reassessment – Approval is held to be valid – Reassessment is up held [S. 147, 148, 151] 1043

Tribunal held that the reassessment is held to be valid and valid approval is obtained from the competent authority. As regards cash deposited in the bank account, the addition as unexplained money is up held, however for working of peak credit the matter remanded to the Assessing Officer. (AY. 2008-09)

Shyam Gidwani v. ITO (2021) 214 TTJ 862 / 208 DTR 233 /63 CCH 155 (Jaipur)(Trib.)

S. 69A : Unexplained money – Explanation provide by the Assessee – Particular entries were recorded by the assessee – Proper explanation provided for the same – Addition made by the AO not sustained. 1044

Tribunal held that the entries relating to the advances received were from the relative from Canada being recorded in the books of accounts and the assessee also explained that this amount was received as an advance for making the investment in the property by the said persons and the assessee was engaged in the property business. Therefore, the Ld.AO was not justified in invoking the provisions section 69A particularly when entries were recorded, the explanation relating to the purpose of receiving the advances was given, identity of the person from whom amount was received was disclosed. As a result, the addition made by the A.O. and sustained by the CIT(A) was not justified. (AY. 2004-05)

Jagmohan Kaur Bajwa (Smt) L/H of Late Jaskiran Singh Bajwa v. ITO (2021) 213 TTJ 558 / 206 DTR 1/ (2022) 193 ITD 46 / 97 ITR 149 (Chd.)(Trib.)

S. 69C : Unexplained expenditure – Bogus hawala purchases – Third party statement – Opportunity of cross examination was not provided – Payments were through banking channels by way of letter of credit – Order of Tribunal deleting the addition was affirmed – No question of law. [S. 260A] 1045

Dismissing the appeal of the revenue the Court held that the assessment order could not have been passed by the Assessing Officer without granting an opportunity to respondent to defend his position or cross-examine the two persons on whose affidavits, the Assessing Officer had relied upon to conclude that respondent had made certain purchases from those persons identified as Hawala Traders. The Assessing Officer also should have investigated further or should have dealt with in his assessment order as to why he was not accepting the explanation of respondent that he had paid in excess

of Rs.25,62,560/- through the Bank L.C. to one of the parties allegedly doing business of issuing bogus bills. Order of Tribunal is affirmed. (ITA No. 971 of 2017 dt. 28-9-2021) (AY. 2010-11) (Arising ITA No. 7287/M/2014 dt.7-10-2016)
PCIT v. Dhananjay Mishra (Bom)(HC) www.itatonline.org

1046 **S. 69C : Unexplained expenditure – Seized material – Department not provided the details of transaction – Deletion of addition is held to be justified – No question of law [S. 132, 260A]**
Department filed an appeal against the order of the Tribunal wherein the Tribunal deleted the addition of Rs. 739.04 lacs stating that payment by the assessee of the amount of Rs. 739.04 lacs had not been established from the seized material and therefore no addition could be made on this account ignoring the fact that the assessee never provided the details of the transaction either during the course of assessment proceedings or thereafter and the assessee was in the exclusive knowledge. High Court dismissed the appeal being question of fact.
PCIT v. Hassan Ali Khan (2021) 124 taxmann.com 208 (Bom.)(HC)
Editorial : SLP of revenue is dismissed PCIT v. Hassan Ali Khan, (2021) 277 Taxman 398 (SC)

1047 **S. 69C : Unexplained expenditure – Failure to explain the source – Justified in confirming the disallowance.**
Dismissing the appeal the court held that the assessee had failed to furnish relevant details to prove source in respect of claim for deduction, Assessing Officer was justified in holding that amount was incurred out of undisclosed sources and making addition. (AY. 2007-08)
Sudarsanan P.S. v. CIT (2021) 283 Taxman 84 (Ker.)(HC)

1048 **S. 69C : Unexplained expenditure – Interest paid on post dated cheques – No evidence that there was transfer of money – Addition cannot be made.**
Held that there was no corroborative evidence to show that there was in fact transfer of money. Addition made in respect of the interest paid on post-dated cheques outside the books was to be deleted.(AY. 2006-07, 2007-08)
Green Valley Tower Pvt. Ltd. v. ACIT (2021) 86 ITR 1 (Delhi)(Trib.)

1049 **S.69C : Unexplained expenditure – Accommodation entries – Report from investigation wing – Purchase and sales details were furnished – Addition was held to be not justified.**
The Assessing Officer made addition of entire purchases as bogus purchases relying on the report of the investigation wing. On appeal the CIT(A) confirmed the addition on estimation of GP. On appeal to Tribunal by the assessee and revenue,the Tribunal deleted the entire addition on the ground that the assessee has furnished the details of purchase and sales and no defects were found in the books of account maintained by the assessee. (AY. 2011-12, 2012-13)
ACIT v. Vikas J.Solanki (2021) 86 ITR 517 (Mum.)(Trib.)

S. 69C : Unexplained expenditure – Bogus purchases – Search and seizure – Incriminating materials belongs to company – Addition in the assessment of the director was deleted [S.132] 1050

Dismissing the appeal of the revenue the Court held that since corresponding undisclosed and unaccounted income pertained to company in which assessee was a director and said company was carrying out business separately in its own name, addition was held to be unjustified. (AY. 2010-11 to 2014-15)

JCIT v. Narayana Reddy Vakati (2021) 190 ITD 466 / 88 ITR 23 (Hyd)(Trib.)

S. 69C : Unexplained expenditure – Bogus purchases – Addition was restricted to 6% of alleged bogus purchases. [S.133(6)] 1051

Commissioner (Appeals) restricted addition to 12.5 per cent of such bogus purchases. On appeal Tribunal estimated the addition to 6% of alleged bogus purchases. (AY. 2009 -10 to 2011-12)

Jaswantlal J. Shah v. ACIT (2021) 190 ITD 157 (Mum.)(Trib.)

S. 69C : Unexplained expenditure -Bogus purchases – Import and export of diamonds – Purchase invoices, ledger account,payment details and PAN was produced – Restricting 6% of alleged bogus purchases is held to be justified – Disallowance of expenses was held to be not justified. [S. 132, 143(3)] 1052

Tribunal held that the assessee has produced purchase invoices, ledger account,payment details and PAN. Restricting 6% of alleged bogus purchases is held to be justified. Disallowance of expenses was held to be not justified. (AY. 2012-13 to 2015-16)

DCIT v. Lucent Diamond (2021) 189 ITD 581 (Mum.)(Trib.)

S.69C : Unexplained expenditure – Personal household expenses – Joint family – Expenses reduced by 50 Per Cent. 1053

Tribunal held that as the assessee is staying in joint family disallowance of personal house hold expenses are restricted by 50 per cent. (AY.2014-15)

Sudhir S. Mehta v. Dy. CIT (2021) 85 ITR 8 (SN)(Mum.)(Trib.)

S. 69C : Unexplained expenditure – Addition cannot be made only on the basis of statement of partner in the absence of any other material. [S. 131(IA)] 1054

Tribunal held that the Revenue failed to bring on account any material in the form of cash, bullion, jewellery, document, etc. or unexplained expenditure to justify the addition made u/s. 69C of the Act and therefore, relying on the decision of the Hon'ble Supreme Court in case of *CIT v. Mantri Share Brokers (P) Ltd. (2018) 96 Taxmann.com 279/ 257 Taxman 337 (SC)* it was held that no addition u/s 69C can be made in the hands of an assessee except where a statement of the partner of the assessee offering additional income is backed by any other material either in the form of cash, bullion, jewellery, document, etc. to justify the addition u/s 69C of the Act. (AY. 2017-18)

Kohinoor Craft v. ACIT (2021) 213 TTJ 70 (UO)/ (2022) 192 ITD 584 (SMC)(Delhi)(Trib.)

1055 **S. 70 : Set off of loss – One source against income from another source – Same head of income – Loss from from eligible unit for exemption could be set off against other unit which was not eligible for exemption under same head of income. [S. 10A]**
Dismissing the appeal of the revenue the Court held that loss sustained by assessee company from its unit which was eligible for exemption under section 10A could be set-off against profit of its other unit which was not eligible for exemption under said section under same head of income. (AY. 2006-07)
PCIT v. Infosys BPO Ltd. (2021) 277 Taxman 320 (Karn.)(HC)

1056 **S. 70 : Set off of loss – One source against income from another source – Same head of income – Could be set off against income of assessee under same head from other unit not eligible for deduction under said section – Matter remanded to the Tribunal. [S.10B, 71, 80B(5), 80IC]**
Allowing the appeal of the assessee the Court held that loss suffered by assessee in respect of its unit eligible for deduction under section 80IC could be set off against income of assessee under same head from other unit not eligible for deduction under said section.Matter remanded to Tribunal. (AY. 2008-09)
TVS Motor Company Ltd. v. ACIT (2021) 276 Taxman 25 (Mad.)(HC)

1057 **S. 70 : Set off of loss – One source against income from another source – Same head of income – Long term capital loss – Non-Resident – ownership of shares was transferred – Consideration was paid and transaction was complete – Benefit of long-term capital loss set-off cannot be denied. [S. 45]**
Assessee, NRI, sold a property and claimed Long-Term Capital gain and also had long term capital loss. The Assessing Officer denied the set off long term capital loss as fictitious. Tribunal held that ownership of shares was transferred on its net effective worth and book value, consideration was paid and transaction was complete and loss was real and assessee may end up saving taxes but that was perfectly legitimate. Benefit of long-term capital loss cannot be denied. (AY. 2010-11)
Michael E Desa v. ITO (IT) (2021) 191 ITD 691 / 206 DTR 114/ 213 TTJ 753 (Mum.)(Trib.)

1058 **S. 72 : Carry forward and set off of business losses – Delayed furnishing of ITR-V – Order of Tribunal allowing the carry forward of losses was affirmed [S. 80, 139]**
Dismissing the appeal of the revenue the Court held that a large number of electronically filed returns remain pending with the revenue for want of receipt of a valid ITR V Form and the time was extended to regularise the returns. The delay caused in submitting the ITR-V did not make the e-filed return invalid warranting denial of carry forward of losses. The Court observed that the Revenue's submission of inapplicability of extended period to AY. 2008-09 was hyper-technical since the e- filed data was transmitted on the date of return to the server designated by the e. Return Administrator which contained the data of claim made by the asssessee for carry forward of losses. The Court also observed that the system of e-filing of tax returns was in the initial stages and if delay in filing the ITR-V was relaxable for the subsequent

years the same cannot be restricted in a strict sense for the initial years. Order of Tribunal was affirmed. (I.T.A No. 273 / 2008 dt.26-10-2018) (AY. 2008-09)
PCIT v. Electronics and Controls Power Systems Pvt Ltd (2021) The Chamber's Journal – December – P. 65 (Karn.)(HC)

S. 72 : Carry forward and set off of business losses – Carry forward and set off of business losses against capital gains – Entitled to set off of carried forward business loss against capital gain arising on sale of business asset used for the purpose of business – Business Loss can be carried forward and set off against income attributable to business though assessed under different head – Interpretation of taxing statutes – Expressions in provision. [S. 28(i), 45, 50, 71, 72(1)(i)] 1059
On appeal held by High Court that proviso to S.72(1)(i) was omitted by Finance Act, 1999 w.e.f. 1st April, 2000. Therefore, for the assessment year in question i.e., 2003-04, Assessee was not required to have carried on the business for the purposes of set off of brought forward business loss. Any income from business though classified under any other head can still be entitled to the benefit of set off. Express mention of one thing implies the exclusion of another. Section 72(1) of the Income-tax Act, 1961 employs the expression computation under the head Profits and gains or profession, whereas, section 72(1)(i) does not use the expression under the head. Thus, the Legislature has consciously left it open that any income from business though classified under any other head can still be entitled to the benefit of set off. In *United Commercial Bank Ltd v. CIT (1957) 32 ITR 688 (SC)*, the court held that heads did not exhaustively delimit sources from which income arises. That business income is broken up under different heads only for the purpose of computation of the total income. By that break up the income does not cease to be the income of the business, the different heads of income being only the classification prescribed by the Indian Income-tax Act for computation of income. Assessee was therefore entitled to set off of carried forward business loss against capital gain arising on sale of business asset used for the purpose of business. Followed *CIT v. Cocando Radhaswami Bank Ltd (1965) 57 ITR 306 (SC)*. Court also held that reference cannot be termed as an order under section 254(1) of the Act. Therefore issue of proceedings under section 148 was remanded to the Appellate Tribunal for adjudication afresh. (AY. 2003-04)
Nandi Steels Ltd v. ACIT (2021) 436 ITR 238/ 320 CTR 432 / 201 DTR 37 / 281 Taxman 615 (Karn.)(HC)
Editorial : Nandi Steel Ltd. v. ACIT (2012) 134 ITD 73 (SB) (Bang) (Trib), reversed.

S. 72 : Carry forward and set off of business losses – Can be set off against capital gains [S.45] 1060
Dismissing the appeal of the revenue the Court held that Loss under the head Profits and gains of business or profession can be carried forward and set off against profits of any business or profession. It is not the requirement of section 72 of the Income-tax Act, 1961 that such gains or profits must be taxable under the head "Profits and gains of business or profession.(AY.2011-12)
PCIT v. Alcon Developers (2021) 432 ITR 277 (Bom.)(HC)

1061 **S. 72 : Carry forward and set off of business losses – Export Oriented undertakings – Declaration in terms of section 10B(8) was to be treated as directory as provision of this section does not provide for any consequence by non-filing of declaration by time limit – Carry forward and set off business losses was allowed to be set off. [S.10B(8)]**
Assessee, a software company, filed its original return on due date in which exemption under section 10B was claimed. Thereafter, assessee withdrew said exemption before completion of assessment and filed revised return in which said exemption was not claimed and certain loss was declared. Assessing officer denied assessee's claim of carrying forward of losses under section 72, however same was allowed by Tribunal. On appeal by revenue the Court held submission of declaration in terms of section 10B(8) was to be treated as directory as provision of this section does not provide for any consequence by non-filing of declaration by time limit. Since assessee had filed said declaration before completion of assessment, appeal filed by revenue was to be dismissed. Referred *Sambhaji v. Gangabai [2008] 17 SCC 117, Rajendra Prasad Gupta v. Prakash Chandra Mishra [2011] 2 SCC 705 and Ramji Gupta v. Gopi Krishan Agrawal (D) AIR 2013 SC 3099.* In *State of Bihar v. Bihar Rajya Bhoomi Vikas Bank Samiti [2018] 9 SCC 472,* it has been held that if infraction of procedural provision does not provide for any consequences, such a provision has to be construed as directory. In the instant case, section 10B of the Act does not provide for non-compliance of submission of declaration. (AY. 2001-02)
PCIT v. Wipro Ltd. (2021) 277 Taxman 309 / 318 CTR 340 / 197 DTR 349 (Karn.)(HC)

1062 **S. 72: Carry forward and set off of business losses – Set off of loss returned by Assessee in subsequent assessment years could not be declined only for the reason that assessment for assessment year in which the losses arose, was in progress and pending. [S. 240]**
The Hon'ble Tribunal held that bearing in mind entirety of the case, the plea of the Assessee is upheld so far as set-off of loss returned by the Assessee cannot be declined by the AO in subsequent assessment years, only for the reason that the assessment for the assessment year 2014-15 is in progress. The AO is to be directed to allow, for the time being, the claim for set-off of loss brought forward, in the light of the above observations. The above direction, however, should not be construed as a direction for the grant of refund, if any is found admissible as a result of income computed as above, for the simple reason that a call will have to be taken by the AO as to whether, in the light of the discussions above, refund of taxes is permissible in such a situation in the light of first proviso to section 240. (AY. 2016-17, 2017-18)
Shelf Drilling Ron Tappmeyer Ltd. v. DCIT (2021) 209 TTJ 587/ 197 DTR 265 (Mum.)(Trib.)
Shelf Drill J.T. Angel Ltd v. DCIT(IT)(2021) 209 TTJ 587,/ 197 DTR 265 (Mum.)(Trib.)

1063 **S. 72 : Carry forward and set off of business losses – Unabsorbed depreciation loss – Carried forward business loss and unabsorbed depreciation loss should be allowed in accordance with law [S. 32(2)]**
Held that the assessee was entitled to set-off of unabsorbed depreciation and carry forward of business loss. The Assessing Officer was to examine the return of income of the assessee and the charts, and after due verification, allow the claim of assessee in accordance with law.(AY.2011-12)
Kaneria Granito Ltd. v. Dy. CIT (2021) 88 ITR 7 (SN)(Surat)(Trib.)

S. 72 : Carry forward and set off of business losses – Long term capital loss – Tax planning with in frame work of law is permissible – Long term capital loss is allowed to be set off against long term capital gains. [S. 45] 1064

Assessing Officer disallowed the capital loss and not allowed to be setoff against long term capital gains. On appeal the Tribunal held that the Assessing Officer cannot disregard a transaction just because it results in a tax advantage to the assessee. Tribunal held that they cannot legitimize and glorify tax evasion through colourable devices and tax shelters. Tribunal also held they cannot deprecate and disapprove genuine tax planning within the framework of law. The line of demarcation between what is permissible tax planning and what turns into impermissible tax avoidance may be somewhat thin, but that cannot be excuse enough for the tax authorities to err on the side of excessive caution. Tribunal directed the Assessing Officer to allow set-off of long term capital loss on the sale of shares in VCAM Investment Managers Pvt Ltd, against the long term capital gains on the sale of the property. (ITA No. 4286/Mum/2017, dt.20-9-2021) (AY. 2010-11)

Michael E Desa v. ITO (Mum.)(Trib.) www.itatonline.org

S. 72 : Carry forward and set off of business losses – Legitimate claim of set-off of unabsorbed losses cannot be rejected even when assessee omits to claim same in return [S. 10A, 72(1)(1), 154] 1065

Assessee company filed its return and declared 'Nil' business income. Subsequently, assessee filed a rectification application before Assessing Officer seeking set-off of unabsorbed losses. Assessing Officer held that fresh claim of deduction could not be considered since assessee had omitted to file such with original return. CIT (A) affirmed the order of the Assessing Officer. On appeal Tribunal held that in view of provision of section 72(1)(i) whether or not assessee has set-off losses in return of income, income tax authorities are required to give effect to section 72(1)(i) and set-off such losses. Accordingly the Assessing Officer was to be directed to consider assessee's claim of set-off of unabsorbed losses/depreciation against declared income. (AY. 2005-06 to 2008-09)

Mistral Solutions (P.) Ltd. v. DCIT (2021) 186 ITD 399/ 211 TTJ 163 / 200 DTR 140 (Bang.)(Trib.)

S. 72 : Carry forward and set off of business losses – If return for the years in which loss was claimed filed on due date the loss is allowed to carryforward and set off [S.139(1)] 1066

The Assessing Officer disallowed the assessee's claim of brought forward losses and unabsorbed depreciation. But the Commissioner (Appeals) allowed the ground of the assessee and directed the Assessing Officer to grant the benefit of brought forward losses and unabsorbed depreciation. Tribunal held that in case the assessee had legally and rightfully claimed the set off of unabsorbed business loss and unabsorbed depreciation loss and the returns for the years in which such loss was shown had been filed on the due dates under section 139(1) of the Act then the assessee deserved to get the benefit of set-off. Matter remanded (AY.2012-13, 2014-15)

A CIT v. Parag Fans and Cooling System Pvt. Ltd. (2021) 86 ITR 598 (Indore)(Trib.)

1067 **S. 73 : Losses in speculation business – Share broker – Purchase and sale of shares – Loss incurred from error trades – Not speculative – Allowable as business loss [S. 28(i)]**

Hon'ble Tribunal held that assessee had carried out the transactions of purchase and sale of shares on account of a business exigency and not with an intention to earn profit, therefore, the same would not come within the purview of "Explanation" to section 73 of the Act. The loss on account of transaction in shares cannot be held to be speculation loss hence deleted the disallowance. (AY. 2003-04)

CLSA India Private Limited v. ACIT (2021) 210 TTJ 484 (Mum.)(Trib.)

1068 **S. 73 : Losses in speculation business – Purchase and sale of securities – Loss on account of its clients – Loss cannot be treated as speculative in nature [S. 28 (i)]**

Held that loss incurred on account of purchase and sale of securities on behalf of clients allowable as business loss. Provision of section 73 could not be applied. (AY. 2009-10)

DCIT v. Edelweiss Financial Advisors Ltd. (2021) 188 ITD 834 (Ahd)(Trib.)

1069 **S.73A: Carry forward and set off of losses by specified business – Loss can be setoff against profit from another unit which was not eligible for deduction**

Held loss incurred in respect of its business unit claiming deduction under section 35AD could be set-off against profit of assessee from another unit which was not eligible for deduction. (AY. 2011-12, 2012-13)

Sarovar Hotels (P.) Ltd. v. DCIT (2021) 188 ITD 498 (Mum.)(Trib.)

1070 **S. 74 : Losses – Capital gains – Security transaction tax – Loss from sale of long term capital asset – Allowed to be carried forward for set off though long term capital asset is exempt [S. 10 (38), 45]**

Tribunal held that loss from sale of long-term capital asset on which security transaction tax has been paid should be allowed to be carried forward for set off even though income from such transfer of long-term capital asset is exempt under section 10(38) of the Act. (AY. 2011-12, 2013-14)

Shiv Kumar Jatia v. ITO (2021) 190 ITD 181 (Delhi)(Trib.)

1071 **S. 80AC : Return to be furnished – Intimation – Co-Operative Societies – Chapter V1A deduction was disallowed – Return was not filed within stipulated under section 139 of the Act – Recovery proceedings – Writ petition was dismissed on the ground that no claim under any of provisions of Part C of Chapter VIA would be admissible in case of a belated return.[S. 80AC(ii), 139(1) 143(1)(a), Art, 226]**

The return was filed belatedly and in the return of income chapter VIA deduction was claimed. While processing the return the claim was disallowed and adjustment was made. When the recovery proceedings were started the assessee filed the writ petition. Dismissing the petition the Court held that the provisions of Section 80AC(ii) make it clear that any deduction that is claimed under Part C of Chapter VIA would be admissible only if return of income in that case were filed within prescribed due date. Scope of an 'intimation' under Section 143(1)(a), extends to the making of adjustments based upon errors apparent from the return of income and patent from the record. Thus

to say that the scope of 'incorrect claim' should be circumscribed and restricted by the Explanation which employs the term 'entry' would, not be correct and the provision must be given full and unfettered play. The explanation cannot curtail or restrict the main thrust or scope of the provision and due weightage as well as meaning has to be attributed to the purposes of Section 143(1)(a). Provisions of Section 80AC(ii) make it clear that any deduction that is claimed under Part C of Chapter VIA would be admissible only if the return of income in that case were filed within the prescribed due date. Thus no claim under any of the provisions of Part C of Chapter VIA would be admissible in the case of a belated return. Held that no claim under any of provisions of Part C of Chapter VIA would be admissible in case of a belated return. (AY. 2018-19)
AAS20 Veerappampalayam Primary Agricultural Co-op. Credit Society Ltd v. Dy. CIT (2021) 202 DTR 391 / 321 CTR 163 (Mad.)(HC)

S. 80G : Donation – Religious trust – providing accommodation to persons propagating and disseminating Dharmik Shiksha in society as a whole – Not to particular community or religion – Denial of approval was held to be not valid- Directed to grant approval. [S. 12AA] 1072

Held that the assessee had been granted registration under section 12AA of the Act only after considering that the objects of the assessee-trust were charitable in nature. There was no change in the objects of the assessee-trust, and it could not be said that the objects were not charitable in nature while granting approval under section 80G of the Act. Therefore, the Commissioner (E) was directed to grant approval under section 80G of the Act.(AY.2018-19)
Om Sat Sanatan Geeta Bhawan Trust v. CIT(E)(2021)88 ITR 764 (Chd.)(Trib.)

S. 80G : Donation – Statutory body created under Sikh Gurudwara Act, 1925 – Religious purposes – Engaged in numerous charitable activities like running School, colleges, Medical colleges, Hospitals, Library, Sarai, Lunger, flood relief camps etc. – Entitle to benefit under section 80G(5)(iii) of the Act [S. 80G(5)(iii)] 1073

Assessee, a statutory body created under Sikh Gurudwara Act, 1925 enacted for administration of Gurudwaras, was also engaged in numerous charitable activities. It sought registration under section 80G which was denied by revenue on ground that assessee's pre-dominant purpose was purely religious and it was established for welfare and managements of Sikh Shrines and Gurudwaras and thus, attracted disqualification under section 80G(5)(iii) read with Explanation 3. On appeal the Tribunal held that on perusal of principles of Sikhism, Sikh Gurudwara Act, 1925 and section 80G, it was observed that in Sikhism, there was no distinction based on caste, creed, sex etc. Further, it was clear from Sikh Rehat Maryada, place of worship (gurudwaras) were open for all human beings irrespective of caste, creed or religion - Similarly, school, colleges, medical colleges, hospitals, library, sarai, were also open for all human beings irrespective of caste, creed or religion. Activities of assessee could not be termed as being done only for benefit of particular community/religion, hence, assessee would be entitled to registration under section 80G(5)(iii) of the Act.
Shirmoni Gurdwara Parbandhak Committee v. CIT (2021) 190 ITD 888/ 214 TTJ 36 (Amritsar)(Trib.)

1074 **S. 80G : Donation – Hospital and school – Denial of approval is held to be not valid – Remanded to pass a speaking order – Amendment in section 80G is effective from 1-10-2009; thus, approval granted on or after 1-10-2009 would be governed by amended law. [S. 12AA, R. 11AA]**

The assessee charitable institution ran hospital and school. CIT (E) denied approval under section 80G on ground that assessee was generating huge surplus as it was receiving Medical and Education associate share for use of its facility by associate concerns and also held that rental income and were not from any charitable activity. Tribunal held that CIT(E) did not raise any specific issue with regard to nature of transactions in questions and did not take matters to logical end. Accordingly directed the CIT (E) to pass a speaking order. Tribunal also held that amendment in section 80G omitting time limitation to which an approval was subjected, is effective from 1-10-2009; thus, approval granted on or after 1-10-2009 would be governed by amended law accordingly the approval granted before this date would be governed by extant law and same would, on expiry, be subjected to renewal and once so renewed, approval would extend in perpetuity. Matter remanded.

Mannulal Jagannath Das Trust Hospital v. ACIT (2021) 186 ITD 247 / 201 DTR 98 / 210 TTJ 518 (Jabalpur)(Trib.)

1075 **S. 80G : Donation – Expenditure on corporate social responsibility – Denial of deduction is held to be not justified – CIT (A) has the power to entertain the claim though not made in the return or revised return [S.254 (1)]**

Tribunal held that the assessee could not be denied the benefit of deduction under Chapter VI-A, merely because such payment formed part of corporate social responsibility, because that would lead to double disallowance, which was not the intention of the Legislature. The Assessing Officer was to verify whether or not the conditions necessary to claim deduction under section 80G of the Act had been met. The assessee was to file all requisite details in order to substantiate its claim before the Assessing Officer and the Assessing Officer was then to grant deduction to the extent of eligibility. The Tribunal also held that the first appellate authority had powers to entertain additional claims, even if they were not made in the return of income. The assessee in principle was entitled to claim deduction of gratuity paid before the appellate authorities. Accordingly, the Assessing Officer was to quantify the amount of deduction towards gratuity and decide accordingly. (AY.2016-17)

FNF India P. Ltd. v. ACIT (2021) 85 ITR 18 (SN)(Bang.)(Trib.)

1076 **S. 80G : Donation – Denial of exemption – Failure to incur expenditure – Registration u/s 12AA was granted – Matter remanded [S. 12A, 12AA, 80G(5)]**

CIT(E) denied the registration u/s 80G(5) of the Act on the ground that the assessee has failed to lead any evidence about having incurred any expenditure in the financial statement. On appeal the assessee contented that the assessee has incurred the expenditure however the information was not available before the CIT(E). Tribunal remanded the matter to the file of CIT(E) to decide the matter in accordance with law.

Jhalana Wildlife Research Foundation v. CIT(E)(2021) 209 TTJ 540 / 197 DTR 428 (Pune) (Trib.)

S. 80G : Donation – Limitation – Application moved on 1st Aug, 2019 – Order passed on 19 th Feb, 2020 – Limitation period expired on 28 th Feb, 2020 – Order is within period of limitation – Once registration u/s 12A is granted denial of approval u/s 80G(5) is not valid – Trust is operating from temple premises – Matter remanded. [S.12AA, 80G(5)(vi)] 1077

Tribunal held that application moved on Ist Aug, 2019. Order passed on 19th Feb, 2020. Limitation period expired on 28 th Feb, 2020 Order is within period of limitation. Tribunal also held that once registration u/s 12A is granted denial of approval u/s 80G(5) is not valid however Trust is operating from temple premises. Matter remanded.
BGSAL CF TRY v. CIT (2021) 198 DTR 41 (Jaipur)(Trib.)

S. 80G : Donation – Refusal to grant recognition on ground there were no noticeable charitable activities from date of formation of trust – Denial of registration is not valid – Matter remanded to CIT(E) to decide in accordance with law. [S. 12AA, 80G(5)(vi)] 1078

The assessee-trust was granted registration under section 12AA of the Act by the Commissioner (E). The Department had not doubted the charitable nature of the objects for which the assessee was established. The grant of recognition under section 80G of the Act, acted as a catalyst and resulted in donations which in turn resulted in charitable activities. In other words, there was encouragement for donors to donate when the trust was recognized under section 80G of the Act. Therefore, grant of recognition under section 80G of the Act may be a condition precedent for achieving the objects for which the trust was established. The case was restored to the files of the Commissioner (E) who was to consider the assessee's application for recognition under section 80G(5)(vi) of the Act afresh. The reasons stated by the Commissioner (E) could not be a ground to deny the benefit of recognition under section 80G(5)(vi) of the Act. The Commissioner (E) shall afford a reasonable opportunity of hearing to the assessee and shall take a decision in accordance with law.
Sri Saravu Mahalinga Bhat Foundation v. CIT (E)(2021) 91 ITR 33 (SN)(Bang.)(Trib.)

S. 80HHB : Projects outside India – Gross total income – Additional deduction to be computed on the basis of recomputed gross total income. 1079

Allowing the appeal of the revenue the Court held that by virtue of the decision of the Tribunal the claim of the assessee for loss on revaluation and sale of Government bonds had been accepted. In accounting parlance, these items were to be deleted from the gross total income of the assessee. The quantification under section 80HHB should have been done correspondingly. The deduction under section 80HHB under the quantifying order dated July 28, 2003 was correct.(AY.1996-97)
CIT v. Bhageeratha Engineering Ltd. (No. 2)(2021) 439 ITR 713 (Ker.)(HC)

S. 80HHC : Export business – Deduction granted under section 80IB must be excluded [8IA(9), 80IB] 1080

Dismissing the appeal of the assessee the Court held that, the provisions are explicit that if any deduction is claimed and allowed under section 80-IA as an eligible business, the assessee cannot claim deduction to the extent of such profits and gains coming under other heads of deduction of Chapter VI-A of the Act. Section 80HHC which relates

to deductions in respect of the profits and gains from export business falls under the heading "C" of Chapter VI-A. There is no ambiguity in section 80-IA(9) of the Act. The intention of the Legislature is clear that there cannot be a simultaneous deduction under section 80-IA and under section 80HHC. The profits and gains allowed as deduction under section 80-IA have to be excluded while computing the deduction under section 80HHC.(AY.2000-01, 2002-03, 2003-04, 2004-05)
Kanam Latex Industries Pvt. Ltd. v. CIT (2021) 439 ITR 218 (Ker.)(HC)

1081 **S. 80HHC : Export business – Order not given effect even after eight years of passing the order – The Assessing Officer was directed to give effect of the Order of Tribunal within a period of one month from the receipt of the certified copy of this judgment – Non-compliance of the order the Assessing Officer made liable to pay cost of Rs.25000. From his salary [S. 254(1), Art. 226]**
The Assessing Officer has not given an effect to the order of the Tribunal even after eight years of passing of the order by the Appellate Tribunal. On writ the High Court directed the Assessing officer to give effect of the Order of Tribunal within a period of one month from the receipt of the certified copy of this judgment.-Non compliance of the order the Assessing Officer made liable to pay cost of Rs,25000. From his salary. (AY. 2003-04)
Mohanachandan Nair, B. v. A CIT (2021) 197 DTR 217/ 318 CTR 495 (Ker.)(HC)

1082 **S. 80HHC : Export business – Insurance claim and miscellaneous income – No nexus with core business – Not entitled to deduction.[S.80HHC(3)]**
Dismissing the appeal of the assessee the Court held that the insurance claim and miscellaneous income had no nexus with the assessee's business. Since there was no nexus, the Tribunal rightly reversed the order of the appellate authority and restored that of the Assessing Officer for excluding receipts arising in the core business and not specified in Explanation (baa) to section 80HHC. The insurance claim and miscellaneous income were not directly attributable to the business, and hence, they were liable for 90 per cent deduction. Followed *CIT v. Ravindranathan Nair (2007) 295 ITR 228 (SC)*. (AY.2002-03, 2003-04)
VTM Limited v. Dy. CIT (2021) 433 ITR 182 (Mad.)(HC)

1083 **S. 80HHC : Export business – Shipping agency fees, hire charges of machinery and installation must be reduced on net Basis – Proceeds of services and repairs by Shipyards not to be reduced. [S.80HHC Explanation (baa)]**
Court held that the receipts by way of shipping agency fees and the hire charges of machinery and installation had to be reduced in terms of Explanation (baa) to section 80HHC of the Income-tax Act, 1961. However, such reduction had to be on net basis and not on gross basis. That the receipts toward hire of ships/transhippers and hire charges of barges had to be reduced in terms of Explanation (baa) to section 80HHC. That proceeds of services and repairs of vessels by shipyards were not covered under Explanation (baa) to section 80HHC and, therefore, there was no question of reduction of such receipts from out of the profits. (AY.1997-98)
Sesa Goa Ltd. v. CIT (NO. 1)(2021) 430 ITR 109 (Bom.)(HC)

S. 80IA : Industrial undertakings – Infrastructure development – Scope of S/80IA(5) is limited to determine quantum of deduction under S/80IA(1) by treating 'eligible business' as 'only source of income' – However, S. 80IA(5) cannot be read to limit the deduction only to business income. [S. 80AB] 1084

Held by the High Court that the scope of Section 80IA(5) of the Act is limited to determination of quantum of deduction under Section 80IA(1) by treating 'eligible business' as the 'only source of income'. Sub-section (5) cannot be pressed into service for reading a limitation of the deduction under sub-section (1) only to 'business income'. (AY 2002-03)

CIT v. Reliance Energy Ltd (2021) 127 taxmann.com 69 / 320 CTR 473 / 201 CTR 73/ (2022) 441 ITR 346 (SC)

S. 80IA : Industrial undertakings – Infrastructure development – Splitting up or Reconstruction of existing business – Previously used – Generation and distribution of electricity – Leasing windmills – Lease does not amount to transfer – Entitle to deduction. [S.80IA(3)] 1085

Allowing the appeal the Court held that a lease transaction would not amount to a transfer and merely because the lessor had claimed 100 per cent depreciation on the asset that could not make the asset previously used to disqualify the assessee from claiming deduction under section 80-IA.Order of tribunal set aside. (AY.1997-98 to 2004-05)

Sundaram Non-Conventional Energy Systems Ltd v. ACIT (2021) 438 ITR 124 (Mad.)(HC)

S. 80IA : Industrial undertakings – Infrastructure development – software technology park – Lease rentals – Assessable as business income – Eligible for deduction [S. 28 (i)] 1086

Dismissing the appeal of the revenue the Court held that Lease rent income received from letting out modules of software technology park to various lessees would constitute income from business and eligible for deduction. (AY. 2007-08 to 2009-10)

CIT v. Rishabh Infopark (P) Ltd. (2021) 282 Taxman 143 (Mad.)(HC)

S. 80IA :Industrial undertakings – Loss – Setting off of Loss of loss-making units against profits of profit – Making units – Entitled to benefit. 1087

Court held that the Tribunal was correct in holding that the assessee was entitled to deduction under section 80IA without setting off of the loss of loss-making units against the profits of the profit-making units. Followed *CIT v. Karnataka Power Corporation Ltd* (ITA No. 778 of 2009 dt. 1-19-2015 (AY. 2007-08)

CIT v. Karnataka Power Corporation Ltd. (No. 1)(2021) 436 ITR 285 (Karn.)(HC)

S. 80IA : Industrial undertakings – Infrastructure development – Non-automatic approval – Requirement that a unit not to occupy more than 50 per cent of area did not apply – Entitled to deduction. 1088

Dismissing the appeal of the revenue the Court held that the assessee had applied for non-automatic approval under said scheme, requirement that a unit not to occupy more than 50 per cent of area did not apply to its case. Tribunal is justified in allowing the deduction. (AY. 2007-08)

CIT v. Primal Projects (P.) Ltd. (2021) 279 Taxman 415 / 203 DTR 167 (Karn.)(HC)

1089 **S. 80IA : Industrial undertakings – Entitled to deduction without setting off of loss or loss making units, against income of its profit making units. [S.260A]**

Dismissing the appeal of the revenue the Court held that the Tribunal is justified in holding that the assessee is entitle to deduction under section 80IA of the Act, without setting off the loss making units against the profits of the profit making units. Followed ITA No. 778 of 2009 dt 19-1-2015.

CIT v. Karnatka Power Corporation (2021) 127 taxmann.com 282 (Karn.)(HC)

Editorial : SLP granted to the revenue, CIT v. Karnatka Power Corporation (2021) 280 Taxman 1 / 127 taxmann.com 283 (SC)

1090 **S. 80IA : Industrial undertakings – Electricity undertaking – Expenditure on renovation and modernisation of existing lines – More than 50% of book value – Entitled to deduction. [S.80IA(4)]**

The assessee was a public limited company which was wholly owned by the Government of Karnataka and was engaged in the activity of distribution of electricity. The assessee filed the return of income for the assessment year 2005-06 claiming deduction of Rs. 141,84,44,170 under section 80-IA(4)(iv)(c). The Assessing Officer disallowed which was confirmed by CIT (A) and Tribunal. On appeal to the High Court the assessee submitted that its case fell within the third category of undertakings and therefore, the amount undertaken towards renovation and modernization had to be considered. Alternatively, it submitted that capital work-in-progress was to be included and should not be restricted only to those amounts which were capitalized in books and substantial renovation and modernization could be at any time during the period beginning on April 1, 2004 and ending on March 31, 2006. It contended that it had undertaken substantial renovation and modernization of existing lines which was more than 50 per cent. of the book value of assets as on April 1, 2004 under the Explanation to section 80-IA(4)(iv)(c). Allowing the appeal the Court held that the assessee had undertaken substantial renovation and modernization of existing lines which was more than 50 per cent. of the book value of the assets as on April 1, 2004 under the Explanation to section 80-IA(4)(iv)(c) of the Act. Thus, it could safely be inferred that the assessee had undertaken the work towards renovation and modernization of existing transmission or distribution lines. The assessee was entitled to deduction under section 80-IA(4). relied on the Circular dated July 15, 2005 ([2005] 276 ITR (St.) 151) (AY. 2005-06).

Bangalore Electricity Supply Company Ltd. v. Dy. CIT (2021) 431 ITR 606/ 201 DTR 401 (Karn.)(HC)

Editorial : Notice issued in SLP filed by the revenue, Dy.CIT v. Bangalore Electricity Supply Company Ltd (2021) 283 Taxman 190 (SC)

1091 **S. 80IA : Industrial undertakings – Infrastructure development – Development and leasing of premises in software park – Assessable as business income – Entitled to deduction.[S.28(i), 80IA(4)]**

Dismissing the appeal of the revenue the Court held that the income derived from letting out of property to tenants for the purpose of running a technological park was income from business and not income from house property and the assessee was

entitled to deduction under section 80-IA(4) on rental income and lease rent income of the industrial park.(AY.2008-09)
CIT v. Tidel Park Ltd. (No. 1)(2021)430 ITR 214 (Mad.)(HC)

S. 80IA : Industrial undertakings – Infrastructure development- Functional Test – Each unit must function independently – Matter remanded. [S. 80IA(4)(iii)] 1092
Held that the assessee had to factually establish that it had four units or more and that no unit occupied more than 50 per cent allocable area. Accordingly, the Assessing Officer was to come to a factual finding that the assessee's claim of five floors of the industrial park were independent and separate units. The matter remanded (AY. 2006-07, 2008-09, 2009-10)
Dy. CIT v. Gopalan Enterprises (India) Pvt. Ltd. (2021)90 ITR 30 (SN)(Bang.)(Trib.)

S. 80IA : Industrial undertakings – Eligible profits – Business of power generation – Handling charges, interest received from employees and miscellaneous Income – Surcharge received from Electricity Boards for delayed payment of receivables in respect of supply of electricity – Interest received from third party for delay in payment – Not Income Generated From Business Operations – Not eligible for deduction – Expansion of unit – Eligible deduction. 1093
Held that handling charges, interest received from employees and miscellaneous Income, surcharge received from Electricity Boards for delayed payment of receivables in respect of supply of electricity, Interest received from third party for delay in payment, not Income generated from business operations,not eligible for deduction. Income from expansion of unit, eligible deduction. (AY.2013-14, 2014-15)
NLC India Ltd. v. Dy. CIT (2021) 87 ITR 121 (Chennai)(Trib.)

S. 80IA : Industrial undertakings – Deduction disallowed for interest on delayed payments – bore no nexus to the industrial activity of power generation – disallowed. 1094
Assessee and revenue in appeal. First, assessee claimed wrongful disallowance under S. 80IA. Surcharge in the form of interest for delayed payments to assessee in dispute. Tribunal held interest received is simipliciter basis the contract. Thus, cannot be considered as income from business operations merely because received from supplier and so is not eligible u/s. 80IA. Second, is addition towards surcharge recoverable from Electricity Boards. Tripartite agreement where surcharge bore specific mention, thus taxable under accrual basis. Revenue's appeal covered by assessee's own case and dismissed. ((AY. 2013-14, 2014-15).
NLC India v. DCIT (2021) 87 ITR 121 (Chennai)(Trib.)

S. 80IA : Industrial undertakings – Infrastructure development – Solid waste management – Agreement with Municipal corporation – Substantial work by assessee – Entitled to deduction. 1095
Assessee had entered into an agreement with municipal corporation and other authorities for providing work of waste treatment/processing/development/maintenance. Assessee claimed deduction under section 80IA of the Act. Assessing Officer disallowed same on ground that said agreement was only for supply of vehicles by assessee for

lifting garbage at different points and such supply of vehicles was purely a works contract for supply of vehicle and not a solid waste management system developed/ operated/maintained by assessee. CIT (A) confirmed the disallowance. On appeal the Tribunal held that since substantial work of solid waste management was actually carried out by assessee and not Municipal Authorities, assessee was to be allowed deduction under section 80IA. (AY. 2010-11, 2011-12)
Antony Waste Handling Cell (P.) Ltd. v. ACIT (2021) 187 ITD 1/209 TTJ 15 (Mum.)(Trib.)

1096 **S. 80IA : Industrial undertakings – Infrastructure development – Amount received under agreement with Tamil Nadu Water Supply and Drainage Board for maintaining infrastructure facility – Eligible for deduction – Disallowance u/s 14A cannot exceed exempt income [S.14A, 80IA(4), R.8D]**
Tribunal held that Amount received under agreement with Tamil Nadu Water Supply and Drainage Board for maintaining infrastructure facility. Followed *Katira Construction Ltd v. UOI (2013) 352 ITR 513 (Guj)(HC).* Tribunal also held that disallowance u/s 14A cannot exceed exempt income.(AY.2009-10)
Doshion Ltd. v. ACIT (OSD) (2021) 85 ITR 12 (SN.)(Ahd.)(Trib.)

1097 **S. 80IA : Industrial undertakings – Wind mills – Initial assessment year – Option to choose year within block of 15 years from commencement of business.**
Dismissing the appeal, that the initial assessment year in respect of a claim under section 80-IA would mean the first year opted for by the assessee for claiming such deduction and the deduction was allowable for a period of 10 years from then on, out of a period of 15 years beginning from the year in which the assessee commences operations. As a result, the relief provided to the assessee was to be sustained. (AY.2011-12)
Advik Hi-Tech Pvt. Ltd. v. Dy. CIT (2021) 85 ITR 535 (Pune)(Trib.)

1098 **S. 80IA : Industrial undertakings – Production of power – Claiming cost of power plant and recognizing revenue for generation of power and steam at specific value – No evidence to show that steam value charged from other units not at Market Value – Assessing Officer not empowered to re-compute Profit And Loss Account of eligible unit. [S.80IA(4)]**
That for the purpose of deduction under section 80IA(4) power should be construed in common parlance as "energy". "Energy" can be in any form being mechanical, electricity, wind or thermal. In such circumstances, the "steam" produced by the assessee could be termed as power and would qualify for the benefit available under section 80IA(4) of the Act. The order of the Commissioner (Appeals) affirmed. That regarding allocation of cost between high power steam and low power steam, once the assessee had claimed relevant cost of the power plant and recognized revenue for generation of power and steam at specific values and the Assessing Officer had not brought any evidence that the steam value charged from the other unit was not at market value, the Assessing Officer was not empowered to re-compute the profit and loss account of the eligible unit. There was no need to prepare/recast the profit and loss account or compute excess low power cost recovered from paper units as made by the Assessing Officer as well

as by the Commissioner (Appeals). The method of cost re-allocation for high power steam and low power steam initially worked out by the Assessing Officer and further method of allocation of cost made by the Commissioner (Appeals) were to be set aside. (AY.2007-08 to 2013-14)
N. R. Agarwal Industries Ltd. v. ACIT (2021) 91 ITR 503 (Surat)(Trib.)

S. 80IA : Industrial undertakings – Generation of power – Amalgamation of companies – Eligible enterprise transferred before expiry of period of exemption – Transferee Company, i.e Amalgamated company entitled to deduction.[S.80IA(4), 80IA(12)(b)] 1099
Held that when any undertaking of an Indian company which was entitled to deduction under this section was transferred before expiry of the period specified in this section to another Indian company, then in terms of clause (b) of section 80IA(12), the provisions of this section shall apply to the amalgamated company, as they would have applied to the amalgamating company. In other words, the provision made it clear that the ambit of this section was extended to cases where an eligible enterprise was transferred, in which case the transferee company, i. e., the amalgamated company would become entitled to the deduction. The Commissioner (Appeals) had appreciated the facts and the law as well as weighed the earlier decisions of his predecessor and allowed the claim of deduction under section 80IA. The order of the Commissioner (Appeals) called for no interference.(AY. 2010-11)
DCIT v. Chiripal Industries Ltd. (2021) 91 ITR 21 (SN)(Ahd.)(Trib.)

S. 80IA : Industrial undertakings – Losses relating to years prior to initial year – Could not be set off against income from Windmill on or after initial year. [S.80IA(4)] 1100
Held that the losses pertaining to the earlier years, referred to by the Assessing Officer for setting off against the current year's qualifying income from the eligible unit, related to the years prior to the initial year. Obviously, such losses could not be set off against the income from the windmill on or after the initial year. The Tribunal in the case of the assessee for the assessment years 2007-08 to 2011-12, having accepted the assessee's claim, the claim was to be allowed. (AY. 2012-13, 2013-14)
DCIT v. Sakal Papers Ltd. (2021) 91 ITR 69 (SN)(Pune)(Trib.)

S. 80IA : Industrial undertakings – Market value of power sold – Captive consumption – Purchase price of electricity in the open market paid to the State Electricity Board by the manufacturing units in uncontrolled conditions is to be considered for determination of captive consumption [S. 80IA(4)(iv), 80IA(8), 92F(ii)] 1101
Tribunal held that purchase price of electricity in the open market paid to the State Electricity Board by the manufacturing units in uncontrolled conditions is to be considered for determination of captive consumption. Order of CIT (A) is affirmed. (AY. 2016-17)
DCIT v. Balarampur Chini Mills Ltd. (2021) 211 TTJ 729/ 203 DTR 60 (Kol.)(Trib.)

S. 80IAB : Undertaking – Development of Special Economic Zone – Developer – Operation and maintenance – Entitled to deduction. 1102
Held that the activities of assessee being that of a developer, would also include operation and maintenance of SEZ and, therefore, assessee would be entitled for

deduction under section 80IAB; it could not be said that deduction under section 80IAB will be allowed to transferee developer only. (AY. 2014-15)
DCIT v. Zydus Infrastructure (P.) Ltd. (2021) 190 ITD 652 (Ahd.)(Trib.)

1103 **S. 80IAB : Undertaking – Development of Special Economic Zone – Lease rental – business' of developing- Eligible for deduction.**
Tribunal held that lease rental income, on lease of house property is within contemplation of profits derived by a developer of a SEZ from 'business' of developing it and, thus, eligible for deduction. (AY. 2012-13)
DCIT v. DLF Assets (P.) Ltd. (2021) 187 ITD 857 (Delhi)(Trib.)

1104 **S. 80IB : Industrial undertakings – Fraudulent transactions – Denial of tax holiday – Principles of natural justice is not applicable in cases of fraud – Special provisions for payment of tax by certain persons other than a company – Hospital – Tax holidays – Alternative remedy – Finding given by single judge was modified – Directed to entertain the appeal and dispose the appeal in accordance with law as expeditiously. [S.80IB(11C), 115JC, 153A, 246A, Art.226]**
On writ dismissing the petition the single judge held that the assessment order revealed that during the demonetisation period, the assessee had deposited a total sum of Rs. 7,54,77,619 in cash, and when the assessee was asked to explain the source, he stated that he was running a hospital at Thanjavur, for which the tax holiday was now being sought. The hospital had been the source of a huge cash holding of Rs. 7,54,77,619. Any tax holiday can be granted to a person who declares a truthful return. It cannot and should not be granted to a person who claims that he purchased medical equipment in the guise of treating poor persons for a sum of Rs. 2,32,79,760 and it is subsequently found that the entire transaction was bogus. There was every justification in the order of the Assessing Officer invoking section 115JC which provision was squarely applicable. Appeal was filed against the order of single Judge. Learned single judge dismissed the writ petition and also given finding on merits.On appeal the division bench modified the order of the single judge and directed the revenue to entertain the appeal and dispose the appeal in accordance with law as expeditiously. (AY 2013-14 to 2017-18)
Gurushanakar S. v. CIT (2021) 199 DTR 42 (Mad).(HC)
Editorial: Refer order of single judge, Gurushanakar S. v. CIT (2020) 427 ITR 175/ (2021) 199 DTR 44/ 319 CTR 410 / 277 Taxman 180 (Mad.) (HC)

1105 **S. 80IB : Industrial undertakings – Failure to provide details of number of workmen working in each units in form No. 10CCB- Denial of exemption is held to be not valid. [Form no. 10CCB]**
Assessing Officer denied assessee deduction under section 80-IB, because, assessee in Form No. 10CCB failed to provide details of number of workmen working in each of Units of assessee. Tribunal held that omission on part of assessee whilst filling in Form 10CCB, was not such an omission which was not rectifiable and Assessing Officer should have granted assessee an opportunity for rectifying this omission. On appeal by the revenue the Court held that since assessee, prior to assessment, produced material before Assessing Officer which evidenced that each of Units of assessee employed more than 10 workers, there was material before Assessing Officer to conclude that assessee

fulfilled conditions required for claiming deduction under section 80IB. (AY. 2006-07, 2007-08)
CIT v. Borkar Packaging (P.) Ltd. (2021) 276 Taxman 131 / 199 DTR 526/ 320 CTR 792 (Bom.)(HC)

S. 80IB: Industrial undertakings – Real estate developer – Sale of opening stock – Estimate of profit to reduce the claim is held to be not justified – Revenue could not use concept of reasonable profit which is subject matter of section 80IA, for purpose of section 80-IB, as object of sections 80IA and 8IB are different [S.80IA] 1106
Assessee was a real estate developer and its books of account was audited by a Chartered Accountant. During year under consideration, assessee did not incur any cost and only opening stock was sold. Assessee, thus, claimed average profit at rate of 62.03 per cent. Though opening stock was not proved to be wrong, or sales invoices were doubted, Assessing Officer estimated average profit at 16.02 per cent and Commissioner (Appeals) estimated assessee's average profit at 38.40 per cent. On appeal the Tribunal held that since Assessing Officer worked out unreasonable profit without pointing out any defect in opening stock, which was sold during relevant assessment year, estimation of average profit by Assessing Officer without noting any defect in opening stock, was not justifiable, therefore estimation of average profit was not in accordance with law, addition made by lower authorities was to be deleted. Revenue could not use concept of reasonable profit which is subject matter of section 80IA, for purpose of section 80-IB, as object of sections 80IA and 80IB are different. (AY. 2009-10)
Vipul Park v. DCIT (2021) 186 ITD 628 (Surat)(Trib.)

S. 80IB: Industrial undertakings – Research and development – Technology purchased from another company – Matter remanded back to Assessing Officer to examine afresh as to whether the asseseee has carried out any scientific research and development activities independent of the technology purchased from MMB [S.80B(8A)] 1107
The assessee company availed of Monsanto technology from another company MMB by making payment of trait value to develop hybrid cotton seeds. The Tribunal held that the role of the assessee for carrying out independent scientific research and development is not clearly established as required under section 80IB(8A) of the Act the matter is remanded back to the Assessing Officer to examine a fresh as to whether the assessee has carried out any scientific research and development activities during the year independent of the technology purchased from MMB. (AY. 2010-11)
DCM Shriram Consolidated Ltd v. ITO (2021) 201 DTR 113 (Delhi)(Trib.)

S. 80IB(10) : Housing projects – Completion of project – Certificate of Registered Certified Architect Sufficient Karnataka Municipal Corporations Act, 1976, S. 310] 1108
Dismissing the SLP of the revenue the Court held that the decision of the High Court did not warrant any interference. However, the observations in the judgment as to the scope of section 310(2) of the Karnataka Municipal Corporations Act, 1976, were qua the State of Karnataka, given the particular local Act in that case ie Certificate of Registered Certified Architect Sufficient compliance. (AY. 2008-09)
PCIT v. Majestic Developers (2021) 431 ITR 49 (SC)

1109 **S. 80IB(10) : Housing projects – Open terrace of building not to be included for computation of built-up area – Time limit for completion of project – Date of approval of building plan and not date of lay-out – Completion Certificate issued by local panchayat would satisfy the requirement – Entitled to deduction.[S.80IB(10)(b)]**
Dismissing the appeals the Court held that the Tribunal was right in holding that the open terrace area should not be included while computing the built-up area for the purpose of claiming deduction. The time limit for completion of the eligible project should not be computed from the date on which the lay-out was approved for the first time but only from the date on which the building plan approval was obtained for the last time. The completion certificate issued by the local panchayat would satisfy the requirements of the section instead of the completion certificate issued by the Chennai Metropolitan Development Authority which had originally approved the plan.(AY.2010-11)
CIT v. Shanmugham Muthu Palaniappan (2021) 437 ITR 276 (Mad.)(HC)

1110 **S. 80IB(10) : Housing projects- – Approval of local authority in the name of Director – Exemption cannot be denied.**
Held that the Tribunal is justified in holding that merely because approval of local authority in the name of director exemption cannot be denied.(AY. 2008-09)
CIT v. True Value Homes (India) Pvt. Ltd. (2021) 435 ITR 391 (Mad.)(HC)

1111 **S. 80IB(10) : Housing projects – Owner of land outsourcing the construction work – Entitled to deduction.**
Dismissing the appeal of the revenue the Court held that a plain reading of section 8IB(10) of the Income-tax Act, 1961, makes it clear that deduction is available in a case where an undertaking develops and builds a housing project. The section clearly draws the distinction between "developing" and "building". An assessee who is only an owner of the land and has outsourced the work of construction of the building and had realised the sale proceeds in the form of constructed area is entitled to deduction under section 80IB. Followed *CIT v. Veena Developers (2018) 12 ITR-OL 487 (SC)*(AY 2006-07 to 2009-10)
CIT v. Sri Lakshmi Brick Industries (2021) 434 ITR 213 (Mad.)(HC)

1112 **S. 80IB(10) : Housing projects – Built-up area – Proportionate deduction can be granted – Method of accounting – Project Completion method can be adopted. [S.133A]**
Dismissing the appeal of the revenue the Court held that the Tribunal was correct and the assessee was entitled to the benefit of proportionate deduction under section 80IB(10) of the Act in respect of flats which conformed to limits under the relevant provisions of the Act. Court also held that the Institute of Chartered Accountants has issued a clarification that revised Accounting Standard 7 is not applicable to the enterprises undertaking construction activities. The assessee was right in following the project completion method of accounting in terms of Accounting Standard 9.(AY. 2009-10).
CIT v. S. N. Builders and Developers (2021) 431 ITR 241 / 279 Taxman 347 (Karn.)(HC)

S. 80IB(10) : Housing projects – Completion certificate – Application for issuance of certificate and fees was paid within time specified – Delay in issuance of certificate by Municipal corporation – Occupancy certificate deemed to have been issued – Entitled to deduction – Project for which building completion application was made 4-7-2014, schedule date of completion was 31-3-2014 – Denial of exemption was justified – Entitled to deduction in respect of flats not exceeding area of 1500 Sq. ft – Delay in filing the appeal was condoned [S. 254(1)] 1113

Delay in filing the appeal was condoned. Tribunal also held that the Central Board of Direct Taxes Instruction No. 4 of 2009 dated June 30, 2009 clarified that the assessee could claim deduction under section 80-IB(10) on a year-to-year basis when it was following the percentage completion method and such a deduction so granted in each of the years could be withdrawn if the condition of completing the project within the stipulated period was not fulfilled. The project of the assessee contained eleven blocks in an area of 11.05 acres and the assessee had completed seven blocks in totality, F, G, H, I, J, K and L and had also furnished the occupancy certificate dated March 29, 2012. Therefore, the assessee was eligible for deduction under section 80IB(10) on the profits earned from those buildings The assessee had submitted the building completion notice" on July 4, 2014 only. Therefore, the deduction claimed under section 80-IB(10) Explanation (i), (ii) pertaining to its A, D and E housing projects was rightly rejected by the authorities.(AY.2013-14 to 2016-17)

Manjeera Projects v. ACIT (2021) 92 ITR 148 (Hyd.)(Trib.)

S. 80IB(10) : Housing projects – Survey – On money – Sale of flats – Entitle to deduction. [S. 133(6)] 1114

Held that when the assessee had made a surrender with the clear admission of having received on-money and the Department had accepted it while including it in the total income, it could not later on claim that no deduction under section 80-IB(10) could be granted thereon on the ground that the assessee failed to prove that the flat bookers gave such on-money. Once at the time of its inclusion in the total income it was agreed to be on-money from the flat bookings, a fortiori, such an income, being from sale of flats albeit received as on-money, qualified for the deduction as well. Therefore, the assessee was entitled to deduction under section 80-IB(10) on such amount.(AY. 2010-11)

Surana Mutha Bhasali Developers v. ACIT (2021) 89 ITR 47 (SN) / 213 TTJ 885 / 204 DTR 329 (Pune)(Trib.)

S. 80IB(10) : Housing projects – Completion Certificate – Completion Certified by Architects, planners and engineers – Delay in issue of completion certificate by local authority – Entitled to deduction – Allotment of more than one residential unit to persons belonging to persons belonging to the same family – Disallowable proportionately- Advance tax – Matter remanded [S.80IB (10)(f), 115JB, 234A, 234B] 1115

Tribunal held that the assessee entitled to deduction on the basis of competition certificate issued by Architects, planners and engineers. Delay in issue of completion certificate by local authority, exemption claimed cannot be denied. As regards allotment of more than one unit to persons belonging to the same family, exemption is

disallowable proportionately. Relied on *Kamat Constructions Pvt. Ltd. v. ACIT (2020) 429 ITR 609 (Bom)(HC).* Levy of interest matter was remanded. (AY.2012-13)
Shipra Estate Ltd. v. ACIT (2021) 86 ITR 245 (Delhi)(Trib.)

1116 **S. 80IB(10) : Housing projects – Restriction on extent of commercial space in housing project imposed by way of amendment to section 80IB(10) w.e.f. 01.04.2005 does not apply to housing projects approved before 01.04.2005 even though completed after 01.04.2005.[S.80IB]**
Tribunal relying on the decision of *CIT v. Sarkar Builders (2015) 375 ITR 392)(SC)* and *CIT v. Vatika Township (P) Ltd (2014) 367 ITR 466 (SC)* held that restriction on extent of commercial space in housing project imposed by way of amendment to section 80IB(10) w.e.f. 01.04.2005 did not apply to housing projects approved before 01.04.2005 even though completed after 01.04.2005. Since, in the instant case the housing project was admittedly approved before 01.04.2005, the first allegation of the Revenue that the aggregate built up commercial area exceeded the prescribed limit was bad in law. Further, the second objection raised by the Revenue i.e., for the completion of the project on or before 31.03.2008 was concerned, the Hon'ble Tribunal observed that the documents regarding this were never produced before the lower Authorities and were filed before the Hon'ble Tribunal for the first time as additional evidence. As a result, additional evidence filed was accepted and was restored back to the Ld. AO for adjudication.(AY. 2005-06, 2006-07)
DCIT v. Sahara India Sahkari Awas Samiti Ltd. (2021) 213 TTJ 863 / 205 DTR 297 / (2022) 193 ITD 19 (Delhi)(Trib.)

1117 **S.80IB(11A) : Undertaking – Business of processing, preservation and packing of fruits or vegetable eligible – Agricultural produce – handling, storage and transportation of food grains harmoniously interrelated as a single activity – Entitled to deduction.**
Held that section 80IB(11A) mandated that the assessee should be engaged in an "integrated business". In the present case, the assessee had demonstrated that the three elements, i. e., handling, storage and transportation of food grains, were harmoniously interrelated as a single activity and thus the assessee was eligible for deduction under section 80-IB(11A) of the Act. The assessee had demonstrated that it fulfilled the parameters of the exemptions. Besides, the Tribunal had on identical facts allowed deduction claimed under section 80-IB(11A) for the assessee's group company as well. (AY.2009-10)
Dy. CIT v. Daawat Foods Ltd. (2021) 91 ITR 110 (Delhi)(Trib.)

1118 **S. 80IC : Special category states – Consumption of electricity – Mismatch of production – Denial of exemption is held to be not justifies.**
Assessing Officer, on basis of consumption of electricity in various Units of assessee, concluded that profits of newly established Unit N was unreasonably high and he denied assessee deduction under section 80IC by observing that consumption of electricity was increased only by 1497 per cent, but sales had increased by 7102 per cent. Commissioner (Appeals) as well as Tribunal held that alleged mismatch between production and profits at various Units as determined by consumption of electricity at

such units could not be sole ground for denial of exemption. On appeal by the revenue High Court affirmed the order of the Tribunal. (AY. 2006-07, 2007-08)
CIT v. Borkar Packaging (P.) Ltd. (2021) 276 Taxman 131 / 199 DTR 526 / 320 CTR 792 (Bom.)(HC)

S. 80IC : Special category states – Substantial expansion – Initial assessment year – Previous year in which substantial expansion undertaken would became initial assessment year – Entitled to 100 Per Cent deduction from that assessment year subject to maximum period of ten years. 1119
Held that the previous year in which substantial expansion undertaken would became initial assessment year. Entitled to 100 Per Cent deduction from that assessment year subject to maximum period of ten years. (AY.2015-16)
Tilak Raj Arora v. CIT (2021) 92 ITR 52 (SN)(Delhi)(Trib.)

S. 80IC : Special category states – Failure to allocate financial expenses – Assessee allocating on the basis of ratio 58.67 % – The Assessing Officer computing 58.69 % – Held to be justified. 1120
Held that the allocation of financial expenses by the Assessing Officer is held to be valid. (AY. 2013-14 to 2015-16)
Rasna Pvt. Ltd. v. Dy. CIT (2021) 90 ITR 39 (SN)(Ahd.)(Trib.)

S. 81C : Special category states – Initial assessment – Commencement of Business on 28-12-2006 – Loss can only be set off against profits of eligible unit in Assessment Year 2008-09. [S.80IA(5), 80IC(7)] 1121
Initial assessment year is previous year in which undertaking or enterprise begins to manufacture or produce articles or things. Commencement of business on 28-12-2006. Tribunal also held that loss can only be set off against profits of eligible unit in Assessment Year 2008-09. (AY.2008-09)
Samrat Plywood Ltd. v. ACIT (2021) 87 ITR 102 / 203 DTR 421(Chd.)(Trib.)

S. 80IC : Special category states – Substantial expansion – entitled to deduction [S.80IC(8)(ix)] 1122
Held that substantial expansion in existing unit immediately on completion of first five years and duly complied with conditions laid down in clause (ix) sub-section 8 of section 80-IC, is entitled for deduction. (AY. 2014-15)
ACIT v. Vanesa Cosmetics (2021) 188 ITD 787 / 212 TTJ 712 / 204 DTR 393 (Delhi)(Trib.)

S. 80IC : Special category states – Initial assessment year – Substantial expansion within a period of 10 years – Substantial expansion was undertaken would become initial assessment year – Entitled to 100 per cent deduction for a total period of ten years as provided in section 80IC(6) of the Act. [S.80IC(6)] 1123
Assessee set-up a manufacturing unit in Himachal Pradesh on 1-4-2007 and started claiming 100 per cent deduction under section 80IC of the Act. In thee Assessment year 2012 -13 the assessee undertook substantial expansion. The Assessing Officer disallowed claim of assessee of 100 per cent deduction and allowed deduction to extent of 25 per-

cent. On appeal the Tribunal held that an assessee who sets up a new unit as mentioned under section 80-IC(2)(ii) would be eligible for 100 per-cent deduction for 5 years commencing from initial assessment year and for next five years deduction would be 25 per cent. Since assessee had carried out substantial expansion as defined under section 80IC(8)(ix) within aforesaid period of 10 years, said previous year in which substantial expansion was undertaken would become 'initial assessment year' and assessee would be entitled to 100 per cent deduction for a total period of ten years as provided in section 80IC(6) of the Act. (AY. 2015-16)

Quantum Power Systems v. ACIT (2021) 187 ITD 523 / 86 ITR 9 (SN)(Bang.)(Trib.)

1124 **S. 80IC : Special category states – Splitting up or reconstruction of business – Diversified its business to new products and product line – Eligible for deduction [S.80IA(3)]**

The assessee being an individual and a proprietor, was engaged in the business of manufacturing of ancillary equipment catering to plastic, paper, rubber, confectionery food, and medical industries. The assessee during the year under consideration, set up a unit in Haridwar and claimed a deduction towards profit derived from undertaking situated at Haridwar under section 80IC of the Act. The AO did not allow the deduction for the same holding that the assessee had split up the business of the entity and diverted it to his proprietary concern especially to the Haridwar unit. The Ld. CIT(A) held that new unit established at Haridwar was a new undertaking, but not established by splitting or reconstructing of existing unit of the assessee. Also, the Ld. CIT(A) negated the observations made by the AO considering transfer of used plant and machinery more than prescribed limit.

On appeal, the Hon'ble Tribunal on going through the facts of the case and relying on the decision of the Hon'ble High Court of Delhi in the case of *CIT v. Ganga Sugar Corporation Ltd (1973) 92 ITR 173 (Delhi)(HC)* held that the concept of reconstruction of business would not be attracted when a company which is already running one industrial unit set up another industrial unit. Further, the new industrial unit would not lose its separate and independent identity even though it has been set up by a company which is already running an industrial unit before the setting up of the new unit. The Hon'ble Tribunal noted that the object of the section was to provide incentive for the setting up of new industrial unit to accelerate the process of industrialization. Therefore, the action of Ld. CIT(A) was correct in holding that the assessee was eligible for deduction under section 80IC of the Act.(AY. 2013-14)

DCIT v. Pool Thevar Marimuthu (Prop: M/s. Arun Enterprises), (2021) 213 TTJ 804 (Chennai)(Trib.)

1125 **S. 80IC : Special category states – Splitting up or reconstruction of business – Diversified its business to new products and product line – Eligible for deduction [S.80IA(3)]**

The assessee being an individual and a proprietor, was engaged in the business of manufacturing of ancillary equipment catering to plastic, paper, rubber, confectionery food, and medical industries. The assessee during the year under consideration, set up a unit in Haridwar and claimed a deduction towards profit derived from undertaking

situated at Haridwar under section 80IC of the Act. The AO did not allow the deduction for the same holding that the assessee had split up the business of the entity and diverted it to his proprietary concern especially to the Haridwar unit. The Ld. CIT(A) held that new unit established at Haridwar was a new undertaking, but not established by splitting or reconstructing of existing unit of the assessee. Also, the Ld. CIT(A) negated the observations made by the AO considering transfer of used plant and machinery more than prescribed limit.

On appeal, the Hon'ble Tribunal on going through the facts of the case and relying on the decision of the Hon'ble High Court of Delhi in the case of *CIT v. Ganga Sugar Corporation Ltd (1973) 92 ITR 173 (Delhi)(HC)* held that the concept of reconstruction of business would not be attracted when a company which is already running one industrial unit set up another industrial unit. Further, the new industrial unit would not lose its separate and independent identity even though it has been set up by a company which is already running an industrial unit before the setting up of the new unit. The Hon'ble Tribunal noted that the object of the section was to provide incentive for the setting up of new industrial unit to accelerate the process of industrialization. Therefore, the action of Ld. CIT(A) was correct in holding that the assessee was eligible for deduction under section 80IC of the Act.(AY. 2013-14)

DCIT v. Pool Thevar Marimuthu (Prop: M/s. Arun Enterprises) (2021) 213 TTJ 804 (Chennai)(Trib.)

S. 80IC : Special category states – Set off loss – Initial assessment year – Assessment year 2007-08 is held to be initial assessment year – loss could be set off against profit of the eligible unit in the assessment year 2008-09 – Reassessment was quashed. [S.80IA(5), 8OIC(7), 147, 148] 1126

Tribunal held that the assessee had commenced the business of its eligible unit w.e.f 28 th December 2006, the initial assessment year is 2007 -08. The loss suffered by the eligible unit in the assessment year 2007-08 could be set off against the profit of the eligible unit in the assessment year 2008-09. Reassessment was quashed. (AY. 2008-09)

Samrat Plywood Ltd v. ACIT 210 TTJ 743 (Chd.)(Trib.)

S. 80IC : Special category states – Estimate of GP at 40 percent of total turnover as against GP disclosed at 57-01 percent – Taxed difference of 17.01 as income from other sources and denied the exemption – Order of CIT(A) is affirmed. [S. 56, 145 (3)] 1127

Assessee-firm claimed deduction under section 80-IC. Assessing Officer denied claim of assessee on ground that there were various anomalies in financial transactions of assessee and profits of assessee-firm were not genuine. CIT (A) held that the assessee would be eligible for deduction under section 80-IC however by invoking section 145(3) and estimated gross profit at 40 per cent of total turnover for allowability of deduction under section 80-IC as against gross profit rate disclosed by assessee at 57.01 per cent and taxed difference of 17.01 per cent on gross turnover as income from other sources - It was noted that Commissioner referred to various charts depicting profitability of assessee-firm in preceding years with other related concerns operating in same field and same area. On appeal Tribunal held that since CIT (A) conducted detailed enquiry which remained uncontroverted by assessee, conditional allowing of section 80-IC taking

40 per cent GP rate and charging difference of profit on gross turnover as income from other sources was to be allowed. (AY. 2013-14 to 2015-16)
Sheo Shakti Coke Industries v. ACIT (2021) 91 ITR 231 / (2022) 192 ITD 463 (Kol.)(Trib.)

1128 **S. 80IE : Undertakings – North-Eastern States – Ineligible units – Disallowance cannot be made by by applying provisions of section 80IA(10) of the Act. [S.80IA (10)]**
Assessee was engaged in manufacturing and trading of plywood and related products. Assessee claimed deduction under section 80-IE in respect of its eligible unit in State of Assam. Assessing Officer held that the assessee showed an abnormally high profit for such eligible unit as compared to its other non-eligible businesses, accordingly he held that assessee had shifted profits from non-eligible business to this eligible business and, accordingly, by invoking section 80IA(10) deduction under section 80IE was restricted to Rs. 30.05 crore as against assessee's claim of Rs. 52.53 crore. Tribunal held that since Assessing Officer had failed to show existance of any arrangement between assessee and its connected persons or other ineligible units by which transactions were so arranged as to produce more than ordinary profits in hands of assessee in respect of its eligible unit, impugned disallowance of part deduction under section 80IE by applying provisions of section 80-IA(10), was not justified. (AY. 2014-15)
DCIT v. Century Plyboards (I) Ltd. (2021) 187 ITD 35 (SN) 209 TTJ 273 / 203 DTR 229 (Kol.)(Trib.)

1129 **S. 80JJAA : Employment of new workmen – Software engineer – Does not discharge supervisory duty is workman – Amendment in section 2018 is clarificatory and has retrospective effect – Interpretation of taxing statutes – Beneficial provision – Interpretation should be liberal. [Industrial Disputes Act, 1947, S. 2(s)]**
Held that section 80JJAA makes it clear that the term "workman" shall have the meaning assigned to it in clause (s) of section 2 of the Industrial Disputes Act, 1947. In terms of section 2(s) of the 1947 Act, the definition of a workman is very wide inasmuch as the said definition would cover any person who has the technical knowledge, self skilled in an industry. A software engineer would come within the purview and ambit of workman under section 2(s) of the 1947 Act so long as such person does not take a supervisory role. A software engineer per se would be a workman ; a software engineer rendering supervisory work would not be a workman. Court also held that what is required is for a person to be employed for a period of 300 days continuously. There is no such criteria made out for a person to be employed in any particular year or otherwise. The amendment of section 80JJAA is more an explanatory amendment or a clarificatory amendment which clarifies the methodology of applying section 80JJAA. The period of 300 days as mentioned under section 80JJAA of the Act could be taken into consideration both in the previous year and the succeeding year for the purpose of availing of the benefit under section 80JJAA. It is not required that the workman works for entire 300 days in the previous year. A benevolent provision has to be read liberally and reasonably and if there is an ambiguity, in favour of the assessee. It is required for the Assessing Officer, Commissioner, Tribunal as also any other officer to always interpret and/or apply the provisions of the Act, taking into consideration the intent and purport of the provisions. an intention to encourage the assessee to employ

more and more people. Followed *Devinder Singh v. Municipal Council (2011) 6 SCC 584* (AY. 2008-09)
CIT (LTU) v. Texas Instruments India Pvt. Ltd. (2021) 435 ITR 1 / 321 CTR 34/ 203 DTR 1 (Karn.)(HC)

S. 80JJAA : Employment of new workmen – Certificate in form 10DA – High salaries cannot be the basis for denial of exemption. 1130
Held that when the certificate in form No 10DA was furnished the exemption cannot be denied on the ground that the employees are drawing high salaries. Followed *CIT v. Texas Instrument India Pvt Ltd (2021) 435 ITR 1 (Karn.)*(HC)(AY. 2008-09 to 2010-11)
OnMobile Global Ltd. v. Add CIT (2021) 90 ITR 18 (SN)(Bang.)(Trib.)

S. 80JJAA : Employment of new workmen – Exemption cannot be denied when the employees fulfilled the condition of being employed for 300 days for the year under consideration, even though such employees do not fulfil the condition of being employed for 300 days in the immediately preceding assessment year. 1131
The AO rejected the claim of the appellant on the ground that the condition of 300 days to be fulfilled by the regular workmen as per the provisions does not stand fulfilled. CIT(A) also affirmed the order of the AO. On appeal the Tribunal held that, exemption cannot be denied when the employees fulfilled the condition of being employed for 300 days for the year under consideration, even though such employees do not fulfil the condition of being employed for 300 days in the immediately preceding assessment year. Relied *Texas Instruments (India) Pvt Ltd v. ACIT (2020) 115 taxman.com 154 (Bang) (Trib.)*(ITA No. 3445/Bang/2018 dt 29-10-2020)(AY. 2014-15)
Tata Elxsi Ltd v. JCIT (2021) BCAJ- January – P 46 (Bang.)(Trib.)
Editorial: The Finance Act,2018 has added a second proviso to the definition of additional employee in Explanation (ii) to section 80JJA of the Act.

S. 80P : Co-operative societies – Section must be read liberally and reasonably and in case of ambiguity, in favour of the assessee – Once a co-operative society provides credit facilities to its members, the fact that it also provides credit facilities to non-members does not disentitle it from availing of the deduction. Section does not require that the society has to give agricultural credit only – Proviso which excludes co-operative banks which are co-operative societies engaged in banking business and not primary agricultural credit societies – Interpretation – Proviso cannot be used to cut down language of main enactment – Precedent – Ratio decidendi alone binding and not what may seem logically to follow from it. [S. 2(19), 80P(2)(a), 80P(4), Kerala Co-Operative Societies Act, 1969, Ss. 2(F), (Oaa), (Ob), (Oc), 3, 4, 7, 8, Kerala Co-Operative Societies Rules, 1969, R. 15] 1132
Assessee provided credit facilities to its members for agricultural and allied purposes and was classified as primary agricultural credit society by the Registrar of Co-operative Societies under the Kerala Co-operative Societies Act, 1969. It claimed deduction under s. 80P(2)(a)(i) of the Income-tax Act. Post insertion of S. 80P(4) which denied deduction to co-operative bank other than primary agricultural credit society, etc. AO denied the claim for deduction holding the agricultural credits given by the assessee

to its members were negligible and that the credits given to such members were for purposes other than agricultural credit. Supreme Court held that section 80P being a benevolent provision must be read liberally and reasonably and in case of any ambiguity it must be interpreted in favour of the assessee. Supreme Court observed that section 80P(2)(a)(i) which covers a co-operative society engaged in the business of banking or providing credit facilities to its members does not require that the assessee has to be a primary agricultural credit society. Supreme Court noted that section 80P(2)(a)(i) does not require that the society has to give agricultural credit only. It further observed that once the co-operative society provides credit facility to its members, the fact that it also provides credit facility to non-members does not disentitle the society from availing of deduction. However, profits attributable to loans given to non-members cannot be deducted. Supreme Court observed that the object of section 80P(4) was to exclude co-operative banks that function at par with other commercial banks and noted that as primary agricultural credit societies are not entitled for obtaining a banking license would not be hit by this provision. Ratio in *Citizen Co-Operative Society Ltd. v. CIT [2017] 397 ITR 1 (SC)* explained (CA Nos. 7343-7350 and 8315 of 2019 dt. 12.01.2021) (AY. 2007-08 to 2010-11, 2012-13)

Mavilayi Service Co-Operative Bank Ltd. v. CIT (2021) 431 ITR 1/ *318 CTR 609* / *197 DTR 361* / *279 Taxman 75 (SC)*

Editorial : Decision in PCIT v. Poonjar Service Co-Operative Bank Ltd [2019] 414 ITR 67 (Ker) (HC) reversed.

1133 **S. 80P : Co-operative societies – Entitled to deduction – Matter remanded.**

Held that that society registered under Kerala Co-operative Societies Act was entitled to claim deduction under section 80P. Court also held that the observation of the Assessing Officer that books were not produced had not been expressly considered by the appellate authority and the Tribunal. The matter required reconsideration by the primary authority, for the return filed by the assessee had to be examined. Followed *Mavilayi Service Co-Operative Bank Ltd. v. CIT (2021)431 ITR 1 (SC)*(AY.2012-13, 2013-14)

PCIT v. Ponkunnam Service Co-Operative Bank Ltd. (2021) 437 ITR 195 (Ker.)(HC)

1134 **S. 80P : Co-operative societies – Interest on deposits – Entitled to deduction [Kerala Societies Registration Act, 1860, S. 2(19)]**

Court held that the primary business of assessee-society was accepting deposits and providing benefits to its members. The income received by the society was, therefore, from the interest it earned on the amount lent to the members. The society, likewise, was paying interest on the deposits it had accepted. Five per cent of the expenditure booked against interest paid to depositors was disallowed and once the disallowed portion was accepted by all the authorities, it formed part of the interest earned by the society on the amount lent by the society to its members, in other words, income earned from business carried on by the society. The Society was entitled to deduction of such income under section 80P(2)(a)(i). Followed *Mavilayi Service Co-Operative Bank Ltd. v. CIT (2021) 431 ITR 1 (SC)* Referred Circular Dated 2-11-2016 (2016) 388 ITR 62 (St)(AY.2012-13)

PCIT v. Ettumanoor Service Co-Operative Bank Ltd. (2021) 437 ITR 305 (Ker.)(HC)

S. 80P : Co-operative societies – Credit society – Credit facility to its members – Exemption allowable [S. (2(19), 80P(2)(a)(i)] 1135

Dismissing the appeal of the revenue the Court held that since assessee had been registered as co-operative credit society and banking had never been its core activity. The assessee is eligible for deduction under section 80P(2)(a)(i) of the Act. (AY. 2012-13)

PCIT v. Quepem Urban Co-Operative Credit Society Ltd. (2021) 438 ITR 631/ 281 Taxman 245 / 203 DTR 141 (Goa)(Bom.)(HC)

VPK Urban Co-Operative Credit Society Ltd. (2021) 438 ITR 631 / 203 DTR 141 / 281 Taxman 245 (Goa) (Bom.)(HC)

S. 80P : Co-operative societies – Banking business – Entitled to exemption. [S.80P(2)(a)(i)] 1136

Assessee a co-operative society engaged in the business of banking by providing credit facilities only to its members claimed exemption from income tax under section 80P(2)(a)(i). The AO denied the exemption under section 80P. The High Court relied on the decision of *Mavilayi Service Co-operative Bank Ltd v. CIT (2021) 431 ITR 1 (SC)* and held that the issue is no more res integra and allowed the exemption to the assessee. (AY.2010-11)

Tellicherry Public Servants Co-operative Bank Ltd. v. CIT (2021) 433 ITR 60 / 110 CCH 210 (Ker.)(HC)

S. 80P : Co-operative societies – Banking business – Eligible for deduction. [S.80P(2)(a)(i), 80P(4)] 1137

Allowing the appeal the Court held the assessee was entitled to the deduction. (AY. 2011-12 and 2014-15)

S 1911 An Pudur Paccs v. P CIT (NO. 1)(2021) 431 ITR 579 (Mad.)(HC)

S. 80P : Co-operative societies – Banking business – Eligible for deduction. [S.80P(2)(a)(i), 80P(4)] 1138

Court held, that the Tribunal was not right in holding that (i) the assessee was a co-operative bank and therefore not entitled for deduction under section 80P, (ii) the provisions of section 80P(4) was applicable to the assessee, and (iii) the principles of mutuality was not present and therefore, the assessee was not eligible for deduction under section 80P(2)(a)(i).(AY. 2014-15)

S 1911 An Pudur Paccs v. PCIT (NO. 2)(2021) 431 ITR 583 (Mad.)(HC)

S. 80P : Co-operative societies – Set-off of expenditure – Interest Income – Matter remanded for verification to ascertain whether the expenditure was incurred exclusively for maintenance of housing Society.[S. 56,, 57, 80P(2)(d)] 1139

Held that that set-off of the expenditure incurred on the housing society against the interest income was allowable. However, it was a factual aspect requiring verification whether the expenditure claimed by the assessee had been incurred only and exclusively for the maintenance of housing society. There was no occasion to verify this as this claim was not made before the Assessing Officer and no finding was rendered by the Commissioner (Appeals). Therefore, the Commissioner (Appeals) was to give a finding

after due verification and after affording the assessee reasonable opportunity of being heard, how much expenditure could be set off against the interest income earned. Matter remanded.(AY. 2016-17)
Hyde Park (A) Co-Operative Housing Society Ltd. v. ITO (2021) 90 ITR 50 (SN)(Pune)(Trib.)

1140 **S. 80P : Co-operative societies – Income from sale of mutual funds to be taxed as capital gains – Interest on fixed deposits taxable as income from other sources" – Loss for year and brought forward loss from sale of mutual funds to be set off.[S. 45, 70, 71,80P(2)(a)(i)]**
Held that when the business itself was not allowed to be carried on to the assessee, the investment made in mutual funds could not be treated as giving rise to business income. Ex consequential the profit or loss from transfer of such mutual funds would fall under the head Capital gains. The interest on fixed deposits with nationalised banks shall be taxed as Income from other sources. The Tribunal also held that the assessee was entitled to set off the loss from mutual funds, etc. against the income from mutual funds, etc. However, this exercise required examination of the amount of loss incurred from sale of mutual funds, etc. during the year and the amount of loss brought forward from earlier years eligible for set off against income from mutual funds during the year. Such an exercise can be carried out only after considering the break-up of the loss. The matter remanded to the Assessing Officer to examine brought forwarded from earlier years and then allow set-off in terms of sections 70 and 71 of the Act.(AY. 2007-08, 2008-09)
ITO v. Maharashtra State Co-Operative Credit Societies Deposit Guarantee Corp. Ltd. (2021)90 ITR 36 (SN)(Pune)(Trib.)

1141 **S. 80P : Co-operative societies – Members to be construed as per definition of Concerned Co-Operative Societies Act – Matter remanded- Interest from investment in Co-Operative Societies eligible for deduction- Interest from any Bank which is not – Co-Operative Society is not eligible for deduction. [S.80P(2))(a), 80P(2)(d)]**
Held that Members to be construed as per definition of Concerned Co -Operative Societies Act Co-Operative Society. Matter remanded. Followed *Mavilayi Service Co-Operative Bank Ltd. v. CIT i(2021)431 ITR 1 (SC)*. Interest from investment in Co-Operative Societies eligible for deduction. Interest from any Bank which is not Co-Operative Society is not eligible for deduction.(AY. 2015-16, 2016-17)
Potters Cottage Industrial Co-Operative Society Ltd. v. ITO (2021) 90 ITR 73 (SN)(Bang.)(Trib.)

1142 **S. 80P : Co-operative societies – Interest and dividend – Profits attributable to activity of providing credit facilities to its members – Matter remanded to the Assessing Officer. [S. 80P(2)(a))(i), 80P(2)(d)]**
Held that whether interest and dividend earned through investments in Co-Operative Bank is eligible deduction. Matter remanded to the Assessing Officer todecide afresh in light of decisions in *Totgar's Co-Operative Sale Society Ltd. v. ITO (2010)322 ITR 283 (SC)* and *Tumkur Merchants Souharda Credit Co-Operative Ltd. v. ITO (2015) 230 Taxman 309 (Karn.)(HC)*. As regards profits attributable to activity of providing credit facilities to its members the Assessing Officer was directed to examine claim afresh in light of

principles enunciated in *Mavilayi Service Co-Operative Bank Ltd. v. CIT (2021) 431 ITR 1 (SC)*(AY. 2016-17)
Venoor Co-Operative Agricultural Bank Ltd. v. ITO (2021) 90 ITR 20 (SN)(Bang.)(Trib.)

S. 80P : Co-operative societies – Providing banking facilities to members – Interest earned from short-term deposit – Deduction allowable. [S.80P(2)(a)] 1143
Held that money temporarily parked with bank to maintain the overdraft limit available to the assessee The interest earned partook of the character of business income attributable to carrying on the business of banking and was eligible for deduction under section 80P.(AY. 2013-14)
Thota Uthpannagala Marata Sahakara Sangha Niyamitha v. Dy. CIT (2021) 86 ITR 134 (Bang)(Trib.)

S. 80P : Co-operative societies – Credit facilities to members – Deposit from members – Penalty proceedings wrongly mentioning as Co-Operative bank – Deduction cannot be denied [S.80P(2)(a)(i), 271D] 1144
Assessee, a co-operative society, was engaged in providing credit facilities to its members. It claimed deduction under section 80P(2)(a)(i). Assessing Officer held that during a penalty proceeding initiated against assessee under section 271D for violation of provision of section 269SS in respect of cash deposits received by it in excess of Rs. 20,000 former Chartered Accountant of assessee submitted that assessee was a co-operative bank and was entitled to receive cash deposits in excess of Rs. 20,000 from its members. Same was accepted by revenue and penalty under section 271D was deleted. On basis of same Assessing Officer held that assessee was co-operative bank and, accordingly, not entitled for deduction under section 80P(2)(a)(i) of the Act. CIT (A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that the assessee had collected deposits only from its members and had provided credit facilities only to its members. It did not have any transaction with non-members. Chartered Accountant of assessee had misinterpreted activity carried on by assessee to be akin to banking business and submitted assessee to be a co-operative bank - In fact, after realising its mistake, assessee had even preferred rectification petition pointing out aforesaid mistake which was still pending disposal. Assessee had also obtained a bona fide from said Chartered Accountant and placed it on record. Mere admission of Chartered Accountant alone would not determine status of assessee and same was to be determined based on charter documents i.e. objects and bye laws of assessee society. Accordingly the Tribunal held that assessee was to be considered as a co-operative credit society and not co-operative bank and, accordingly, assessee was to be allowed deduction under section 80P(2)(a)(i).(AY. 2007-08, 2010-11, 2013-14, 2014-15)
Thane Zilla Madhyamik Shikshak Sangh Sahakari Parpedhi Maryadit v. ACIT (2021) 187 ITD 201 / 197 DTR 81 / 209 TTJ 571 (Mum.)(Trib.)

S. 80P : Co-operative societies – Carrying on business of banking or providing credit facilities to its members – Matter remanded [S.80P(2)] 1145
Tribunal held that under section 80P(2)(d) of the Act, income by way of interest or dividends derived by a co-operative society from its investments with any other co-

operative society is entitled to deduction of the whole of such interest or dividend income. The issue of deduction of interest received by the assessee from the apex co-operative bank was to be remanded to the Assessing Officer for a fresh decision after examining the facts in the light of the judgment of the Supreme Court in the case of *Totgar's co-operative sale society Ltd. v. ITO (2010) 322 ITR 283 (SC)* and of the Karnataka High Court in the case of *Tumkur Merchants Souharda Co-Operative Ltd. (2015) 230 Taxman 309*. The Assessing Officer was to afford opportunity of being heard to the assessee and file appropriate evidence to substantiate its case, before deciding the issue of deduction on the sum of Rs. 9,47,434 under section 80P(2)(a)(i) or (d) of the Act. (AY.2016-17)

Spandana Credit Souhardha Sahakari Niyamita v. ITO (2021) 85 ITR 11 (SN)(Bang.)(Trib.)

1146 **S. 80P : Co-operative societies – Entity Registered Under Karnataka Souharda Sahakari Act, 1997 – Co-Operative Society eligible for deduction [S. 2(19), 80P(2)(a)(i)]**

An assessee registered under the Karnataka Souharda Sahakari Act, 1997 is a co-operative society coming within the definition of the term in section 2(19) of the Income-tax Act, 1961, and hence, deduction under section 80P(2) cannot be denied. (AY.2016-17)

Sri Rama Souharda Credit Co-Operative Ltd. v. ITO (2021) 85 ITR 58 (SN)(Bang.)(Trib.)

1147 **S. 80P: Co-operative societies – Deposit only from Members – Determination based on Charter documents – Not based on mere admission – Deduction allowable.[S.80P(2)(a)(i), 269SS, 271D]**

Where Assessee co-operative society collected deposits only from its members and had no transaction with non-members. It filed a return of income declaring Rs. Nil after calculating the deduction u/s. 80P(2)(a)(i) of the Act. The AO observed that the assessee is carrying on banking business as stated by the former Chartered Accountant.

The Tribunal noted that the assessee had collected deposits only from its members and had provided credit facilities only to its members and did not have any transaction with non-members. It was registered under Maharashtra State Co-operative Societies Act, 1960, providing financial assistance to its members. The former Chartered Accountant of the assessee had misinterpreted activity carried on by the assessee to be akin to banking business. On realising its mistake, the assessee had even preferred a rectification petition pointing out the mistake, which was still pending disposal. Mere admission of Chartered Accountant alone would not determine the status of assessee, and same was to be determined based on charter documents, i.e. objects and bye-laws of assessee society. The assessee was to be considered as a co-operative credit society and not co-operative bank and allowed deduction under section 80P(2)(a)(i). (AY. 2007-08, 2010-11, 2013-14, 2014-15)

Thane Zilla Madhyamik Shikshak Sangh Sahakari Patpedhi Maryadit v. ACIT (2021) 187 ITD 291 / 124 Taxmann.com 75 / 197 DTR 81 / 209 TTJ 571 (Mum.)(Trib.)

S. 80P : Co-operative societies – Income of co-operative societies (Credit Societies) – interest earned on short term deposits eligible for deduction.[S. 80P(2)(d)] 1148

The assessee co-operative society, engaged in providing credit facility to its members, was maintaining short-term deposits of money which was not required for time being, as investment with co-operative banks, interest earned by assessee on such deposits was qualify for deduction u/s. 80P(2)(d).(AY. 2014-2015)

Sant Motiram Maharaj Sahakari Pat Sanstha Ltd. v. ITO (2021) 186 ITD 220 (Pune)(Trib.)

S. 80P : Co-operative societies – Return filed in the status of firm – Rectification application moved to change the status as an AOP and for allowing the claim u/s 80P of the Act – Conditions of section 80A(5) is not satisfied – Denial of deduction is valid. [S. 80A(5), 80P(2)(a)(i), 143(1), 154] 1149

Tribunal held that neither in the original return of income nor in the revised return of income, the assessee had claimed deduction under section 80P(2)(a)(i) of the Act. A careful reading of the aforesaid provision makes it clear that unless the assessee claims the deduction allowable under section 10A, 10AA, 10B, 10BA or under any other provision in Chapter-VIA under the heading, "C.-Deductions in respect of certain incomes", no deduction shall be allowed to him. Undisputedly, section 80P comes within Chapter-VIA under the heading "C.-Deductions in respect of certain incomes". The language used in section 80A(5) is very much clear and unambiguous. Thus, it is apparent, besides fulfilling the conditions of section 80P(2)(a)(i) of the Act, the assessee must also fulfill the condition contained in section 80A(5) of the Act. Distinguished the facts of the decision relied by the assessee in case of MSEB Employees Co-operative Credit Society Ltd ITA No. 793/PN/2013 dated 18 July 2014. Relied on Hon'ble jurisdictional High Court in case of EBR Enterprises (2019) 415 ITR 139 / 311 CTR 698/ 107 taxmann.com 220 (Bom) HC) and held that the assessee cannot be allowed deduction under section 80P(2)(a)(i) of the Act, insofar as, the impugned assessment year is concerned due to non fulfilment of conditions contained in section 80A(5) of the Act. (AY. 2011-12)

Shree Datta Prasad Sahakari Patsanstha Ltd. v. ITO (2021) 213 TTJ 617 / 205 DTR 337/ (2022) 193 ITD 285 (Mum.)(Trib.)

S. 80P : Co-operative societies – Souhardasahakari Registered Under Karnataka Souharda Co-Operative Act, 1997 – Eligible For Deduction [S. 2(19), 80P(2)(a)(i)] 1150

The Assessing Officer disallowed the benefit of deduction under section 80P(2)(a)(i) of the Act. The Commissioner (Appeals) reversed the order of the Assessing Officer. On appeal by the department the Tribunal affirmed the order of CIT(A). (AY. 2016-17)

ITO v. Pavagada Souharda Multi Purpose Co-Operative Ltd. (2021) 91 ITR 16 (SN)(Bang.) (Trib.)

1151 **S. 80P : Co-operative societies – Interest and dividend income – Directed the Assessing Officer to consider de novo and to verify whether assessee had deducted tax at source on interest payment to non-members exceeding Rs. 10,000 per annum. [S.80P(2)(a)(i), 80P(4)]**

The issue of deduction under section 80P of the Act was to be remanded to the Assessing Officer consideration for de novo in the light of principles laid down by the Supreme Court in *Mavilayi Service Co-operative Bank Ltd. v. CIT (2021) 431 ITR 1 (SC).* Followed Ravindra Multipurpose Co-operative Society Ltd. v. ITO (I. T. A. No. 1262/ Bang/2019, dated August 31, 2021)

The direction of the Commissioner (Appeals) to the Assessing Officer to verify whether the assessee had deducted tax at source on interest payment to non-members (interest payment exceeding Rs. 10,000 per annum) was in accordance with law. (AY. 2012-13)

Shri Shankarling Co-Operative Credit Souharda Sahakari Niyamit v. ITO (2021) 91 ITR 57. (SN)(Bang.)(Trib.)

1152 **S. 90 : Double taxation relief – Salary – Tax Residency certificate – Salary income from Australia cannot be taxed in India – DTAA-India-Australia [S. 5(2), 9(1)(1), 10, Art, 15]**

Allowing the appeal the Tribunal held that the assessee being a non-resident in India and was liable to tax in Austria for services rendered in Austria in pursuance of article 15 of DTAA between India and Austria, Assessing Officer was not justified in taxing said salary income on ground that assessee could not produce Tax Residency Certificate from said country. (AY. 2014-15)

Vamsee Krishna Kundurthi v. ITO (2021) 190 ITD 68 (Hyd.)(Trib.)

1153 **S. 90 : Double taxation relief – Tax credit – Law firm – Independent Personal Services applies only to individuals – Tax Credit Allowed – The legal fees paid to a partnership firm of lawyers can indeed subjected to levy of tax under article 12 as exclusion clause under article 12(4) does not get triggered for payments to persons other than individuals, and the provisions of article 14 are required to be read in harmony with the provisions of article – DTAA-India-Japan [Art, 12, 14, 23(2)]**

The assessee is a law firm assessed to tax in status of a partnership. The Assessing Officer held that the assessee is not entitled to foreign tax credit. Which was affirmed by CIT (A). On appeal to Tribunal allowing the appeal, the Tribunal held hat article 23(2)(a) of the Double Taxation Avoidance Agreement states that when any income of an Indian resident was taxed in Japan in accordance with the provisions thereof, the Indian resident would be allowed deduction of the taxes paid by the assessee in Japan in the computation of his tax liability. The phrase "in accordance with" means "being in agreement or harmony with ; in conformity to". The question therefore was whether the assessee could reasonably be said to be taxable in Japan under article 12 of the Double Taxation Avoidance Agreement, in respect of the professional income earned in Japan. Only when this was so, could question of the grant of credit in respect of taxes paid abroad be considered, in the hands of the assessee. There were overlapping areas in the definition of fees for technical services under article 12(4), which covered "technical, management and consultancy services" vis-à-vis the definition of professional services

income which would be taxed under article 14 as "income from independent personal services". The exclusion clause under article 12(4) proceeds on the basis that article 14 applies to individuals alone. Therefore, article 14 holds the field for the individuals only, particularly in the light of the exclusion clause under article 12(4) being restricted to payment of fees for professional services to individuals alone. As a corollary, the payments in question were rightly subjected to tax withholding in Japan under article 12. The Assessing Officer was directed to grant the tax credit to the assessee. So far as determination of question whether or not the taxation had been done in the source country "in accordance with the provisions of this convention" is concerned, one had to decide whether the view adopted by the source jurisdiction was a reasonable and bona fide view, which may or may not be the same as the legal position in the residence jurisdiction. While it was desirable that there should be uniformity in tax treaty interpretations, it may not always be possible to do so in view of a large variety of variations, such as the sovereignty of judicial systems, domestic law overrides on the treaty provisions, etc. In a situation in which a transaction by resident of one of the Contracting States was to be examined in both the treaty partner jurisdictions, different treatments being given by the treaty partner jurisdictions would result in incongruity and undue hardship to the assessee.(AY.2014-15)

Amarchand and Mangaldas and Suresh A Shroff and Co. v. ACIT (2021) 85 ITR 49 (SN)/197 DTR 19/ 209 TTJ 1 /187 ITD 750 (Mum.)(Trib.)

S. 90 : Double taxation relief – Foreign tax credit – Tax paid in USA, Japan and Germany – Credit available on all taxes paid in these countries – Tax paid in Korea – Limited to taxes payable on doubly taxed income in India – Tax paid in Taiwan – No double taxation avoidance agreement with Taiwan – Foreign tax credit computed based on rate of tax applicable in India or Taiwan, whichever is less, on doubly taxable income – DTAA-India-USA-Japan-Germany-Korea [S.91, Art, 25, 23(2), 23(2), 23] 1154

Allowing the appeal the Tribunal held that under the Double Taxation Avoidance Agreements with the U. S. A., Japan and Germany, if a resident Indian derives income, which may be taxed in that country, India shall allow as a deduction from the tax on the income of the resident, an amount equal to the tax paid in such country. For eliminating double taxation of doubly taxable income in the hands of the assessee, it would be necessary to establish the taxes paid by the assessee in U. S. A., Japan, and Germany. Thus, foreign tax credit was available in full on taxes paid in these countries. Relied on *Wipro Ltd. v. Dy. CIT (2016) 382 ITR 179 (Karn) (HC).* As regards the provisions of the Double Taxation Avoidance Agreement with Korea, foreign tax credit was available in India for the taxes paid in Korea and such credit shall not exceed the taxes payable in India on the doubly taxed income. Thus, there was a difference in the foreign tax credit available on taxes paid in the U. S. A., Japan and Germany vis-a-vis Korea. In the case of Korea, foreign tax credit was limited to taxes payable on such doubly taxed income in India. In other words, credit was limited to taxes paid in Korea or India, whichever was less. As regards income from Taiwan India had not entered into a Double Taxation Avoidance Agreement with Taiwan. Therefore, foreign tax credit available to the assessee against taxes paid in Taiwan was to be computed in accordance with section 91 of the Act. The provision for deduction of a sum calculated

on such doubly taxed income paid in any country from the Indian Income-tax payable by an assessee. The assessee would be entitled to deduction from the Indian Income-tax, payable by him, of a sum calculated on the doubly taxed income at the Indian rate of tax or the rate of tax of the other country concerned, whichever was lower. Thus, under section 91 of the Act, in the case of Taiwan, foreign tax credit was to be computed based on the rate of tax applicable in India or Korea, whichever was less, on such doubly taxable income.(AY. 2013-14, 2014-15)
Ittiam Systems Pvt. Ltd. v. ITO (2021) 86 ITR 611 / 211 TTJ 367 / 201 DTR 191 (Bang.) (Trib.)

1155 **S. 90 : Double taxation relief – Most Favourable Nation clause – Applied automatically – No separate notification – Not assessable as fees for technical services – DTAA-India -Sweden [S.9(1)(vii), Art. 12 (4)(a)]**
The assessee provided consulting services on actual cost based charges and information technology services to the Indian subsidiary. The assessee submitted that payments would not constitute 'fees for technical services' as the services would not "make available" the recipient to perform the services in the future, as provided under the "Most Favoured Nation" clause (MFN clause) in India-Sweden Tax treaty, read with India Portugal DTAA. The AO denied the benefits of the MFN Clause under India – Sweden tax treaty was not notification.
The Tribunal held that the MFN clause in the Indo-Swedish tax treaty is a situation in which limiting the source taxation, for fees for technical services, to any other OECD member jurisdiction, by itself, is enough to trigger that the same provisions. No further actions on India's part are envisaged in the Indo-Swedish tax treaty to trigger the application of the same provisions in the Indo Portugal tax treaty (no requirement to issue separate notifications). Portugal is an OECD jurisdiction, and India has entered the tax treaty after Sweden. The Portuguese tax treaty provides a far more restricted scope of 'fees for technical services', since it adopts the 'make available' clause, which restricts the taxation of fees for technical services only in such cases which "make available" technical knowledge, experience, skill, know-how or processes. The services provided does not enable the recipient of these services to perform the same services, in the future, without recourse to the assessee, thus cannot be considered as FTS. (AY 2015-16)
SCAHygiene Products AB v. Dy. CIT (IT) (2021) 187 ITD 419/ 197 DTR 401 / 209 TTJ 545/ 123 taxmann.com 152/ 85 ITR 607 (Mum.)(Trib.)

1156 **S. 90 : Double taxation relief – Credit for foreign taxes on income eligible for deduction u/s 10A/10AA – Allowed as per the treaties-DTAA-India-USA [S. 10A, 10AA, 90(1)(a)(ii), 91]**
Assessee had claimed foreign tax relief as per the provisions of section 90(1)(a)(ii) of the Act read with provisions of the applicable Double Tax Avoidance Agreements, for income taxes paid in overseas jurisdiction in relation to income eligible for deduction under section 10A/10AA of the Act in India. It is stated that herein the countries involved are USA, Denmark, Hungary, Norway, Oman, South Africa, Saudi Arabia and Taiwan. Tribunal relied on earlier years ITAT order. Referring to the treaty provisions with USA it was earlier held that it is not the requirement of law that the assessee

before he claims credit under the Indo-US convention or under the provision of the Act must pay tax in India on such income. As per the embargo placed in the DTAA, the assessee is entitled to such tax credit only in respect of that income which is taxed in USA. It referred to the tax treaty with Canada where the provisions do not allow credit for tax paid in Canada if the income is not subjected to tax in India. Regarding countries with which India does not have any agreement for avoidance of double taxation, the Tribunal observed that as per section 91 of the Act, the assessee would be eligible to avail tax credit. Thus, Tribunal observed that where the respective tax treaty provides for benefit for foreign tax paid even in respect of income on which the assessee has not paid tax in India, still, it would be eligible for tax credit under section 90 of the Act. Based on the above Tribunal held that foreign tax credit would be available to the assessee in view of treaties India is having with USA, Denmark, Hungary, Norway, Oman, Saudi Arabia and Taiwan. The assessee was further directed to file before the AO the relevant provisions of India-South Africa Treaty.(AY.07-08)

Tata Consultancy Services Ltd v. ACIT (2020) 121 taxmann.com 190 / (2021) 186 ITD 721 (Mum.)(Trib.)

S. 90: Double taxation relief – Foreign tax Credit – Not allowed as refund – Deduction of taxes paid – Allowed in computation – DTAA [S. 28(1), 37(1), 91, Art. 24] 1157

The assessee is a major Indian bank, with several branches abroad- a few in the treaty partner jurisdictions, i.e., the countries with which India has entered into Double Taxation Avoidance Agreements under section 90, and remaining in the non-treaty partner jurisdictions. The issue before the Tribunal was ;

(a) Whether or not, on the facts and in the circumstances of this case, learned CIT(A) was justified in upholding the action of the Assessing Officer, in declining refund to the assessee for Rs. 165,96,87,349 for income tax paid in treaty partner jurisdictions, for Rs. 15,79,80.943 for income tax paid in non- treaty partner jurisdictions and for Rs. 87,54,656 in respect of dividend taxes abroad?

(b) Whether or not the learned CIT(A) was justified in upholding the action of the Assessing Officer in declining deduction, in the computation of business income, of Rs. 182,64,22,948 in respect of taxes so paid abroad?

The Tribunal held that the assessee is declined the foreign tax credits for Rs. 182,64,22,948, and, accordingly, held that the assessee is not entitled to seek a refund of that money from the Indian tax exchequer. The claim of the assessee that these taxes paid abroad will be allowed as a deduction in the computation of the business income of the assessee is upheld. (AY. 2012-13)

Bank of India v. ACIT (2021) 201 DTR 1/ 210 TTJ 649 (Mum.)(Trib.)

S. 90 : Double taxation relief – Tax credit – Assessing Officer will examine the provisions of the respective tax treaty and compute the admissible tax credit separately for each jurisdiction – Matter remanded. [S. 37(1), 90(3), 280Z, A297(2)(k), General Clauses Act, S 24] 1158

The Tribunal held that the Assessing Officer will examine the provisions of the respective tax treaty and compute thee admissible tax credit separately for each jurisdiction in accordance with the scheme of related treaty. Matter remanded.

Department appeals such as provision for wages, amortisation of premium, perpetual bonds etc are covered by jurisdictional High Court hence dismissed. (AY. 2015-16)
Bank of India v. ACIT (2021) 209 TTJ 301/ 197 DTR 134 (Mum.)(Trib.)

1159 **S. 90: Double taxation relief – Assessee – Company being a tax resident of Singapore is eligible to the benefits of India-Singapore tax treaty with respect to sale of shares in Indian subsidiary – LOB clause is not applicable as such sale was pursuant to genuine business restructuring and MNC's activity of being an investment holding company is a bonafide business activity – Hence, no capital gains on sale of shares of Indian subsidiary by a Singapore holding investment company.**
Held by the AAR that (i) there is no provision in the India-Singapore tax treaty which provides that the benefits of tax treaty will be denied if the Company is merely a holding investment company; (ii) holding companies are essential for management of MNCs' worldwide business interest and such an activity of being a investment holding company is a bonafide business activity; (iii) the affairs of the applicant company were not arranged with the primary purpose of availing tax treaty benefits as the investment was made prior to introduction of protocol exempting tax on capital gains and the control and management was located in Singapore and the decision to sell the investments in Indian entity is pursuant to a genuine business restructuring as such decision is not only for Indian entity but also for other foreign entities. (AAR No.1376 & 1377 of 2012, dt. 25-02-2021)
BG Asia Pacific Holding Pte Ltd In re (2021) 125 taxmann.com 2 (AAR)

1160 **S. 92A : Transfer pricing – Associated enterprises – Arm's length price – Arranged price – Deletion of addition was set aside – Tribunal's order as regards the value of scrap sales and the levy of interest and the 5 per cent. of interest income taken as expenditure was up held. [S. 10B, 92A(1),92CA(3)]**
Court held that the Tribunal's order deleting the disallowance of Rs. 3.54 crores was to be set aside. However, there was no infirmity in the Tribunal's order as regards the value of scrap sales and the levy of interest and the 5 per cent. of interest income taken as expenditure. Court also held that the practical difficulty was of hitting upon correct comparables to arrive at the arm's length price for the particular product and therefore the submission of the assessee was accepted even though it was lower than the excess profit over arm's length price arrived at by the Transfer Pricing Officer under section 92CA(3) by another method was acceptable.(AY.2004-05)
CIT v. Tweezerman (India) Pvt. Ltd. (2021) 437 ITR 80/ 208 DTR 295/ 323 CTR 781 (Mad.) (HC)

1161 **S. 92A : Transfer pricing – Associated enterprises – Sub-Sections (1) and (2) of Section 92A must be read together – No disallowance can be made – Finding of fact – No question of law.[S.260A]**
Dismissing the appeal of the revenue the Court held that from a perusal of the provisions, it is evident that sub-sections (1) and (2) of section 92A of the Income-tax Act, 1961 are interlinked and have to be read together. Sub-section (2) of section 92A was amended with effect from April 1, 2002 to clarify that the mere fact of participation by one enterprise

in the management or control or capital of the other enterprise, or the participation of one or more persons in the management or control or capital of both the enterprises shall not make them associated enterprises, unless the criteria specified in sub-section (2) are fulfilled. On facts the finding recorded by the Tribunal that the assessee had not complied with the provisions of sub-section (1) of section 92A of the Act, had not been assailed by the Revenue. The Tribunal was right in law in setting aside the disallowance.(AY. 2010-11)
PCIT v. Page Industries Ltd. (2021) 431 ITR 409 / 198 DTR 153 / 319 CTR 328 (Karn.)(HC)

S. 92A : Transfer pricing – Associated enterprises – Arm's length price – Tested party to be determined even when most appropriate method was comparable uncontrolled price- Generation of power for captive consumption – Rate to be taken at rate supplied by Electricity Board to its consumers in open market. [S. 80IA(8), 92CA] 1162
Held that the Transfer Pricing Officer had chosen to take the price specified in the power purchase agreement as the market value. The agreement was a 20 year old agreement. The assessee was required to take statutory clearances and approvals. The price was regulated. The sale of power under the terms and conditions of the agreement could not be considered as the market value of the sale of electricity. Such sales could not be considered as made in uncontrolled conditions. Thus, while determining the arm's length price, the assessee had correctly identified the manufacturing unit as the tested party and the comparable uncontrolled price as the most appropriate method and the purchase price of electricity in the open market from the State Electricity Board to the manufacturing units in uncontrolled conditions. Held that as regards generation of power for captive consumption, rate to be taken at rate supplied by Electricity Board to its consumers in open market. (AY.2016-17)
Dy. CIT v. Balarampur Chini Mills Ltd. (2021) 89 ITR 461 (Kol.)(Trib.)

S. 92B : Transfer pricing – Arm's length price – The term international transaction includes capital financing, which, in turn, also includes guarantee – effects of furnishing corporate guarantee directly percolated to the principal debtor, namely, AE for whom the assessee stood surety – thus, the department contention that the act of furnishing guarantee be treated as shareholder's activity, is devoid of any merit. [S. 92C, 92CA] 1163
In the present case, the Appellate Tribunal held that on going through the ambit of "shareholder activity" as given in the OECD Guidelines on a general perspective, it becomes imminent that such activities are certain acts performed by a company solely because of its shareholding in other group companies, which is obviously not the case here. Au contraire, the effect of furnishing corporate guarantee directly percolated to the principal debtor, namely, the AEs for whom the assessee stood surety. Thus, the ground urging that the act of furnishing guarantee be treated as shareholder's activity, is devoid of merits. Moreover, now with the statutory amendment specifically treating 'guarantee' as an international transaction, there remains no doubt whatsoever that the furnishing of corporate guarantee by an assessee is an international transaction. This ground is thus dismissed. (AY. 2014-15)
Bilcare Ltd. v. ACIT (2021) 211 TTJ 429/ 207 DTR 257 (Pune)(Trib.)

1164 **S. 92B : Transfer pricing – Arm's length price – Advertisement, marketing and sales promotion expenses – Incidental benefit to foreign associated enterprise not to be concluded as brand building exercise [S.92C]**
Allowing the appeal of the assessee the Tribunal held that there was no evidence to show that by incurring expenses the assesee had enhanced brand value and created intangibles in favour of its associated enterprise. Adjustment made in respect of advertisement marketing and sales promotion expenses were deleted. (AY. 2011-12)
Xerox India Ltd v. Dy.CIT (2021) 87 ITR 209 (Delhi)(Trib.)

1165 **S. 92B : Transfer pricing – Arm's length price – Advertisement, marketing and sales promotion expenses. [S.92CA]**
The Tribunal held that the Transfer Pricing Officer had failed to prove that the assessee had incurred the advertisement, marketing and promotion expenses only to benefit the associated enterprise and not to promote its own business. Therefore, the Transfer Pricing Officer had wrongly invoked the provisions of Chapter X of the Act for the advertisement, marketing and promotion expenses incurred. The addition to be deleted. (AY.2014-15)
Amadeus India Pvt. Ltd. v. ACIT (2021) 87 ITR 371 (Delhi)(Trib.)

1166 **S. 92B : Transfer pricing – Associated enterprise – Performance guarantee – International Transactions – Transfer Pricing Adjustment – Performance Guarantee – No risk was involved – Adjustment is not justified – Corporate Guarantee to bank on behalf of Associated enterprise – Directed to recompute arm's length price of guarantee commission at 0.20 Per Cent.**
Held that considering the fact that it was a corporate guarantee for which no fees was paid by the assessee, the transfer pricing adjustments were estimated against these transactions at 0.20 per cent the Transfer Pricing Officer was to recompute the arm's length of the guarantee commission at 0.20 per cent.(AY.2011-12)
Dy. CIT v. KEC International Ltd. (2021) 87 ITR 587 (Mum.)(Trib.)

1167 **S. 92B : Transfer pricing – International transaction – AMP expenses – Advertising, marketing and promotion – Domestic parties – Not international transaction – Addition was directed to be deleted.**
Held that advertisement, marketing and promotion expenses to domestic parties could not be termed as international transaction and the addition made by the TPO was deleted should not invoke provision of Chapter X for said advertising, marketing and promotion spent. (AY. 2015-16)
Amadeus India (P.) Ltd. v. ACIT (2021) 190 ITD 253 (Delhi)(Trib.)

1168 **S. 92B : Transfer pricing – International transaction – Corporate guarantee is not international transaction prior to amendment of section 92B w.e.f. 1-4-2012**
Corporate guarantee is not international transaction prior to amendment of section 92B with effect from 1-4-2012. (AY. 2011-12)
Vivimed Labs Ltd. v. DCIT (2021) 187 ITD 665 (Hyd.)(Trib.)

S. 92B : Transfer pricing – Arm's length price – In absence of any evidence of existence of international transactions between assessee & its foreign associated enterprise arising out of advertisement & marketing promotion determination of Arm's length price does not arise requiring no transfer pricing adjustment. 1169

During Assessee Company's Assessment, on matter being referred to Transfer Pricing officer, an adjustment on account of international transaction namely 'creation of marketing intangible in favor of the associated enterprise' arising out of the advertisement and marketing promotion was proposed and A.O made the adjustment in the final Assessment Order.

On Appeal Tribunal held that, there being no material to prove existence of an international transaction involving advertisement and marketing promotion expenses, which led to enhancement of brand value and creation of intangibles in favor of associated enterprise, the addition cannot be made, more so when similar adjustments were deleted in earlier years. (AY. 2011-12)

Xerox India Ltd v. CIT (2021) 87 ITR 209 (Delhi)(Trib.)

S.92BA : Transfer pricing – Reference to transfer pricing officer was held to be not valid – Directed to re-examine the issue in terms of section 40A(2)(b) of the Act. [S.40A(2)(b)] 1170

Held, that the reference to the Transfer Pricing Officer in respect of specified domestic transactions mentioned in clause (i) of section 92BA was not valid, since the provision had been omitted. Therefore, the Assessing Officer was directed to delete the addition. The Tribunal restored the issue to the file of the Assessing Officer with the direction to examine the claim of expenditure in accordance with the provisions of section 40A(2) (b) of the Act. (AY.2014-15)

Sobha City v. ACIT (2021) 88 ITR 337 (Bang.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – TNM method – Transaction of buying services for sourcing garments in India – Addition made to ALP by applying cost plus 5 per cent mark-up on FOB value of exports among third parties was not supported under rule 10B(1)(e) and was liable to be deleted. [R. 10B(1)(e)] 1171

Assessee, a subsidiary of a Mauritius based company, had entered into an international transaction of buying services for sourcing garments, leather etc. in India for its AE and computed ALP of said transaction by adopting TNM method. Assessing Officer accepted application of TNMM by assessee as most appropriate method however addition made by TPO in assessee's ALP by applying cost plus 5 per cent mark-up on FOB value of exports among third parties. Tribunal deleted the addition which was affirmed by the High Court. (AY. 2011-12)

PCIT v. Li & Fung (India) P. Ltd. (2021) 130 taxmann.com 438 (Delhi)(HC)

Editorial : SLP is granted to the revenue ; PCIT v. Li & Fung (India) P. Ltd. (2021) 283 Taxman 4 (SC)

1172 **S. 92C : Transfer pricing – Arm's length price – Functionally different – Justified in directing for exclusion of ABCL from the list of comparables – Interest receivable – Notional interest for relating to alleged delay in collecting receivable – No substantial question of law – Question as to whether in a given case transfer pricing adjustment on delayed receivable could apply even to a debt-free company or not does not arise on facts and is left open [S. 260A]**

Dismissing the appeal of the revenue the Court held that the Tribunal is justified in directing for exclusion of ABCL from the list of comparables. Court also held that there can be no notional computation of delayed receivables' only ignoring the receivables received in advance. Appeal was dismissed. Question as to whether in a given case transfer pricing adjustment on delayed receivable could apply even to a debt -free company or not does not arise on facts and is left open. Followed *Mckinsey Knowledge Centre India (P) Ltd v. PCIT (2018) 407 ITR 450 (Delhi) (HC)* (AY. 2014-15)

PCIT v. Mckinsey Knowledge Centre India (P) Ltd. (2021) 323 CTR 360 / 207 DTR 60 / (2022) 284 Taxman 484 (Delhi)(HC)

1173 **S. 92C : Transfer pricing – Arm's length price – Computation – TNMM – Alternative remedy – Writ to quash the assessment order – Writ is held to be not maintainable [S.92CA, Art. 226]**

The Tribunal for the Assessments year 2013-14, applied the TNMM method. For the assessment year 2015 -16, the Assessing Officer applied the operating margin method. The assessee has filed the writ against the assessment order. Dismissing the petition the Court held that the challenge to the assessment order is premature. The assessee has the option to approach the DRP or file an appeal. The writ petition was dismissed. (AY. 2015-16) (SJ)

Bonfiglioli Transmission (P) Ltd v. Dy.CIT (2021) 203 DTR 329 / 321 CTR 726 (Mad.)(HC)

1174 **S. 92C : Transfer pricing – Arm's length price – Comparable – Foreign Associated enterprises – Tested party – Matter remanded back to TOP. [S.260A]**

TPO rejected transfer pricing analysis undertaken by assessee and undertook a fresh search for external comparables. Tribunal rejected selection of tested party as contended by assessee stating that assessee failed to produce material evidences/documents to establish functional profile and risks assumed by overseas AEs. On appeal the Court held that findings given by TPO and Tribunal foreclosing assessee's claim to refer to foreign AEs as tested party was legally not sustainable and issue regarding assessee's plea to consider foreign AE as tested party was to be remanded back to TPO.(AY. 2011-12)

Virtusa Consulting Services (P) Ltd v. Dy. CIT (2021) 282 Taxman 95 / 208 DTR 386 (Mad.)(HC)

1175 **S. 92C : Transfer pricing – Arm's length price – Interest rate – Accepted earlier year as well as subsequent assessment years – Revenue could not be allowed to make a departure in case of rate of interest for relevant assessment year**

Dismissing the appeal of the revenue the Court held that Reserve Bank of India had given approval with regard to said rate of interest adopted by assessee which was a relevant factor to determine rate of interest. TPO had accepted such rate of interest

adopted by assessee for assessment years 2002-03 to 2008-09 except for relevant assessment year 2006-07. Revenue could not be allowed to make a departure in case of rate of interest for relevant assessment year. (AY 2006-07)
CIT v. GE India Technology Centre (P) Ltd. (2021) 278 Taxman 261 (Karn.)(HC)

S. 92C : Transfer pricing – Arm's length price – Captive service provider – Depreciation – Transfer pricing officer to exclude depreciation from cost and Comparables [S.32, R 10B(1)(e)] 1176
Dismissing the appeal of the revenue the Court held that since the assessee had a policy of charging a higher rate of depreciation as compared to the companies selected by the Transfer Pricing Officer, there was a definite impact on the net margins of the assessee as compared to the comparable companies. There was a need for an adjustment to eliminate the differences in the accounting policies of the appellant and the comparable companies, in terms of rule 10B, especially given that in the benchmarked international transactions were sales by a captive service provider to its associated enterprises, on which depreciation would have no bearing and could be excluded altogether. The direction issued by the Tribunal to the Transfer Pricing Officer to exclude depreciation from the cost of the assessee and of the comparables and directing the Assessing Officer/ Transfer Pricing Officer to rework the depreciation was not perverse.(AY.2010-11)
PCIT v. Novell Software Development (India) Pvt. Ltd. (2021) 434 ITR 154 / 202 DTR 370/ 278 Taxman 390 / 321 CTR 458 (Karn.)(HC)

S. 92C : Transfer pricing – Arm's length price – Exclusion of ten comparables – Finding of fact – No substantial question of law [S.260A] 1177
Dismissing the appeal of the revenue the Court held that order of Tribunal upholding exclusion of ten comparables for purpose of determination of arm's length price of international transactions involving is question of fact and does not involve any substantial question of law. (AY. 2008-09)
PCIT v. Evaluserve.Com (P) Ltd. (2021) 124 taxmann.com 210 (Delhi)(HC)
Editorial: SLP of revenue is dismissed, as there was delay of 359 days in filing said petition and explanation offered in support of prayer for condonation was not satisfactory, PCIT v. Evaluserve.Com (P) Ltd. (2021) 277 Taxman 392 (SC)

S. 92C : Transfer pricing – Arm's length price – Technical services – Finding of fact [S.92(1), 92B(1), 260A] 1178
Dismissing the appeal of the Revenue the Court held that the Commissioner (Appeals) had recorded a finding that since the assessee had earned profit in the technical service segment in contracts other than with SKF the Transfer Pricing Officer should not have loaded the mark-up on the costs and expenses incurred in meeting the obligations under contracts other than with SKF on which the assessee had earned a profit of 36 per cent. on operating cost. The finding of fact had been affirmed in appeal by the Tribunal. The findings had been arrived at by the Commissioner (Appeals) and the Tribunal on the basis of meticulous appreciation of evidence on record. No question of law arose from the order.(AY. 2004-05)
PCIT v. EDS Electronics Data Systems India Pvt. Ltd. (2021) 431 ITR 307 / 199 DTR 212 (Karn)(HC)

1179 **S. 92C : Transfer pricing – Arm's length price – Exclusion of comparables and depreciation on goodwill – Question of fact – No substantial question of law [S.92CA]**
Dismissing the appeal of the revenue the Court held that the issue whether the entity IL was comparable to the assessee and was functionally dissimilar was a finding of fact. The Commissioner (Appeals) had dealt with the findings recorded by the Transfer Pricing Officer and had been approved by the Tribunal by assigning cogent reasons. The findings were findings of fact. Even in the substantial questions of law, no element of perversity had either been pleaded or demonstrated. The Tribunal was justified in removing certain companies from the list of comparables on the basis of functional dissimilarity and in holding that the assessee was entitled to depreciation on goodwill. (AY. 2009-10)
PCIT. v. Samsung R & D Institute Bangalore Pvt. Ltd. (2021) 431 ITR 615 / 201 DTR 397 (Karn.)(HC)

1180 **S. 92C : Transfer pricing – Arm's length price – Rejection of comparables is a finding of fact – Appellate Tribunal – Decision of High Court is available – Remand is not justified – Additional evidence is produced – Remand is justified. [S.92B, 254(1)]**
Where certain companies were rejected as comparables by the Tribunal on the ground that segmental information was not available and that the comparables were majorly involved in related party transactions, such findings of the Tribunal were findings of fact and no question of law arises from the same. Court also held that when the decision of High Court is available, remand is not justified. When additional evidence is produced first time before Appellate Tribunal remand is justified. (AY. 2011-12, 2012-13)
Microsoft India (R&D) Pvt. Ltd. v. DCIT (2021) 431 ITR 483 /197 DTR 409 / 318 CTR 654 (Delhi)(HC)

1181 **S. 92C : Transfer pricing – Arm's length price – TPO passing the order without following the Direction of the Appellate Tribunal – Alternative remedy is available – Writ is not maintainable – Order of single judge rejecting the Writ petition is affirmed [S.92CA, 143, 144C, 148, Art. 226]**
The TPO has passed the order without considering the objections raised by the assessee. DRP affirmed the order of the TPO. The ITAT has up held the revised order passed by the DRP. In a miscellaneous application filed by the assessee, the ITAT corrected the earlier order and directed the TPO whether the petitioner's rate of royalty payment is lesser than the rate prevailing in the Industry. The TPO once again confirmed the disallowance on the ground that the assessee has relied on Wikepedia and not any authentic source to substantiate the its contention. The assessee filed writ against the said order. The learned single Judge dismissed the petition by stating that it was premature and the assessee had not exhausted all available remedies before Approaching the Court. Division bench also affirmed the Order of the single Judge and directed the petitioner to approach the Tribunal within four weeks from the date of receipt of the copy of the order. Relied on *UOI v. Guwahati Carbon Ltd (2012) 11 SCC 651 / Mafatlal Industries Ltd v. UOI (1997) 5 SCC 536, Titaghur Paper Mills Co Ltd v. State of Orissa*

(1983) 2 SCC 433, Nivedita Sharma v. Cellular Operations (2011) 14 SCC 337 (AY. 2008-09)
Hyundai Motor India Ltd v. Dy.CIT (2021) 432 ITR 306/ 276 Taxman 156 / 199 DTR 124 /320 CTR 106 (Mad)(HC)

S. 92C : Transfer pricing – Arm's length price – Amount paid as trade mark fees to associated company in Singapore – Trade Mark was being used for several years past – Disallowance of trade mark fees is held to be justified – Corporate and Bank guarantees – Financial services – Direction to modify the claim is justified – Clarificatory Amendment can have retrospective operation.[S. 47(iv), 92B] 1182

Court held that no evidence placed by the assessee either before the Dispute Resolution Panel or before the Tribunal, disputing the factual position. The admitted fact was that the assessee had been using the mark ever since 1993. R, Singapore, a wholly owned subsidiary of the assessee, was established only in 2005 and the agreement to pay trade mark or licence fee was in the year 2006. The conclusion arrived at by the Transfer Pricing Officer as confirmed by the Dispute Resolution Panel was based on records, which were available before it and the assessee failed to establish its case not only before the Transfer Pricing Officer, but also before the Dispute Resolution Panel by placing records. Therefore, there was absolutely no error in the manner in which the decision was taken by the Transfer Pricing Officer and the Dispute Resolution Panel. There was absolutely no justification on the part of the assessee to seek for a remand to the Assessing Officer to redo the assessment on the issue. As regard to the corporate guarantee and bank guarantee the Transfer Pricing Officer had compared the nature of documentation executed by the assessee in favour of its associated enterprise to come to the factual conclusion that it was a financial service. This finding of fact had not been interfered with by the Dispute Resolution Panel, but the Dispute Resolution Panel was of the view that the same treatment, which was given in the previous assessment year should be extended for the assessment year under consideration also and there was no reason given by the Transfer Pricing Officer for taking a divergent view. The finding that the very same transaction for the previous assessment year was subject matter of a transfer pricing adjustment, had not been disputed by the Tribunal rather had not even dealt with by the Tribunal. Therefore, the finding rendered by the Tribunal was utterly perverse. The Tribunal committed an error in deleting the additions made against the corporate and the bank guarantee and the order passed by the Dispute Resolution Panel was correct. (AY.2009-10)
PCIT v. Redington (India) Ltd. (2021) 430 ITR 298 / 197 DTR 233/ 318 ITR 520 (Mad.)(HC)

S. 92C : Transfer pricing – Arm's length price – Raw material from related parties – Arithmetical Mean Rate – Lowest or minimum rate – Deletion of addition is held to be justified. [S.92C(2)] 1183

Held, that the assessee had benchmarked the specified domestic transaction with the arithmetical mean rate at which the related parties sold the products to independent buyers.. The Transfer Pricing Officer had benchmarked it by taking the lowest or minimum rate ignoring all other comparable uncontrolled transactions. The proviso to section 92C(2) clearly states that where more than one price is determined by the

most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices. The benchmarking methodology followed by the Transfer Pricing Officer was prima facie perverse and against the extant provisions contained in proviso to section 92C(2) of the Act. Order of CIT (A) deleting the addition was affirmed. (AY. 2013-14)
Dy. CIT v. Ankit Metal and Power Ltd. (2021) 92 ITR 189 (Kol.)(Trib.)

1184 **S. 92C : Transfer pricing – Arm's length price – Adjustment was made on the basis of Location saving – Matter remanded – Inter group services – Justified in making the adjustment [S.92B]**
Held that the functional comparability of the companies selected by the assessee had not been examined by the Transfer Pricing Officer and no steps were taken to find out the other comparables of the assessee for determination of the arm's length price, the Tribunal remanded the determination of the arm's length price and consequential adjustment, if any, for adjudication afresh to the Transfer Pricing Officer. Tribunal also held that the assessee failed to explain why in this assessment year there was no mark-up on the investigator payments. Accordingly, this intra-group service rendered by the assessee to the parent company could not be considered as reimbursement of expenses or pass through costs. It was a separate service in itself for which the assessee needed to determine the arm's length price which the assessee failed to do so. The Transfer Pricing Officer was justified in marking up the services so as to make an adjustment. The transfer pricing adjustment on this count was to be sustained. (AY.2013-14)
Parexel International Clinical Research P. Ltd. v. Dy. CIT (2021) 92 ITR 1(Bang.) (Trib.)

1185 **S. 92C : Transfer pricing – Arm's length price – Functionally dissimilar companies cannot be taken as comparable — Outstanding receivable – Debt free company - Adjustment made on interest on receivables not sustainable – Appellate Tribunal – Additional ground admitted – Education cess – Allowable as deduction [S. 37 (1), 40(a)(ii)]**
Held that functionally dissimilar companies cannot be taken as comparable. When the assessee is debt free company, adjustment made on interest on receivables is not sustainable. Additional ground admitted and education cess held to be allowable as deduction. (AY.2015-16)
Qualcomm India Pvt. Ltd. v. Add. CIT (2021) 92 ITR 434 (Delhi)(Trib.)

1186 **S. 92C : Transfer pricing – Arm's length price – Rule of consistency – No distinguishing facts in Current year – Addition on account of advertisement, marketing and sales promotion expenses not sustainable. [S. 143(3)]**
Held that the Tribunal while deciding the identical issue in the assessee's own case in assessment year 2012-13, following the decision of the High Court in the assessee's own case had deleted the addition. The Department had not pointed to any feature distinguishing the facts of the case for the year under consideration from those of earlier years nor placed any material on record to demonstrate that the order of the High Court in the assessee's own case for the assessment years 2006-07 to 2010-11 had been set aside or stayed or overruled by a higher judicial forum. Order of CIT (A) is affirmed. (AY.2013-14)
ACIT v. Bauch and Lomb India Pvt. Ltd. (2021) 92 ITR 36 (SN)(Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Advance Pricing Agreement – Order of CIT(A) on the basis of Advance Pricing Agreement is held to be proper. 1187
Dismissing appeal of the revenue the Tribunal held that order of the CIT (A) on the basis of Advance Pricing Agreement passed by the Tribunal is held to be justified. (AY. 2007-08)
Dy.CIT v. Mission Pharma Logistics (India) Pvt Ltd (2021) 92 ITR 25 (SN) (Ahd.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Selection of comparable – Consulting business – Companies rendering soft ware services cannot be comparable. 1188
Held that the companies rendering software services cannot be compared with consulting business services. Inclusion of comparable N ltd, subject to the availability of the accounts and passing of the filters is held to be valid. (AY. 2016-17)
Cowi India Pvt. Ltd v. ITO (2021) 92 ITR 24 (SN) (Delhi) (Trib.)

S. 92C : Transfer pricing – Arm's length price – Functionally different – Cannot be comparable 1189
Company rendering software development services cannot be comparable with company engaged in knowledge process outsourcing services. (AY. 2008-09)
Dell International Services India P. Ltd. v. Add.CIT (LTU) (2021) 90 ITR 61 (SN.)(Bang.) (Trib.)

S. 92C : Transfer pricing – Arm's length price – Functional dissimilarity – Product company having inventories and undertaking very high level research work – Excluded from list of comparable Companies.[S.92CA] 1190
Held that as seen from the annual report, GVK Ltd. was a discovery research and development organization providing a broad spectrum of services, across the research and development and manufacturing value chain. It also held a number of patents as provided in its annual report. It was a product company having inventories and undertook very high level research work, which could not be compared to the assessee, which was a captive service provider. This company was to be excluded from the list of comparable companies in the research and development segment. (AY. 2014-15)
Invitrogen Bioservices India Pvt. Ltd. v. ACIT (2021) 90 ITR 91 (SN)(Bang.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Consultancy services – Matter remanded. 1191
Held that matter remanded to the Assessing Officer to consider the terms of agreement and evidence for determination of Arm's length price.(AY. 2012-13)
Johnson Matthey Chemicals India P. Ltd. v Dy. CIT (2021) 90 ITR 75 (SN)(Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Advertisement and publicity expenses – Margin earned higher than the third party transactions – Adjustment made was deleted. 1192
Held that gross profit earned with related party transactions were higher than the third party transactions on similar transactions. Adjustment made was deleted. (AY. 2011-12)
ITO v. Hairr Appliances (India) Pvt Ltd (2021) 90 ITR 47 (Delhi)(Trib.)

1193 **S. 92C : Transfer pricing – Arm's length price – Comparable – Authorities justified in adopting combined accounts approach and confining addition to export segment – Functional similarity – Low turnover - Matter remanded – Draft Assessment order – Assessing Officer bound to follow Dispute Resolution Panel's Direction [S. 144C]**
Held that the Authorities justified in adopting combined accounts approach and confining addition to export segment- Functional similarity. Low turnover. Matter remanded. Assessing Officer bound to follow Dispute Resolution Panel's Direction (AY.2014-15)
Tasty Bite Eatables Ltd v. ACIT (2021) 89 ITR 699 / 214 TTJ 643 (Pune)(Trib.)

1194 **S. 92C : Transfer pricing – Arm's length price – Depreciation adjustment can be allowed for computation of operating profit, only if there is variance in the depreciation rates applied with the comparable. [S. 32]**
The Tribunal held that, an adjustment in terms of sub-clause (iii) of rule 10B(1)(e) may be warranted when there is a difference in recording certain expenses on principle i.e., in the instant case, depreciation adjustment in the computation of Operating Profit can be allowed only when the rates at which the Assessee charged depreciation on fixed assets are at variance with rates at which the chosen comparables charged depreciation. It was for the verification of this, that the Tribunal had restored the matter earlier, and not to adjudicate the proposition already rejected. Further heeding to the plea of the Assessee for providing another opportunity to furnish this data, the Tribunal restored to the file of AO/TPO for deciding this issue afresh in the light of new calculation sheet(s). (AY. 2007-08, 2008-09)
Vishay Components India (P.) Ltd v. ACIT (2021) 209 TTJ 664 / 198 DTR 102 (Pune)(Trib.)

1195 **S. 92C : Transfer pricing – Arm's length price – Depreciation adjustment can be allowed for computation of operating profit, only if there is variance in the depreciation rates applied with the comparable.[S. 32]**
The Tribunal held that, an adjustment in terms of sub-clause (iii) of rule 10B(1)(e) may be warranted when there is a difference in recording certain expenses on principle i.e., in the instant case, depreciation adjustment in the computation of Operating Profit can be allowed only when the rates at which the Assessee charged depreciation on fixed assets are at variance with rates at which the chosen comparables charged depreciation. It was for the verification of this, that the Tribunal had restored the matter earlier, and not to adjudicate the proposition already rejected. Further heeding to the plea of the Assessee for providing another opportunity to furnish this data, the Tribunal restored to the file of AO/TPO for deciding this issue afresh in the light of new calculation sheet(s). (AY. 07-08, 08-09)
Vishay Components India (P.) Ltd v. ACIT (2021) 209 TTJ 664/ 198 DTR 102 (Pune)(Trib.)

1196 **S. 92C : Transfer pricing – Arm's length price – Transfer Pricing adjustment cannot extend to non-AE transactions and to that extent a proportionate adjustment is warranted.**
The Tribunal held that the transfer pricing adjustment cannot extend to non-AE transactions. The matter is remitted to the file of AO/TPO for restricting the transfer pricing adjustment only in respect of the AE transactions. (AY. 2015-16)
Knorr Bremse Systems for Commercial Vehicles India (P.) Ltd v. DCIT (2021) 209 TTJ 1035 (Pune)(Trib.)

S. 92C : Transfer pricing – Arms' length price – safe harbour rules are optional for an eligible assessee – assessee has not exercised option for the safe harbour rules – entire set of rules from 10TA to 10TG cannot be operationalised. (ITR, 10B(1)€ & 10TA) 1197

In this case the Appellate Tribunal held that if an assessee has not exercised option for the safe harbour rules, the entire set of rules from 10TA to 10TG cannot be operationalized in determining the Arm's Length Price under the TNMM, or for that matter any other method under rule 10B, rule 10TA is not relevant. As such the TPO is not justified in applying the definition of 'operating profit' and 'operating expense' given under rule 10TA for the purposes of determining the Arm's Length Price of the international transactions in the 'manufacturing activity' under the TNMM as enshrined in rule 10B((1)(e) of the Income Tax Rules, 1962. (AY.203-14)

Dana India (P) Ltd v. DCIT (2021) 211 TTJ 271 (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Comparables – Functional dissimilarity – Excluded. [S.92CA] 1198

Held that companies with functional dissimilarity should be excluded. Unique intangible from which it could derive substantial benefit when compared to the assessee to be excluded.(AY.2010-11)

Dy.CIT v. Altisource Business Solutions P. Ltd. (2021) 88 ITR 135 (Bang)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Advances to associated enterprises – No interest chargeable – No adjustment is required – Performance bank guarantees – Commission was paid by its subsidiary – No adjustment required. [S.92CA] 1199

Held that advances to associated enterprises. No interest chargeable no adjustment is required. Performance bank guarantees. Commission was paid by its subsidiary no adjustment required. (AY.2012-13)

KEC International Ltd. v. Dy.CIT (2021) 88 ITR 246 (Mum.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Payment of professional fees – No adjustment required – Assessing Officer cannot disallow expenses [S. 37(1)] 1200

Held that payment of professional fees the Assessing Officer cannot disallow the expenses. No adjustment is required. (AY.2008-09, 2010-11)

ACIT v. Lifestyle International (P.) Ltd. (2021) 88 ITR 79 (Bang.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Software development service – Comparable – Companies providing software development services as well as sale of software products – Directed to exclude from the final set of comparbles [S.92CA (3)] 1201

Held that when the assessee is providing software development service, company providing software development services as well as sale of software products are directed to be excluded from the final set of comparbles.(AY.2011-12)

Fiserv India Pvt. Ltd. v. ACIT (2021) 88 ITR 217 (Delhi)(Trib.)

1202 **S. 92C : Transfer pricing – Arm's length price – Net margin method – Adjustments to be restricted to international transactions and not to be applied to entire segment of manufacturing activity – Entitled to benefit of tolerance range of +5 Per Cent.[S.92CA]**
Held that net margin method adjustments to be restricted to international transactions and not to be applied to entire segment of manufacturing activity. Assesee is entitled to benefit of tolerance range of +5 Per Cent.(AY. 2008-09, 2009-10)
Add.CIT v. Bunge India Pvt. Ltd. (2021) 87 ITR 34 (SN)(Mum.)(Trib.)

1203 **S. 92C : Transfer pricing – Arm's length price – Comparable – Company whose audited financial data for previous year available in public domain not to be discarded merely because it has different financial year- Expenses on travel, boarding and lodging, etc. of its employees during outstation visits – Assessee should have marked up expenses by a profit-margin before making recoveries- Weighted average period of realization with respect to all invoices was only 20.52 days – Matter remanded.**
Held, that the functional profile of these comparables was different from that of the assessee-company. Both these entities were involved in software testing, verification and validation of software which fell in the domain of "software development" services. Besides this, separate segmental details pertaining to information technology enabled services or business process outsourcing activities were not available in their financial statements. Therefore, the Transfer Pricing Officer were to exclude both these comparables from the final list of comparables. Expenses on travel, boarding and lodging, etc. of its employees during outstation visits. Assessee should have marked up expenses by a profit-margin before making recoveries. Weighted average period of realization with respect to all invoices was only 20.52 days. Matter remanded. (AY.2010-11)
Dunnhumby It Services India P. Ltd. v. Dy.CIT (2021) 87 ITR 66 (SN)(Delhi)(Trib.)

1204 **S. 92C : Transfer pricing – Arm's length price – Net Margin Method or Cost – Plus Method – Directed to adopt cost plus method. [S.92CA]**
Following the earlier order the Transfer Pricing Officer was directed to determine the arm's length price of the transaction under the trading segment using the cost plus method as the most appropriate one. (AY. 2012-13)
A. O. Smith India Water Products Pvt. Ltd. v. Dy. CIT (2021) 86 ITR 38 (SN.)(Bang.)(Trib.)

1205 **S. 92C : Transfer pricing – Arm's length price – Comparable – Turnover filter – Having small turnover – Cannot be compared with giant companies having huge turnover – Matter remanded.**
Assessee having a turnover of Rs. 33.24 crores cannot be compared with the companies having turnover ranged from Rs. 207 crores to Rs. 3,032 crores. Matter remanded to for applying turnover filter for selection of 0 to 200 crores.
Kumaran Systems (P.) Ltd. v. DCIT (2021) 191 ITD 514 (Chennai)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Manufacturing and trading of light commercial air-conditioning systems – Methods – Transactional Net Margin Method (TNMM) – Other method – MAM – Rule of consistency was followed – Directed to other method. 1206

Assessee was engaged into manufacturing and trading of light commercial air-conditioning systems. The assessee applied other method by considering gross margin of comparable companies with gross margin earned by it. TPO applied TNMM and made addition. On appeal the Tribunal held that relevant year was first year of manufacturing undertaken by assessee and it had been constantly following other methods in succeeding years which had been accepted by TPO. Following the rule of consistency matter remitted back to TPO to decide afresh as to whether other method applied by assessee was MAM. (AY. 2013-14)

Carrier Midea India (P.) Ltd. v. DCIT (2021) 191 ITD 286 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – TPO cannot decide as to whether expenses incurred by assessee were necessary for business purpose of assessee or not. [S. 37(1)] 1207

Tribunal held that TPO cannot decide whether expenses were necessary for conducting business or whether any benefit had been derive from expenditure so incurred and thus, DRP was justified in deleting impugned addition. (AY. 2006-07, 2007-08)

DCIT v. Rabo India Finance Ltd. (2021) 189 ITD 420 (Mum.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Secondary adjustment cannot be rejected – Matter was remanded for verification of factual elements. [S.92CE (1)] 1208

Tribunal held that proviso to section 92CE(1), cannot be interpreted as a bar on any secondary adjustment even de hors requirements under section 92CE(1). Matter was remanded for verification of factual elements. (AY. 2011-12 to 2016-17)

Gemological Institute of America Inc. v. ACIT (IT)(2021) 189 ITD 254 / 88 ITR 505 / 211 TTJ 521/ 201 DTR 321 (Mum.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Interest free advance – LIBOR rate and not domestic lending rate – Loan to AE – International Transaction [S.92B] 1209

Held that transaction of giving interest-free advance to associated enterprise in foreign currency should be benchmarked by applying LIBOR and not domestic lending rate. Transaction of giving guarantee on a loan availed of by AE is an international transaction. (AY. 2012-13, 2013-14)

Electrosteel Castings Ltd. v. DCIT (2021) 189 ITD 183 (Kol.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Reimbursement of expenses – Mark up was directed to be re-examined. 1210

Tribunal held that the DRP had determined mark up rate at 10 per cent on basis of financial results of assessee-company, but it had not brought on record any external supporting material to substantiate said mark-up rate, determination of rate of markup would require fresh examination. (AY. 2010-11)

Tata Coffee Ltd. v. DCIT (2021) 189 ITD 128 (Bang.)(Trib.)

1211 **S. 92C : Transfer pricing – Arm's length price – Comparable – Software consultancy – Functional similarity – Company engaged in providing both software products as well as software development services could not be accepted as comparable – A company engaged in providing information services could not be accepted as comparable.**
Where assessee-company was engaged in providing software development services to its AEs, a company engaged in providing both software products as well as software development services could not be accepted as valid comparable. A company engaged in providing product development services and rendering on-site services in one overall segment of 'Information Technology services' could not be accepted as valid comparable. A company mainly engaged in outsourcing its business activities could not be accepted as comparable. A company providing information services could not be accepted as valid comparable. (AY. 2010-11)
BMC Software India (P.) Ltd. v. DCIT (2021) 189 ITD 57 (Pune)(Trib.)

1212 **S. 92C : Transfer pricing – Arm's length price – Management fee – Documents filed to justify and availment of services have to accept value of management services as claimed by assessee – Functional similarity – Assessee involved in advertising agency, data not available in public domain for comparability of business support system segment of said company, it could not be compared to marketing support service provider- Income from exhibitions and events, should be excluded from comparable list to marketing support service provider.**
TPO examined timesheet related to charges to AE and observed that there was no clarity regarding services availed or services provided and treated value of management services fee as Nil in absence of supporting evidence of availing such services. Tribunal held that, since assessee had filed documents justifying not only need of services but also availment of services and TPO had failed to take into cognizance of those documents/ evidences, there was no merit in order of TPO and hence to accept the value of management services as claimed by assessee. Assessee-company rendered marketing support services to its AE, where a company was involved in advertising agency, but data was not available in public domain for comparability of business support system segment of said company, it should not be selected as comparable. The Assessee Company rendered marketing support services to its AE, a company was also involved in conducting exhibitions and events and most of income came from exhibitions and events, it should be excluded from list of comparable. (AY. 2011-12)
Renishaw Metrology Systems Ltd. v. DCIT (2021) 189 ITD 236 (Pune)(Trib.)

1213 **S.92C : Transfer pricing – Arm's length price – Bona fide expenditure should be incurred while availing services – Application of benefit test is not warranted-Matter remanded.[S.254 (1)]**
The Tribunal held that the mechanism applied by the Assessee or the TPO all the three methods for benchmarking was improper, nothing was left to be adjudicated upon. Accordingly, the issue was set aside to the TPO (without any specific directions on a particular method to be adopted) to redetermine the ALP afresh after giving an opportunity of being heard to the Assessee. (AY. 2013-14)
Adient India (P) Ltd v. Dy CIT (2021) 212 TTJ 777/ 204 DTR 193 (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Corporate guarantee distinct from bank guarantee – Average of guarantee fee paid by assessee cannot be questioned 1214

Where the adequacy of the ALP of the corporate guarantee fees determined by the assessee at 0.43 per cent of the amount of loan by taking the average of the guarantee fees that was paid by the assessee to various banks for standing guarantees on its behalf for certain third parties. It was held that a higher commission is to be paid for obtaining bank guarantee, as they are easily encashable in the event of default as in comparison to corporate guarantee provided by an assessee company to a bank for facilitating raising of loan by its AE. Therefore, the adequacy of the ALP of the corporate guarantee fees determined by the assessee cannot be called in question. (AY. 2012-13, 2013-14)

Greatship (India) Ltd. v. DCIT (2021) 212 TTJ 137 / 126 taxmann.com 47 (Mum.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Interest free loan to Associated enterprises – Libor rate is to be applied – Corporate guarantee – Guarantee commission/fee to be charged at 0.5 per cent.[S.92B] 1215

Held that arm's length interest would be determined by applying LIBOR rate. Providing corporate guarantee to a bank by assessee on behalf of its AE was an international transaction; guarantee commission/fee to be charged at 0.5 per cent. (AY. 2014-15)

Rosy Blue (India)(P.) Ltd. v. DCIT (2021) 188 ITD 909 (Mum.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Order passed without giving any finding – Matter remanded [S.254(1)] 1216

Held that Assessing Officer/TPO/Commissioner (Appeals) did not give any finding in respect of inclusion or exclusion of comparables, but made T.P. adjustment. Matter remanded (AY. 2010-11)

Mahle Behr India Limited v. DCIT (2021) 188 ITD 769 (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Resale method – Trading in India – Matter reamended. 1217

Held that the material imported was for trading,resale method would be appropriate. Matter remanded. (AY. 2010-11)

DCIT v. ADC India Communications Ltd. (2021) 188 ITD 696 (Bang.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Foreign exchange fluctuation gain/ loss be treated as an operating income / expenses – Comparable – Rejection of comparable was held to be not valid – Failure to provide annual report – Rejection of comparable was held to be valid – Customers whose segmental information was not available. could not be accepted as valid comparable- a comparable company engaged in purchase and sale of products could not be accepted as valid comparable – TP adjustment, if any, has to be restricted to international transactions of assessee with its Associated Enterprises only. [S.92A] 1218

Held that,foreign exchange fluctuation gain/loss should be treated as an operating income/expenses for purpose of computing ALP. Rejection of comparable is held to be not valid when foreign exchange was earned. Failure to provide annual report justified in rejecting comparable Where assessee selected a comparable company but failed to

prove comparability of this company with reference to annual report of this company, TPO was justified in rejecting said comparable, unit got physically moved during succeeding financial year, factor of relocation of its SEZ unit could not be considered as an extraordinary event during, segmental information was not available. could not be accepted as valid comparable, company engaged in purchase and sale of products could not be accepted as valid comparable. TP adjustment has to be restricted to international transactions of assessee with its Associated Enterprises only. (AY. 2014-15)
Synechron Technologies (P.) Ltd. v. ACIT (2021) 188 ITD 628 (Pune)(Trib.)

1219 **S. 92C : Transfer pricing – Arm's length price – Comparable – Functional similarity – Safe to exclude it from final list of comparables to assessee who had been following fixed price project model- turnover filter of Rs. 1 crore, companies having turnover of more than Rs. 200 crores have to be excluded.**
Held that where revenue recognition method followed by selected company caused drastic variation in profit margin of said company, it would be safe to exclude it from final list of comparables particularly when assessee followed fixed price project model where revenue from software development was recognised based on software developed and built to clients. TPO has applied a turnover filter of Rs. 1 crore, companies having turnover of more than Rs. 200 crores have to be eliminated from list of comparables. (AY. 2019-10)
Triology E-Business Software India (P.) Ltd. v. DCIT (2021) 188 ITD 615 (Bang.)(Trib.)

1220 **S. 92C : Transfer pricing – Arm's length price – Profit Split Method Royalty and AMP expenses – Required to be shown separately – Matter remanded.**
Tribunal held that TPO had combined royalty payments along with AMP expenses while making Transfer pricing adjustments by adopting Residual Profit Split Method. AMP expenses required to be shown separately matter remanded for fresh examination. (AY. 2015-16)
Kontoor Brands India (P.) Ltd. v. DCIT (2021) 188 ITD 503 (Bang.)(Trib.)

1221 **S. 92C : Transfer pricing – Arm's length price – TNM method – Cost plus method – TNM was directed to be applied – Beneficiary of AMP expenses or promotion of brand, said transfer pricing adjustment was to be deleted – Adjustment of royalty – Directed to be deleted**
Tribunal held that following the rule of consistency TPO was directed to adopt TNM method. Tribunal also held that since assessee was beneficiary of AMP expenses or promotion of brand, said transfer pricing adjustment was to be deleted. Following the earlier order adjustment of royalty was directed to be deleted. (AY. 2012-13)
Himalaya Drug Company v. ACIT (2021) 188 ITD 547 (Bang.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Restricted to international transactions with Associated Enterprises. 1222

Held that transfer pricing adjustment ought to have been restricted to international transactions with Associated Enterprises rather than entity level transactions. (AY. 2015-16)

Minda Rinder (P.) Ltd. v. ACIT (2021) 188 ITD 513 / 210 TTJ 545 / 200 DTR 58 / 86 ITR 25 (SN)(Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Export of customers electronic data – Comparable – Functionally different – Not acceptable as comparable – Interest receivable – No separate adjustment for interest on receivable was to be made. 1223

Company engaged in activities of certification, recertification, safety audit, HSE management system for offshore and onshore oil and gas facilities functionally different companies cannot be accepted as comparable such as, Government company engaged in activity of providing consultancy for designing and engineering, project management and procurement of medical equipments, drugs and pharmaceutical etc, Vocational training. Tribunal also held that no separate adjustment for interest on receivable was to be made when working capital adjustment was already granted to assessee (AY. 2013-14)

Bechtel India (P.) Ltd. v. ACIT (2021) 188 ITD 460 / 86 ITR 544 / (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Functional similarity – Business of manufacturing and distributing products of consumer electronics and home appliances category – Providing an online marketing platform for sale of electronic products of multiple brands – Designing and manufacturing of only mobile phones – Having brand owning and outsourcing its manufacturing activities to third party contractors could not be accepted as a valid comparable-Would not be accepted as a valid comparable. 1224

Tribunal held that the business of assessee is manufacturing and distributing products of consumer electronics and home appliances category therefore company providing an online marketing platform for sale of electronic products of multiple brands, designing and manufacturing of only mobile phones, having brand owning and outsourcing its manufacturing activities to third party contractors could not be accepted as a valid comparable. As regards other issues matter was remanded to the Assessing Officer. (AY. 2013-14)

Samsung India Electronics (P.) Ltd. v. ACIT (2021) 188 ITD 425 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Factors to be considered while accepting comparables – Web enabled customer care services, BPO services – Health care BPO services – Revenue filter – Held to be not comparable – Turnover of comparable company was 509 times – Not comparable -High Brand value – Not comparable. 1225

A company, engaged in providing health care BPO services, was to be accepted as valid comparable where the assessee company was engaged in providing web enabled customer care services, BPO services, call centre services and I.T. enabled services. Company had not passed revenue filter adopted by TPO as its revenue had decreased

from previous year due to decline in sales. This company could not be accepted as valid comparable. The turnover of assessee was Rs. 1.83 crores and comparable had a turnover of Rs. 932 crores which was 509 times more than that of assessee. Not accepted as comparable. Company having huge turnover and high brand value as compared to assessee could not be accepted as valid comparable. (AY. 2010-11)
Serco BPO (P.) Ltd. v. DCIT (2021) 188 ITD 19 (Delhi)(Trib.)

1226 **S. 92C : Transfer pricing – Arm's length price – Advertisement expenses – No agreement between AE – Adjustment was deleted – adjustment of royalty was deleted.**
Following the earlier order addition made on account of advertisement expenses was deleted as there was no agreement between the AE and the assessee. Since assessee had not collected any amount over and above selling price either from domestic customers or from non-AEs, said adjustment was to be deleted. (AY. 2014-15)
Himalaya Drug Company v. DCIT (2021) 188 ITD 201 (Bang.)(Trib.)

1227 **S. 92C : Transfer pricing – Arm's length price – CUP method – Interest-free debt funding of an overseas company in the nature of a special purpose vehicle – Cannot be compared with loan simpliciter – Cannot be subjected to arm's length price. [S. 92A, 92B]**
Allowing the appeal of the asssessee the Tribunal held that is an interest-free debt funding of an overseas company in the nature of a special purpose vehicle (SPV), with a corresponding obligation to use it for the purpose of acquisition of a target company abroad, cannot be compared with a loan simpliciter, and cannot be subjected to an arm's length price adjustment, on the basis of Comparable Uncontrolled Price (CUP) method accordingly. (AY.2010-11, 2011-12, 2012-13)
Bennett Coleman & Co Ltd. v. DCIT (2021) 205 DTR 209 (Mum.)(Trib.)

1228 **S. 92C : Transfer pricing – Arms' length price – Pro-rata adjustment considering only associated enterprises.**
In transfer pricing proceedings, TPO made adjustment to entire segment of manufacturing activity instead of making adjustment for only international transaction. ITAT held that TPO was not justified in making adjustment to entire segment of manufacturing activity and remanded matter back to TPO to verify and decide value of adjustment by taking appropriate revised margin rate. (AY. 2008-09 2009-10)
Bunge India Pvt. Ltd v. Add CIT (2021) 87 ITR 34 (SN.)(Mum.)(Trib.)

1229 **S. 92C : Transfer pricing – Arms' length price – Functionally dissimilar companies cannot be taken as comparable.**
The Tribunal held that while determining arm's length price functionally dissimilar companies cannot be taken as comparable. (AY. 2010-11)
Intercontinental Hotels Group (India) Pvt. Ltd. v. Dy. CIT (2021) 87 ITR 573 (Delhi)(Trib.)

S.92C : Transfer pricing – Arms' length price – If a company was otherwise functionally similar – It could not be excluded only on ground of having a different financial year ending. 1230

Assessee Company was engaged in rendering marketing support services (MSS) to its Associated Enterprises (AEs). It was also providing Microsoft consultancy services and product support services. The AO excluded two comparable company namely R Systems International and Helios & Matheson Information Technology Limited selected by assessee on ground that said company had a different financial year ending. The Tribunal relying on the Delhi HC decision in the case of *CIT v. Mckinsey Knowledge Centre India (P.) Ltd. [IT Appeal No. 217 of 2014, dated 27-3-2015]* held that if a company is otherwise functionally similar, then, it cannot be excluded only on the ground of having a different financial year ending.

The TPO had applied a filter of the related party transaction of 25%based on which a comparable namely Sonata Software Limited was included. However, the related party transactions of the comparable worked out at 53.83%. The Tribunal held that since the related party transactions in company are more than 50% of sales, company does not pass related party filter applied by TPO and accordingly directed to exclude the said company as comparable.

The TPO also denied working capital adjustment on the grounds that the same was not be allowed in the case of service industry. The Tribunal following the decisions of Bangalore Tribunal in the case of Goldman Sachs Services (P.) Ltd. v. Jt. CIT [2020] 115 taxmann.com 286/182 ITO 189 wherein such adjustment was granted by the co-ordinate bench and accordingly allowed working capital adjustment.(AY.2010-11)

Microsoft Corporation (India) Pvt Ltd. v. Dy.CIT (2021) 187 ITD 94 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Resale price method – Trading of telecom network equipments – Selling without any value addition – TPO applied TNM method – Order of TPO was set aside. 1231

Allowing the appeal of the assessee the Tribunal held that it is an undisputed fact that assessee is engaged in the business of trading of telecom network equipments and it is the assessee's submission that the assessee was purchasing goods from the associated enterprises and was selling it without any value addition. It is also a fact that assessee had applied RPM method (though it is assessee's contention that inadvertently it is stated to have followed TNMM method in TPO study report) TPO considered the TNMM method to be most appropriate method and proceeded to work out the adjustment accordingly. Tribunal held that RPM method has been held to be a most appropriate method for determining of ALP transaction when the assessee is trading in goods without making any value addition. Accordingly the adjustment made by the TPO was set aside (AY. 2012-13)

RFS India Telecom (P.) Ltd v. ACIT (2021) 187 ITD 254 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Cup method – e-mails correspondence is considered as evidence. 1232

Assessee-company was engaged in manufacturing of commercial truck tyres, road tyres and rear farm tyres. Assessee entered into a Service Agreement with its AE for receipt

of regional services. Assessee adopted CUP method to demonstrate that international transaction of payment of Regional Service Charges (RSC) was at Arm's Length Price (ALP). TPO determined Nil ALP for five regional services on ground that there was no evidence of receipt of services by assessee or assessee did not receive any benefit from such services. Assessee produced certain e-mails before TPO to demonstrate receipt of services. However, TPO did not infer factum of receipt of services from said e-mails by holding that those e-mails were either general or did not refer to receipt of services by assessee. On appeal the Tribunal held that text of said e-mails gave detailed account of nature of regional services furnished to assessee, there remained not even an iota of doubt that assessee did receive such services from its AE. Therefore, it was not justified on part of TPO to hold that said e-mails were general e-mails not evidencing any provision of services to assessee. (AY. 2014-15, 2015-16)
Goodyear South Asia Tyres (P.) Ltd. v. ACIT (2021) 187 ITD 72 / 214 TTJ 299 (Pune)(Trib.)

1233 **S. 92C : Transfer pricing – Arm's length price – Capacity utilization adjustment – allowed as the assessee is in the initial years of operation – Matter remanded0 Treatment of depreciation as operating expense – Depreciation held as operating expense for R&D segment considering interlink with manufacturing segment.**
The assessee submitted that the present year being the second year of manufacturing, assessee was not in a position to fully utilise the equipments purchased be cause of which an adjustment for under capacity utilisation is warranted. However, the TPO and DRP did not allow such adjustment. The Tribunal, by relying on the decision of Hon'ble Bangalore Tribunal in the case of *SKF Technologies India (P.) Ltd. v. Dy. CIT [IT(TP) Appeal No. 341 (Bang.) of 2014, dated 15-2-2019]*, held that the capacity utilization adjustment was to be granted. Also, in light of the observations made by the Hon'ble Delhi Tribunal in case of *Dy. CIT v. Claas India (P.) Ltd.[2015] 62 taxmann.com 173,* the issue was remitted back to the TPO for re-examination.
During the year, the assessee asked for treating depreciation as operating expense. However, the TPO disregarded the same. On further appeal, the DRP allowed the adjustment as the assessee was in the 2nd year of operation in contradistinction to the comparable resulting in higher impact of depreciation on profitability. On appeal by the department before the Tribunal, the Tribunal held that there was no infirmity in the order of the DRP. Further relying on the decision in *BA Continuum India (P.) Ltd. v. Asstt. CIT [2013] 40 taxmann.com 311 (Hyd)(Trib.)*(AY.2009-10)
Sigma Aldrich Chemicals Pvt. Ltd. v. Dy.CIT (2021) 187 ITD 374 (Bang.)(Trib.)

1234 **S. 92C : Transfer pricing – Arm's length price – Comaprable – Cannot be compared with business support services – Functionally dissimilar cannot be a comparable – Abnormal growth due to restrictions cannot be a comparable – Company had outsourced services to third party vendors cannot be held to be comparable.**
Assessee involved in providing high-end services to its clients involving higher special knowledge and domain expertise in field, it could not be taken as a comparable to assessee which was providing business support services to its group entities. Similarly a company had ventured into areas of health care sector, viz., Medical Transcription, Medical Coding, Medical Billing, Receivables Management (Collections), same can

be held to be functionally dissimilar to assessee rendering ITE services. A company achieved abnormal growth of 56 per cent, said company could not have been adopted as comparable to assessee-company. A company had outsourced services to third party vendors which constituted 20.39 per cent of its total expenses, it could not be selected as comparable to assessee. (AY. 2008-09)
Deutche CIB Centre (P.) Ltd. v. ACIT (2021) 187 ITD 506 / 209 TTJ 137 (Mum.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Management fee – TPO did not resort to transfer pricing exercise adjustment- Addition was to be deleted [S.92C(1)] 1235
Allowing the appeal the Tribunal held that since TPO did not resort to transfer pricing exercise as per any of the methods as prescribed in section 92C(1), transfer pricing adjustment was to be deleted. (AY. 2013-14)
Henkel Chembond Surface Technologies Ltd. v. ACIT (2021) 187 ITD 406 (Mum.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Assessee engaged in software development services, comparable engaged in wide variety of services – Not comparable without segmental analysis. TPO bound by the directions of the DRP [S. 92CA, 144C] 1236
Assessee is a subsidiary of a US Parent. Using TNM Method, the assessee declared a Profit Level Indicator (PLI) of 16.57%. TPO shortlisted 9 comparable and arrived at a margin of 28.18%. While rejecting these comparable on appeal, the Tribunal held three things. First, comparable was engaged in variety of segments unlike the assessee. In the absence of segmental data, the comparable was rejected. Second, PLI of comparable in dispute. DRP agreed with assessee's calculation of comparables PLI. AO/TPO cannot overlook S. 144C. Further, where DRP held entity to be functionally comparable, not for TPO to reject comparable basis other filters as it jeopardises the direction of the DRP. (AY. 2012-13)
Netscout Systems India Private Limited v. Dy. CIT (2021) 187 ITD 773 (Pune)(Trib.)

S. 92C : Transfer pricing – Arms' length price – Comparable – Leading company without segmental information cannot be accepted as a comparable. 1237
The assessee is a captive entity (i.e. risk mitigated entity) mainly engaged in providing Information Technology (IT) enabled services in the nature of call center and low end back office support to its associated enterprises (AE) and billing them at cost plus 15%. It was held that a company engaged in the call center business is a comparable company with that of the assessee. Further, comparable companies should be compared for the same financial year. Further, a leading company without segmental information cannot be accepted as a comparable. (AY. 2013-14)
Ocwen Financial Solutions Private Limited v. ACIT (2021) 187 ITD 861 (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Fully Compulsorily Convertible Debentures (FCCDs) – Interest adjustment – Interest should be market determined interest rate applicable to currency in which loan has to be repaid i.e. SBI Prime Lending Rate and not LIBOR based interest rate 1238
Assessee-company issued Fully Compulsorily Convertible Debentures (FCCDs) to its foreign based Associated Enterprise (AE). It made payment towards interest on FCCDs

denominated in Indian Rupee to said AE. TPO applied LIBOR based interest rates to benchmark aforesaid international transaction of payment of interest. Tribunal held that interest should be market determined interest rate applicable to currency in which loan has to be repaid. Therefore lending rate was SBI Prime Lending Rate and, therefore, TPO was unjustified in using LIBOR based interest rate.
Assotech Moonshine Urban Developers (P.) Ltd. v. DCIT (2021) 186 ITD 600 (Delhi)(Trib.)

1239 **S. 92C : Transfer pricing – Arm's length price – Comparable – Computer software developer – RPT of comparable company – Knowledge Process Outsourcing (KPO)-Engineering and consulting services – Manufacturing of software – Functional similarity – working capital adjustment – Matter remanded.**
Assessee-company was engaged in business of provision of software development services hence a software product company was incomparable. RPT of comparable company at 18.66 per cent was beyond threshold limit of 15 per cent, this company was to be excluded from list of comparable companies. Company engaged in Knowledge Process Outsourcing (KPO), could not be regarded as comparable to a Software development services provider. A company engaged in engineering and consulting services, in absence of segmental information available to compare margins of SWD services segment of said company, could not be selected as comparable to Software development service provider. Where a company was engaged in manufacturing of software products and was a giant company assuming various risks, it could not be compared with assessee-company, a software developer. Company engaged in manufacturing of software products and assuming various risks, was incomparable. When working capital adjustment is positive, it should be allowed on actual without putting a cap on working capital adjustment, i.e., without restricting working capital adjustment to average working capital component of comparables. (AY. 2010-11)
ITO v. Sabre Travel Technologies (P.) Ltd. (2021) 186 ITD 164 (Bang.)(Trib.)

1240 **S. 92C : Transfer pricing – Arm's length price – Interest on debentures – Equity and not debt – Deduction allowable – Matter remanded [S.92CA]**
Tribunal held that the debentures issued by the assessee-company qualified as equity share capital and therefore, the debenture interest was allowable as deduction from the arm's length price. Followed, *Kolte Patil Developers Ltd. v. Dy.CIT* (I. T. A. Nos. 1980 and 2111/Pun/2017 dated December 8, 2020). Matter remanded for verification.(AY.2013-14)
Amanora Future Towers P. Ltd. v. Dy. CIT (2021)85 ITR 16 (Trib.)(SN)(Pune)(Trib.)

1241 **S. 92C : Transfer pricing – Arm's length price – Comparables – Company which is a giant risk taking company and engaged in development and sale of software products is not Comparable – Foreign exchange fluctuation gain or loss is to be considered for transfer pricing analysis if it is in respect of current year's turnover.**
Tribunal held that Company which is a giant risk taking company and engaged in development and sale of software products is not Comparable - Foreign exchange fluctuation gain or loss is to be considered for transfer pricing analysis if it is in respect of current year's turnover. (AY.2012-13)
CSG Systems International (I) Pvt. Ltd. v. JCIT (OSD)(2021) 187 ITD 529 / 85 ITR 62 (SN) (Bang.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Adjustment not entry level transactions – Net margin method – Not opted for foreign exchange gain or loss is part of operating revenue or loss. 1242

Tribunal held that only the international transactions which call for transfer pricing adjustment and not the entity level transactions of the assessee. Tribunal also held that the foreign exchange gain or loss earned or incurred by the assessee and the other comparables had to be considered as a part of operating revenue or cost not only for the reason that the assessment year under consideration was prior to the applicability of the safe harbour rules but also that there could be no question of applying rule 10TA(k) in the absence of the assessee having or exercising option to be subjected to the safe harbour rules. Once it was proved that the foreign exchange gain emanated from the regular business transactions of the assessee with its associated enterprises, it had to be taken as an item of operating revenue.(AY.2012-13)

Delval Flow Controls P. Ltd. v. Dy. CIT (2021) 85 ITR 65 (SN)(Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price Comparables – Company having huge brand value and extraordinary events to be excluded – Computation of working capital level and consequent adjustment on account of working capital remanded to Transfer Pricing Officer for fresh consideration – Gains arising from fluctuation of foreign exchange having nexus with international transactions – to be treated as operating income and taken into consideration. 1243

Tribunal held that Company having huge brand value and extraordinary events to be excluded.-Computation of working capital level and consequent adjustment on account of working capital remanded to Transfer Pricing Officer for fresh consideration. Gains arising from fluctuation of foreign exchange having nexus with international transactions to be treated as operating income and taken into consideration. (AY.2012-13)

Fidelity Business Services India Pvt. Ltd. v. ACIT (2021) 85 ITR 14 (SN)(Bang.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Net Margin Method – Companies having different functional profile – Companies for which segmental details not available are to be excluded – Profit margin at entity level could not be taken – Working capital adjustment to be given effect – Communication charges should be excluded both from export turnover and total turnover [S.10A] 1244

Tribunal held that the Companies having different functional profile and Companies for which segmental details not available are to be excluded. Profit margin at entity level could not be taken. Working capital adjustment to be given effect. Communication charges should be excluded both from export turnover and total turnover for the purpose of S.10A of the Act. (AY.2007-08, 2010-11)

Gxs India Technology Centre Pvt. Ltd. v. ITO (2021) 85 ITR 24 (SN)(Bang.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Comparables – Company Having Less Than 75 Per Cent. of its revenue from Information Technology Services to be excluded – Company engaged in provision of routine software development services 1245

Tribunal held that the revenue from information technology transactions services was less than 75 per cent and consequently this company did not satisfy the filter of

information technology revenue and was to be excluded and the entire revenue of P had been shown under the sale of software services and products segments and no separate segment had been given in respect of software services. The composite data of revenue as well as margins of this company pertaining to the sale of software services and products could not be considered as comparable with the software development services segment of the assessee. (AY.2011-12)
Meritor Cvs India (P.) Ltd. v. ITO (2021)85 ITR 30 (SN)(Bang.)(Trib.)

1246 **S. 92C : Transfer pricing – Arm's length price – Transactional Net Margin Method — Matter remanded to transfer pricing officer to consider fresh search of comparables. [S.92C(3)]**
Tribunal remanded to the Transfer Pricing Officer with a direction to consider the fresh search of the comparables by the assessee. The assessee was to submit the complete search along with accept/reject matrix and the computation of the margin of the transactional net margin method before the Transfer Pricing Officer and the Transfer Pricing Officer may verify it and after giving proper opportunity of hearing to the assessee may compute the correct margin and consequent adjustment.(AY.2012-13)
USG India Pvt. Ltd. v. ACIT (2021) 85 ITR 71 (SN)(Delhi)(Trib.)

1247 **S. 92C : Transfer pricing – Arm's length price – Direct Sales Compensation – Direction to Assessing Officer to adopt average commission rate of 3.93 Per Cent. as appropriate rate for benchmarking- Bad debts written off – Adjustment made towards bad debts written off to be deleted – Royalty- Matter remanded – Order pronounced much after the expiry of 90 days [S. 254(1)]**
Tribunal held that as regards direct sales Compensation, direction was given to Assessing Officer to adopt average commission rate of 3.93 Per Cent. as appropriate rate for benchmarking As regards bad debts written off adjustment made towards bad debts written off to be deleted. As regards, royalty matter remanded. The Tribunal observed that the order was being pronounced much after the expiry of 90 days from the date of conclusion of hearing on account of nationwide lock-down due to pandemic Covid-19 applying the exception to 90 day time limit for pronouncement of orders inherent in rule 34(5)(c) of the Income-tax (Appellate Tribunal) Rules, 1963.(Ay.2010-11, 2011-12)
Johnson Controls (India) Pvt. Ltd. v. Dy. CIT (2021) 85 ITR 120 (Mum.)(Trib.)

1248 **S. 92C : Transfer pricing – Arm's length price – Selection of comparables – Software Development Service – Companies having huge brand value and engaging in sale of software products, developing mobile enterprise applications and solutions not functionally comparable to be excluded from list of comparables – Interest due on receivable outstanding – Not charging others – Addition cannot be made [S.92CA]**
Tribunal held that Companies having huge brand value and engaging in sale of software products, developing mobile enterprise applications and solutions not functionally comparable to be excluded from list of comparables. As regards interest there was similar delay in receipt of receivables from others and the assessee was not charging any interest for delay in receipt of receivables against services rendered to unrelated third

parties. Hence, there was no warrant for any adjustment on account of interest due on receivables from its associated enterprise.(AY.2011-12)
Motherson Sumi Infotech and Designs Ltd. v. Dy. CIT (2021) 85 ITR 360 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Transactional Net Margin Method – Comparables – Exclusion of companies on ground of revenue filter, non-availability of segmental data, functional dissimilarities – Held to be proper – Working capital adjustment on actual basis – allowable – Disallowance of interest would increase profits and gains derived from eligible – The addition relating to transfer pricing adjustment was not eligible for deduction under section 10A of the Act, in view of the bar provided in the proviso to section 92C(4) of the Act. [S.10A, 92C(4)] 1249
Tribunal held that exclusion of companies on ground of revenue filter, non-availability of segmental data, functional dissimilarities is held to be proper. Working capital adjustment on actual basis is held to be allowable. Tribunal held that if disallowed while computing business income of the undertaking, which was eligible for deduction under section 10A of the Act, would go to increase the profits and gains derived from the eligible undertaking. Tribunal also held that the addition relating to transfer pricing adjustment was not eligible for deduction under section 10A of the Act, in view of the bar provided in the proviso to section 92C(4) of the Act. Other disallowances made by the Assessing Officer would go to increase the profits derived from the undertaking. Since it was supported by the Central Board of Direct Taxes Circular No. 37 of 2016, dated November 2, 2016 ([2016 388 ITR (St.) 62), the Assessing Officer was directed to recompute the deduction. (AY.2011-12)
Maxim India Integrated Circuit Design Pvt. Ltd. v. Dy. CIT (2021) 187 ITD 547 / 86 ITR 26/ 212 TTJ 986/ 204 DTR 332 (Bang.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Transactional Net Margin Method Or Cost – Plus Method – Directed to follow Cost Plus Method [S.92CA] 1250
Tribunal held that for the assessment year 2011-12, the Department was aggrieved by the Dispute Resolution Panel's direction to consider cost plus method as the most appropriate method for determining the arm's length price of the international transaction under the trading segment while the Transfer Pricing Officer had adopted the resale price method as the most appropriate one. In the present case, the Transfer Pricing Officer adopted the transactional net margin method against the assessee's choice of cost plus method on the same set of comparables for determining the arm's length price. Admittedly, there being no difference in the facts and circumstances between the two assessment years, in terms of the Tribunal's direction for the earlier assessment year in the assessee's own case, the Transfer Pricing Officer was directed to determine the arm's length price of the transaction under the trading segment using the cost plus method as the most appropriate one. (AY. 2012-13)
A. O. Smith India Water Products Pvt. Ltd. v. Dy. CIT (2021) 86 ITR 38 (SN)(Bang)(Trib.)

1251 **S. 92C : Transfer pricing – Arm's length price -Transactional Net Margin Method – Transfer pricing adjustment to be restricted to International Transactions rather than entity level transactions [S.92(1)]**

Allowing the appeal the Tribunal held that, Transfer pricing adjustment to be restricted to International Transactions rather than entity level transactions in conformity with the Tribunal's observations.(AY. 2015-16)

Minda Rinder P. Ltd. v. ACIT (2021) 86 ITR 25 (SN)(Pune)(Trib.)

1252 **S.92C : Transfer pricing – Arm's Length Price – Most Appropriate Method – Assembling goods partly purchased from itns associated enterprise and partly developed by its own vendor – Resale Price Method adopted is not appropriate – Transactional Net Margin Method, Appropriate. [S.144C]**

Tribunal held that the assessee had not resold the same goods with only minor modifications to justify the adoption of resale price method. The assessee had assembled the goods partly purchased from its associated enterprise and partly developed them by its own vendor. There was no infirmity in the order of the Assessing Officer/Transfer Pricing Officer as well as direction of the Dispute Resolution Panel in adopting the transactional net margin method as the most appropriate method. (AY. 2013-14)

Roxtech India Private Ltd v. ACIT (2021) 86 ITR 42 (SN)(Delhi)(Trib.)

1253 **S. 92C : Transfer pricing – Arm's length price – Lease guarantee commission – If lease guarantee is treated as chargeable services, the charge should be levied only for the balance i.e. 60% during the year under consideration. [S.40(a)(ii), 37(1)]**

The Tribunal directed the AO to charge guarantee commission @0.5% per annum both on performance/lease guarantee as well as financial guarantee. Tribunal further directed the AO to examine the contentions of the assessee that (i) part of the activity with respective performance guarantee, was performed by the assessee itself, while the remaining services are rendered by the AE and thus, if the performance guarantee is treated a chargeable services, the charges should be levied only on the component of services performed by the AE (ii) part of the premises i.e. 40% during the year under consideration was occupied by the assessee and thus, if lease guarantee is treated as chargeable services, the charge should be levied only for the balance i.e. 60% during the year under consideration.(AY.2007-08)

Tata Consultancy Services Ltd v. ACIT (2020) 121 taxmann.com 190 / (2021) 186 ITD 721 (Mum.)(Trib.)

1254 **S. 92C : Transfer pricing – Arm's length price – AMP expenditures incurred for creating awareness about the product is purely business expenditures and thus, outside the purview of international transactions. Hence, no TP adjustment on account of AMP expenses are required to be made.[S.92B]**

It has been held by the Appellate Tribunal that the assessee is engaged in sale of Nivea products in India. The Assessee had incurred huge expenditure on advertisement, marketing and promotion of Nivea brand in India. The TPO made adjustment in respect of AMP expenditure incurred by assessee in the absence of any agreement or

arrangement between assessee and AE for incurring the AMP expenses. As, the assessee wanted to create awareness about its product in Indian market, it has incurred AMP expenditure. Thus, the expenses incurred by the assessee were wholly and exclusively for its own business and it was not international transaction. Hence, no adjustment is required to be made with respect to AMP expenditure incurred by the Assessee. (AY. 2014-15)
NIVEA India (P) Ltd. v. Dy. CIT (2021) 186 ITD 366 (Mum.)(Trib.)

S. 92C : Transfer pricing – Arms' length price – Availment of support services from AE had benefitted business of assessee – Thus, ALP of management fee paid to AE could not be determined at nil. 1255
In this case the Appellate Tribunal held that increase in profitability of assessee during relevant period proved that availment of support services from AE had benefitted its business. Thus, TPO is not justified in determining ALP of management fee paid by assessee to its AE at nil. (AY.2008-09)
Michelin India (P) Ltd v. JCIT (2021) 186 ITD 62 (Delhi)(Trib.)

S. 92C : Transfer pricing – Arms' length price – A company engaged in KPO services is not comparable to software development service company. 1256
It has been held by the Appellate Tribunal that the assessee was rendering software development services to its AE. Thus, a company engaged in KPO services was not acceptable as comparable with Assessee company. (AY.2011-12)
Microchip Technology (India)(P) Ltd. v. ACIT (2021) 186 ITD 156 (Bang.)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Working capital adjustment is to be allowed on actual without making adjustment to average working capital component of comparables. [S.10A, 92CA] 1257
In the present case the Ld. TPO while making the working capital adjustment observed that that working capital adjustment cannot exceed the average working capital component of the comparables. Ld. TPO further observed that while computing working capital adjustment, advances received from the sister company included in the debtors should be excluded because such advances received towards services to be rendered usually does not have any cost.
The Appellate Tribunal however deleted the addition by holding that when the working capital adjustment is positive, the same is to be allowed on actual without putting a cap on the working capital adjustment i.e., without restricting the working capital adjustment to the average working capital component of the comparables. The Appellate Tribunal further held that when the working capital adjustment is negative then there should be no adjustment on account of working capital and advances received from AE should also be considered as part of payables in computing working capital of the Assessee. (AY. 2010-11)
ITO v. sabre Travel Technologies (P) Ltd (2021) 186 ITD 164 (Bang.)(Trib.)

1258 **S. 92C : Transfer pricing – Arm's length price – Assessee apart from acting as a distributor of products manufactured by its AE, also engaged in manufacturing its own products in India under license from AE – AMP expenditure to promote its brand would not constitute international transaction requiring any TP adjustment. [S.92B]**
In this case the Appellate Tribunal held that the assessee was not merely a distributor of the products manufactured by its AE but also manufacturing its own products in India under license from the AE. The assessee has incurred AMP expenditure by making payments to third parties in India in order to market and promote its own manufactured products. There was no express arrangement/agreement between the assessee and its AE for incurring such expenditure to promote the brand of the AE. Therefore, the said transactions would not constitute international transaction relating to AMP expenditure. The Appellate Tribunal further observed that BLT method as adopted by Ld. TPO is not a valid method to benchmark the transactions relating to AMP expenditure. (AY.2013-14)
Kellogg India (P.) Ltd v. ACIT (2021) 186 ITD 10 (Mum.)(Trib.)

1259 **S. 92C : Transfer pricing – Arm's length price – Royalty – Net margin is higher than the margin of the comparables, addition was deleted – It is not obligatory for the assessee to demonstrate as to whether or not the international transaction has resulted into economic benefit [S.92BF(ii)]**
Tribunal held that Net margin is higher than the margin of the comparables, addition was deleted – It is not obligatory for the assessee to demonstrate as to whether or not the international transaction has resulted into economic benefit.(AY. 2010-11 to 2012 -13)
Dow Agrosciences India (P) Ltd. v. ACIT (2021) 214 TTJ 1064(Mum.)(Trib.)

1260 **S. 92C : Transfer pricing – Arm's length price – Cup method – Rate at which the distribution company sells the electricity to the customers has to be adopted the transactions relating to transfer of electricity to other units – Purchase made from AE are at arm's length price and non AE transactions are considered under CUP method.**
Tribunal held that rate at which the distribution company sells the electricity to the customers has to be adopted as CUP for bench marking the transaction relating to transfer of electricity to other units. Purchase made from AE are at arm's length price and non AE transactions are considered under CUP method. (AY. 2013-14, 2014-15)
Jayant Agro Organics Ltd. v. Addl. CIT (2021) 214 TTJ 368 (Mum.)(Trib.)

1261 **S. 92C : Transfer pricing – Arm's length price – CUP method is not the most appropriate method in the facts of the case – Assessing Officer is directed to determine ALP under the TNMM but restricting the amount of adjustment only to the International Transactions. [R. 10B]**
Allowing the appeal the Tribunal held that CUP method is not the most appropriate method in the facts of the case. Assessing Officer is directed to determine ALP under the TNMM but restricting the amount of adjustment only to the International Transactions. (AY. 2012-13)
Mubea Automotive Components India (P) Ltd. v. Dy. CIT (2021) 214 TTJ 1047 / 63 CCH 501 / 208 DTR 217 (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Comprables – Exclusion of company from the comparable is set aside- Amount of export incentives is liable to be considered as part of operating revenue – Transfer pricing adjustment is to be restricted only to the extent of international transactions – TPO is directed to grant working capital adjustment as per the methodology suggested by DRP. [S. 144C] 1262

Tribunal held that exclusion of company from the comparable is set aside. Amount of export incentives is liable to be considered as part of operating revenue. Transfer pricing adjustment is to be restricted only to the extent of international transactions. TPO is directed to grant working capital adjustment as per the methodology suggested by DRP. (AY. 2014-15)

Tasty Bitte Eatables Ltd v. ACIT (2021) 214 TTJ 643 (Pune)(Trib.)

S. 92C: Transfer pricing – Arm's length price – Where extraordinary financial event of amalgamation happened in the preceding year and got recorded in books of accounts of the preceding year itself, company cannot be removed from list of comparables for current year on this sole reason, if it is otherwise functionally similar – Inclusion of a government company as comparable by the TPO rejected.[R. 10B] 1263

Partly allowing the assessee's appeal, the Hon'ble Mumbai Tribunal held that the assessee's argument to exclude a comparable on the ground of non-availability of its data for the year under consideration at the time of preparing the transfer pricing study report cannot be sustained.

Further, the Hon'ble Tribunal also held that due to an extraordinary financial event of amalgamation and its recording in the books of accounts happening in the preceding year, a comparable cannot be excluded for the current year on this sole reason, if it is otherwise functionally similar.

The Hon'ble Tribunal also went on to hold that where trading activity is regularly pursued by an assessee and forms a reasonably good percentage of the manufacturing activity, the assessee, on entity level, could not have been treated as a comparable to another lone Manufacturing company. Per contra, if trading activity of a company forms a minimal and inconsiderable portion with the overwhelming functionally similar manufacturing activity, then such a company cannot be ruled out for a comparison with a company engaged only in manufacturing activity.

Further, where the same comparable was suo-moto included by the assessee and was not tinkered with by the TPO in the preceding year and there was no noticeable difference in the functional profile for the current year vis- à -vis the preceding year, the inclusion is justified.

Finally, the Hon'ble Tribunal, relying on the decision of the co-ordinate bench in the assessee's own case (ITA No.565/PUN/2015 and 644/PUN/2015) directed exclusion of BEML, being a government company, from the list of comparables.

In result, the Hon'ble Tribunal set aside the matter to the file of the TPO with the direction to carry out reasonably accurate adjustment to the profit of the comparable so as to eliminate the effect of a microscopic difference due to trading sales and service income. (AY. 2011-12)

ACIT v. Hyundai Construction Equipment India Pvt Ltd (2021) 62 CCH 181 / 213 TTJ 203 (Pune)(Trib.)

1264 **S. 92C : Transfer pricing – Arm's length price – There cannot be a transaction, between independent enterprises, of interest-free debt funding of an overseas SPV by its sponsorer; if such a transaction between independent enterprises is at all hypothetically possible, arm's length interest on such funding will be 'nil'- A performance guarantee by SPV, and if such a commitment was reiterated for performance of own obligations, reiteration of this own commitment could not have an arm's length price.[S.92A, 92F(ii)]**

Adjudicating the matter in favour of the assessee, the Hon'ble Tribunal held that when the borrower has no discretion of using funds gainfully, commercial interest rates do not come into play at all. When CUP method is to be adopted for ascertaining the ALP of providing wherewithal to SPV, for achieving its objectives and purpose, arm's length consideration thereof could at best be corresponding gain to SPV concerned directly or indirectly. There cannot be a transaction, between independent enterprises, of interest-free debt funding of an overseas SPV by its sponsorer if such a transaction between independent enterprises is at all hypothetically possible, arm's length interest on such funding will be 'nil' and if there has to be an arm's length consideration under CUP method, other than interest for such funding it has to be net effective gains-direct and indirect, attributable to risks assumed by sponsorer of SPV, to SPV in question. The Tribunal held that when the assessee already had an obligation to finance transaction of acquisition of target company by SPVs, same obligation being reiterated, in different words, did not amount to a performance guarantee by SPV and if such a commitment was reiterated for performance of own obligations, reiteration of this own commitment could not have an arm's length price. Further, since assessee-company was de facto beneficiary of this transaction, assessee-company could not be treated as a guarantor but rather as a primary obligor for its own transaction undertaken through SPV. Accordingly, impugned ALP adjustment, on CUP basis, was not sustainable. (AY.2009-10)

Bennett Coleman & Co Ltd v. DCIT (2021) 62 CCH 0548 / 213 TTJ 377 (Mum.)(Trib.)

1265 **S. 92C: Transfer pricing – Arm's length price – Once it is held that the property is used by the assessee for business purposes and the Revenue fails to bring on record and evidence to the contrary, it is not open to the TPO to apply 'Other method' and determining Nil ALP on the premise that no independent party would have paid any rent for not having occupied the premises – Addition of TP adjustment is deleted.[S. 37(1)]**

Adjudicating the matter in favour of the assessee, the Hon'ble Tribunal held that once it is held that the property is used by an assessee for its business and the Revenue fails to bring any contrary reliable evidence on record, the TPO cannot apply applying 'Other method' and determining Nil ALP on the premise that no independent party would have paid any rent for not having occupied the premises, fails. On the other hand, the assessee applied CUP as the most appropriate method for benchmarking its rent expenses for which it gave a comparable instance of rent paid by bank under a lease agreement for a nearby premises which was more than the impugned transaction. Accordingly, the Hon'ble Tribunal held that the ALP of the SDT of payment of rent cannot be disputed. Addition of TP adjustment is deleted. (AY. 2013-14)

DCIT v. Bhairavanath Sugar Works Ltd. (2021) 62 CCH 0201 / 213 TTJ 703 / 205 DTR 197 (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Working Capital adjustment Advances to suppliers and advances from customers are integral part of working capital adjustment and cannot be excluded in computing working capital adjustment.[R. 10B] 1266

Tribunal was of the view that higher amount of advances to suppliers indicated that an assessee(buyer) made more advance payments and made cheap purchases. Also, higher amount of advances from customers deciphers that an assessee- seller made cheap sales. Therefore, there was no qualitative difference between the higher amount of advances from customers and lower amount of trade receivables insofar as its impact on the profit margin was concerned. Thus, advances to suppliers and advances from customers are integral part of working capital adjustment in the same way in which there are trade receivables and trade creditors. As a result, the Hon'ble Tribunal held that such advances could not be excluded in computing working capital adjustment.

In addition to this, it was held that as the figures of Advances to suppliers and Advances from customers were placed first time before the Ld. CIT(A) and therefore, were not verified by any Authority, deserved to be remanded back for adjudication.

Further, the Hon'ble Tribunal observed that the overall PLI at -41.54% not only depicts the effect on company's manufacturing activity but also the activity of rendering services. However, the transaction was benchmarked separately by the assessee and the TPO did not dispute that it was at ALP. Thus, the only segment of the assessee under consideration was that of Manufacturing de hors Services. Since the Revenue from sale of services of Fives Cail KCP Ltd. constitutes a substantial portion i.e. 83%, could not be considered as comparable to the international transaction under consideration of 100% Manufacturing activity. (AY. 2013-14)

GL&V India (P) Ltd. v. DCIT (2021) 213 TTJ 117 / (2022) 93 ITR 122 (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Comparable – BEM being a Government company – Not includible in the list of comparables – 99.65 per cent of the manufacturing activity of JCB Ltd is functionally similar – Included in the comparables.[R. 10B] 1267

Tribunal held that BEML being a Government company is not includible in the list of comparbles. Tribunal also held that since 99. 65 per cent of the manufacturing activity of JCB Ltd in functionally similar to that of the assessee. It cannot be excluded from the list of comparables. (AY. 2011-12)

ACIT v. Hyundai Construction India (P) Ltd. (2021) 213 TTJ 203 (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Customs duty paid – Adjustment is not warranted- Selection of comparable – BEML being a Government company cannot be included in the list of comparables. [R. 10B(1)] 1268

Tribunal held that rate of customs duty paid by the assessee and the comparable is similar, no adjustment is warranted towards excess custom duty paid because the assesssee's percentage of import to total materials purchased is higher than that of the comparbles. Tribunal also held that BEML being a Government company, cannot be included in the list of comparbles. (AY. 2013-14)

Hyundai Construction India (P) Ltd v. ACIT (2021) 213 TTJ 216 (Pune)(Trib.)

1269 **S. 92C : Transfer pricing – Arm's length price – Operating revenue expenses incurred – Order set aside – TP adjustment are only in respect of international transactions and not entry level transactions [S. 92]**
Tribunal held that when an international transactions is concluded in the succeeding year the costa/ revenue of the said transaction from first year also qualify for consideration in determining ALP even though characterized as prior period costs / revenue. Matter set aside for decide a fresh. Tribunal also held that TP adjustment are only in respect of international transactions and not entry level transactions. (AY. 2013-14)
Mtu India (P) Ltd v. DCIT (2021) 211 TTJ 978/ 203 DTR 390 (Pune)(Trib.)

1270 **S. 92C : Transfer pricing – Arm's length price – Assembling of products and sold to customers – TPO was justified in rejecting the RPM and adopting TNMM as the most appropriate method. [R. 10B]**
Tribunal held that RPM is the most appropriate method for computation of ALP when the goods are purchased from an AE resold without any substantial addition. On the facts of the assessee assembled the products after obtaining raw materials from its AE and vendors which are further improved through its own vendors and then sold to the customers. Therefore the TPO was justified in rejecting the RPM and adopting TNMM as the most appropriate method. (AY. 2012-13)
Roxtec India Pvt. Ltd. v ACIT (2021) 210 TTJ 116 / 199 DTR 1 (Delhi)(Trib.)

1271 **S. 92C : Transfer pricing – Arm's length price – Interest on outstanding receivables – Adjustment is not warranted if pricing/profitability of assessee is more than working capital adjusted margin of comparables companies.**
Tribunal held that no additional imputation of interest on outstanding receivables is warranted if pricing/profitability of assessee is more than working capital adjusted margin of comparables companies. Accordingly addition made on account of interest on receivables was deleted. Followed *PCIT v. Kusum Health care (P) Ltd (2017)) 398 ITR 66 (Delhi)(HC)*. (AY. 2016-17)
ERM India (P.) Ltd. v. NEAC (2021) 91 ITR 24 (SN)/ (2022) 192 ITD 115 (Delhi)(Trib.)

1272 **S. 92C : Transfer pricing – Arm's length price – Recharacterization of the transaction of debt in to equity is not approved – Bench marking of interest payment to AES at 13. 75 % matter remanded – Additional ground on Education cess was allowed. [S. 94B]**
Dismissing the appeal of the revenue the Tribunal held that, recharacterization of the transaction of debt in to equity is not approved. Bench marking of interest payment to AES at 13. 75 % matter remanded. Additional ground on Education cess was allowed. (AY. 2013-14)
DCIT v Kolte Patil Developers Ltd. (2021) 209 TTJ 364/ 198 DTR 1 (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – TP adjustments should be restricted to the AE transactions only – Reversal of provision for write back – Matter remanded – VAT refund – Non operating and ice versa – Miscellaneous income – Can not be considered as operating income. [R. 10B] 1273

Held that TP adjustments should be restricted to the AE transactions only. Reversal of provision for write back. Matter remanded. VAT refund is Non operating and vice versa. Miscellaneous income can not be considered as operating income. (AY. 2015-16)

Knorr Bremse Systems for Commercial Vehicles India (P) Ltd v. Dy.CIT (2021) 198 DTR 196 (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Selection of comparables – Not produced relevant information of the Foreign AEs – Assessee itself is to be treated as the tested party – When the capacity utilization figures of the comparable are not available, ALP can be determined with gross profit margins only qua raw material cost to the exclusion of direct expenses – Turnover filter – Adjustment to be made at entry level only to the value of international transactions. [R. 10B(1)(e)] 1274

Held that the assessee has not produced relevant information of the Foreign AEs therefore Assessee itself is to be treated as the tested party. When the capacity utilization figures of the comparable are not available, ALP can be determined with gross profit margins only qua raw material cost to the exclusion of direct expenses. Turnover filter cannot be excluded on the facts of the case. Adjustment to be made at entry level only to the value of international transactions. (AY. 2014-15)

A Raymond Fasteners India (P) Ltd. v. Dy. CIT (2021) 208 DTR 407 (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Payment to intra-group services and not stewardship activity – ALP determination was not adjudicated – No ground was raised by the revenue. 1275

Dismissing the appeal of the revenue the Tribunal held that the payment to intra-group services and not steward activity hence the ALP determination was not adjudicated since no ground has been raised by the revenue. (AY. 2009-10)

ACIT v. Nalco Water India Ltd (2021) 208 DTR 85 (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Subsidy received under Incentive Scheme of Government of Maharashtra – Capital receipt – Cannot form part of operating revenue of manufacturing segment for the purpose of determining ALP under the TNMM – Excess custom duty paid cannot be reduced by the difference in the amount of customs duty. 1276

Held that subsidy received under Incentive Scheme of Government of Maharashtra is capital receipt hence cannot form part of operating revenue of manufacturing segment for the purpose of determining ALP under the TNMM. Excess custom duty paid cannot be reduced by the difference in the amount of customs duty. (AY. 2014-15)

Hyundai Construction Equipment India (P) Ltd. v. ACIT (2021) 208 DTR 449 (Pune)(Trib.)

1277 **S. 92C : Transfer pricing – Arm's length price – Adjustment of working capital – Advance to suppliers – Matter remanded – Comparable – Manufacturing sales less than 75 percent of total sales – Cannot be considered as comparable for bench marking the international transaction of 100 percent manufacturing activity of the appellant company**

Held that advances to suppliers and advances from customers are integral working capital adjustment and therefore such advances cannot be excluded in computing the working capital adjustment. Reference to trade receivable and trade payables in the example given in Annexure to Chapter III of the OECD Transfer Pricing Guidelines 2010 should be construed as including advances to suppliers and advances from customers. Tribunal also held that a company which has passed the filter of manufacturing sales not less than 75 percent of total sales only passed the company level test for qualifying as a comparable ; since the said company has also service income to the extent of 17 per cent of its total revenue and no segmental information of the manufacturing activity is available it cannot be considered as comparable for bench marking the international transaction of 100 percent manufacturing activity of the appellant company. (AY. 2013-14)

GL & V India (P) Ltd v. Dy.CIT (2021) 204 DTR 317 (Pune)(Trib.)

1278 **S. 92C : Transfer pricing – Arm's length price – Remittance of funds by assessee to its Associated Enterprises by way of share application money and loan – Assessee neither charging interest on its receivables nor paying any interest on its payables to its Associated Enterprises – Notional interest could not be charged on amounts due from Associated Enterprises – No adjustment warranted.**

Dismissing the appeal of the revenue the Tribunal held that during the year under consideration, the assessee had neither charged interest on its receivables nor had paid any interest on its payables to its associated enterprises. No notional interest could be charged on amounts due from associated enterprises. The adjustment made by the Transfer Pricing Officer was to be deleted. (AY.2014-15)

JCIT v. Reliance Life Sciences Pvt. Ltd. (2021) 91 ITR 468 (Mum.)(Trib.)

1279 **S. 92C : Transfer pricing – Arm's length price – Selection of comparables — comparables functionally dissimilar or involved principally in on-site development to be excluded – where average margin or segmental information not available, matter remanded for recomputation.**

Held that in the information technology enabled services segment, ACTL and ITL were to be excluded from the list of comparables owing to their functional dissimilarity with the assessee. The case of company JSL was restored to the file of the Transfer Pricing Officer to recompute its correct average margin. That in the business support services segment, the case of companies FCHL and FCIAL were remanded to the file of the Transfer Pricing Officer : the former for verification of the related-party transactions before deciding on comparability with the assessee and the latter for recomputation of the margins in terms of the above instructions of the Dispute Resolution Panel. (AY.2010-11)

Eaton Technologies P. Ltd. v. ACIT (2021) 91 ITR 36 (Pune)(Trib.)

S. 92C : Transfer pricing – Arm's length price – Comparables – Functionally different from assessee to be excluded from list of comparables – Transactional net margin method – Foreign exchange fluctuation gains on re-statement of outstanding debtors as on balance-sheet date – Part of operating revenue – Assessee within ± 5 Per Cent. tolerance range – No transfer pricing adjustment called for. [S.92C(2)] 1280

Held that functionally different from assessee to be excluded from list of comparables. If the foreign exchange fluctuation gains were treated as operating revenue and the six companies were excluded from the list of comparables, the assessee would be well within the ± 5 per cent tolerance range in terms of the second proviso to section 92C(2) of the Act and there was no need to make any transfer pricing adjustment in respect of provision of information technology enabled services by the assessee to its associated enterprises. (AY. 2009-10)

Tech Mahindra Business Services Ltd. v. DCIT (2021) 91 ITR 8 (SN)(Mum.)(Trib.)

S. 92CA : Reference to transfer pricing officer – Alternative remedy – Writ is not maintainable – Corporate service – The order passed by the Tribunal in respect of reference made against an order passed under section 92CA for a particular assessment year was not binding for the subsequent assessment years. [S. 144C, 253, Art, 226] 1281

Dismissing the petition, that the challenge to the order was premature. The assessee had options under the Act to file an application under section 144C before the Dispute Resolution Panel and if an adverse order was passed, the remedy of statutory appeal before the Tribunal was available to the assessee. Payments made during each of the assessment years would differ. Therefore, the order passed by the Tribunal in respect of reference made against an order passed under section 92CA for a particular assessment year was not binding for the subsequent assessment years. A writ would not issue against the order.(AY.2015-16) (SJ)

Bonfiglioli Transmission Pvt Ltd v. Dy. CIT (2021) 437 ITR 251 (Mad.)(HC)

S. 92CA : Reference to transfer pricing officer – Opportunity of hearing – Opportunity of hearing must be given. [Art. 228] 1282

Allowing the petition as per CBDT Instruction No 3 of 2016 dt.10 3 -2016 satisfaction should have been recorded that there ought to be an income or potential of an income arising and/or being affected on determination of ALP of an international transaction or specified domestic transaction and in absence of such satisfaction being recorded in order disposing of objections, reference to TPO would be without jurisdiction. (AY 2017-18)

Hitachi Hi Rel Power Electronics (P) Ltd v. NFAC (2021) 282 Taxman 520 / 205 DTR 201/ 322 CTR 593 (Guj.)(HC)

S. 92CA : Reference to transfer pricing officer – Transfer pricing – Arm's length price – Limitation – Order passed by TPO on 1-11-2019 is barred by limitation by one day [S. 92CA(3), 92CA(3A), 144C, 153, Art, 226] 1283

Assessee filed its return for AY 2016-17 and TPO passed an order on 1-11-2019. The assessee filed a writ petition challenging the TPO order passed under section 92CA(3) being barred by limitation by one day. Limitation under section 153 expired on 31-12-

2019 and period of 60 days prior to the last date on which period of limitation referred to in section 153 for making assessment expires is 1-11-2019 and hence 'any date prior thereto' would mean 31-10-2019 or before and thus the impugned order is held to be barred by limitation. Accordingly the order passed on 1-11-2019 were barred by limitation. (AY.2016-17)

Pfizer Healthcare India (P.) Ltd. v. JCIT (2021) 433 ITR 28 / 201 DTR 367 / 320 CTR 812 / 124 taxmann.com 536 (Mad.)(HC)

Editorial: Affirmed by Division Bench, DCIT (TP)v. Saint Gobain India Pvt. Ltd. (2022) 444 ITR 636 (Mad) (HC)

1284 **S. 92CA : Reference to transfer pricing officer – Time – Limit to pass order – Sixty days to be computed excluding last date for passing order – Order passed beyond limitation period of 60 days – Order is bad in law – Appellate Tribunal has the power to admit the additional ground raised as to jurisdiction [S. 92CA(3), 143(3), 153, 254(1)]**

Tribunal admitted the additional ground on limitation raise for the first time before the Appellate Tribunal. Allowing the appeal held that under sub-section (3A) of section 92CA inserted with effect from June 1, 2007 the time-limit for the Transfer Pricing Officer to pass the order was within a period of 60 days prior to the date of completion of assessment under section 153, which was 21 months. The assessment order in the assessee's case was passed on March 31, 2013 and the Transfer Pricing Officer was required to pass his order within 60 days prior to expiration of the period of limitation given in section 153. The 60 days was to be computed by excluding the date of passing of the order. As a result, the Transfer Pricing Officer was required to pass the order by January 29, 2013 ; however, the order was passed on January 31, 2013, beyond the limitation date. Thus the Transfer Pricing Officer's order was barred by limitation. Consequently, the additions made by the Transfer Pricing Officer on account of transfer pricing adjustment were not sustainable. The assessment order under section 143(3) passed by the Assessing Officer being within time, stood, except for the additions proposed by the Transfer Pricing Officer.(AY.2009-10)

Louis Dreyfus Commodities India P. Ltd. v. Dy. CIT (2021) 89 ITR 27 (Delhi)(Trib.)

S. 94 : Transaction in securities – Unless interest arising and accruing from security is deemed to be income of owner who transferred the securities loss cannot be disallowed [S. 45, 94(4)] 1285

The Hon'ble Tribunal acknowledged the assessee's contention that the provisions of section 94(4) of the Act cannot be invoked unless and until the relevant income is brought to tax in the hands of the counter party under section 94(4) of the Act i.e. unless the interest arising and accruing from the security is deemed to be the income of the owner who transferred the securities to the assessee in terms of section 94(1) of the Act hence the loss cannot be disallowed in the hands of the assessee. Relying on coordinate bench ruling in *Growmore Leasing and Investment Ltd v. DCIT* (ITA No.2192/M/2015 dated 17.11.2017), the Hon'ble Tribunal allowed set off of losses. (AY. 1992-93)

Cascade Holdings Pvt Ltd v. DCIT (2021) 61 CCH 470 / 213 TTJ 491 (Mum.)(Trib.)

S. 115A : Foreign companies – Tax – Royalty – Different agreements – The assessee can opt to be either under statutory provisions or the Double taxation avoidance agreement – DTAA-India-USA [S.90] 1286

Dismissing the appeal of the revenue the Court held that the Tribunal was right in holding that royalty income received under an agreement entered into before June 1, 2005 and royalty income received under an agreement entered into on or after that date was from the same source and as such the assessee could apply section 115A or the Double Taxation Avoidance Agreement separately for one source of income covered by different agreements.(AY.2007-08, 2008-09, 2013-14)

CIT (IT) v. IBM World Trade Corporation (NO. 2)(2021) 436 ITR 647 (Karn.)(HC)

S. 115A : Foreign companies – Tax – Royalty – Entitled to adopt rate of tax payable on royalty income in respect of both agreements entered into before 1-6-2005 as on or after 1-6-2005 as per provisions of section 115A(1)(b) or provisions of Article 12 of Indo-US DTAA, which were more beneficial – DTAA-India-USA [S.90, Art. 12] 1287

Dismissing the appeal of the revenue the Court held that the assessee is entitled to adopt rate of tax payable on royalty income in respect of both agreements entered into before 1-6-2005 and on or after 1-6-2005 as per provisions of section 115A(1)(b) or provisions of article 12 of Indo-US DTAA, which are more beneficial. Followed *CIT (IT) v. IBM World Trade Corporation (2020) 120 taxmann.com 151 (Karn.)(HC)*(AY. 2013-14)

CIT (IT) v. IBM World Trade Corporation (2021) 281 Taxman 265 (Karn.)(HC)

S. 115A : Foreign companies – Tax – Dividends – Royalty – Technical services fees – Rates prevailing during different periods under DTAA and under section 115A which were more beneficial to assessee, had to be applied – DTAA-India-USA [S.90(2), Art.12] 1288

Assessee, a Foreign company received royalty pursuant to various agreements entered into before or after 1-6-2005. Assessing Officer made assessment by levying tax at rate of 15 per cent. Tribunal held that rates prevailing during different periods under DTAA and under section 115A which were more beneficial to assessee, had to be applied. On appeal by revenue, high Court affirmed the order of the Tribunal.(AY. 2007-08)

DIT (IT) v. IBM World Trade Corporation (2021) 436 ITR 641 / 276 Taxman 211 (Karn.) (HC)

1289 **S. 115A : Foreign companies – Tax – Dividends – Royalty – Technical services fees – Rate of tax – Matter remanded – DTAA-India-USA. [S.115A(b), Art. 12]**
Assessee computed tax at rate of 10 per cent in terms of section 115A(b) in respect of payment received by it as FTS, but Assessing Officer applied rate of 15 per cent as per article 12, since in all other assessment years, similar payment received by assessee had been taxed at rate of 10 per cent as per section 115A(1)(b), matter was to be remanded back. (AY. 2016-17)
Gemological Institute International Inc. v. CIT (2021) 214 TTJ 393 / (2022) 192 ITD 83 / 211 DTR 139 (Mum.)(Trib.)

1290 **S. 115BB : Winning from lotteries – Irrespective of the head of the income, the winnings from lotteries shall be taxed at a special rate – The business loss incurred by the assesse after exclusion of prize money earned from the unsold lottery tickets is eligible for set off against such winnings from lotteries.[S. 2(24)(ix), 28(i), 56(2)(ib), 58(4), 71]**
The Tribunal held that the loss incurred by the area distributor from the unsold lottery tickets shall be eligible for set off against winnings from lotteries under Section 71 of the Act and the lottery winnings from lotteries shall be taxed under Section 115BB irrespective of the head to be taxed i.e., business income or income from other sources. (AY. 2014-15)
Pooja Marketing v. PCIT (2021) 212 TTJ 306 / 204 DTR 1 (Mum.)(Trib.)

1291 **S.115BBE: Tax on specified income – Levy of tax at 60% and surcharge @ 25% – Legislature has the power to levy taxes and duties – Taxation Laws (Second Amendment Act, 2016) – Order of single Judge is affirmed [S.69A, Art. 245, 246(1), 269, 270, 271]**
The writ petition was filed for a declaration that the amendments made by the Taxation Laws (Second Amendment) Act, 2016, to section 115BBE of the Income-tax Act, 1961 enhancing the rate of income-tax for specified incomes which are unexplained, to 60% and the surcharge provided in the Finance Act, 2016 to 25 % for income covered under section 69A, to be prospective. Single Judge rejected the writ petition. On appeal division bench affirmed the order of the single Judge. The Court held that the Legislature has the power to levy taxes and duties. (AY. 2018-19)
Maruthi Babu Rao Jadav v. ACIT (2021) 430 ITR 504 / 199 DTR 66/ 319 CTR 422 (Ker.) (HC)

1292 **S.115BBE: Tax on specified income – Income from undisclosed income – Setting off any loss – Restrictions applicable prospectively with effect from 1-4-2017 [68, 69, 69A, 69B 69C]**
Section 115BBE of the Income-tax Act, 1961 was brought on the statute by the Finance Act, 2012 with effect from April 1, 2012. The embargo against setting off any loss while computing the assessee's income referred to in sections 68, 69, 69A, 69B, 69C and 69D of the Act included in the return of income filed by the assessee under section 139 of the Act was effective from April 1, 2017. This restriction was extended to incomes under these sections determined by the Assessing Officer and not forming part of the

returned income. Thus, the provision of section 115BBE was applicable prospectively with effect from April 1, 2017 and is not applicable for earlier years. (AY.2013-14, 2014-15, 2015-16, 2016-17)
Ekta Housing Pvt. Ltd. v. Dy. CIT (2021) 89 ITR 56 (Mum.)(Trib.)

S.115BBE: Tax on specified income – Survey – Builder – Housing project – On money – Income offered – Assessed as deemed income- Professional fees paid was allowed as deduction. [S. 68, 37 (1)] 1293
In the course of survey the partner of the firm offered additional income. The assessee has debited expenditure in respect of professional fees paid to the professional. The Assessing Officer disallowed the expenditure which was affirmed by the CIT(A). On appeal the Tribunal held that the disallowance of professional fees was held to be not justified. (dt. 26-7-2021)(AY. 2013-14)
Anjani Infra v. DCIT (2021) BCAJ – October – P. 54 (Surat)(Trib.)

S.115BBE: Tax on specified income – Search and seizure – Surrender of income – Amount surrendered cannot be taxed at higher rate of tax [S. 68 to 69D] 1294
Assessing Officer treated said additional income as income from unexplained sources and invoked provisions of section 115BBE and charged tax at a higher rate. On appeal the Tribunal held that the Assessing Officer had not pointed out any unexplained credit in books of account in this respect and surrender of Rs. 15 lakhs that had been offered to cover up discrepancies in respect of likely disallowances of claims, if any, relating to its business income. Since aforesaid surrender was not covered under provisions of sections 68, 69, 69A, 69B, 69C and 69D, provisions of section 115BBE were not attracted and Assessing Officer was directed to compute said surrendered income under normal provisions as applicable to business income of assessee. (AY. 2017-18)
Bajaj Sons Ltd. v. (2021) 190 ITD 128 / 91 ITR 498 (Chd.)(Trib.)

S. 115BBE : Tax on specified income – set-off of any loss – Entitled to claim set-off of loss against income determined under till assessment year 2016-17. [S. 68 to 69D] 1295
Held term or set off of any loss was specifically inserted only vide Finance Act, 2016, with effect from 1-4-2017, an assessee is entitled to claim set-off of loss against income determined till assessment year 2016-17. (AY. 2015-16)
ACE Infracity Developers (P.) Ltd. v. DCIT (2021) 188 ITD 589 (Delhi)(Trib.)

S. 115JB : Book profit – Provision for bad and doubtful debts – Corresponding amount reduced from loans and advances on assets side of balance sheet- Net provision is shown – Provision not to be added in computing book profit. [S. 36(1)(vii)] 1296
The Tribunal held that since the assessee had simultaneously obliterated the provision from its accounts by reducing the corresponding amount from the loans and advances on the assets side of the balance-sheet and consequently, at the end of the year shown the loans and advances on the assets side of the balance sheet as net of the provision for bad debts, it would amount to a write-off and such actual write-off would not be hit by clause (i) of the Explanation to section 115JB. On appeal dismissing the appeal the Court held that the Tribunal was right in deleting the addition on account

of the provision for bad and doubtful debts in the computation of the book profits for computation of minimum alternate tax liability in the light of clause (i) of the Explanation to section 115JB.(AY.2004-05)
PCIT v. Narmada Chematur Petrochemicals Ltd. (2021) 439 ITR 761 (Guj.)(HC))

1297 **S. 115JB : Book profit – Write back of provision – Disputed excise duty – The denial of the benefit of writing back the provision to the assessee in these assessment years was illegal and the finding recorded by the Tribunal was valid and correct [S.143(3)]**
Dismissing the appeal of the revenue the Court held that the Tribunal had rightly found that the fact that the proper working was not reflected in the respective assessment orders or the record could not lead to the conclusion that the Assessing Officer had not considered the applicability of special provision as well and that the omission on the part of the Assessing Officer in referring to the special provisions ought not to deny the writing back provision available under the second proviso to sub-section (2) of section 115JB. The denial of the benefit of writing back the provision to the assessee in these assessment years was illegal and the finding recorded by the Tribunal was valid. (AY. 2002-03)
CIT v. Kerala Chemicals and Proteins Ltd. (2021) 438 ITR 333 (Ker.)(HC)

1298 **S. 115JB : Book profit – Banking companies – Accounts drawn in conformity with Banking Regulation Act, 1939 – Not liable for minimum alternative tax.**
Dismissing the appeal of the revenue the Court held that Accounts drawn in conformity with Banking Regulation Act, 1939 is not liable for minimum alternative tax. (AY.2006-07)
CIT, LTU v. Vijay Bank (2021) 130 taxmann.com 148 (Karn.)(HC)
Editorial : SLP was granted to revenue, CIT, LTU v. Vijay Bank (2021) 282 Taxman 296 (SC)

1299 **S. 115JB : Book profit – Amendment in Law – Explanation 3 – Not Applicable.**
Section 115JB was not applicable to the assessee in view of Explanation 3 to section 115JB. Followed *CIT v. ING Vysaya Bank Ltd (2020) 422 ITR 116 (Karn)(HC)*(AY. 2007-08)
CIT v. Karnataka Power Corporation Ltd. (No. 1)(2021) 436 ITR 285 (Karn.)(HC)

1300 **S. 115JB : Book profit – Power generating company – Additional ground – Provision is not applicable.[S. 254(1)]**
Dismissing the appeal of the revenue the Court held that the Tribunal was justified in admitting the additional ground and also holding that the section 115JB was not applicable to the assessee in view of Explanation 3 to section 115JB of the Act. (AY. 2006-07)
CIT v. Karnataka Power Corporation Ltd. (No. 2) (2021) 436 ITR 292 / 281 Taxman 600 (Karn.)(HC)

S. 115JB : Book profit – Exempt income – Disallowance of expenditure made under section 14A – No addition can be made while computing book profits – Reduction of provision for bad and doubtful debt written back – Addition cannot be made for purpose of computing book profit. [S.14A, 36(1)(vii)] 1301

Disallowance of expenditure made under section 14A could not be added for purpose of computing book profits. Reduction of provision for bad and doubtful debt written back credited to profit and loss account of assessee could not be added for purpose of computing book profit. (AY. 2008-09)

Karnataka State Industrial and Infrastructure Development Corporation Ltd v. Dy. CIT (2021) 281 Taxman 312 (Karn.)(HC)

S. 115JB : Book profit – Provision is held to be not applicable. [S.260A] 1302

Dismissing the appeal of the revenue the Court held that, Tribunal was right in holding that section 115JB was not applicable to the assessee. Followed ITA No 18 /2014 dt 16-1-2020.

CIT v. Karnatka Power Corporation (2021) 127 taxmann.com 282 (Karn.)(HC)

Editorial : SLP granted to the revenue, CIT v. Karnatka Power Corporation (2021) 280 Taxman 1 / 127 taxmann.com 283 (SC)

S. 115JB : Book profit – Banking companies – Provisions are not applicable to banking companies [Banking Regulation Act, 1939] 1303

Dismissing the appeal of the revenue the Court held that the Tribunal is right in law holding that the provisions of S.115JB of the Act are not applicable to banking companies.

CIT v. Vijay Bank (2021) 126 taxmann.com 166 (Karn.)(HC)

Editorial: SLP granted to the revenue, CIT v. Vijay Bank (2021) 280 Taxman 235 / 126 taxmann.com 167 (SC)

S. 115JB : Book profit – Amount disallowed u/s 14A cannot be included [S.14A] 1304

Allowing the appeal of the assessee the Court held that the disallowance under section 14A of the Act is a notional disallowance and therefore, by recourse to section 14A of the Act, the amount cannot be added back to the book profits under clause (f) of Explanation 1 to section 115JB.(AY. 2008-09)

Sobha Developers Ltd. v. Dy CIT(LTU) (2021) 434 ITR 266 / 278 Taxman 338 (Karn.)(HC)

S. 115JB : Book profit – Professional fees offered as income in subsequent year – Deletion on the ground of double addition is held to be proper. 1305

Dismissing the appeal of the revenue the Court held that as the assesseee offered such income to tax in the subsequent year and if any addition was made in the assessment year in question, it would amount to double addition, which was contrary to the provisions of law.(AY.2011-12)

PCIT v. Adani Infrastructure and Developers Pvt. Ltd. (2021) 432 ITR 113 (Guj.)(HC)

1306 **S. 115JB : Book profit – Provision for doubtful debts – Finance (No. 2) Act, 2009 – Law does not contemplate performance of an impossible Act – Amounts disallowed under Section 14A cannot be added.[S.14A]**

Allowing the appeal of the assessee the Court held that the assessee could not have added back the provision for doubtful debts to the net profit for the purpose of computation under section 115JB of the Act in the years prior to insertion of clause (i) as those years had already elapsed and the assessee could not have given effect to the provision, which was inserted at a later point of time. The assessee therefore, could not have added back the provision for bad and doubtful debts to the net profit. Even if the provision for doubtful debts was added back to the net profits, the resultant figure of book profits was still negative and even though the assessee was prevented from adding back the provision for bad and doubtful debts to the net profit due to reasons beyond its control, it had at the first opportunity demonstrated to the authorities that book profits were still negative on adding back the provision for bad and doubtful debts and therefore, no adverse inference could have been drawn against the assessee. The assessee had added the provision for bad and doubtful debts for the assessment years 1998-99 to 2000-01. The assessee was entitled to reduction of bad debts from book profits. (Referred Circular dated June 3, 2010 ([2010] 324 ITR (St.) 293) para 40.2)(AY. 2009-10)

Karnataka State Industrial and Infrastructure Development Corporation Ltd. v. Dy. CIT (2021) 431 ITR 255/ 278 Taxman 126/ 203 DTR 122 (Karn.)(HC)

1307 **S. 115JB: Book Profit – Central warehousing Corporation – No Notification exempting from requirements of Schedule VI to Companies Act, 1956 – Provision for payment of gratuity, bad and doubtful debts, Payment of wealth-tax, leave encashment and productivity linked incentives – Assessing Officer to verify claim of actuarial valuation and other documentary evidence to substantiate that liabilities were ascertained liabilities [S. 37(1), Companies Act, 1956, S. 211(3), Sch. VI]**

Held that there is no notification exempting, Central warehousing Corporation from requirements of Schedule VI to Companies Act, 1956, hence section 115JB provision is applicable. Tribunal also held that whether the provision for payment of gratuity, bad and doubtful debts, payment of wealth-tax, leave encashment and productivity linked incentives allowable or not the Assessing Officer to verify claim of actuarial valuation and other documentary evidence to substantiate that liabilities were ascertained liabilities.(AY.2006-07 to 2010-11)

Central Warehousing Corporation v. ACIT (2021) 89 ITR 208 (Delhi)(Trib.)

1308 **S. 115JB : Book profit – Provision created for premium payable on redemption of debentures – Ascertained liability – Not to be added to book profits.**

Held provision created for premium payable on redemption of debentures is ascertained liability. Not to be added to book profits. (AY.2003-04 to 2005-06, 2009-10)

ACIT v. Investment Trust of India Ltd. (2021) 88 ITR 566 / 211 TTJ 777 (Chennai)(Trib.)
Dy.CIT v. HFCL Infotel Ltd. (2021) 88 ITR 566 / 211 TTJ 777 (Chennai)(Trib.)

S. 115JB : Book profit – Capital or revenue – Receipt of unutilised contribution from welfare trust – Not liable to tax while computing Book Profit[S. 2 (24) 40A (11)] 1309
Tribunal held that the amount claimed back from the welfare trusts by the assessee was duly credited by it in its profit and loss account and offered to tax while computing the book profits under section 115JB of the Act in the return. The receipt of Rs. 4.27 crores by the assessee from the welfare trusts was a capital receipt not liable to Income-tax. A receipt which from its inception was not the income under section 2(24) of the Act could not be taxed under section 115JB of the Act as well. (AY.2011-12)
Batliboi Ltd v. Dy. CIT (2021) 87 ITR 401 (Mum.)(Trib.)

S. 115JB : Book profit – Capital receipt – A particular receipt cannot be assessed as book profit merely on the ground that the assessee has offered it in the return of income [S. 2(24), 4] 1310
Held that sale of additional FSI for which no cost was incurred hence not exigible for long term capital gains. The said receipt cannot be assessed as book profit merely on the ground that the assessee has offered it in the return of income. (ITA No. 6228/ (Mum.) 2017, dt. 21-5-2021)(AY. 2013-14)
Batliboi Ltd v. ITO (2021) 62 CCH 160 (Mum.)(Trib.)

S. 115JB : Book profit – Debenture redemption reserve (DRR), Amount could not be considered as reserve – To be excluded while computing book profit – Capital gains on transfer of assets and investment should be included while computing book profit. [S. 45, Companies Act, 1956, S.117C] 1311
Held that certain amount as debenture redemption reserve (DRR) which was compulsory under section 117C of Companies Act, 1956, same could not be considered as reserve within meaning of Explanation 1(b) of section 115JB and; therefore, same was to be excluded while computing book profits under section 115JB of the Act. Capital profits earned on sale of fixed assets and investment should be included while computing book profit (AY. 2013-14)
ACIT v. India Power Corporation Ltd. (2021) 191 ITD 250 (Kol.)(Trib.)

S. 115JB : Book profit – Business loss – Depreciation loss – Available for reduction from book profits till it was wiped off [S. 28(i), 32, 72] 1312
Tribunal held that business loss and depreciation loss would continue to remain in books of account till it is wiped off by earning profits by company and the same would be available for reduction from book profits. (AY. 2014-15)
GO Airlines (India) Ltd. v. DCIT (2021) 189 ITD 430 / 198 DTR 113 / 209 TTJ 731 (Mum.) (Trib.)

S.115JB : Book profit – When income is not reported in its P&L account, could not be said that its prepared in accordance with Part II and III of Schedule – VI to Companies Act. AO is justified to re-compute book profit u/s. 115JB- Disallowance u/s. 14A r.w. rule 8D is not to be applied while determining book profits. [S.14A, R.8D] 1313
Held that, when books of account of assessee are not in accordance with Part II and III of Schedule VI to Companies Act, 1956, then AO is empowered to tinker with net

profit by making additions u/s. 115JB to book profits. Disallowance u/s. 14A r.w. rule 8D is not to be applied while determining book profits u/s. 115JB. Disallowance u/s. 14A r.w. rule 8D is not to be applied while determining book profits (AY 2010-11, 2012-13, *Jayant Packaging (P.) Ltd. v. DCIT (2021) 189 ITD 321 (Chennai)(Trib.)*

1314 **S. 115JB : Book profit – Provision for diminution in value of investment- Written off in books of account – Addition cannot be made [S. 115JB(2)(i)]**

Dismissing the appeal of the revenue the Tribunal held that provision for diminution in value of investment written off, could not be added to book profit. (AY. 2002-03)

Dy. CIT v. Peerless General Finance and Investment Co. Ltd. (2021) 188 ITD 349/ 85 ITR 1 (SN)(Kol.)(Trib.)

1315 **S. 115JB : Book profit – Disallowance made under section 14A cannot be considered while computing book profit under clause (f) of Explanation 1 to section 115JB. [S.14A]**

Tribunal held that disallowance made under section 14A cannot be considered while computing book profit under clause (f) of Explanation 1 to section 115JB. (AY. 2014-15)

DCIT v. Century Plyboards (I) Ltd. (2021) 187 ITD 35 (SN) / 209 TTJ 273 / 203 DTR 229 (Kol.)(Trib.)

1316 **S. 115JB : Book profit – Subsidies – Refund of VAT and Excise duty – New Industry – Cannot be considered as income for purpose of book profit even though same was credited in profit and loss account.**

Tribunal held that subsidies received by assessee by way of refund of VAT and excise duty for setting up new industries in States of Assam and West Bengal for development of industries and generation of employment opportunities in these states could not be regarded as income for purpose of computing book profit even though same was credited in profit and loss account. (AY. 2007-08)

DCIT v. Century Plyboards (I) Ltd. (2021) 187 ITD 35(SN) / 209 TTJ 273 / 203 DTR 229 (Kol.)(Trib.)

1317 **S. 115JB : Book profit – Provision for doubtful debts – Written back and allowed – Not to be added for book profit.**

While computing book profit the assessee reduced provision of card receivable written back. The Assessing Officer disallowed the reduction from the book profit which was affirmed by the CIT (A). On appeal the Tribunal following the assessee's own case *BOB Financial Solutions Ltd v. DCIT (ITA No. 4485& 4297 /Mum/2017 dt 7-5-2019* (AY. 2012 – 13) held that reduction of provision of doubtful debts written back from book profit allowed, even when in the year when the provision was made and tax was paid under normal provisions of the Act, while computing book profit, the same was not to be added to book profit. (ITA No. 1207/Mum/2019 dt 15-3-2021)(AY. 2014-15)

BOB Financial Solutions Ltd v. DCIT (2021) BCAJ-April – P. 56 (Mum.)(Trib.)

S. 115JB : Book profit – Provision for diminution in value of investment and provision for non-performing assets – Actual write-Off of sums – Sums not provisions – To be excluded from book profits. 1318

Dismissing the appeal of the revenue the Tribunal held that the assessee had shown provision for diminution in value of investment and provision for non-performing assets which were debited to the profit and loss account. Both provisions had been written back during the year and credited in the profit and loss account under the head "Miscellaneous income". This showed that they were not only a mere creation of "provision for diminution in investments" and "provision for non-performing assets" by debiting the profit and loss account but simultaneously the corresponding amounts shown on the assets side of the balance-sheet were also reduced or adjusted. In other words, the investments and loans and advances in the assets side recorded in the books were net of the provision. Thus, the provisions for diminution in investments and non-performing assets would amount to an actual "write-off" of the provisions from the assets side and therefore would not attract clause (i) of Explanation 1 below section 115JB(2) of the Act.(AY.2002-03)

Dy. CIT v. Peerless General Finance And Investment Co. Ltd. (2021) 85 ITR 1 (Kol.)(Trib.)

S. 115JB : Book profit – Fertiliser subsidy received treated as capital receipt and not chargeable to tax, it had to be excluded from computing book profit [S. 4] 1319

The Tribunal held that the subsidy was linked to reduction of price in manufacturing, and which can only be classified under revenue not capital. In this scheme, the ultimate object was to make available the required fertilisers and at appropriate price to the farmers, which can be achieved only by bringing new investments in the industry therefore, the adoption of purpose test by the CIT(A) is to be accepted in this case and the subsidy can be classified as capital in nature. It is opined that a receipt that is held to be a capital in nature and not chargeable to tax under the normal provisions of the Act hence the same lies outside the purview of MAT and is to be excluded while computing book profit. (AY. 2015-16)

ACIT v. Shree Pushkar Chemicals & Fertilisers Ltd. (2021) 213 TTJ 273 / (2022) 192 ITD 618 (Mum.)(Trib.)

S. 115JB : Book profit – Relief for a period of 8 years – Not entitle to relief from claiming further relief after its net worth turned positive during said scheme period [S. 115JB(2), Expln. 1 (vii), Sick Industrial Companies (Special Provisions, Act, 1985, S. 17(1), 18(12)] 1320

The assessee company was declared as a sick company under the provisions of the Sick Industrial Companies (Special Provisions, Act, 1985 (SICA) and rehabilitation scheme was sanctioned by BIFR on 21 st September 2010 with directions for implementation for revival of the assessee. The scheme gave certain tax exemption to the assessee. BIFR has discharged the company from the purview of SICA vide order dt. 16 th August 2011. The Assessing Officer held that since the net worth turned positive by implementation of revival scheme the assessee is precluded from relief under section 115JB in view of Expln. 1 (vii) to section 115JB(2) of the Act. On appeal the Tribunal held that though the rehabilitation scheme sanctioned by BIFR for granting relief for a period of 8 years

the assessee is precluded from claiming further relief after its net worth turned positive during the said scheme period. (AY. 2013-14, 2014-15)
Windsor Machines Ltd v. Dy.CIT (2021) 199 DTR 79 (Mum.)(Trib.)

1321 **S. 115JB : Book profit – Provision for expenses – Ascertained liability – Cannot be added back [S. 37(1)**
Provision for various expenses incurred during the year for which the bills were not received by the year end is ascertained liability, the same cannot be added back while computing book profit.(AY. 2010-11)
Barclays Shared Services (P) Ltd. v. ACIT (2021) 202 DTR 185 (Pune)(Trib.)

1322 **S. 115-O : Domestic companies – Tax on distributed profits – Non-Obstante clause – Overriding effect – Amount distributed or paid by way of dividend falls under the category of profits under section 50 of the SIDBI Act – Not liable to pay additional tax [SIDBI Act, S. 29(2), Unit Trust India Act, 1963, S. 32]**
The is a financial institution established under SIDBI Act. Finance Act, 1997 provided for the tax payment on distributed profits. The assessee had transferred a sum of Rs 54 Crores to IDBI in accordance with section 29 (2) of the SIDBI Act out of profits year ending 31-3 1997. The assessee also deposited tax as per section 115-O of the Act under protest and sought clarification about liability to pay additional tax. As the clarification was rejected the assessee filed writ petition before the High Court. Allowing the petition the Court held that the amount distributed or paid by way of dividend falls in category of profits under section 50 of the SIDBI Act or any amount received and thus the assessee would not be liable to pay income-tax or any other tax. The assessee was not liable to pay additional income – tax under section 1150-O of the Act. The amount collected was directed to be refunded. (WP No. 1994 of 2003 dt 2-12-2021)
Small Industries Development Bank of India v. CBDT (2022) The Chamber's Journal – January- P. 74 (Bom.)(HC)

1323 **S. 115-O : Domestic companies – Tax on distributed profits – Rate in force – Non-Resident share holders – Double Taxation avoidance agreement – DTAA being more beneficial to assessee would be applicable over rate specified in section 115-O – Matter remanded. [S. 2(37A), 4, 90]**
Tribunal held that rate of tax payable on dividend distributed to non-resident shareholders would depend upon relevant Article of DTAA entered into between India and country to which non-resident belongs, subject to conditions that dividend is paid to non-resident shareholder, dividend constitutes income in hands of non-resident shareholder, non-resident shareholder is beneficial owner of dividend and non-resident shareholder does not have a Permanent Establishment in India. Matter remanded. (AY. 2013-14, 2014-15)
DCIT v. Indian Oil Petronas (P.) Ltd. (2021) 189 ITD 490/ 214 TTJ 123 / 207 DTR 131 (Kol.)(Trib.)

S. 115-O : Domestic companies – Tax on distributed profits – Whether the protection granted by the tax treaties under section 90 of the Income-tax Act 1961, in respect of taxation of dividend in the source jurisdiction, can be extended, even in the absence of a specific treaty provision to that effect, to the dividend distribution tax under section 115 '0' in the hands of a domestic company ? Registry is directed to place the matter before the Honourable President for his kind consideration for the appropriate orders. [S. 255 (4)] 1324

Assessee (Indian Co.) paid dividend to its shareholders in France and sought to pay DDT at the lower rate prescribed under India-France DTAA by relying upon Delhi and Kolkata Bench rulings in Giesecke & Devrient and Indian Oil Petronas. ITAT admitted the cross-objection filed by the Taxpayer and thereafter, expressed doubt on the correctness of the decisions given by co-ordinate benches of the Tribunal such as,(i) DDT should be considered as a tax on the company and not shareholders, hence treaty protection for resident company not available in the absence of a specific provision (ii) The treaty protection thus sought goes well beyond the purpose of the tax treaties.(iii) Where intended, tax treaty provisions specifically provide for treaty application to taxes like DDT (iii) DTAA is a self-imposed limitation on states' inherent right to tax and "Inherent in the self-imposed restrictions imposed by the DTAA is the fact that outside of the limitations imposed by the DTAA, the State is free to levy taxes as per its own policy choices", arose in respect of DDT rate applicable in hands of shareholders. Thus, ITAT frames the question "Whether the protection granted by the tax treaties, under section 90 of the Income Tax Act, 1961, in respect of taxation of dividend in the source jurisdiction, can be extended, even in the absence of a specific treaty provision to that effect, to the dividend distribution tax under section 115-O in the hands of a domestic company?" for approval of the ITAT President for the constitution of a special bench of three or more members. (AY. 2016-17)

Dy.CIT v. Total Oil India Pvt. Ltd. (2021) 190 ITD 312 / 212 TTJ 292 / 203 DTR 265 (Mum.)(Trib.)

S. 115WB : Fringe benefits – Sponsoring students for higher education – No relationship of employer and employee – Amounts spent on bundling of product – Not liable to be assessed as Fringe benefits – Reimbursement of medical expenses to employees in excess of fifteen thousand rupees liable to Fringe benefits. [S.17(2)(v)] 1325

Court held that where there is no employer-employee relationship between the assessee and the persons in respect of whom the expenditure is incurred, the expenditure cannot be subjected to fringe benefits tax. Accordingly amount spent on sponsoring students for higher education is not liable to Fringe benefits. Similarly the expenses incurred by the assessee on bundling of the product are not exigible to fringe benefits tax. Reimbursement of medical expenses to employees in excess of fifteen thousand rupees liable to Fringe benefits. (AY.2006-07)

CIT v. Wipro Ltd (2021) 430 ITR 34 / 279 Taxman 253 (Karn.)(HC)

1326 **S. 115WB : Fringe benefits – Agreement to provide free electricity to employees – Justified in making an addition in hands of assessee towards Fringe benefit tax on account of expenditure pertaining to staff towards electricity consumption**

Held that providing electricity to its employees at free of cost/concessional rate was not for fulfilling statutory obligation since agreement between management of assessee company and Coal Workers Association was not statutory but it was only a facility provided by company to its employees and he brought to tax same under fringe benefit in hands of assessee. Assessing Officer was justified in taxing the same as under fringes benefit. (AY. 2006-07, 2007-08, 2008-09)

Singareni Colleries Company Ltd. v. ACIT (2021) 190 ITD 917 (Hyd.)(Trib.)

1327 **S. 124 : Jurisdiction of Assessing Officer – Return filed in Kolkata – Proof of change of address in PAN database proved that assessee had changed his address properly and department was already in knowledge of address of assessee at Kolkata – Assessment initiated by Assessing Officer from Kanpur – Notice and assessment is held to be in valid [S.142(3), 143(3), 150]**

All the evidences prove that assessee, long back in 2008, had duly intimated to the department regarding change of address and had duly got the address changed in PAN database and the department also acknowledged the change of address through letter by Income-tax PAN Services Unit. From assessment year 2009-10 onwards, the assessee filed his returns with address of Kolkata and the intimations under section 143(1) were also being generated from Kolkata jurisdiction. Further Form 26AS also contains the address of Kolkata and on none of the documents there is mention of Kanpur address. Therefore, the assessee's contention before the Commissioner (Appeals) that the Assessing Officer of Kanpur Range has wrongly assumed the jurisdiction and has wrongly passed the assessment order, was well justified. Tribunal also observed that the provisions of section 150 do not lie within the purview of a direction issued by the Commissioner (Appeals).(AY. 2015-16)

ACIT v. Deepak Sehgal (2021) 189 ITD 78 (Lucknow)(Trib.)

1328 **S. 124 : Jurisdiction of Assessing Officer – Objection to jurisdiction cannot be challenged after completion of Assessment – Assessee submitting to jurisdiction of Assessing Officer by filing return – issue not raised in assessment proceedings – Assessment valid.[S. 124(3)]**

Held that as per the provisions of section 124(3) of the Income-tax Act, 1961, the issue of jurisdiction cannot be challenged after completion of the assessment. (AY.2010-11)

Prithvi Raj Singh v. ITO (2021) 91 ITR 164 (Jaipur)(Trib.)

1329 **S. 127 : Power to transfer cases – Search and Seizure – Show cause notice had clearly spelt out reasons for proposed transfer of case of assesse – Dismissal of petition by High Court is affirmed.[S. 132, Art. 226]**

A search under section 132 was conducted upon assessee company and its directors during which incriminating materials tending to show huge tax evasions were recovered. PCIT Madurai transferred case of assessee from Tiruneveli to Madurai for reason that detailed, coordinated and centralized investigation was necessary. Assessee contended

that there was no clear reasons provided for transfer of its case. It further contended that its Chartered Accountant was stationed at Tirunelveli and that he was 85 years old and it would cause hardship for assessee if its case would be transferred to Madurai. Dismissing the petition High Court held that show cause notice had clearly spelt out reasons for proposed transfer of case of assesse. Further, grievance of assessee that its Chartered Accountant was an elderly person was also imaginary because Income-tax returns were now filed online. High Court by impugned order held that, on facts, order of transfer of case was to be upheld. SLP of the assessee is dismissed.
V.V. Minerals v. PCIT (2021) 276 Taxman 279 (SC)
Editorial: Affirmed the Judgment in V.V. Minerals v. PCIT (Mad.)(HC)(WAMD No. 417/2020 dt 30-6-2020)

S. 127 : Power to transfer cases – Transfer from one Commissioner to another – Search and Seizure – Connected – Notice must be specific – Failure to deal with reply of assessee – Notice was quashed. [S. 127(1). 127(2), 132, Art. 226] 1330
Allowing the petition the Court held that the order was passed without granting a personal hearing though the assessee had requested one and sub-section (2)(a) of section 127 required that such an order could be passed after giving the assessee a reasonable opportunity of being heard in the matter and after recording his reasons for doing so. Even though in the order the Commissioner (IT) had stated that the assessee was provided opportunity under section 127(1), he had exercised his powers under section 127(2) which showed his non-application of mind. He had failed to deal with all the points raised by the assessee in his reply. Moreover, the notice itself was defective as it had been issued by the ITO (IT) and not by the Commissioner who exercised his power. In the intimation notice apart from stating you are connected to this group there were no other details as to how the assessee was connected to the searched party, Salagaocar group of companies The word connected has a varied and a wide meaning. The Department ought to have mentioned in the notice as to how the assessee was connected to the searched party. The contention of the Department that the assessee should have been aware in view of the past events as to what the Department meant by connected with the Salagaocar group of companies could not be accepted. Notice was quashed. The Respondent was directed to retransfer of files to the back to original Assessing Officer. Referred *Om Shri Jigar Association v. UOI (1994) 209 ITR 608 (Guj.) (HC)*(AY.2018-19)
Darshan Jitendra Jhaveri v. CIT (IT) (2021) 439 ITR 514 / (2022) 285 Taxman 212 (Bom.) (HC)

S. 127 : Power to transfer cases – Transfer for administrative convenience – Sufficient compliance with statutory provisions and principles of natural justice – Order of transfer valid.[Art. 226] 1331
Dismissing the petition the Court held that there was sufficient compliance with the statutory provisions and principles of natural justice. The petition was mala fide and to take an unfair advantage in the matter of assessment by not permitting assessment of all related persons by one Officer.
Dev Wines Sales Corporation v. PCIT (2021) 431 ITR 619 / 199 DTR 281 / 320 CTR 318/ 279 Taxman 342 (Delhi)(HC)

1332 **S. 127 : Power to transfer cases – Interim order permitting continuation of writ proceedings – Assessment completed – Appeal became infructuous – Duty of assessee to pay tax – Comply with order or file an appeal. [Art. 226]**
Dismissing the appeal the Court held that he writ appeal had become infructuous in view of the assessment order having been passed by the assessing authority in pursuance of the transfer order under section 127 of the Act. The transfer order passed under section 127 was more in the nature of an administrative order rather than a quasi-judicial order and the assessee would not have any right to choose his assessing authority, as no prejudice could be said to have been caused to the assessee depending upon which authority of the Department passed the assessment order, accordingly directed to comply with the order of file an appeal. (AY.2014-15)
Advantage Strategic Consulting Pvt. Ltd. v. PCIT (2021) 430 ITR 1 / 277 Taxman 512 / 202 DTR 441 (Mad.)(HC)

1333 **S. 127 : Power to transfer cases – Transfer of case from one Assessing Officer to another Assessing Officer within same city – No statutory requirement for notice or prior intimation to be given to assessee [S. 127(3)]**
Tribunal held that where case of assessee was transferred from one Assessing Officer to another Assessing Officer within same city, in view of provisions of sub-section (3) of section 127, there was no statutory requirement for notice or prior intimation to be given to assessee before order of transfer. (AY. 2009-10 to 2011-12)
Jaswantlal J. Shah. v. ACIT (2021) 190 ITD 157 (Mum.)(Trib.)

1334 **S. 132 : Search and seizure – Validity – Authorisation – Reason to believe – Non filing of return – Department can conduct survey at one place and Search at another place – Issue of summons is not mandatory – Search action is held to be valid.[S.132(1)(c), 132(4), 133A, 153A, 292CC, Art. 226]**
The writ petition was filed to quash the search proceedings initiated against the petitioner. Dismissing the petition the court held that, non filing of return could be the reason to believe for initiation of search proceedings. The department can conduct survey at one place and Search at another place. Court also held that the issue of summons is not mandatory before initiation of search proceedings. Search action is held to be valid. (AY. 2009-10 to 2014-15)
Shiva Cement Ltd v. DIT (Inv)(2021) 439 ITR 92 / 207 DTR 1 /323 CTR 1 (2022) 284 Taxman 306 (Orissa)(HC)
Shivom Minerals Ltd v. DIT (Inv)(2021) 439 ITR 92 / 207 DTR 1 /323 CTR 1 (2022) 284 Taxman 306 (Orissa)(HC)
Editorial : SLP of assessee dismissed, Shivom Minerals Ltd v. DIT (Inv)(2022) 443 ITR 362 (St)(SC)

1335 **S. 132: Search and seizure – Power to seize articles – Stock in trade Seizure cannot be made on mere suspicion – Explanation of assessee must be considered – Seizure was held to be illegal – Department was directed to pay interest of Rs 1 lakh on market value of seizure of stock in trade. [S. 132(1)(iii), 132 (4), Art. 226]**
Allowing the petition the Court held that the seizure was illegal and all consequential actions based on such seizure were illegal and contrary to the provisions of section

132(1)(iii). The claim for the goods in terms of section 132(1)(iii) had been made by the two firms as the jewellery seized in stock-in-trade and the required material had already been placed before the Income-tax authorities. The jewellery was required to be released as the seizure itself was unjustified and illegal. The petitioners would also be entitled to interest of a sum of Rs. 1 lakh which was paid as a gross amount towards retention of the jewellery which was stock-in-trade and was marketable. Court also observed that the Seizure has to be effected after due care and caution. Merely on account of reasons to suspect, seizure of goods ought not to be undertaken as held in *Khem Chand Mukim v. PDIT(Inv)(2020) 423 ITR 129* (Delhi)(HC)
Harshvardhan Chhajed v. DGIT (Inv) (2021) 438 ITR 68 / 206 DTR 97 / 322 CTR 723 (Raj.)(HC)

S. 132 : Search and seizure – Warrant of Authorisation – Search proceedings against company – Application of mind – Warrant of Authorisation is held to be valid [Art. 226] 1336
Dismissing the petition the Court held that the satisfactions note was clearly concerned with tax evasion activities conducted by the various companies and persons mentioned therein and it had been relied upon by the authority to initiated the proceedings under section 132. The petitioner's assertion of having resigned from the company and having nothing to do with it, could not be accepted as a disputed fact in writ jurisdiction, more so when the records of the Registrar of Companies reflected the position to be otherwise. In any event, whether or not the petitioner was connected with the company ; or whether or not the documents reflecting huge amounts of cash transactions stood reflected in the books of account and did not represent undisclosed income was again a question of fact which could be easily taken before the authorities in the adjudicatory proceedings. The action was neither mala fide nor arbitrary or capricious. The note of satisfaction did record reasons calling for necessary authorisation to carry out search and seizure operation. The search and seizure operations carried out by and in terms of section 132 were valid.
Ajay Kumar Singh v. DGI (Inv)(2021) 434 ITR 352 / 320 CTR 858 / 277 Taxman 633 (Pat.)(HC)

S.132: Search and seizure – Cash seized by police – Handed over to Income-Tax Authorities – Issue of warrant of authorization and retention of cash – Held to be invalid [S. 132A, 132B, Art. 226, 300A] 1337
Cash was seized from petitioner's employee by police and handed over to the income-tax department on August 27, 2019. Search warrant dt. August 28, 2019, that too not mentioning the place to be searched, was a fabricated document. On writ the Court held that intimation by the Police to the income-tax department on August 27, 2019 would not confer jurisdiction on the income-tax department to detain and withhold cash, that too by issuance of an invalid search warrant under S. 132. Income-tax department is directed to refund the cash to the Assessee along with interest. Followed *DGIT (Inv) v. Spacewood Furnishers Pvt. Ltd. (SC), CIT v. Vindya Metal Corporation (1997) 224 ITR 614* (SC)
Mectec v. DIT (Inv)(2021) 433 ITR 203 / 198 DTR 157 / 319 CTR 95 / 278 Taxman 214 (Telangana)(HC)
Vipul Kumar Patel v. UOI)(2021) 433 ITR 203 / 319 CTR 95 / 198 DTR 157 / 278 Taxman 214 (Telegana)(HC)

1338 **S. 132 : Search and seizure – Seizure of cash – Under investigation – Writ for release of cash is held to be not maintainable. [S.12A, Art. 226]**
Cash was seized on March 12, 2019 when its managing trustee was proceeding to his bank to deposit a sum of Rs. 68,14,000 belonging to its school, he was intercepted by the Flying Squad which took custody of the cash of Rs. 68,14,000 and issued a receipt. The assessee applied for release of the cash which was rejected. On writ dismissing the petition the Court held that respondents had not admitted that they were liable to release the seized cash back to the assessee accordingly the writ was dismissed.
Leo Charitable Trust v. PDIT(Inv) (2021) 432 ITR 286 (Mad.)(HC)

1339 **S. 132 : Search and seizure – Writ – Warrant of Authorisation – High Court can find out if there was reason to believe – Cannot determine whether reasons were adequate. [R. 112(1), 112(2)(c) Art. 226]**
Dismissing the writ petition the Court held that, High Court can find out if there was reason to believe however cannot determine whether reasons were adequate. Accordingly warrant of authorization is held to be valid.
Shilpa Chowdhary v. PDIT (Inv) (2021) 430 ITR 218 / 197 DTR 68 / 318 CTR 1 / 277 Taxman 576 (Delhi)(HC)
Vikas Chowdhary v. PDIT (Inv) (2021) 430 ITR 218 / 197 DTR 68 / 318 CTR 1 / 277 Taxman 576 (Delhi)(HC)

1340 **S. 132(4) : Search and seizure – Statement on oath – Undisclosed income – Retraction – Failure to produce any evidence contrary to the statement – Order of Tribunal is affirmed [S. 132]**
On the basis of statement recorded in the course of search and seizure action addition was made in the assessment. The addition was affirmed by the Tribunal. On appeal the High Court set aside the order of the Tribunal and directed to decide in accordance with law. The Tribunal once again passed the order confirming the addition on the ground that the assesee has not produced any evidence contrary to the material placed before the Tribunal. On appeal the High Court affirmed the order of the Tribunal. (BP. 1989 – 90 to 22nd June 1998)
Nayaar Patel v. ACIT (2021) 323 CTR 1005 / (2022) 441 ITR 148 / 209 DTR 226 (Ker.)(HC)

1341 **S.132(4) : Search and seizure – Statement on oath – Introduction of undisclosed income as share capital of company – Statement of assessee – transactions made by him in FY 2009-2010 and including amount in return for AY 2010-11. AO accepting admission but bringing sum to tax in 2009-10. Sum could not be taxed in AY 2009-10 [S.68, 132, 153A]**
Dismissing the appeal of thee revenue Tribunal held that, partly allowing the of the assessee (i) that the assessee had made disclosure in his individual capacity and stated that the transaction between him and the alleged paper companies and payment of cash and making such investment were made by him in the FY 2009-10 relevant to the AY 2010-11, and therefore, the assessee had rightly included the amount in the return for the AY 2010-11, which was according to the statement made u/s. 132(4). The AO should have considered the statement made by the assessee under section 132(4) of the

Act. The basis for the addition was merely the statement of the assessee and nothing else. The mere investment in the share capital made in the AY 2009-10, ipso facto did not suggest that the assessee had income in that year, in the absence of any concrete material evidence to prove accordingly. Moreover, the amount having suffered tax in the AY 2010-2011 the AO had not given credit therefor, while assessing the amount in the AY 2009-10, which amounted to double taxation. The deletion of the addition for the AY 2009-10 called for no interference. (AY 2009-10, 2010-11)
Dy. CIT v. Babuprasad Ramdayalji Shah (2021) 87 ITR 54 (SN)(Ahd.)(Trib.)

S. 132(4) : Search and seizure – Statement on oath – When the addition was made on account of seized material once again addition cannot be made on the basis of statement which will lead to double addition [S. 132, 143(3), 153A] 1342
The AO assessed the undisclosed income in addition to the income voluntarily declared by the assesses in the statement recorded u/s. 132(4) of the Act. It was observed that the AO made independent addition based on the seized material found during the course of survey actions, that there cannot be income addition on account of voluntary disclosure made by the assessee. Hence the Tribunal allowed set-off of income declared by the assessee in the statement recorded u/s. 132(4) of the Act out of undisclosed income computed by the AO as otherwise it would amount to double addition for the same lapse found in the Books of Accounts of the assesses. (AY. 2013-14, 2014-15, 2016-17)
Ahmed Shareef v. Dy. CIT (2021) 189 ITD 522 (Bang.)(Trib.)

S. 132B : Application of seized or requisitioned assets – Jewellery seized – Failure to pass an order within period of 120 days on which last authorisation of search was executed – Entire jewellery seized was directed to be released [S. 132, Art. 226] 1343
In the course of search jewellery and cash of certain amount was seized. The Assessee filed an application under section 132B for release of seized jewellery. No action was taken by revenue on said application filed by assessee within stipulated period of 120 days from date on which last authorisation for search was executed under section 132 of the Act. On writ the Court held that provisions of section 132B got triggered, once period of 120 days from date of last of authorisation for search under section 132 expired,therefore, entire seized jewellery was to be released to assessee. (AY.2015-16, 2018-19)
Kamlesh Gupta v. UOI (2021) 283 Taxman 237 (Delhi)(HC)

S. 132B : Application of seized or requisitioned assets – Authorised Officer can retain seized assets only for fifteen days – Seized Assets must be handed over to Assessing Officer having jurisdiction over the assessee within fifteen days – Adjustment of liability out of seized assets – Liability must be determined on completion of assessment – No adjustment before completion of assessment- Kar Vivad Samadhan Scheme would stand revived [S. 132, 132(9A), Kar Vivad Samadhan Scheme 1988] 1344
On appeal against the judgement of single judge the division bench held that the finding of the single judge that the encashments of Indira Vikas Patras were carried out by the second respondent-Assessing Officer, while the first respondent had only co-ordinated the collection and encashment of Indira Vikas Patras, was erroneous. The encashment of the Indira Vikas Patras was contrary to law and void having been carried out by a person without authority. Moreover for assessment years 1994-95 and 1995-96, covered

by the orders, the Indira Vikas Patras were adjusted by the Department, even prior to the determination of liability. For the year 1995-96, the adjustments were effected on different dates between April, 1995 to January, 1997. For the year 1994-95, the adjustments were affected in August and October 1997. It was thus evident that the Indira Vikas Patras were adjusted against liabilities that were not determined on the date of such adjustments. The adjustments were therefore invalid under this count also. The application for the grant of benefit under the Kar Vivad Samadhan Scheme would stand revived. (AY. 1994-95, 1995-96)
Dr. R. P. Patel v. ADIT (Inv)(2021)438 ITR 53 (Ker)(HC)

1345 **S. 132B : Application of seized or requisitioned assets – Amount seized by Excise Department received by Income-Tax Department From Magistrate's Court – Magistrate ordering release of cash to department with direction that it be produced when summoned – Crime thereafter closed and no proceedings before Magistrate's Court – On Writ the Court held the proceedings pending before Income tax department – Refund not warranted [S.153A, 153B, Art. 226]**
Allowing the appeal of the revenue against the single judge the court held that according to the instructions from the Magistrate's court no proceedings were pending before it and hence there was no question of any summons being issued by that court to produce the amounts, which were the subject matter of the crime, which itself had been closed. However that did not absolve the assessee from disclosing the source of the amounts in question before the Department, to their satisfaction. Proceedings had been initiated and the assessee had been participating in such proceedings. The limitation for concluding the proceedings under sections 153A and 153B was on March 31, 2021. Under section 132B, the Department could retain the amounts until conclusion of the proceedings. In such circumstances, refund was not warranted. The order of the single judge was set aside.
UOI v. Rajesh Kumar (2021) 431 ITR 155 / 201 DTR 6 / 320 CTR 670 (Ker.)(HC)

1346 **S. 132B : Application of seized or requisitioned assets – High court could not direct release of gold in favour of the alleged owner when appeal before the CIT(A) was pending.[S.250, Art.226]**
The Petitioner claimed that it was the owner of certain quantity of gold which was seized from the job worker to whom the gold was given to convert into jewellery and in whose hands the same was added as undisclosed income as he could not explain the source thereof. The order of assessment in the case of the job worker was pending before the CIT(A). The High Court held that as the ownership over the gold had not been finalized and the appeal in the case of the job worker was pending before the CIT(A), it could not direct the release of the gold in favour of the Petitioner. (AY. 2017-18)
New Lakshmi Jewellers v. PCIT (2021) 431 ITR 570 / 318 CTR 713 / 278 Taxman 403 / 200 DTR 264 (Bom.)(HC)

S. 133A :Power of survey – Undisclosed income – Real Estate business – Income declared in the course of survey – Earlier losses and current year loss can be set off against income disclosed in the course of survey [S. 28(i), 72] 1347

Held that the assessee did not have any other source of income. The assessee was entitled to set off of losses of earlier years, which had been allowed to the assessee. Income declared in the survey fell under one of the heads of income and the current year's losses could be set off against such undisclosed income.(AY.2014-15)

ITO v. Vesta Exim P. Ltd. (2021)92 ITR 15 (SN)(Surat)(Trib.)

S. 133A: Power of survey – Income from undisclosed source – Unaccounted professional income – Double addition – Followed order of Settlement Commission – Deletion of addition is held to be justified [S. 245D(4)] 1348

Held that the CIT(A) followed the order of Settlement Commission on similar circumstances in earlier and succeeding year and estimated the undisclosed professional income. Order of CIT (A) is affirmed. (AY. 2013-14)

Dy. CIT v. Dr. Baljit Kaur (Mrs) (2021) 92 ITR 385 (Chd.)(Trib.)

S. 133A : Power of survey – Closing stock – Carry forward and set off – Enhanced value of stock shown in the books of account which was found in the course of survey – Entitle to set off of closing stock. [S. 145] 1349

Held that the Assessing Officer ought to have given appropriate set off in respect of the enhanced value of stock according to the books of account as well as enhanced value of stock which was found in excess at the time of survey. The closing stock of an accounting year ought to be opening stock of following year. The assessee is entitle to set off of closing stock. (AY. 2008-09)

Gogga Gurusanthiah and Bros v. Dy.CIT (2021) 92 ITR 322 (Bang.)(Trib.)

S. 139 : Return of income – Voluntary retirement scheme – Bank employee – Claimed exemption after by filing the letter after passing of assessment order – Filing the revised return – Delay was not condoned by CBDT – High Court directed the CBDT to condone the delay and grant refund without interest. [S. 10(10C), 89(1), 119(2)(b), 139(5), 143(1) Art. 226] 1350

The assessee did not claim exemption under section 10(10C) of the Act the on the superannuation benefit amount. An assessment order was passed/s 143(1) of the Act, wherein the Assessing Officer stated that no exemption under section 10(10CC) was claimed but only relief under section 89(1) was claimed. The assessee filed rectification application to the Assessing Officer by a letter dated March 18, 2008 stating that the amount of superannuation benefit was not taken into consideration for tax exemption. As no response was received the assessee filed a revised return and filed an application seeking condonation of delay under section 119(2)(b)of the Act. The application was rejected as time barred on the ground that Circular No. 9 of 2015 dated June 9, 2015 ([2015] 374 ITR (St.) 25) of the Central Board of Direct Taxes did not permit condoning the delay beyond the period of six years. On writ the Court held that the assessee's entitlement to exemption under section 10C) was noticed by the Assessing Officer. The Assessing Officer's observation in his assessment order regarding exemption under

section 10(10C) indicated that he was aware of non-claiming of the exemption by the assessee. Prima facie an order considering the letter of the assessee, dated March 18, 2008, as a rectification application and passing an order would be a legally justifiable order. As no order was passed, the assessee had decided to explore the possibility of filing a revised return. In view of Circular No. 014 (XL-35) dated 11-4-1955 and the peculiar facts of the case, including that letter that could be construed to be a rectification application was not decided, on the merits of the claim for exemption, the revised return could be considered. The reasons assigned while seeking condonation of delay were satisfactory. The order rejecting the condonation of delay under section 119(2)(b) was set aside and the delay was condoned. As regards the grant of refund, eventually on account of the delay, there would be exclusion of interest on the amount of refund. The court made it clear that the order had been passed in view of the peculiar facts and circumstances of the case and accordingly, could not be considered to have laid down the law as regards the aspect of condonation of delay under section 119(2)(b) or on other issues dealt with. (AY.2004-05)(SJ)
Devendra Pai v. ACIT (2021) 439 ITR 532 / 208 DTR 97 / 323 CTR 848 / (2022) 285 Taxman 438 (Karn.)(HC)

1351 **S. 139 : Return of income – Revised return – Permitted to file revised return in an electronic mode once the direction of the NCLT was communicated [Art, 226]**
The Scheme of arrangement was sanctioned by the National Company Law Tribunal (NCLT). There was no mechanism to file the revised return on line as the time for filing of revised return time was had lapsed. The petitioner had filed the return physically explaining the cause of revision. The assessment order was passed without processing the revised return of income filed. On writ the Court observed that when the respondents are desirous of operating in the regime of electronic mode and faceless assessment, it shall need to improve the software and allow the revised return more particularly. The Court directed for improving the software whenever necessary since its limitation had the tendency to swell the Court litigation and remarked that the Assessee could have been saved from this ordeal if permitted to revise the return in an electronic mode once the direction of the NCLT was communicated along with the decision of Apex Court in *Dalmia Power Ltd v. ACIT (2020) 269 Taxman 352 (SC)*. (S.C.A. No. 11916 of 2021 dt. 29-9-2021)(AY. 2018-19)
Deep Industries Ltd v. DCIT (2021) The Chamber's Journal – December – P. 63 (Guj.)(HC)

1352 **S. 139 : Return of income – Condonation of delay – Litigation between promotors and investors – Beyond control of assessee – PCIT and Additional CIT recommending condonation of delay- Rejection of application by CBDT was set aside. [S.119(1), 119(2)(b), Art, 226]**
The assessee made an application before the CBDT to condone the delay as the return could not be filed due to prolonged litigation between the promotors and investors. CBDT rejected the application. On writ the single judge directed the CBDT to condone the delay and application for condonation of delay was allowed. It was contended that the delay in filing Application of the assessee to condone the delay in filing the return was rejected by the CBDT due to Where CBDT rejected assessee's application

for condonation of delay in filing return without appreciating reasons given by assessee for such delay and without considering documents produced by assessee. In view of fact that such delay was beyond control of assessee said order was to be set aside and application for condonation of delay was to be allowed. On appeal the division bench affirmed the order of single judge. Circular No. 9 of 2015 dated June 9, 2015 (2015) 374 ITR (St.) 25)(AY 2014-15)

CBDT v. Vasudev Adigas Fast Food (P) Ltd. (2021) 437 ITR 67 / 282 Taxman 48 / 323 CTR 235 / 207 DTR 342 (Karn.)(HC)

Editorial : Decision of the single judge in Vasudev Adigas Fast Food (P) Ltd v. CBDT (2020) 324 CTR 852/ 186 DTR 89 15 ITR-OL 187 (Karn)(HC)), affirmed.

S. 139 : Return of income – Extension of time for filing – Audit report – Covid-19 – Impossibility for tax practitioners to complete audit work – CBDT was directed to take decision on extension of date [S. 44AB, Art. 226] 1353

The petitioner contended that in line with reality of covid-19 pandemic and due to orders and directives for work places from Government it was impossible for tax practitioners to complete audit work to issue a certificate required under section 44AB and filing returns of income within extended due date of 30-10-2020 Considering fact that time period for officials of tax department had been extended upto 31-3-2021 having regard to current covid-19 pandemic situation, some extension deserved to be given for filing of return and submission of audit report in accordance with law so that no undue hardship might be caused to taxpayers. High Court directed the CBDT to take a decision on extension of date (AY. 2020-21)

All Gujarat Federation of Tax Consultants v. UOI (2021) 279 Taxman 382 (Guj.)(HC)

S.139 : Return of income – Condonation of delay – Rejection of condonation of delay by the PCIT was held to be not justified – Order of single judge is affirmed with modification – Matter remanded to PCIT [S.119(2)(b), Art, 226] 1354

Against the rejection of condonation of delay, the writ was filed. The single judge held that the application for condonation of delay in filing the returns had to be reconsidered. On appeal by revenue the division bench held that the single judge was right in setting aside the order of the Principal Commissioner rejecting the application for condonation of delay and remanding the matter. However, while remanding the matter, it ought to have been remanded to the Principal Commissioner and not to the Income-tax Officer in the writ petition. The delay in filing the appeal was condoned. (AY.2018-19)

PCIT v. Navanidhi Vividhoddesha Sahakara Sangha Ltd. (2021) 433 ITR 177 / 202 DTR 409/ 321 CTR 630 (Karn.)(HC)

S. 139 : Return of income – Covid-19 Extension of dates for filing returns and tax audit reports – Directions issued to Central Board Of Direct Taxes to consider representation. [S.119, Art, 226] 1355

The writ petition was filed by the Chartered Accountants Society of Uttarakhand for extension of due date for filing the return and Audit Report due to Covid-19. The court observed that admittedly, due to the Covid-19 pandemic a large number of

assessees still found it difficult to even meet their chartered accountants and to file their audit reports and returns. Therefore, the petitioner was permitted to submit a fresh representation, voicing all the grievances, with regard to the consequences which would flow from the different provisions of the Act. The Central Board of Direct Taxes was directed to leniently consider the representation and accordingly pass an order.(AY.2021-22)
Dehradun Chartered Accountants Society v. UOI (2021) 433 ITR 79 / 198 DTR 57 / 319 CTR 57 (Uttarakhand)(HC)

1356 **S. 139 : Return of income – Time for filing audit report extended thrice – Prayer for writ of mandamus to extend time limit further was rejected [S. 44AB, 119, Art. 226]**
Dismissing the writ petition the Court held that due dates for filing of returns and tax audit reports had already been extended on three occasions. The return filing statistics of the current year indicated that returns filed in this financial year already far exceeded the returns filed which were due on the last date of filing of returns. Any further extension would adversely affect the return filing discipline and shall also cause injustice to those who have taken pains to file the return before the due date. It would also postpone the collection of revenue thereby hampering the efforts of the Government to provide relief to the poor during these Covid times. Upon due consideration of all the relevant aspects of the matter, if the Board had taken the final decision not to extend the time limit any further, it was difficult for the court to issue a writ of mandamus to the Board to extend the time limit on the assumption that undue hardship would be caused to taxpayers and tax professionals, more particularly, in view of the latest data put forward by the Revenue. A writ would not issue directing the Board to extend the time limit any further.
All Gujarat Federation of Tax Consultants v. UOI (2021) 432 ITR 225 / 198 DTR 8 / 319 CTR 33/ 278 Taxman 22 (Guj.)(HC)

1357 **S. 139 : Return of income – Audit – Extension of due date of filing – COVID-19 – Power of CBDT is discretionary – CBDT was justified in denying further extension [S. 119, Art, 226]**
Dismissing the petition the Court held that power exercised by the CBDT u/s 119 is discretionary, accordingly the order passed by the CBDT on 11.01.2021 cannot be said that CBDT had failed to exercise its discretion or that it acted in an arbitrary or unreasonable manner in refusing to grant further extension of the due dates. Accordingly writ for further extension of the due dates was rejected. (AY. 2020-21)
CVO Chartered & Cost Accountants' Association, Mumbai v. UOI (2021) 434 ITR 219 / 278 Taxman 307/ 198 DTR 85/ 319 CTR 60 (Bom.)(HC)

1358 **S. 139AA : Return of income – Quoting of Aadhar number – Change in law or subsequent decision/judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review – Review petition against judgment upholding certification of Aadhaar Act as a Money Bill was to be dismissed. [Art.110]**
Change in law or subsequent decision/judgment of a co-ordinate or larger Bench by itself cannot be regarded as a ground for review. Review petition against judgment in

Justice *K.S. Puttaswamy (Retd.) v. UOI (2018) 97 taxmann.com 585 (SC)* in relation to majority opinion upholding certification of Aadhaar Act as a Money Bill within meaning of Article 110 was to be dismissed.
Beghar Foundation v. Justice K.S. Puttaswamy (2021) 278 Taxman 1 (SC.)

S. 142(1) : Enquiry before assessment –Natural justice – lockdown in State due to covid-19 pandemic – Large number of documents – Failure to reply – Order was set aside. [S.143 (3), Art. 226] 1359
Allowing the petition the Court held that there were large number of documents in his possession that he would have placed on record to clarify issues raised in said notice by Assessing Officer, impugned assessment order passed against assessee by Assessing Officer without filling of reply by assessee to said notice was unjustified and same was to be set aside. (AY. 2013-14 to 2019-20)
Ghanshyam Das Gupta v. ACIT (2021) 439 ITR 511/ 282 Taxman 161/ 204 DTR 97/ 321 CTR 522 (Delhi)(HC)

S.142(2A): Inquiry before assessment – Special audit – Hearing provided – Order directing special audit sustainable [Art. 226] 1360
Dismissing the petition the Court held that the Assessing Officer had considered the nature of accounts and the complexities involved in the accounts and a few such complexities involved in the accounts and had given reasons for the rejection of the objections filed by the assessee. The assessee had once again submitted objections on December 23, 2011 which were also disposed of on December 26, 2011. Thus, the opportunity to defend the case by way of pre-decisional hearing was provided as no final order was passed based on the proceedings dated December 9, 2011 directly. Further, the assessee had not challenged the order dated December 9, 2011, as a final order. This being the admitted facts between the parties, there was no reason to disbelieve the proceedings dated December 9, 2011, though it was not aptly worded, as rightly stated by the Department. The order for special audit under section 142(2A) was sustainable. (AY. 2009-10)(SJ)
JP Jai Land and Building Promoters P. Ltd. v. CIT (2021) 438 ITR 80 / (2022) 285 Taxman 193 (Mad.)(HC)

S.142(2A): Inquiry before assessment – Special audit – Natural justice – Search and Seizure – Directions were neither arbitrary, illegal nor beyond the scope of the provision – Period during which the petitions remained pending shall be excluded while counting the period prescribed in the proviso to section 142(2C) of the Act. [S.14A, 142(2C), Art. 226] 1361
Dismissing the petition the Court held that directions were neither arbitrary, illegal nor beyond the scope of the provision. The directions did not suffer from any illegality or infirmity. In any case, even if two or three queries out of forty five queries were found to be unwarranted, the entire order giving directions could not be set aside treating it to be a nullity. Relied on *Sahara India (Firm) v. CIT (2008) 300 ITR 403 (SC) and Rajesh Kumar v. Dy.CIT (2006) 287 ITR 91 (SC) Deepak Agro Foods v. State of Rajasthan (2008) 16 VST 454 (SC).* The court directed that the period during which the petitions remained

pending shall be excluded while counting the period prescribed in the proviso to section 142(2C) of the Act.
Dishman Infrastructure Ltd. v. ACIT (2021) 437 ITR 487 / 206 DTR 65 / 323 CTR 39/ 129 taxmann.com 344 (Guj.)(HC)
Editorial: SLP is dismissed Dishman Infrastructure Ltd. v. ACIT (2022) 285 Taxman 192 / 443 ITR 227 (SC)

1362 **S.142(2A) : Inquiry before assessment – Special audit – Nature of business and volume and complexity of accounts and multiplicity of transactions – Order directing special audit is proper. [S.142(1), Art.226]**
Dismissing the petition the Court held that the assessee was afforded an opportunity of hearing before taking recourse to sub-section (2A) of section 142 directing the assessee for special audit. A questionnaire was also issued under section 142(1). These facts nullified the contention of the assessee that it had no effective opportunity of hearing. The reply was not found satisfactory because the assessee had not maintained its books of account accurately and had not followed the accounting principles correctly and the nature of accounts being complex and bulky had led the Department to take recourse to compulsory audit. The order directing special audit need not be interfered with. (AY.2017-18)
Madhya Pradesh Audyogik Kendra Vikas Nigam v. PCIT (2021) 430 ITR 41/ 276 Taxman 384 / 199 DTR 132/ 204 DTR 268 / 319 CTR 108 (MP)(HC)

1363 **S.142(2A): Inquiry before assessment – Special audit – Writ petition was pending – No stay of proceedings – Assessment completed beyond statutorily prescribed period – Barred by limitation.[S.153A,153B]**
Held that in terms of section 142(2A), the period of 90 days plus a further extension of 60 days expired on October 21, 2016. Whereas, the Assessing Officer had passed the assessment order more than two months thereafter, which was barred by limitation. The finding of the Commissioner (Appeals) that in view of section 153B read with the Explanation (ii)(b) thereto, the period starting with the date of filing of the writ petition and ending on the date of disposal of the writ petition was to be excluded, had no merit. Therefore, the Commissioner (Appeals) had gone wrong in invoking Explanation (ii)(b) to section 153B. As a result, his order was set aside and the assessment order passed by the Assessing Officer, being barred by limitation, was quashed.(AY. 2008-09, to 2013-14)
Eminent Infradevelopers Pvt. Ltd. v. Dy.CIT (2021) 90 ITR 678 (Delhi)(Trib.)

1364 **S.142(2A) : Inquiry before assessment – Special audit – Time limit – Assessment completed within two months from date of special Audit report – Held to be within limitation period [S.142(2C), 153]**
Held that assessment completed within two months from date of special Audit report is held to be within limitation period. (AY.2011-12)
Dwarka Prasad Tayal v. ITO (2021) 87 ITR 675 (Indore)(Trib.)

S. 142A : Estimate of value of assets by Valuation Officer – Search and seizure – DDIT (Inv)/ADIT (Inv) was empowered to make reference to Valuation Officer inserted by section 132(9D) only after 1-4-2017 by an amendment by Finance Act, 2017 – Addition made on the basis of valuation report was held to be not valid – Valuation report cannot be considered as incriminating document [S. 132(9D), 153A] 1365

Pursuant to search, DDIT (Investigation) made a reference to DVO on 11-7-2014 in respect of valuation of immovable properties held by assessee. On the basis of valuation report the Assessing Officer initiated the proceedings under section 153A of the Act. The Tribunal held that DDIT (Inv)/ADIT (Inv) was empowered to make reference to Valuation Officer inserted by section 132(9D) only after 1-4-2017 by an amendment by Finance Act, 2017. Reference to valuation Officer was held to be not valid. Tribunal also held that valuation report cannot be considered as incriminating document. (AY. 2008-09 to 2013-14)

ACIT v. Narula Educational Trust. (2021) 189 ITD 31 / 86 ITR 365 / 211 TTJ 39/ 205 DTR 95 (Kol)(Trib.)

S. 143(1)(a) : Assessment – Intimation – Prima facie adjustments – Capital gains – Exemption denied – No intimation before making adjustments – Adjustments is not sustainable. [11(1A), 11(2)] 1366

Held that no intimation was given to the assessee before making the adjustment towards capital gains and accumulation of income under section 11(2) of the Act. Therefore, the adjustment made by the Assessing Officer towards capital gains and accumulation of income under section 11(2) of the Act had to be deleted.(AY. 2015-16)

Ceylon Pentecostal Mission v. ACIT (2021) 214 TTJ 651/ 91 ITR 54 (SN)/ 207 DTR 249 (Chenai)(Trib.)

S. 143(2) : Assessment – Notice – Failure to issue notice – Assessment is held to be bad in law [S. 132, 153A] 1367

Dismissing the appeal of the revenue the Court held that once the assesee does not receive a notice under section 143(2) of the Act within stipulated period, such an assessee take it that the return filed by him has become final and no scrutiny proceedings are to be taken with respect to that return. Followed *Chintles India Ltd v. Dy..CIT (2017) 397 ITR 416 (Delhi)(HC), CIT v. Kabul Chawla (2016) 380 ITR 573 (Delhi) (HC)*(AY. 2008-09 to 2012-13)

PCIT v. Param Dairy Ltd. (2021) 439 ITR 89 / 200 DTR 118 / 320 CTR 843 (Delhi)(HC)

S. 143(2) : Assessment – Notice – Additions are made without issue of notice – Matter was remanded [S. 143 (3)] 1368

Allowing the appeal the Court held that since no notice under section 143(2) was issued, addition was held to be unjustified and the order was set aside.(AY. 2008-09)

Karnataka State Industrial and Infrastructure Development Corporation Ltd v. Dy. CIT (2021) 281 Taxman 312 (Karn.)(HC)

1369 **S. 143(2) : Assessment – Notice – Assessing Officer can issue more than one notices – Writ is not maintainable to quash third notice. [Art. 226]**
Dismissing the petition the Court held that Assessing Officer can issue more than one notices. Writ is not maintainable to quash third notice it was not the case of the assessee that no jurisdictional fact existed for the purpose of assuming jurisdiction to issue the show-cause notices. The notices were valid.(AY.2016-17, 2017-18)
Sumandeep Vidyapeeth v. ACIT (2021) 434 ITR 433 / 200 DTR 393 / 320 CTR 464 (Guj.) (HC)

1370 **S. 143(2) : Assessment – Notice issued by the Assessing Officer not having jurisdiction over assessee – Additional ground admitted – Not curable defects u/s 292BB of the Act – Assessment order was quashed [S. 127(4), 254(1), 292BB]**
Held that notice issued by the Assessing Officer who had no jurisdiction over the assessee is not curable defects. The assessment was quashed.(AY.2014-15, 2015-16)
Golf View Homes Ltd. v. ACIT (2021) 88 ITR 423 / 212 TTJ 472 / 207 DTR 199 (Bang.) (Trib.)

1371 **S. 143(2) : Assessment – Notice – Notice was issued after statutory limit – Order null and void ab initio [S.69A, 132]**
Order passed based on the notice issued after statutory time limit is held to be null and void ab initio. (AY. 2013-14)
Harman Singh Dhingra. v. ACIT (2021) 191 ITD 687 / 92 ITR 133 (Delhi)(Trib.)

1372 **S. 143(2): Assessment – Notice – Jurisdiction – Order passed without issuing notice under section 143 (2) – Assessment is without jurisdiction and null and void [S. 68, 143(3)]**
Tribunal held that the order under section 143(3) passed by ITO, Ward-5 without issuing fresh notice under section 143(2) and only in pursuance with notice issued by ITO, Ward- 4 who did not enjoy jurisdiction over assessee was null and void and liable to be quashed. (AY. 2012-13)
Eversafe Securities (P.) Ltd. v. ITO (2021) 189 ITD 642 (Kol.)(Trib.)

1373 **S. 143(2) : Assessment – Mandatory issue of notice – Jurisdiction – Transfer from Shillong to Guwahati – Order passed by Assessing Officer, Guwahati without issuing notice under section 143(2) and only in pursuance with notice issued by ITO, Shillong who did not enjoy jurisdiction over assessee was null and void [S.120, 143(3)]**
Assessee-firm was selected for scrutiny and notice under section 143(2) was issued upon it by Income Tax Officer (ITO), Shillong – However, case of assessee was then transferred from ITO, Shillong to Assessing Officer, Guwahati as assessee's principal place of business was at Guwahati and, thus, jurisdiction to assess lies with Income Tax Authorities at Guwahati. Assessing Officer, Guwahati framed assessment under section 143(3). Assessee contended that Assessing Officer, Guwahati completed proceedings under section 143(3) without issuing fresh notice under section 143(2), thus, said assessment order was invalid. On appeal the Tribunal held that order under section 143(3) passed by Assessing Officer, Guwahati without issuing notice under section

143(2) and only in pursuance with notice issued by ITO, Shillong who did not enjoy jurisdiction over assessee was null and void and same was to be quashed. (AY. 2011 – 12)
Balaji Enterprise v. ACIT (2021) 187 ITD 111 / 211 TTJ 213 / 201 DTR 81 (Guwahati) (Trib.)

S. 143(2) : Assessment – Notice was issued by ITO Belgaum – Actual Assessing Officer id from Bellary – Notice was issue without jurisdiction – Order was quashed. [S. 10(10D), 127, 143(3)] 1374
Original juris diction of assessee was with ITO. Belgaum who issued notice under section 143 (2) of the Act. Subsequently, case was transferred by ITO, Belgaum to ITO, Bellary and assessment was framed by ACTT, Bellary Tribunal held that since notice under section 1432) was issued to by ITO. Belgaum but he was not concerned Assessing er of assesser and actual Assessing Officer was ITO. Bellary and no valid notice was issued the order was quashed and set aside. (AY. 2015-16)
Dy. CIT v. Hothur Mohamed Iqbal (2021)214 TTJ 996 / (2022) 192 ITD 64 (Bang.)(Trib.)

S. 143(3): Assessment – Cash credits – Natural justice – COVID-19 – Failure to grant reasonable opportunity for furnishing details – Assessment order was set aside [S. 68, 132 Art, 226] 1375
In notice, several details were asked from assessee which were to be produced within two or three days which was not complied within such short possible time during COVID-19 pandemic period. The Assessment was completed by making huge additions. On writ allowing the petition the Court held that it could not be reasonably expected that assessee would be able to collect all documents and produce before revenue within 2 to 3 days. The order was set aside with the direction to grant some more opportunity produce those documents. Matter was remanded. (SJ)
Manickam Subramanian v. ACIT (2021) 283 Taxman 32 (Mad.)(HC)

S.143(3): Assessment – Unexplained money – Alternative remedy is available – Writ is not maintainable. [S.69A,142(1), Art, 226] 1376
During demonetization period, assessee deposited cash in his saving bank account. Assessing Officer issued section 142 notice which was not responded by assessee. Assessing Officer treated said deposits as unexplained money of assessee. On writ, Single Judge disposed of writ petition granting liberty to assessee to file appeal before appellate authority. On appeal the Court held that since Act provides effective and sufficient forum for any aggrieved party to work out their remedy, view expressed by Single Judge was to be agreed and there was no merit in appeal. (AY. 2017-18)
Narasimman Padmavathy v. ITO (2020) 196 DTR 365/ (2021) 431 ITR 374 / 276 Taxman 352 / 318 CTR 472 (Mad.)(HC)

S. 143(3) : Assessment – Show cause notice is mandatory – Assessing Officer is expected to crystalise the issues and issue a show cause notice setting out the issues and solicit the response of the assessee – Assessment order was set aside. [Art, 226] 1377
The assessment was passed without issuing the specific show cause notice as regards various additions made in the assessment order. On writ the Court held that the

Assessing Officer is expected to crystalise the issues and issue a show cause notice setting out the issues and solicit the response of the assessee. Assessment order was set aside. The Assessment order was directed to be passed within a period of sixteen weeks. (W.P.Nos. 1260, 1264 of 2020 dt. 17-5-2021)(AY. 2016-17)
Eshakti.com Pvt. Ltd. v. ACIT (2021) The Chamber's Journal – July – P. 153 (Mad.)(HC)

1378 **S. 143(3): Assessment – Validity – Order passed after death – After conclusion of submission before passing of order the assessee expired – Order of Tribunal quashing of the order was set aside – The Assessing Officer was directed to issue notice to the legal representatives of the deceased and thereafter pass afresh order of assessment [S. 159(2)]**
After conclusion of submission before passing of the order the assessee expired. The legal representatives of the assessee preferred an appeal. CIT (A) decided the issue on merit against the assessee. On appeal the Tribunal held that since the order of assessment was passed by the Assessing Officer against a dead person is a nullity. On appeal by the revenue the Court held that it is not a case where the proceedings were initiated against the assessee who had already expired. On the facts after conclusion of submission before passing of order the assessee expired. High Court set aside the order of Tribunal and directed the Assessing Officer to issue notice to the legal representatives of the deceased and there after pass a fresh order of assessment. (AY. 2005-06)
CIT v. I. Mahabaleshwarappa (2021) 204 DTR 194 / 321 CTR 746 (Karn.)(HC)

1379 **S. 143(3): Assessment – Validity – Natural justice – Cash credits – Foreign in ward remittances – E. filing portal was dysfunctional – Order set aside [S. 68, 115BBE, 143(2), 156, Art. 226]**
The assessment of the petitioner was completed making addition under section 68 of the Act in respect of foreign in ward remittances. On writ the petitioner contended that they have not been given a reasonable opportunity of hearing for filing the details. Allowing the petition the Court held that the e-filing portal was dysfunctional hence the order of the Assessing Officer was seta side, with the liberty to the AO to continue the assessment proceedings from the stage at which they were positioned when the show cause notice dated 11 th June 2021 was issued. (AY. 2017-18)
One Mobikwik Systems (P) Ltd v. Dy.CIT (2021) 204 DTR 87/ 321 CTR 711 (Delhi)(HC)

1380 **S. 143(3): Assessment – Co-operative societies – Denial of exemption – Binding precedent – Failure to follow the judgement of Supreme Court – Alternative remedy – Judgement of single judge was set aside – The Assessing Officer was directed to redo the assessment after hearing the parties [S. 80P(2)(a)(i), Art. 226]**
The assessee is a primary Agriculturist credit society. While completing the assessment the Assessing Officer ignored the direction issued by the Supreme Court in *The Mavilayi Co-operative Bank v. CIT (2021) 318 CTR 609/ 197 DTR 361(SC)* and denied the claim under section 80P of the Act. The assesse filed an writ before High Court. The Single judge held that the assessee has remedy of a statutory appeal hence the writ was dismissed. On appeal the division bench held that it cannot be the stand of the Department that an assessee who is aggrieved by an assessment order passed ignoring

the binding judgement of the Supreme Court, has nevertheless an alternative remedy by way of appeal before first appellate Authority under the statute. The judgement of single judge was set aside and the Assessing Officer was directed to redo the assessment. (AY. 2018-19)
Poonjar Service Co-Operative Bank Ltd v. ITO (2021) 206 DTR 425 / 323 CTR 104 (Ker.) (HC)
Editorial : Order of single judge in Poonjar Service Co-Operative Bank Ltd v. ITO (2021) 206 DTR 428 / 323 CTR 107 (Ker)(HC), set aside.

S. 143(3) : Assessment – Appeal is proper remedy – Writ is not maintainable [S.246A, Art. 226] 1381
Dismissing the petition the Court held that in common parlance, statutes contain appeal provisions. In some of the statutes, there are two-tier appeal provisions in order to ensure that the facts, grounds, evidence are appreciated and the grievances are redressed in the manner known to law. Such appeal provisions are provided with the legislative intention to provide remedy to aggrieved persons. The High Court, in normal circumstances, would not interfere nor dispense with the appellate remedy. When the facts are disputed by the parties to the writ petition, then appeal alone would be a proper remedy.
Vishwataj Developers Pvt. Ltd. v. ACIT (No. 1)(2021) 438 ITR 146 (Mad.)(HC)

S. 143(3): Assessment – Share capital – Cash credits – Investment by foreign company – Appeal – Existence of alternative remedy – Writ is not maintainable [S.68, 246A, Art. 226] 1382
The single judge dismissed the writ petition filed by the assessee on the ground that the assessee was not justified in not availing of the appellate remedy of appeal to the Commissioner (Appeals) provided under section 246A of the Act. On appeal dismissing the appeal, that the submission of the assessee that it did not have adequate opportunity of hearing could not be accepted, as the Assessing Officer had recorded that the assessee had been represented by the authorized representative. If according to the assessee, the documents had not been properly appreciated or had to be appreciated in the manner as decided by the assessee, it was for the assessee to raise all such contentions before the appellate authority and there was no justifiable or valid reason for the assessee to bypass the available remedy of appeal before the Commissioner (Appeals) under section 246A of the Act. The assessee could not be permitted to avoid the appellate remedy available under the Act and was relegated to remedy of statutory appeal. (AY. 2007-08)
Vishwatej Developers Pvt. Ltd. v. ACIT (2021) 438 ITR 163 / (2022) 284 Taxman 580 (Mad.)(HC)

S. 143(3): Assessment – Principle of natural justice – Appeal – Alternative remedy – Writ is not maintainable [S. 246A, Art. 226] 1383
The single judge relegated the assessee to the statutory remedy of appeal under the Act. On appeal dismissing the appeal the Court held that whether appreciation of the documents was done or not and whether there was sufficient opportunity granted to the assessee or not were all issues which could be contended before the first appellate

authority in appeal under section 246A of the Act and there was no valid reason for the assessee to bypass the statutory appeal remedy. The liberty granted to the assessee by the single judge in his order was sustained. (AY. 2007-08)
Rakindo Kovai Township Pvt. Ltd. v. ACIT (2021) 438 ITR 474 (Mad.)(HC)

1384 **S. 143(3) : Assessment – E-Procedure facility – Natural justice – Observations regarding E-Proceedings and findings on merits of assessment order was held to be not called for – Order of single judge was set aside [S.69A, 142, Art, 226]**
On appeal against the single judge order the Court held that the grounds raised namely there had been violation of the principles of natural justice, there was total non-application of mind, and that the addition made under section 69A of the Act was uncalled for, were all matters where the factual matrix needed to be adjudicated threadbare. Such an exercise could not be done by a writ court and should not be permitted to be done. Court also observed that the observation contained in the single judge's order on that aspect needed to be eschewed. The sweeping observations and remarks were not called for especially when the system had been implemented and assessees throughout the country had changed from manual procedure to e-procedure. The order of the single judge and all the observations and findings regarding the effectiveness of the e-governance implemented by the Department and the observations and findings rendered in the order touching upon the merits of the assessment were set aside.(AY.2017-18)
Dy. CIT v. Salem Sree Ramavilas Chit Co. P. Ltd. (2021) 437 ITR 597 / 323 CTR 207 / 207 DTR 273 (Mad.)(HC)
Editorial: Order of the single judge in Salem Sree Ramavilas Chit Co. P. Ltd v. Dy.CIT (2020) 423 ITR 525 / 187 DTR 217/ 313 CTR 473 (Mad.)(HC) set aside.

1385 **S. 143(3): Assessment – Adjournment sought was granted – Allegation of no such email was generated from the office of the Income-tax department – Prima facie committed penal offence by forging documents – CBI was to be directed to enquire as to whether e-mail had been issued to assessee or not, and if so, by whom [S. 142(1), Art. 226]**
The assessee received assessment order dated 1-6-2021. Assessee challenged assessment order by filing writ on ground that it was bad in law because after adjournment sought by it had been granted, there was no occasion for revenue to pass the assessment order. Revenue contended that assessee had approached Court with unclean hands as e-mail dated 31-5-2021, which was basis for filing writ petition had not originated from its office and assessee had prima facie committed penal offences by forging documents. Court held that since allegation pertained to a sensitive server belonging to Ministry of Finance/Department of Income Tax, CBI was to be directed to enquire as to whether e-mail dated 31-5-2021 had been issued to assessee or not, and if so, by whom. (AY. 2018-19)
Three C. Homes (P) Ltd. v. ACIT (2021) 282 Taxman 134 / 204 DTR 105 / 321 CTR 513 (Delhi)(HC)

S. 143(3): Assessment – Cash credits – Personal hearing was not given – Violation of principle of natural justice – Order was set aside. [S.68, 220] 1386

On writ the High Court held that the petitioner had been able to establish, a prima facie case that the order was passed without granting personal hearing and the Assessing Officer had not taken into account explanation and material placed by petitioner. Order was set aside. The Assessing Officer was directed to pass a fresh order. Refer *DJ Surfactants v. National E-Assessment Centre, ITD (2021) 281 Taxman 256/ 203 DTR 222 / 321 CTR 270 (Delhi.)(HC)* for interim order. (AY. 2018-19)

DJ Surfactants v. NEAC (2021) 437 ITR 519 / 281 Taxman 316 (Delhi)(HC)

S. 143(3) : Assessment – Bogus purchases – Estimation of profit at 10% of total alleged bogus purchases is held to be justified – No substantial question of law [S.37 (1), 40A(3), 260A] 1387

The Assessing Officer disallowed the entire purchases as bogus purchases. On appeal the Commissioner of Income-tax (Appeals) estimated the profit at 15%. On appeal the Tribunal reduced the estimated the profit at 10 %. On appeal by the revenue, dismissing the appeal the Court held that estimation of net profit being question of fact, the order of Tribunal is affirmed. No substantial question of law. (ITA No 1850 of 2017 dt 28-10-2021)(AY.2019-10)

PCIT v. JK Surface Coatings Pvt. Ltd. (Bom.)(HC) www.itatonline.org.

S. 143(3): Assessment – Natural justice – Covid-19 – Lockdown – Returned income was loss of Rs.10,57,049 and income assessed was 114.57,33,424 – Only three working days notice was given to file various details – Order passed without giving sufficient time is violative of the principle of natural justice – Order was set aside. [S. 144, Art. 226] 1388

The assessee is in the business of trading of Precious Metals – Gold and Silver Bullion. During the lockdown period the assesee was served with notice to file the details with in three working days. The returned income was loss of Rs. 10,57,049. The Assessing Officer passed the order by estimating the income at 8% of sales turnover and assessed the income at Rs 114,57,33,424. The assessee filed writ before the High Court. Allowing the petition the Court held that Order passed without giving sufficient time is violative of the principle of natural justice. Order was set aside. (AY. 2018-19)(WPNO. 1368 of 2021 dt 28-10-2021)

SPL Gold India Pvt. Ltd. v. ACIT (Bom.)(HC) www.itatonlline.org

S.143 (3): Assessment – Natural justice – Order passed before expiry of time granted in the notice – Order was quashed – Matter remanded.[Art, 226] 1389

A notice dated March 4, 2021 was issued according to which the assessee was required to file a reply on or before the end of the day on March 15, 2021 by 11.59 p.m. But an order was passed at 4.22 p.m. on March 15, 2021. On a writ petition contending that he had sent a reply before the deadline. On writ allowing the petition the Court held that there was manifest violation of the principles of natural justice in passing the order before the time prescribed for filing the reply by the assessee and considering such reply. The order had been passed with a pre-set mind. The order was quashed

and the matter was remitted to the ITO for passing a speaking order after considering the assessee's reply. (AY. 2018-19)
Antony Alphonse Kevin Alphonse v. ITO (2021) 435 ITR 735 (Mad.)(HC)

1390 **S. 143(3) : Assessment – Faceless assessment – Natural justice violated – Order was passed before time granted – Order and notices are set aside – Directed to grant a personal hearing to the authorised representative. [S. 144B, 156, 271AAC, 274]**
The notice was received by the assessee via e-mail on April 20, 2021 at 03 : 06 hours. The assessee filed an application via the e-portal and sought a day's adjournment, i.e., till April 22, 2021. An assessment order was passed under section 143(3) read with section 144B of the Income-tax Act, 1961, dated April 22, 2021. On the same day a notice of demand under section 156 and a notice under section 274 read with section 271AAC(1) for penalty proceedings were also issued. On a writ petition contending that no response was received with respect to the request for adjournment, that the objections raised by the assessee were not considered and that the principles of natural justice were breached. The court set aside the assessment order dated April 22, 2021, passed under section 143(3) read with section 144B and directed the National Faceless Assessment Centre to pass a fresh order after considering the objections filed by the assessee qua the notice dated April 19, 2021. (AY. 2017-18)
KBB Nuts Pvt Ltd v. NFAC (2021) 435 ITR 622 / 280 Taxman 380 (Delhi)(HC)

1391 **S. 143(3) : Assessment – Computation of capital gains – Valuation of property – Alternative remedy – Writ petition was dismissed [S.45, 50C, 55A, 246A, Art. 226]**
The assessment was completed by valuating the property at very high value and assessing the capital gains. The assessee filed writ petition challenging the basis of valuation and correctness of the assessment. Dismissing the petition the Court held that there are several disputed questions of fact which are best left open to be decided by the authorities under the hierarchy of the Income-tax Act, 1961 and the petitioner has an alternative and efficacious remedy by way of an appeal against the assessment writ was not entertained. (AY. 2013-14, 2014-15)
Rajeshwari Iyer v. ITO (2021) 279 Taxman 472 (Mad.)(HC)

1392 **S. 143(3) : Assessment – Joint venture – Association of persons – Once amount had been offered to tax by its members – AOP could not be saddled with liability to pay tax in respect of same amount – Estimation of net profit at 11.59 % was deleted – Order of Tribunal is affirmed. [S. 4, 2(31)(v)]**
Assessee was a joint venture constituted through a joint venture agreement, holding a separate permanent account number and having status of AOP. Assessing Officer finalised assessment under section 143(3) treating assessee as an AOP and making addition by adopting net profit ratio at 11.59 per cent of gross receipt. Commissioner (Appeals) deleted addition made by Assessing Officer. Tribunal affirmed the order of CIT (A) and held that AOP was formed only to secure work and after that there was no involvement of such AOP in execution of work as entire work was executed by members of joint venture as agreed between them. Tribunal also held members of joint venture had duly shown income in their returns of income and paid tax thereon. Joint venture

and members of joint venture were being taxed at maximum marginal rate, and hence, no loss had been caused to revenue. Tribunal also held that requirements of CBDT circular No. 7/2016 were duly satisfied in case of assessee and hence, once amount had been offered to tax by its members, hence AOP could not be saddled with liability to pay tax in respect of same amount. High Court affirmed the order of the Tribunal. (AY. 2008-09, 2009-10)

PCIT v. Backbone Projects Ltd. (2021) 124 Taxmann.com 261 (Guj.)(HC)

Editorial : SLP of revenue is dismissed,PCIT v. Backbone Projects Ltd. (2021) 277 Taxman 497 (SC)

S. 143(3): Assessment – Business of textile – Cash sales – Income from undisclosed sources – Income from other sources – Sale of opening stock cannot be treated as income from undisclosed sources. [S.56, 68 133A] 1393

Assessee was engaged in business of textiles. All sales were cash.

Based on the survey report the Assessing Officer held that entire cash deposit found in assessee's bank account was unexplained income and not sale proceeds. On appeal the Tribunal deleted the addition. On appeal by the revenue the Court held that where quantum figure and opening stock was accepted in previous years during scrutiny assessments, receipt from sales made by assessee proprietary concern out of its opening stock could not be treated as unexplained income to be taxed as income from other sources. (AY. 2014-15)

PCIT v. Akshit Kumar (2021) 277 Taxman 423 / 197 DTR 121 / 318 CTR 26 (Delhi)(HC)

S. 143(3): Assessment – Faceless assessment – Natural Justice – Order passed during lockdown – Non compliance of notice – High Court by passing interim order stayed the assessment order. [S. 144, Art. 226] 1394

Draft Assessment order and show cause notice were issued during lockdown which petitioner could not comply due to lockdown. National Assessment Centre completed the assessment on 23-5-2021 during lockdown itself. Assessee filed writ before High Court. High Court passed an interim order admitting the writ petition and stayed the assessment order. (AY. 2018-19)(WP No. 5846/2021 dt. 4-6-2021.

Ketan Ribbons Pvt. Ltd. v. NFAC (Delhi)(HC) www.itatonline.org

S.143(3): Assessment – Income from undisclosed sources – Agricultural income – Land taken on lease – Amount Shown – No agricultural operations had been carried on in land – Addition is held to be justified [S.10(1)] 1395

Dismissing the appeal of the assessee the Court held that the Tribunal had recorded the finding that the assessee was neither in possession of the agricultural land nor did he perform any agricultural activity. Therefore, the question of earning any agricultural income did not arise. These findings were pure findings of fact which had been recorded on meticulous appreciation of evidence on record. The findings had not been shown to be perverse. (AY. 2005-06)

Jinesh (HUF) v. ITO (2021) 431 ITR 588 / 278 Taxman 369 (Karn.)(HC)

1396 **S. 143(3) : Assessment – Mismatched PAN – Demonetised notes – Assessment order was passed without considering material produced by assessee – Court directed to redo the assessment after considering the materials on record. [Art.226]**

Assessee-partnership firm was issued a PAN, which reflected its status as a company. Assessee did not notice this discrepancy till much later. When noticed, assessee applied for rectification and was issued a fresh PAN showing its status as a firm. During demonetization period, petitioner firm made certain deposits in its bank account, a portion of which comprised of demonetised notes Owing to mismatched PAN that was available in bank account, cash deposit of demonetised notes was reported by bank to Income-tax Department Respondent initiated assessment proceedings against assessee. In assessment order, Assessing Officer stated that claims made by assessee could not be accepted Assessment order was passed without considering material produced by assessee. Court held that the respondent should redo assessment in relation to assessee by considering materials produced by assessee to justify his contentions on merit. (AY. 2017-18)

IY TEE CEE Trading Company v. ACIT (2021) 276 Taxman 116 / 199 DTR 110 / 319 CTR 710 (Ker.)(HC)

1397 **S. 143(3) : Assessment – Unexplained money – Initiation of penalty proceedings – Cryptic order – Non issue of notice – Violation of principle of natural justice – Writ is not maintainable [S.69C, 142(1), 271AAC, Art. 226]**

Assessee was engaged in running business of fertilizers and seeds – It deposited Rs. 95.50 lakhs in its bank account in Specified Bank Notes (SBN) denomination during demonitization. Assessing Officer treated entire deposit as unexplained and added same to total income of assessee and initiated a penalty proceeding under section 271AAC. Assessee filed instant writ petition for quashing of order passed by Assessing Officer on ground that said order was cryptic in nature as Assessing Officer did not assign any reason. Dismissing the writ the Court held that since all material facts necessary for adjudication were recorded by Assessing Officer, said order could not be said to be in violation of principles of natural justice, even though it was short in nature. (AY. 2017-18)

Sapta Panchait Kirshk Seva Swablambi Sahkari Samiti Ltd. v. UOI (2021) 276 Taxman 7 /199 DTR 148/ 320 CTR 356 (Patna)(HC)

1398 **S.143(3): Assessment – Cash credits – Unexplained money – Estimation of profit – Estimation of profit at 2 Per cent of total credits held to be justified [S. 68, 69]**

Dismissing the appeal of the revenue the Court held that the Tribunal was justified in restricting the addition made by the Assessing Officer under section 68 to 2 per cent. of the total credits. The Tribunal had found that the computation of profit at the rate of 8 per cent. of the turnover was without any basis or materials on record. The order of the Tribunal is affirmed. (AY.2003-04)

PCIT v. Shitalben Saurabh Vora (2021) 430 ITR 253 (Guj.)(HC)

S. 143(3) : Assessment – Income from undisclosed sources – Commission agent – Director admitted that cash seized belong to the company – Sales tax authorities accepted that sales the sales shown by the company – Extracts of cash book certified by the Chartered Accountant was filed – Addition was deleted. [S. 132(4)] 1399

Held that the company had shown the amount before the sales tax authorities and the sales tax authorities had also accepted the sales belonging to Lux Industries Ltd Kolkata. The assessee had discharged the burden by disclosing the source of cash amount by filing evidence available on the record. Addition is held to be not justified. (AY.2012-13)

Ashok Kumar Banthia v. Dy. CIT (2021) 92 ITR 505 (Jodhpur)(Trib.)

S. 143(3):Assessment – Bogus purchases – Grey market – Affidavit before Sales tax department – Only profit element can be estimated. [S. 133(6)] 1400

Held that the assessee had made purchases from tainted suppliers. Though these parties had filed an affidavit before the Sales Tax Department that they were genuinely engaged in business, the assessee could not prove the genuineness of purchases made from those parties with conclusive evidence. It would be just and fair to bring to tax only the profit element embedded in the value of such disputed purchases. The Assessing Officer was directed to add only profit element on the said purchases.(AY. 2010-11)

Max Realities LLP v. Dy. CIT (2021) 90 ITR 42 (SN)(Mum.)(Trib.)

S. 143(3): Assessment – Income from undisclosed sources – Survey – Discrepancy of stock – Addition can be made only to the extent of profit element in sales considering the average sale price as ascertainable from sales recorded and not entire sale proceeds. [S. 133A] 1401

Held that when discrepancy of stock is found in the course of survey, addition can be made only to the extent of profit element in sales considering the average sales price as ascertainable from sales recorded and not entire sale proceeds. The Assessing Officer was to restrict the addition on account of out of books sales to the extent of the profit element, i. e, gross profit that too by considering the average sale price as ascertainable from the sales recorded by the assessee.(AY. 2014-15)

Gulab Singh v. ITO (2021) 90 ITR 93 (SN)(All)(Trib.)

S. 143(3): Assessment – Amalgamation of Banks by Gazette Notification – Assessment in the name of amalgamated or merged Entity – Assessment in the name of non – existent entities is held to be not sustainable. 1402

Held that the factum of amalgamation had been duly brought to the notice of Assessing Officer. Assessments had been framed on December 26 and 27, 2016 whereas the assessee ceased to be in existence with effect from November 29, 2013 on account of amalgamation by Gazette Notification. The Assessing Officer was required to frame the assessments in the name of the amalgamated or merged entity. The assessments were not sustainable having been framed in the name of non-existent entities.(AY. 2013-14, 2014-15)

Gurgaon Gramin Bank v. ACIT (2021) 90 ITR 11 (SN)(Delhi)(Trib.)
Haryana Gramin Bank v. ACIT (2021) 90 ITR 11 (SN)(Delhi)(Trib.)

1403 **S. 143(3): Assessment – Income from undisclosed source – Firm – Deposit of money in partner's capital account – Explained the source – Addition cannot be made as undisclosed income of the firm – Cash deposited in the bank account of concern was accepted as genuine – Assessee received the payment by banking channels – Addition cannot be made as undisclosed income of the firm. [S. 69]**

Held that when the deposit of amount in partner's capital account is explained the addition cannot be made as undisclosed source. Relied on *CIT v. Metachem Industries (2000) 245 ITR 160 (MP)(HC)* and *ITO v. Mahar Singh Sadhu Singh (2002) 253 ITR 471 (P&H)(HC).* Tribunal also held that when the cash deposited in the bank account of concern was accepted as genuine the assessee received the payment by banking channels. Addition cannot be made as undisclosed income of the firm. (AY.2013-14)

ITO v. Swaran Fastners (2021) 89 ITR 650/ 210 TTJ 1 (Chad.)(Trib.)

1404 **S. 143(3): Assessment – Trader in Iron and steel – Sales not doubted – Profit element is estimated at 5 % of such purchases.**

Held that the assessee was only a trader in iron and steel. The assessee had disclosed gross profit of 2.42 per cent in its books which had been accepted by the Department. The sales made out from seven parties had not been doubted by the Department. For the purpose of determining the profit element embedded in the value of such purchases, taking into consideration the industry in which the assessee dealt, it would be appropriate to estimate the profit at 5 per cent of the value of such purchases as income of the assessee.(AY. 2011-12)

ITO v. Ismailbhai M. Lohkandwala (2021) 89 ITR 1 (SN)(Mum.)(Trib.)

1405 **S. 143(3): Assessment – Income from undisclosed sources – Cash and cheque deposits in bank accounts – Transactions carried out on behalf of others – Entire deposit cannot be assessed as income from undisclosed sources – Profit element is estimated at 20 percent. [S. 133A]**

Held that since the transactions were carried out on behalf of others the explanation of the assessee that the transactions in these two bank accounts related to his real estate business could not be rejected altogether. On the contrary, the observations made by the Assessing Officer, the replies given by the assessee would suggest that the explanations given by the assessee may be accepted. In that case, the entire deposits could not be assessed as income of the assessee. Only the income element involved in the deposits required to be assessed as income of the assessee. The assessee had not stated anything about his rate of commission or brokerage. Considering the fact that the income element in the case of liaison works was usually high, the income of the assessee may be estimated at 20 per cent of the addition made by the Assessing Officer relating to unexplained deposits.(AY. 2014-15)

Venkataramanappa Ravikumar v. ACIT (2021) 89 ITR 63 (SN)(Bang.)(Trib.)

S. 143(3): Assessment – Undisclosed income – Bogus purchases – Sales accepted – Statement in the course of search – Neither the statement was furnished nor an opportunity of cross examination was provided – Addition is held to be not justified [S. 131, 133(6)] 1406

Tribunal held that when the sales are accepted neither statement of the third parties nor cross examination was not provided, addition is held to be not justified (AY.2012-13)

ACIT v. Jain Jewellery (2021) 87 ITR 43 (SN.)(Delhi)(Trib.)

S. 143(3): Assessment – Undisclosed income – Cash in hand as at close of preceding year accepted in assessment – Sufficient to cover shortfall in sum returned – Addition cannot be made.[S. 132] 1407

Allowing the appeal the Tribunal held that the assessee had cash in hand in its business concern and other individuals which was sufficient enough to cover the shortfall in surrender of income found during the course of search as on August 30, 2016. Therefore, since the assessee had explained the source of cash to the extent as on the date of search, it had rightly reduced the surrender of income. Addition was held to be not justified. (AY.2017-18)

Daya Properties and Finance v. ACIT (2021) 87 ITR 17 (SN)(Indore)(Trib.)

S. 143(3): Assessment – Order passed in the name of a deceased person is invalid and unsustainable in the eyes of law. [ITAT R. 27] 1408

Tribunal held that the AO passed the order in the name of Late Ajit Kumar Vaddevalli, a non-existent person. The information of which has been intimated to the AO by the wife of assessee, who is legal heir. Order was quashed as void ab-initio (ITA No. 1209/ Hyd / 2018 dt. 12-6-2021. (AY. 2013-2014)

DCIT v. Late Ajit Kumar Vaddevalli L/R – Vadevalli Sarita Devi (2021) The Chamber's Journal – August – P 83 (Hyd.)(Trib.)

S. 143(3) : Assessment – Cash credits – Cash deposited in the bank – Accommodation entries – No return was filed – Justified in treating the entire deposit as turnover and estimating the net profit at 5 percent – Reassessment was held to be justified. [S. 68 147, 148] 1409

On the basis of information received the assessment was reopened. Assessee contended that bank account was misused for purposes of accommodation entries for which she had also received commission and she was just a housewife and wife of a labourer who never carried on any business, thus, by no stretch of mind her misused bank account receipts could be reckoned as her turnover. She contended that only commission of income at 0.25% of deposit may be estimated. The Assessing Officer estimated the income at 5% of the total deposits in the bank. Dismissing the appeal the Tribunal held that credit was in bank account of assessee and it was onus of assessee to prove correct nature of credits. Assessee had not given any evidence to prove that this was not her turnover. Affidavit filed by her was not supported by any evidence and was self-serving. Net profit rate of 5 per cent by the Assessing Officer was justified. Reassessment notice was held to be valid. (AY. 2010-11)

Uma Mandal. (Smt.) v. ITO (2021) 191 ITD 212 (Jaipur)(Trib.)

1410 **S. 143(3) : Assessment – Information received from seller – Material Collected at the back of the assessee – Opportunity of cross examination was not provided – Addition cannot be made. [S. 131 147, 148]**

Tribunal held that any material collected at the back of the assessee or any statement recorded at the back of the assessee cannot be read in evidence against the assessee, unless the same is confronted to the assessee and that assessee should be allowed to cross-examine to such statements. Reliance was placed on *Kishan Chand Chellaram v. CIT (1980) 125 ITR 713 (SC)* and *Andaman Timber Industries v. CCE (2015)281 CTR 214/ 127 DTR 241 (SC).* It was held that A.O.'s reference to the manager of the society was not relevant as it was a different transaction. Addition was set aside. (AY.2009-10)

Sunita Gadde (Smt) v. ITO (2021) 211 TTJ 898/ 88 ITR 2 (SN) /202 DTR 51 (Delhi)(Trib.)

1411 **S. 143(3): Assessment – Cash credits – Mismatch of tax deducted at source – Turnover – Difference in 26AS and actual turnover – Addition cannot be made only on the basis of information as per form No 26AS [S. 68]**

Tribunal held that only a mismatch between TDS certificate (26AS) and turnover shown by assessee in its profit and loss account could not be sole basis on which entire addition of difference could have been brought to tax. Order of CIT(A) is affirmed.(AY. 2019-10)

ITO v. Star Consortium. (2021) 189 ITD 105 (Kol.)(Trib.)

1412 **S 143 (3): Assessment – Search and Seizure – On money – Loose sheets – Purchase of land Addition on the basis of statement of third party – AO made addition based on the statement given by third party – No incriminating material found suggesting the payment of on-money consideration – Tribunal Deleted addition [S. 132(4), 132 (4A)]**

The AO made addition of undisclosed consideration in the hands of the Assessee. The CIT(A) granted partial relief to the Assessee and sustained addition to the extent of amount admitted in the statements recorded u/s 132(4) of the Act by the vendors. Against this order of CIT(A), both the Assessee as well as the Department filed appeal before the Tribunal.

The Tribunal held that no incriminating material suggesting the payment of on-money consideration to the vendors of the subject land was found in the hands of the Assessee. It also observed that any addition can only be made if there is conclusive evidence brought on record by the AO. The Tribunal also noted that during cross examination of the third party, the statements of such party were clearly contradictory and such contradictory statements had no evidentiary value. It also noted that the third party admitted the receipt of the on-money but nowhere mentioned that they received on-money consideration from the respondent Assessee or its group companies.

The Tribunal also held that onus lies upon the Department to collect cogent evidence to corroborate the notings on the loose sheets. The additions cannot be made merely on the basis of notings on the loose sheet papers which are in the nature of "dumb documents" having no evidentiary value. In the present case, as a result of search and seizure action in the case of respondent-Assessee and its group companies, no material whatsoever was seized and found indicating payment of on-money consideration at the time of purchase of the lands. Also, no addition in the assessment can be made

merely based on assumptions, suspicion, guess work and conjuncture or on irrelevant inadmissible material. Hence the Tribunal held that Department had failed to establish that the Assessee had paid any on-money over and above stated consideration of the sale deed to the vendors of the property and directed to delete the entire addition made. (AY. 2012-13, 2014-15)
Dhananjay Marketing v. CIT (2021) 212 TTJ 877 (Pune)(Trib.)

S. 143(3): Assessment – Civil construction business – Difference in 26AS and actual receipts – Matter remanded back to the Assessing Officer. 1413
Held that it was for revenue to bring on record cogent material to prove that prejudice was caused to revenue or there was malice on part of assessee to have included said income in preceding previous year while it ought to have been included in current previous year income, matter was to be remanded back to the Assessing Officer. (AY. 2015-16)
Ashoka Construction Company v. ACIT (2021) 188 ITD 896 (All)(Trib.)

S. 143(3): Assessment – Difference in amount of income shown between ITS/26AS viz-a-viz income accounted in books of account- Failure to reconcile the difference – Addition is held to be justified. 1414
Held that the assessee has failed to reconcile the difference in amount of income shown between ITS/26AS viz-a-viz income accounted in books of account. Addition is held to be justified. (AY. 2010-11)
DCIT v. Edelweiss Financial Advisors Ltd. (2021) 188 ITD 834 (Ahd.)(Trib.)

S. 143(3): Assessment – Jurisdiction of Assessing Officer – Order giving effect to the order of the Commissioner – After passing of reassessment proceedings case was transferred to another Assessing Officer – Order giving effect by the original Assessing Officer after transfer of jurisdiction is held to be bad in law. [S.124, 127, 143(3), 147, 148, 263] 1415
ITO passed a reassessment order under section 147/143(3) in case of assessee by making an addition of certain amount. Thereafter, case of assessee was transferred under section 127 from ITO to Dy. CIT. Later on, Pr. CIT invoked his revisionary jurisdiction under section 263 requiring to set aside such reassessment order originally framed by ITO under section 147 of the Act. ITO giving effect to order of Pr. CIT set aside such earlier order passed by him under section 147/143(3) and framed reassessment under section 263/143(3). On appeal the Tribunal held that as per section 127 it was found that transfer of jurisdiction over assessee's case from charge of ITO to Dy. CIT was absolute and without reserving any right of concurrent jurisdiction over assessee to ITO. Therefore, ITO had no jurisdiction to frame impugned revisional assessment under section 263 as jurisdiction vested in him had already been transferred under section 127 to Dy. CIT, thus, such revisional order under section 263/143(3) was to be quashed. (AY. 2008-09)
OSL Developers (P.) Ltd. v. ITO (2021) 187 ITD 559 / 202 DTR 21 (Kol.)(Trib.)

1416 **S.143(3): Assessment – Limited scrutiny – After approval from Principal Commissioner converted in to full scrutiny – Violation of instruction of Board – Addition of loan – Produced loan confirmation Held to be not sustainable [S. 68, 142(1)]**

Tribunal held that when the return was selected for limited scrutiny, converting the same in to full scrutiny with the approval PCIT is bad in law as it is contrary to the instruction of the Board. As the addition made as cash credits on account of loans from directors and their relatives are not coved under limited scrutiny addition is not sustainable. The Central Board of Direct Taxes in Instruction No. 20 of 2015 dated December 29, 2015 clearly states that when returns are selected through the computer aided scrutiny selection, the assessee is required to be informed whether the case of the assessee is under limited scrutiny or complete scrutiny. In the case of limited scrutiny the reasons therefor are to be given to the assessee. Instruction No. 5 of 2016 dated July 14, 2016 clearly states that only on conversion of case to complete scrutiny, the Assessing Officer may examine issues other than the issues involved in limited scrutiny. The Assessing Officer is required to intimate the taxpayer regarding conducting the complete scrutiny in his case. The Assessing Officer is duty-bound to follow the instructions issued by the Board. Relied on *Catholic Syrian Bank Ltd. v. CIT (2012) 343 ITR 270 (SC), CIT v. Best Plastics P. Ltd (2007) 295 ITR 256 (Delhi)(HC). Manju Kaushik (Smt) v. DY. CIT (2020)78 ITR (Trib.) 564 (Jaipur) and Bothra Financial Services v. ITO (I. T. A. No. 2023 of 2019 dated March 2, 2020)(Delhi)(Trib.).*(AY.2014-15)

Spooner Industries P. Ltd. v. ITO (2021) 85 ITR 44 (SN)(Delhi)(Trib.)

1417 **S. 143(3) : Assessment – Bogus purchases – Addition based on the report of Inspector – Remand report no adverse comment – Deletion of addition is held to be justified – No defects in the books of account – Addition cannot be made**

Dismissing the appeal of the revenue the Tribunal held that, when the Assessing Officer has not given any adverse comment in the remand report, the deletion of addition is held to be valid. Tribunal also held that when no defects are found in the books of account, the deletion of addition is held to be justified. (AY. 2012-13)

ITO v. Abhishek Agarwal (2021) 85 ITR 494 (Delhi)(Trib.)

1418 **S.143(3): Assessment – Unexplained money – Cash found during search – Sale of scrap – Reflected in balance sheet – Addition cannot be made [S. 69, 69C 132]**

Tribunal held that the assessee's submission was that the cash found during the search pertained was received from sale of scrap generated during the renovation work as well as normal operations of the business, that this was duly accounted for in the books of account. The Commissioner (Appeals) noted that the seized cash had been separately reflected in the audited balance-sheet and included in the income from sale of scrap offered to tax amounting to Rs. 14,08,000 and, thus, the cash found and seized stood duly accounted for. This finding of fact had not been controverted. There was no reason to interfere with it. (AY.2011-12 to 2013-14)

ACIT v. Claridges Hotels Pvt. Ltd. (2021) 86 ITR 402 (Delhi)(Trib.)

S. 143(3) : Assessment – Jurisdiction – Filing returns at Meerut – Notice for scrutiny assessment issued by Officer at Malegaon – No material to show how or why case transferred – Notice by Officer not having jurisdiction – Assessment invalid. [S.127, 143(2)] 1419

Allowing the appeal the Tribunal held that the assessee had been filing her returns of income at Meerut for earlier years and filed her return of income with the officer at Meerut for the year in question. The ITO at Malegaon had issued notice under section 143(2). The assessee objected to the jurisdiction of the officer at Malegaon by fling an objection under section 124(3) of the Act, denying any connection at Malegaon (Nasik). No material or order under section 127 had been produced to show the case of the assessee was transferred from Meerut to Malegaon (Nasik). Admittedly, no notice under section 143(2) had been issued by Income-tax Officer, Meerut who was the jurisdictional ITO in the case of the assessee within the period of limitation provided under the Act. Therefore, the notice issued under section 143(2) by the Income-tax Officer, Malegaon having no jurisdiction over the case of the assessee was not valid and would not confer any jurisdiction over the case of the assessee. The entire assessment proceedings were, therefore, vitiated because of non-service of jurisdiction notice under section 143(2) within the period of limitation by ITO at Meerut having jurisdiction over the case of the assessee. (AY.2014-15)

Reeta Singhal (Smt.) v. ITO (2021) 86 ITR 47 (SN)(Delhi)(Trib.)

S. 143(3): Assessment – Income from undisclosed sources – estimate of income – Suppression of both purchases and sales – Gross profit alone to be assessed and not entire suppressed sales – Prior period expenses – Disallowance is justified – Sundry creditors – Matter remanded.[S. 37(1), 69] 1420

Held that when there is suppression of both purchases and sales only gross profit alone to be assessed and not entire suppressed sales.. Disallowance of prior period expenses is justified. As regards sundry creditors, matter remanded. (AY. 2010-11, 2011-12, 2015-16)

APS Steel Pvt. Ltd v. ITO (2021) 91 ITR 25 (SN)(Bang.)(Trib.)

S. 143(3): Assessment – Income from undisclosed sources – Refund of tax deducted by mistake-Deletion of addition is justified [S. 69] 1421

Held that the assessee did not receive any amount under form 16A issued by various parties and this was corroborated by the bank account statement of the assessee. In all these circumstances, except suspicion of the Assessing Officer, there was no material, whatsoever, at the command of the Assessing Officer to fasten any tax liability on the assessee. Order of CIT(A) is affirmed. (AY. 2007-08)

ITO v. Logistic Buildtech P. Ltd. (2021) 91 ITR 14 (SN)(Delhi)(Trib.)

S. 143(3) : Assessment – Amalgamation – Order of assessment framed in name of non-existent entity after it ceases to be a subsisting entity – Ab initio void. 1422

Held that the order of assessment framed in the name of a non-existent entity after it had ceased to be a subsisting,entity was ab initio void and therefore, null in the eyes of law.(AY. 2008-09)

Infosys Bpm Ltd. v. JCIT (2021) 91 ITR 12 (SN)(Bang.)(Trib.)

1423 **S. 143(3) : Assessment – Search and seizure – On money – Builder – Opportunity to cross-examine person making adverse statement against assessee never provided to assessee – Addition is not valid [S. 131, 132, 147]**

Held that no additions could be made merely on the basis of presumption, conjectures and surmises. The assessee had all along denied having received any cash component from the C group. In such a situation, the onus was on the Department to prove with corroborative material the fact of exchange of cash between the assessee and the C group. The opportunity to cross-examine the person making adverse statements against the assessee had never been provided to the assessee. Since the statement formed the very basis of making additions in the hands of the assessee, not providing such an opportunity of cross-examination would make the additions unsustainable in the eyes of law.(AY. 2015-16)

Riddhi Siddhi Developers Pvt. Ltd. v. DCIT (2021) 91 ITR 36 (SN)(Mum.)(Trib.)

1424 **S. 144 : Best judgment assessment – Rejection of books of account – Excess consumption – Deletion of addition upheld – No substantial question of law [S.44AB, 260A]**

Dismissing the appeal the Court held that there were concurrent findings recorded by both the appellate authorities, that the Assessing Officer had wrongly made an addition on account of excess consumption of raw material. There was no justification given by the Assessing Officer for rejecting the books of account of the assessee. Therefore the order of the Tribunal upholding the order of the Commissioner (Appeals) deleting the addition, need not be interfered with. No question of law arose.(AY.1999-2000)

PCIT v. Bell Ceramics Ltd. (No. 1)(2021) 437 ITR 52 / 207 DTR 393 / 323 CTR 675 (Guj.) (HC)

1425 **S. 144 : Best judgment assessment – Violation of principle of natural justice – Sufficient time, personal hearing not granted – Matter was remanded [S. 143(2), 156, Art, 226]**

Allowing the petition the Court held that the department arbitrarily made an assessment on 24-12-2019 under section 144 of the Act. Since petitioner was not granted time to reply and no personal hearing was granted, it was a case of violation of principles of natural justice, accordingly the assessment order was to be set aside and matter was remanded. (AY 2017-18)

Jaffaorulla Syeaadunnishaa v. ACIT (2021) 282 Taxman 400 (Mad.)(HC)

1426 **S. 144 : Best judgment assessment – Violation of principle of natural justice – Details filed in response to notice u/s 142(1) were not considered – No personal hearing granted – Order was set aside [S. 44AB, 142(1)), Art. 226]**

Allowing the petition the court held that the assessee sent a reply and further sought an adjournment to file voluminous details which were not considered. No personal hearing was granted to assessee. Court held that the order passed was in clear violation of principles of natural justice. Order was set aside. (AY 2017-18)

Kalidoss Bharath v. ACIT (2021) 282 Taxman 478 (Mad.)(HC)

S. 144 : Best judgment assessment – Natural justice – Prayer for adjournment – Order passed without giving further time to explain the case- Matter remanded.[S. 142(1), Art. 226] 1427

The Assessing Officer issued notice u/s 142(1) seeking for details. Assessee requested for 15 days time for furnishing the required details. The adjournment request was not considered and an order raising the demand was passed. On a writ petition, the Court held that since petitioner's petition for adjournment had not been considered and no personal hearing was granted, it was a case of violation of principles of natural justice. Assessment order was set aside and matter was to be remitted back to pass fresh assessment order. (AY. 2017-18)

M. Thirugnanam v. ACIT (2021) 282 Taxman 481 (Mad.)(HC)

S. 144 : Best judgment assessment – Requested to file its objections – Order passed with in two days of reply – Matter remanded to Assessing Officer [S.142 (1) 143(2), Art. 226] 1428

Against the order passed u/s 144 of the Act, the assessee filed a writ petition stating that no reasonable opportunity was given. Allowing the petition the Court held that. the order dated December 15, 2019 passed under section 144 by the Income-tax Officer was to be set aside and the matter was remitted back to him to consider the objections and documentary evidence to be filed by the assessee. Matter remanded.(AY.2017-18)

Dwaraka Balaji Developers v. PCIT (2021) 433 ITR 46 (Telangana)(HC)

S. 144 : Best judgment assessment – Requested to file its objections – Order passed with in two days of reply – Matter remanded to Assessing Officer [S.142(1) 143(2), Art. 226] 1429

Against the order passed u/s 144 of the Act, the assessee filed a writ petition stating that no reasonable opportunity was given. Allowing the petition the Court held that the order dated December 15, 2019 passed under section 144 by the Income-tax Officer was to be set aside and the matter was remitted back to him to consider the objections and documentary evidence to be filed by the assessee. Matter remanded.(AY.2017-18)

Dwaraka Balaji Developers v. PCIT (2021) 433 ITR 46 (Telangana)(HC)

S. 144 : Best judgment assessment – Violation of principles of natural justice – Writ against the order – Matter remanded [S.69A, 115BBE, Art. 226] 1430

The AO passed the order u/s 144 of the Act where in the AO treated the cash deposited under the Pradhan Mantri Garib Kalyan Yojana Scheme as unexplained cash credits u/s 69A read with 115BBE of the Act. On writ it was contended that the Assistant Commissioner had initiated the assessment proceedings without authority, since the amendment to section 143(3A) was proposed only in the Finance Bill, 2020 to include section 144 proceedings, and therefore, for the assessment year 2017-18, such an amendment made in the year 2020 would not apply. Allowing the petition the Court held that the order was passed under section 144, the assessee had not participated in such proceedings and the order was in the nature of an ex parte order. The grounds raised by the assessee had not been taken into consideration. Though in the counter-affidavit, the Assistant Commissioner had given reasons for rejecting each contention of the assessee, they were not mentioned in the assessment order. Further, no personal

hearing had been afforded to the assessee in the proceedings. It was also not clear that whether or not such an opportunity of hearing to raise all his contentions was given by the Assistant Commissioner to the assessee, thereby violating the principles of natural justice while passing the reassessment order. The order was liable to be quashed and the matter remanded to the Assistant Commissioner to pass final order on the merits after affording sufficient opportunity to the assessee. Matter remanded.
Nadimuthupathar Sundarapandian Elavarman v. ACIT (2021) 431 ITR 191 / 278 Taxman 171 (Mad.)(HC)

1431 **S. 144 : Best judgment assessment – Violation of principles of natural justice – Writ against the order – Matter remanded [S.69A, 115BBE, Art. 226]**
The AO passed the order u/s 144 of the Act where in the AO treated the cash deposited under the Pradhan Mantri Garib Kalyan Yojana Scheme as unexplained cash credits u/s 69A read with 115BBE of the Act. On writ it was contended that the Assistant Commissioner had initiated the assessment proceedings without authority, since the amendment to section 143(3A) was proposed only in the Finance Bill, 2020 to include section 144 proceedings, and therefore, for the assessment year 2017-18, such an amendment made in the year 2020 would not apply. Allowing the petition the Court held that the order was passed under section 144, the assessee had not participated in such proceedings and the order was in the nature of an ex parte order. The grounds raised by the assessee had not been taken into consideration. Though in the counter-affidavit, the Assistant Commissioner had given reasons for rejecting each contention of the assessee, they were not mentioned in the assessment order. Further, no personal hearing had been afforded to the assessee in the proceedings. It was also not clear that whether or not such an opportunity of hearing to raise all his contentions was given by the Assistant Commissioner to the assessee, thereby violating the principles of natural justice while passing the reassessment order. The order was liable to be quashed and the matter remanded to the Assistant Commissioner to pass final order on the merits after affording sufficient opportunity to the assessee. Matter remanded.
Nadimuthupathar Sundarapandian Elavarman v. ACIT (2021) 431 ITR 191/ 278 Taxman 171 (Mad.)(HC)

1432 **S. 144 : Best judgment assessment – Estimation of gross profit – Sluggish economic conditions – CIT(A) accepting the gross profit declared by the assessee – No business could have a minimum threshold gross profit every year just to satisfy the whims of the Assessing Officer – Action of CIT(A) proper [S. 145(3)]**
Tribunal held that there was also a substantial decrease in turnover as compared to the immediately preceding year and that it was important for the Assessing Officer to examine this issue. While examining gross margins, the Assessing Officer should not only compare the past margins of the assessee but also the current year margins of other assessees engaged in similar business. This would give an insight into the actual profit margins during the year under reference and would be a correct guide for estimation of profits. It held that no business could have a minimum threshold of gross profit every year just to satisfy the whims of the Assessing Officer. There was no reason to interfere with the findings of the Commissioner (Appeal)(AY. 2015-16).
ACIT v. Shiv Edibles Ltd. (2021)89 ITR 58 (SN)(Jaipur)(Trib.)

S. 144: Best judgment assessment – Ad-hoc disallowance on percentage basis – Books of account audited by chartered accountant – Ad-hoc disallowance was deleted. [S. 37(1), 145(3)] 1433

Held that the ad hoc disallowance on percentage basis of the expenses claimed by the assessee was arbitrary and not sustainable. Relied on *National Industrial corp. Ltd. v. CIT (2002) 258 ITR 575 (Delhi)(HC)*(AY. 2011-12*)*

Kaneria Granito Ltd. v. Dy. CIT (2021) 88 ITR 7 (SN)(Surat)(Trib.)

S. 144 : Best judgment assessment – Assessment order passed without issue of notice u/s 143(2) of the Act was held to be bad in law.[S. 143(2)] 1434

Held that the best judgement assessment without issue of notice u/s 143(2) of the Act was bad in law. (AY. 2012-13 to 2014-15)

SBG Infrastructure LLP. v. DCIT (2021) 191 ITD 400 (Ahd.)(Trib.)

S. 144 : Best judgment assessment – Change of jurisdiction – Fresh notice was not issued – Assessment is held to be bad in law. [S. 120, 143(2)] 1435

Assessment was completed u/s 144 without issuing notice under section 143(2). Notice issued by ITO- Ward 6 who did not enjoy jurisdiction over assessee was bad in law and was quashed. (AY. 2012-13)

Cosmat Traders (P.) Ltd. v. ITO (2021) 189 ITD 504 (Kol.)(Trib.)

S. 144 : Best judgment assessment – Civil construction – Rejection of books of account – Estimation of 5% of net profit on gross receipts – Tribunal estimated at 3%. [S. 145(3)] 1436

Tribunal held that since assessee agreed for estimation of a percentage of profits on gross receipts, an estimate at 3% would meet ends of justice. (AY. 2012-13)

Shri Lakshmanan v. ITO (2021) 189 ITD 499 (Chennai)(Trib.)

S. 144: Best judgement assessment – Assessing Officer rejected the books of account and estimated the net profit rate of 12% – CIT(A) estimated at 6.5 % – Order of CIT(A) is affirmed – Un explained expenditure – When the income is estimated separate addition as unexplained expenditure cannot be made – Order of CIT(A) is affirmed [S. 69C, 145(3)] 1437

Tribunal affirmed the order of CIT(A) and held that estimate of net profit at 6.5 % is proper and when the income is estimated separate addition as unexplained expenditure cannot be made. (AY. 2014-15)

ACIT v. Ceigall India Ltd (2021 209 TTJ 85 (Chd.)(Trib.)

S. 144 : Best judgment assessment – Failure to deduct tax at source – Leave travel allowance – Order passed without calling remand report – Matter remanded – Tribunal recorded deep appreciation for very well drafted statement of facts and grounds of appeal before CIT(A) while deciding the matter without the assistance of the assessee. [S. 10(5), 133A, 192, 201(1), 201(IA), 201(3), 250, 254(1)] 1438

The assessee is a branch office of public sector bank. Branch office was subjected to survey u/s 133A of the Act. It was found that the certain employees have claimed

leave travel allowance as exempt. The travel places included out side India also. The exemption was claimed u/s 10(5) of the Act. The Assessing Officer treated the assesee in default for not deducting the related tax at source. The assessment was passed u/s 144 of the Act. The assessee has filed detailed statement of facts and grounds of appeal before CIT(A). CIT(A) rejected the contentions of the assessee and affirmed the order of the Assessing Officer. Before the Tribunal non appeared on behalf of the assessee. The Tribunal held that the CIT(A)) has passed the order without calling remand report hence remanded the matter to the file of the Assessing Officer. The Tribunal also recorded deep appreciation for very well drafted statement of facts and grounds of appeal before CIT(A) while deciding the matter without the assistance of the assessee. (AY. 2012-13)
State Bank of India v. ACIT (2021) 209 TTJ 964 / 199 DTR 57 (Mum.)(Trib.)

1439 **S. 144B : Faceless Assessment – Violation of principle of natural justice – Order was not passed in accordance with procedure laid down under section 144B(9) Act – Order was set aside- Court also observed that if such orders are continued to be passed, substantial costs will be imposed on concerned Assessing Officer which would be recovered from his/her salary and also department is to be directed to place such judicial orders in career records of such Assessing Officer [S. 144B(9), 156 270A, Art. 226]**
Petitioner challenged assessment order passed under section 144 along with notice of demand issued under section 156 and penalty proceedings initiated under section 270A of the Act. Allowing the petition the Court held that the assessment order passed by revenue was an exact reproduction of draft assessment order without considering replies filed by petitioner and petitioner's request for personal hearing. The Court held that the assessment order was passed without application of mind and was not in accordance with procedure laid down under section 144B(9) of the Act. The Court also observed that, if such orders are continued to be passed, substantial costs will be imposed on concerned Assessing Officer which would be recovered from his/her salary and also department is to be directed to place such judicial orders in career records of such Assessing Officer. (AY. 2018-19)
Mantra Industries Ltd v. NFAC (2021) 283 Taxman 459 / 323 CTR 249 / 207 DTR 161/ (2022) 441 ITR 467 (Bom.)(HC)

1440 **S. 144B : Faceless Assessment – Violation of principle of natural justice – Request for personal hearing had been was not granted – Draft assessment order was not issued – Order passed is held to be non-est and set aside. [S. 143(3), Art, 226]**
The assessment order was passed without giving an opportunity of hearing and also without issuing draft assessment order. On a writ petition the Court held that where assessee's request for personal hearing had been ignored and mandatory draft assessment order had not been issued to assessee the assessment order and consequential notices for demand and penalty, having been passed without following requirements of Faceless Assessment Scheme, 2019 were to be treated as non est and were to be quashed and set aside. The Court also observed that it is open to respondents to take such steps as advised in accordance with law. (AY. 2018-19)
Chander Arjandas Manwani v. NFAC (2021) 283 Taxman 380 / (2022) 442 ITR 197 (Bom.) (HC)

S. 144B : Faceless Assessment – Principle of natural justice – Order passed without providing due opportunity – Notice cum draft assessment order – Provided only one day time – Order was set aside [Art, 226] 1441

The Assessing Officer issued a notice-cum-draft assessment order proposing certain additions and only one day was granted to respond to same. Assessee sought adjournment on same day on ground that time granted was too short to file a response to said notice. The Assessing Officer passed a final assessment order in terms of draft assessment order even before time of adjournment expired. On a writ, the Court held that time granted of only one day in show-cause notice certainly could not be accepted as sufficient time given to assessee to respond. Assessment order passed by Assessing Officer without providing assessee due opportunity to file his submissions to notice-cum-draft assessment order was in violation of principles of natural justice and, same was to be set aside. The matter is sent to the Assessing Officer for de novo consideration. (AY. 2018-19)

Uday Desai HUF v. NFAC (2021) 283 Taxman 570 (Bom.)(HC)

S. 144B : Faceless Assessment – Principle of natural justice – Show cause notice along with draft assessment order raising demand under section 156 of the Act – Reply to show cause was filed – Adjournment application was filed – Order passed without considering the reply – Assessment order was quashed – Officers are directed to be truthful while filing the affidavit – Directed to place this order before Commissioner (Judicial) and also circulate to all Commissioners (Judicial). [S. 143(3),156, Art. 226] 1442

Department issued a show cause notice along with draft assessment order raising demand under section 156 of the Act. In response to show cause notice reply was filed by the assessee. Final assessment order was passed without considering the reply of the assessee. On a writ, the Court quashed the assessment order and the demand notice on the ground that the Assessing Officer has not considered the reply filed by the assessee. In the affidavit the Assessing officer stated that no reply was filed. The Court observed that print out of e-proceedings response acknowledgement from department showed that reply to show cause notice had been submitted by assessee. The made observation that the Officers not truthful in filing affidavit. Directed that this order be placed before the Commissioner of Income – tax (Judicial) and also be circulated to all Commissioner (Judicial) in the Country so that they are made aware of the Fact that it would be in the interest of department to be truthful and accept their mistake in the interest of department to be truthful and accept their mistakes instead of filing of such affidavits as it has been done in the present case.

Zeus Housing Company v. UOI (2021) 283 Taxman 377 (Bom.)(HC)

S. 144B : Faceless Assessment – Principle of natural justice is violated – Cash credits – Order was passed without giving an opportunity of hearing – Order was set aside [S. 68, 142(1), 143(3), Art. 226] 1443

The assessment order was passed making addition u/s 68 of the Act, without issuing the show cause notice. On a writ petition, the Court held that the issuance of show cause notice is the preliminary step. The purpose of show cause notice is to enable a party to effectively deal with the case made out by the respondent. On the facts the addition

was made without issue of show cause notice, the order was quashed and set aside. Followed *Om Shri Jigar Association v. UOI,1994 SCC Online.Guj 77.*
Shreji Investment & Advisory Services v. NFAC (2021) 207 DTR 357 / 323 CTR 505 (Bom.) (HC)

1444 **S. 144B : Faceless Assessment – Cash credits – Violation of principle of natural justice – Two days time was not granted – Draft assessment order was not provided – Assessment order was set aside [Art. 226]**
The assessment order was passed making addition of Rs 29,51,28,460 under section 68 of the Act, A reasonable opportunity of hearing was also not provided. The assessee filed the writ petition. High Court set a side the order of the Assessing Officer for violation of natural justice and not providing draft assessment order. (AY. 2018-19)
Setu Securities (P) Ltd. v. NFAC (2021) 323 CTR 646 / 207 DTR 425 (Bom.)(HC)

1445 **S. 144B : Faceless Assessment – Order passed without providing the draft assessment order – Order was quashed – Directed the revenue to prepare draft assessment order as prescribed by law [Art. 226]**
The assessee received a show cause notice stating as to why the assessment order should not be completed as per Draft Assessment order, however no draft assessment order was furnished to the assessee. The assessment was completed. The assessee challenged the assessment order by filing a writ petition. High Court set aside the assessment order and directed the revenue to consider the response submitted by the assessee and provide the draft assessment order and pass the order in accordance with law. (W.P.No. 1646 of 2021 dt 24-11-2021)
Bhavi Homes Pvt Ltd v. NFAC (2021) The Chamber's Journal- December – P. 165 (Bom.) (HC)

1446 **S. 144B : Faceless Assessment – Violation of principle of natural justice – Order passed without giving a reasonable opportunity – Order was quashed and directed to pass appropriate orders on merits in accordance with law [S. 143(3), Art. 226]**
Allowing the petition the Court held that the order has been passed without following the principles of natural justice, and is liable to be quashed. The respondents are directed to pass appropriate orders on merits and in accordance with law within a period of 45 days from the date of receipt of a copy of this order. The assessee is also directed to file reply within a period of 30 days from the date of receipt of a copy of this order. (SJ)
Sathya Jyothi Films v. NFAC (2021) 208 DTR 102 (Mad.)(HC)

1447 **S. 144B : Faceless Assessment – Violation of principle of natural justice – Issue of show cause notice and draft assessment order is mandatory – Assessment order, notice of demand and penalty notice was quashed – Matter was remanded back to Assessing Officer, who shall issue a draft assessment order and thereafter pass a reasoned order in accordance with law [S.143(3), 144B(7), 156, 271AAC, Art. 226]**
Assessment order was passed without issue of show cause notice and draft assessment order. On writ the Court held that there was a blatant violation of principles of natural justice as well as mandatory procedure prescribed in Faceless Assessment Scheme. The

assessment order, notice of demand and notice of penalty were set aside and matter was remanded back to Assessing Officer who was directed to issue a draft assessment order and thereafter pass a reasoned order in accordance with law. (AY. 2018-19)
Akashganga Infraventures India Ltd. v. NFAC (2021) 283 Taxman 37 (Delhi)(HC)

S. 144B : Faceless Assessment – Violation of principle of natural justice – Order passed without issuing a mandatory draft assessment order – Assessment order, notice of demand and penalty notice was quashed – Revenue was given an opportunity to pass a fresh assessment order in accordance with law. [143(3), 156, 270A, 271AAC, Art. 226] 1448
Assessment order was passed without issuing a mandatory draft assessment order or a show cause notice to assessee. On a writ, the Court held that order passed without issuing a mandatory draft assessment order and show cause notice being contrary to statutory scheme, as provided in section 144B of the Act, the assessment order issued under section 144, read with section 144B as well as demand notice issued under section 156 and notice for initiating penalty proceedings issued under sections 270A and 271AAC(I) were set aside. Revenue was given an opportunity to pass a fresh assessment order in accordance with law. (AY. 2018-19)
Anju Jalaj Batra v. NEAC (2021) 283 Taxman 81 (Delhi)(HC)

S. 144B : Faceless Assessment – Violation of principle of natural justice – Order was set aside – Liberty to Assessing Officer to continue assessment proceedings from stage at which they were positioned when show cause notice was issued [S. 143(3), Art. 226] 1449
Allowing the petition the court held that the assessment order having been passed without providing adequate opportunity to submit reply in response to notice to show cause-cum-draft assessment order as time frame set out in show cause notice was extremely shortand e-filing portal was allegedly dysfunctional, impugned assessment order was to be set aside with liberty to Assessing Officer to continue assessment proceedings from stage at which they were positioned when show cause notice was issued.
Centum Finance Ltd v. NFAC (2021) 283 Taxman 232 (Delhi)(HC)

S. 144B : Faceless Assessment – Violation of principles of natural justice – Reply filed to show cause notice was not considered – Order was quashed – Assessing Officer was directed to re do the assessment afresh [Art. 226] 1450
Against the order passed u/s 144B of the Act, the assessee filed writ before the High Court. Allowing the petition the Court held that the order was bad on account of violation of principles of natural justice and, consequently, assessment order was to be quashed and Assessing Officer was directed to re-do assessment afresh. (AY. 2018-19)
Ezhome Service Co-op. Bank Ltd. v. ITO (2021) 283 Taxman 567 (Ker.)(HC)

S. 144B : Faceless Assessment – Violation of principle of natural justice – Portal was not working – Failure to file reply – Order was passed without giving reasons – Order was set aside [Art. 226] 1451
A notice-cum-draft assessment order was served upon the assessee proposing an addition of huge amount against the returned income. Assessee failed to file its reply to said notice-cum-draft assessment order as portal of the department was not working between 1-6-2021 and 17-6-2021 i.e. last date for filing reply to said notice-cum-draft assessment

order. Assessing Officer passed a final assessment order copying such proposed additions to income of assessee without giving any reason. On writ the Court held that the assessment order passed by Assessing Officer was in violation of principal of natural justice inasmuch as assessee did not have a reasonable opportunity to file a reply to notice-cum-draft assessment order and, thus, same was to be set aside. (AY. 2018-19)
Faqir Chand v. NEAC (2021) 283 Taxman 51 (Delhi)(HC)

1452 **S. 144B : Faceless Assessment – Violation of principle of natural justice – Order passed without issuing show cause notice and draft assessment order – Order set aside [S. 144B(9), Art. 226]**
Allowing the petition the court held that the final assessment order had been passed without issuing a show-cause notice and draft assessment order, department's action was violative of principles of natural justice and provisions of section 144B of the Act. The assessment order was set aside and matter was remanded back to Assessing Officer. (AY. 2018-19)
Floral Realcon (P) Ltd. v. NFAC (2021) 283 Taxman 488 (Delhi)(HC)

1453 **S. 144B : Faceless Assessment – Violation of principle of natural justice – Order passed without issuing show cause notice and draft assessment order – Order was set aside and the matter remanded with the direction too pass a reasoned order in accordance with law [S. 143(3), 144B(7), Art. 226]**
Allowing the petition the Court held that section 144B (7) mandatorily provides for issuance of a prior show cause notice and draft assessment order before issuing final assessment order. When there was no prior show cause notice as well as draft assessment order had been issued before passing assessment order in faceless manner, there was a violation of principles of natural justice as well as mandatory procedure prescribed in Faceless Assessment Scheme' and stipulated in section 144B of the Act. The order was set aside and directed the Assessing Officer to pass a reasoned order in accordance with law. (AY 2018-19)
Globe Capital Foundation v. NEAC (2021) 283 Taxman 411 (Delhi)(HC)

1454 **S. 144B : Faceless Assessment – Violation of principle of natural justice – No draft assessment order was passed – Order was set aside [S. 143(3), Art. 226]**
Allowing the petition the Court held that the assessment proceeding had been completed in violation of principle of natural justice and no draft assessment order was passed. Assessment order was set aside along with notice of demand arising therefrom were to be set aside. (AY. 2017-18)
International Management v. NFAC (2021) 283 Taxman 78 (Delhi)(HC)

1455 **S. 144B : Faceless Assessment – Violation of principle of natural justice – Order passed without issuing show cause notice and draft assessment order – Order was set aside and remanded [Art, 226]**
Allowing the petition the Court held that the Assessing Officer passed a final assessment order without issuing a show cause notice and passing a draft assessment order. The assessment order was to be set aside and matter remanded. (AY. 2014-15)
Javin Construction (P) Ltd v. NFAC (2021) 283 Taxman 42 (Delhi)(HC)

S. 144B : Faceless Assessment – Violation of principle of natural justice – No show cause notice and draft assessment order was issued – Assessment order was set aside and remanded back to Assessing Officer [Art, 226] 1456

Allowing the petition the Court held that the order passed without issue of show cause notice and draft assessment order is violation of principles of natural justice as well as mandatory procedure prescribed under Faceless Assessment Scheme. The assessment order was set aside and matter was remanded back to Assessing Officer. (AY. 2018-19)

Novelty Merchants (P) Ltd v. NFAC (2021) 283 Taxman 385 (Delhi)(HC)

Pooja Singla Builders and Engineers (P) Ltd v. NAFC (2021) 440 ITR 413/ 283 Taxman 491/ (2022) 440 ITR 413 (Delhi)(HC)

Religare Enterprises Ltd. v. NFAC (2021) 283 Taxman 408 (Delhi)(HC)

S. 144B : Faceless Assessment – Violation of principle of natural justice – Without affording personal hearing – COVID-19 – Order was set aside and remanded back for adjudication a fresh [S. 143(3), Art. 226] 1457

Assessment order was passed without granting an opportunity of filing objections against notices-cum-draft assessment orders as State of Delhi was under lockdown due to second wave of Covid-19 Pandemic between date of notices and date by which replies had to be filed. On a writ, High Court set aside the matter and remanded back to Assessing Officer for taking appropriate steps in accordance with law. (AY. 2018-19)

Ramprastha Buildwell (P) Ltd v. NEAC (2021) 283 Taxman 235 (Delhi)(HC)

S. 144B : Faceless Assessment – Personal hearing was not granted – Violation of principle of natural justice – Assessment order was quashed – Directed to grant an opportunity of hearing by way of Video Conferencing [s. 144B(7), 144B(9), Art, 226] 1458

The assessee requested for video conference hearing, however the order was passed without giving an opportunity of personal haring. On writ the Court held that if video conference hearing was requested the order passed without granting personal hearing was a violation of principles of natural justice as well as mandatory procedure prescribed in Faceless Assessment Scheme and stipulated in section 144B of the Act. The order was quashed and set aside and the Assessing Officer was directed to grant an opportunity by way of video conferencing.

KRS Home Developers (P) Ltd v. NFAC (2021) 283 Taxman 413 (Delhi)(HC)

S. 144B : Faceless Assessment – Violation of principle of natural justice – Opportunity of personal hearing was not granted – Order was set aside – Direction issued to the Assessing Officer to pass a reasonable order in accordance with law [S. 143(3), 144B(7) Art, 226] 1459

Assessing order was passed without granting opportunity of personal hearing. On a writ, the High Court held that there was no hearing had been granted to assessee before passing impugned assessment order passed under section 143(3) read with section 144B, there was a violation of principles of natural justice as well as mandatory procedure prescribed in Faceless Assessment Scheme, assessment order as well as demand notice and all proceedings initiated pursuant thereto were to be set aside and matter was to be remanded back to Assessing Officer for adjudication afresh. (AY. 2018-19)

Umkal Healthcare (P) Ltd. v. NFAC (2021) 283 Taxman 504 (Delhi)(HC)

1460 **S. 144B : Faceless Assessment – Order passed without considering the reply – Incorrect affidavit by the Assessing Officer – Show cause notice was issued for perjury proceedings – Cost of Rs 10000 was imposed payable to PM Cares Fund – Order was set aside. [Art. 226]**

The assessment order was passed without considering the reply of the assessee. In the affidavit in reply the revenue stated that no reply was received before completion of the assessment proceedings. High Court observed that the time allotted in the show cause notice was up to 23.59 on April, 12 2021 where as the assessee filed the response on that date at 8. 20 am. The Assessment order was signed at 2.53 pm, but the affidavit by the official mentioned the time as 3.17 pm. The court observed that the affidavit did not reflect the true facts and had been prepared in a very lackadaisical manner without confirming the veracity of the statement being on oath. The Court observed that the assessment order was passed even before the response time had expired and without checking whether any reply has been filed. The Court quashed and set aside the order. The Court also order for payment of Cost of Rs 10000 which is to be paid to the PM Cares fund. The Court also issued show cause notice why perjury proceedings should not be initiated for making an incorrect statement on oath, particularly without verifying the documents of the Department annexed to the petition. (WP No. 1286 of 2021 dt. 17-9-2021)

Mateen Pyarali Dholakia v. UOI (2021) The Chamber's Journal – October – P. 105 (Bom.) (HC)

1461 **S. 144B : Faceless Assessment – Order passed without show cause and draft assessment order – Order was quashed. [S. 143(3), 144B (xi)(b), Art. 226]**

The assessee filed the writ petition challenging the assessment order on the ground that it has been passed in breach of the provisions of the Faceless Assessment Scheme, 2019. Allowing the petition the Court held that the NFAC passed a final assessment order under section 143(3), read with section 144B, against assessee without issuing any show cause notice which was mandatory requirement for faceless assessment under section 144B as well as without serving draft assessment order. The assessment order was set aside (AY. 2018-19)

Trendsutra Client Services (P.) Ltd v. NEAC (2021) 283 Taxman 558 (Bom.)(HC)

1462 **S. 144B : Faceless Assessment – Natural justice – Order was passed without considering the request for an adjournment- Pending the final disposal the assessment order, notice of demand and penalty proceedings are stayed. [S. 143 (3), 270A, 271AAC, Art. 226]**

The Assessing Officer has passed the assessment order without considering the request for an adjournment. On writ the High court passed an interim order staying the assessment order, notice of demand and penalty proceedings till next date of hearing.

GSA Constructions v. NFAC (2021) 203 DTR 305 / 321 CTR 362 (Bom.)(HC)

S. 144B : Faceless Assessment – Natural justice – Order was passed enhancing the income without following the procedure – Stay was granted till next date [S. 143(3), Art. 226] 1463

The assessee challenged the assessment order on the ground that the Assessing Authority has passed the order enhancing the income without following the procedure. High Court granted an interim stay till the next date of hearing.

Prakash Nanji Paatel v. NFAC (2021) 203 DTR 220 / 321 CTR 256 (Bom.)(HC)

S. 144B : Faceless Assessment – Natural justice – Personal hearing was not granted – Order was set aside [Art. 226] 1464

Allowing the petition the Court held that the statement and affidavit-in-reply and orders noted in the assessment order that no reply or explanation was furnished by the assessee was contrary to what the records indicated. The assessment order was quashed and set aside. The matter was remanded back to the concerned authority to consider the matter de novo and pass an order after granting personal hearing to the assessee. Matter remanded. (AY. 2018-19)

Sureshkumar S. Lakhotia v. NEAC (2021) 438 ITR 225 / (2022) 284 Taxman 340 (Bom.) (HC)

S. 144B : Faceless Assessment – Draft assessment order – Natural justice – Order passed without following the procedures laid down under section 144B of the Act is ab-initio – void [S. 143(3), Art. 226] 1465

Allowing the petition the Court held that principles of natural justice firmly run through fabric of section 144B(1) of the Income-tax Act, 1961. Court held that when an assessee approaches the department with a response to show cause notice, the request made by an assessee would have to be taken in to account. The draft assessment order was quashed. The Court left it open to the authorities to carry forward the process in accordance with section 144B of the Act by giving opportunity of hearing to the assessee. (W.P.(L) No. 11040 of 2021 dt 30-7-2021)(AY. 2017-18)

(Notice issued Piramal Enterprises Ltd v. Add. CIT (2021) 281 Taxman 1 (Bom.)(HC)
Piramal Enterprises Ltd v. Add. CIT (2021) 282 Taxman 407 / 205 DTR 81/ 322 CTR 370 (Bom.)(HC)

S. 144B : Faceless Assessment – Natural justice – Assessment order without jurisdiction – Order was kept in abeyance – Notice was issued to the revenue [Art. 226] 1466

On writ the High Court stayed the operation of the order till next date and issued notice to the revenue

Praful M. Shah v. NFAC (2021) 281 Taxman 244 (Bom.)(HC)

S. 144B : Faceless Assessment – Natural justice. [S.143(3), 270A, 271AAC, Art. 226] 1467

Order passed by the Faceless Assessment Scheme without giving an opportunity before passing final assessment order. On writ operation of assessment order passed under section 143(3) read with section 144B was to be stayed.

Raja Builders v. NFAC (2021) 280 Taxman 304 (Bom.)(HC)

1468 **S. 144B : Faceless Assessment – Principle of natural justice – Cash credits – Order was set aside [S. 68, 143(3), Art. 226]**

The assessment order was passed making addition of cash credits of more than 40 Crores. On writ the assessee contended that no reasonable opportunity of hearing was given. Allowing the petition the Court observed that before going into the merits of the issue whether the income of the assessee was taxable under section 68 or not, though the assessee had not sought a personal hearing, it became incumbent on part of the assessing officer to grant a personal hearing to enable the assessee to explain the documents already submitted to the Department to establish the genuineness of the transaction under which the assessee had accepted the sum from the lender through the bank. The order was set aside and the matter was remitted back to the assessing authority with directions to give one day personal hearing to the assessee. (AY.2018-19) (SJ)

Nagalinga Nadar M. M. v. Add. CIT (2021) 439 ITR 147 / 207 DTR 241 / (2022) 284 Taxman 244/ 324 CTR 195 (Mad.)(HC)

1469 **S. 144B : Faceless Assessment – Natural justice – Video hearing – Personal hearing was not granted – Time for passing assessment was extended – Order and notice of demand and notice initiating penalty proceedings were set aside [S. 143(3), 156, 271AAC(1), Art, 226]**

The assessee has requested for personal hearing, which was not granted and the order was passed. On Writ the Court held that the Assessing Officer should have, dealt with above request, i.e., either rejected request made or accommodated the petitioner, having regard to circumstances put forth by her, however, Assessing Officer having proceeded to pass assessment order, even when time frame for passing assessment order stood extended till 30-6-2021. Assessment order as also consequential notice of demand and notice for initiating penalty proceedings were to be set aside. (AY. 2018-19)

Naina lal Kidwai v. NFAC (2021) 203 DTR 137 / 321 DTR 363 / 132 taxmann.com 30 (Delhi)(HC)

1470 **S. 144B : Faceless Assessment – Natural justice – Assessment order was quashed – Existence of alternative remedy not an absolute bar to issue writ – Matter remanded to the appropriate authority for fresh assessment – Writ is maintainable where there is a violation of the principles of natural justice. [S. 143 (3), Art. 226]**

The assessment was completed without providing adequate opportunity to the assessee. The assessee filed an writ petition against the assessment order. Single judge dismissed the petition on the ground that the assessee has an alternative remedy of appeal before the Appellate Authority. On appeal before the division Bench the Court held that writ is maintainable where there is a violation of the principles of natural justice. Order of single judge and the assessment order was set aside. The matter was remanded to the appropriate authority for fresh assessment. (AY. 2018-19)

V. Thillainatesan v. Add.CIT (2021) 439 ITR 614 / 206 DTR 215 / 323 CTR 92 / (2022) 284 Taxman 388 (Mad.)(HC)

Editorial : Order of single judge, V. Thillainatesan v. Add.CIT (2021) 206 DTR 223 / 323 CTR 100 (Mad.)(HC)

S. 144B : Faceless Assessment – Natural justice – Order passed without considering the reply of assessee and draft assessment order – Order was set aside [S.68, 143(3), Art. 226] 1471

Allowing the petition the Court held that the assessment order was passed. Without considering the reply filed by the assessee, the Assessing Officer made an addition to the income. The court set aside the assessment order passed and directed the Assessing Officer to consider the assessee's reply to the notice-cum-draft assessment order. (AY.2018-19)

Dj Surfactants v. NEAC (2021) 437 ITR 519 (Delhi)(HC)

S. 144B : Faceless Assessment – Natural justice – Personal hearing was not granted – Assessment order and subsequent notices were stayed. [S. 143(3), 144B(7), 156, 270A, 274 Art. 226] 1472

On writ the court stayed the operation of the order passed under section 143(3) read with section 144B and the consequential notices of demand issued under section 156 and for initiation of penalty proceedings under section 274 read with section 270A on the grounds that the Department did not inform whether steps under sub-clause (h) of section 144B(7)(xii) had been taken.(AY.2018-19)

Lemon Tree Hotels Ltd v. NFAC (2021) 437 ITR 111 (Delhi)(HC)

S. 144B : Faceless Assessment – Natural justice – Order passed without issuing notice and draft assessment order – Assessment order and consequential orders and notices are set aside [S. 143(3), 156, 270A, 274, Art. 226] 1473

Allowing the petition the Court held that since there was a variation in the declared income of the assessee, the Assessing Officer was required to issue a notice-cum-draft assessment order, in consonance with the provisions of section 144B of the Act and the Faceless Assessment Scheme, 2019. Accordingly, the final order under section 143(3) read with section 143(3A) and (3B) and the consequential notice of demand issued under section 156 and the notice for initiation of penalty proceedings issued under section 274 read with section 270A were set aside.(AY.2018-19)

Lokesh Constructions P. Ltd. v. ACIT (2021) 437 ITR 123 / 202 DTR 149 / 321 CTR 110 (Delhi)(HC)

S. 144B : Faceless Assessment – Natural justice – Draft assessment order was not passed – Assessment order and demand notice was set aside [S.143(3), 144B(1)(xvi)), 156, Art. 226] 1474

Allowing the petition the Court held that the assessment order was not only in considerable variation with the figures for the earlier assessment years but was also prejudicial to the interests of the assessee. The requirement of section 144B(1)(xvi) of providing a draft assessment order was not complied with. Assessment order and demand was set aside and directed to pass a fresh assessment order. AY.2018-19)

Orissa Stevedores Ltd. v. UOI (2021) 437 ITR 693 / 203 DTR 353/ 321 CTR 727 (Orissa) (HC)

1475 **S. 144B : Faceless Assessment – Natural justice – Variation in income – Personal hearing was not given – Order, notice of demand and penalty notices were stayed. [S.144B(7)(vii), 156, Art. 226]**

On writ the Court held that since the statute itself had made the provision for grant of personal hearing to the assessee in faceless assessment under section 144B the Department could not avoid giving an opportunity of hearing. Accordingly, the assessment order and the notice of demand and notice for initiating penalty proceedings were set aside. The required standards, procedures and processes to guide the Assessing Officer as to whether or not personal hearing in a given matter should be granted had to be framed under section 144B(7)(vii)of the Act.

Ritnand Balved Education Foundation (Umbrella Organization of Amity Group of Institutions) v. NFAC (2021) 437 ITR 114 (Delhi)(HC)

1476 **S. 144B : Faceless Assessment – Natural justice – Draft assessment order – Variation in income – Personal hearing [S. 144B(7)(vii), 156, 270A, Art, 226]**

Allowing the petition the Court held that no personal hearing was granted, despite a request being made to explain as the matter was complex.

The court set aside the assessment order and the consequential notices issued under section 156 towards tax demand and under section 270A for initiation of penalty proceedings and gave liberty to the Department to proceed from the stage of issuing a notice-cum-draft assessment order with directions to afford an opportunity of hearing to the assessee.

Satia Industries Limited v. NFAC (2021) 437 ITR 126 (Delhi)(HC)

1477 **S. 144B : Faceless Assessment – Natural justice – Opportunity of hearing – Video conferencing – Variation of income is proposed – Matter remitted back to Assessing Officer to grant opportunity of hearing [S. 144B(7), Art. 226]**

On writ the court set aside the assessment order dated April 21, 2021 and remanded the matter back to the Assessing Officer, directing him to grant an opportunity of hearing to the assessee by way of video conferencing and thereafter pass an order.

SDS Infratech Private Ltd v. NFAC (2021) 437 ITR 314 (Delhi)(HC)

1478 **S. 144B : Faceless Assessment – Natural justice – Draft assessment order – Opportunity of hearing was not granted – Order was set aside [S. 115BBEE, 156, 270A, 274]**

Allowing the petition the Court held that the principles of natural justice had been violated. The Department could not have side-stepped statutory safeguards put in place by the Legislature. Admittedly, the assessee's income was varied to its prejudice with an addition in the assessment order under section 115BBEE. Had the notice cum draft assessment been issued the assessee could have requested for a personal hearing in the matter. The justification proffered by the Department that notices under sections 143(2) and 142(1) were issued prior to the passing of the assessment order could not be accepted in view of the schematic design of the statute. Accordingly, the assessment order and the notices of tax demand and penalty issued under section 156 and section 274 read with section 270A were set aside.(AY.2018-19)

YCD Industries v. NFAC (2021) 437 ITR 119 (Delhi)(HC)

S. 144B : Faceless Assessment – Natural justice – Personal hearing though video link was not granted – Matter was remanded [S.144B(7), Art. 226] 1479

Allowing the petition the Court held that the assessee had requested for a personal hearing through a video link which would be enabled, however, despite repeated attempts, personal hearing/video conference link was not enabled and petitioner did not get a personal hearing, since section 144B(7) provides an opportunity for a personal hearing, if requested by assessee, matter was remanded back to Assessing Officer to grant an opportunity of personal hearing to petitioner. Matter remanded. (AY.2018-19)

Civitech Developers (P) Ltd v. NEAC (2021) 282 Taxman 360 / (2022) 440 ITR 398 (Delhi) (HC)

S. 144B : Faceless Assessment – Natural justice – Order passed without affording an opportunity of personal hearing – order was set aside [S.144B(7), 270A, 271AAC, Art. 226] 1480

Allowing the petition the Court held that the order passed and notice of demand issued by Assessing Officer without affording an opportunity of personal hearing to assessee was to be set aside.

Expert Capital Services (P) Ltd v. NFAC (2021) 282 Taxman 131 (Delhi)(HC)

S. 144B : Faceless Assessment – Notice and draft assessment order – Natural justice – Opportunity of personal hearing must be given if requested – Matter remanded [S. 144B(7), Art. 226] 1481

Allowing the petition the Court held that where no show cause notice as well as draft assessment order had been issued to assessee and no hearing had been given before passing assessment order, there was a blatant violation of principles of natural justice as well as mandatory procedure prescribed in 'Faceless Assessment Scheme'. Accordingly the assessment order and notice of demand were to be set aside and matter was remanded back to Assessing Officer. (AY. 2018-19)

Interglobe Enterprises (P) Ltd v. NFAC (2021) 282 Taxman 357 (Delhi)(HC)

S. 144B : Faceless Assessment – Natural justice – Personal hearing was not granted – Assessment order, notice of demand, penalty notices were set aside [S. 143(3), 144B(7), 156, 274, Art. 226] 1482

Allowing the petition the Court held that since section 144B(7) provides for a personal hearing, assessment order, notice of demand passed under section 156 and notice for penalty were set aside and matter was to be remanded back to Assessing Officer. (AY. 2018-19)

Punjab and Sind Bank v. NFAC (2021) 282 Taxman 34 (Delhi)(HC)

1483 **S. 144B : Faceless Assessment – Natural justice – Draft assessment order – Order was passed without issuing the show cause notice – Order was set aside [S.143(3A), 144B(1)(xvi), 144C, Art. 226]**

Allowing the appeal the Court held that the draft assessment order had been passed without issuance of a show cause notice as mandated by section 143(3A)/144B, same was to be set as and matter was to be remanded back to Assessing Officer for passing a fresh assessment order under section 143(3) read with sections 144B and 144C after giving a show cause notice to assessee under section 144B(1)(xvi) of the Act. Matter remanded. (AY. 2017-18)

Ramtech Consulting v. NEAC (2021) 282 Taxman 37 (Delhi)(HC)

1484 **S. 144B : Faceless Assessment – Natural justice – Draft assessment order – Order passed without issue of show cause notice – Order was set aside.[S.143(3), 144B(1)(xvi), Art. 226]**

Allowing the petition the Court held that order passed issuance of a show cause notice-cum-draft assessment order which was a mandatory requirement of faceless assessment under section 144B(1)(xvi)of the Act. Order was set aside. (AY. 2018-19)

Rani Promoter (P) Ltd v. Addl. CIT (2021) 282 Taxman 120 / 205 DTR 349 / 322 CTR 965 (Delhi)(HC)

1485 **S. 144B : Faceless Assessment – Natural justice – Draft assessment order was not issued – Matter remanded. [S. 144B(1)(xvi)(b), Art. 226]**

High court held that the assessment order was passed without issuing a draft assessment order and variation made in declared income was carried out without issuance of a show-cause notice, since, there being violation of principles of natural justice as well as mandatory procedure prescribed under faceless assessment scheme, assessment order was set aside. Matter remanded. (AY. 2018-19)

Sams Facilities Management (P) Ltd v. NFAC (2021) 282 Taxman 487 (Delhi)(HC)

1486 **S. 144B : Faceless Assessment – A notice-cum-draft assessment was to be issued and a personal hearing was to be accorded if there was variation in income – Notification issue by Central Board of Direct Taxes is binding on department – Order was set aside [143(3), Art. 226]**

Allowing the petition the Court held that according to the Central Board of Direct Taxes' Notification dated March 31, 2021, after April 1, 2021, the assessment order could only be passed in consonance with the provisions of section 144B. Therefore, the order, dated April 15, 2021, passed under section 143(3) read with section 143(3A) and 143(3B), the notice of demand issued under section 156 and the notice issued under section 274 read with section 270A for initiating penalty proceedings were to be set aside. The Department should proceed with the assessment process by following the procedure prescribed under section 144B. A notice-cum-draft assessment was to be issued and a personal hearing was to be accorded if there was variation in income. Order was set aside. (AY. 2018-19)

Gurgaon Realtech Limited v. NFAC (2021) 436 ITR 280 / 203 DTR 129 / 321 CTR 266 (Delhi)(HC)

S. 144B : Faceless Assessment – A notice-cum-draft assessment was to be issued and a personal hearing was to be accorded if there was variation in income – Notification issue by Central Board of Direct Taxes is binding on department – Order was set aside [143(3), Art. 226] 1487

Allowing the petition the Court held that according to the Central Board of Direct Taxes' Notification dated March 31, 2021, after April 1, 2021, the assessment order could only be passed in consonance with the provisions of section 144B. Therefore, the order, dated April 15, 2021, passed under section 143(3) read with section 143(3A) and 143(3B), the notice of demand issued under section 156 and the notice issued under section 274 read with section 270A for initiating penalty proceedings were to be set aside. The Department should proceed with the assessment process by following the procedure prescribed under section 144B. A notice-cum-draft assessment was to be issued and a personal hearing was to be accorded if there was variation in income. Order was set aside. (AY. 2018-19)

Gurgaon Realtech Limited v. NFAC (2021) 436 ITR 280 / 203 DTR 129 / 321 CTR 266 (Delhi)(HC)

S. 144B : Faceless Assessment – Natural justice – Final assessment order was passed before disposal of request for grant of time to file objections to draft assessment order – Order and notice was quashed [S.143(3) 156, 270A, 274, Art. 226] 1488

Allowing the petition the Court held that the final order was passed before disposal of request for grant of time to file objections to draft assessment order. Order and notice was quashed. The National Faceless Assessment Centre could pass a fresh order in terms of the provisions of clauses (vii) to (ix) of section 144B after giving an opportunity of hearing to the assessee, qua the show-cause notice-cum-draft assessment order.(AY.2018-19)

RKKR Foundation v. NFAC (2021) 436 ITR 49 / 282 Taxman 76 (Delhi)(HC)

S. 144B : Faceless Assessment – Natural justice – Variation in taxable income – Order passed without according a personal hearing – Order vitiated – Order was set aside. [S. 143(3), 144B(7)(vii), 156, 270A, Art. 226] 1489

Allowing the petition the Court held that the since assessee had a statutory right to personal hearing under section 144B(7)(vii), failure to grant same had vitiated impugned assessment order and said order was to be set aside. Followed *Sanjay Aggarwal v. National Faceless Assessment (2021) 127 taxmann.com 637 (Delhi)(HC).* (AY. 2018-19)

Balraj Hire Purchase (P) v. NFAC (2021) 281 Taxman 583 (Delhi)(HC)

S. 144B : Faceless Assessment – Natural justice – Order passed without issuing a show cause notice – cum draft assessment order- Mandatory requirement – Order was set aside.[S. 143(3), 144B(7)(vii), 156, 270A, Art. 226] 1490

Allowing the petition the Court held that the order passed without issuance of a show cause notice-cum-draft assessment order which was a mandatory requirement under section 144B of the Act. Assessment order was set aside.(A Y. 2018-19)

Bhabani Pigments (P) Ltd v. NFAC (2021) 281 Taxman 224 (Delhi.)(HC)

1491 **S. 144B : Faceless Assessment – Natural justice – Adjournment request was not considered – Order was passed before the expiry of time given in show cause notice Show cause notice-cum-draft assessment order was set aside.[S.143(3), Art. 226]**
Allowing the petition the court held that there was there a breach of principles of natural justice, inasmuch as the Assessing Authority failed to deal with assessee's request for a short adjournment and did not even wait for time frame given in show cause notice-cum-draft assessment order to expire though the CBDT had extended time frame for completion of assessment till 30-6-2021. Show cause notice-cum-draft assessment order was set aside. (AY.2018-2019)
Blue Square Infrastructure LLP v. NFAC (2021) 436 ITR 118 / 202 DTR 113/ 281 Taxman 233 (Delhi)(HC)

1492 **S. 144B : Faceless Assessment – Natural justice – Personal hearing – Once an request is made for personal hearing, the Officer in charge ordinarily has to grant a personal hearing [S. 143, 144B(7), Art. 226]**
On writ granting the ad-interim relief the Court held that where assessee requests for a personal hearing before passing final assessment order, the officer in-charge, under provisions of clause (viii) of section 144B(7), would have to, ordinarily, grant a personal hearing. The operation of order was stayed and matter was listed on 18-8-2021. (AY. 2018-19)
Lemon Tree Hotels Ltd v. NFAC (2021) 437 ITR 111 / 202 DTR 152 / 321 CTR 137 / 281 Taxman 328 (Delhi)(HC)

1493 **S. 144B : Faceless Assessment – Order set aside by the Appellate Tribunal of Cochin Bench – Notice issued by the Faceless assessment unit from Delhi – Notice issued under faceless assessment Scheme was stayed- Respondent was directed to initiate proceedings for personal hearing by the original Assessing Officer. [Art. 226]**
Appellate Tribunal remanded assessment order to the Assessing Officer. The Notice was issued under Faceless Assessment Scheme, 2019, before the revenue Authority at Delhi. The assessee filed the writ petition stating that the nature of case required production and explanation of various documents and Faceless Assessment in Delhi may not be satisfactory in circumstances. Court held that on an appreciation of order of Appellate Tribunal, merit was found and accordingly notice issued under Faceless Assessment Scheme, 2019 was to be stayed. Court also directed the respondent to initiate proceedings for personal hearing by the original Assessing Officer. (AY. 2011-12)
Nandakumar T.G. v. ITO (2021) 281 Taxman 259 (Ker.)(HC)

1494 **S. 144B : Faceless Assessment – Natural justice – Order without affording an opportunity of personal hearing – Order was set aside. [S.143(3), 144B(7), Art. 226]**
Allowing the petition the Court held that order passed without affording an opportunity of personal hearing was set aside. (AY. 2018-19)
Naresh Kumar Goyal v. NFAC (2021) 281 Taxman 577 (Delhi)(HC)

S. 144B : Faceless Assessment – Natural justice – No reasonable opportunity was granted – Assessment order, notice of demand and notice for initiation of penalty proceedings was quashed and set aside. [S. 143(3), Art. 226] 1495

Allowing the petition the Court held that the order was passed without following the principle of natural justice. The Assessment order, notice of demand and notice for initiation of penalty proceedings was quashed and set aside. (AY. 2018-19)

RKKR Foundation v. NFAC (2021) 281 Taxman 604 (Delhi)(HC)

S. 144B : Faceless Assessment – Natural justice – Draft assessment order was not issued – Order was set aside [S. 143(3), 144B(9), Art. 226] 1496

Allowing the petition the Court held that before passing assessment order, it is mandatory for National E-Assessment Centre to provide an opportunity to assessee, by serving a notice calling upon him to show cause as to why variation proposed in Draft Assessment Order, which is prejudicial to interest of assessee, be not made. Absence of such notice would clearly be a violation of principles of natural justice leading to assessment order passed being declared void. Order was set aside. (AY. 2017-18)

RMSI (P) Ltd. v. NEAC (2021) 436 ITR 612 / 281 Taxman 571 (Delhi)(HC)

S. 144B : Faceless Assessment – Natural justice – Time was granted to respond to the draft assessment order and show cause notice by 23.59 hours on 22-4-2021 – Order was passed on 22-4-2021 at 14-11 hours – The order was quashed and directed to pass a fresh assessment order [S.143(3)] 1497

Show Cause Notice-cum-draft assessment order dated 18-4-2021 requiring assessee to respond by 23:59 hours on 22-4-2021 was issued and subsequently assessment order was passed on 22-4-2021 at 14:11 hours. Allowing the petition the Court held that assessment order was passed prior to expiry of date given for filing response to SCN-cum-draft assessment order. The principle of natural justice is violated. The order was set aside. (AY.2018-19)

Renew Power (P) Ltd. v. NEAC (2021) 281 Taxman 240 (Delhi)(HC)

S. 144B : Faceless Assessment – Natural justice – Order was passed without granting personal hearing – Order and notice of demand and notice for initiating penalty proceedings were set aside [S.143(3)), 144B(7)(vii))] 1498

Allowing the appeal the Court held that a specific request for personal hearing was made on behalf of petitioner but same was denied. Since statute itself makes provision for grant of personal hearing, revenue cannot veer away from same. The assessment order as well as impugned notice of demand and notice for initiating penalty proceedings, were set aside.

Ritnand Balved Education Foundation v. NFAC (2021) 437 ITR 114/ 202 DTR 155/ 321 CTR 141 / 281 taxman 275 (Delhi)(HC)

1499 **S. 144B : Faceless Assessment – Natural justice – Opportunity of Video Conferencing / oral hearing had not been provided – Matter remanded back to the Assessing Officer. [S. 143(3), 144B(7)]**
Allowing the appeal the Court held that the assessment order had been passed without providing fair opportunity of Video Conferencing/Oral hearing despite specific request being made. Matter was remanded back to Assessing Officer for adjudication afresh.
SDS Infratech (P) Ltd. v. NFAC (2021) 437 ITR 314 / 281 Taxman 580 (Delhi)(HC)

1500 **S. 144B : Faceless Assessment – Natural justice – Order was passed without affording an opportunity of personal hearing – Order was set aside [S. 57, 92C, 143(3), Art. 226]**
Allowing the petition the Court held that the order was passed without affording an opportunity of personal hearing. Order was set aside. (AY. 2018-19)
Sanjay Aggarwal v. NFAC (2021) 436 ITR 180 / 203 DTR 73/ 321 CTR 145 / 281 Taxman 282 (Delhi)(HC)

1501 **S. 144B : Faceless Assessment – Natural justice – Order passed without issue of show cause notice – cum draft assessment order – Order was set aside.[S. 143(3), 156, 270A, Art. 226]**
Allowing the petition the court held that the,order passed without issue of show cause notice – cum draft assessment order was set aside.
Smart Vishwas Society v. NFAC (2021) 281 Taxman 226 (Delhi)(HC)

1502 **S. 144B : Faceless Assessment – Natural justice – Request for an adjournment was refused – Order passed and notices for initiating penalty proceedings were to be set aside.[S. 143(3), 156, 270A, Art. 226]**
Allowing the petition the Court held that the Assessing Officer failed to deal with request for according an adjournment in matter and in view of difficulty faced by assessee in filing response/objection to show cause notice-cum-draft assessment order because of his son and wife having been admitted to hospital, impugned assessment order passed by revenue as well as notices for initiating penalty proceedings were to be set aside.
Sudhir Desh Ahuja v. NFAC (2021) 281 Taxman 279 / 205 DTR 149 (Delhi)(HC)

1503 **S. 144B : Faceless Assessment – Natural justice – Order was passed without issuing show cause notice-cum-draft assessment – Order was set aside [S.143(3), 156, 270A, 271AAC, Art. 226]**
Allowing the petition the Court held that the assessment order was passed without issuing show cause notice-cum-draft assessment on assessee in Faceless Assessment proceedings, same would be in violation of section 144B of the Act Therefore, assessment order notice of demand issued under section 156 and notice for initiation of penalty proceedings issued under sections 270A and 271AAC(1) were set aside (AY. 2018-19)
Toplight Corporate Management (P) Ltd v. NFAC (2021) 281 Taxman 451 (Delhi)(HC)

S. 144B : Faceless Assessment – Natural justice – Order passed making some variations without passing draft assessment order and affording opportunity of hearing – Order was set aside [S.143 (3), Art. 226] 1504

Allowing the petition the Court held that an assessment order making some variations to income as offered by assessee without passing draft assessment order and affording opportunity of hearing to assessee was set aside (AY. 2018-19)

YCD Industries v. NFAC (2021) 437 ITR 119 / 202 DTR 146 / 321 CTR 106 / 281 Taxman 475 (Delhi)(HC)

S. 144B : Faceless Assessment – Natural justice – Stay of demand – Order was passed before expiry of date mentioned in the show cause notice. [S. 156, 271AAC(1), Art. 226] 1505

Show cause notice (SCN) dated 18-3-2021 was served on assessee calling upon assessee to respond to draft assessment order. However before expiry of time granted in SCN i.e. 26-3-2021, final assessment order dated 25-3-2021 had been passed and notice of demand under section 156 had also been issued. The assessee challenged the assessment order and notice of demand. Court held prima facie, submission that there had been a breach of principles of natural justice, appeared to be correct. Notice was to be issued to revenue and interim stay on notice of demand was to be granted.

BL Gupta Construction (P.) Ltd. v. NEAC (2021) 280 Taxman 306 (Delhi)(HC)

S.144B : Faceless Assessment – Variation in income – Request made to personal hearing was not complied with – System has to be transparent and person administering it have to be accountable – Order was set aside. [S.142(1), Art. 226] 1506

The assessment was completed under faceless assessment Scheme without providing an opportunity of personal hearing. The assessment was challenged by filing writ petition on the ground that assessment order has been passed under Section 143(3) read with Section 144B of the Act, is contrary to the statutory scheme incorporated under Section 144B of the Act. and the impact of such an infraction, as captured in Section 144B(9) of the Act, is that, such assessment proceedings are non-est in the eyes of law. Allowing the petition the Court held that perusal of clause (vii) of Section 144B (7) would show that liberty has been given to the assessee, if his/her income is varied, to seek a personal hearing in the matter. The usage of the word 'may' cannot absolve the Revenue from the obligation cast upon it, to consider the request made for grant of personal hearing. Besides this, under sub-clause (h) of Section 144B (7)(xii) read with Section 144B (7)(viii), the Revenue has been given the power to frame standards, procedures and processes for approving the request made for according personal hearing to an assessee who makes a request qua the same. No such standards, procedures as also processes have been framed, as yet. Accordingly the order was set aside. (AY. 2018-19)(WP No. 5741 / 2021 dt 2-6-2021)

Sanjay Aggarwal v. NFAC (Delhi)(HC) www.itatonlin.org.

1507 **S. 144B : Faceless Assessment – Assessment order was passed without issuing show cause notice or draft assessment order – Violation of principle of natural justice – Alternative remedy is not bar – Operation of assessment order was stayed [S.143 (3), Art. 226]**
The case of the assessee selected for scrutiny assessment stating "Compliance with TDS provision on payment outside India." The Assessing Officer issued various notices calling for information. The assessee duly replied to all the notices. Thereafter the Assessing Officer straight away passed the assessment order without giving any show cause notice /and /or draft assessment order. Moreover, in the assessment order various new issues were raised by the Assessing Officer. On writ following the ratio in Whirpool Corporation v. Registrar Trade Marks Mumbai (1998)(8) SCC 1, wherein it was held that the alternative remedy cannot be a bar to maintain writ wherein principle of natural justice is in challenge. High Court issued the notice and stayed the operation of the order. (AY. 2018-19)(WPNo. 6047 / 2021 dt 27-5-2021)
Devgiri Exports Ltd. v. ITO (NFAC) (Raj.)(HC) www.itatonline.org

1508 **S. 144C : Reference to dispute resolution panel – Natural justice – Draft assessment order – Objections cannot be rejected merely on the ground that non- appearance of party at time of hearing – Order set aside [Art. 14, 226]**
Allowing the petition the Court held that the principles of natural justice being an integral part of article 14 of the Constitution of India, the direct violation of the provisions in this regard is a ground for entertaining a writ petition. Where the violation of principles of natural justice is raised and interpretation of the provisions of the Act is imminent, it is necessary to entertain the writ petition to ascertain the nature of rights conferred to an assessee or the Assessing Officer under the provisions of the Act. While doing so, if the rights violated are patent and caused infringement of right to either of the parties, the aggrieved person is entitled to appropriate relief. In the event of glaring violation of the provisions of the Act, the High Court has to provide appropriate relief to the aggrieved person. In other words, if the point of jurisdiction or enforcement of right was directly hitting the provisions of the Income-tax Act then the High Court has to entertain a writ petition. In the event of failure, the High Court would be failing in its constitutional duty to restore the valuable right of an assessee conferred under the Income-tax Act.
An order passed rejecting the objections submitted by the assessee, merely on the ground that the assessee has not appeared on the hearing date, is infirm and quashed. (AY. 2011-12)
Sesa Sterlite Ltd. v. DRP (2021) 438 ITR 42 / 207 DTR 313 / 323 CTR 522 (Mad.)(HC)

1509 **S. 144C : Reference to dispute resolution panel – Order passed without following the procedure – Not a procedural irregularity – Not a curable defects – Final order passed without the draft assessment order was not valid. [S.292B, Art. 226]**
Court held that the requirement under section 144C(1) to first pass a draft assessment order and to provide a copy thereof to the assessee is a mandatory requirement which gives a substantive right to the assessee to object to any variation, that is prejudicial to it. The procedure prescribed under section 144C of the Act is a mandatory procedure and not directory. Failure to follow the procedure under section 144C(1) would be a jurisdictional error and not merely procedural error or irregularity but a breach of a

mandatory provision. Therefore, section 292B of the Income-tax Act cannot save an order passed in breach of the provisions of section 144C(1), the same being an incurable illegality. Accordingly the final assessment order had been passed without the draft assessment order as contemplated under section 144C(1). The order was not valid. (AY. 2017-18)
SHL (India) Pvt. Ltd. v. Dy. CIT (2021) 438 ITR 317 / 282 Taxman 334 / 204 DTR 233 / 321 CTR 655 (Bom.)(HC)

S. 144C : Reference to dispute resolution panel – Power of enhancement – Any matter relating to assessment – Writ was dismissed. [S.92C, 144C(8), Art. 226] 1510
Dismissing the petition the Court held that DRP being a specialised Panel is vested with a power to propose variations relating to any matter arising out of assessment proceedings and Explanation to sub-section (8) of section 144C stipulates that enhancement is to be made with reference to matter arising out of assessment proceedings relating to draft assessment order. The Court also held that there is no impediment as such for DRP to consider any matter arising out of assessment proceedings relating to draft assessment order and no matter, whether such an issue was discussed in draft assessment order or not. However the issue it should not be totally unconnected with assessment proceedings or draft assessment order. (AY. 2013-14)(SJ)
Delphi – TVS Diesel Systems Ltd. v. ITO (2021) 323 CTR 508 / 207 DTR 329 / (2022) 440 ITR 310 (Mad.)(HC)

S. 144C : Reference to dispute resolution panel – Final assessment without waiting for decision of DRP – Order was set aside [S. 143(3), Art. 226] 1511
When an objections against said draft assessment order before DRP, final assessment order passed by Assessing Officer without waiting for decision of DRP upon such objections was unjustified and was set aside. (AY. 2017-18)
Anand NVH Products (P) Ltd. v. NEAC (2021) 282 Taxman 485 (Delhi)(HC)

S. 144C : Reference to dispute resolution panel – Draft assessment order – Alternative remedy – Writ petition was dismissed [S. 253, Art. 226] 1512
Dismissing the petition the Court held since assessee had an alternative efficacious statutory remedy of filling an appeal before Tribunal, writ petition was to be dismissed. (AY. 2018-19)
Core Diagnostics (P) Ltd. v. NEAC (2021) 282 Taxman 30 (Delhi)(HC)

S. 144C : Reference to dispute resolution panel – Violation of principle of natural justice – Order was set aside [Art. 226] 1513
Allowing the petition the Court held that since reply submitted by assessee to the show cause notice was not considered by revenue while passing assessment order the said order prime facie suffered from perversity as well as non compliance with principle of natural justice. Order was set aside.
Manickan Ravichandran v. Addl. CIT (2021) 282 Taxman 263 (Ker.)(HC)

1514 **S. 144C : Reference to dispute resolution panel – Draft assessment order – Tribunal remanding the matter – Assessing Officer passing final order – Passing of draft order is mandatory – Order quashed and remanded [S.92CA(4), 143(3), 254(1)), Art. 226]**
Allowing the petition the Court held that when the law mandated a particular thing to be done in a particular manner, it had to be done in that manner. The final assessment order under section 144C read with section 143(3) had been passed without jurisdiction. Once the case was remitted back to the Assistant Commissioner/Transfer Pricing Officer, it was incumbent on their part to have passed a draft assessment order under section 143(3) read with section 92CA(4) and section 144C(1). They could not bypass the statutory safeguards prescribed under the Act and deny the assessee the right to file an application before the Dispute Resolution Panel. The final order was quashed and the case was remitted back to the Assistant Commissioner to pass a draft assessment order.(AY. 2009-10 to 2011-12)(SJ)
Durr India Private Limited v. ACIT (2021) 436 ITR 111 / 203 DTR 419 / 323 CTR 86 (Mad.)(HC)

1515 **S. 144C : Reference to dispute resolution panel – Transfer Pricing – Arm's length price – Draft Assessment order mandatory – Not curable defects – Order quashed [S.143(3), 271(1)(c)]**
Allowing the petition the court held that the assessment order had been passed inadvertently by choosing the wrong field in the Department software would not just be an over-simplification, but a wrong statement since the assessment had been styled consciously, as an order of regular assessment only. The section under which the assessment was made was stated to be section 143(3). The total income had been assessed and the order was accompanied by a computation sheet determining the demand payable by the assessee along with interest. Penalty proceedings had been initiated in terms of section 271(1)(c). It was clear that the Assessing Officer had consciously proceeded to pass an order of regular assessment, losing sight of the scheme of assessment in terms of section 144C, which he was statutorily mandated to follow and apply. The order was quashed.(AY.2016-17)
GE Oil and Gas India Private Ltd. v. CIT (2021) 436 ITR 168 (Mad.)(HC)

1516 **S. 144C : Reference to dispute resolution panel – Arm's length price – Remand by Tribunal – Order is valid – Entire procedure under section 144C need not be repeated [S. 254 (1), Art. 226]**
Dismissing the petition the Court held that Tribunal in clear terms, directed the Assessing Officer to decide the issue regarding the application of method, i.e., whether comparable uncontrolled price method or the transactional net margin method as the most appropriate method. Thus, a specific issue was directed to be decided by the Assessing Officer. Once the procedure had been followed the Tribunal remitted the matter back to decide a particular issue with a specific finding. It was sufficient if the remitted issue was decided by the Assessing Officer/Transfer Pricing Officer and a final assessment order was passed. Repetition of the same procedure would become an empty formality, which was not intended under the provisions. The order passed by the Assessing Officer was valid.(AY. 2012-13)
Enfinity Solar Solutions Private Limited v. Dy. CIT (2021) 436 ITR 188 / 204 DTR 201 / 321 CTR 716 / 282 Taxman 210 (Mad.)(HC)

S. 144C : Reference to dispute resolution panel – Final assessment order without first passing a draft assessment order – Order was set aside [Art. 226] 1517

Allowing the petition the Court held that the final assessment order passed without first passing a draft assessment order, was unjustified for failure to follow procedure prescribed under section 144C. Order was set aside (AY. 2010-11 to 2011-12)

Volex Interconnect (India)(P) Ltd v. ACIT (2021) 281 Taxman 269 (Mad.)(HC)

S. 144C : Reference to dispute resolution panel – Pendency of objections to draft assessment order – Final assessment order is held to be without jurisdiction. [S. 143 (3), 144C(3)] 1518

Allowing the petition the Court held that when objections to draft assessment order filed were pending disposal with DRP, final assessment order passed by Assessing Officer was without jurisdiction. (AY. 2017-18)

SRF Ltd v. NFAC (2021) 281 Taxman 574 / 204 DTR 153 / 322 CTR 837 (Delhi)(HC)

S. 144C : Reference to dispute resolution panel – Arm's length price – Objection considered by the Dispute Resolution panel – Alternative remedy – Every error of an authority is not open to judicial review merely by terming it a "jurisdictional error", although it may, at a later stage, be set aside for being erroneous- Writ is not maintainable [S.92C, 92CA, 144C(5), 253, Art. 14, 19(1)(g), 226, 265] 1519

Dismissing the petition the Court held that since an effective alternative remedy was available the writ petition was not maintainable. The directions issued by the Dispute Resolution Panel were binding on the Assessing Officer but that in itself was not a sufficient ground to exercise jurisdiction under article 226. The assessee had the statutory remedy of filing an appeal under section 253 before the Tribunal against the order passed by the Assessing Officer giving effect to the directions issued by the Dispute Resolution Panel under sub-section (5) to section 144C. The reasons given by the Dispute Resolution Panel for upholding the action of the Transfer Pricing Officer could not be analysed in writ jurisdiction and such reasonings would have to be tested before the appropriate forum. The factual background would have to be necessarily evaluated by the Assessing Officer while framing the assessment order. Every error of an authority is not open to judicial review merely by terming it a "jurisdictional error", although it may, at a later stage, be set aside for being erroneous. (AY.2016-17)

Sabic India Private Limited v. UOI (2021) 434 ITR 563 / 280 Taxman 158 / 207 DTR 193/ 323 CTR 325 (Delhi)(HC)

S. 144C : Reference to dispute resolution panel – Limitation – Notice by Dispute Resolution Panel four years after direction by Tribunal – Barred by limitation. [S. 144C(13), 153, 254(1), Art. 226] 1520

Allowing the petition the Court held that notice by Dispute Resolution Panel four years after direction by Tribunal is barred by limitation by application of provisions of section 153(2A) of the Act.(AY.2009-10, 2010-11)(SJ)

Roca Bathroom Products Private Limited v. DRP (2021) 432 ITR 192 / 127 taxmann.com 332 / 203 DTR 55 / 321 CTR 496 (Mad.)(HC)

1521 **S. 144C : Reference to dispute resolution panel – Selection for scrutiny – Draft assessment order – Participating in assessment proceedings – Notice by TPO and draft assessment order is held to be valid. [Art. 226]**

Dismissing the appeal against the single judge order, the division bench held that the single judge was right in holding that to say that the reason for selection of scrutiny was only for numerical reconciliation was an over simplification of the reason stated for selection. In fact, the single judge had observed that the officer might have been more detailed in the choice of words employed so as to specifically refer to the issue of total employee cost. However, this was not fatal, as the reason for selection by the computer aided selection system had been produced and placed on record by the officer while seeking approval of the Principal Commissioner for reference to the Transfer Pricing Officer. The single judge rightly concluded that the assessee had not only cooperated and participated in the conduct of assessment, but had also filed objections before the Dispute Resolution Panel that were pending disposal. Order of single judge is affirmed. (AY.2016-17)

Transsys Solutions Private Limited v. ACIT (2021) 432 ITR 375/ 202 DTR 94 /321 CTR 68/ 280 Taxman 150 (Mad.)(HC)

Editorial : Decision of single judge is affirmed, Transsys Solutions Private Limited v. ACIT (2021) 17 ITR-OL-418 / 202 DTR 103/ 321 CTR 77 (Mad.)(HC)

1522 **S. 144C : Reference to dispute resolution panel – Where the matter was remanded by the ITAT for de novo assessment, the entire procedure under 144C had to be followed. [S.254 (1)]**

Where the matter was remanded to the AO for passing an order of assessment de novo, the entire procedure prescribed under section 144C had to be followed by the AO starting from passing a draft assessment order. Since the AO had straightaway passed the final assessment order, the proceedings were null and void. Not following the prescribed procedure is not a technical or a procedural defect, which can be cured. (AY. 2007-08)

PCIT v. Headstrong Services India Pvt. Ltd. (2021) 197 DTR 329 /318 CTR 369 / 278 Taxman 224 (Delhi)(HC)

1523 **S. 144C : Reference to dispute resolution panel – No variation in income – Draft assessment order was not warranted. [S.92C, 143 (3)]**

Tribunal held that Assessing Officer did not intend to make any variation in income of assessee, assessment order should have been framed as per provisions of section 153 read with section 143(3). Draft assessment order under section 144C(1) was not warranted. (AY. 2014-15)

Silver Bella Holdings Ltd. v. ACIT (IT) (2021) 189 ITD 678 (Delhi)(Trib.)

1524 **S. 144C : Reference to dispute resolution panel – Issue of notice of demand along with draft assessment order – Assessment order is not bad in law [S. 92C]**

Tribunal held that sending a draft assessment order along with notice of was a legal nullity as no valid demand could be raised under draft assessment order. Therefore sending the demand notice could not vitiate assessment proceeding. (AY. 2012-13)

Himalaya Drug Company v. ACIT (2021) 188 ITD 547 (Bang.)(Trib.)

S. 144C : Reference to dispute resolution panel – Transfer pricing – Adjustment on account of Notional Income in respect of interest on delayed receivables was directed to be deleted on verifying the same with the credit period in master service agreement, and also verifying whether the same is subsumed in the working capital adjustments. 1525
During Assessee Company's Assessment, on matter being referred to Transfer Pricing officer, an adjustment on account of notional income in respect of interest on delayed receivables based on actual realizations on each invoices was proposed and A.O made the adjustment in the final Assessment Order.
On Appeal Tribunal directed to rework the adjustment made based on credit period as stated in master service agreement which was 90 days as against 30 days considered in the adjustment made in the Order. In the event if it exceeds 90 days, but if found to be subsumed in working capital adjustments than no adjustment be made. In case any trade payables that falls outside 90 days period and not subsumed, than adjustment should be restricted to Libor + 300 basis points. (AY. 2015-16)
Zynga Game Network India Pvt Ltd. v. CIT (2021) 87 ITR 352 (Bang.)(Trib.)

S. 144C : Reference to dispute resolution panel – Form no 35A not verified properly – Directed DRP to accept the original form and decide on merit. [Form No. 35A No Rule 34 (5)] 1526
The assessee a resident of Mauritius invested in Share capital of Indian Companies. The Assessing Officer issued draft assessment order wherein he treated the loss as non genuine and not allowed to carried forward. The assessee filed an appeal before the DRP. The DRP dismissed the appeal on the ground that verification was not done properly.. On appeal the Tribunal directed the DRP to accept the original form No 35A filed by the assessee and to proceed with the matter upon giving an opportunity of hearing and to pass an order in accordance with law. (AY. 2015-16)
Rivendell PE Ltd v. ITO (2021) 186 ITD 266 (Mum.)(Trib.)

S. 144C : Reference to dispute resolution panel – Draft assessment order – Cannot be assumed to be final assessment [S. 143(3)] 1527
Tribunal held that when Assessing Officer had specifically stated that order was passed under section 144C and had given heading of order as Draft Assessment Order it would be legally incorrect to hold that order was actually a Final Assessment Order passed under section 143(3) merely on the basis of attachment of an invalid and non-est notice of demand in Form No. 7 and notice of penalty under section 274 of the Act, especially when no appeal is filed before the CIT (A). (AY. 2011-12)
Pricewaterhouse Coopers (P.) Ltd. v. DCIT (2021) 186 ITD 88 / 210 TTJ 419 / 203 DTR 201 (Kol.)(Trib.)

S. 144C : Reference to dispute resolution panel – Form no 35A could not be signed by Director – Scanned copy signed by director residing other country – Rejection of Form No 35A was quashed – Directed the DRP to decide the issue on merits. [S. 143(3)] 1528
Assessee, a resident of Mauritius, a draft assessment order, was passed under section 143(3), read with section 144C of the Act. Against said order, assessee preferred objection along with Form No. 35A. During course of proceedings before DRP, it was

found that Form No. 35A filed by assessee was not verified as per procedure laid down since signature of person on verification page was a copy of original signature. Assessee submitted that Mauritius was hit by a cyclone leading to heavy rainfall at relevant time and thus, Director present in Mauritius was not available for signing and forwarding original objections,thus, to meet deadline assessee got original objections signed by one of its directors available in USA and filed a scanned copy.DRP, however, rejected assesssee's plea in limine. On appeal the Tribunal held that – It when concerned director was not available in Mauritius, assessee with bona fide intention got Form No. 35A signed from other director available in USA and filed scanned document on due date even if it was a defect in eyes of law, it was a procedural defect curable in nature. Accordingly the order of DRP rejecting Form No. 35A was to be quashed and, DRP was to be directed to proceed with matter in accordance with law. (AY. 2015-16)
Rivendell PE, LLD. v. ACIT (IT) (2021) 186 ITD 266 (Mum.)(Trib.)

1529 **S. 144C : Reference to dispute resolution panel – Draft assessment order – Limitation period – Where assessee files objections before Dispute Resolution Panel within prescribed time Assessing Officer bound to wait for directions of Dispute Resolution Panel – Final order without waiting for directions of panel – Assessment order without jurisdiction [S.143(3)]**

Allowing the appeal the Tribunal held that in terms of sub-section (2) of section 144C of the Act, the Assessing Officer was duty-bound to give the assessee 30 days' time to either file objections before the Dispute Resolution Panel against the draft order or to accept the draft order. Even if the assessee accepted the draft order or did not prefer to go before the Dispute Resolution Panel within 30 days, the time prescribed for the Assessing Officer to frame the final order under section 144C(3) of the Act as given in sub-section (4) of section 144C of the Act was within one month from the end of the month, i. e., between February 1, 2020 and February 28/29, 2020. However, the assessee had preferred objections before the Dispute Resolution Panel within 30 days of receipt in terms of sub-section (2)(b) of section 144C of the Act on January 24, 2020 which fact was intimated to the Assessing Officer by letter dated January 27, 2020 at the office of Assessing Officer. The Assessing Officer ought to have awaited the decision of the Dispute Resolution Panel as envisaged under sub-section (5) of section 144C of the Act. The directions of the Dispute Resolution Panel were binding on the Assessing Officer in terms of sub-section (13) of section 144C of the Act and after the directions of the Dispute Resolution Panel, the Assessing Officer could have framed the assessment without providing any opportunity to the assessee as envisaged in sub-section (13) of section 144C of the Act. The Assessing Officer having failed to wait for the direction of the Dispute Resolution Panel and having arbitrarily framed the final assessment order the final assessment order passed by him was vitiated. The Assessing Officer had no jurisdiction to frame the final assessment order on January 27, 2020 under section 144C(3) of the Act. The final assessment order under section 144C(3) of the Act dated January 27, 2020 and the demand notice under section 156 of the Act were therefore, null in the eyes of law and liable to be quashed.(AY.2016-17)
Century Plyboards (India) Ltd. v. CIT (2021) 85 ITR 5 / 209 TTJ 273 (SN)(Kol.)(Trib.)

S. 144C : Reference to dispute resolution panel – Assessment – Limitation – Amalgamation of companies-Draft assessment order passed in name of amalgamated company – Not a curable defect – Order void ab initio [S. 143(3), 144C(15)(b), 153 292B] 1530

Tribunal held that in terms of section 144C(15)(b) of the Income-tax Act, 1961, the taxpayer in whose name the transfer pricing proceedings had been concluded and draft assessment order had been passed was not an "eligible assessee", but the erstwhile C, which was not in existence on the date of the orders since C got amalgamated with V with effect from April 11, 2016 and could not be considered an "eligible assessee". Framing the transfer pricing order on the basis of which the draft assessment order had been passed in the name of amalgamating entity was not a curable defect and the assessment framed was bad in law. In the assessee's own case for the assessment year 2014-15, the Tribunal had decided in the assessee's favour by treating the order passed by the Transfer Pricing Officer in the name of the amalgamating entity as non est. The assessment in question was liable to be quashed. As a result, the other grounds were not considered.(AY.2015-16)

Vedanta Ltd. v. ACIT (2021) 85 ITR 565 / 200 DTR 153 / 210 TTJ 993 (Delhi)(Trib.)

S. 144C : Reference to dispute resolution panel – Power of enhancement – DRP has the power to enhance the assessment on an issue not part of assessment order. [S. 145A] 1531

Tribunal held that the DRP has the power to enhance the assessment on the issue of stock write off though the said item was not considered by the AO in the draft assessment order. (AY. 2013-14)

Bilcare Ltd. v. ACIT 214 TTJ 880 (Pune)(Trib.)

S. 144C : Reference to dispute resolution panel – Limitation – Order set aside by the Appellate Tribunal – Amended section is not applicable – Order void ab initio [S. 143(3), 144C(13), 153(2A, 254(1)] 1532

The assessee challenged the validity of its assessment Order claiming the assessment completed under section 144C(13) to be bad in law, void ab initio and barred by limitation. Allowing the appeal, that when the Tribunal set aside the original assessment made under section 143(3), the Assessing Officer erroneously framed a draft assessment Order in terms of section 144C(1), which was clearly not applicable to the case. Since section 144C was introduced by the Finance (No. 2) Act, 2009 with effect from October 1, 2009, the amendment was applicable only from the assessment year 2011-12. Hence, the final assessment Order framed on August 19, 2011 on the direction of the Dispute Resolution Panel was barred by limitation in the light of section 153(2A). As a result, the assessment Order was quashed as null and void. (AY.2003-04)

A.T. Kearney Ltd. v. Add. DIT (IT) (2021) 91 ITR 710 (Delhi)(Trib.)

S. 145 : Method of accounting – Completed contract method – Accepted in earlier years – Method cannot be substituted by the percentage competition method. 1533

Held that where an assessee has all along been following the completed contract method and the Department has accepted it over several years, the method of accounting cannot be substituted by the percentage completion method in the absence of any finding

by the Assessing Officer that the completed contract method distorts the profits of a particular year. (AY.2013-14, 2014-15, 2015-16, 2016-17)
Ekta Housing Pvt. Ltd. v. Dy. CIT (2021) 89 ITR 56 (Mum.)(Trib.)

1534 **S. 145 : Method of accounting – Provision for software expenses – Allowable as deduction.[S. 37(1)]**
Held that when an assesse following mercantile system of accounting provision for software expenses as per the accounting standard allowable as deduction. (AY.2011-12)
Infosys BPM Ltd. v. Dy. CIT (2021) 87 ITR 193 (Bang.)(Trib.)

1535 **S. 145 : Method of accounting – Real estate business – Project competition method – Advance from customers – Estimate at 10 percent of advance received during the year is proper – Advance carried over from earlier years no addition can be made. [S. 28(1), 145(3)]**
Held that the profit percentage of 15 per cent of the total advances from customers was high, unreasonable and excessive. At the same time, the contention of the assessee that the profit may be estimated at five per cent was not acceptable. Considering the entire facts and circumstances of the case, the Assessing Officer was to estimate the profits at 10 per cent of the advances received from customers during the financial year 2013-14 relevant to assessment year 2014-15 only. (AY.2014-15)
Srabani Constructions Pvt. Ltd. v. ACIT (2021) 87 ITR 7 (SN)(Cuttack)(Trib.)

1536 **S. 145 : Method of accounting – Accrual of income – Real income theory – Interest income – Realisation becomes impossible – Income cannot be assessed on hypothetical basis. [S. 4, 5]**
Allowing the appeal of the assessee the Tribunal held that the concept of accrual of income needs to be considered in the light of the real income theory. Where accrual of income takes place but its realisation becomes impossible, such hypothetical income cannot be charged to tax. Addition made in respect of interest on deposit with the Rupee Co – Operative Bank Ltd was deleted. (dt. 11-5-2021)(AY. 2013-14)
Nutan Warehousing Co Pvt Ltd v. ACIT (2021) BCAJ- July – P. 46 (Pune)(Trib.)

1537 **S. 145 : Method of accounting – Change of accounting – Revenue expenditure allowable as deduction – Loan processing fees on term loan, stamp charges, share issue expenses – Allowable as deduction, though shown as prepaid expenses or deferred expenditure in books of account. [S. 37(1)]**
Held that when the assessee has given reasons for change of accounting method,revenue expenses are allowable as deduction. Tribunal also held that Loan processing fees on term loan, stamp charges, share issue expenses – Allowable as deduction, though shown as prepaid expenses or deferred expenditure in books of account.(AY. 2016-17)
DCIT v. Hinduja Leyland Finance Ltd. (2021) 191 ITD 529 (Chennai)(Trib.)

S. 145 : Method of accounting – Amount reflected in form No 26AS – CPC – Burden is on revenue to show that the amount was received by the assessee.[S. 143(3), 194J, Form No 26AS] 1538

Tribunal held that merely on the basis of entries in form No 26AS of the deductor addition cannot be made. Burden is on the revenue to verify whether the assessee has rendered any services. (AY. 2017-18)

Dr. Swati Mahesh Vinchurkar v. DCIT (2021) 191 ITD 434 (Surat)(Trib.)

S. 145 : Method of accounting – Alleged under invoicing – Export to sister concern – Books of account was audited – Addition was made on unscientific and improper basis – Addition was deleted. 1539

Held that the books of the assessee had duly audited all books of account, method of comparison and estimation adopted by Assessing Officer in making such huge addition was unscientific and improper. Deletion of addition by CIT (A) was confirmed.(AY. 2009-10)

ITO v. Bajaj Herbals (P.) Ltd. (2021) 191 ITD 41 (Ahd.)(Trib.)

S. 145 : Method of accounting – Fall in GP – Fall in price of cardamom – Exceptional circumstances – Increase in turnover by 130 times – Rejection of books of account – Estimation of GP was deleted. 1540

Tribunal held that trader explained substantial fall in GP rate due to fall in price of cardamom by almost half rate at end of year as compared to beginning of year, and there was exceptional circumstances of increase in turnover by 130 times, there would be no rational basis for estimating GP rate by Assessing Officer even though he had rejected books of account (AY. 2012-13)

Sanjay Agarwal v. ITO (2021) 191 ITD 495 / 87 ITR 607 (Jaipur)(Trib.)

S. 145 : Method of accounting – Project completion method – Builder – Revised Guidance Note of 2012 issued by ICAI – 25% of on money was taxed on receipt basis was deleted – On money has to be assessed as business receipts and not as cash credits. [S. 68] 1541

Held that the assessee following project completion method, income quantified on amount of on-money received by assessee on sale of flats ought to be taxed only in year in which project had completed construction in accordance to conditions prescribed as per Revised Guidance Note of 2012 issued by ICAI and thus, income estimated at rate of 25% on-money and taxed in year of receipt was unjustified and deleted. Income estimated at 12 % of on money as against commissioner estimated at 25% of on money. On money cannot be assessed as cash credits it has to be assessed as business receipts. (AY. 2013-14, 2014-15)

DCIT v. Adarsh Industrial Estate (P.) Ltd. (2021) 190 ITD 878 (Mum.)(Trib.)

S. 145 : Method of accounting – Business of supply of processes, designing, construction etc. – Completed contract method of accounting – Rejection of books of account is held to be not justified. 1542

Tribunal held that the revenue had accepted accumulation for previous assessment years 2004-05 and 2005-06 and this was the third year of accumulation under projects.. The

Assessing Officer was not justified in rejecting the completion project method followed by the assesseee. (AY. 2008-09)
UHDE India (P.) Ltd. v. ACIT (2021) 190 ITD 777 / 211 TTJ 339 (Mum.)(Trib.)

1543 **S. 145 : Method of accounting – Rejection of books of account and estimate of net profit at 7% as against net profit of 6.5% shown by the assessee – Adoption of net profit at 7% was held to be unjustified.[S.145 (3)]**
Held that since assessee had declared net profit at 6.5 per cent on turnover of 7.25 crores which was higher than net profit declared by it in preceding year, in absence of any reasonable basis, criteria or guidelines applied by Assessing Officer, adoption of net profit at 7 per cent was not justified. (AY. 2013-14)
L.P.R. Construction v. DCIT (2021) 190 ITD 439 (All.)(Trib.)

1544 **S. 145 : Method of accounting – Valuation of closing stock of dust /scrap – Ad-hoc addition was held to be not justified.**
Held that the assessee had explained reasons for not maintaining quantitative details and maintaining stock register of such dust stock process. Ad-hoc addition made by the Assessing Officer was deleted. (AY. 2010-11)
Universal Stone Crushing Co. Dala v. ITO (2021) 190 ITD 415 (SMC)(All)(Trib.)

1545 **S. 145 : Method of accounting – Sale proceeds – Difference between books of account and as per TDS certificate – Only embedded portion of profits was to be taken into – addition cannot be made of entire turnover. [S.69A]**
Held that where there was difference between assessee's books of account and accounts as per TDS certificate, then on said difference, only embedded portion of profits was to be taken into consideration and addition was to be made thereon. Total sale does not represent profit of assessee and only net profit rate has to be adopted and once net profit is adopted. There was no justification in making addition of entire turnover to income of assessee (AY. 2013-14)
Sohan Lal Aggarwal v. ACIT (2021) 190 ITD 850 (Delhi)(Trib.)

1546 **S. 145 : Method of accounting – Ad hoc method of accounting – Followed by AO and assessee – Held unacceptable – Remand- Fresh consequential grounds – Permissible – Matter remanded to the Assessing Officer.**
Assessee included 15% of work in progress as income. During reassessment AO increased percentage by further 15%. Tribunal rejected holding that the AO ought to have guided the assessee to follow accepted method of accounting to declare profits. (Circular No. 14/1955 dt. 11.04.1955, followed). Followed CIT v. British Paints India (1991) 188 ITR 44 (SC) where Supreme Court rejected use of unaccepted method of accounting. Remanded matter to AO to assess income basis recognised methods of accounting. Fresh consequential ground for not allowing TDS credit. Since no new facts required, grounds admitted, *National Termal Power Ltd v. CIT (1999) 229 ITR 383 (SC) and Jute Corporation of India Ltd (1991) 187 ITR 688 (SC) Nirmala L. Mehta v A.Balasubramiam (2004) 269 ITR 1 (Bom)(HC),* followed). (AY. 2011-13, 2012-13)
Monarch Plaza Comforts Pvt. Ltd. v. ACIT (2021) 87 ITR 24 (SN)(Bang.)(Trib.)

S. 145 : Method of accounting – Rejection – Non production of complete muster rolls – Books of accounts audited – Estimation of profit at 11.5 % is directed to be deleted. 1547
Held that the Assessing Officer has specified any irregularity in the books of account which were duly audited, there was no justification for rejection of books of account on the ground of non production of complete muster rolls. Addition of estimation of profit at 11.5% of net profit is directed to be deleted. (AY. 2014-15)
Pooranchand Agarwal v. Dy.CIT (2021) 206 DTR 27 / (2022) 216 TTJ 507 (Raipur)(Trib.)

S. 145 : Method of accounting – Books of account – Estimation of gross profit – to be made on reasonable basis 1548
Held that where the books of account have been rejected, the appropriate course of action for the Assessing Officer is to estimate the gross profit in the hands of the assessee on some reasonable basis and in this regard, past history provides a reliable and reasonable basis for estimating gross profit in the hands of the assessee. The average gross profit for the past two assessment years as available on record was 25.18 per cent. as against 24.80 per cent declared by the assessee. Therefore, the addition to the extent of differential of 0.38 per cent was to be sustained and the remaining addition sustained by the Commissioner (Appeals) was to be deleted. Followed ACIT v. Allied Gems Corporation. (AY. 2012-13)
Anil Kumar Garg v. ITO (2021) 91 ITR 68 (SN)(Jaipur)(Trib.)

S. 145A : Method of accounting – Valuation of closing stock – Diminution in value of inventory due to obsolescence – Cost or net realisable value which ever is less – Certificate of Auditor – Addition cannot be made. 1549
Allowing the appeal of the asseessee the Tribunal held that diminution in value of inventory due to obsolescence the valuation is done on the basis of cost or net realisable value which ever is less on the basis of certificate of Auditor. Addition made by the Assessing Officer is deleted. The Tribunal also held that the diminution in the value of stock has to be taken in to consideration on the balance sheet date notwithstanding that fact the same was quantified after the said date (AY. 2013-14)
Bilcare Ltd. v. ACIT 214 TTJ 880 (Pune)(Trib.)

S. 147 : Reassessment – After the expiry of four years – Interest expenses – No failure to disclose material facts – Reassessment notice was quashed [S. 57, 148, Art. 226] 1550
The assessment was completed u/s 143(3) of the Act. The Reassessment notice was issued on the ground that the interest paid to HDFC bank was not allowable as deduction u/s 57 of the Act. The assessee filed the writ petition to quash the reassessment notice, allowing the petition the Court held that there is no failure on the part of the assessee to truly and fully disclose all primary facts necessary for the purpose of assessment. Accordingly the reassessment notice was quashed. Followed *Calcutta Discount Co Ltd v. ITO (1961) 41 ITR 191 (SC), Ananta Land Mark Pvt. Ltd v. Dy.CIT (2021) 439 ITR 168 (Bom)(HC)*. (AY. 2012-13)
Kalpataru Plus Shrayans v. Dy. CIT (2021) 207 DTR 138 / 323 CTR 747 / (2022) 440 ITR 269 (Bom.)(HC)

1551 **S.147 : Reassessment – After the expiry of four years – Shipping business – Reserves – Dividend and long term capital gains – No failure to disclose material facts – Return was not filed in pursuance of notice issued u/s 148 of the Act – There is no hard and fast rule that the assessee should file the return pursuant to notice, when the reasons do not disclose on the face of it any failure on the part of the assessee to disclose all material facts necessary for assessment – Reassessment notice was quashed. [S. 33AC, 148, Art, 226]**

The assessment was completed u/s 143(3) of the Act. The reassessment notice was issued on 30-11-2000, for alleged wrongly allowing the deduction u/s 33AC of the Act. The petitioner requested for copy of the recorded reasons which was not provided. The assessee filed the writ before the High Court. The writ was admitted on 18 th December 2001and ad – interim stay was granted. The reason was given in the affidavit filed in the reply by the respondent. The revenue contended that as the petitioner has not filed the return pursuant to the notice u/s 148 of the Act as per the ratio laid down by Supreme Court in *GKN Driveshafts (India) Ltd v. ITO (2003) 259 ITR 19 (SC)*, the petition should be rejected. The petitioner relied on the Judgement in *Caprihans India Ltd v. Traun Seem Dy.CIT (2003)) 132 Taxman 123 (Bom.)(HC)* for the proposition that there is no hard and fast rule that the assessee should file its return pursuant of the notice u/s 148 of the Act, more so when the reasons do not disclose on the face of it any failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. The Court could certainly entertain the petition and set aside the notice. On the facts the Court in its wisdom thought fit to issue rule and also grant relief on 18 th December 2021. Court referred the Judgement in *CIT v. Trend Electronics (2015) 379 ITR 456(Bom)(HC)* wherein the court observed that "where the jurisdictional issue is involved the same must be strictly complied with by the authority concerned and no question of knowledge being attributed on the basis of implication can arise. We also do not appreciate the stand of the Revenue, that the respondent- assessee had asked the reasons recorded only once and therefore, seeking to justify non-furnishing of reasons. We expect the State to act more reasonably"

The court held that the petitioner has been allowed a deduction under section 33AC of the Act in respect of income from dividends, long term capital gains and interest is no ground for initiating proceedings u/s 148 of the Act. Reassessment notice was quashed. (AY. 1994-95)

Great Eastern Shipping Company Ltd v. K.C Naredi, Add.CIT (2021) 208 DTR 273 / 440 ITR 58 (Bom.)(HC)

1552 **S. 147 : Reassessment – After the expiry of four years – Loss disclosed and allowed in original assessment – No failure to disclose material facts – Notice to withdrawal of loss allowed – Held to be not valid [S. 143(3), 148, Art. 226]**

Allowing the petition the Court held that in the reasons for the reopening of the assessment the Assessing Officer had merely stated that the assessee had failed to disclose fully and truly all the material facts necessary for its assessment for the assessment year 2012-13. The Assessing Officer had based his assessment on the books of account and arrived at the conclusion that the assessee had incurred long-term capital loss and had allowed such long-term capital loss while completing the assessment under section 143(3). The notice of reassessment after four years to disallow the loss was not valid. Followed *Ananta Land Mark Pvt. Ltd. v. Dy.CIT (2021) 439 ITR 168 (Bom.)(HC)*(AY.2012-13)

Hindustan Unilever Ltd. v. Dy. CIT (2021) 439 ITR 333 / (2022) 284 Taxman 252 (Bom.)(HC)

S.147 : Reassessment – After the expiry of four years – Duty of assessee only to disclose facts and not to draw inferences – Notice has to state which facts not disclosed – Change of opinion – Notice was quashed [S. 80IB(10), 148, Art. 226] 1553

Allowing the appeal the Court held that all material facts necessary for assessment has been disclosed by the assessee truly and fairly but they were scrutinized and the income and deduction were reworked by the Assessing Officer in the original assessment. In the recorded reasons for reopening of assessment it was not mentioned what facts were not disclosed. Therefore, the condition precedent to the reopening of assessment beyond the period of four years had not been fulfilled. The notice issued under section 148 to reopen the assessment under section 147 for the assessment year 2012-13 and the order rejecting the objections raised by the assessee were quashed and set aside.(AY.2012-13)

Kalpataru Limited v. Dy. CIT (2021) 439 ITR 284 (Bom.)(HC)

S.147: Reassessment – After the expiry of four years – Capital gains – Sale of property – No failure to disclose material facts – Validity of notice to be examined on the basis of reasons recorded wile issuing the notice – The notice cannot be justified by filing affidavit or by oral submissions – Notice was held to be not valid [S. 45, 148, Art. 226] 1554

Allowing the petition the Court held that there was no omission on the part of the assessees to disclose fully or truly all the material facts necessary for the assessment year 2010-11. There was nothing on record to suggest that the assessees were following the accounting system based on accruals rather than receipts. Rather, the material on record placed by the assessees themselves before the Department indicated that the sale deed dated February 2, 2010 was subject to realization of the cheque amount. There was nothing in this material that could constitute a ground for a reason to believe that there was a failure to disclose a material fact and further, that income had escaped assessment for the assessment year 2010-11. The reasons stated by the Assessing Officer spoke about the receipt of Rs. 3 crores by the assessees during the assessment year 2010-11. However, based on the very material relied upon by the Assessing Officer, this contention was virtually given up and a new reason about accrual was sought to be put forward. The notice of reassessment was not valid.(AY.2010-11)

Nirupa Udhav Pawar (Smt) v. ACIT (2021) 439 ITR 541 (Panji Bench)(Bom.)(HC)

S. 147 : Reassessment – After the expiry of four years – Business expenditure – Advertisement and marketing expenditure – Change of opinion – Reassessment notice was quashed [S. 37(1), 148, Art. 226] 1555

The assessment was completed u/s 143(3)). In the course of original assessment proceedings the Assessing Officer has raised specific query on advertisement expenses. After considering the reply the expenses were allowed. The Assessing Officer issued notice u/s 148 of the Act to disallow the expenses in view of Explanation 1 to section 37(1) of the Act. On writ allowing the petition the Court held that where the Assessing Officer in original assessment was aware of issue of expenses incurred on advertisement and marketing by assessee and assessee had filed all requisite details called for by Assessing Officer. Primary facts necessary for assessment having been fully and truly disclosed, it would not be open for Assessing Officer to reopen assessment based on very same material and to take view that advertisement and marketing expenditure

incurred by assessee were not deductible in view of Explanation 1 to section 37(1) of the Act. (AY. 2013-14)
Rich Feel Health and Beauty (P.) Ltd v. ITO (2021) 132 taxmann.com 228 (2022) 284 Taxman 286 (Bom.)(HC)

1556 **S. 147 : Reassessment – After the expiry of four years – Subsequent search and Seizure of another party – Loan activity not established – Recorded reasons must indicate the manner in which the Assessing Officer has come to the conclusion that income chargeable to tax has escaped assessment – Reason recorded cannot be substituted – Reassessment Notice was quashed.[S. 68, 132, 133A, 148, 153A, Art. 226]**
The petitioner challenged the notice issued u/s 148 of the Act, on the ground that there was not even a whisper as to what was the tangible material in the hands of the AO which made him to believe that income chargeable to tax has escaped the assessment and what was the material fact that was not fully and truly disclosed. Allowing the petition the Court held that in the reasons for reopening the AO does not even disclose when the search and survey action 132 was carried out. The reasons for reopening are absolutely silent as to how the search and survey action on M/s Evergreen Enterprises or the statement referred to or relied upon in the reasons have any connection with the petitioner. The reassessment notice was quashed and set aside. (AY. 2012-13)
Peninsula Land Ltd v. ACIT (2021) 439 ITR 582 / (2022) 284 Taxman 556 (Bom.)(HC)

1557 **S.147: Reassessment – After the expiry of four years – Cash credits – Accommodation entries – Penny stock – Survey – General information – No failure to disclose material facts – Reassessment notice was held to be bad in law [S. 45, 68, 69, 133A, 148, Art, 226]**
The assessment was completed under section. 143(3), after issuing the summons to the assesseee and with detailed investigation. Reassessment notice was issued on the basis of survey on third party and alleging the accommodation entries.
Allowing the petition the Court held that in the Course of original assessment proceedings the assessee had furnished all information regarding said transactions of receiving loan and entities from which loans were taken. Even in statement of assessee recorded under section 131 it had disclosed about such unsecured loans taken by it. On facts the reassessment notice was jeld to be not valid. As regards the alleged penny stock scripts and was a beneficiary of bogus short-term capital loss. It was held that there was no tangible material disclosed by Assessing Officer in reasons for reopening – Assessing Officer simply said Investigation wing had analyzed trade data of identified penny stocks and concluded that assessee was found to be involved in trading in one of those penny stocks. This was far too general. Reassessment notice was quashed. (AY. 2014-15)
Jainam Investments v. ACIT (2021) 439 ITR 154 / 283 Taxman 439 / 206 DTR 447 / 323 CTR 25 (Bom.)(HC)

S. 147 : Reassessment – After the expiry of four years – No failure to disclose material facts – Interest income – Deduction – Change of opinion – No power of review – Reassessment is held to be bad in law [S. 37(1), 56, 57, 148, Art. 226] 1558

The assessee is engaged in the business of real estate and development. The assessment was completed u/s 143 (3) of the Act allowing the deduction claimed against interest income u/s 57 of the Act. The Assessment was reopened on the ground that the interest paid on the loans is allowable under section 37 (1) of the Act. Since there was no business income during the year, the entire interest should have been capitalised to the WIP as against claiming as deduction u/s 57 which is not an allowable deduction. Against the disposal of objection, the assessee filled writ before the High Court. Allowing the petition the Court held that there was neither an omission nor failure on the part of the assessee to disclose material facts necessary for assessment. Reassessment notice was held to be bad in law. (AY.2012-13)

Ananta Land Mark Pvt. Ltd v. Dy.CIT (2021) 439 ITR 168 / 323 CTR 138 / 283 Taxman 462 / 131 taxmann.com 52 / 207 DTR 33 (Bom.)(HC)

S. 147 : Reassessment – After the expiry of four years – No failure to disclose material facts –Interest income – Deduction – Change of opinion – No power of review – Reassessment is held to be bad in law [S. 37 (1), 56, 57, 148, Art. 226] 1559

The assessee is engaged in the business of real estate and development. The assessment was completed u/s 143 (3) of the Act allowing the deduction claimed against interest income u/s 57 of the Act. The Assessment was reopened on the ground that the interest paid on the loans is allowable under section 37 (1) of the Act. Since there was no business income during the year, the entire interest should have been capitalised to the WIP as against claiming as deduction u/s 57 which is not an allowable deduction. Against the disposal of objection, the assessee filled writ before the High Court. Allowing the petition the Court held that there was neither an omission nor failure on the part of the assessee to disclose material facts necessary for assessment. Reassessment notice was held to be bad in law. (AY.2012-13)

Ananta Land Mark Pvt. Ltd v. Dy.CIT (2021) 439 ITR 168 / 323 CTR 138 / 283 Taxman 462 / 207 DTR 33 (Bom.)(HC)

S.147: Reassessment – After the expiry of four years – Set-Off of short-term capital gains against business income – No failure to disclose material facts – Disclosure was mentioned in the assessment order – Reassessment notice was quashed [S. 10A, 10AA 143(3), 148, Art. 226] 1560

Allowing the petition the Court held that there was no failure on the part of the assessee to disclose fully and truly the fact that short-term capital gains had been set off against the losses claimed under section 10AA. It was expressly mentioned that the assessee had added short-term capital gains and in his order, the Assessing Officer had allowed the set off of the short-term capital gains. The notice under section 148 was issued without jurisdiction. The notice and the order rejecting the objections were set aside. (AY. 2012-13)

First Source Solutions Ltd. v. ACIT (2021) 438 ITR 139 / 206 DTR 441 / 323 CTR 18 (Bom.) (HC)

1561 **S.147 : Reassessment – After the expiry of four years – Facts disclosed were incorrect – Reassessment notice was held to be valid [S. 148, Art. 226]**
Dismissing the petition the Court held that the Assessing Officer had recorded a finding that the submission of the assessee-company was incorrect and misleading. The notice of reassessment was valid.(AY.2005-06)(SJ)
Cairn India Ltd. v. Dy. DIT (IT)(NO. 2)(2021) 439 ITR 245 / 283 Taxman 529 (Mad.)(HC)

1562 **S.147: Reassessment – After the expiry of four years – Survey – Excess claim for exemption – Alternative remedy – No conclusive finding on validity of the reassessment notice – Order of single judge is reversed – Directed to pursue the statutory remedy. [S. 10B, 133A, 148, Art. 226]**
The assessee filed writ against the issue of notice u/s 148 of the Act. Dismissing the writ petition the single judge held that prima facie reopening of the assessment was in order. On appeal the division bench set aside the order of the single judge and observed that there was no conclusive finding on the validity of the reopening of the assessment under section 147 after taking note of the objections which had been raised by the assessee and only a prima facie finding had been recorded by the single judge. Therefore, the assessee would not be prejudiced if relegated to the appeal remedy before the Commissioner (Appeals) against the order and the assessee should be permitted to raise the issue regarding the validity of the reopening also, which could be decided by the Commissioner (Appeals) as first among the several issues. All the findings recorded by the single judge on the validity of the reopening proceedings were vacated.
Orchid Pharma Ltd. v. Dy. CIT (2021) 439 ITR 387 (Mad.)(HC)
Editorial : Decision of single judge is reversed, Orchid Chemicals and Pharmaceuticals Ltd. v.Dy. CIT (2021)439 ITR 380 (Mad)(HC)

1563 **S.147: Reassessment – After the expiry of four years – Directed to pass speaking order while disposing the objections after considering the objections of the assessee-Assessment order was quashed and set aside. [S. 148, Art, 226]**
Allowing the petition the Court held that although there is no requirement for elaborate reasons, but a speaking order needs to really speak the mind of the officer exercising the quasi judicial function,. this not being an empty formality even if he has a reason to believe that the income has escaped the assessment and, therefore, the objections are not to be accepted-It becomes the bounden duty to express this satisfaction in clear and specific words so as to also convey to the party concerned that in exercise of discharge of his duty as a quasi judicial authority, he has arrived a conclusion, so far as objections are concerned. Court directed the AO to pass a speaking order taking into consideration the objections raised by the assessee. It is not the length of the order, which is the reason of remand, it is the cryptic manner of dealing without any semblance of reasons which necessitated such remand. Applied the ratio laid in *Divya Jyoti Diamonds (P) Ltd. v. ITO (2021) 439 ITR 4371/ 128 taxmmann.com 419 (Gui)(HC) Sabh infrastructure Ltd v. ACIT (2017) 398 ITR 198 (Delhi)(HC), Shakuntala Shukla v. State of Uttar Pradesh & Anr. [Criminal Appeal No. 876 of 2021, dt. 7th Sept., 2021 (SC)*(AY. 2013-14)
Shilpa Realty (P) Ltd v. ITO (2021) 439 ITR 478 /323 CTR 830 / 208 DTR 70/(2022) 284 Taxman 428 (Guj.)(HC)

S.147: Reassessment – After the expiry of four years – Seeking clarification – Retention money – No failure to disclose material facts – Reassessment is bad in law [S. 148, Art. 226] 1564

The assessment was completed u/s 143(3) of the Act. The notice for reassessment was issued after the expiry of four years for seeking clarifications. The assessee filed writ challenging the issue of notice u/s 148 of the Act. Single judge dismissed the writ petition. On appeal allowing the petition the Court held that there appears to be no power vested with the AO to seek such clarifications-Nevertheless, the assessee has furnished the reply and the reply specifically stated that the retention money has already been offered to tax in the subsequent period. There is no allegation against the assessee of any failure on his part to disclose full particulars at the time of original assessment, nor there is any fresh tangible material brought out by the AO on record justifying his exercise of power under section 147 read with section 148 of the Act. Notice was quashed. (AY. 2011-12)

S. Subrahmanyan Constructions Co. (P) Ltd v. A CIT (2021) 439 ITR 600 / 207 DTR 289 (Mad.)(HC)

Editorial : Order of single judge in S. Subrahmanyan Constructions Co. Ltd. v. CIT (2021) 439 ITR 589 207 DTR 296 (Mad.)(HC), is set aside.

S.147: Reassessment – After the expiry of four years – Accommodation entries – Purchase and sales – Commission income was not disclosed – Information from investigation Wing – Direct nexus and live link – Reassessment notice was held to be valid [S.148, Art. 226] 1565

Dismissing the petition the Court held that from inquiry/investigation by Investigation Wing, some tangible material was found to substantiate fact that assessee was provider of accommodation entries and that, income from commission, was not disclosed in return and, thus, there was direct nexus/live link between material coming to notice of Assessing Officer and that for formation of his belief that there had been escapement of income of assessee because of his failure to disclose fully and truly all material facts. Reassessment notice was held to be justified. (AY. 2012-13)

Geetaben Dineshchandra Gupta v. ITO (2021) 208 DTR 154 / 129 taxmann.com 346 / (2022) 441 ITR 698 (Guj.)(HC)

S. 147: Reassessment – After the expiry of four years – Search – Accommodation entries –Bogus capital gains – Reassessment notice was held to be justified [S.45, 68, 131, 132, 143(3), 148, 153A, Art. 226] 1566

The notice for reassessment was issued on 18-3-2020 based on the search action it was found that they have provided accommodation entries to the assessee which was admitted by them in the statement provided u/s 131 of the Act. In the recorded reasons it was observed that the assessee had made the transaction of shares in respect of scrip of Safal (Parikh Herbals Ltd) during the financial year 2012-13 relevant to assessment year 2013-14. The assessee challenged the notice by filling the writ petition and contended that the assessee has neither contacted nor has any remote contact with Shri Jignesh Shah as it was mentioned in the list. Dismissing the petition the Court held that reassessment notice was issued to assessee mainly on basis of information received

from Deputy Director to effect that search in case of two individuals companies revealed that they had provided accommodation entries to assessee for claiming bogus capital gain, since thorough inquiry was carried out and after verifying all aspects regarding incriminating documents unearthed during course of search action, it was declared that transactions were accommodation entries provided to assessee, there was reason to believe that income chargeable to tax had escaped assessment and, thus, reassessment was justified. (AY. 2013-14)
Bharatkumar Kalubhai Ghadiya v. ACIT (2021) 283 Taxman 254 / (2022) 209 DTR 291 (Guj.)(HC)

1567 **S.147 : Reassessment – After the expiry of four years – Additional stamp duty – Not mentioning the built-up area – No failure to disclose material facts – Reassessment notice was held to be not valid [S.45, 5OC, 148, Indian Stamp act, 1899, S. 47A, 70(2)]**
Assessee had declared long-term capital gains on sale consideration and got levied with compounding fees by registry authority under section 70(2) of the Indian Stamp act, 1899, which was inclusive of 8% stamp duty and 1% registration fee, for not mentioning correct built-up area of concerned structure Act. The assessment was completed u/s 143(3) of the Act. The assessment was reopened and addition was made as per section 50C of the Act. Tribunal held that reassessment was not valid. On appeal by the revenue dismissing the appeal the Court held that since assessee had disclosed fully and truly all necessary details including sale deed and documents with regard to payment of stamp duty and additional stamp duty during original assessment, reopening of assessment after period of four years was not justified. (AY. 2005-06)
CIT v. John Ettimootil Samuel (2021) 283 Taxman 39 (Mad.)(HC)

1568 **S.147 : Reassessment – After the expiry of four years – Deduction of tax at source – Non-Resident – Lesser deduction of tax at source – New information – Reassessment notice was held to be justified [S. 148, 195, Art. 226]**
Dismissing the writ petition the Court held that the Assessing Officer was able to cull out from above material that TDS deducted was at lower rate and said issue was not adjudicated by original assessing authority. The Assessing Officer was able to trace out the material from the material submitted by the assessee. Such new information or material would provide the Assessing Officer for reason to believe to reopen the assessmmeny Further, objections raised by assessee had been considered by revenue and had been disposed of. Therefore, Assessing Officer had reason to believe to reopen assessment. (AY. 2004-05)(SJ)
Cairn India Ltd v. Dy. DIT (IT) (2021) 283 Taxman 243 (Mad.)(HC)

1569 **S.147 : Reassessment – After the expiry of four years – Retention money – Contractor – Contingent – Allowed as deduction – No full and true disclosure – Reassessment notice was held to be valid. [S. 28(i), 148, Art, 226]**
AO issued a reopening notice on ground that retention money of certain amount held back by assessee company from its contractors could not be allowed as expenditure as it was contingent in nature. The assessee filed writ challenging the notice issued u/s 148 of the Act. Dismissing the petition the Court held that the retention money which

was claimed by assessee as expenditure by debiting it fully in profit and loss account was actually held back by assessee was not truly disclosed by assessee in its return of income, annual reports, disclosures, audit reports, memo of total income, thus, there was no full and true disclosure of facts by assessee, impugned reopening notice was justified. (AY. 2006-07)(SJ)
Consolidated Construction Consortium Ltd v. CIT (2021) 283 Taxman 60 (Mad.)(HC)

S. 147 : Reassessment – After the expiry of four years – Capital gains – Sale of rural agricultural land – No query was raised in the original assessment proceedings as regards applicability of section. 50C of the Act – Reassessment notice was held to be valid [S. 45, 50C, 148, Art. 226] 1570
Dismissing the petition the Court held that the assessee had herself shown capital gain on sale of said land in question in her income tax return. No query was made during original assessment as to why assessee had shown capital gain on said land in ITR when she herself was of view that impugned land was an agricultural land and did not fall within purview of section 2(14) of the Act. No inquiry was conducted by Assessing Officer in accordance with provision of section 50C as well as undervaluation of consideration. Reassessment notice is held to be valid. (AY. 2014-15)
Premalata Soni v. NESC (2021) 283 Taxman 416 / 207 DTR 149 / 323 CTR 489 (MP)(HC)

S.147: Reassessment – After the expiry of four years – Method of accounting – Professional income – Notice issued on the basis of statement of a manger (Operations) – Re assessment notice is held to be justified [S. 145, 148, Art. 226] 1571
Reassessment notice was issued on ground that a statement of manager (operations) in hospital in which assessee was practicing was recorded in which he stated that on basis of number of patients visited to assessee, income from consultation fees received by assessee from hospital practice was much more than what was shown by assessee. On a writ petition the Court held that reason for reopening of assessment was made available to assessee,while disposing of objections, Assessing Officer had categorically stated that he had reason to believe that income chargeable to tax had escaped assessment. Reassessment notice was held to be justified. (AY. 2012-13, 2015-16, 2016-17)(SJ)
Dr. Sajan Hedge v. ACIT (2021) 283 Taxman 144 (2022) 44O ITR 389 (Mad.)(HC)

S.147 : Reassessment – After the expiry of four years – Unexplained investment – Purchase of house – Payment was made prior to sale existing house – Not examined the source of investment in new house – Reassessment notice was held to be justified [S. 54, 59, 148, Art, 226] 1572
Reassessment notice was issued on the ground that source of investment in purchase of new house was not examined by the Assessing Officer in original assessment proceedings. Dismissing the petition the Court held that source of investment was not examined in the original assessment proceedings, issue of reassessment notice is valid in law. (AY. 2011-12)(SJ)
N.S. Srinivasan v. CIT (2021) 283 Taxman 118 / (2022) 440 ITR 367 / 211 DTR 327 / 325 CTR 521 (Mad.)(HC)

1573 **S.147: Reassessment – After the expiry of four years – Income from forex Transaction, Insurance claim, miscellaneous income – Not eligible deduction – Reassessment notice was held to be valid [S. 80HHC, 148, Art. 226]**
Assessment of the assessee was completed u/s 143 (3) of the Act. After six years, Assessing Officer issued a reopening notice on ground that income from forex transaction, insurance claim and miscellaneous income were not eligible for deduction under section 80HHC and same were to be brought to tax as per Explanation (baa) under section 80HHC. The Assessee challenged the notice dismissing the petition the Court held that since impugned reopening notice was issued on 7-3-2011 and it was served to assessee on 16-3-2011 and last date for reopening of assessment was 30-3-2011 the reopening notice was well within period of limitation and, accordingly, same was to be upheld. (AY. 2004-05)
Super Spinning Mills Ltd. v. Dy. CIT (2021) 283 Taxman 55 (Mad.)(HC)

1574 **S.147: Reassessment – After the expiry of four years – No failure to disclose material facts – Change of opinion – The Assessing Officer has to deal with objections if not satisfied should specifically state as to how the objections are unjustified – Reassessment notice was quashed [S. 148, Art. 226]**
Allowing the writ appeal the Court held that on the facts of the case the reopening of the assessment is a clear case of change of opinion and what the AO purported to do amounted to a review of the scrutiny assessment, which is impermissible under law. The Court also held that. The writ appeal is allowed and the order passed by this Court in is set aside and the writ petition is allowed and the order impugned in that writ petition is quashed. *Saravana Stocks Investments (P) Ltd. v. Dy. CIT* (WP Nos. 30610 of 2012 and 30980 of 2014, dt. 12th July, 2021) set aside. (AY. 2006-07)
Saravana Stocks Investments (P) Ltd v. Dy. CIT (2021) 323 CTR 666 / 207 DTR 185 / (2022) 284 Taxman 669 (Mad.)(HC)

1575 **S.147: Reassessment – After the expiry of four years – Penny stock – Specific information – Information wing – Approval was obtained – Reassessment notice was held to be valid. [S. 143(1), 148, Art. 226]**
Dismissing the petition the Court held that the notice was issued based on specific information which was received after the assessment, the assessment was under section 143(1) and the higher authority has granted the approval. At the stage of issuing the notice the court cannot investigate in to adequacy or sufficiency of the reasons. (AY. 2012-13)
Nishant Vilaskumar Parekh v. ITO (2021) 203 DTR 290 / (2022) 440 ITR 436 (Guj.)(HC)

1576 **S.147: Reassessment – After the expiry of four years – Discrepancy and mismatch – MB Shah Commission report – Illegal mining in State of Odisha – Reason to believe – Excess production – Issue subject matter of the reopening of assessment was never discussed in the original assessment proceedings – Failure to make full and true disclosure – Reassessment notice is held to be valid [S. 148, 154, Form 26AS, Art. 226]**
The petitioner is in the business of Iron ore mining services, transportation and handling of iron ore limestone etc. The assessment was completed u/s 143 (3) of the Act. The

petitioner filed an application u/s 154 stating that TDS amount was not taken in to account and interest was levied under section 234B of the Act. The Assessing Officer issued notice u/s 148 of the Act `on the ground that there was huge difference between the data reflected in Form No 26AS and the statement was up dated from time to time. The Assessing Officer has also relied on the Shah Commission report as regards illegal activities of mining. The objection for recording of reasons was rejected by the Assessing Officer. On Writ the asseasee contended that the reassessment notice was beyond four years and there was no failure to disclose any material facts. Dismissing the petition the Court held that the AO had culled out certain factors based on the rectification application filed by the assessee under section. 154 of the Act. The AO had sufficient reason to believe. The sufficiency of reasons cannot be gone in to by the High Court in a writ proceedings. Against the judgement of the Single judge an appeal was filed. Dismissing the petition the Court held that the issue which is now subject matter of the reopening of assessment was never discussed during the original assessment proceedings and no opinion was formed by the Assessing Officer during the original assessment proceedings. The reassessment proceedings are valid.(AY. 2008-09 to 2010-11)

Triveni Earthmovers (P) Ltd v. ACIT (2021) 206 DTR 279 / 322 CTR 934 / 283 Taxman 297 (Mad.)(HC)

Editorial : Order of single judge is affirmed, Triveni Earthmovers (P) Ltd v. ACIT (2021) 205 DTR 190/ 322 CTR 406 (Mad.)(HC)

S. 147 : Reassessment – After the expiry of four years – Free trade zone – Export Oriented units – Start of manufacturing – Location of Industrial undertaking – Failure to disclose material facts – Reassessment notice was held to be valid. [S.10A(2), 148, Form No 56F, Art. 226] 1577

The assessment was completed u/s. 143 (3) of the Act. Reassessment notice was issued for failure to disclose location of industrial undertaking and date of start of manufacturing activity. In the Form No.56F, the assessee has not stated about their location of functioning and the said Form categorically indicates that the assessee must mention the location and address of undertaking. The assessee has mentioned only one address. Dismissing the petition the Court held that the petitioner has not mentioned about the location of functioning. It is for the petitioner to produce the evidence before the Assessing Officer that they are entitled to relief under the provisions of the Act. The issue being factual disputes,it is for the assessee to produce before Assessing Authority. The writ petition was dismissed. (AY. 2009-10)(SJ))

FCA Engineering India (P) Ltd v. ACIT (2021) 206 DTR 43 (Mad.)(HC)

S.147: Reassessment – After the expiry of four years – Export oriented undertakings – Valid approval by STPI – Mistake or omission committed by the Assessing Officer – No failure to disclose any material facts – Reassessment notice was quashed. [S.10B, 148, Art. 226] 1578

Allowing the petition the Court held that the Assessee was possessing a valid approval under section 10B of the Act granted by STPI which was produced before the Assessing Officer and if a ratification by CBDT is to be obtained then the Assessing Officer at the time of original assessment ought to have directed the assessee to get any such

ratification certificate for allowing the exemption. It may be a mistake or omission committed by the Assessing Officer. The reassessment proceedings on the ground that the assesee has not disclosed fully and truly all material facts is not established. Assessment beyond period of four years was held to be not sustainable. (AY. 2019-20)(SJ)
Kone Elevators (India)(P) Ltd v. ACIT (2021) 206 DTR 137 / 322 CTR 697 (Mad.)(HC)

1579 **S.147: Reassessment – After the expiry of four years – Discrepancy and mismatch – MB Shah Commission report – Illegal mining in State of Odisha – Reason to believe – Reassessment notice is held to be valid [S. 148, 154, Form 26AS, Art. 226]**
The petitioner is in the business of Iron ore mining services, transportation and handling of iron ore limestone etc. The assessment was completed u/s 143 (3) of the Act. The petitioner filed an application u/s 154 stating that TDS amount was not taken in to account and interest was levied under section 234B of the Act. The Assessing Officer issued notice u/s 148 of the Act on the ground that there was huge difference between the data reflected in Form No 26AS and the statement was up dated from time to time. The Assessing Officer has also relied on the Shah Commission report as regards illegal activities of mining. The objection for recording of reasons was rejected by the Assessing Officer. On Writ the asseasee contended that the reassessment notice was beyond four years and there was no failure to disclose any material facts. Dismissing the petition the Court held that the AO had culled out certain factors based on the rectification application filed by the assessee under section. 154 of the Act. The AO had sufficiency reason to believe. The sufficiency of reason cannot be gone in to by the High Court in a writ proceedings. (AY. 2008-09 to 2010-11)(SJ)
Triveni Earthmovers (P) Ltd v. ACIT (2021) 205 DTR 190 / 322 CTR 406 (Mad.)(HC)
Editorial : Affirmed by division Bench Triveni Earthmovers (P) Ltd v. ACIT (2021) 206 DTR 279/322 CTR 934/ 283 Taxman 297 (Mad.)(HC)

1580 **S.147: Reassessment – After the expiry of four years – Income escaped assessment – Not barred by limitation – Reassessment notice was held to be valid [S.40A(3), 147, 151 Art. 226]**
Dismissing the petition the Court held that the phrase reason to believe does not mean that the Assessing Officer should have ascertained the facts by legal evidence. All that is required is that, the Assessing Officer should prima facie have some material on the basis of which there should be reason to believe of certain incomes chargeable to tax escaping assessment. There need not be any concrete evidence or proof available for coming to a final conclusion. It is only an initiation of proceedings of reassessment where the assessee gets a chance to put forth their defence, explanation and justification which would further be scrutinized by the Assessing Officer while reaching to the final conclusion. One should not lose sight of the fact that the final assessment on the conclusion of a proceedings under Section 147 of the Act is also an appealable order wherein also the assessee has a right to agitate or challenge the order passed by the Assessing Officer on a proceeding under Section 147 of the Act. On the facts the Assessing Officer has reason to believe that an income of more than Rs.2.53 Crores, which are chargeable to tax has escaped assessment and which has come to the notice of Department at a later stage in the course of scrutiny assessment. The documents

having been submitted to the Assessing Officer at the first instance and the Assessing Officer having skipped/missed the said transaction from being assessed or having been overlooked, the same would not bar the department from initiating proceedings under Section 147 of the Act in case if the department finds at a later stage certain transaction which have escaped assessment. (AY. 2013-14)
Sanjay Agrawal v. PCIT (2021) 199 DTR 533 / 319 CTR 684 (Chhattisgarh)(HC)

S.147: Reassessment – After the expiry of four years – Tangible material – Accommodation entries – Bogus companies – Information from investigation wing – Reassessment notice is valid [S. 143(3), 148, Art. 226] 1581
Dismissing the petition the Court held that the Assessing Officer had reason to believe that the assessee was a beneficiary of accommodation entry and the basis for formation of such belief were several inquiries and the investigation by the Investigation Wing and report thereof. The reasons for the formation of the belief by the Assessing Officer had a rational connection with or relevant bearing on the formation of belief that there had been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. The notice of reassessment was valid. (AY. 2013-14)
Bharatkumar Kalubhai Ghadiya v. CIT (2021) 438 ITR 443 (Guj.)(HC)

S. 147 : Reassessment – After the expiry of four years – Depreciation – Undisclosed income – No failure to disclose material facts – No power to review the order – Notice issued to reopen the assessment was quashed [S.148, Art. 226] 1582
The assessment was completed u/s 143(3)of the Act. The revision order was passed, on appeal the Tribunal quashed the revision order. The writ was filed against the issue of notice. Single judge dismissed the petition. On appeal the division bench held that there was no failure to disclose any material facts. The Court held that unless there is a fresh tangible material available with the Department, the question of reopening the assessments based on the material already available on record is impermissible. As pointed in the decision of the Hon'ble Supreme Court in the case of *CIT v. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC)* what is to be borne in mind is the conceptual difference between the power of review and the power to re-assess, that the Assessing Officer has no power to review, but he has a power to reassess, that the reassessment should be based on fulfillment of certain preconditions and that if the concept of change of opinion is removed, then in the garb of reopening the assessment, review would take place. This is precisely what the Department seeks to do in the cases on hand. Accordingly the reassessment notice was quashed. (AY. 1995-96, 1996-97, 1997-98)
Shaspayee Paper & Boards Ltd v. UOI (2021) 198 DTR 97 / 319 CTR 293 (Mad.)(HC)

S. 147: Reassessment – After the expiry of four years – Amalgamation – No failure to disclose material facts – Reassessment notice was held to be not valid [S. 2(IB), 148, Art. 226] 1583
Allowing the petition the Court held that while passing the original assessment the Assessing Officer considering the very same material as well as the information provided and the court orders formed an opinion that it was case of amalgamation. Thereafter,

he again formed an opinion that the transaction did not come under the purview of section 2(1B) of the Act and it was an ordinary takeover of business by acquiring shares. The Assessing Officer in his assessment order had specifically considered that the quantum of accumulated unabsorbed losses of the amalgamating company. In the original assessment order itself, the assessment authority made a finding regarding unabsorbed depreciation of the amalgamating company. The details were furnished and the assessing authority had taken into consideration all these facts. The Department could not establish that there was a failure on the part of the assessee to disclose fully and truly all material facts. The notice of reassessment was not valid. (AY. 2005-06)
Roca Bathroom Products Pvt. Ltd. v. Dy. CIT (2021) 438 ITR 249 (Mad.)(HC)

1584 **S.147: Reassessment – After the expiry of four years – Survey – Search – Failure to disclose material facts – Information from Investigation wings – Bogus accommodation entries – Reassessment notice was held to be justified [S. 132, 133(6), 147, Art. 226]**
Based on information received from the Investigation Wings the notice was issued for reopening of assessment. On Writ the notice of reassessment was challenged. Dismissing the petition the Court held that since the assumption of jurisdiction on the part of the Assessing Officer to reopen the assessment under section 147 was based on fresh information specific and reliable and otherwise sustainable under the law, the challenge to the reassessment proceedings could not be entertained. Mere production of the books of account or documents with the return of income was not full and true disclosure of all material facts, more particularly when it was subsequently found, on the basis of credible information and tangible material that the assessee was the beneficiary of accommodation entries provided by the parties in respect of whom search was conducted who were entry providers. Before the issuance of the notice under section 148 for reopening the assessment under section 147, the assessee was issued notice under section 133(6) which required it to furnish evidence to prove the genuineness of the transactions mentioned therein, but the assessee chose not to respond to the notice. The petition was devoid of merit.(AY.2012-13)
Backbone Projects Ltd v. ACIT (2021) 437 ITR 144 / 206 DTR 169 / 323 CTR 552 (Guj.) (HC)

1585 **S.147 : Reassessment – After the expiry of four years – Incorrect and misleading particulars – Reassessment notice is justified – Writ is not maintainable [S. 43B(c), 148, Art. 226]**
Dismissing the petition the Court held The assessment had been reopened beyond a period of four years, but within a period of six years and therefore, mere availability of tangible material would be sufficient for the purpose of invoking the powers under section 147 of the Act. The failure on the part of the assessee was considered for reopening of assessment and the finding was given that the assessee had misled the assessing authorities by furnishing incorrect particulars. It was for the assessee to establish its case during the course of reassessment proceedings availing of the opportunities to be provided by the authorities in accordance with law.(AY.2006-07)
Cairn India Ltd. v. Dy. DIT (IT) (2021) 437 ITR 371 / (2022) 284 Taman 86 (Mad.)(HC)

S.147: Reassessment – After the expiry of four years – No failure to disclose material facts – The four-year period not from the disposal of appeal by CIT (A) – Third proviso – Reassessment is held to be not valid – Appeal – Consistent view taken in favour of assessee – Appeal is not maintainable.[S. 148, 260A] 1586

Dismissing the appeal the Court held that the contention of the Department that in terms of the third proviso to section 147, the four-year period provided in the first proviso to the section would commence only on the final adjudication of the appeal filed by the assessee and it was disposed of by the Commissioner (Appeals) by an order dated January 30, 2009 and therefore, the notice under section 148 issued on March 22, 2011 was within the four-year period as provided in the first proviso to section 147 could not be accepted. Court also held that though the Department had contended that each assessment year would give a separate cause of action and that the decision taken in one assessment year could not act as res judicata in the other assessment years, it would also have a vital bearing in the adjudication of the present appeal. Consistent view taken in favour of assessee.Appeal is not maintainable. (AY.2004-05)

PCIT v. Superior Films Pvt. Ltd. (2021) 437 ITR 230 / 208 DTR 202 / 323 CTR 1016 / 282 Taxman 123 (Delhi)(HC)

S.147 : Reassessment – After the expiry of four years – Real estate business – Sale between related parties – No enquiry was made in the course of original assessment proceedings – New information based on Tribunal judgement – No true disclosure of material facts – Reassessment notice was held to be valid. [S.40A(2)(b), 148, Art. 226] 1587

Dismissing the petition the Court held that the son of the managing director of the company which owned the land was a substantial stake holder in the assessee-firm. The transactions between the assessee-firm and company were so arranged that the entire sale proceeds of the land and building were received by the firm and a portion was thereafter diverted to the company, apart from the amount diverted through the partner as share of profit from the firm. Fresh tangible material had come into the possession of the Assessing Officer through the order of the Tribunal, which was in the public domain. The Assessing Officer had omitted to examine whether the related party transaction remained at arm's length while concluding the original assessment. There was no deliberation on this aspect and hence, failure to undertake proper enquiry resulted in excessive and unreasonable deduction to the assessee-firm. This required correction and therefore, the reassessment proceedings were justified. (AY.2009-10, 2010-11)

Doshi Housing v. PCIT (2021)437 ITR 317 (Mad.)(HC)

S.147 : Reassessment – After the expiry of four years – Change of opinion – No allegation of non – disclosure of true and full facts – Proviso 1 and 3 – Reassessment notice was held to be not valid [S. 148, Art. 226] 1588

Allowing the petition, the court held that the Assessing Officer did not have any new tangible material for reopening the proceedings, as the reason was prefaced by the sentence in the return of income filed for the assessment year 2011-12, the assessee had debited a certain amount. The Assessing Officer had not brought on record any new

tangible material to reopen the assessment beyond the period of four years. Therefore, the reassessment proceedings being without jurisdiction were quashed.(AY.2011-12)
DRS Industries Pvt. Ltd. v Dy. CIT (NO. 2)(2021) 437 ITR 687 / 205 DTR 57 / 322 CTR 289 (Mad.)(HC)

1589 **S.147 : Reassessment – After the expiry of four years – Material facts – Disclose fully and truly – Deemed cases – Details of accounting – Sufficiency of reasons need not be gone into in writ proceedings – Reassessment notice was held to be valid [S. 147, Explanation, 2, 148, Art. 226].**
Dismissing the petition the Court held that the High Court is not an expert body, so as to go into the details of the accounting system and find out arithmetic errors, if any. What is to be considered in a writ petition mainly with reference to the cases of reopening of assessment is the "reasons to believe" for reopening of assessment. The reasons furnished should have live link with the materials and the conditions stipulated are to be complied with. If these aspects are satisfied, such an objective satisfaction would be sufficient for the purpose of allowing the assessing authority to proceed with the reassessment proceedings and conclude them by providing opportunity to the assessee. The sufficiency of the reasons need not be gone into by the High Court in writ proceedings. Thus, if there is a prima facie case for the purpose of reopening of assessment, objective satisfaction is sufficient for the purpose of reopening of assessment. Since the Assessing Officer had not applied his mind and formed any opinion on the issues for which the case had been reopened, it could not be argued that reassessment was based on change of opinion or that the issues for which the case was reopened had already been disclosed by the assessee and dealt with by the Assessing Officer in the original assessment. The reassessment proceedings must go on. The assessee had to avail of the opportunity to be provided to defend its case with regard to the allegations of underassessment or excessive relief or otherwise and co-operate for the early completion of the reassessment proceedings.(AY. 2009-10)
SL Lumax Ltd. v. Dy. CIT (2021) 437 ITR 549 (Mad.)(HC)

1590 **S.147: Reassessment – After the expiry of four years – Change of opinion – No failure to disclose any material facts – Non-resident – Tax deduction at source – Reassessment notice was held to be not valid [S.40(a)(ia), 195, 201(1), Art. 226]**
Allowing the petition the Court held that the reopening of the assessments was merely on a change of opinion and there was no failure on the part of the assessee to truly and fully disclose all the material facts that were required for assessment by the Assessing Officer. The Assistant Commissioner in the original assessment order had merely disallowed the bare boat charter cum demise hire charges perhaps on account of the order passed by the Income-tax Officer (IT). There was no failure by the assessee to truly and fully disclose all information required for assessment. The reassessment order was quashed.(AY.2004-05, 2005-06)
West Asia Maritime Ltd. v. ACIT (2021) 437 ITR 338 (Mad.)(HC)

S.147 : Reassessment – After the expiry of four years – Subsequent investigation – Accommodation entries – Penny stock – Capital gains – Transactions were bogus – Reassessment notice was held to be valid [S. 45, 132, 148, Art. 226] 1591

Dismissing the petition the Court held that as a result of the investigation carried out during the search proceedings conducted by the office of Principal Director (Inv) the assessee-company was one of the beneficiaries of the accommodation entries as the assessee had entered into transactions in a penny stock companies used for bogus long-term capital gains and contrived losses. The Assessing Officer had also received specific information from the investigating wings outlining the systemic evasion of taxes by the assessee and others. As fresh material for coming to the prima facie conclusion that the assessee had failed to disclose fully and truly all material facts necessary for his assessment for the assessment year 2012-13. The notice of reassessment was valid.(AY.2012-13)

Zaveri and Company Pvt Ltd v. Dy. CIT (2021) 437 ITR 100 / 205 DTR 269 / 322 CTR 441/ (2022) 285 Taxman 178 (Guj.)(HC)

S. 147 : Reassessment – After the expiry of four years – Deduction windmill unit – Set off brought forward losses/unabsorbed depreciation – Reassessment notice was held to be not justified [S. 32, 80IA, 143 (3), 148, Art. 226] 1592

Allowing the petition the Court held that full details pertaining to assessee's claim for deduction under section 80IA were furnished during original scrutiny assessment – Even assessment order passed under section 143(3) contained a reference to claim of deduction under section 80-IA. Merely because while framing assessment for subsequent year, Assessing Officer noticed certain irregularity in claim by itself would not be sufficient to satisfy requirements of proviso to section 147. Reassessment notice was quashed.(AY 2012-13)

Gujarat Ambuja Exports Ltd v. ACIT (2021) 282 Taxman 225 (Guj.)(HC)

S.147: Reassessment – After the expiry of four years – Capital gains – Land used for agricultural purposes – No new material – Reassessment notice was quashed [S.54B, 148, Art. 226] 1593

Allowing the petition the Court held that the revenue failed to show which necessary facts were not disclosed by assessee at stage of previous assessment proceedings Since no new material surfaced during reassessment proceedings the notice was held to be bad in law. (AY. 2002-03)

Kavitaben Jaysukhbhai Zalawadiya v. ITO (2021) 282 Taxman 265 (Guj.)(HC)

S. 147 : Reassessment – After the expiry of four years – Change of opinion – Short term capital gains – Dividend – Reassessment is held to be not valid. [S. 10(38), 148] 1594

Dismissing the appeal of the revenue the Court held that all the particulars relating to dividends and short-term capital gains and other particulars were available with the Assessing Officer during the assessment proceedings, which were concluded under section 143(3) of the Act. The Tribunal, on the facts, had recorded that the Department did not bring any material fact before it, which was not disclosed in the original return of income. The reopening of the assessment beyond four years was clearly a case of change of opinion. The reassessment was not valid.(AY. 2008-09)

PCIT v. M. R. Narayanan (2021) 436 ITR 520 (Mad.)(HC)

1595 **S.147: Reassessment – After the expiry of four years – Sale of land – Borrowed satisfaction – Non application of mind before issue of notice – Notice is held to be not valid [S.148, Art. 226]**

Allowing the petition the Court held having accepted the entire transaction on the basis of the scrutiny assessment under section 143(3) of the Act the reopening on the basis of some information was not valid in the eyes of law and was liable to be quashed for the reason that the Assessing Officer failed to apply his mind. The reasons were merely recorded by the Assessing Officer on borrowed satisfaction. The source for all the conclusions was the information received from the Deputy Commissioner and that too, based on a search and survey carried out at the residential and business premises in the case of K. Star Corporation. (AY.2011-12)

Kantibhai Dharamshibhai Narola v. ACIT (2021) 436 ITR 302 (Guj.)(HC)

1596 **S.147 : Reassessment – After the expiry of four years – Failure to deduct tax at source – Issue not considered in the original assessment – Court cannot adjudicate disputed facts or go in to sufficiency of reasons for reopening – Reassessment notice is valid [S. 9(1)(i), 40(a)(ia) 148, Art. 226]**

Dismissing the petition the Court held that mere failure to quote the provision of law would not vitiate the entire reassessment proceedings, though the competent authorities are expected to quote the provisions of law. That certain facts placed by the assessee before the court could not be wholly relied upon. The Department without conducting an enquiry and scrutinizing the documents, would not be in a position to place all the facts before the court. Therefore, the scope of interference in initiation of reassessment proceedings would be limited and, the court in such circumstances should refrain from preventing the competent authorities from conducting further enquiry by following the procedures as contemplated on initiation of proceedings under section 147. Reassessment notice is held to be valid. (AY.2007-08)(SJ)

Sutherland Global Services (P.) Ltd. v. CIT (2021) 436 ITR 122 / 207 DTR 408 / 323 CTR 690 (Mad.)(HC)

1597 **S.147: Reassessment – After the expiry of four years – No failure to disclose material facts – No new information – Notice to withdraw the deduction is held to be not valid [S. 35(1))(ii), 80GGA, 148, Art. 226]**

Allowing the petition the Court held that the notice for reopening could not have been issued without there being any tangible material to come to the conclusion that there was escapement of income. There was no live link to form a belief, more particularly, when the Assessing Officer during the course of the original assessment had raised queries with regard to both the issues by issuing notices under section 142(1) of the Income-tax Act, 1961 which were duly replied by the assessee. Accordingly the notice to withdraw the claim allowed under section 80GGA read with section 35(1)(ii) of the Act was quashed.(AY. 2013-14)

Amrishbhai Hasmukhlal Parikh v. ITO (2021) 435 ITR 97 (Guj.)(HC)

S.147: Reassessment – After the expiry of four years – No failure to disclose material facts – Developer – Works contract – Reassessment is not valid. [S. 148] 1598

Dismissing the writ appeal of the revenue the Court held that the original assessment was made on the basis that the assessee was a developer of infrastructure. If that was so, the proceeding initiated on the premise that the assessee was a works contractor and not a developer was only on a change of opinion and therefore did not fulfil the essential requirements of sections 147/148 of the Act. The notice of reassessment was not valid.(AY. 2010-11)

ACIT v. Kotarki Constructions Pvt. Ltd. (2021) 435 ITR 78 / 202 DTR 241 / 322 CTR 843 / 281 Taxman 187 (Karn.)(HC)

Editorial : Decision of single judge in Kotarki Constructions Pvt. Ltd v. ACIT (2018) 11 ITR – OL 479 / 162 DTR 49/ (2019) 306 DTR 223 (Karn.)(HC) affirmed

S.147: Reassessment – After the expiry of four years – Finding by Investigation Wing – Bogus transaction – Accommodation entries – No true disclosure of facts – Issue of notice is valid [S.148, 149, Art. 226] 1599

Dismissing the petition the Court held that the case of the assessee was sought to be reopened on the basis of information received from the Investigation Wing wherein, it was stated that, the agency had scrutinised selected bank account numbers of the assessee, maintained with Standard Chartered Bank and prima facie it was found that the transactions reflected in the accounts used by the assessee for layering of funds and the credit entries of Rs. 51,00,000 were mere accommodation entries and the credit entries remained unexplained. The Assessing Officer had verified the information with regard to suspicious cash transactions and upon analysis of the bank statements, had seen that compared to turnover, the total income was very low, which in his opinion, was not commensurate with the profit. The facts with regard to cash transactions had not been disclosed truly and fully. The notice of reassessment was valid.(AY. 2012-13)

Garvit Diamonds Pvt. Ltd. v. ITO (2021) 435 ITR 737 / 203 DTR 34 (Guj.)(HC)

S.147: Reassessment – After the expiry of four years – Book profit – Bad and doubtful debts – Subsequent retrospective amendments – No failure to disclose material facts – Reassessment notice is held to be not valid [S. 115JB, 148, Art. 226] 1600

The assessment was completed under section 143(3) of the Act by an order dated December 10, 2008. After the assessment was completed, by the Finance (No. 2) Act, 2009 certain amendments were made to section 115JB of the Act with retrospective effect from April 1, 2001. On the date when the assessee filed the returns under section 139 of the Act, i. e., on November 4, 2006, there was no provision which warranted the amount provisioned as bad and doubtful debts to be added to the book profits for the computation of income under section 115JB. The assessee had filed returns based on the understanding of law as it stood at the time of filing of returns on November 4, 2006. Therefore, it could not be said that there was failure on the part of the assessee to truly and fully disclose all materials that are required for assessment. In fact the assessment was also completed based on the understanding of law as it prevailed then. The notice of reassessment after four years was not valid.(AY. 2006-07)

Seshasayee Paper and Boards Ltd. v. ACIT (2021) 435 ITR 625 (Mad.)(HC)

1601 **S.147: Reassessment – After the expiry of four years – Objections not been disposed of – Invalid approval – Approval of Joint Commissioner instead of Principal Chief Commissioner – Reassessment is held to be bad in law [S.148, 151, Art. 226]**
Allowing the petition the Court held that the mandatory requirement that the – assessee's objections raised for reopening of the assessment should be disposed of by the Assessing Officer by a speaking order was not complied with. The reassessment proceeding under section 147 was vitiated on this ground alone. The letter of approval under section 151 for the issuance of notice under section 148 issued by the Joint Commissioner to the ITO simply stated that "approval is hereby accorded under section 151(2) for initiation of proceeding under section 147 ". There was no indication of any application of mind by the authority. The approval accorded under section 151 had to be granted by the Principal Chief Commissioner, or the Chief Commissioner, or the Principal Commissioner, or the Commissioner, if the reopening is beyond four years. However, the approval was issued by the Joint Commissioner and therefore, it was not valid.(AY. 2007-08)
Viresh Hemani v. ITO (2021) 435 ITR 376 (Orissa)(HC)

1602 **S.147: Reassessment – After the expiry of four years – Information from District Registrar – Purchase of land at higher value – Unexplained expenditure – Reassessment is held to be justified [S.69C, 148, Art, 226]**
Dismissing the petition the Court held that though assessee had shown to have incurred an expenditure of Rs. 11.65 crores for purchase of certain lands, however, on cross verification from report of District Registrar the Assessing officer had discovered a fact that assessee had actually purchased lands of Rs. 30.04 crores. On facts reopening notice issued against assessee after four years from end of relevant assessment year was justified. (AY. 2013-14)
Usha Martin Ltd. v. UOI (2021) 436 ITR 154 / 279 Taxman 155 / 207 DTR 258 / 323 CTR 395 (Jharkhand)(HC)

1603 **S. 147 : Reassessment – After the expiry of four years – Income from lease rental – Reassessment based on documents accompanying return of income – No new material discovered – Reassessment is bad in law – With in four years – Reassessment based on discrepancies noted in value of land and doubtful debts in the statement of the computation of income and financials – Reassessment is held to be valid [S. 36(1)(viia), 69A, 148, Art. 226]**
Allowing the petition for the assessment years, 1996-1997 and 1997-98 the Court held that reassessment based on documents accompanying return of income and no new material discovered. Reassessment is held to be bad in law. As regards reassessment for the assessment years 2000-01 and 2015-16 the reassessment notices were issued based on discrepancies noted in value of land and doubtful debts in the statement of the computation of income and financials within period of four years. Reassessment is held to be valid (AY. 1996-97, 1997-98, 2000-01, 2015-16)
Indian Syntans Investments (P.) Ltd. v. ACIT (2021) 279 Taxman 292 (Mad.)(HC)

S. 147 : Reassessment – After the expiry of four years – Capital gains – Undisclosed investments – Sale of land – Reassessment is held to be bad in law [S.45, 69, 148, Art. 226] 1604

Allowing the petition the Court held that the Assessing Officer had recorded reasons of reopening merely on borrowed satisfaction. Assessing Officer had not applied his mind to arrive at conclusion that there was any failure on part of assessee to disclose fully and truly all material facts. On facts, impugned reopening notice issued against assessee was unjustified and same was to be set aside. (AY. 2011-12)

Kantibhai Dharamshibhai Narola v. DCIT (2021) 436 ITR 302 / 125 taxmann.com 348/ 278 Taxman 322 / 203 DTR 356 / 321 CTR 595 (Guj.)(HC)

S. 147 : Reassessment – After the expiry of four years – Change of opinion – Directors remuneration – Subsequent year on similar facts reassessment was dropped – Reopening was set aside [S. 36 (1)(ii), 148, Art. 226] 1605

Court held that the assessee had made adequate disclosures during original scrutiny assessment and based on same assessment was completed. Reopening notice issued in case of assessee for subsequent assessment year 2008-09 on similar ground/issue was dropped by Commissioner (Appeals) on ground of change of opinion and same was accepted by revenue as no appeal was filed against said order. Reopening notice was set aside. (AY 2007-08)

CavinKare (P) Ltd v. Dy. CIT (2021) 435 ITRR 396 / 282 Taxman 69 (Mad.)

S.147 : Reassessment – After the expiry of four years – Report of investigation wing – Non application of mind by the Assessing Officer – Notice not valid [S.148, Art. 226] 1606

Allowing the petition the Court held that the Assessing Officer had not applied his independent mind while recording the reasons that the income had escaped assessment. The original assessment record was with the Assessing Officer. The scrutiny assessment had been challenged by the assessee-company and the appeal was pending before the Appellate Tribunal. As the issue of alleged transaction of Rs. 7,50,055 was earlier added by the Assessing Officer under section 68 of the Act at the original assessment stage, the same amount could not be brought to tax once again in the reassessment proceedings. It was not the case of the Revenue that the transaction as reported by the Investigating Wing, Surat was distinct and had no relation with the earlier scrutiny assessment made under section 143(3) of the Act. Thus, as such there was no tangible material in the hands of the Assessing Officer for reopening of the proceedings. The notice of reassessment was not valid.(AY.2012-13)

Alliance Filaments Ltd. v. ACIT (2021) 434 ITR 537 (Guj.)(HC)

S.147: Reassessment – After the expiry of four years – Accommodation entries – Facts disclosed in the original assessment proceedings were false – Notice is held to be valid [S.148, Art. 226] 1607

Dismissing the petition the Court held that the Assessing Officer had examined the information received from the Surat wing and based on the information made inquiries and after independent application of mind, and upon due satisfaction, had reached the conclusion that the alleged transaction with A Ltd. seemed to be a bogus purchase and

it was accommodation entries provided at the instance of AM and their group. After the framing of the assessment made under section 143(3) of the Income-tax Act, 1961 tangible material came into the hands of the Assessing Officer through the Investigation Wing and upon perusal thereof, he made independent inquiries and applied his mind and upon due satisfaction, he formed an opinion that the income had escaped assessment. The notice of reassessment was valid.(AY.2012-13)
Keshav Diamonds Pvt. Ltd. v. ITO (2021) 434 ITR 700 (Guj.)(HC)

1608 **S.147: Reassessment – After the expiry of four years – Accommodation entries – Policed diamonds – Subsequent information – Transaction disclosed in the original assessment proceedings were not valid – Sanction obtained – Reassessment was held to be valid [S. 132, 148, 151, Art. 226]**

Dismissing the petition the Court held that the subsequent information that transaction disclosed in the original assessment proceedings were not valid and the Assessing Officer presented the reasons recorded for approval of the Principal Commissioner in the prescribed format through the Additional Commissioner. Both officers had perused the reasons recorded and opined that it was a fit case to issue notice under section 148. There was compliance with section 151. The notice was valid. (AY.2012-13)
Madhav Gems Private Limited v. ITO (2021) 434 ITR 684 / 200 DTR 297 (Guj.)(HC)

1609 **S.147: Reassessment – After the expiry of four years – No payment of interest or remuneration – Notice on ground that payments must have been made – Not valid [S.80(IB)(10), 148, Art. 226]**

Allowing the petition the Court held that there was no material on record to indicate that the assessee had actually received any interest on capital and remuneration from the firm. The record further indicated that for the assessment year 2010-11, deduction under section 80-IB(10) was claimed without paying any interest on capital and remuneration to partners and such claim was not disturbed by the Assessing Officer. In this view of the matter, the conclusion arrived at by the Assessing Officer that the assessee had claimed deduction without providing interest on capital and remuneration to partners as per clauses 6 and 7 of the deed, and hence income had escaped assessment on account of failure on the part of the assessee in filing of the return of income disclosing fully and truly all material facts, were contrary to law and without jurisdiction.(AY.2011-12 to 2013-14)
Myhome Developers v. ACIT (2021) 434 ITR 270 (Guj.)(HC)

1610 **S.147: Reassessment – After the expiry of four years – Failure to disclose true facts – Share capital – Kolkata based companies – Reassessment notice is held to be valid [S.143(1), 148, Art. 226]**

Dismissing the petition the Court held that the return filed by the assessee was accepted without scrutiny. Since there was no scrutiny assessment, the Assessing Officer had no occasion to form any opinion on any of the issues arising out of the return filed by the assessee. The concept of change of opinion would, therefore, have no application. This was not a case where the ITO sought to draw any fresh inference which could have been raised at the time of the original assessment on the basis of the materials

placed before him by the assessee as regards the receipt of the share capital and share premium from two Kolkata based companies which were subsequently discovered to be shell companies. The subsequent information, on the basis of which the ITO acquired reason to believe that income chargeable to tax had escaped assessment on account of the omission of the assessee to make a full and true disclosure of the primary facts, was relevant, reliable and specific. It was not vague or non-specific. The notice of reassessment was valid.(AY.2011-12)
Navnidhi Dyeing and Printing Mills Pvt. Ltd. v. ACIT (2021) 434 ITR 334 / 201 DTR 265 / 320 CTR 737 / 281 Taxman 542 (Guj.)(HC)

S.147 : Reassessment – After the expiry of four years – Failure to disclose true facts – Share capital – Kolkata based companies – Reassessment notice is held to be valid [S.143(1), 148, Art. 226] 1611
Dismissing the petition the Court held that the return filed by the assessee was accepted without scrutiny. Since there was no scrutiny assessment, the Assessing Officer had no occasion to form any opinion on any of the issues arising out of the return filed by the assessee. The concept of change of opinion would, therefore, have no application. This was not a case where the ITO sought to draw any fresh inference which could have been raised at the time of the original assessment on the basis of the materials placed before him by the assessee as regards the receipt of the share capital and share premium from two Kolkata based companies which were subsequently discovered to be shell companies. The subsequent information, on the basis of which the ITO acquired reason to believe that income chargeable to tax had escaped assessment on account of the omission of the assessee to make a full and true disclosure of the primary facts, was relevant, reliable and specific. It was not vague or non-specific. The notice of reassessment was valid.(AY.2011-12)
Navnidhi Dyeing and Printing Mills Pvt. Ltd. v. ACIT (2021) 434 ITR 334 / 201 DTR 265/ 320 CTR 737 / 281 Taxman 542 (Guj.)(HC)

S.147 : Reassessment – After the expiry of four years – Housing projects – No failure to disclose any material facts – Reassessment is not valid. [S.80IB(10), 148, Art. 226] 1612
Allowing the petition the Court held that the order and the materials furnished by the assessee at the stage of original assessment showed that there was conscious application of mind to the issue of deduction under section 80-IB(10) by the Assessing Officer and after considering the evidence and materials, he had thought it not fit to disallow the deduction. Therefore, a mere change of opinion while pursuing the same material by the Assessing Officer while initiating the proceedings, could not be a reason to believe that income had escaped assessment. Once an opinion was formed on the issue of deduction and assessment on the issue was made under section 143(3) reopening the assessment on the same set of facts and material, without there being any tangible material would be nothing but a change of opinion. The condition precedent for reopening of the assessment beyond the period of four years having not been satisfied the notice issued under section 148 was quashed and set aside.(AY. 2012-13)
Sarthak Developers v. Dy CIT (2021) 434 ITR 648 / 129 taxmann.com 45 (Guj.)(HC)
Editorial: SLP of revenue is dismissed, Dy. CIT v. Sarthak Developers (2022) 284 Taxman 362 (SC)

1613 **S.147: Reassessment – After the expiry of four years – Rejection of application by non application of mind – Order set aside and remanded to the Assessing Officer. [S.148, Art. 226]**

The Assessing Officer rejected the objection of the Assessee without application of mind. On writ allowing the petition the Court held that none of the objections raised by the assessee to the notice issued under section 148 to reopen the assessment under section 147 were considered by the Assessing Officer in a meaningful manner. The exercise which the Assessing Officer was supposed to have undertaken while dealing with the objections raised by the assessee was not an empty formality. The order disposing of the objections should reflect application of mind. The order disposing of the objections was quashed and set aside. The matter was remitted to the Assessing Officer. (AY.2012-13)

Chetan Engineers v. ACIT (2021) 433 ITR 143 (Guj.)(HC)

1614 **S.147: Reassessment – After the expiry of four years – Method of accounting – Contractor – Percentage completion of method – Mere claim is not sufficient – Documents to support the claim was not submitted – Notice is held to be valid. [S.148, Art. 226]**

Dismissing the petition the Court held that unless supporting documents were produced, it could not be said that there was full disclosure. The enclosures filed before the Assessing Officer at the time of section 143(3) assessment did not indicate this. Therefore, it could not be said that there was true and full disclosure of all materials that were required for assessment before the Assessing Officer by the assessee. The notice of reassessment was valid.(AY.2011-12, 2013-14)

Durr India Private Limited v. ACIT (OSD) (2021) 433 ITR 48 (Mad.)(HC)

1615 **S. 147 : Reassessment – After the expiry of four years – When re-assessment proceedings to disallow brought forward loss were held to be without jurisdiction, High Court could not issue fresh directions to Assessing Officer to look into other grounds. [S.72, Art. 226]**

Reassessment proceedings were challenged before the High Court. High Court held that the Assessing Officer was not entitled to adjust loss of brought forward from books of account of transferor-company. However the Single Judge held that re-assessment was without jurisdiction but directed the Assessing Officer to look into other grounds. On appeal the division bench held that when the since Single Judge came to conclusion that re-assessment proceedings were without jurisdiction, Single Judge was barred from issuing any further directions to Assessing Officer to look into other grounds. (AY. 2010-11, 2011-12)

T. Stanes and Company Ltd. v. Dy. CIT (2021) 435 ITR 39 / 202 DTR 78 / 321 CTR 153/ 277 Taxman 230 (Mad.)(HC)

Editorial : Order of single (2021) 435 ITR 533 / 202 DTR 82 / 321 CTR 157 (Mad.)(HC)

S.147 : Reassessment – After the expiry of four years – Assessment without scrutiny – Report of investigation wing – Reassessment was held to be valid [S.133, 143(1), 148, Art. 226] 1616

Dismissing the petition the Court held that Assessing Officer had relied on primary information of undisclosed account and after independent inquiry and upon verification of return of income and other documents, recorded his satisfaction and formed a reasonable belief that income of assessee had escaped assessment. The AO also recorded the statement of the assessee, accordingly notice for reassessment was held to be valid. (AY.2014-15)

Hiteshkumar Babulal Ramani v. ACIT (2021) 432 ITR 403 / 279 Taxman 449 (Guj.)(HC)

S.147 : Reassessment – After the expiry of four years – No new material – Notice to increase quantum of disallowance is held to be not valid [S. 14A, 148, Art. 226] 1617

Allowing the petition the Court held that the Assessing Officer could not reopen the assessment after four years where there was no failure on the part of the assessee to disclose fully and truly all the facts necessary for assessment. The record indicated that the assessee had disclosed all materials fully and truly before the authority at the time of original assessment. Even on the merits, it is settled that disallowance under section 14A cannot exceed the exempt income of the assessee. Thus, the twin conditions as provided under section 147 of the Act, which were condition precedent for reopening of the assessment after four years were not satisfied. The proposed disallowance under section 14A exceeded the exempt income and invoking the provisions for reopening of the assessment under section 147 of the Act was bad in law. The notice was not valid. (AY.2012-13)

Sandesh Procon LlP v. ACIT (2021) 432 ITR 414 / 202 DTR 305 (Guj.)(HC)

S.147 : Reassessment – After the expiry of four years – Expenditure for earning exempt income – No failure to disclose material facts – Notice is not valid [S.14A, 148, Art. 226] 1618

Allowing the petition the Court held that that it was evident that during the original assessment proceedings a specific query was raised by the Assessing Officer with respect to section 14A of the Income-tax Act, 1961, and the assessee appropriately replied. The reply was accepted at the relevant point of time. The very same issue was sought to be raised for the purpose of reopening the assessment. This was otherwise not permissible in law on mere change of opinion. It could not also be said that there was any failure on the part of the assessee to fully and truly disclose all the material facts. The notice of reassessment was not valid (AY.2012-13)

Saurabh Natvarlal Soparkar v. ACIT (2021) 432 ITR 68 (Guj.)(HC)

S. 147 : Reassessment – After the expiry of four years – No failure to disclose any tangible material – Reassessment is held to be bad in law. [S. 40(b)(ia), 148] 1619

A notice under section 148 was challenged by the assessee. The reasons recorded stated that the assessee was a partner in the firm named M/s Vijya Laxmi Exports where an audit objection was raised as the deed of the partnership firm provided a clause to provide for interest and remuneration as per section 40(b) but no provision was made

by the firm. High Court quashed the reopening proceedings which were beyond a period of four years as there was no failure to disclose any tangible material and there was no escapement of income. There was no material on record to show that assessee actually received any interest on capital or remuneration from the firm and where no such income is earned, there was no question of taxing the same. (AY.2011-12)
Devebhai Mafatlal Patel v. ACIT (2021) 318 CTR 722 / 110 CCH 53 (Guj.)(HC)

1620 **S.147: Reassessment – After the expiry of four years – Deduction at source – Rent – Audit objection – Reassessment is held to be not valid. [S. 40(a)(ia), 148, 194I]**
The assessee has paid Machine Hire Charges to various contractors or sub-contractors were fully disclosed not only in books of account and Audit Reports furnished by Tax Auditor, but also by way of replies to notice issued by Assessing Authority. During course of original assessment proceeding, it was also contended while giving reply to audit objection that payments, having been made as machine hire charges, did not amount to rentals and thereby did not attract section 194I. The Reassessment proceedings were initiated for failure to deduct tax at source. Tribunal held that since aspect of non-deduction of TDS on machine hire charges attracting section 194I was very much discussed by Assessing Authority during original assessment proceeding, on a mere change of opinion, Assessing Authority could not have invoked reassessment proceedings under section 147/148 beyond period of four years after end of relevant assessment year to disallow impugned amount. Order of Tribunal is affirmed. (AY. 2007-08)
PCIT v. Bharathi Constructions (2021) 276 Taxman 244 (Mad.)(HC)

1621 **S.147: Reassessment – After the expiry of four years – No failure to disclose material facts – Change of opinion – Tax deducted at source – Notice and reassessment is held to be invalid. [S.148]**
Dismissing the appeal of the revenue the Court held that the Tribunal was fully justified in holding that reopening the assessment beyond a period of four years was on a change of opinion and did not satisfy the requirements to be fulfilled in terms of the first proviso to section 147. The Department had not made out any ground to interfere with the order passed by the Tribunal.(AY.2009-10)
CIT v. B. Suresh Kumar (2021) 430 ITR 60 (Mad.)(HC)

1622 **S.147 : Reassessment – After the expiry of four years – Capital gains – Limitation — Assessment not Under Section 143(3) – Limitation for notice is six years – Notice of reassessment on basis of protective assessment is valid [S. 45, 143(1), 148]**
Dismissing the appeal of the assessee the Court held that the return of income for the assessment year 2012-13 was not scrutinized and only the return of income of the assessee for the assessment year 2016-17 was taken up for scrutiny. The concept of protective assessment is applicable in Income-tax law. The question whether the capital gains were assessable in the assessment year 2012-13 or 2016-17 was thus, a matter to be decided by the authorities after due verification of relevant documents and in accordance with law. Thus, while the merits of the matter relating to the year in which the instance of capital gains would fall was left entirely open for decision by the Officer,

the assumption of jurisdiction, on a protective basis was valid. Court also held that since only an intimation under section 143(1) had been passed for the assessment year 2012-13 the limitation of six years was available. Accordingly the Court held that the notice of reassessment was valid and not barred by limitation.(AY.2014-15)
Dass Media Pvt. Ltd. v. ITO (2021) 430 ITR 419 /278 Taxman 142 (Mad.)(HC)

S.147: Reassessment – After the expiry of four years – Capital gains – Limitation – Assessment not under Section 143(3) – Limitation for notice is six years – Notice of reassessment on basis of protective assessment is valid [S. 45, 143(1), 148] 1623
Dismissing the appeal of the assessee the Court held that the return of income for the assessment year 2012-13 was not scrutinized and only the return of income of the assessee for the assessment year 2016-17 was taken up for scrutiny. The concept of protective assessment is applicable in Income-tax law. The question whether the capital gains were assessable in the assessment year 2012-13 or 2016-17 was thus, a matter to be decided by the authorities after due verification of relevant documents and in accordance with law. Thus, while the merits of the matter relating to the year in which the instance of capital gains would fall was left entirely open for decision by the Officer, the assumption of jurisdiction, on a protective basis was valid. Court also held that since only an intimation under section 143(1) had been passed for the assessment year 2012-13 the limitation of six years was available. Accordingly the Court held that the notice of reassessment was valid and not barred by limitation.(AY.2014-15)
Dass Media Pvt. Ltd. v. ITO (2021) 430 ITR 419 / 278 Taxman 142 (Mad.)(HC)

S.147 : Reassessment – After the expiry of four years – No failure to disclose material facts – Audit objection – Barred by limitation [S.148, 153, 271(1)(c)] 1624
Dismissing the appeal of the revenue the Court held that the Tribunal was justified in annulling the reassessment order on the ground that it was barred by limitation under the proviso to section 147. While making the addition in question, the assessing authority himself had admitted that despite the addition having been made in the income, the penalty for concealment had not been initiated under section 271(1)(c) since no aspect of concealment on the part of the assessee was found. But the addition to the income was on account of change of opinion. The Tribunal had categorically held that there was no failure on the part of the assessee, but disclosed the relevant facts and therefore, merely on the basis of the audit objection or change of opinion and reassessment under sections 147 and 148 could not be made beyond the period of four years from the end of the relevant assessment year. (AY.1997-98)
CIT v. Sterling Tree Magnum India Ltd. (2021) 430 ITR 515 / 277 Taxman 234 (Mad.)(HC)

S.147 : Reassessment – After the expiry of four years – No failure to disclose material facts – Reassessment is held to be not valid [S.80IA, 148] 1625
On appeal, the Commissioner (Appeals) held that full information in respect of sale of spares as well as manufactured goods including opening and closing balances was provided by the assessee along with the original return. He set aside the order of the Assessing Officer but the Tribunal restored it. On appeal the Court held that the order of the Tribunal, had been passed in a cryptic manner and the well reasoned order passed

by the Commissioner (Appeals) had been set aside without assigning any cogent reasons. Accordingly the order of the Tribunal was quashed. (AY.1997-98, 1998-99)
Merck Life Science Pvt. Ltd. v. Dy CIT (2021)430 ITR 426 / 279 Taxman 189 (Karn.)(HC)

1626 **S. 147 : Reassessment – Within four years – Waiver of loan – Change of opinion – Query raised during regular assessment proceedings – Order of Tribunal affirmed – No question of law [S. 28(iv), 41(1), 148]**
Dismissing the appeal the Court held that once a query had been raised with regard to a particular issue during the regular assessment proceedings it must follow that the Assessing Officer had applied his mind and taken a view in the matter as reflected in the assessment order. A query was raised by the Assessing Officer in the original assessment in respect of the waiver of loan on account of the one time settlement with the bank and the assessee had filed a detailed submission as to why the principal amount waived by the bank on account of the one time settlement was not taxable. Reassessment on a change of opinion was impermissible. No question of law arose. Referred, *CIT v. Kelvinator of India Ltd (2010) 320 ITR 561 (SC), followed Aroni Commercials Ltd. v. ACIT (2014) 367 ITR 405 (Bom.)(HC), Marico Ltd v. ACIT (2020) 425 ITR 177 (Bom.)(HC)*(AY.2007-08)
PCIT v. EPC Industries Ltd. (2021) 439 ITR 210 (Bom.)(HC)

1627 **S. 147 : Reassessment – Within four years – Jurisdictional issue – Capital gains – Large deduction of expenses – Exemption claimed – Prima facie showing escapement of income – Notice of reassessment is held to be valid – Writ is held to be not maintainable [S. 45, 54F, 143(1), 148, Art. 226]**
Dismissing the petition the Court held that presenting the writ petition on the same day of lodging of objections to the notice of reassessment. The assessee had pursued the writ remedy as a parallel remedy, which was impermissible in law. Moreover, at least, prima facie, the contention of the assessee of an error of jurisdictional fact having vitiated the proceedings initiated by the Assistant Commissioner was not tenable. The notice of reassessment was valid.(AY.2016-17)
John Sebastian Zezito Lobo v. ACIT (2021) 439 ITR 537 / 283 Taxman 229 (Panji Bench) (Bom.)(HC)

1628 **S. 147: Reassessment – Within four years – Change of opinion – Long term Capital gains – Applicability of Rate of tax at 10% or 20% – Examined in the original assessment proceedings – Reassessment is bad in law. [S.48, 112, 148, Art. 226]**
Reassessment notice was issued for calculation of rate of tax in respect of long term capital gains on sale of shares to be calculated at 20% as against 10% was determined while passing the assessment order. On writ the Court held that, once a query has been raised by the AO through the assessment proceedings and the assessee has responded to the query, it would necessarily follow that the AO has accepted the submission of the assessee with that issue in the assessment order even though the assessment order does not reflect any consideration on the issue. It is settled law that once all the material was placed before the AO and he chose not to refer to the deduction /claim which was being allowed in the assessment order, it could not be considered that the AO had not

applied his mind while passing the order. Reassessment notice was quashed. (WP No. 7388 of 2008 dt.17-12-2021)
Conopco Inc v. UOI (2022) BCAJ - January – P. 47 (Bom.)(HC)

S. 147: Reassessment – Within four years – Reasons based on erroneous and incorrect facts – Non application of mind – Notice was quashed [S.143(1), 148, 151 Art. 226] 1629
Allowing the partition the Court held that the reasons recorded are based on totally erroneous and incorrect facts and non application of mind. Averment made in the petition was not denied. Reassessment notice was quashed. (WP No. 3224 of 2019 dt.15-12-2021)
Dhiren Anantraj Modi v. ITO (The Chamber's Journal – January – P. 73 (Bom.)(HC)

S. 147 : Reassessment – Reasons recorded – Sanction – Non-application of mind – Strictures – CBDT to formulate a Scheme to train officers for recording reasons – Commissioners to not to grant sanction in a mechanical manner – Reassessment proceedings quashed [S. 148, 151, Art. 226] 1630
Allowing the writ petition the Court held that where the recorded reasons suggested that the assessee received bogus accommodation entries from itself, it was a clear case of non-application of mind in forming the recorded reasons for reopening. The High Court has suggested that the CBDT could formulate a scheme to train officers for applying their mind in recording the reasons. Further, the CBDT to advise the concerned Commissioners to not grant approval under section 151 of the Income-tax Act, 1961 in a mechanical manner. Reassessment Proceedings quashed. (AY. 2014-15)
Sharvah Multitrade Company Pvt. Ltd. v. ITO (2022) 285 Taxman 397 (Bom.)(HC)

S. 147 : Reassessment – Within four years – Failure to deduct tax at source – Foreign currency loan guarantee – Reassessment notice was held to be valid [S. 148, Art. 226] 1631
Dismissing the petition the Court held that failure on the part of the petitioner to deduct tax at source on interest on foreign currency loan guarantee was misleading. Accordingly the notice for reassessment was held to be valid. (AY.2007-08)(SJ)
Cairn India Ltd. v. Dy. DIT (IT)(No. 1)(2021) 439 ITR 224 (Mad.)(HC)

S. 147 : Reassessment – Arithmetical mistake – Issue subject matter of appeal before CIT(A) – Reassessment invalid – Electricity duty short provision of interest on Government loan – Deletion of addition is held to be justified. [S.43B, 148] 1632
Dismissing the appeal of the revenue the Court held that the reassessment proceedings had been initiated contrary to the second proviso to section 147(1). What was pending before the Commissioner (Appeals) was the very same subject matter for which notice under section 148 was issued. Court also held that the Tribunal was right in confirming the decision of the Commissioner (Appeals) and quashing the order thereby deleting the additions made on account of electricity duty and short provision of interest on Government loan, made under section 43B, relying on the court's decision in the assessee's own case for earlier assessment years. Followed *Kerala State Electricity Board v. Dy CIT (2010) 329 ITR 91 (Ker.)(HC)*(AY.2005-06)
PCIT v. Kerala State Electricity Board (2021) 439 ITR 323 / (2022) 285 Taxman 583 (Ker.)(HC)

1633 **S. 147 : Reassessment – Within four years – Change of opinion – Interest income – oversight, inadvertence or mistake committed by the ITO – No fresh material- Reassessment is held to be not valid [S. 57, 148]**
Dismissing the appeal of the revenue the Court held that details were placed before the AO, at the time of original assessment and therefore, it is not possible to infer that the AO had not at all applied his mind. The initiation of the reassessment proceedings on account of change of opinion' is not permissible in law as the AO had examined all the relevant material furnished by the assessee and had accepted the claim of the assessee. Followed *CIT v. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC).* (AY. 2005-06)
CIT v. Bharatiya Reserve Bank Note Mudran (P) Ltd. (2021) 207 DTR 283 (Karn.)(HC)

1634 **S. 147 : Reassessment – Within four years – Change of opinion – Interest income – oversight, inadvertence or mistake committed by the ITO – No fresh material – Reassessment is held to be not valid [S. 57, 148]**
Dismissing the appeal of the revenue the Court held that details were placed before the AO, at the time of original assessment and therefore, it is not possible to infer that the AO had not at all applied his mind. The initiation of the reassessment proceedings on account of change of opinion' is not permissible in law as the AO had examined all the relevant material furnished by the assessee and had accepted the claim of the assessee. Followed *CIT v. Kelvinator of India Ltd (2010) 320 ITR 561 (SC).* (AY. 2005-06)
CIT v. Bharatiya Reserve Bank Note Mudran (P) Ltd. (2021) 207 DTR 283 (Karn.)(HC)

1635 **S. 147 : Reassessment – Within four years – Audit objection – Survey – Reassessment notice was held to be valid [S. 133A, 148, Art. 226]**
Dismissing the petition the Court held that the objections raised regarding the reasons were dealt with by the respondents. The other issue regarding change of opinion is also considered. AO has spelt out certain reasons, which provided a cause for reopening of assessment and such reasons are sufficient enough and if the assessee is not convinced, it is left open to him to defend the case during reassessment proceedings. (AY. 2011-12) (SJ)
Sutherland Global Services (P)Ltd v. Dy. CIT (2021) 208 DTR 265 (Mad.)(HC)

1636 **S. 147 : Reassessment – Within four years – Failure to deduct tax at source – Reassessment notice was held to be justified. [S. 40(a)(i), Art. 226]**
The reassessment issued reassessment notice on the ground that assessee had not deducted TDS on payment made by it to its Associate Enterprise (AE) in USA towards shared/cost sharing expenses. On writ the Assessee contended issue regarding non-deduction of TDS on payment made for shared/cost sharing expenses to its AE was already pending in appeal before Tribunal, thus, same could not be a ground for reopening of assessment under. Court held that issue pending adjudication before Tribunal was about payment made by assessee to its AE, namely, BASF, in Malaysia whereas reasons for reopening was about non-deduction of TDS on payment made by assessee to its AE, namely, BASF, USA. There was a prima facie reason for reopening of assessment notice was held to be valid (AY. 2011-12)
BASF Catalysts India (P) Ltd v. Dy. CIT (2021) 283 Taxman 591 (Mad.)(HC)

S. 147 : Reassessment – Cash credits – Purchases – Non genuine payment – Reassessment notice was held to be valid [S. 68, 148, Art. 226] 1637

On basis of information that the assessee had made payments to some companies which were not genuinely engaged in business of sale of software, it was concluded that purchase made by assessee-company had to be disallowed and considered for tax incidence and, thus, reassessment was initiated. On writ dismissing the petition the Court held that since disputed facts could not be gone into by High Court in a writ proceeding under article 226, which was to be done with reference to documents as well as evidences made available before competent authority and reasons furnished for reopening of assessment as well as findings made in order disposing of objections were candid and convincing, reopening of assessment was justified. (AY. 2010-11)

Chennai Network Infrastructure Ltd v. ACIT (2021) 283 Taxman 126 / (2022) 441 ITR 535 (Mad.)(HC)

S. 147 : Reassessment – Cash credits – Purchases – Non genuine payment – Reassessment notice was held to be valid [S. 68, 148, Art. 226] 1638

On basis of information that the assessee had made payments to some companies which were not genuinely engaged in business of sale of software, it was concluded that purchase made by assessee-company had to be disallowed and considered for tax incidence and, thus, reassessment was initiated. On writ dismissing the petition the Court held that since disputed facts could not be gone into by High Court in a writ proceeding under article 226, which was to be done with reference to documents as well as evidences made available before competent authority and reasons furnished for reopening of assessment as well as findings made in order disposing of objections were candid and convincing, reopening of assessment was justified. (AY. 2010-11)

Chennai Network Infrastructure Ltd v. ACIT (2021) 283 Taxman 126 (Mad.)(HC)

S. 147 : Reassessment – Within four years – Issue of share expenses – Reassessment notice was held to be valid [S. 148, Art. 226] 1639

The objection of the asseessee was rejected by the Assessing Officer. On writ dismissing the petition the Court held that even though reasons for rejection of objections might not be acceptable to assessee, it had to proceed with impugned reassessment proceedings. Writ was dismissed (AY. 2010-11)(SJ)

Financial Software & Systems (P) Ltd. v. Dy. CIT (2021) 283 Taxman 165 (Mad.)(HC)

S. 147 : Reassessment – Within four years – Value of any benefit or perquisites – On the basis of observation by the CIT (A) – Repayment of loan – Disputed facts cannot be adjudicated in writ proceedings – Reassessment notice is held to be valid. [S. 28(iv), 148, 151, Art. 226] 1640

On the basis of observation made by the Commissioner (Appeals) in the assessment of company in which assessee was director held that erstwhile directors had received a certain sum each by way of repayment of loan taken from escrow agent which would have to be considered for assessment in their hands under section 28(iv) of the Act. On basis of said order, section 148 notice was issued to assessee On writ the assessee made a submission that he was not a director of company at that time, and without even

hearing him and not providing any opportunity to defend his case, order was passed disposing the objections. Dismissing the petition the Court held that disputed facts could not be adjudicated in writ proceedings, all such disputed facts were to be verified by competent authority and, thus, initiation of reassessment was justified. (AY. 2009-10)(SJ)
K. Rajesh v. ACIT (2021) 283 Taxman 153 (Mad.)(HC)

1641 **S. 147 : Reassessment – Within four years – Change of opinion – No new material – Reassessment notice was quashed [S. 148, Art. 226]**
The Assessee challenged the issue of reassessment notice u/s 148 of the Act. Single judge dismissing the petition held that the intricacies involved in the issues required an elaborate adjudication. The assessee was a large taxpayer unit and certain intricacies in deeper manner required more adjudication with reference to the issues raised. On appeal the division Bench held that, the AO while disposing the objections has accepted the fact that the grounds on which the assessment was reopened were verified by the Assessing Officer while completing the assessment under section 143(3) of the Act. In the absence of new facts coming to the knowledge of the AO subsequent to the original assessment proceedings the reopening could not have been done on the basis of same material. Referred Circular No 549 dt. 31 st October, 1989 (1990) 181 ITR 35 (St). Appeal is allowed, order of single judge is set aside. (AY. 2013-14)
Cognizant Technology Solutions India P. Ltd v. ACIT (2021) 439 ITR 571 / 206 DTR 401 (Mad.)(HC)
Editorial : Order of single judge in Cognizant Technology Solutions India P. Ltd v. ACIT (2021) 437 ITR 425 / 206 DTR 408/ 323 CTR 259 (Mad.)(HC) set aside

1642 **S. 147 : Re assessment – Export oriented undertakings – Instruction of CBDT Dated 9-3-2009 Clarifying that approval granted by Software Technology Parks of India has to be ratified by Board of approvals – Instruction valid – Writ petition was dismissed. [S. 10B, 148, Art, 226]**
Dismissing the petition the court held that instruction of CBDT Dated 9-3-2009 Clarifying that approval granted by Software Technology Parks of India has to be ratified by Board of approvals is valid. The assessee had to get an approval from the competent Board as contemplated for claiming exemption under section 10B of the Act. Even if there was a change of authorities/Board by the Ministry, it was for the assessee to approach the Ministry or the Department concerned for the purpose of the procedures, which were in force for claiming exemption. Writ petition was dismissed. (AY. 2006-07) (SJ)
Indus Teqsite Pvt. Ltd. v. Ministry of Finance (2021) 435 ITR 613 / 204 DTR 224 / 322 CTR 100 (Mad.)(HC)
Editorial : On appeal division bench quashed the reassessment notice, Indus Teqsite Pvt. Ltd v. Dy.CIT (2021) 206 DTR 129 / 322 CTR 689/ (2022) 285 Taxmman 302 (Mad.) (HC)

S. 147 : Reassessment – Within four years – No new material – Matter remanded to consider the issue on change of opinion [S. 148, Art, 226] 1643

Allowing the petition the Court held that the revenue could not satisfy the Court about new material of documents came in to possession of the Assessing Officer after the assessment order which was passed u/s 143(3) of the Act. Order rejecting the application was set aside and the matter was remanded to consider regarding change of opinion. (AY. 2013-14)

Magma HDI General Insurance Co Ltd v. ITO (2021) 439 ITR 329 / 206 DTR 57 / 322 CTR 750 (Cal.)(HC)

S. 147 : Reassessment – Within four years – Disputed facts – Alternative remedy – Interim order – Order is not barred by limitation – Writ is not maintainable – Order of single judge is affirmed. [S.148, 153(2), Art. 226] 1644

Single judge dismissing the writ petition against the reassessment notice on the ground that the disputed facts cannot be adjudicated in writ proceedings. As regards the limitation the Court held that in the absence of any order communicated the Assessing Officer,it was not possible for the department to act in a particular manner. Order passed based on the final assessment order was within limitation period and not barred by limitation. On appeal division bench affirmed the order of single judge. The Court also held that the assessee has to necessarily avail the appellate remedy as against the order of reassessment and agitate all issues on merits. As regards the limitation the Court held that the assessee having enjoyed the benefit of the interim order passed by the Supreme Court on 8th December 2016, restoring the position, which stood on 8 th June, 2014 is not entitled to maintain a challenge to the reopening / reassessment on the ground of limitation. The contentions with regard to the limitation which have been rejected. (AY. 2007-08)

Madras Race Club v. Dy.CIT (2021) 206 DTR 297 / 323 CTR 188 (Mad.)(HC)

Editorial: Order of single judge is affirmed Madras Race Club v. Dy.CIT (2021) 203 DTR 338 / 322 CTR 292 (Mad.)(HC)

S. 147 : Reassessment – Within four years – Disputed facts – Alternative remedy – Order is not barred by limitation – Writ is not maintainable. [S.148, 153(2), Art. 226] 1645

Dismissing the writ petition against the reassessment notice the Court held that the disputed facts cannot be adjudicated in writ proceedings. As regards the limitation the Court held that in the absence of any order communicated the Assessing Officer,it was not possible for the department to act in a particular manner. Order passed based on the final assessment order was within limitation period and not barred by limitation. (AY. 2007-08)(SJ)

Madras Race Club v. Dy.CIT (2021) 203 DTR 338 / 322 CTR 392 (Mad.)(HC)

Editorial: Affirmed by division Bench Madras Race Club v. Dy.CIT (2021) 206 DTR 297 / 323 CTR 180 (Mad.)(HC)

1646 **S. 147 : Reassessment – Within four years – Approval was granted by Development Commissioner but on such approval Ratification Certificate was not yet given by Board of Approval – Reassessment notice was held to be not valid [S. 10B]**
The assessment was completed under section 143(3) allowing the deduction under section 10B of the Act on the basis of approval granted approval by Development Commissioner. The reassessment notice was issued on the ground that ratification certificate was not yet given by the Board. On writ the single judge dismissed the petition. On appeal the division bench held that since approval granted by an Authority, to whom power had been delegated was valid, as long as said approval was not withdrawn, assessee would be entitled to rely upon approval and claim deduction under section 10B of the Act. (AY. 2006-07)
Indus Teqsite (P.) Ltd v. Dy. CIT (2021) 206 DTR 129 / 322 CTR 689 / 133 taxmann.com 134 / (2022) 285 Taxman 302 (Mad.)(HC)
Editorial : Order of single judge set aside; Indus Teqsite Pvt. Ltd v. Ministry of Finance (2021) 435 ITR 613 / 204 DTR 224 / 322 CTR 100 (Mad.)(HC)

1647 **S. 147 : Reassessment – Within four years – Capital gains – Joint development – Failure to disclose the factum of handing over of possession of the property – Reassessment notice was held to be valid- Matter remanded to the Tribunal. [S. 45, 148, 154(1)]**
Allowing the appeal of the revenue the Court held that the assessee has failed to disclose the factum of handing over of possession of the property to joint venture. The Assessing Officer has recorded the reasons, the order of Tribunal suffered from the vice of non application of mind and the finding recorded by it is perverse. Matter remanded to the Tribunal to decide in accordance with law. (AY. 2004-05)
CIT v. Amco Batteries Ltd (2021) 200 DTR 244 (Karn.)(HC)

1648 **S. 147 : Reassessment – Within four years – Based on the information collected in the course of survey – Alternative remedy – Reassessment notice was held to be valid – Writ was dismissed. [S.133A, 148, Art. 226]**
Dismissing the appeal against single judge, the division bench held that the reassessment proceedings were initiated on the basis of information received in the course of survey. The matter involves fact finding exercise, order of single judge was affirmed.(AY. 2013-14)
Precision Engineering v. ACIT (2021) 319 CTR 217 / 198 DTR 311 (Chhattishgarh)(HC)
Aaditya Construction v. PCIT (2020) 427 ITR 198 / 196 DTR 371 (Chhattisgarh)(HC)
Editorial : Order of Single Judge Precision Engineering v. ACIT (2020)427 ITR 198/ 196 DTR 371 / 319 CTR 219 (Chhattishgarh)(HC)

1649 **S. 147 : Reassessment – Search and seizure – Information from third party – Satisfaction – Validity of issue was notice u/s 148 was left open to be decided in appeal – Order of single judge was set aside [S. 132, 148, 153C, 158BD, Art. 226]**
In a writ filed before the Single judge validity of issue of notice u/s 147/148 was challenged on the ground that the proceedings should have been initiated u/s 153C of the Act and no reassessment under section 147 can be resorted to. Single judge dismissed the petition holding the initiation of proceedings were valid. On appeal the

division bench of High Court set aside the order of the single judge. Court observed that as the assessee has preferred an appeal before the CIT (A), the assessee can raise all the issue including the validity of the proceedings initiated u/s 147/148 of the Act, by raising additional grounds. (AY. 2016-17, 2017-18)
Navkar Electronics v. ITO (2021) 323 CTR 1037 / 208 DTR 315 (Mad.)(HC)
Editorial : Finding of single judge is set aside, Navkar Electronics v. ITO (2021) 323 CTR 1041 / 208 DTR 320 (Mad.)(HC)

S. 147 : Reassessment – Survey – Various documents – Business connection in India – Notice issued to file the return was held to be valid. [S. 5(2), 6(3), 9(1)(i), 92CA(3), 148, 151, Art. 226] 1650
During the course of survey operations, various evidences were collected which went on to prove that the sites of management and control of the petitioner is in India at Unit-4, 7th Floor, Crest Building, Ascendas IT Park, CSIR Road, Taramani, Chennai-600 113, i.e., the premise of Watanmal India, in association with all the functions related to the business activity of the petitioner, which are being carried out there and there exists a business connection as per Explanation 2(a) of Section 9(1) of the IT Act. The petitioners have not filed the return. The petitioner has approached this Court at initial stage only on the ground that the respondents have no authority to invoke Section 147 of the Act. However, perusal of the reasoning given in the show cause notice, it is sufficient to arrive a conclusion that there are materials and evidences are enough to allow the Department to proceed with the issues and adjudicate the same based on the materials and evidences available and by affording opportunity to the petitioner. Court held that the petitioner could not establish any acceptable ground for the purpose of interference at the stage of issuance of a notice under Section 148 and the issuance of show cause notice and contrarily the respondents could able to establish that sufficient materials are available on record, which were considered and scrutinised and a finding on such analysis is also recorded in the impugned show cause notice, there is no reason whatsoever to interfere with the actions of the respondent and thus, all the writ petitions fail and stand dismissed. In view of the fact that the respondents had already completed the assessment process and passed an assessment order and kept the same in a sealed cover, the respondents are permitted to open the sealed cover and communicate the assessment orders to the petitioner without any further delay enabling the petitioner to proceed further, if any grievance exist. Accordingly, all the writ petitions are dismissed. (AY. 2006-07)
Watnamal Boolchand & Co. Ltd v. ACIT (IT) (2021) 202 DTR 321 / 321 CTR 548 (Mad.)(HC)

S. 147 : Reassessment – Within four years – Failure to deduct tax at source – Alternative remedy – Writ petition was dismissed [S. 40(a)(ia), 43B, 148, Art. 226] 1651
Dismissing the petition the Court held that the assessee had not deducted tax at source. When the material was not considered at the time of original assessment the consideration thereof by the respondent could not be said to be a change of opinion or review of the earlier order. The order of reassessment was valid. (AY. 2014-15)
Bayer Vapi Pvt. Ltd. v. ACIT (2021) 438 ITR 495 /(2022) 284 Taxman 267 (Guj.)(HC)

1652 **S. 147 : Reassessment – Within four years – Gift by proprietor of Jewellery business to his close relatives – Relatives investing gifts in business and forming a partnership – Notice was held to be valid. [S.143 (1), 148, Art. 226]**
Dismissing the writ petition the court held that there was proper application of mind on the part of the Assessing Officer while recording the reasons for reopening the assessments. When the return of income of both the assessees was processed under section 143(1) and not under section 143(3) the Assessing Officer was justified in arriving at the conclusion that the income had escaped assessment. The notices of reassessment were valid. (AY. 2015-16)
Hareshbhai Mathurbhai Zinzuwadia v. ACIT (2021) 438 ITR 413 / (2022) 284 Taxman 161 (Guj.)(HC)

1653 **S. 147: Reassessment – Search and seizure — Assessment of third person — Jurisdiction – Decision of single judge was set aside – Assessee was given liberty to raise additional grounds on the issue of jurisdiction. [S. 132, 147, 153C, Art. 226]**
On writ against the issue of reassessment proceedings the single judge proceeded to consider the effect of section 153C and observed that nowhere in section 147, the provisions of section 153C stood excluded. The assessee was permitted to file an appeal before the first appellate authority. On appeal allowing the appeal, the division bench held that the contentions raised by the assessee with regard to the validity of the reopening proceedings had not been decided. In any event, the assessee had filed appeals before the first appellate authority within the period of limitation. Therefore, the assessee was relegated to pursue the appellate remedy. The observations rendered by the court which might cause prejudice to the assessee or to the Department were vacated, as they would amount to putting fetters on the exercise of the powers of the appellate authority. Therefore, all issues were left open and the assessee was at liberty to contend all factual and legal issues before the first appellate authority. The order passed in the writ petitions was set aside. The assessee was also granted liberty to raise additional grounds if a need arose. (AY. 2016-17, 2017-18)
Navkar Electronics v. ITO (NO. 2)(2021) 438 ITR 676 / 208 DTR 315 (Mad.)(HC)
Editorial : Observation of single judge as regards proceedings under section 147/ 148 of the Act in relation to search related issues was set a side, Navkar Electronics v. ITO (NO. 1)(2021)438 ITR 671/ 208 DTR 320 (Mad.)(HC)

1654 **S. 147 : Reassessment – Within four years – Accommodation entries – Information from Investigation wing – New material – Notice and rejection of objection was held to be valid [S. 132, 148, Art. 226]**
Dismissing the petition the Court held that there was reason to believe that the income chargeable to tax had escaped assessment. The reopening of the assessment under section 147 had been made only after due inquiries and recording of statements of concerned persons and on having found prima facie material, the notice under section 148 was issued to the assessee. The Assessing Officer had reason to believe that the assessee was a beneficiary of accommodation entry and the basis for formation of such belief was several inquiries and the investigation by the Investigation Wing and report thereof. The reasons for the formation of the belief by the Assessing Officer had a

rational connection with or relevant bearing on the formation of belief that there had been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. Writ petition was dismissed. (AY. 2013-14)
Sanjay Baulal Surana v. ACIT (2021) 438 ITR 269 (Guj.)(HC)

S. 147 : Reassessment – Search and seizure – Information from DIT (Inv) – Bogus accommodation entries – Reassessment notice is held to be valid [S. 68, 132(4), 148, Art. 226] 1655
Dismissing the petition the Court held that though the original assessment was completed u/s 143 (3) of the Act on the basis of subsequent information from DIT (Inv) based on the search and seizure action regarding bogus accommodation entries prima facie issue of reassessment notice was held to be justified. (AY. 2012-13)
Amber v. Dy. CIT (2021) 437 ITR 45 / 282 Taxman 178 / 203 DTR 412 / 321 CTR 489 (Orissa)(HC)

S. 147 : Reassessment – Fringe benefits tax – Reason to believe – Information from audit – Disputed facts not to be adjudicated by Court – Reassessment proceeding is held to be valid. [S.115WG, 115WH, 148, 150 Art. 226] 1656
Dismissing the petition the Court held that the three lines omitted did not cause any prejudice to the interest of the assessee and the subject was categorically dealt with by the assessing authority throughout the proceedings and the assessee also had knowledge of these facts and circumstances and raised objections. The mere information provided by way of the audit objection could not be a ground to quash the entire initiation of proceedings. Section 115WG provides wider scope for reassessment of fringe benefits chargeable to tax which escaped assessment. The scope provided for reopening of assessment of any fringe benefits escaping assessment cannot be narrowed down by the courts. The contention that it was a change of opinion was not tenable. The reasons were disclosed to the assessee. The assessee had responded to the reasons and certain typographical error would not constitute a ground for quashing the entire initiation of proceedings under section 115WG. The reason for reopening as contemplated would not be construed as a change of opinion and further the assessee has to submit all the details for the purpose of completing the reassessment proceedings. That the continuation of the proceedings based on the reopening of the assessment initiated by the erstwhile officer by invoking section 115WG could not be raised as a valid ground unless any mala fides are established against such officer. The assessee had to participate in the reopening proceedings by availing of the opportunities to be provided for the purpose of completion of proceedings. The disputed facts raised by the assessee could not be adjudicated by the writ court under article 226 of the Constitution of India. Such an adjudication has to be undertaken through original records and evidence made available.(AY.2009-10)(SJ)
Cognizant Technology Solutions India P. Ltd. v. Dy. CIT (No.1)(2021) 437 ITR 410 / 208 DTR 168 / 323 CTR 939 (Mad.)(HC)

1657 **S. 147 : Reassessment – Within four years – Speaking order only with reference to reasons for reopening of assessment and not on all issues – Reassessment was held to be valid. [S. 148, Art. 226]**

Dismissing the petition the Court held that the intricacies involved in the issues required an elaborate adjudication. The assessee was a large taxpayer unit and certain intricacies in deeper manner requires more adjudication with reference to the issues raised. It was for the assessee to participate in the reopening proceedings and avail of the opportunities to be provided for the purpose of completion of reopening proceedings. The Assessing Officer had established that he had reason to believe for reopening of assessment and there was no infirmity in the reopening of the assessment under section 147 / 148 of the Act.(AY. 2013-14)(SJ)

Cognizant Technology Solutions India P. Ltd. v. ACIT (NO. 2)(2021) 437 ITR 425 / 206 DTR 408 / 323 CTR 259 (Mad.)(HC)

1658 **S. 147 : Reassessment – Within four years – Change of opinion – Information from audit party – Sufficiency of reasons not to be gone into by High Court – Reassessment notice was held to be valid. [S.10A, 10AA, 115JB, 148, Art. 226]**

Dismissing the petition the Court held that based on the information collected from the records, the Assessing Officer formed an opinion that claiming of deduction under section 10AA or opting out of benefit of section 10AA was not a criterion to enforce section 115JB and that while computing income under section 115JB, the assessee had added back expenses related to some special economic zone units and reduced the revenue from such units. Based on the information clear findings are also given. That at the time of finalizing the assessment the Assessing Officer had not formed any opinion on the issue of transfer pricing issue leading to reassessment under section 147 and thus, it did not amount to change of opinion and also to review of the assessment already completed. The reasons for reopening had been duly recorded and conveyed to the assessee. The order, disposing of the objections, could not be construed as a final order of assessment and if the mandatory requirement of "reason to believe" is satisfied with reference to section 147 of the Act, the authority shall be allowed to continue the reassessment proceedings. The sufficiency of the reasons need not be gone into by the High Court. The issue of reopening of notice is held to be valid. (AY.2011-12)(SJ)

Cognizant Technology Solutions India P. Ltd. v. Dy. CIT (NO. 3)(2021) 437 ITR 438 / 323 CTR 252 (Mad.)(HC)

1659 **S. 147 : Reassessment – Within four years – Information by external agency – Sufficiency of reasons not to be gone into in Writ proceedings – Notice of reassessment is valid. [S. 148, 151, Art. 226]**

Dismissing the petition the Court held that sufficiency of reasons was not to be gone into in Writ proceedings. Notice of reassessment is valid. (AY.2010-11)(SJ)

Cognizant Technology Solutions India P. Ltd. v. ACIT (NO. 4)(2021) 437 ITR 457 / 208 DTR 217 / 323 CTR 955 / 283 Taxman 349 (Mad.)(HC)

S. 147 : Reassessment – Other income not disclosed – Alternative remedy – Correctness of facts cannot be decided in writ proceedings – Reassessment proceedings is held to be valid. [S. 148, Art. 226] 1660

On appeal by the Department allowing the appeal the Court held that the Assessing Officer had clearly stated that there was escapement of assessment and also stated the reasons, pointing out that the assessee had not commenced its business during the year, and therefore, the expenses claimed needed to be capitalised. Mixed question of law and facts, in respect of the reopening of the assessment were to be adjudicated and appreciated by the competent statutory authority contemplated under the Act. The details with regard to scrutiny of materials were all available with the Assessing Officer and so objections in respect of the reasons raised by the assessee had to be discussed only by the statutory authority and the assessee was bound to respond to the Assessing Officer for the purpose of arriving at a just conclusion and taking a decision. In the event of the assessee filing its returns in the prescribed form as called for by the Department and also by submitting all required documents and substantiating its stand and if the Assessing Officer passed the order on such reassessment, and if the Assessing Officer had not considered the submissions raised by the assessee or it assessed the income under wrong head, then, the assessee was entitled to prefer statutory appeal. Therefore, when there was a hierarchy of appeals provided under the statute, the assessee must exhaust the statutory remedies. When there is an alternative statutory remedy, the writ jurisdiction of the court under article 226 of the Constitution of India ought not to be invoked.(AY.2009-10)

Dy.CIT v. Daimler India Commercial Vehicles Pvt. Ltd. (2021) 437 ITR 605 / 206 DTR 10/ 322 CTR 623 / 283 Taxman 326 (Mad.)(HC)

Editorial: Decision of the single judge in Daimler India Commercial Vehicles Pvt Ltd v. Dy.CIT (W.P.No 43435 of 2016 and WMP.Nos. 37296 and 37297 of 2016, reversed dt. 30-1-2018.

Editorial: SLP of assessee dismissed, Daimler India Commercial Vehicles Pvt. Ltd. v. Dy.CIT (2022) 443 ITR 5(St)(SC)

S. 147 : Reassessment – Within four years – Reasons for notice were different from issues concluded during original assessment – Notice was held to be valid [S. 143(3), 148 Art. 226] 1661

Dismissing the writ petition the Court held that the reasons for reopening of assessment under section 147 of the Act, were different from the issues verified in assessment proceedings. The notice of reassessment was valid.(AY.2011-12)

DRS Industries Pvt. Ltd. v. Dy. CIT (NO. 1)(2021) 437 ITR 673 / 205 DTR 63 / 322 CTR 295 (Mad.)(HC)

S. 147 : Reassessment – Within four years – Change of opinion – Sanction – Non application of mind – Reassessment notice was quashed.[S.92CA(3), 143(3), 144C, 148, 151, Art. 226] 1662

Allowing the petition the Court held that the material that had been used for initiating the reassessment proceedings was the same material that was available to the Assessing Officer while passing the draft assessment orders. The failure to arrive at a logical

conclusion in a section 144C proceeding could not become the basis for initiating the proceedings under section 148 of the Act in the absence of new material emerging before the Assessing Officer which gave the Assessing Officer reason to believe that the assessee's income chargeable to tax had escaped assessment. The notice of reassessment was not valid. Court also held that the Additional Commissioner while giving approval under section 148 of the Act, ought to have applied his mind to the crucial question as to whether any new or fresh facts had come to the notice of the Assessing Officer for invoking the provisions of section 148 of the Act. The Additional Commissioner, on the other hand, mechanically replicated the language of the provision by making the endorsement in both cases the approval was not valid. (AY.2013-14)

ESS Advertising (Mauritius) S. N. C. Et Compagnie v. ACIT (IT)(2021) 437 ITR 1/ 204 DTR 156/ 321 CTR 679 (Delhi)(HC)

ESS Distribution (Mauritius) S.N.C. Et Compagnie v. ACIT (IT)(2021) 437 ITR 1 / 204 DTR 156/ 321 CTR 679 (Delhi)(HC)

1663 **S. 147 : Reassessment – Within four years – Share application money – Shell bogus companies – Information from investigation wing – Notice and reassessment was held to be valid [S.68, 131, 148, Art, 226]**

Dismissing the petition the Court held that on the facts, there was reason to believe that income chargeable to tax had escaped assessment because reopening of the assessment under section 147 had been made only after due inquiries and recording of statements of concerned persons, and on having found prima facie material. The Assessing Officer had reason to believe that the investor companies were not in existence and the basis for such belief was several inquiries and the investigation by the Investigation Wing, Kolkata and report thereof. The identity was comprised of actual business of the investors and the director of one of those companies was unable to establish that he had carried out any actual business. Further, the investor companies were found to be shell or paper companies. In this regard, the report of the commission under section 131 sent to Kolkata and the physical entry done by the Inspector of that range established that at the registered address of the company, no business was being carried out and the premises at the address of the company were residential premises, which was substantiated from a copy of a photograph. The reasons for the formation of the belief by the Assessing Officer had a rational connection with or relevant bearing on the formation of belief that there had been escapement of income of the assessee from assessment in the assessment year 2014-15 because of its failure to disclose fully and truly all material facts. Writ was dismissed. (AY.2014-15)

Kottex Industries Pvt Ltd v. ACIT (2021) 437 ITR 211 / 282 Taxman 432 (Guj.)(HC)

1664 **S. 147 : Reassessment – Within four years – Information from Investigation wing – Bogus accommodation entries – Notice of reassessment was held to be valid [S. 131, 148, Art, 226]**

Dismissing the petition the Court held that the reasons for the formation of the belief by the Assessing Officer had a rational connection with or relevant bearing on the formation of belief that there had been escapement of income of the assessee from

assessment in the particular year because of his failure to disclose fully and truly all material facts. Reassessment notice was held to be valid. (AY.2012-13)
Priya Blue Industries Pvt. Ltd. v. ACIT (2021) 437 ITR 155 (Guj.)(HC)
Editorial: SLP of assessee dismissed, Priya Blue Industries Pvt. Ltd. v. ACIT (2022) 443 ITR 6 (St)(SC)

S. 147 : Reassessment – Search and Seizure – Accommodation entries – Initiation of reassessment proceedings was held to be justified.[S. 68, 132, 148, Art. 226] 1665
Dismissing the petition the Court held that reopening had been made only after due inquiries and recording of statements of concerned persons, prima facie there was live link between material coming to notice of Assessing Officer and formation of his belief that there had been escapement of income of assessee from assessment because of his failure to disclose fully and truly all material facts; initiation of reassessment was justified. (AY. 2012-13)
Anderson Biomed (P) Ltd v. ACIT (2021) 282 Taxman 490 (Guj.)(HC)

S. 147 : Reassessment – Export oriented undertakings – Survey – Claimed higher profit – Reassessment notice was held to be justified [S.10B, 133A, 148, Art. 226] 1666
Notice under section 148 was issued on the basis of survey that the assessee has claimed higher deduction. Dismissing the petition the Court held that if accounts were casted to distort income to show higher profit from EOU operation to claim deduction under section 10B, revenue would be justified in reopening assessment.
Orchid Chemicals & Pharmacauticals Ltd. v. Dy. CIT (2021) 282 Taxman 257 (Mad.)(HC)

S. 147 : Reassessment – Method of accounting – Estimate of income – Statement of manager operations – Reopening was held to be justified [S. 145, Art. 226] 1667
Court held that while disposing of objections, Assessing Officer had categorically stated that he had reason to believe that income chargeable to tax had escaped assessment. Reassessment notice was held to be justified. (AY. 2015-16, 2016-17)
Dr. Sajan Hedge v. ACIT (2021) 282 Taxman 39 / (2022) 440 ITR 389 (Mad.)(HC)

S. 147 : Reassessment – Within four years – Insurance business – Profit on sale of investments – Prior to assessment year 2011-12 not liable to tax – First Schedule, Rule 5 – Provision of section 115JB which enables companies to compute book profit are not applicable to insurance companies- Reassessment notice was quashed [S. 44, 115JB. 148, Art. 226] 1668
Allowing the writ against the issue of notice u/s 148 of the Act, the Court held that prior to assessment year 2011-12, profit on sale of investments made by general insurance companies could not be brought to tax. Provision of section 115JB which enables companies to compute book profit are not applicable to insurance companies. Reassessment notice was quashed. (AY. 2008-09)
United India Insurance Co. Ltd v. Dy. CIT (2021) 282 Taxman 184 (Mad.)(HC)

1669 **S. 147 : Reassessment – Foreign currency – Interest – Professional fees – Consulting fee etc. – Reassessment notice was held to be justified. [S.37(1), 148, Art, 226]**
Dismissing the petition the Court held that reasons for reopening had got sum and substance and said differences or inferences had to be answered and explained by assessee by participating in process of reassessment and assessee should furnish further details or documents or materials so as to establish expenditure. Reopening notice was held to be justified. (AY. 2002-03)(SJ)
Vedanta Ltd v. ADIT (IT)(2021) 439 ITR 719 / 282 Taxman 504 (Mad.)(HC)

1670 **S. 147 : Reassessment – Free trade zone – Disallowance of expenditure – Reassessment notice was held to be justified [S.10A, 148, Art. 226]**
Dismissing the petition the Court held that the expenditure were expressly disallowed under deeming fiction created by penal provisions, on account of infringement of law. By adding back same item, eligible profits got increased resulting in excess claim under section 10A. Disallowance of expenditure was required to be added back to taxable income. Reopening of notice was held to be justified. (AY 2009-10)
Vestas Technology R&D Chennai (P) Ltd v. ACIT (2021) 282 Taxman 195 (Mad.)(HC)

1671 **S. 147 : Reassessment – Transfer pricing – Credit for withholding tax – Limitation is held to be not applicable – Reassessment is held to be valid. [S. 90, 92CA, 92E, Art. 226]**
Assessee filed audit report under section 92E which was considered by TPO to pass final order which was forwarded to Assessing Officer who has passed a final assessment order. The Assessing Officer sought information from TPO, to cull out certain truth or understand transactions, if any escaped, would not fall under scope of sub-section (2B) or (2C) of section 92CA and limitation prescribed under sub-section (2C) would not be applicable. Issue of reassessment notice is held to be justified The assessee company had claimed credit for an amount of withholding tax deducted by Singapore tax authorities in respect of interest income earned by assessee from a Singapore registered company which was allowed as TDS in relevant assessment year, since assessee had borrowed money in name of Singapore company and interest expenditure on such borrowed money was also claimed by assessee which resulted in no real interest income on netting offered in India, relief under section 90 on tax withheld at Singapore was not available, Reopening of assessment to disallow claim of assessee for credit for withholding tax paid in Singapore was justified. Writ against reassessment notice was dismissed. (AY. 2007-08)
Aban Offshore Ltd v. Addl. CIT (2021) 436 ITR 249 / 281 Taxman 369 / 207 DTR 14/ (2022) 324 CTR 182 (Mad.)(HC)

1672 **S. 147 : Reassessment – Cash credits – Objections not properly dealt with by Assessing Officer – Order passed without application of mind – Matter remanded to the Assessing Officer [S.168, 148, Art. 226]**
Allowing the petition the Court held that the Assessee raised various objections both on ground of jurisdiction as well as on merits and requested to drop reassessment proceedings but same was rejected by Assessing Officer holding that assessment

was valid and within jurisdiction. However the Assessing Officer had passed order mechanically and without application of his mind and matter was remitted to Assessing Officer. (AY. 2012-13)
Ashish Bohra v. ITO (2021) 439 ITR 465 / 281 Taxman 383 (Guj.)(HC)

S. 147 : Reassessment – Penny stock – Information from DIT (Inv) – Capital gains – Assessing Office had made independent enquiries – Reassessment is held to be justified [S. 10(38), 45, 148, Art. 226] 1673
Dismissing the petition the court held that since Assessing Officer on basis of information received from concerned wing, made independent enquiries and applied his mind gathered information and formed a belief that income had escaped assessment. Notice issued for reopening of assessment is held to be justified (AY. 2012-13)
Bhanuben Mansukhlal Khimashia v. ITO (2021) 281 Taxman 504 (Guj.)(HC)

S. 147 : Reassessment – Objection – Order passed disposing the objection in a mechanical manner – Order of Assessing Officer rejecting objections must be well reasoned – Order set aside [S.148, Art. 226] 1674
Allowing the petition the Court held that since specific objections raised by assessee had not been properly dealt with by Assessing Officer and Assessing Officer had passed order mechanically and without application of his mind, order disposing of objections was set aside and matter was remanded back to Assessing Officer for decision afresh. (AY.2012-13)
Divya Jyoti Diamonds (P) Ltd v. ITO (2021) 439 ITR 471 / 281 Taxman 323 (Guj.)(HC)

S. 147 : Reassessment – Capital gains – Stamp valuation – New information – Reassessment notice is held to be justified – Alternative appellate remedy – Writ is not maintainable. [S.45, 48, 148, Art. 226] 1675
Dismissing the petition the Court held that since manner in which sale deed was valued by assessee and stamp duty paid at time of registration and actual market value prevailing during relevant point of time with reference to subject property, provided new information and additional material, which were not considered by Assessing Officer at time of original assessment, reopening of assessment is valid in law. Court also held that when an appellate remedy is provided in respect of final order of assessment passed by competent authority, assessee must exhaust said appellate remedy first. (AY. 2013-14)
GE T &D India Ltd v. Dy. CIT (2021) 281 Taxman 228 (Mad.)(HC)

S. 147 : Reassessment – Objection – Directed to dispose the objections by passing a speaking order [S.148, Art. 226] 1676
Allowing the petition the Court held that the Assessing Officer is bound to dispose of objections raised by assessee against reasons of reopening by passing a speaking order. Instead of dealing with said objection, by passing a speaking order, Assessing Officer merely informed the assessee that notice under section 148 was issued only after obtaining necessary approval from jurisdictional Joint Commissioner and, hence, reopening was in accordance with law. Order was set aside with the direction to dispose of assessee's objections by passing a speaking order. (AY. 2014-15, 2015-16, 2016-17)
P. Hemalatha v. ITO (2021) 281 Taxman 342 (Mad.)(HC)

1677 **S. 147 : Reassessment – Within four years – Under assessment of income – Misinterpretation of provision – Notice valid – High Court cannot consider sufficiency of reason.[S.80IA, 148, Art. 226]**
Dismissing the petitions the Court held that, under assessment of income due to misinterpretation of provision by the assessee, the reassessment notice is valid and Court cannot consider sufficiency of reason in writ proceedings.(AY. 2006-07, 2007-08, 2009-10)(SJ)
Aircel Cellular Limited v. Dy. CIT (2021) 435 ITR 660 (Mad.)(HC)

1678 **S.147 Reassessment – Information from Investigation wing – No independent opinion – Cannot travel beyond reasons recorded – Notice was quashed [S.68,148, Art. 226]**
Allowing the petition the Court held that the Assessing Officer had acted mechanically based on the information received from the Investigating Wing and the formation of belief by the Assessing Officer was vague and based on irrelevant material. Court also observed that it is a settled principle of law that the Department cannot have recourse to material and information beyond the scope of the reasons recorded by the Assessing Officer prior to reopening of the assessment under section 147 of the Income-tax Act, 1961.Accordingly the notice was quashed. (AY. 2012-13)
Alliance Fibres Ltd. v. ACIT (2021) 435 ITR 264 / 280 Taxman 242 (Guj.)(HC)

1679 **S. 147 : Reassessment – Within four years – Bogus transaction – Accommodation entries – Assessing Officer verifying material and deciding information was true – Notice is valid [S. 133(6), 148, Art. 226]**
Dismissing the writ petition the court held that the information received by the Department was specific, clear and unambiguous so far as the involvement of the assessee was concerned. The Assessing Officer after receiving the information had verified the details of the assessee and called for information under section 133(6) of the Act and also obtained bank statement of all concerned and finally observed that the transactions made with two entities through bank channels having direct links with Mahavir Enterprises as money had been routed through the bank account of Mahavir Enterprises and Harsahaben Rashikbharti Gosai (Smt) being the proprietor of the concern managed to provide accommodation entries through bogus billing and the sales and purchases shown in the books of the assessee were bogus and the assessee had received the benefit of bogus entries and the income earned from these accommodation entries had escaped assessment. The Assessing Officer had initiated the proceedings not only on the information received from the Department but based upon his independent satisfaction and other available material to form a belief with regard to the escaped assessment of income. The notice was valid. Followed Raymond Woollen Mills ltd. v. ITO (1999) 236 ITR 34 (SC)(AY.2011-12)
Cemach Machineries Ltd. v. ITO (2021) 435 ITR 306 (Guj.)(HC)

1680 **S. 147 : Reassessment – Within four years – Notice alleging failure to file the return – Acknowledgement for return filed was produced – Approval was not taken – Notice and order rejecting objections was Set aside.[S. 139, 148, Art. 226]**
Allowing the petition the Court held that the explanation given by the Department that the assessment of the assessee for the AY. 2011-12 was reopened under section

147 / 148 after proper recording of reasons for forming belief that income had escaped assessment and approval of the Principal Commissioner under section 151 was obtained was not satisfactory. Nothing was placed on record to prove the approval taken. The proof produced by the assessee with regard to the acknowledgment of return filed for the AY. 2011-12 had not been disputed by the Department. The notice and order were quashed.(AY. 2011-12)
Deepak Wadhwa v. ACIT (2021) 435 ITR 699 (Delhi)(HC)

S.147 : Reassessment – Deduction allowed in part during original assessment – Pendency of appeal before Appellate Tribunal – Reassessment proceedings cannot be resorted to in respect of income which is the subject matter of an appeal, reference or revision. [S.80IA, 148, 253, Art. 226] 1681
Allowing the writ the Court held that the record indicated that special queries were raised on the issue of allowances made under section 80IA of the Act. The calculation of deduction worked out by the assessee-company was reflected in the audited books of account and it was not hidden. In the original assessment proceedings, the then Assessing Officer had applied his mind and taken a conscious decision in respect of the time usage charge component and partly disallowed the claim made under section 80IA. The issue regarding disallowance of the claim was pending for disposal before the second appellate authority and in view of the third proviso to section 147 of the Act, the Assessing Officer could not reopen the assessment invoking the provisions of section 147. The notice of reassessment was not valid.(AY. 2011-12)
Garden Silk Mills Ltd v. ACIT (2021) 435 ITR 351 / 204 DTR 129 / 322 CTR 66 / 281 Taxman 484 (Guj.)(HC)

S. 147 : Reassessment – Non-compete fee – Failure to disclose material facts – Notice for reassessment is held to be valid [S.148, Art. 226] 1682
Dismissing the petition the Court held that it was not clear why two agreements were signed with the same parties and the payments were made only to the same Indian company. The valuation in the agreement was not clearly explained by the assessee. Though it was submitted that the Indian company had paid a sum of Rs. 15 crores to the assessee, it was found from the annual report filed for the financial year ending on March 31, 2005 that only a sum of Rs. 1,50,000 was paid under the second agreement. Further, it was also not clear whether the tax was paid in the returns filed for the years 2004-05 and 2005-06 and there were also disputed questions of fact involved as to whether the tax had been paid by the – assessee during the succeeding Assessment years. Writ was dismissed. (AY. 2003-04)(SJ)
Revathi Equipment Ltd v. ACIT (2021) 435 ITR 543 / 204 DTR 313 / 282 Taxman 232 / 204 DTR 313 / 322 CTR 703 (Mad.)(HC)
Editorial : Order of single judge set aside, Revathi Equipment Ltd. v. ACIT (2022) 443 ITR 262 (Mad) (HC)

1683 **S. 147 : Reassessment – No tangible material – Sanction for notice was accorded mechanically – Breach of principle of natural justice – Share capital – Share premium – Notice was not valid – Existence of alternative remedy is not an absolute bar – Notice was quashed. [S.148, Art, 226]**

Allowing the petition the court held that the correlation between the underlying material and the information which was available in the balance-sheet of the assessee was clearly not made. The formation of belief by the ITO that income of the assessee chargeable to tax had escaped assessment, was unreasonable and irrational, as it could not be related to the underlying information ; something which was discernible from a bare reading of the order recording reasons. The Principal Commissioner, who accorded sanction for initiating the process under section 147 of the Act, simply rubber-stamped the reasons furnished by the ITO for issuance of notice under section 148. There was breach of principles of natural justice. The notice was quashed.(AY. 2010-11, 2011-12)

Synfonia Tradelinks Pvt. Ltd. v. ITO (2021) 435 ITR 642/ 202 DTR 13/ 322 CTR 310/ 281 Taxman 557 (Delhi)(HC)

1684 **S. 147 : Reassessment – Loss – Carry forward and set off – Amalgamation of companies – Change of opinion – Reassessment was held to be not valid [S.72A(1)(a), 148, Art. 226]**

On writ the Court held that issue of notice for the purpose of the proviso to section 147 qua denial of adjustments under section 72A(1)(a) by the Deputy Commissioner was inspired from a change of opinion as the assessee had disclosed the basis on which it had claimed deductions in the returns of income and it was pursuant thereto that the respective assessment orders were passed by the Assessing Officer. Therefore, there was no material suppression of facts on the part of the assessee, neither was there a failure to either truly or fully furnish the information that was required for completing the assessment. Therefore invocation of section 148 for the purpose of the proviso to section 147 was without jurisdiction. Court also directed the assessee to participate in the proceedings before the Deputy Commissioner and if in the course of such proceedings he concluded that there were other aspects within the purview of Explanation 3 to section 147 on which the assessment could be reopened, such income could be assessed or – reassessed. The Deputy Commissioner was however precluded from disturbing the benefits claimed and allowed under section 72A(1)(a) in the assessment orders.(AY. 2010-11, 2011-12)(SJ)

T. Stanes and Company Ltd v. Dy. CIT (NO. 1)(2021) 435 ITR 533 / 202 DTR 82 (Mad.) (HC)

Editorial : Division bench partly modified the order, T. Stanes and Company Ltd v. Dy. CIT (2021) 202 DTR 78/321 CTR 157 / 277 Taxman 230 (Mad.)(HC)

1685 **S. 147 : Reassessment – Within four years – Accommodation entries – Hawala dealer – Bogus purchases – Recorded reason – Reassessment is valid – Approval was granted on the date of issue of notice – Sanction is valid [S. 68, 148, 151, Art. 226]**

Dismissing the petition the Court held that the Assessing Officer was entitled to initiate reassessment proceedings on basis of tangible material which came in his hand as regards the bogus purchases. Court also held that competent Authority had given

satisfaction in writing and accorded sanction under section 151 on the date of issue of notice, hence the sanction is valid in law (AY. 2012-13)
Nisha Diamonds (P.) Ltd. v. ITO (2021) 280 Taxman 314 (Guj.)(HC)

S. 147 : Reassessment – Within four years – Information from NMS (Non filler monitoring system) – Cash deposited in a bank account – Re assessment notice is held to be valid [S. 68, 143(1), Art. 226] 1686
Notice under section 148 was issued on the basis of information from NMS (Non filler monitoring system) on account of cash deposits made in the bank account. The assessee filed the writ petition challenging the notice of reassessment proceedings. Dismissing the petition the Court held that the assessee had not produced copy of cash book and there were also discrepancies in bank statements with regard to opening balance and withdrawals of cash amount in such other bank account from which assessee contended to have withdrawn and redeposited cash deposits in question. Reassessment notice was held to be valid. (AY. 2012-13)
Silverdale Inn (P.) Ltd. v. ITO (2021) 280 Taxman 253 (Guj.)(HC)

S. 147 : Reassessment – Within four years – Information from DDIT (Investigation) – Bogus transaction – Accommodation entries – Long term capital gain – Sale of shares – Mere disclosure of that transaction at time of original assessment proceedings could not be said to be disclosure of true and full facts – Reassessment notice is held to be valid [S. 45, 68, Art. 226] 1687
Assessing Officer issued notice u/s 148 on the basis of information from DDIT (Investigation) alleging that the transaction of long term capital gain shown by the assessee was bogus transaction and only accommodation entries. The assessee challenged the reassessment proceedings by filing the writ petition. Dismissing the petition the Court held since transaction itself on basis of subsequent information was found to be a bogus transaction, mere disclosure of that transaction at time of original assessment proceedings could not be said to be disclosure of true and full facts. Notice issued was held to be justified.(AY. 2012-13)
Mehrunnisa Mohamed Fazal Maniar v. ITO (2021) 280 Taxman 261 (Guj.)(HC)

S. 147 : Reassessment – Within four years – Bogus purchases – Unexplained expenditure – Accommodation entries – Reassessment proceedings is held to be valid [S.69C, 143(1), 148, Art. 226] 1688
Dismissing the petition the Court held that as per the reasons recorded and materials relied upon by AO, it appeared that AO himself was satisfied with regard to information and other materials available with him and came to conclusion that transactions of purchases shown by assessee in books of account were bogus. On facts reopening notice issued against assessee whose return was accepted without scrutiny was justified. (AY. 2012-13)
Cemach Machineries Ltd. v. ITO (2021) 280 Taxman 98 (Guj.)(HC)

S. 147 : Reassessment – Within four years – Infrastructure development – BOT(Build – Operate – Transfer) – Not claiming amortisatiion of expenses – Tax neutrality – Reassessment proceedings was quashed [S. 80IA, 148, Art. 226] 1689
The Assessing Officer reopened the assessment on the ground that the assessee had erroneously applied CBDT Circular No. 09/2014, dated 23/04/2014 and claimed

amortization expenses for financial year 2014-15 but according to department, this Circular was not applicable to assessee as assessee was a BOT (Build – Operate – Transfer), who received amenity while circular applies only to BOT operators who are collecting toll. On writ the assessee contended that since assessee was entitled to deduction under section 80-IA, there was no question of any escapement of tax as increase in income by not claiming amortization expenses would not result in assessee paying any further tax as same was 100 per cent deductible under section 80IA. Allowing the petition the Court held that the order did not address issue in relation to tax neutrality because of fact that assessee was eligible for section 80IA deduction. The order was quashed and set aside. (AY. 2015-16)
Mapex Infrastructure (P.) Ltd. v. ACIT (2021) 280 Taxman 236 (Cal.)(HC)

1690 **S. 147 : Reassessment – Search in third party premises – Sale of land – Unexplained investment – Return was not filed- Reassessment notice issued after analysing voluminous material collected by revenue during search – Reassessment notice is held to be valid – Search undertaken prior to 1-6-2015 – Argument that proceedings should have been initiated u/s 153C and not under section 148 was not accepted [S. 69A, 132, 133A, 148, 153C, Art. 226]**
The assessee sold an immovable property but did not file her return of income for relevant assessment year. Search was conducted on Venus group. Voluminous documents were seized after analysing the documents and recording reasons, the reassessment notice was issued. The objections were disposed off. The assessee challenged the issue of notice is bad in law. Dismissing the petition the Court held that the assessee has not filed the return and the reassessment notice issued after analysing voluminous material collected by revenue during search Reassessment notice is held to be valid. On the facts the search was initiated prior to 1-6-2015 therefor argument that proceedings should have been initiated u/s 153C and not under section 148 was not accepted. (AY. 2012-13)
Heval Navinbhai Patel v. ITO (2021) 279 Taxman 24 / 199 DTR 1 (Guj.)(HC)
Navin R.Patel v. ITO (2021) 279 Taxman 24 / 199 DTR 1 (Guj.)(HC)

1691 **S. 147 : Reassessment – Firm – Remuneration – Not received any interest or remuneration – Notice for reopening of assessment is held to be not justified [S.10AA, 148, Art. 226]**
Allowing the petition the Court held that there was no such material on record to indicate that assessee had actually received any interest on capital and remuneration from partnership firm and, thus, question of taxing same did not arise at all – Whether, therefore, impugned reopening notice was unjustified and same was to be set aside.
Devenbhai Mafatlal Patel v. ACIT (2021) 278 Taxman 198 / 199 DTR 298/ 318 CTR 722 (Guj.)(HC)

1692 **S. 147 : Reassessment – Protective assessment – Search and seizure – Statement of third party – No incriminating material was found against the assessee – Order Tribunal quashing the reassessment was affirmed [S. 132, 148, 260A]**
Dismissing the appeal of the revenue the Court held that there was no allegation of withholding material or suppression of facts nor there was there anything incriminating

recorded against assessee, hence no protective assessment could have been made. (AY. 2008-09)
PCIT v. Kalyan Buildmart (P) Ltd. (2021) 127 taxman.com 280(Raj.)(HC)
Editorial: SLP of revenue dismissed on the ground of delay, PCIT v. Kalyan Buildmart (P) Ltd (2021) 279 Taxman 443 (SC)

S. 147 : Reassessment – Information received from Investigation wing – Non application of mind – Sanction not obtained – Notice is held to be not valid [S.133A, 148, 151, Art. 226] 1693
Allowing the petition the Court held that the reasons recorded for assuming jurisdiction to issue notice under section 148 referred to clause (a) of Explanation 2 to section 147 of the Act, 1961 which applies to non-filing of the return of income but the assessee had filed the return of income, and hence it would not be applicable. Thus the Assessing Officer had recorded the reasons without proper application of mind. There was no reference to approval having been sought from the Addition Commissioner or CIT for issuance of notice under section 148 as provided in section 153.Accordingly In view of the facts and circumstances of the case, the notice dated March 29, 2018 issued under section 148 of the Act, could not be sustained.(AY.2011-12)
Bharatkumar Nihalchand Shah v. ACIT (2021) 434 ITR 621 / 281 Taxman 521 (Guj.)(HC)

S. 147 : Reassessment – Business expenditure – Loss on bidding deduction – Tribunal quashed the reassessment on the ground that there was no failure on the part of assessee to disclose all material facts – High court quashed the order of Tribunal and remanded the matter back to Tribunal to decide on merit afresh. [S.37(1), 148] 1694
Allowing the appeal of the revenue the Court held that since Tribunal had not taken note of fact that Assessing Officer had recorded reasons and had held that escapement of income from assessment had taken place due to failure to disclose fully and truly all material facts necessary on part of assessee, impugned order of Tribunal was to be quashed and matter was to be remitted back to Tribunal to decide same afresh. (AY. 2003-04)
CIT v. Shriram Chits (Karnataka)(P.) Ltd. (2021) 277 Taxman 224 (Karn.)(HC)

S.147: Reassessment – Unexplained money – Enforcement Directorate without making any independent inquiry himself into matter – Borrowed satisfaction – Reassessment was held to be not valid [S.69A] 1695
Assessing Officer reopened the assessment on the ground that assessee had paid bribe to Iraqi officials and added the amount as undisclosed investment. On appeal the Tribunal held that the Assessing Officer had simply borrowed conclusions drawn by Enforcement Directorate without making any independent inquiry himself into matter. On appeal the High Court held that these were re-assessment proceedings and at the stage of issue of notice it was enough to form a prima facie view for re-opening the assessment. In the re-assessment proceedings the AO was expected to undertake a full-fledged inquiry into the documents produced before him to come to the conclusion that the addition sought to be made was justified. As pointed out by the ITAT or that the AO seems to have done is to simply borrow the conclusions drawn by the ED without making any independent

inquiry himself into the matter. Even before the ITAT, the Revenue was unable to show the precise documents or material on the basis of which the AO formed the reason to believe that 60,000 US$ had been paid as bribe to the Iraqi officials and therefore was required to be added to the income of the Assessee. Order of Tribunal was affirmed. (AY. 2001-02)
PCIT v. Andaleeb Sehgal (2021) 124 taxmann.com 246 (Delhi)(HC)
Editorial : SLP of revenue is dismissed, PCIT v. Andaleeb Sehgal (2021) 277 Taxman 492 (SC)

1696 **S. 147 : Reassessment – Bogus donation – Report of CBI – Reassessment is held to be valid – Failure to prove donations were genuine – Addition is held to be valid [S.68, 148]**
Dismissing the appeal of the assessee the Court held that there was specific information based on the report of CBI that donations were not genuine, reassessment was held to be valid. On merit the genuineness of the donors was not established. Addition is held to be justified.(AY. 2006-07, 2007-08)
Brijbasi Education and Welfare Society v. PCIT (2021) 431 ITR 126 / 200 DTR 341 / 278 Taxman 246 / 321 CTR 478 (Delhi)(HC)

1697 **S. 147 : Reassessment – Interest or Remuneration – Reassessment on presumption of receipt is held to be not valid [S.148]**
Allowing the petition the Court held that, mere incorporation of a clause in the partnership deed providing for payment of interest partners capital and remuneration does not necessarily mean or should be construed as mandatory. It is the settled position of law that the condition precedent for reopening an assessment is that the Assessing Officer should be satisfied based on some cogent or tangible material, that the case is one of escapement of income chargeable to tax. In the absence of escapement of any income chargeable to tax, it is not open for the Department to reopen the case of the assessee. (AY. 2011-12)
Dipak Ratnabhai Patel v. ITO (2021) 431 ITR 548 / 278 Taxman 42 (Guj.)(HC)

1698 **S. 147 : Reassessment – Report of Investigation wing of Department – Notice issued after application of mind – Notice is valid [S.148, Art. 226]**
Dismissing the writ petition the Court held that having regard to the materials on record, it could not be said that there was total non-application of mind on the part of the Assessing Officer while recording the reasons for reopening of the assessment. It also could not be said that his conclusion was merely based on the observations and information received from the Investigation Wing as the Assessing Officer could be said to have applied his mind to the same. The notice of reassessment was valid.(AY. 2012-13)
M. R. Organisation v. ITO (2021) 431 ITR 528 / 198 DTR 298 / 319 CTR 156 (Guj.)(HC)

1699 **S. 147 : Reassessment – Within four years – High Court directed AO to re-look at the matter in light of the declaratory and curative amendment in 40(a)(ia) being retrospective from 1-4-2005 [S. 40(a)(ia), 148, 194C, Art. 226]**
A notice under section 148 was challenged by the assessee. The reasons recorded stated that the assessee had not disclosed freight receipts from exporters and net freight paid to

La Freightlift Pvt Ltd fell within section 194C as payment to sub-contractor and assessee failed to deduct tax in the year under consideration. Disallowance of the entire amount was made under section 40(a)(ia) of the Act. Assessee explained the AO that the freight rates from exporters were actual payment received on behalf of La Freightlift Pvt Ltd who has paid the tax amount but since the AO did not accept the explanation a writ was filed. High Court directed the AO to re-look at the matter in light of the amendment to section 40(a)(ia) being declaratory and curative in nature would have retrospective effect from 1-4-2005. (AY.2005-06)
Sima Agencies v. ITO (2021) 318 CTR 516 / 198 DTR 33 / 110 CCH 52 / 279 Taxman 171 (Mad.)(HC)

S. 147 : Reassessment – Within four years – Change of opinion – Oversight, inadvertence or mistake of Assessing Officer discovered on reconsideration of same material – Reassessment is not permissible. [S.148, Art. 226] 1700
During the assessment proceedings the Assessing Officer has examined the issue of deferred revenue by calling for details and agreed with the accounting system followed by the assessee as regards the accounting of consideration for extended warranty. The AO issued notice u/s 148 for alleged under assessment of income. Objections raised by the Assessee was rejected by the Assessing Officer. The assesee challenged the order of rejection by filing writ petition. Allowing the petition the Court held that oversight, inadvertence or mistake of Assessing Officer discovered on reconsideration of same material. Reassessment is not permissible. Referred *Kalyanji Mavji and Co. (1976) 102 ITR 287 (SC).* Indian and Eastern Newspaper Society (1979) 119 ITR 996 (SC)(Three judges)(AY. 2009-10)
Dell India Ltd v. JCIT (2021) 432 ITR 212 / 278 Taxman 9 / 198 DTR 73 / 319 CTR 1 (FB) (Karn.)(HC)

S.147 : Reassessment – Principal officer – Director for short period – Assessee cannot be held to be Principal Officer – Notice was set aside. [S. 2(35), Art, 226] 1701
Allowing the petition the Court held that here being acting directors of company, department could have proceeded against any one of such acting directors for reassessment proceedings and could have treated any one of them as Principal Officer. Accordingly since effective proceedings would not be possible with petitioner as Principal Officer impugned order treating petitioner as a Principal Officer was to be set aside. (AY. 2011-12)
Suvendra Kumar Panda v. ITO (2021) 276 Taxman 171 (Mad.)(HC)

S.147 : Reassessment – Best judgment assessment – Principles of natural justice – Amalgamation – Unable to file returns of merged company E-Portal – No opportunity to respond to notice and raise its objections to reasons – Order quashed and matter remanded [S. 144, 148, Art. 226] 1702
On a writ the assessee contended that the assessee was not given any opportunity to seek the reasons for reopening of the assessment or submit its objections to the reopening of the assessment. Allowing the petition the Court held that the principles of natural justice had been violated by the Department while passing the order under

section 144 read with section 147 as no opportunity had been given to the assessee to file its returns pursuant to the notice issued under section 148 for reopening of the assessment. The order was quashed and the matter was remanded. (AY.2012-13)
Oasys Green Tech Pvt. Ltd. v. ITO (2021) 430 ITR 207/ 199 DTR 521/ 319 CTR 695 / 279 Taxman 222 (Mad.)(HC)

1703 **S. 147 : Reassessment – Within four years – Change of opinion – Income from business – Income from house property – Developing, operating and maintaining information technology parks – Reassessment is held to be not valid [S. 22, 28(i), 80IA(4), 148]**
Dismissing the appeal of the revenue the Court held that the main object of the company was to construct, maintain and lease out of the software technology parks and the main income of the assessee was lease rentals. With regard to non-payment of interest, it was clear that the assessee had paid the interest within the relevant assessment year and all these facts had been disclosed by the assessee to the Assessing Officer. After taking into consideration all these aspects, the Assessing Officer had passed the original assessment order. Further both the Commissioner (Appeals) and the Tribunal had thoroughly scrutinised the entire facts and passed orders. The original assessment order was passed by the Assessing Officer after taking into consideration all the material facts. During the course of the reassessment proceedings, the Assessing Officer had not found any tangible material to prove escapement of income from tax. The reassessment proceedings were not valid.(AY.2003-04, 2005-06)
CIT v. Tidel Park Ltd. (No. 2)(2021) 430 ITR 242 (Mad.)(HC)

1704 **S. 147 : Reassessment – Issue of notice under section 143(2) prior to disposal of objections – Directed to keep the notice in abeyance [S.143(2), 148, Art. 226]**
Allowing the petition the Court held that though no notice under section 143(2) was issued, the objections had not been disposed of. While the Assessing Officer was entitled to issue notice under section 143(2) to take forward the assessment on the merits, the issuance of the notice at a stage anterior to disposal of the objections to the assumption of jurisdiction was premature and contrary to law. The notices issued under section 143(2) were set aside and the Assistant Commissioner was directed to dispose of the objections filed by the assessee as to the assumption of jurisdiction. If the question of jurisdiction was decided adverse to the assessee the proceedings for reassessment would continue. *GKN Driveshafts (India) Ltd. v. ITO (2003) 259 ITR 19 (SC)*(AY.2013-14 to 2017-18)
Krishnaraj Chandrasekar v. ACIT (2021) 430 ITR 211 (Mad.)(HC)

1705 **S.147: Reassessment – After the expiry of four years – Unexplained investment – Assessment cannot be reopened merely on the basis of Report of District valuation officer – Allegation of escapement of income more than Rs. 1lkah – Reassessment proceedings valid. [S. 69, 148, 149(1)(b)]**
Held that since the allegation was of escapement of income more than Rs. 1 lakh, the reopening could not be said to be invalid in view of the provisions of section 149(1)(b) of the Act. Therefore, the reopening of assessment proceeding was valid. Tribunal also held that the Assessing Officer having completed the assessment under section 143(3)

making additions in respect of unexplained investment, could not reopen the assessment for enhancement of the addition merely based on the report of the District Valuation Officer.(AY.2010-11)
Ambalal Nanabhai Patel v. ITO (2021) 92 ITR 81 (Ahd.)(Trib.)

S.147 : Reassessment – After the expiry of four years – No allegation in the reasons recorded of any omission or failure on the part of the assessee in disclosing fully and truly all material facts necessary of assessment – Notice is void-ab-initio. [S. 148] 1706
It has been held by the appellate tribunal that the impugned notice is issued under section 148 of the Act after the expiry of four years from the end of the relevant assessment year and the AO nowhere stated in the reasons recorded that there was any omission or failure on the part of the assessee in disclosing fully and truly all material facts necessary for assessment under section 143(3) of the Act, impugned notice under section 148 as well as subsequent proceedings under section 147 of the Act is invalid. (AY. 2004-05)
Bharti Cellular Ltd. v. DCIT (2021) 211 TTJ 760 (Delhi)(Trib.)

S.147: Reassessment – After the expiry of four years – Unexplained investment – Beneficiaries of Trusts – Discretionary trust – Account with bank in Liechtenstein – Notice barred by limitation – Addition was not valid – 1/5 share in the trust neither accrued nor arisen – Additional ground was admitted [S. 69, 143(3), 148, 151(2)] 1707
Allowing the appeal of the assessee the Tribunal held that it was only in the year 2009, i. e., on March 30, 2009 to be precise that the Assessing Officer issued the section 148 notice. The reopening initiated beyond a period of four years from the end of the relevant assessment year was not sustainable in the absence of the specified amount of taxable income having escaped assessment being recorded in reopening – reasons. Therefore, the reopening was not sustainable. Held that there was no cogent material indicating that the assessees had a one-fifth share each in the trusts' assets. The assessees' alleged one-fifth share in the trust balance had neither accrued nor arisen so as to be taxed in the – assessees' hands. The authorities had erred in law and on the facts in initiating section 148 proceedings against the two assessees culminating in the addition of Rs. 230,71,880 each. As regards the taxability of amount receivable from discretionary trust and accrual of income, the tribunal referred *CWT v. Estate of Late HMM Vikramsinhji of Gondal (2014) 363 ITR 679 (SC), CIT v. Kamalini Khatau (1994) 209 ITR 101 (SC), Seth Pushalal Mansinghka (P) Ltd v. CIT (1967) 66 ITR 159 (SC) Additional ground reassessment was admitted. Followed National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC) and All Cargo Global Logistics Ltd. v. Dy. CIT (2012) 18 ITR 16 / 137 ITD 26 (SB)(Mum.)(Trib.)*.(AY.2002-03)
Manoj Kumar Dhupelia v. Dy. CIT (2021) 87 ITR 528 (Kol)(Trib.) Rupal Dhupelia (Smt.) v. Dy. CIT (2021) 87 ITR 528 (Kol.)(Trib.)
Editorial : Order in Mohan Ambrish and Ms Bhavya Manoj Dhupalia v.Dy CIT (2014) 54 taxmann.com 146 (Mum.)(Trib.), distinguished.

1708 **S.147 : Reassessment – After the expiry of four years – Derivative losses – Report of Investigation Directorate – Commodities transaction – Reassessment notice was held to be not justified [S. 4, 143(3), 148, 153A]**

Held that the Assessing Officer had not independently applied his mind to information received from Investigation Directorate regarding assessee's commodity transactions but had simply recorded reasons based on borrowed satisfaction. On facts notice of reassessment was quashed. (AY. 2009-10 to 2012-13, 2014-15)

ACIT v. G R D Commodities Ltd. (2021) 188 ITD 793 (Kol.)(Trib.)

1709 **S.147: Reassessment – After the expiry of four years – Capital gains – Depreciable assets – Block of assets – Sale of land – Reassessment is held to be not justified – Depreciation was not claimed – Capital gains cannot be assessed as short term capital gains [S. 2(11), 32, 45, 50, 148]**

Allowing the appeal of the assessee the Tribunal held that there was no failure to disclose material facts hence reassessment is held to be bad in law. On merits the depreciation was not claimed hence sale of land cannot be assessed as short term capital gains. (AY. 2019-10, 2012-13)

Anant Raj Ltd. v. DCIT (2021) 188 ITD 321 / 212 TTJ 836 (Delhi)(Trib.)

1710 **S. 147: Reassessment – After the expiry of four years – No allegation about non-disclosure of full and true particulars in original assessment – Reopening is bad in law. [S.148]**

The original assessment was completed under section 143(3). Notice u/s 148 was issued after the expiry of four years from the end of the relevant assessment year. The tribunal held that as in the reasons recorded, there was no allegation made by the Assessing Officer that there was any such failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year. This being a jurisdiction requirement and in absence of any such failure on part of the assessee, the Assessing Officer could not assume jurisdiction under section 147 of the Act. Thus, the notice issued under section 148 and consequent reassessment proceedings were to be set aside. (AY 2008-09)

ITO (E) v. Apollo Animal Medical Group Trust (2021) 87 ITR 168 (Jaipur)(Trib.)

1711 **S.147 : Reassessment – After the expiry of four years – No failure to disclose material facts – Change of opinion – Reassessment quashed [S. 143(3), 148]**

Allowing the appeal the Tribunal held that when all the information and details called for by the Assessing Officer were furnished by the assessee and the Assessing Officer was satisfied with such information, which tallied with the annual information return, if any capital gains arose in such sale transaction, the Assessing Officer ought to have discussed and weighed such factors in the original assessment order itself ; having not done so and having framed the assessment under section 143(3), there was nothing to suggest that all primary facts relevant to the assessment were not disclosed by the assessee, and there was no room to reopen the assessment. Reopening of the assessment on the same set of facts was not legally permissible. The reassessment order was to be quashed.(AY.2008-09)

Baldevbhai Mangaldas Patel v. Dy. CIT (2021) 85 ITR 79 (SN)(Ahd.)(Trib.)

S.147 : Reassessment – After the expiry of four years – Assessment cannot be reopened on basis of statement of unrelated party – No opportunity of cross-examination given – Reassessment is bad in law – Loan received by cheque and repaid by cheque – Addition can not be made on the basis of seized document [S.68, 132(4A), 148, 292C] 1712
Allowing the appeal the Tribunal held that Assessment cannot be reopened on basis of statement of unrelated party when no opportunity of cross-examination given hence the reassessment is bad in law. As regards loan received by cheque and repaid by cheque addition cannot be made on the basis of seized document.(AY.2008-09, 2009-10)
Picheswar Gadde v. ITO (2021)85 ITR 68 (SN) / 211 TTJ 887 / 202 DTR 41 (Delhi)(Trib.)

S.147 : Reassessment – After the expiry of four years – No failure to truly and fully disclose all material facts Necessary For Assessment – Notice not valid. [S.143(2), 148] 1713
Tribunal held that the original assessment was completed under section 143(3) of the Act and the Assessing Officer was duty-bound to demonstrate in his reasons recorded prior to issue of notice, the failure on the assessee's part to truly and fully disclose all material facts in the course of original assessment. The Assessing Officer had not made a mention to that effect, and the essential condition precedent as stipulated in the first proviso to section 147 of the Act had not been satisfied. Therefore, the Assessing Officer could not have assumed jurisdiction to reopen the assessment.(AY.2008-09)
Dy. CIT v. Peerless General Finance and Investment Co. Ltd. (No. 2)(2021) 85 ITR 252 (Kol.)(Trib.)

S.147 : Reassessment – After the expiry of four years – Capital gains – Report from investigation wing – No tangible material – Reassessment is held to be invalid [S.50C, 148] 1714
Tribunal held that the Assessing Officer had merely gone by the Central Investigation Bureau report and was not even in possession of the sale deed and the exact specifics of the transaction at the time of recording of reasons. The registered sale deed was obtained by the Assessing Officer after recording the reasons. There was no tangible material in the hands of the Assessing Officer to have any reason to believe that income had escaped the assessment. The reasons recorded or the documents available on record, did not show a link or nexus and relevancy to the opinion formed by the Assessing Officer regarding escapement of income. However, even though the reopening was after the expiry of four years from the end of the assessment year 2008-09, given that there was no return of income filed by the assessee and consequent assessment, it was not necessary for the Assessing Officer to show that there was any failure to disclose fully or truly all material facts necessary for the assessment in terms of proviso to section 147 of the Act.(AY.2008-09)
Shujaat Ali Khan v. ITO (2021) 85 ITR 661 / 209 TTJ 907 / 203 DTR 47 (Jaipur)(Trib.)

S.147 : Reassessment – After the expiry of four years – Transfer pricing – Arm's length price – Tribunal order in earlier year assessment years – No failure to disclose material facts – Reassessment is not valid [S.148] 1715
Tribunal held that the assessee had disclosed all the material facts during the regular assessment proceedings. The reassessment proceedings had been initiated only on the

basis of the Tribunal's order in the assessee's case for assessment years 2005-06 and 2006-07. Therefore, it could not be alleged that there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment. The reassessment proceedings were bad in law and liable to be quashed.(AY. 2008-09)
Nike India P. Ltd. v. ACIT (2021) 86 ITR 27 (SN)(Bang.)(Trib.)

1716 **S.147 : Reassessment – After the expiry of four years – Information from investigation wing – Alleged deposit of tax – Recording wrong and incorrect reasons – Reassessment is held to be bad in law [S. 148, 151]**
Held that the Assessing Officer had recorded wrong facts on many counts in the reasons recorded. He recorded that no assessment had been completed under section 143(3) but in the reason itself the Assessing Officer recorded that earlier reassessment had been done under section 147 / 148 read with section 143(3) of the Act, and that the sanction for reopening of assessment was required under the proviso to section 151(1) of the Act although such proviso did not exist in the statute since it was amended in 2015. Therefore, the Assessing Officer had recorded wrong, incorrect and non-existing reasons for reopening of the assessment. There was total non-application of mind on the part of the Assessing Officer. The reasons failed to demonstrate the live link between the alleged tangible material and the formation of belief that income chargeable to tax had escaped assessment. Reassessment was quashed.(AY.2010-11)
Karan Khurana v. ITO (2021) 92 ITR 114 (Delhi)(Trib.)

1717 **S. 147 : Reassessment – Investigation wing – Roving inquiry – Reassessment was held to be bad in law [S. 143(3), 148]**
Held, that under the guise of reopening of the assessment, the Assessing Officer wanted to make a roving inquiry. Even in the reasons recorded the Assessing Officer had specially mentioned that for the purpose of verification of the claim, it was necessary to reopen the assessment. Thus, it could not be said that the Assessing Officer had any tangible material to form an opinion that income chargeable to tax had escaped assessment and the action of reopening of the assessment in exercise of power under section 148 of the Income-tax Act, 1961 for the reasons recorded could not be sustained. Reassessment was quashed. (AY.2007-08)
Sudhir Dalichand Jain v. ITO (2021) 92 ITR 102 (Surat)(Trib.)

1718 **S. 147 : Reassessment – Investigation wing – Accommodation entries – No live link between the escapement of income and information – Reassessment notice was quashed [S. 148]**
Held that the Assessing Officer had to form an opinion how the transaction shown in the bank account could be treated as escaped income. On the facts the Assessing Officer has simply made reference to the information and then believed that some income must have escaped the assessment. Order of CIT(A) quashing the reassessment was up held. (AY. 2007-08)
ITO v. Gujarat Storages P. Ltd. (2021) 92 ITR 30 (SN)(Ahd.)(Trib.)

S. 147 : Reassessment – Survey – Inspectors report was not shown – Cross examination of witness was not provided – Reassessment was quashed [S. 68, 133A, 148] 1719
Held that Inspectors report was not shown, cross examination of witness was not provided. Reassessment was quashed. (AY. 2008-09, 2009-10)
ACIT v. Sur Buildcon Pvt. Ltd (2021) 90 ITR 300 (Delhi)(Trib.)
ACIT v. BBN Transportation Pvt. Ltd (2021) 90 ITR 300 (Delhi)(Trib.)
ACIT v. Goldstar Cement Pvt. Ltd. (2021)(Delhi)(Trib.)

S. 147 : Reassessment – Accommodation entries – Reasons supplied was not the same reason recorded – Reopening of assessment was held to be not sustainable. [S. 148] 1720
Held that the reasons supplied were not the same and verbatim. The reopening of the assessment under section 147 of the Act was not sustainable.(AY 2004-05)
Jansampark Advertising and Marketing P. Ltd. v. ITO (2021)90 ITR 32 (SN)(Delhi)(Trib.)

S. 147 : Reassessment – Carbon credit – Capital receipt – Reassessment notice to contrary decision of High Court – Held to be in valid [S.4, 148] 1721
Held that the assessee's receipts in the form of carbon credits could not be treated as taxable income. Reassessment notice to contrary to the decision of High court was held to be invalid. Followed *CIT v. My Home Power Ltd (2014) 365 ITR 82 (AP)(HC)*(AY.2008-09)
Clarion Power Corporation Ltd. v. ACIT (2021) 88 ITR 3 (SN)(Hyd.)(Trib.)

S. 147 : Reassessment – Information from Investigation wing – Notice on the basis of incorrect and non – existing reason – Non application of mind – Reassessment is not valid [S. 68, 131, 147(b), 148] 1722
Held, that section 147(b) did not exist in the statute for the assessment year 2010-11. It was a fact that the assessee did not maintain any such bank account with the bank and the amount alleged to have escaped assessment belonged to the assessee. The Assessing Officer had recorded wrong, incorrect and non-existing reasons and the reopening of the assessment had been done without application of mind. Therefore, the reassessment was liable to be quashed and the additions made were to be deleted.(AY.2010-11)
Bishan Sharup Gupta v. ITO (2021) 89 ITR 43 (Delhi)(Trib.)

S. 147 : Reassessment – Cash deposited and property purchased – Notice of reassessment was held to be valid – Matter remanded to examine the cash deposited, after giving an opportunity of being heard [S. 143(1)), 147, R. 46A] 1723
Held that reassessment notice to examine the cash deposited for purchase of property was held to be valid. Tribunal also held that though the Commissioner (Appeals) had accepted the additional evidence under rule 46A of the Income-tax Rules, 1962 he had not examined the explanation of the assessee that the source of cash deposits were duly reflected in her books of account regularly maintained by her. Since the assessee had sought to explain the source of cash deposit from her books of account, the entries need to be examined. Therefore, in the interest of justice and fair play, this issue was to be restored to the Assessing Officer for verification and decision afresh after giving the assessee reasonable and sufficient opportunity of being heard.(AY. 2012-13)
Amita Yadav (MS.) v. ITO (2021) 89 ITR 24 (SN)(Delhi)(Trib.)

1724 **S. 147 : Reassessment – Order passed without disposing objections – Entire assessment proceedings vitiated [S.143(3), 148]**

Allowing the appeals the Tribunal held that no separate speaking order disposing of the objections raised by the assessee had been passed by the Assessing Officer and he had proceeded to pass the assessment order under section 147 read with section 143(3). There was a failure by the Assessing Officer to comply with the mandatory requirement of disposing of the objections raised by the assessee to the reopening of assessment. Since the procedure required to be followed had not been followed the entire assessment proceedings were vitiated and therefore the assessment order passed by the Assessing Officer was bad in law. Followed *CIT v. Trend Electronics (2015) 379 ITR 456 (Bom.)(HC), Jayanthi Natarajan (Mrs) v. ACIT (2018) 401 ITR 215 (Mad.)(HC).* (AY 2010-11, 2011-12)
Chand Singh v. Dy.CIT (2021) 89 ITR 57 (SN)(Delhi)(Trib.)

1725 **S. 147 : Reassessment – Reason for reopening assessment did not survive – No addition can be made on other issues [S. 45, 148]**

Held that the Forest Department of the Government of Andhra Pradesh had cancelled the assessee's sale deed on November 20, 2008 on the ground that the land in question was Government reserve forest land. No other sale deed other than that had been executed at the assessee's behest. The assessee could not have been held to have derived any taxable income once the sale deed itself stood annulled by the State Government. The Assessing Officer's reason to believe that the assessee's taxable income from sale of properties during financial year 2008-09 did not survive. Tribunal also held that the Department's contention that the Assessing Officer could take up issues other than those specified in the reopening in terms of Explanation 3 to section 147 of the Income-tax Act, 1961, inserted with retrospective effect from April 1, 1989 was not tenable. The validity of reassessment proceedings is a sine qua non for any additions being made to the income of the assessee, during the course of the reassessment proceedings whether or not in respect of the reasons recorded for reopening the assessment.(AY. 2009-10)
Gel Infrastructure Pvt. Ltd. v. ITO (2021) 89 ITR 44 (SN)(Hyd.)(Trib.)

1726 **S.147 : Reassessment – Initial year was AY. 2010-11 wherein AO after detailed verification allowed the deduction – Subsequent year i.e. AY. 2013-14 also deduction was allowed – Reopening is nothing but change of opinion and hence quashed. [S.80IB(11C), 148]**

The Tribunal held that reopening of assessment was on the basis of information that was already available on record and no fresh information was received by the AO. Revisiting the same issue which was already considered in original assessment and decided amounts to a change of opinion and on difference of opinion the reopening of assessment is not permissible. The Tribunal held that the reopening of assessment is bad in law and accordingly, quashed the notice issued u/s 148 and annulled the assessment. (AY.2012-13)
Ramya Hospitals v. ITO (2021) 62 CCH 29 / 211 TTJ 36 (UO)(Vishakha)(Trib.)

S. 147: Reassessment – Absence of information or material prior to recording of reasons – Reassessment proceedings are quashed and set aside. [S. 45, 50C, 148] 1727
The Assessing Officer must have some material and the material must be reliable before reopening the assessment. The valuation of the sub-registrar on spot verification showing an increase in the value of property for the purpose of addition under Section 50C of the Act is not supported by any revaluation order and no reference is made by the Director of Stamps to the sub-registrar and therefore no addition can be made There was complete absence of any information or any material for formation of belief that the income of the assessee has escaped assessment prior to recording of reasons and issuance of notice u/s 148 of the Act, therefore the reassessment was held to be bad in law. (AY. 2009-2010)
Dhoot Stono Crafts Private Ltd. v. ACIT (2021) 212 TTJ 409 (Jaipur)(Trib.)

S. 147: Reassessment – Reopening by issuing notice under Section 148 but no notice under Section 143(2) – Reassessment is bad in law. [S.143(2), 292BB] 1728
The reopening of an assessment cannot take place if only the notice under Section 148 of the Act is issued and no notice under Section 143(2) of the Act is issued prior to passing the reassessment order under Section 143 r.w.s 147 of the Act. The defect is not curable under Section 292BB of the Act.(AY. 2008-2009)
DCIT v. Board of Cricket Control in India (2021) 212 TTJ 937 / 205 DTR 257 (Mum.)(Trib.)

S. 147 : Reassessment – Jurisdiction – Notice issued by one Officer – Reassessment order was passed by another circle – No order by Competent Authority transferring case – Order was quashed. [S, 127(2), 144, 148] 1729
Held that the notice under section 148 of the Act was issued by the ITO, Phagwara, after recording reasons for initiating proceedings under section 147 of the Act, whereas the assessment order under section 144 read with section 147 was passed by the Dy. CIT (IT), Circle Chandigarh. Further, the competent authority had not passed any order under section 127(2) of the Act transferring the case from the ITO, Phagwara to the Dy. CIT (IT) Circle Chandigarh. The order passed by the Dy. CIT (IT), Circle Chandigarh under section 144 read with section 147 of the Act was quashed.(AY.2011-12)
Uttam Singh v. Dy. CIT (IT)(2021) 88 ITR (SN) 1 (Chd.)(Trib.)

S. 147 : Reassessment – With in four years – Information from Investigation Wing – Client code modification – Mistake by share broker – Reassessment is held to be not valid [S. 148] 1730
Tribunal held that there was no whisper in the order of the authorities that there was cash transfer between the parties for transferring the income of the assessee to the other party. Thus, in the absence of such verification or examination carried out by the authorities, the Assessing Officer was directed to delete the addition made by him. Since the code of the other party was entered at the place of the assessee, the other party was also required to be investigated. Followed *Rakesh Gupta v. CIT (2018) 405 ITR 213 (P&H)(HC)* (AY.2009-10)
Chintan Jaswantbhai Shah v. ITO (2021) 87 ITR 228 (Ahd.)(Trib.)

1731 **S. 147 : Reassessment- Compensation received – No discussion in the assessment order – Reassessment was up held [S. 28(va), 148]**
Tribunal held that as there is no discussion in assessment order regarding issue of compensation received for termination of contract, there is no change of opinion, reassessment notice was held to be valid. (AY.2007-08)
Sai Mirra Innopharm P. Ltd. v. ITO (2021)87 ITR 235 (Chennai)(Trib.)

1732 **S. 147: Reassessment – No fresh tangible material – Reassessment not valid [S. 143(1), 148]**
Allowing the appeal of the assessee there was no fresh tangible material hence reassessment notice was not valid. (AY.2008-09)
Samrat Plywood Ltd. v. ACIT (2021)87 ITR 102(Chd.)(Trib.)

1733 **S. 147 : Reassessment – Within four years- AIR Information – Cash credits – Cash deposit in the bank – Assessing Officer failed to make reasonable enquiry – Reassessment was quashed. [S. 44AE, 68, 148]**
The reassessment proceedings were initiated on the basis of AIR information that the assessee has deposited the sum in savings bank account. The Assessing Officer made addition as cash credit. On appeal the Tribunal held that if adverse information may trigger reason to suspect then the Assessing Officer has to make reasonable inquiry and collect material which would make him believe that there is in fact an element of income. Reason is the link between the information and the conclusion. After information there should be some reason which should warrant the holding of a belief that income chargeable to tax has escaped assessment. The reassessment was quashed. Relied on *Ganga Saran & Sons (P) Ltd. v. ITO (1981) 130 ITR 1 (SC)*. (dt. 7-7-2021)(AY. 2009-10)
Tapan Chakraborty v. ITO (2021) BCAJ-October – P. 53 (Kol.)(Trib.)

1734 **S. 147: Reassessment – Recorded reasons not provided – Reassessment is bad in law [S. 148]**
Allowing the appeal of the assessee the Tribunal held that the recorded reasons were not supplied to the assessee despite requesting several times. The Tribunal pursued the assessment records and quashed the reassessment proceedings. (ITA No. 1535 /Mum/ 2016 dt. 29-9-2021 (AY. 2009-10)
Rishabh Metals & Chemicals Pvt Ltd v. DCIT (2021) The Chamber's Journal – November – P. 101 (Mum.)(Trib.)

1735 **S. 147 : Reassessment – Within four years – Ex-servicemen corporation – No failure to disclose any material facts – Reassessment proceedings for denial of exemption is held to be not justified [S. 10(26BBB, 148]**
Allowing the appeal the Tribunal held that issue of exemption under section 10(26BBB) had been extensively dealt with in original assessment and assessment was ultimately completed after making proportionate disallowance of claim of exemption and there was nothing to show that there was any failure in terms of first proviso to section 147, re-assessment to disallow section 10(26BBB) exemption being based on existing material was impermissible. (AY. 2009-10)
Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. ITO (2021) 190 ITD 193 / 212 TTJ 498 / 203 DTR 279 (Dehradun)(Trib.)

S. 147 : Reassessment – Within four years – Change of opinion – Provision for bad and doubtful debts – Reassessment notice was held to be not valid [S. 36(1)(viia), 148] 1736
Allowing the appeal the Tribunal held that the Assessing Officer had called for all details in respect of provision made for bad debts during original scrutiny assessment proceedings and after considering details he had accepted claim. Reassessment notice was on mere change of opinion hence set aside. (AY. 2012-13)
District Co-operative Central Bank Ltd. v. ACIT (2021) 190 ITD 105 (Bang.)(Trib.)

S. 147 : Reassessment – Within four years – Share premium – Director (Inv) – Reassessment was held to be not valid [S.56(2(viib)), 148] 1737
Allowing the appeal the Tribunal held that reassessment proceedings merely on basis of information received from Director (Intelligence & Criminal Investigation) without making any independent investigation reassessment proceedings is held to be not valid. (AY. 2010-11)
Future Tech IT Systems (P.) Ltd. v. ITO (2021) 89 ITR 676 / 190 ITD 52 (Chd.)(Trib.)
Abacus Edutech Pvt. Ltd. v. ITO (2021) 89 ITR 676 (Chd.)(Trib.)
Axis Education Technologies (P.) Ltd. v. ITO (2021) 89 ITR 676 (Chd.)(Trib.)

S. 147 : Reassessment – Search and seizure – Failure by revenue to establish that the seized documents belong to assessee – Opportunity cross examination not provided – Reassessment was held to be not valid. [S. 132] 1738
The Tribunal held that the order becomes null and void if based merely on the statement of a witness without allowing opportunity to cross-examine them. Relied on, *Andaman Timber Industries v. CCE (2016) 38 GSTR 117 (SC), Dhakeswari Cotton Mills Ltd. v. CIT (1954) 26 ITR 775 (SC) Omar Salay Mohamed Sait v. CIT (1959) 37 ITR 151 (SC) and Lalchand Bhagat Ambica Ram v. CIT (1959) 37 ITR 288 (SC)*. The Tribunal also held that the assessment could not have been reopened. In view of these specific facts, the action taken by the Assessing Officer of reopening of the assessment under section 147 of the Act was not sustainable and was void ab initio being based on seized documents of other assessee and based on presumptions, assumptions and incorrect interpretation of law. (AY. 2006-07, 2007-08)
Green Valley Tower Pvt. Ltd. v. ACIT (2021) 86 ITR 1 (Delhi)(Trib.)

S. 147: Reassessment – Mentioning of wrong section 147(b) – Not curable defects – Reassessment was quashed as bad in law [S. 148, 292B] 1739
Allowing the appeal the Tribunal held that the reason for reassessment was referred as per section 147(b) cannot be accepted as a typographical human error which was curable under section 292BB of the Act. The orders of the authorities below were to be set aside, the reopening of the assessment in both the assessment years under appeals were to be quashed and all additions were deleted. Followed *Kalpana Shantilal Haria v. ACIT (2017) 100 CCH 165 (Bom)(HC)*(AY. 2009-10, 2010-11)
Madhu Apartment Private Limited v. ITO (2021) 86 ITR 317 (Delhi)(Trib.)

1740 **S. 147 : Reassessment – Information from investigation Wing – Client code modification – Recording of incorrect and wrong facts – Mechanical approval – Reassessment was not valid [S. 148. 151]**
Held that the Assessing Officer had recorded incorrect, wrong and non-existing reasons for reopening the assessment and failed to verify the veracity of the information received from the Investigation Wing. The Commissioner also had given approval in a mechanical manner. Therefore, the reopening of the assessment was invalid.(AY. 2010-11)
R. S. Shares and Securities Ltd. v. ITO (2021) 86 ITR 269 (SMC)(Delhi)(Trib.)

1741 **S. 147 : Reassessment – Recorded reasons – No addition was made on the basis of recorded reasons – Addition was made on long term capital gains – Reassessment was not valid [S. 148]**
Held that when an assessment is reopened for a reason but no addition is made in the reassessment proceedings in respect of that reason or when the addition is deleted, no further addition can be made in the reassessment proceedings (AY. 2013-14)
Vijeta Shukla (Smt) v. Dy. CIT (2021) 86 ITR 169 (Luck)(Trib.)

1742 **S. 147 : Reassessment – Search and seizure – Search assessment was required to be made under section 153A or 153C – Reassessment was quashed – Reassessment without communication of reasons recorded when request was made – Reassessment is bad in law – Delay of 492 days in filing of appeal due to mistake of accountant was condoned. [S. 132(4), 148, 153A, 153C, 254(1)]**
Tribunal condoned the delay of 492 days in filing the appeal due to bonafide mistake of the Accountant. Information collected during course of search from another person, all search assessments were required to be made in case of assessee under sections 153A or 153C, but not under section 147. Reassessment was quashed. Reassessment completed without communicating reasons recorded to assessee, when specifically requested was held to be unsustainable and quashed. (AY. 2009-10 to 2011-12)
Samanthapudi Lavanya (Smt.) v. ACIT (2021) 189 ITD 401 (Vishakha)(Trib.)

1743 **S. 147 : Reassessment – Within four years – Recorded reasons – Return filed regularly – Recorded reasons without application of mind – Reassessment was quashed. [S. 139, 148]**
Tribunal held that the Assessing Officer has reopened assessment without ascertaining whether assessee had filed return or not, reopening of assessment was not valid and was to be quashed and set aside. (AY. 2008-09)
Satish Kumar Khandelwal v. ITO (2021) 189 ITD 118 / 213 TTJ 584 / 206 DTR 289 (Jaipur)(Trib.)

1744 **S. 147: Reassessment – Borrowed satisfaction – Cash credits – Accommodation entries – AO issued reopening notice merely on basis of information received from department and he had not pointed out as to how investment in question was unexplained income of assessee, order passed by AO was to be quashed. [S. 68, 132, 147, 148]**
The AO received an information from ITO that a search action u/s. 132 was carried out in case of one 'VI' Group during which it was found that several companies of group were engaged in providing accommodation entries to various companies in form of

share capital, share premium, bogus bills, unsecured loans etc. on commission basis and that one company RTCPL had made bogus investments of certain amount in assessee company, on basis of said information, AO issued reopening notice against assessee and passed reassessment order by making additions u/s. 68 on account of bogus investment. Held that, reopening proceedings initiated only and solely on the basis of information received from ITO, thus, said assessment order was void ab initio, as AO had not pointed out as to how investment in question was unexplained income of assessee, AO had assumed jurisdiction u/s. 147 in a mechanical manner. (AY. 2011-12)
Kaur Sain Spinning & Weaving Mills Ltd. v. ACIT (2021) 189 ITD 515 (Chd.)(Trib.)

S. 147 : Reassessment – Recorded reasons – Complete text of reasons recorded was not given – Sanction was vague – No new tangible material on record – Reassessment was quashed. [S. 148, 151] 1745
The Ld AO sought to reopen the Assessment for the relevant AY by way of notice u/s 148 of the Act which was issued beyond four years but within six years from the end of the relevant AY. The Assessee filed a letter requesting a copy of reasons recorded together with the sanction from the competent authority in terms of section 151, however, the AO furnished only an extract of such reasons recorded to the Assessee and the copy of the sanction/approval from the competent authority was not provided at all. The objections filed by the Assessee to the reasons recorded for reopening which were disposed of by the AO by way of a separate order on the same day. Further objections filed in respect of such order were dealt with and disposed of by the AO in the reassessment order u/s 143(3)/144C(3) r.w.s. 147 of the Act. The CIT(A) dismissed the grounds raised by the Assessee on the validity of reopening of assessment and assumption of jurisdiction by the AO. The Tribunal noted that the full text of reasons recorded for reopening as well as sanction obtained u/s 151 was furnished to the Assessee during the course of the hearing. It observed that in the full text of the reasons recorded, omission on the part of Assessee was mentioned as a general and vague statement without specifically pointing out as to what was the clear omission or failure on the part of the assessee. The reasons started with the word "on verification of records…" which shows that the entire information was available before the AO, therefore there was no tangible material available to form belief that income has escaped assessment. Even the sanction u/s 151 for reopening of assessment u/s 147 suffered from jurisdictional defect. In view of the above, the reopening of the Assessment was quashed. (AY. 2007-08)
ACIT v. Bharti Axa Life Insurance Company Ltd (2021) 189 ITD 450 (Mum.)(Trib.)

S.147 : Re-assessment – Search – On money – Additional ground – AO made reopening relying upon information received from search proceedings in case of third party – Held reassessment proceedings null and void – Only 153C valid in case of information received from third party – Assessment was quashed. [S.132, 148, 153A, 153C, 254(1)] 1746
Assessee is an HUF and sold its half share in a residential property and offered the capital gains to tax after claiming indexed cost of acquisition. A search & seizure action under section 132 of the Act was carried out in case of buyers and addition was made for unexplained on-money. AO initiated re- assessment proceedings under section 147

of the Act in the hands of the Assessee under the belief that addition made in hands of buyer has direct bearing on the seller as well as they were the recipients of the on-money. Accordingly, AO made addition of half share of alleged on-money received by Assessee and not declared as part of sales consideration and revised the capital gain tax payable by Assessee.

On appeal, CIT(A) held that the AO had not followed the procedure laid down by the law for reopening proceedings. CIT(A) noted that reasons of reopening provided to Assessee were mechanical in nature and the AO had adjudicated the matter without disposing the objections of Assessee. It was further submitted that AO received the information in respect of the valuation report from the CIT(A) before whom the appeal of the purchaser was pending for adjudication. The AO of the buyer did not find it worth passing on and thus buyers AO did not record his satisfaction in this respect. The CIT(A) who passed the information to the AO, while adjudicating the matter in case of buyer of property granted substantial relief to the buyer and held that the "valuation report of the valuer cannot be taken as yardstick for unaccounted investment. Hence, the basis for reopening the case, i.e., the copy of valuation report, was held to be invalid for the purpose of making any addition in the hands of the buyer by the CIT(A) and accordingly CIT(A) quashed the impugned order.

Tribunal relied on various decisions and held that reopening on the basis of documents found during course of search of third party premises was invalid and could be done only under section 153C of the Act and quashed the assessment as null and void. s(AY. 2008-09)

ACIT v. K. S. Chawla & Sons (HUF)(2021) 212 TTJ 199 / 203 DTR 180 (Delhi)(Trib.)

1747 **S. 147 : Reassessment – Deemed sale consideration – Not considered while assessing the original assessment – Reassessment is held to be justified [S.45, 50C]**

Held that no enquiry was made by Assessing Officer from perspective of applicability of section 50C or otherwise on issue of computation of capital gains in original proceedings. Reopening of assessment was held to be justified.(AY. 2010-11)

Rakesh Ambalal Patel. v. ITO (2021) 188 ITD 593 / 212 TTJ 769/ 203 DTR 441 (SMC) (Ahd.)(Trib.)

1748 **S. 147 : Reassessment – Change of opinion – Exemption – Notice was quashed on account of change of opinion and first proviso too section 147. [S. 10(26BBB), 148]**

The Assessee was partially denied exemption u/s 10(26BBB) in the original assessment u/s 143(3). The assessee is incorporated u/s 617 of the Companies Act, 1956, with the objective to work towards welfare and upliftment of ex-servicemen of state of Uttarakhand. Subsequently, the case was reopened u/s 147 of the Act after expiry of four years and the entire claim of exemption u/s 10(26BBB) was disallowed. ITAT opined that it is apparent that action u/s 147 was solely for the purpose of enhancing the disallowance of claim of exemption u/s 10(26BBB) already made in the original assessment u/s 143(3), which is impermissible and not in accordance with spirit of section 147 of the Act. The reasons recorded fail to satisfy the dual jurisdictional requirements as per law. ITAT relies on decision of Hon'ble Uttarakhand High Court in the case of *Oil and Natural Gas Corp. Ltd. v. DCIT [2003] 262 ITR 648* and concludes

that notice u/s 148 is not in consonance with established legal principles and is vitiated on dual count of change of opinion as well as first proviso to section 147 of the Act. (AY. 2009-10)
Uttarakhand Purv Sainik Kalyan Nigam Limited v. ITO (2021) 190 ITD 193 / 212 TTJ 498/ 203 DTR 279 (Dehradun)(Trib.)

S. 147 : Reassessment – Cash credits – Bogus accommodation entry – General information – Reassessment is held to be not valid [S. 68] 1749
Dismissing the appeal of the revenue the Tribunal held that there were no specific inputs connecting said information with case of assessee. No bank account or entry operator was named which could be linked to assessee. The Assessing Officer had not specified nature of accommodation entry like whether it was income/expenses/capital/ share/loan etc. Order of CIT (A) was affirmed. (AY. 2009-10)
DCIT v. Alembic Merchants (P.) Ltd. (2021) 188 ITD 289 (Kol)(Trib.)

S. 147 : Reassessment – Anonymous donation – Notice for under utilisation of income – No addition was made in respect of notice issued – Addition made on account of anonymous donation is held to be without jurisdiction and bad in law [S. 115BBC, 148] 1750
Dismissing the appeal of the revenue the Tribunal held that when no addition was made in respect of recorded reason for which the notice u/s 148 was issued, the Assessing Officer cannot make any other addition. (AY. 2008-09, 2009-10)
ACIT (E) v. Everest Education Society (2021) 188 ITD 8 (Pune)(Trib.)

S. 147 : Reassessment – Bogus purchases – Information must be reliable and there must be some evidence to believe that purchases are bogus – Reassessment was quashed. [S.148] 1751
Allowing the appeal of the assessee the Tribunal held that the sales / consumption of the material by the assessee was not been doubted by the Assessing Officer. There is no mention of any evidence available before the AO to show that the transaction was a bogus transaction. The assessing officer merely on the basis of suspicion observed that the aforesaid entry might be a bogus entry and that the assessee might have purchased the material from outside. A perusal of the reasons recorded by the Assessing Officer does not show that the Assessing Officer had any credible information or evidence to believe that the aforesaid transaction made by the assessee was bogus, rather, a reading of the whole of the contents of the document containing reasons for reopening of the assessment would reveal that the reopening of the assessment has been made merely on the basis of suspicion. Even the sales / consumption of the material purchased through the aforesaid transaction has not been doubted. Even the turnover and gross profits of the assessee during the year have considerably increased. Reassessment was quashed. (ITA No.1197/Del./2019 Bench 'B'. dt.29-9-2021)(AY. 2009-10)
Dove Consultants Pvt. Ltd v. DCIT (Delhi)(Trib.). www.itatonline.org

1752 **S. 147 : Reassessment – Reasons recorded are different than the reasons supplied – Reassessment was quashed. [S. 148]**

Allowing the appeal of the assessee the Tribunal held that the reasons supplied to the assessee are not the same and verbatim. Appeal of the assessee was allowed. Reassessment order was quashed. Followed *Haryana Acrylic Manufacturing Co v. CIT (2009) 308 ITR 38 (Delhi)(HC)*(ITA No.-3132/Del/2018 dt.12-8-2021)(AY. 2004-05)

Jansampark Advertising & Marketing v. ITO (Delhi)(Trib.) www.itatonline.org.

1753 **S. 147 : Reassessment – Change of head – Income from other sources – Share capital – Notice was issued to assess the excess share premium under section 56 of the Act – Addition was made under section 68 of the Act as cash credits – Reassessment is held to be bad in law. [S. 56, 68, 148]**

Tribunal held that when the reassessment notice was issued to assess the excess share premium as income from other sources, however the addition was made as cash credits under section 68 of the Act, the reassessment is bad in law. Followed *CIT v. Jet Airways Ltd. (2011) 331 ITR 236 (Bom.)(HC).* (ITA Nos 3191/Mum/2017; ITA No. 3192 /Mum//2017 dt. 23-7-2021), (AY. 2009-10, 2011-12)

Ideacount Education Pvt. Ltd v. ACIT (Mum.)(Trib.) www.itatonline.org

1754 **S. 147: Reassessment – Change of jurisdiction of Assessing Officer – Reassessment order passed by the ITO after the transfer under section 127 to Dy.CIT – Order quashed – Reassessment order originally framed by ITO was without jurisdiction. [S.127, 129, 148, 153A, 263]**

The ITO passed a reassessment order under section 147/143(3) in case of assessee by making an addition of nominal amount as against assessees income. Thereafter, the assessees case was transferred under section 127 from ITO to Dy. CIT. Later on, Pr. CIT invoked his revisionary jurisdiction under section 263 requiring to set aside such reassessment order originally framed by ITO under section 147/143(2) and directed de novo assessment. Thereafter, the ITO (the erstwhile AO) gave effect to order of Pr. CIT and set aside such earlier order passed by him under section 147/143(3) and framed fresh assessment. The assessee challenged the said fresh assessment order challenging the jurisdiction of the AO, as the erstwhile AO passed the said order did not have jurisdiction over the assessee on the said date as the jurisdiction lied with the Dy. CIT to whom the order was transferred vide order under section 127.

The Tribunal held that from plain reading of order under section 127 it was clear that jurisdiction over assessee's case was transferred from ITO to Dy. CIT. The Tribunal following the Calcutta High Court ruling in the case of. Ramshila Enterprises Pvt. Ltd. (2016) 383 ITR 546 /239 Taxman 17 (Cal)(HC), held that since the jurisdiction was divested of the ITO by virtue of transfer order, he ceased to be Assessing Officer after the date of transfer. As a result, the assessment order passed by the ITO (i.e. the erstwhile AO) was legally unsustainable and therefore null in the eyes of law and thereby quashed. (AY.2008-09)

OSL Developers Pvt Ltd. v. ITO (2021) 187 ITD 559 / 211 TTJ 621 (Kol.)(Trib.)

S. 147 : Reassessment – Deemed dividend – Without bringing any fresh material on record, on fresh application of mind – Reassessment is bad in law – On merit also addition as deemed dividend was deleted.[S. 2 (22)(e)] 1755

Allowing the cross objection the Tribunal held that the Assessing Officer nowhere mentioned that he had new information or fresh material in possession from where he had seen such fact and the Assessing Officer had not applied his mind in reaching the reason to believe or formed belief in mechanical manner without adducing supporting material that income of assessee had escaped assessment. – Therefore reopening is held to be bad in law. Even in merits the Tribunal held that provision of deemed dividend is applicable to the facts of the appellant. (AY. 2008-09)

DCIT v. Jateen Madanlal Gupta (2021) 187 ITD 832 (Ahd.)(Trib.)

S. 147 : Reassessment – Specific Information – Reassessment was held to be valid – Addition of salary is held to be not justified [S.69A, 148] 1756

Tribunal held that reassessment was with specific information and reassessment is held to be valid. However addition was made in respect of salary income of the assessee. The Assessee had submitted on oath that prior to starting its own business it worked for M/s Oldy Goldy Computers on a monthly salary. However no salary income was returned by the assessee in the relevant AY. The Tribunal observed that the AO did not make any enquiry from the employer about whether salary was actually paid to the assessee. Therefore it held that in absence of conclusive evidence it was unjustified on the part of the AO to make such addition. (AY. 2009-10 to 2011-12)

Arpit Goel v. ITO (2021) 87 ITR 76 (SN)(Delhi)(Trib.)

S.147 : Reassessment – Accommodation entries – Failure to dispose objection – Failure to apply mind – Reassessment is bad in law [S.68, 148] 1757

Tribunal held that in not passing a separate order disposing of the objections of the assessee, the Assessing Officer was in clear violation of the law laid down by the Supreme Court in the case of GKN Driveshafts [2003 259 ITR 19 (SC). Tribunal also held that in the reasons, the Assessing Officer has recorded that the assessee has obtained accommodation entries in a sum of Rs. 60 lakhs in the name of six dummy companies during the year under consideration, but finally made the addition of Rs. 50 lakhs in the assessment order. This showed that the Assessing Officer had not applied his mind before recording the reasons in issuing the notice under section 148 of the Act. Therefore, the reopening of the assessment was liable to be quashed and the addition was to be deleted.(AY.2009-10)

Admach Auto Ltd. v. Dy. CIT (2021) 85 ITR 4 (SN)(Delhi)(Trib.)

S. 147 : Reassessment – Accommodation entries – Information from Investigation Wing – Reassessment is bad in law [S.68, 69, 148] 1758

Allowing the appeal the Tribunal held that assessment was reopened on the basis of information received from the Investigation Wing but the Assessing Officer had not made any enquiry on this information and had reopened the case of the assessee and made the addition in dispute and completed the assessment. Similarly the Commissioner (Appeals) had upheld the assessment order. Therefore, the reassessment on the basis

of the information was not justified and legally valid, and was liable to be quashed, as was the order of the Commissioner (Appeals).(AY.2010-11)
ASN Polymers Pvt. Ltd. v. ITO (2021) 85 ITR 56 (SN)(Delhi)(Trib.)

1759 **S. 147 : Reassessment – Basis of information that assessee deposited cash in bank and earned commission – Recording wrong and incorrect facts – Reassessment is bad in law [S.148]**
Allowing the appeal the Tribunal held t hat the assessee had filed details of deposits in the bank to show that there were cash deposits in ICICI Bank at Rs. 11,49,750 as against Rs. 11,07,160 stated by the Assessing Officer in the reasons for reopening of assessment. Thus, wrong and incorrect facts had been recorded in the reasons recorded for reopening of assessment. Moreover, though the Assessing Officer had referred to the commission earned by the assessee in the assessment year no addition had been made in the reassessment order. Thus the Assessing Officer had also not applied his mind to the facts of the case and merely based on the information without verifying them had recorded reasons for reopening of assessment. Thus, the reopening of assessment could not be sustained in law.(AY.2011-12)
Dheeraj Yadav v. ITO (2021) 85 ITR 43 (SMC)(SN)(Delhi)(Trib.)

1760 **S. 147 : Reassessment – Passing of reassessment order within four weeks of disposing of objections of assessee to reopening – Not sustainable – Order quashed – Two views possible, then the view in favour of the assessee shall have to be followed for deciding the matter in dispute [S.148]**
Allowing the appeal the Tribunal held that the reasons for reassessment were supplied to the assessee only on November 21, 2017 and the assessee on the same day filed the objections to the reopening of the assessment which had been disposed of by order dated December 5, 2017. The Assessing Officer within 23 days after disposing of the objections of the assessee passed the reassessment order dated December 28, 2017. Time of four weeks was not granted to the assessee to take remedial action in the matter. Thus, the reassessment order dated December 28, 2017 framed under section 147 read with section 143(3) was bad in law and deserved to be quashed. Relied on *Kamlesh Goel (Smt.) v. ITO (I. T. A. No. 5730/Delhi/2017 dated August 30, 2018) and Bharat Jayantilal Patel v. UOI [2015 378 ITR 596 (Bom)(HC) PCIT v. Sagar developers (TA No. 797 of 2015 etc., dated July 21, 2016)*, distinguished. Tribunal also held that if there were two views possible, then the view in favour of the assessee shall have to be followed for deciding the matter in dispute.(AY.2010-11)
FGR Logistics Pvt. Ltd. v. ACIT (2021) 85 ITR 35 (SN)(Delhi)(Trib.)

1761 **S. 147 : Reassessment – Search and seizure – Seized documents not related to the assessee – Reassessment is bad in law [S. 132]**
Tribunal held that the Department had failed to bring any material on record to establish that any seized documents found during the course of search belonged to the assessee. There was a clear finding by the Commissioner (Appeals) in his order that none of the seized documents referred to the assessee which the Department was unable to controvert.(AY.2006-07, 2007-08)
Green Valley Tower Pvt. Ltd. v. ACIT (2021) 86 ITR 1 (Delhi)(Trib.)

S. 147 : Reassessment – Income of any other person – Search – Reassessment is not valid when the assessment out have been done under section 153C of the Act as per non obstante provision – Cross examination denied – Addition as cash credit is held to be not justified. [S. 68 132, 153C] 1762

Allowing the appeal the Tribunal held that the search leading to seizure of incriminating documents took place on September 10, 2015 and therefore, the provisions of section 153C as amended with effect from June 1, 2015 were applicable to the facts of the case. The seized document, undisputedly pertained to the assessee and formed the very basis for making additions in the hands of the assessee. In view of the foregoing, the provisions of section 153C of the Act were applicable and the Assessing Officer was not justified in framing the assessment under section 143(3) read with section 147. Hence, the assessment framed under section 143(3) read with section 147, was liable to be cancelled. Followed *V. L. Khandge v. ITO (I. T. A. Nos. 1971/Pune/2014 dated April 24, 2018)*. As regards addition as cash credits merely on the basis of dumb document found in the premises of third party without giving an opportunity of cross examination addition cannot be made. (AY.2010-11 to 2013-14)

Kalyanji Velji HUF v. Dy. CIT (2021)85 ITR 500 (Mum.)(Trib.)

S. 147 : Reassessment – Change of opinion – Full and true disclosure – Reassessment is held to be bad in law [S. 54EC, 54F, 148] 1763

Allowing the appeal the Tribunal held that the assessee had filed before the Assessing Officer a detailed note on exemption claimed under sections 54F and 54EC along with supporting documents. From the purchase agreement of the residential property and its annexures, which were filed before the Assessing Officer during the course of original assessment proceedings, it was evident that the assessee had purchased a residential property comprising a house of 6700 square feet and another house of 400 square feet along with the land appurtenant thereto and claimed deduction under section 54F against the sale of shares held long-term. The assessee had disclosed all the primary facts necessary for assessment of its case to the Assessing Officer. Thus a mere change of opinion by the Assessing Officer could not be a ground for reassessment. The reopening of the assessment under section 147 by the Assessing Officer was liable to be quashed.(AY.2008-09)

Jagdish U. Thackersey v. Dy. CIT (2021) 85 ITR 633 (Mum.)(Trib.)

S. 147 : Reassessment – Wrongly mentioning Section 147(b) – Not curable defects under Section 292B – Reassessment is bad in law. [S.148, 292B] 1764

Allowing the appeals the Tribunal held that the assessee had raised the issue regarding the validity of the reassessment before the Commissioner (Appeals), but the contention of the assessee was rejected holding that section 147(b) as mentioned in the reason for reassessment was a typographical human error which was curable under section 292BB of the Act. This observation was not proper. The orders of the authorities below were to be set aside, the reopening of the assessment in both the assessment years under appeals were to be quashed and all additions were deleted.(AY.2009-10, 2010-11)

Madhu Apartment Private Ltd v. ITO (2021) 86 ITR 317 (Delhi)(Trib.)

1765 **S. 147 : Reassessment – Death of assessee – Notices and reassessment orders passed in name of deceased assessee quoting his Permanent Account Number is held to be not valid. [S.148]**

Allowing the appeal the Tribunal held that notice under section 148 was the foundation stone on which subsequent reassessment proceedings are built. To acquire valid jurisdiction the notice should be addressed to the correct person and not to a deceased person. The notice under section 148 had been issued in the name of a deceased assessee stating his permanent account number and the assessment orders had also been framed in the name of the deceased assessee stating his permanent account number. As a result, the reassessment orders for all three years were liable to be quashed.(AY..2008-09 to 2010-11)

Lalita Agarwal v. ACIT (2021) 85 ITR 376 (Delhi)(Trib.)

1766 **S. 147 : Reassessment – Within four years – Information from Investigation wing – Client code modification – Recording of incorrect and wrong fact and wrong provision – Approval in mechanical manner Reassessment is held to be not valid. [S. 147(b), 148, 151]**

Tribunal held that the Assessing Officer had mentioned that the provisions of section 147(b) of the Income-tax Act, 1961 were applicable for reopening of the assessment but this section did not exist in the statute for the assessment year under appeal. The Assessing Officer in the order rejecting the assesssee's objections confirmed that the assessee carried out the transactions through MSFL. Therefore, there was no question of the assessee arranging any loss through SMC. The reasons did not indicate the basis for the Assessing Officer to come to the reasonable belief that there had been escapement of income on the ground that the modifications done in the client code were not on account of genuine error, originally occurring while punching the trade. The material available that there was a client code modification done by the assessee's broker was also incorrect and there was no link to conclude that it was done to escape assessment of a part of its income. The Assessing Officer had recorded incorrect, wrong and non-existing reasons for reopening the assessment and failed to verify the veracity of the information received from the Investigation Wing. The Commissioner also had given approval in a mechanical manner. Therefore, the reopening of the assessment was invalid. (AY2010-11)

R. S. Shares and Securities Ltd. v. ITO (2021) 86 ITR 269 (Delhi)(Trib.)

1767 **S. 147 : Reassessment – No addition was made in respect of reasons recorded – Addition of long term as bogus – Reassessment is held to be bad in law [S.148]**

Allowing the appeal the Tribunal held that nowhere in the assessment order had the Assessing Officer made the addition on account of escapement of income for which he had recorded the reasons. Instead, he made the addition on long-term capital gains holding it to be bogus. Therefore, the addition made was to be deleted.(AY.2013-14)

Vijeta Shukla (Smt.) v. Dy. CIT (2021) 86 ITR 169 (Luck)(Trib.)

S. 147 : Reassessment – Change of opinion – Metal loan from members – Consistent method – Reassessment is bad in law.[S.148 1768

Tribunal held that the Assessing Officer was well aware of the fact that the gold belonging to family members was taken by the assessee as metal loan way back before 2001 itself and the assessee was consistently following the practice of including the metal loan in its stock register as belonging to family members without showing it as its own stock nor showing the value of gold as capital contribution/liability. Hence, the Assessing Officer did not have any reason to doubt the genuineness of explanation given by the assessee with regard to the unreconciled 17.319 kgs. of gold. The expression "unreconciled" was a misnomer and the Assessing Officer had reopened the assessment on mere change of opinion. There was no material brought on record to support the view of the Assessing Officer. The reopening of assessment for all the years under consideration was on account of "change of opinion" and not valid.(AY. 2006-07 to 2012-13)

Rajarathnam's Jewels v. ACIT (2021) 86 ITR 20 (SN)(Bang.)(Trib.)

S. 147 : Reassessment – No addition was made on reasons recorded – Additions made on any other income which does not form part of reasons recorded cannot be sustained [S.2(22)(e), 148] 1769

Allowing the appeal of the assessee the Tribunal held that where no addition was made on account of the income which have alleged to have escaped assessment, the Assessing Officer cannot make any addition on any different ground which did not form part of the reasons recorded. Relied on *CIT v. Mohmed Juned Dadani (2014) 355 ITR 172 (Guj.) (HC)(ITA No. 2414/ Ahd/ 2018 dt 20-11-2020)*(AY. 2013-14)

Shri Tyrone Patrick Lemos v. ITO (2021) The Chamber's Journal – March – P. 184 (Ahd) (Trib.)

S. 147 : Reassessment – Within four years – Absence of new or tangible material – Undisclosed money disclosed u/s.132 (4) – Cash deposited in the bank – Re assessment was held to be not valid [S. 132(4), 148] 1770

Dismissing the appeal of the revenue, Tribunal held that the Assessing Officer in the course of original assessment proceedings enquired about the cash deposits in the savings bank account on the basis of income declared u/s 132(4) of the Act. The information about the deposits in the bank was neither a new fact nor a new tangible material hence reassessment is held to be bad in law. (AY. 2011-12)

Dy. CIT v. Murarilal R. Mittal (2021) 214 TTJ 665 / 208 DTR 17 / 63 CCH 436 (TM)(Mum.) (Trib.)

S. 147 : Reassessment – No tangible material – Reassessment is bad in law [S. 143(1)] 1771

The Tribunal held that in absence of any fresh tangible material the reassessment is held to be bad in law. (AY. 2008-09)

Samrat Plywood Ltd v. ACIT (2021) 210 TTJ 743 (Chd.)(Trib.)

1772 **S. 147 : Reassessment – Opportunity of hearing not granted – Principle of natural justice is violated – Order is not valid – Information from third party – Notice invalid- Notice based on Order of Commissioner of Customs and Excise – Order subsequently quashed – Very basis to support reasons to believe no longer in existence – Proceedings to be quashed.[S. 143(1), 148]**

On appeal by the assessee, held, allowing the appeal that the opportunity of hearing not granted. Principle of natural justice is violated. Order is not valid. Notice based on Order of Commissioner of Customs and Excise. Order subsequently quashed. Very basis to support reasons to believe no longer in existence. Proceedings to be quashed (AY.2008-09)

Bansiwala Iron and Steel Rolling Mills v. Dy. CIT (2021) 91 ITR 263 / 214 TTJ 93 (Jaipur) (Trib.)

1773 **S. 147: Reassessment – Notice – Assessment framed without issue of notice under section 143(2) – Assessment void ab initio [S. 143(2), 148]**

The Tribunal held that the Assessing Officer had unequivocally admitted in his remand report that no notice was issued under section 143(2) of the Act. The assessee had also stated that he never received notice under section 143(2) of the Act. These averments remained uncontroverted. The default of non-issue of notice under section 143(2) of the Act was fatal to the order of reassessment and rendered the whole reassessment proceedings void ab initio being without jurisdiction and liable to be quashed. (AY.2007-08)

ITO v. Dipakkumar S. Mehta (2021) 91 ITR 634 (Surat)(Trib.)
Deepak S. Mehta v. ITO (2021) 91 ITR 634 (Surat)(Trib.)

1774 **S. 147 : Reassessment – When no reassessment was made in respect of issue of notice,reassessment cannot be made in respect of other income which has escaped the assessment [S. 147, Explanation 3, 148(2)]**

Held that in terms of this provision, the Assessing Officer had power to assess or reassess the income in respect of an issue which had escaped assessment as well as any other income chargeable to tax, which came to his notice subsequently in the course of reassessment notwithstanding the reasons for such issue not being a part of the reasons recorded under section 148(2). In the absence of such assessment or reassessment of the former, he cannot independently assess the latter. In the case on hand, the Assessing Officer had accepted the objections of the assessee and had not assessed or reassessed the income, which was the basis of the notice. As a result, it would not be open to him to assess income under some other issue independently. The assessment order framed under section 147 read with section 143(3) was quashed. Referred *CIT v. Jet Airways (I)) Ltd (2011) 331 ITR 236 (Bom)(HC), Travencore Cements Ltd v. ACIT (2008) 305 ITR 170 (Ker)(HC), Vipin Khanna v. CIT (2002) 255 ITR 220 (P&H)(HC))*(AY.2011-12)

Interglobal Steels Pvt. Ltd. v. ITO (2021) 91 ITR 432 (Delhi)(Trib.)

S. 147: Reassessment – Capital gains – Non-application of mind by Assessing Officer – No reason to believe income had escaped assessment – Reassessment not valid- Provisional assessment – No provision for making provisional assessment order – Addition based on solely on report of District Valuation Officer is not valid. [S. 50C, 148] 1775

Held that for a valid assumption of jurisdiction to reassess, the Assessing Officer must have definite and specific information or material which should lead to formation of the belief that any income chargeable to tax has escaped assessment. The assessee had declared capital gains in the return which clearly showed that there was non-application of mind on the part of the Assessing Officer while recording the reasons as he did not consider the return furnished by the assessee wherein capital gains had been shown. Thus, non-existing facts did not lead to formation of the belief under section 147 of the Act which was a condition precedent under section 147 of the Act as there was no rational nexus between the information available and the formation of the belief. Therefore, the assumption of jurisdiction under section 147 of the Act was unsustainable. Tribunal also held that there is no provision for making provisional assessment order. Addition based on solely on report of District Valuation Officer is not valid (AY.2010-11)

Prithvi Raj Singh v. ITO (2021) 91 ITR 164 (Jaipur)(Trib.)

S. 147 : Reassessment – Statement recorded in course of search – Admission by person in control of Company – Suppression of sales – Statement not retracted – Reassessment notice is valid [S. 132(4), 148] 1776

Tribunal held that statement recorded in course of search. Admission by person in control of Company. Suppression of sales. Statement not retracted, reassessment notice is valid. (AY. 2010-11, 2011-12, 2015-16)

APS Steel Pvt. Ltd v. ITO (2021) 91 ITR 25 (SN)(Bang.)(Trib.)

S. 147 : Reassessment – Medical institution – Notice issued on ground registration cancelled from inception – Order cancelling registration set aside by Tribunal and registration restored – Reassessment not sustainable.[S. 10(23C)(iiiae), 12A, 12AA, 148] 1777

Held that the issue of validity of cancellation of registration the Tribunal had set aside the order whereby the registration of the assessee-trust under section 12AA of the Act was cancelled since inception and restored the registration granted under section 12AA of the Act. The sole ground for reopening of assessment was that the registration granted under section 12A of the Act had been cancelled since inception. The basis of reopening of the assessment now no more existed. Therefore, the assessment framed on the basis of such ground could not be sustained.(AY. 2005-06, 2006-07)

Bhai Hospital Trust v. ITO (E)(2021) 91 ITR 77 (SN)(Delhi)(Trib.)

S. 148 : Reassessment – Merger – Notice issued in the name of entity which had ceased to exist – Fundamental error – Which cannot be corrected under section 292B of the Act [S. 147, 292B, Art. 226] 1778

Assessing Officer issued notice in the name of the merged entity despite being aware that said entity had merged with petitioner company and had ceased to exist. The

Assessing Officer submitted that it was a human error which could be corrected under section 292B of the Act. On writ allowing the petition the Court held that the Assessing Officer before issuing notice under section 148 had not applied his mind to look for documents which were already on file. The Assessing Officer having committed a fundamental error, stand of Assessing Officer that it was an error which could be corrected under section 292B was not acceptable. Notice issued notice and order rejecting objections to said notice were to be quashed and set aside. (AY. 2012-13)
Alok Knit Exports Ltd v. Dy. CIT (2021) 283 Taxman 221 (Bom.)(HC)

1779 **S. 148 : Reassessment – Notice – Notice issued to non-existing entity – Notice invalid- Notice could not be corrected u/s 292B of the Act. [S.292B, Art. 226]**
The notice u/s 148 was issued to non – existing entity. The assessee challenged the said notice by filing writ petition. Allowing the petition the Court held that notice issued to non – existing entity is bad in law which could not be corrected u/s 292B of the Act. The notice issued was quashed. (WP.(L.) No. 14088 of 2021 dt. 25-10-2021)
Implenia Services and Solutions Pvt Ltd v. Dy.CIT (Bom.)(HC)(UR))

1780 **S. 148 : Reassessment – Notice – Constitutional validity – Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 – CBDT's notification No. 20/2021, dated 31-03-2021 – Notice issued under old provisions of section 148 on or after 1-4-2021- Notice was issued to revenue and Attorney General of India – Order passed staying the proceedings till next date of hearing. [S. 147, 148A, 149, TLA Act, 2020, S. 3, Art. 226]**
On writ challenging the issue of notice u/s 148 allowing the revenue to issue reassessment notice under old provisions of section 148 read with section 149 of the Act as per section 3 of the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.. Notice was to be issued to revenue and Attorney General of India. Order was passed staying the proceedings till next date of hearing.
Tata Communications Transformation Services Ltd v. UOI (2021) 281 taxman 222 (Bom.)(HC)
Sahil International v. ACIT (2021) 281 Taxman 221 (Bom.)(HC)

1781 **S. 148: Reassessment – Issuance of notice of reassessment – Resolution personal – Provisions of this Code to override other laws – For period prior to approval of resolution plan under the Insolvency & Bankruptcy Code, 2016 ('IBC') – Once the public announcement is made under the IBC by the Resolution Professional calling upon all concerned, including the statutory bodies, to raise claim, it would be expected from all the stakeholders to diligently raise their claim- Not maintainable against the Corporate Debtor – Notice issue was quashed (S. 147, The Insolvency and Bankruptcy Code, 2016, S. 7, 30(2), 238, Art, 226)**
Where notice under Section 148 of the Income Tax Act, 1961 (Act) to a Corporate Debtor, calling upon it to submit a return in the prescribed form for the assessment year falling prior to the date of approval of Resolution Plan under the IBC on the ground that the Ld. Assessing Officer had a reason to believe that the income chargeable to tax of the Corporate Debtor has escaped assessment within the meaning of Section 147 of the Act, it was held that once the public announcement is made under the IBC by

the Resolution Professional calling upon all concerned, including the statutory bodies, to raise claim, it would be expected from all the stakeholders to diligently raise their claim. The Income Tax authorities in that sense, ought to have been diligent to verify the previous years' assessment of the Corporate Debtor as permissible under the law and to raise the claim in the prescribed form within time before the Resolution Professional. In the present case, the Income Tax Authorities failed to do so and therefore, the claim stood extinguished. The impugned Notices issued under section 148 of the Act are quashed and set aside. Petitions are allowed. Followed *Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited* and others reported in 2021(9) SCC 657. (WP No. 2948 of 2021 dt. 23-12-2021)
Murli Industries Limited v. ACIT (Nag – Bench)(Bom)(HC) www.itatonline.org.

S. 148 : Reassessment – Amalgamation of companies – Intimation was conveyed to the revenue – Notice in name of non-existing entity – Not curable defect – Notice is void [S.147, 292B, Art. 226] 1782
Allowing the petition the Court held that if a statutory notice is issued in the name of a non-existing entity, entire assessment would be a nullity in the eye of law. Such defect cannot be treated as procedural defect and mere participation of appellant would be of no effect as there is no estopped against law. Such a defect cannot be cured by invoking provisions under section 292B. The notice issued by the Assessing Officer, without realising that the company was a non-existing entity, directing it to file a return of income within thirty days stating there was reason to believe that income chargeable to tax had escaped assessment. The notice was void.(AY. 2012-13)
Teleperformance Global Services Pvt. Ltd. v. ACIT (2021) 435 ITR 725 / 201 DTR 161 / 322 CTR 734 / 281 Taxman 331 (Bom.)(HC)

S.148 : Reassessment – Assessment processed u/s 143(1) – Fresh claim of loss in reassessment proceedings – Held to be allowable- Deletion of Explanation to section 143 from 1-6-1999, intimation under section 143(1) ceases to be an order for purposes of section 264. [S. 143(1), 147, 264] 1783
The assessment was processed u/s 143 (1) of the Act. The asssessee received notice u/s 148 of the Act. In the return filed pursuance of notice u/ s148 of the Act, the assessee claimed loss on securities. The loss was disallowed by the AO and also affirmed by the Appellate Tribunal. On appeal the Court held that there was no original assessment order it was only intimation u/s 143(1) of the Act, which could not be treated as an order. The proceedings u/s 148 was the first assessment and the same could have been done considering all the claims of the asseessee. The Court also observed that in view of deletion of Explanation to section 143 from 1-6-1999, intimation under section 143(1) ceases to be an order for purposes of section 264. The court remitted the matter back to the Assessing Officer to adjudicate the claim. The Court has referred the ratio in *CIT v. Sun Engineering Works (P)Ltd (1992) 198 ITR 297(SC), ITO v. Mewalal Dwaraka Prasad (1989) 176 ITR 529 (SC), ITO v. K.L. Srihari HUF (2001) 250 ITR 193 (SC)(Larger Bench), ACIT v. Rajesh Jhaveri Stock Brokers Ltd (2007) 291 ITR 500 (SC)*(ITA No. 392 of 2016 dt. 6-7-2021)(AY. 2007-08)
Karnataka State Co-Operative Apex Bank Ltd v. DCIT (2021) 283 Taxman 98 (Karn.)(HC)

1784 **S.148: Reassessment – Notice – Amalgamation – Notice issued after amalgamation in name of erstwhile company – Similarity in names but Permanent Account Number the same – Bona fide mistake – Correcting the mistake and final assessment order was passed – Order was held to be valid. [S. 147, 292B]**

Dismissing the petition the Court held that the petitioner was provided with an opportunity to defend its case in the manner prescribed and the assessment order was passed following the procedure contemplated. There was thus no reason to interfere with the process of reassessment already completed. It would be for the petitioner to redress its grievances, if any, by preferring an appeal, in the manner prescribed under the Act. There was no infirmity or perversity warranting undoing the processes undertaken already, pursuant to the notices issued under section 148 of the Act. On the facts the notice is intended to be issued to the person to whom it is issued and such person also acknowledged the permanent account number, which was rightly mentioned, and responded to the letters and notices issued by the Department, the name mentioned wrongly is a mistake to be fit in with the provisions of section 292B of the Act. (AY. 2008-09)

Vedanta Ltd. v. Dy. CIT (2021) 438 ITR 680 (Mad.)(HC)

1785 **S. 148 : Reassessment – Notice – Service of notice – Question of fact – No substantial question of law [S. 147, 260A]**

Dismissing the appeal the Court held that service of notice is question of fact hence no substantial question law arose. Held, dismissing the appeal, that the issues were factual in nature. No substantial question of law arose. (AY.2017-18)

Manoj Kumar Sharma v. ITO (2021) 438 ITR 693 (All.)(HC)

1786 **S. 148: Reassessment – Notice – Constitutional validity – The delegation authorized being only for the purpose of enlarging limitation under a valid law, such delegation could not be exercised to resurrect the provision of law that stood omitted from the statute book by virtue of its substitution made by the Finance Act, 2021, w.e.f. 01.04.2021 – Reassessment notices issued under section 148 of the Act are quashed- It is left open to the assessing authority to initiate – re-assessment proceedings in accordance with the provisions of the Act, as amended by the Finance Act, 2021 after making due compliance as required under the law. [S. 147, 148A, 149, 151, 151A, 153, 292 Relaxation of Certain Provisions) Act, 2020 (TOLA), S. 3(1) of the Act 38 of 2020, Art. 226]**

Honourable High Court deciding the issue of validity of notices issued under section 148 of the Income-tax Act, 1961 on or after April 01, 2021, held the Explanations A(a)(ii)/A(b) to the Notifications dated 31st March, 2021 and 27th April, 2021 which extended the period of issuance of Notices beyond March 31, 2021 are declared to be ultra vires the TOLA and are therefore the Notices issued under section 148 of the Act on or after April 01, 2021 are bad in law, and null and void. The revenue is permitted to take further steps as per law. Followed *Ashok Kumar Agarwal & Ors. v. UOI (All.)(HC), Bpip Infra Pvt. Ltd. and Ors. v. ACIT and Ors;* and dissented from *Palak Khatuja v. Union of India & Ors. (WP(C) 6176 of 2021 dt 15-12-2021)*

Mon Mohan Kohli v. ACIT [2021] 133 taxmann.com 166 (Delhi)(HC) www.itatonline.org

S. 148 : Reassessment – Notice – Constitutional validity – The delegation authorized being only for the purpose of enlarging limitation under a valid law, such delegation could not be exercised to resurrect the provision of law that stood omitted from the statute book by virtue of its substitution made by the Finance Act, 2021, w.e.f. 01.04.2021 – Reassessment notices issued under section 148 of the Act are quashed – It is left open to the assessing authority to initiate – re-assessment proceedings in accordance with the provisions of the Act, as amended by the Finance Act, 2021 after making due compliance as required under the law. [S. 147, 148A, 149, 151, 151A, 153, 292 Relaxation of Certain Provisions) Act, 2020, S.3(1) of the Act 38 of 2020, Art. 226] 1787

The petitioners have challenged the validity of the re-assessment notices issued to them, under Section 148 of the Act. Another challenge has been raised to the validity of the Explanation appended to clause (A)(a) of CBDT Notification No. 20 of 2021, dated 31.03.2021 and Explanation to clause (A)(b) of CBDT Notification No. 38 of 2021, dated 27.04.2021. Those notifications have been issued under the powers vested under Section 3(1) of the Act 38 of 2020 namely, the Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 (hereinafter referred to as the 'Enabling Act'). A delegated legislation can never overreach any Act of the principal legislature. Second, it would be over simplistic to ignore the provisions of, either the Enabling Act or the Finance Act, 2021 and to read and interpret the provisions of Finance Act, 2021 as inoperative in view of the fact circumstances arising from the spread of the pandemic COVID-19.Following the judgement in *Ashok Kumar Agarwal & Ors v. UOI (All.)(HC).www.itatonline.org.* The Hourable High Court quashed the issue of notice under section 148 of the Act for initiating reassessment proceedings. Court also observed that, it is left open to the assessing authority to initiate – re – assessment proceedings in accordance with the provisions of the Act, as amended by the Finance Act, 2021 after making due compliance as required under the law.

BPIP (Infra)(P) Ltd & Ors v. ITO ACIT (2021) 208 DTR 145 / 323 CTR 879 / (2022) 440 ITR 300 / 284 Taxman 635 (Raj.)(HC)

S. 148 : Reassessment – Notice – Constitutional validity – The delegation authorized being only for the purpose of enlarging limitation under a valid law, such delegation could not be exercised to resurrect the provision of law that stood omitted from the statute book by virtue of its substitution made by the Finance Act, 2021, w.e.f. 01.04.2021. – Interpretation of Taxing Statutes – Legislative Substitution- Causus omisus cannot be supplied, either by the delegated legislation or by Courts – The Enabling Act only extended the limitation up to 31.03.2021 to do certain things only. Thereafter, it delegated the power to cause such further extensions to do those things beyond the date 31.12.2020, upto 30.06.2021 – delegate to do colourably, that which it cannot directly do after the Parliament enforced Sections 2 to 88 of the Finance Act 2021, w.e.f. 01.04.2021. once the principal legislation enacted the law as has been done in the present case, its delegate was denuded of its powers, in the field occupied by the principal legislature- Reassessment notices issued under section 148 of the Act are quashed. [S. 147, 148A, 149, 151, 151A, 153,292 Relaxation of Certain Provisions) Act, 2020, S.3(1) of the Act 38 of 2020, Art. 226] 1788

The petitioners have challenged the validity of the re-assessment notices issued to them, under Section 148 of the Act. Another challenge has been raised to the validity of the Explanation appended to clause (A)(a) of CBDT Notification No. 20 of 2021, dated

31.03.2021 and Explanation to clause (A)(b) of CBDT Notification No. 38 of 2021, dated 27.04.2021. Those notifications have been issued under the powers vested under Section 3(1) of the Act 38 of 2020 namely, the Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 (hereinafter referred to as the 'Enabling Act'). A delegated legislation can never overreach any Act of the principal legislature. Second, it would be over simplistic to ignore the provisions of, either the Enabling Act or the Finance Act, 2021 and to read and interpret the provisions of Finance Act, 2021 as inoperative in view of the fact circumstances arising from the spread of the pandemic COVID-19. Practicality of life de hors statutory provisions, may never be a good guiding principle to interpret any taxation law. In absence of any specific clause in Finance Act, 2021, either to save the provisions of the Enabling Act or the Notifications issued thereunder, by no interpretative process can those Notifications be given an extended run of life, beyond 31 March 2020. They may also not infuse any life into a provision that stood obliterated from the statute with effect from 31.03.2021. Inasmuch as the Finance Act, 2021 does not enable the Central Government to issue any notification to reactivate the pre-existing law (which that principal legislature had substituted), the exercise made by the delegate/Central Government would be de hors any statutory basis. In absence of any express saving of the pre-existing laws, the presumption drawn in favour of that saving, is plainly impermissible. Also, no presumption exists that by Notification issued under the Enabling Act, the operation of the pre-existing provision of the Act had been extended and thereby provisions of Section 148A of the Act (introduced by Finance Act 2021) and other provisions had been deferred. Such Notifications did not insulate or save, the pre-existing provisions pertaining to reassessment under the Act. In view of the above the Court held that all the writ petitions must succeed and are allowed. It is declared that the Ordinance, the Enabling Act and Sections 2 to 88 of the Finance Act 2021, as enforced w.e.f. 01.04.2021, are not conflicted. Insofar as the Explanation appended to Clause A(a), A(b), and the impugned Notifications dated 31.03.2021 and 27.04.2021 (respectively) are concerned, Court declared that the said Explanations must be read, as applicable to reassessment proceedings as may have been in existence on 31.03.2021 i.e. before the substitution of Sections 147, 148, 148A, 149, 151 & 151A of the Act. Consequently, the reassessment notices in all the writ petitions are quashed. It is left open to the respective assessing authorities to initiate reassessment proceedings in accordance with the provisions of the Act as amended by Finance Act, 2021, after making all compliances, as required by law. (WTNo. 524 o 2021 dt.30-9-2021

Note: It was held that the decision of the learned Single Judge of the Chhattisgarh High Court in W.P. (T) No. 149 of 2021 Palak Khatuja v. UOI, decided on 23.08.2021 does not lay down the correct law.

Ashok Kumar Agarwal & Ors v. UOI (2021) 439 ITR 1 / 206 DTR 229 / 322 CTR 873 / 131 taxmann.com 22 (All.)(HC).www.itatonline.org.

Editorial: Refer, UOI v. Ashsih Agarwal (2022) 444 ITR 1/ 213 DTR 217/ 326 CTR 473/ 286 Taxman 183 (SC) , notices issued by the Assessing Officers under section 148 shall be deemed to have been issued under Section 148A as substituted by the Finance Act, 2021 and to be treated as show-cause notices in terms of Section 148A(b) of the Act -The Assessing Officers shall, within 30 days from 04-05-2022, provide the information and material relied upon so that the assessees can reply to the notices within two weeks thereafter- Decision to apply to all such notices quashed by High Courts throughout Country.

S. 148 : Reassessment – Notice – Constitutional Validity – Issued between April 01, 2021 to June 30, 2021 – Without following S. 148A – Conducting inquiry, providing opportunity before issue of notice under section 148 – Taxation and other Law (Relaxation and Amendment of Certain Provisions) Act, 2020 and subsequent notifications – held Constitutionally Valid. [S. 147, 148A, Art. 226] 1789

Dismissing the writ petition the Court held that,where notices were issued under section 148 of the Act between April 01, 2021 to June 30, 2021 without adhering to section 148A of the Act which was introduced via Finance Act, 2021 effective from April 01, 2021, the issuance of Notice under section 148 of the Act between April 01, 2021 to June 30, 2021 under the Taxation and other Law (Relaxation and Amendment of Certain Provisions) Act, 2020 and subsequent Notifications extending the due date for issuance was held covered by the doctrine of Conditional Legislation.

Further observed that, the Taxation and other Law (Relaxation and Amendment of Certain Provisions) Act, 2020 and subsequent Notifications extended the due dates for payment of taxes for taxpayers and also protected the interest of the Income-tax Department at parity. Therefore, the provisions of Section 148 which was prevailing prior to the amendment of Finance Act, 2021 was also extended. Writ Petitions dismissed. (WP(T) No. 149 of 2021 dated August 23, 2021)(WP.No 158 of 2021 dt. 1-9-2021)(AY. 2015-16)

Palak Khatuja v. UOI (2021) 438 ITR 622 / 205 DTR 233 / 322 CTR 417 (Chhattisgarh) (HC)

Manisha Khatuja v. UOI (2021) 438 ITR 622 / 205 DTR 233/ 322 CTR 417 (Chhattisgarh) (HC)

Bharti Khatuja v. UOI (2021) 438 ITR 622/ 205 DTR 233/ 322 CTR 417 (Chhattisgarh)(HC)

Anant Rice Industries v. UOI (2021) 439 ITR 275/ 283 Taxman 132 (Chhattisgarh)(HC)

Prashant Sharma v. UOI (2021) 283 Taxman 202 (Chhattisgarh)(HC)

Guruteg Bahadur Rice Mill v. ACIT (2022) 440 ITR 233 (Chhattisgarh)(HC)

Editorial : Refer, UOI v. Ashsih Agarwal (2022) 444 ITR 1/ 213 DTR 217/ 326 CTR 473/ 286 Taxman 183 (SC) , notices issued by the Assessing Officers under section 148 shall be deemed to have been issued under Section 148A as substituted by the Finance Act, 2021 and to be treated as show¬ cause notices in terms of Section 148A(b) of the Act -The Assessing Officers shall, within 30 days from 04-05-2022, provide the information and material relied upon so that the assessees can reply to the notices within two weeks thereafter- Decision to apply to all such notices quashed by High Courts throughout Country

S. 148 : Reassessment – Notice – Failure to file return by the partnership firm – Notice cannot be issued to individual partners to file the return – Notice was quashed. [S.44AD, 139, 147, Art. 226] 1790

Allowing the petition the Court held that merely because the partnership firm has not filed the return, the notice cannot be issued to individual partners to file the return. Referred *V.D.M.RM.M.RM. Muthiah Chettiar v. CIT (1969) 74 ITR 183 (SC),* where in the Supreme Court observed that the Act and the Rules accordingly impose no obligation upon the assessee to disclose to the ITO in his return information relating to income of any other person by law taxable in his hands. (AY. 2012-13)

Niharahemad Varjikhan Pathan v. ITO (2021) 199 DTR 153 / 320 CTR 697 (Guj.)(HC)

1791 **S. 148 : Reassessment – Notice – Disputed question of fact – Matter remanded to the Assessing Officer. [S. 142(1), 147, Art. 226]**
On a writ to quash the issuance of notice issued under section 148 of the Act, as disputed question of fact was involved, the matter was remanded to the Assessing Officer. (AY. 2012-13)
Bhola Ram Steel (P) Ltd. v. PCIT (2021) 198 DTR 94 / 319 CTR 494 (Pat.)(HC)

1792 **S. 148 : Reassessment – Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TLA Act, 2020) – Conducting inquiry, providing opportunity before issue of notice – Notice was issued without following mandatory obligations – Notice was issued – Matter was posted for final hearing after eight weeks.[S. 3, 147, 148A, Art. 226]**
Assessee filed writ petition on ground that impugned reassessment notice was issued invoking section 3(1) of Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TLA Act, 2020) without following mandatory statutory obligations under section 148A as inserted by Finance Act, 2021 with effect from 1-4-2021. Court observed that since revenue could neither submit any evidence to show that provision of section 148A were followed before issuing reopening notice against assessee nor could deny allegations of assessee, matter was listed for final hearing after eight weeks (AY. 2014-15, 2015-16)
Bagaria Properties and Investments (P) Ltd v. UOI (2021) 281 Taxman 218 (Cal.)(HC)

1793 **S. 148 : Reassessment – Notice – Hindu Undivided Family – Partition – Sale consideration – Exemption – Reassessment notice to tax capital gains in the hands of Karta is held to be not valid [S.45, 54F, 148, 171, Art. 226]**
Allowing the petition the Court held that, where a Hindu family was never assessed as a Hindu undivided family, section 171 would not apply even when there was a division or partition of property which did not fall within the definition. The notice issued under section 148 to the estate of ARP (HUF) co-parceners and the consequential order issued in the name of the assessee as the karta were unsustainable.(AY. 2008-09)
A.P. Oree (Kartha) v. ITO (2021) 436 ITR 3 / 203 DTR 153 / 282 Taxman 57 (Mad.)(HC)

1794 **S. 148 : Reassessment – Notice – Death of assessee – Notice issued to deceased assessee – Notice and order not valid [S. 144, 147, 271F, 271(1)(c), Art. 226]**
Allowing the petition the Court held that the notice issued under section 148 having been issued in the name of a dead person, was null and void, and all consequent proceedings and orders, including the assessment order passed under section 144 / 147 and the penalty notices issued under section 274 read with section 271(1)(c) and section 274 read with section 271F, being equally tainted, were set aside.(AY. 2012-13)
Sripathi Subbaraya Manohara (Mrs.) v. PCIT (2021) 436 ITR 469 (Delhi)(HC)

1795 **S. 148 : Reassessment – Notice was served on the last known address – Tribunal remanding the matter – Remand is held to be justified [S. 147, 254(1)]**
Dismissing the appeal the Court held that, ITO Tiruvallur had issued reopening notice to assessee and it had also submitted report of ITO, Tiruvallur that he visited last known

address of assessee to verify address of assessee and found that address belonged to assessee, but house was let out and tenants informed him that they were receiving reopening notice by department and forwarding them to assessee. Therefore proceedings were initiated in a proper manner. Tribunal was justified in remanding matter back to Assessing Officer to adjudicate matter afresh. (AY. 2011-12)
Perumallur Vankipuram Janardhanan v. ITO (2021) 281 Taxman 184 (Mad.)(HC)

S. 148 : Reassessment – Notice – Notice was not served on the assessee – Capital gains – Sale of agricultural land – Reassessment proceedings was quashed [S.147, 292BB, Art, 226] 1796
Allowing the petition the Court held that reopening notice was not served upon assessee at any point of time, impugned reopening proceedings initiated against assessee pursuant to said notice was to be quashed. (AY. 2011-12)
Rambhai Mafatlal Patel v. ITO (2021) 281 Taxman 196 / 323 CTR 712 (Guj.)(HC)

S. 148 : Reassessment – Notice – Proper procedure to be adopted – Writ against the notice was dismissed [S.147, Art. 226] 1797
Dismissing the petition the Court held that a writ petition against a notice under section 148 was not to be entertained in a routine manner. The notice could be challenged if the issuing authority had no jurisdiction or if it was issued beyond the period of limitation. If the ground regarding limitation existed, the assessee could raise such issue before the competent authority and not before the court.(AY.2011-12)
Palaniammal Palaniappan v. ITO (2021) 434 ITR 668 (Mad.)(HC)

S. 148 : Reassessment – Notice – Assessee has right to raise objections – Duty of Assessing Officer to consider objections – Failure to consider objections – Matter remanded [S. 147, Art, 226] 1798
Allowing the petition the Court held that although the Assessing Officer had an opportunity at the stage of dealing with the objections to verify the contention of the assessee, which went to the root of the matter, he ignored the issue taking a stance that the factual proposition would be examined at the time of reassessment proceedings after giving sufficient opportunity to the assessee. Therefore the Assessing Officer had no material to suggest that the assessee had made payment in cash to S and thereafter, received the same amount back through the real-time gross settlement mode. The notice of reassessment was not valid. Matter remanded to Assessing Officer.(AY. 2015-16)
Purshottambhai Bachubhai Pitroda v. Dy CIT (2021) 434 ITR 629 (Guj.)(HC)

S.148 : Reassessment – Notice – Amalgamation of companies – Amalgamating company and amalgamated company operating from same address after amalgamation – Provision of Section 170(2) applicable- Participated in the reassessment proceedings – Notice and reassessment proceedings valid [S. 147, 170 (2), Art. 226] 1799
Dismissing the petition the Court held that on the facts and circumstances established, the assessee had to participate in the reassessment proceedings under section 147 by submitting its documents and evidence to establish its case. After merger with effect from April 1, 2009 both the offices, HCLP and HCLC, were running in the

same premises. Further, the acknowledgment of the notice issued by the Assistant Commissioner had not been disputed by the assessee. Therefore, section 170(2) would be applicable and such ground could not be considered for the purpose of quashing the entire proceedings initiated under section 147. Even on the merits, the Assistant Commissioner had established that there was "reason to believe" in view of certain new materials found in the matter of purchased units of mutual funds. This could not establish any acceptable reason for the purpose of assailing the notice issued under section 148. (AY. 2005-06)
Vama Sundari Investments (Delhi) Private Limited v. ACIT (2021) 434 ITR 174 / 205 DTR 299/ 281 Taxman 260 (Mad.)(HC)

1800 **S. 148 : Reassessment – Reasons recorded not communicated – Reassessment is held to be bad in law [S. 147, 292BB]**
Assessing Officer reopened assessment on ground that in original assessment, he had extended excessive and unnecessary relief to assessee on wrong appreciation of facts, though the recorded reasons were not communicated to the assessee. CIT (A) up held the order of the Assessing Officer. On appeal the Tribunal quashed reassessment proceedings on ground that reasons for reopening were not communicated to assessee and despite opportunities, revenue was not able to produce any evidence to show that reasons recorded for reopening had been provided to assessee as requested by them in their letter. On appeal by revenue the High Court held that Tribunal was right in quashing reassessment proceedings. (AY. 2006-07)
CIT v. Janak Shantilal Mehta (2021) 277 Taxman 385 / 200 DTR 385 (Mad.)(HC)

1801 **S. 148 : Reassessment – Transfer pricing – Objection not disposed of against reassessment notice – Single judge directed the Assessee to participate in adjudicating mechanism – Order of single judge is affirmed in appeal. [S.92C, 92D, 92E, 148, Art. 226]**
Assessing Officer without dealing with objections raised against reopening of assessment transferred its case to Transfer Pricing Officer (TPO) under section 92CA who further called upon assessee to furnish information in terms of sections 92D and 92E. The Assessee filed writ petition against reference of its case by Assessing officer to TPO without dealing with its objections against reopening. Single Bench directed assessee to participate in statutory adjudication mechanism and dismissed writ petition. Assessee filed an writ appeal challenging said order of Single Judge. Dismissing the appeal the Court held that finding rendered passed by Single Judge was an appropriate procedure to be adopted and same was to be upheld.
PPN Power Generating Company (P) Ltd v. CIT (2021) 277 Taxman 240 / 200 DTR 382/ 320 CTR 268 (Mad.)(HC)

1802 **S. 148 : Reassessment – Notice – Notice was not served – Approval granted was of mechanical manner – Legal issue – Additional ground was admitted – Reassessment proceedings is quashed [S. 144, 147, 254(1), 282(1), Civil Procedure Code, 1908, Order V rule 12, Order III rule 6]**
Tribunal admitted the legal ground and held that on the facts the notice of reassessment was not served on the assessee and the Commissioner has given approval in mechanical

manner. The reassessment proceedings is quashed. Followed, *CIT v. Chetan Gupta [2016 382 ITR 613 (Delhi)(HC)*(AY.2010-11)
Charanjit Kaur (Smt.) v. ITO (2021) 88 ITR 414 / 211 TTJ 614 (Chd.)(Trib.)

S. 148 : Reassessment – Notice – Recording of reason stating that the assessee failed to file return of income – Contradictory to facts on record – Order was quashed [S. 143(3), 147] 1803
Held that the recording of reasons was done mechanical manner without verifying the records. Reassessment was quashed. Followed *Sagar Enterprises v. ACIT (2002) 257 ITR 335 (Guj.)(HC)*(AY.2010-11)
Jaspal Singh v. ITO (SMC)(2021) 88 ITR 407 / 211 TTJ 25 (UO)(Chd.)(Trib.)

S. 148 : Reassessment – Notice – Recording of reason stating that the assessee failed to file return of income – Contradictory to facts on record – Mechanical sanction – Notice u/s 143 (2) was issued on same day on which the assessee appeared in response to notice u/s 148 – Order was quashed [S. 143(2), 143(3), 147, 151] 1804
Held that the Assessing Officer had recorded a wrong fact in his reasons that the assessee had not filed the return of income. Reopening of the assessment on a wrong set of facts made such reopening a nullity. The Joint Commissioner and the Principal Commissioner had not applied their mind and had given approval in a mechanical manner and on wrong facts that the assessee had not filed his return of income. In the final order the Assessing Officer had not made any such addition based on the ground on which the reopening was made, but had made addition by disallowing part of the expenses on estimate basis. The notice under section 143(2) was issued to the assessee on the very same day on which the assessee appeared and furnished copy of his Income-tax return in response to notice under section 148 of the Act. Such notice issued under section 143(2) on the very same day had to be treated as invalid and assessment is vitiated due to non-application of mind by the Assessing Officer. The order was quashed. (AY.2010-11)
Simranpal Singh Suri v. ITO (2021)88 ITR 9 (SMC)(SN)(Delhi)(Trib.)

S. 148 : Reassessment – Notice – Non disclosure of capital gains – Legal heirs – Notice was served upon only on three legal heirs out of seven and the assessment was framed in the name of one legal heir – Matter remanded to the Assessing Officer to issue notice to all legal heirs and decide afresh [S. 143(3), 147] 1805
Assessing Officer issued reassessment notice to three legal heirs of assessee out of seven after death of assessee in 2010 referring to sale of immovable property in year 2006 and asked them to explain whether return of income was filed and whether capital gain had been declared and tax had been paid on capital gain by assessee. Assessment was framed in name of daughter of deceased assessee. On appeal the Tribunal held that since in view of decision of Supreme Court in *First Additional ITO v. Susheela Sadanadan (Mrs)(1965) 57 ITR 168(SC)* that unless each and every one of legal representatives of deceased, where there are several, is brought on record, there is no proper constitution of suit or appeal, Assessing Officer was directed to issue notice to all legal heirs of deceased assessee and decide issue afresh. (AY. 2007-08)
Tahar Singh v. ITO (2021) 190 ITD 303 (Delhi)(Trib.)

1806 **S. 148 : Reassessment – Notice – Information from Investigation wing – Bogus long term and Short term capital gains – Reasons for reopening was not supplied – Directed to supply reasons for reopening – Directed to pass in accordance with law – Matter remanded. [S.69B, 147]**

Tribunal directed the Assessing Officer to supply reasons for reopening of assessment and only after disposal of objections, if any, raised by assessee to reopening, Assessing Officer would proceed to recompute income of assessee in accordance with law. Matter remanded. (AY. 2011-12)

Jitender Kumar Gupta (HUF) v. ACIT (2021) 189 ITD 714 (Hyd.)(Trib.)

1807 **S. 148 : Reassessment – Notice – No reasons are recorded and served before issuing the notice – Re assessment proceedings and consequential orders are quashed [S. 143(2), 147]**

Reassessment made by the Assessing Officer without issuing notices under section 143(2) being pure question of law can be challenged by filing additional ground before the Appellate Tribunal. Tribunal held that on facts no reasons are recorded and served before issuing the notice, therefore re assessment proceedings and consequential orders are quashed. (AY. 2012-13)

Puspanjali Mishra (Smt) v. ITO (2021) 210 TTJ 246 / 199 DTR 261 (SMC)(Cuttack)(Trib.)

1808 **S. 148 : Reassessment – Notice – Name struck off from register of companies and dissolved with intimation to assessing officer – On date of notice of reassessment, assessee no longer in existence – notice and consequential order invalid. [S. 144, 147]**

Held that the assessee had made an application before the Registrar of Companies for getting its name struck off from the Register of Companies and its dissolution and on January 9, 2017, the name of the assessee was struck from the register of companies and it was dissolved from that date and the intimation was also given to the ITO. Thus on March 29, 2018 the date of issuance of notice under section 148 of the Act, the assessee was no longer in existence. The notice was invalid and the consequential order passed was also void ab initio. (AY. 2011-12)

S. M. Buildtech Pvt. Ltd. v ITO (2021) 91 ITR 42 (SN)(SMC)(Delhi)(Trib.)

1809 **S. 149 : Reassessment – Time limit for notice – Issue of notice – Notice dated 31-3-2018 – Dispatched on same day – 1-4-2018 being Sunday Franking was done by postal authorities on 2-4-2018 – Notice is not time barred [S. 147, 148, Art. 226]**

The Assessing Officer issued reopening notice against assessee for assessment year 2011-12 on 31-3-2018 which was last date for reopening of assessment and it was dispatched on same day, however, franking was done by postal department on 2-4-2018, in view of fact that 1-4-2018 was a Sunday. The assessee challenged the notice as time barred the Court held that for all purposes, reopening notice was issued within period of limitation and hence valid. (AY. 2011-12)

Dr. Bharani R. Paluvai v. ITO (2021) 283 Taxman 159 (Mad.)(HC)

S. 149 : Reassessment – Time limit for notice – Interim stay of proceedings – Dismissal of writ petition – Appeal pending before Supreme Court – Reassessment was not barred by limitation – Alternative remedy – Writ is not maintainable. [S. 147, 148, 153, Art. 226] 1810

On a writ the assessee contended that the order contending that the order of reassessment ought to have been passed within 60 days from June 8, 2014, i. e., on or before August 7, 2014 and that having been passed on October 24, 2014 it was barred by limitation. Dismissing the petition the Court held that six categories of cases, were clubbed together and heard by the High Court. The writ petition filed by the assessee was clubbed with the fourth category of cases, which were petitions challenging the speaking order where notices of reassessment were issued within fours years from the relevant assessment year where the original assessment orders had been passed under section 143(3) / 147 of the Act. Court held that the writ petitions were not maintainable and all the issues involved were adjudicatory issues. Accordingly, all the writ petitions were dismissed. Consequently, the writ appeals filed by the Revenue against the interim orders were allowed and time was granted to the assessee to file statutory appeal before the appellate authority. Thus, the court did not examine the merits of each and every case, as the issues framed for consideration were purely questions of law. The Supreme Court observed that during the pendency of the appeal before it, stay of reassessment was granted, which was directed to be continued till the disposal of the writ petitions before the High Court. After the order was passed by the Supreme Court, the order of stay stood revived. The assessee having enjoyed the benefit of the interim order passed by the Supreme Court on December 8, 2016, restoring the position as on June 8, 2014, was not entitled to maintain a challenge to the reassessment on the ground of limitation. Court also held that the remedy by way of appeal before the Commissioner (Appeals) was not only an effective, but efficacious remedy. The assessee had to necessarily avail of the appellate remedy as against the order of reassessment dated October 24, 2014 and agitate all issues on the merits except the contentions with regard to the limitation which had been rejected by the court. (AY. 2007-08)

Madras Race Club v. Dy. CIT (2021) 438 ITR 203 (Mad.)(HC)

S. 149 : Reassessment – Time limit for notice – From the date of issue of notice and not from service of notice- Writ petition was dismissed. [S. 147, 148, 281, Art. 226, General Clauses Act, 1897, S. 27] 1811

Dismissing the petition the Court held that the limitation period for reassessment is to be reckoned from date of issue of notice and not from service of notice. Court also observed that meaning of service by post as defined under section 27 of the General Clauses Act, 1897 may not have any applicability or relevancy as far as section 149 of the Income-tax Act, 1961.

Sadhna Tolasariya v. ITO (2021) 202 DTR 377 / 281 Taxman 354 (Mad.)(HC)
Laxmi Kanta Talasaiya v. ITO (2021) 202 DTR 377 (Mad.)(HC)
Praveen Amin Bhathara (Smt) v. ITO (2021) 202 DTR 377 (Mad.)(HC)
Rjesh Gupta v. ITO (2021) 202 DTR 377 (Mad.)(HC)

1812 **S. 151 : Reassessment – Sanction for issue of notice – Sanction of Commissioner – Additional Commissioner granting approval – Reassessment proceedings quashed – Notice served through affixture not valid – No attempt to serve in person or through post – Notice was quashed [S. 147, 148, 151(1), 282]**

Held that the approval given by the Additional Commissioner showed that he had not applied his mind properly and had in a mechanical manner given his approval. Since, the Additional Commissioner had given approval in a mechanical manner without independent application of mind, such approval given under section 151(1) of the Act being not in accordance with law, the reassessment proceedings had to be quashed. Tribunal also held that notice served through affixture not valid as no attempt to serve in person or through post. Notice was quashed. (AY. 2008-09)

Digvijay Advisor Pvt. Ltd. v. ITO (2021) 89 ITR 17 (SMC)(SN)(Delhi)(Trib.)

1813 **S. 151 : Reassessment – Sanction for issue of notice – Additional ground was admitted – Delay in filing the appeal was condoned – Sanction was mechanical, without application of mind – Order of reassessment was quashed [S. 147, 148, 151, 253, 254(1)]**

Tribunal condoned the delay in filing of appeal and admitted the additional ground. The Tribunal held that the Principal Commissioner had recorded satisfaction in a mechanical manner without application of mind to accord sanction for issue of notice. Therefore, the reopening of the assessment was liable to be quashed.(AY.2009-10)

TEK Chand v. ITO (2021) 88 ITR 392 (Chd.)(Trib.)

1814 **S. 151 : Reassessment – Sanction for issue of notice – After the expiry of four years – It is mandatory that satisfaction of Pr.CIT/CCIT/ PCIT /CIT [S. 143 (3), 147, 148]**

Held that when the reopening is done after expiry of four years from end of assessment year and original assessment was completed under section 143(3), then irrespective of rank of Assessing Officer who has reopened assessment, it is mandatory condition that satisfaction of Pr. CCIT/CCIT/PCIT/CIT is required. Followed *Reliable Finhold Ltd v. UOI (2014) 369 ITR 419 (All)(HC)*(AY. 2007-08)

Aries Marketers (P.) Ltd. v. CIT (2021) 188 ITD 671 / 212 TTJ 930 / 204 DTR 233 (SMC) (All)(Trib.)

1815 **S. 151 : Reassessment – Sanction for issue of notice – Satisfaction recorded in a mechanical manner without application of mind – Additional ground Reopening held to be invalid. [S.147, 148, 254(1)]**

The assessee before the Tribunal took the ground that that the impugned assessment Order u/s 143(3) r.w.s 147 was passed without complying with the mandatory conditions u/s 147/148 as envisaged by the Act. Additional ground was admitted.

Tribunal observed that Jt CIT recorded the satisfaction in a mechanical manner without application of mind, and gave approval by simply stating that "Yes, it is approved for 148 action". Based on the same it was held that the approval was not valid and consequently the reopening of the assessment on the basis of said approval was also not valid. (AY. 2013-14)

Satnam Singh v. ITO (2021) 212 TTJ 1 (Amritsar)(UO)(Trib.)

S. 151 : Reassessment – Sanction for issue of notice – Non-issuance of notice – Mechanical satisfaction of P without application of mind – Reassessment not sustainable [S.69, 147, 148, 282] 1816

Assessee challenged the reopening notice, primarily on the ground that Notice was not served as per S. 282 of the IT Act. The addition was also challenged on merits, as reason to believe itself was based on wrong footing as power to reopen was exercised mechanically without examining the records.

The department on the other side argued that non-receipt is not equivalent to non-service, without producing any records or documents to counter the assessee's objections.

On appeal the Tribunal held that :

- As the notice was never served on the assessee, nor the Revenue authorities have given any finding specifying the mode and manner of issuance of notice/s 148, the jurisdiction for reassessment based on such notice is bad in law and be restored to nullity.
- Even on merits as assessee having sufficiently explained the facts right at the assessment stage, and no infirmity in the evidences relied upon and available on record has been pointed out, assessee is entitled to relief on merits too.
- Also reopening u/s 148 based on mechanical satisfaction of PCIT without application of mind deserves to be quashed, as an authority vested with onerous powers of reopening u/s 147 and granting of approval is expected to exercise its power consciously, carefully and with full awareness. The public at large cannot be put to the mercies of careless, casual, arbitrary or whimsical exercise of power. (AY. 2010-11)

Simar Kaur (Smt) v. ACIT (2021) 212 TTJ 236 / 203 DTR 377 / 89 ITR 635 (SMC)(Chd.)(Trib.)

S. 151 : Reassessment – Sanction for issue of notice – Mechanical grant of approval – Failure to issue notice under section 143(2) – Reassessment Not Valid [S. 68, 143(2), 147, 148] 1817

The Assessing Officer reopened the assessment of the assessee and made additions to the total income of the assessee under section 68 of the Income-tax Act, 1961. The Commissioner (Appeals) partly allowed the assessee's appeal. On appeal the Tribunal allowing the additional grounds raised by the assessee regarding non-issuance of notice under section 143(2) of the Act and the mechanical approval granted under section 151 of the Act by the Principal Commissioner of Income-tax admitted and reassessment was quashed. (AY.2010-11)

Ram Niwas Jain v. ITO (2021) 85 ITR 59 (SMC)(SN)(Delhi)(Trib.)

S. 151 : Reassessment – Sanction for issue of notice – After the expiry of four years – Sanction obtained from Additional Commissioner instead of Principal Commissioner or Chief Commissioner or Commissioner – Notice not valid. [S. 147, 148] 1818

Held that, according to section 151, no notice under section 148 shall be issued beyond a period of four years unless the Principal Commissioner or Chief Commissioner or the Commissioner was so satisfied. However, the notice under section 148 was issued beyond the period of four years with the sanction or approval, not of the Principal

Commissioner or Commissioner, but of the Additional Commissioner. As a result, the issue of notice under section 148 and the consequent assessment order passed were invalid, illegal and liable to be quashed. Tribunal also held that the records showed that the Principal Commissioner had given one consolidated approval in the case of 56 different assessees in one shot through one letter which was not even signed by him but by the ITO, who was not a competent authority to sign, or give, the approval. Further, there was a doubt whether the approval had been received before the issue of notice under section 148. In terms of section 151 such an approval could not be given to as many as 56 assessees in a single document as each assessee's case was independent and separate and called for different reasons to be recorded. The procedure and way of approval and satisfaction were not proper and made without application of mind in a slipshod manner. Therefore, the reopening of the assessment was not sustainable as there were clear irregularities and violation of section 151; the very foundation of the issue of notice under section 148 was not in terms of the law. The proceedings under section 147 were to be quashed. (AY.2008-09, 2009-10)
Satya Narayan Bairwa v. ITO (2021)91 ITR 370 (Jaipur)(Trib.)

1819 **S. 153 : Assessment – Reassessment – Limitation – Issue of two notices – First notice dated 22nd march 2011 on business premises – Second notice on 6 th April 2011 on residential premises – First notice was not withdrawn – Order passed on 28 th March 2013 – Barred by limitation on 31st December, 2011. [S. 147, 148, 153(2)]**
Allowing the appeal of the assessee the Tribunal held that the notice u/s 148 was served on the assessee on 25th March, 2011, therefore, the time for completion of assessment proceeding in respect of asst. yrs. 2004-05 and 2005-06 is 31st Dec. 2011 i.e.. nine months from the date of financial year in which notice under S..148 was served. The order of assessment has been passed beyond the aforesaid period i.e., on 28th March, 2013. The proceeding for reassessment were completed beyond the period of limitation as prescribed under section 153(2) of the Act. Admittedly, the first notice which was served on the business premises of the assessee was existing and was not withdrawn. Therefore, the same continued to subsist and the finding of the Tribunal that AO could issue two notices was held to be perverse. Order of Tribunal was quashed. (AY. 2004-05, 2005-06]
H.C. Byregowda v. ACIT (2021) 323 CTR 500 / 207 DTR 324 (Karn.)(HC)

1820 **S. 153 : Assessment – Limitation – Remand to DRP – Tribunal – Order was not passed within stipulated time – Directed to refund the amount with interest [S. 144C(13), 153(2A), 244A, Art. 226]**
The assessment order was passed on 29th October 2010. The order was challenge in appeal before Tribunal. The petitioner challenged the assessment order passed u/s 143(3) read with section 144C(13) of the Act in consequence of an order passed by the DRP as barred by limitation. The direction was sought to refund the tax paid along with interest. The order of Tribunal dated 24th Jan. 2013 was received prior to the completion of that financial year, i. e. on or before 31st March, 2013. Proceedings became barred on 31 st March 2015. If it received after 1stApril 2013 the proceedings would have became barred by 31st March, 2016. Allowing the petition the Court held

that the remand was to TPO or DRP would not make a difference as long as what results from the remand is a fresh assessment of the issue. The time limit for computing is governed by section 153(2A) of the Act. The court held that when matter had been remanded to DRP by Tribunal but no order was within the period of stipulated under section 153(2A). On the facts the proceedings are barred by limitation. The final assessment order was dated 29 th October 2010 was quashed. The assessee is entitled to refund of amount paid with interest under section 244A of the Act. (AY. 2006-07)
Freight Systems (India)(P.) Ltd v. Dy.CIT (2021) 206 DTR 163 (Mad.)(HC)

S. 153 : Assessment – Reassessment – Limitation – Limitation would commence from date of passing of order by competent Authority or Court properly signed and sealed by court and communicated to parties – Mere filing of appeal will not preclude competent Authority from proceeding under law. [S.143(3)] 1821

Mere filing of an appeal before the High Court or the Supreme Court would not preclude the competent authorities from exercising their powers, which are otherwise conferred under the provisions of the Act. Unless any interim order or otherwise is communicated to the authorities, they are bound to proceed under the provisions of the Act, in the manner known to law. According to the judgment of the Constitution Bench of the Supreme Court of India, in the case of *National Insurance Co. Ltd. v. Pranay Sethi [2017] (2) TN MAC 609 (SC)*, the mere pronouncement of the order would not be sufficient. The order must be signed, sealed, dated and communicated to the parties, enabling them to understand the reasons and the spirit of the order. The order which is signed by the authority and appropriately sealed by the court concerned, which is communicated to the party alone must be the date on which the period of limitation commences and not from the date on which the parties have the knowledge by themselves or through their counsel or otherwise. (AY. 2005-06, 2006-07)
Pentamedia Graphics Ltd. v. ACIT (2021) 438 ITR 108 (Mad.)(HC)

S. 153 : Assessment – Limitation – Direction – Court remitting matter to Assessing Officer asking him to give opportunity to be heard – Not a direction – No exclusion of any time in computing limitation – Draft assessment order is beyond period of limitation – Order of Tribunal is affirmed.[S.92C, 144C, 153(3)] 1822

The writ petition was disposed of by the court by order dated March 7, 2012 remitting the matter to the Assessing Officer and directing the assessee to appear before the Assessing Officer on March 21, 2012. The Transfer Pricing Officer by an order dated June 13, 2012 after affording an opportunity to the assessee passed a draft order of assessment on July 5, 2012 and forwarded it to the assessee on July 11, 2012. The assessee filed objections before the Dispute Resolution Panel which passed an order on April 22, 2013. The Assessing Officer passed a final order on May 31, 2013. The assessee preferred an appeal before the Tribunal which held that draft assessment was completed by the Assessing Officer on July 5, 2012, beyond the period of limitation. Tribunal held that the order was beyond period of limitation. On appeal the Court held that the Tribunal was right in holding that the draft assessment was completed by the Assessing Officer on July 5, 2012, which was beyond the period of limitation. The proceedings were stayed for a period from December,8, 2011 to March 7, 2012.i.e. for

a period of 103 days and if the period of 103 days is added and a period of 60 days as prescribed in the proviso to section 153(4) is added, the draft order ought to have been passed by the Assessing Officer up to May 6, 2012, whereas the draft order has been passed on July 5, 2012 which is barred by limitation. The Court held that the order dated March 7, 2012 passed by the court neither contained any finding nor any direction. Followed *ITO v. Murlidhar Bhagwandas (1964) 52 ITR 335 (SC), Rajinder Nath v CIT (1979) 120 ITR 14 (SC), CIT v. Chandra Bhan Bansal (2014) 46 taxmann.com 108 (All)(HC).* (AY.2008-09)
PCIT v. Tally India Pvt. Ltd. (2021)435 ITR 137 /201 DTR 113/ 320 CTR 665 / 283 Taxman 523 (Karn.)(HC)

1823 **S. 153 : Assessment – Limitation – Order giving effect to appellate order – Matter remanded to Principal Commissioner to consider all issues and pass fresh orders [S.153 (5) 244A, 250, Art. 226]**
Petitioner filed three writ petitions seeking direction to the respondents to give effect to the appellate orders passed by the appellate authority ie. Commissioner of Income – tax (Appeals) Allowing the petitions the Court held that in order to comply with the provisions of section 153(5), the orders giving effect to the appellate orders should have been passed by June 30, 2019. If the extended period of six months was added to this, then the orders ought to have been passed by December 30, 2019. However, nothing had been shown as to whether the Asst. Commissioner made a written request before the Principal Commissioner for extension of time and was granted such extension of time on the latter's being satisfied. Thus, there was delay in passing the orders by the Asst. Commissioner giving effect to the appellate orders. The requirement to pay interest under section 244A was also missing in the orders which were also silent on the adjustment of the 20 per cent. of the initial outstanding dues paid by the assessee before the Commissioner (Appeals) while filing stay applications. The impact of Circular No. 19 of 2019, dated August 14, 2019 ([2019] 416 ITR (St.) 140) issued by the Central Board of Direct Taxes on the orders dated August 11, 2020, December 14, 2020 and December 14, 2020 was also required to be assessed because those orders had been manually issued without quoting any document identification number. There were outstanding demands against the assessee from the assessment years 2008-09 to 2017-18 which were required to be adjusted against any refund that was to be made to the assessee. Therefore, the Principal Commissioner was to consider those aspects and the impact of the Board's circular and thereafter decide afresh the issues in respect to giving effect to the orders of the Commissioner (Appeals) passed under section 250 for all the three assessment years 2008-09, 2013-14 and 2014-15.(AY.2008-09, 2013-14, 2014-15)
Salsette Catholic Co-Operative Housing Society Ltd. v. ACIT (2021) 433 ITR 259 / 202 DTR 160 (Bom.)(HC)

1824 **S. 153 : Assessment – Reassessment – Limitation – Direction by Commissioner (Appeals) to assess income in hands of third person – Notice of reassessment issued to such third person – Held to be valid [S.147, 148, 150, 250]**
The assessee filed an appeal against the addition and contended that the income belonged to the Hindu undivided family. The Commissioner (Appeals) by an order

directed the assessing authority to proceed against the Hindu undivided family to assess the income as belonging to the family. A notice under section 148 of the Act was issued to the Hindu undivided family for the period under consideration and the assessing authority after recording reasons for taking up the reassessment proceedings passed an order of reassessment. This was upheld by the Commissioner (Appeals). But the Tribunal set aside the order of reassessment solely on the ground that the assessing authority had not recorded any independent findings to invoke reassessment proceedings. On appeal the Court held that since the order had been passed by the Tribunal without taking note of section 150 read with section 153 as well as Explanation 2 to section 153, it was not valid. Court observed that Section 150 read with section 153 of the Income-tax Act, 1961, and Explanation 2 to section 153 of the Act empowers the assessing authority to include any income excluded from the total income of one person in the income of another person and assessment of such income of such other person shall be deemed to be made in consequence or to give effect to any finding or direction contained in the order. (AY. 2005-06)

PCIT v. Rajkumar C. (HUF)(2021) 431 ITR 320 / 199 DTR 217 / 320 CTR 114 (Karn.)(HC)

S. 153 : Assessment – Limitation – Transfer pricing – Reference to dispute resolution panel – Time limit for pass Transfer pricing order – Before 60 days prior to the date on which the period of limitation referred to section 153 expires – Order passed on 1-11-2019 – Barred by limitation by one day – Alternative remedy is not an absolute bar to entertain the writ petition. [S.92CA(3), 144C, Art. 226] 1825

The assessee has filed return which included income from transactions with associated entities abroad. The TPO had after issuing of notice passed order dated 1-11-2019 which according the assessee barred by limitation of one day. The assessee challenged the order by filing writ petition. The Court held that as there was no disputes on facts the issue being facts and law the writ is maintainable. The Court held that section 153 states that no order of assessment shall be made at any time after expiry of 21 months from the end of the assessment year in which the income was first assessable. The submission of the revenue is that limitation expires only on 12.a.m of 1-1-2020. However, this wold mean that an order of assessment can be passed at 12.am on 1-1-2020, where as the court of the view that such order would held to be barred by limitation as the proceedings for assessment should be completed before 11.59. 59 of 31-12-2019. The Court held that the period of 21 months expires on 31-12-2019 that must stand excluded since Section 92CA(3A) states 'before 60 days prior to the date on which the period of limitation referred to section 153 expires'. Excluding 31-12-2019, the period 60 days would expire on 1-11-2019 and the Transfer pricing orders thus ought to have been passed on 31-10-2019 or any date prior thereto. Incidentally the Board, in the Central Plan also indicates the date by which the Transfer Pricing orders are to be passed as 31-10-2019. Accordingly the order is held to be barred by Limitation. (WP.No. 32699 of 2019 dt 7-09-2020(AY.)

Pfzer Heath Care India Pvt. Ltd. v. JCIT (2021) The Chamber's Journal-March – P. 178 (Mad.)(HC)

1826 **S. 153A: Assessment – Search or requisition- Warrant of Authorisation – Effect of amendment of Section 132(1) by Finance (No. 2) Act, 2009 – Amendment has retrospective effect from June 1, 1994 and is clarificatory – Additional Director of Income-Tax had Authority to issue warrant of authorisation- Without incriminating material proceedings u/s 153A is not valid. [S. 132]**

Court held that Section 132(1) of the Income-tax Act, 1961, was amended by the Finance (No. 2) Act, 2009 authorizing the Additional Director or the Additional Commissioner or the Joint Director or the Joint Commissioner to issue a search warrant. This provision was given retrospective effect from June 1, 1994. In terms of the clarification issued by the Central Board of Direct Taxes the amendment is clarificatory. Warrant of Authorisation issued by the Additional Director of Income -tax was held to be valid. Court also held that there being absolutely no incriminating materials found or seized at the time of search, there was no justification for the initiation of assessment proceedings under section 153A. The assessment proceedings were not valid.(AY.2002-03 to 2008-09)

Smrutisudha Nayak (Smt.) v. UOI (2021) 439 ITR 193 / 208 DTR 1/ 323 CTR 617 (Orissa) (HC)

1827 **S. 153A : Assessment – Search – No incriminating documents were found – Assessment was not pending on the date of search – Deletion of addition was held to be justified. [S.40A(3), 132]**

Dismissing the appeal of the revenue the Court held that as no incriminating documents were found in the course of search and the assessment was not pending on the date of search. Deletion of addition was held to be justified. Followed *CIT v. Kabull Chawla (2016) 300 ITR 573 (Delhi)(HC)*.(AY. 2007-08)

PCIT (Central) v. Jaypee Financial Services Ltd. (2021) 282 Taxman 475 (Delhi)(HC)

1828 **S. 153A : Assessment – Search – Block assessment – Natural justice – Electronic documents – Copies of panchanama – Opportunity of cross examination of persons whose statements were used against the assessee – Assessment order was set aside and matter remanded. [S. 132, 132(4), Indian Evidence Act, 1872, S.65B]**

Allowing the petition the court held that failure to furnish the panchanama to the assessees was a violation of the principles of natural justice as it disabled them from having knowledge of the seized materials and the alleged incriminating materials relied upon by the Department. The Department either should not have relied on the statements recorded under section 132(4) and if they were relied upon, the Department should not have denied the opportunity to the assessee's demand to cross examine the persons who gave the statements. The contention of the Department that since the statements recorded were of persons who were employees of the assessee and therefore the assessee could not seek cross-examination of them could not be accepted. The plea of alternative remedy which was also an effective one to undo the violations committed by the Department was unsustainable. Relied on *Kishinchand Chellaram v. CIT (1980) 125 ITR 713 (SC)*. Court also held that when the assessments had been framed only on the basis of the electronic records which were copies of excel sheet, excel work note book etc., failure to comply with section 65B of the Indian Evidence Act, 1872 rendered the document inadmissible in the eye of law. Relied on Anvar P. v. V. P. K.

Basheer (2014) 10 SCC 473 and *Maharashtra Chess Association v. UOI (2020) 13 SCC 285.* Court set aside the assessment order. The Court also observed that the limitation if any would stand extended and would start afresh for completion of the fresh assessment proceedings. (AY.2013-14 to 2019-20)
Vetrivel Minerals v. ACIT (2021) 437 ITR 178 / 282 Taxman 321 / 208 DTR 280/ 323 CTR 766 (Mad.)(HC)
Vijay Cements v. ACIT (2021) 437 ITR 178 / 282 Taxman 321 / 208 DTR 280 / 323 CTR 766 (Mad.)(HC)

S. 153A : Assessment – Search – No incriminating material was found – Assessment was completed on the date of search – Assessment order and notice of demand was held to be not valid. [S. 132, 156, Art. 226] 1829
Allowing the petition the Court held that the order did not refer to any document unearthed during the course of the search conducted under section 132. Therefore, the assumption of jurisdiction under section 153A for assessment of the assessment year 2015-16 was without legal basis. The panchanama of the search proceedings unambiguously showed that nothing incriminating was recovered in the course of the search. The assessment order and the consequential demand notice under section 156 were set aside.(AY.2015-16)
Jami Nirmala (Smt.) v. PCIT (2021) 437 ITR 573 / 207 DTR 65 / 323 CTR 317 (2022) 284 Taxman 141 (Orissa)(HC)

S. 153A : Assessment – Search – Public Interest Litigation – Allegation of evasion of tax – Filing different petitions on same subject matter – Practice deprecated – Income-Tax Informants Reward Scheme, 2018. [Art, 226] 1830
Dismissing the appeal, that a second writ petition on the same subject matter was not maintainable. The issue of evasion of tax under the tax informant scheme (2018 Scheme) had already been raised in the public interest litigation and the court had already dismissed the identical writ appeal. The modus operandi adopted by the petitioner was that it had filed different writ petitions in respect of the same subject matter which was the subject matter of the public interest litigation. Such a practice deserved to be deprecated. There was no reason to interfere with the order passed by the single judge dismissing the second writ petition.
India Awake For Transparency v. Chairman, CCBDT (No. 2)(2021) 436 ITR 512 (Karn.) (HC)
Editorial : Decision in Single judge in India Awake For Transparency v. Chairman, CCBDT (No. 1)(2021)436 ITR 442 (Karn.)(HC) affirmed.

S. 153A : Assessment – Search or requisition – Client code, modification – No incriminating material was found in the course of search- Assessment was not pending on date of search – Deletion of addition was held to be justified [S. 132] 1831
Held that additions were not based on any incriminating material found during search and assessment was not pending on date of search hence additions were unjustified. Order of Tribunal was affirmed. (AY. 2008-09)
PCIT v. Jaypee Financial Services Ltd. (2021) 280 Taxman 147 (Delhi)(HC)

1832 **S. 153A : Assessment – Search – Block assessment – Failure to hand over seized material by Investigation Officer to Assessing Officer within prescribed time-limit – Notice will not be invalid [S.132, 132 (9A), 153B, Art. 226]**

The assessee filed writ petition challenging the validity of the section 153A notices dated November 1, 2019 for the assessment years 2013-14 to 2018-19, on the ground that the time frame set out in section 132(9A), is mandatory and non-compliance therewith would render the notices issued initiating the process of assessment, invalid. Dismissing the petition the Court held that the undisputed position in this case was that the Deputy CIT(Inv) and Assessing Officer were not the same person. The last of the authorisations in this case was on September 4, 2018 and the seized materials ought to have been handed over, in terms of section 132(9A) on or before November 3, 2018. Admittedly, the handing over had been only on August 20, 2019, more than nine months beyond the stipulated date. Though this constituted a gross procedural irregularity, it did not vitiate the notices issued. Thus, the jurisdiction assumed could not be faulted on this score. The notice was valid. (AY.2013-14 to 2018-19)

Agni Estates and Foundations (P) Ltd v. Dy.CIT (2021) 434 ITR 79 / 204 DTR 1 / 321 DTR 531 (Mad.)(HC)

Jayaprakash R.N. v. PCIT (2021) 434 ITR 79 / 204 DTR 1 / 321 DTR 531 (Mad.)(HC)

1833 **S. 153A : Assessment – Search – Principle of natural justice must be followed – Notice u/s 143 (2) is not mandatory – Order quashed and set aside [S.143 (2), 158BC, Art. 226]**

Allowing the petition the Court held that principle of natural justice must be followed though notice u/s 143 (2) is not mandatory. Accordingly the order quashed and set aside. The Court also observed that that no explanation had been set forth in counter or at the time of hearing to explain why the assessment had been taken up for completion, at the very fag end of limitation and for this reason, the assessments could have been nullified, as a second innings was not to be granted to the Department, merely as a matter of rote. However, solely as a matter of prudence, the court set aside the assessments with a direction to the respondent to issue notices afresh, hear the petitioner and pass orders of assessments within a period of eight weeks with sufficient time being given to the assessee to put forth his submissions on the merits.(AY.2012-13 to 2017-18)

B. Kubendran v. Dy CIT (2021) 434 ITR 161 / 203 DTR 235 (Mad.)(HC)

1834 **S. 153A : Assessment – Search – Block assessment – Statement of third person recorded u/ s 132 (4) does not constitute incriminating material – Opportunity of cross examination was not provided – Absence of any incriminating documents found in the course of search action – Deletion of addition is held to be justified [S. 132, 132(4), 153C]**

Dismissing the appeal of the revenue Court held that, statement of third person recorded u/ s 132 (4) does not constitute incriminating material when an opportunity of cross examination was not provided. Court also held that absence of any incriminating documents found in the course of search action, deletion of addition is held to be justified.

PCIT v. Anand Kumar Jain (2021) 432 ITR 384 / 201 CTR 200 / 320 CTR 656 (Delhi)(HC)
PCIT v. Anand Kumar Jain (HUF)(2021) 432 ITR 384/ 201 CTR 200 / 320 CTR 656 (Delhi)(HC)
PCIT v. Satish Dev Jain(2021) 432 ITR 384/ 201 CTR 200 / 320 CTR 656 (Delhi)(HC)
PCIT v. Sajan Kumar Jain (2021) 432 ITR 384 / 201 CTR 200/ 320 CTR 656 (Delhi)(HC)

S. 153A : Assessment – Search – Participating in assessment proceedings – New plea stating that there was no search only survey was rejected – Assessment based on the statement in the course of search proceedings – Loose sheet fall within the definition of document – Rejection of request for cross examination will not amount to violation of principles of natural justice – Assessment order passed cannot be held to be without authority of law- Request for copies of statements made will have to be made by the person from whose custody any books of account or other documents were seized. [S.132, 132(4), 132A, 133A, Art. 226] 1835

Dismissing the writ petition the Court held that, Loose sheets picked up during search under section 132 of the Income-tax Act, 1961 fall within the definition of "document", mentioned in section 132(4).Under section 132A of the Act, a request for copies of statements made will have to be made by the person from whose custody any books of account or other documents were seized. Court observed that as seen from the assessment orders, adequate opportunity of hearing was provided to the petitioner by the Assessing Officer and only thereafter, the assessment orders for the seven assessment years had been passed. Each and every objection raised by the petitioner had been considered by the Assessing Officer. In the written representation of the petitioner, the petitioner had only requested for cross examination with reference to an addition in respect of loan given to one Shri Seetharaman. He had not made any request for cross examination of any other person, which was the basis for additions. No request was made by the petitioner's father during his life time for copies of sworn statements given by him at the time of search under section 132A. The Assessing Officer had adhered to the principles of natural justice by providing a fair hearing and by giving the petitioner sufficient opportunity to raise all the contentions and the Assessing Officer had also given reasons for rejecting the objections raised by the petitioner under the assessment orders. The new plea that there had been no search but only a survey under section 133A was baseless. Court also held that the search was conducted on August 10, 2017 and the relevant six assessment years immediately preceding the assessment year relevant to the previous year, in which search was conducted, are 2012-13 to 2017-18 and relevant assessment year for the date of the search was 2018-19. Therefore, the contention of the petitioner that the assessment orders had been passed by the Assessing Officer for the year 2018-19 without authority under law under section 153A of the Act had to be rejected. *CBI v. V.C. Shukla (1998) 3SCC 410 (paras 7, 34)* considered. (AY.2012-13)

M. Vivek v. Dy CIT (2021) 432 ITR 53 / 197 DTR 12/ 318 CTR 270/ 278 Taxman 52 (Mad.)(HC)

S. 153A : Assessment – Search – No incriminating material found during search – Mere recording of satisfaction regarding undisclosed income not sufficient – Addition is held to be not valid [S.132] 1836

Dismissing the appeal of the revenue the Court held that the Tribunal had found that in the entire assessment order, the Assessing Officer had not referred to any seized material or other material for the year under consideration having being found during the course of search in the case of the assessee, leave alone the question of any incriminating material for the year under appeal. Mere recording of satisfaction note was not sufficient. Deletion of addition is held to be valid. (AY. 2001-02, 2002-03)

PCIT v. Allied Perfumers Pvt. Ltd. (2021) 431 ITR 237/ 279 Taxman 185 / 198 DTR 59/ 323 CTR 365 (Delhi)(HC)

1837 **S. 153A : Assessment – Search or requisition – Objections raised by the Assessee – Rejected with reasons – No violation of Principles of Natural Justice. [Art. 226]**
The petitioner's late father, Mr. K. Murugesan, was a partner in various firms. During the life time of K. Murugesan, the respondent-Department, on 10.08.2017, conducted search under section 132 of Income-tax Act, 1961, in all the concerns run by him. According to the petitioner, the statements obtained from the petitioner's late father could not be retracted, as he had died, due to the harassment of the Department within three months from the date of the search. It is the case of the petitioner inter alia that the statements recorded by the respondent from him was retracted by him on 22.08.2019. According to the petitioner, the statements obtained from the petitioner's late father under intimidating circumstances cannot be used against the petitioner for passing any orders against him. Further, the opportunity for cross examination was not afforded to the Petitioner and sufficient opportunity for hearing was also not given. It was held that, the respondent-Department has adhered to the principles of natural justice by providing a fair hearing and by giving the petitioner sufficient opportunity to raise all the contentions and the respondent has also given reasons for rejecting the objections raised by the petitioner under the impugned assessment orders.
M. Vivek v. Dy.CIT (2021) 197 DTR 12/ 318 CTR 270 (Mad.)(HC)

1838 **S. 153A : Assessment – Search – Assessment on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act) is not valid. The Assessee also had no opportunity to cross-examine the said witness [S. 132, 153C]**
A statement recorded u/s 132(4) has evidentiary value but cannot justify the additions in the absence of corroborative material. (ii) The statement also cannot, on a standalone basis, constitute 'incriminating material' so as to empower the AO to frame a block assessment u/s 153A (iii) If the statement was recorded in the course of search conducted in the case of a third party, and assuming the statement is construed as 'incriminating material belonging to or pertaining to a person other than person searched', the only legal recourse available to the department is to proceed in terms of S. 153C of the Act by handing over the same to the AO who has jurisdiction over such person. An assessment framed u/s 153A on the basis of alleged incriminating material (being the statement recorded under 132(4) of the Act) is not valid. The Assessee also had no opportunity to cross-examine the said witness (ITA NO. 23/2021 & CM APPL. 5385/2021 DT. 12.02.2021)
PCIT(C)-3 v. Anand Kumar Jain (HUF)(Delhi)(HC), www.itatonline.org

1839 **S. 153A : Assessment – Search – No incriminating material was found – Assessment attained finality – Completed assessment could not be disturbed [S. 132, 143(1), 143(3)]**
Dismissing the appeal of the revenue the Court held that since no incriminating material against assessee in respect of an earlier assessment year for which assessment had already attained finality was unearthed during course of proceedings under section 153A, Assessing Officer while completing assessment under said section could not disturb completed assessment of assessee in respect of such earlier assessment year. (AY. 2008-09)
PCIT v. Rameshbhai Jivraj Desai (2021) 276 Taxman 154 (Guj.)(HC)

S. 153A: Assessment – Search or requisition – Unabated on date of search – Addition cannot be made – Interest income having direct nexus with incriminating material found – Addition is held to be justified [S. 132, 143(2), 153C] 1840

Held that the assessment for the assessment year 2012-13 was unabated on the date of search, since search was conducted on October 16, 2014 and time limit for issue of notice under section 143(2) of the Income-tax Act, 1961, had expired on September 30, 2013. Therefore, when the assessment was unabated or concluded on the date of search, no addition could be made for that year in the absence of incriminating material found as a result of search. As regards interest received there was a direct nexus between the incriminating material found during the course of search and interest income assessed to tax for the assessment year 2012-13. Therefore, the addition made towards the bank loan interest was to be sustained.(AY.2012-13)

C. Vijayalakshmi (Mrs) v. Dy. CIT (2021) 92 ITR 142 (Chennai)(Trib.)

S. 153A: Assessment – Search or requisition – No notice u/s 143(2) was issued after filing of return – Assessment was not invalid – Commissioner being supervisory authority, can issue administrative direction to Assessing Officer – Un explained investment – Addition can be made only in the year in which the investment was made – Assessing Officer cannot make the addition in the year of his choice – Swiss Bank – Base sheet – Authenticity of information not established – Addition as unexplained investment and addition on deposit is held to be not sustainable – Completed assessment – No addition can be made in the absence of incriminating material found in the course of search – Merely on the basis of statement u/s 132(4), addition cannot be made – Marriage expenses – Withdrawal from bank – Deletion of addition is held to be justified. [S. 69, 132, 143(2), 153D] 1841

Held that no notice u/s 143(2) was issued after filing of return. Assessment was not invalid. Commissioner being supervisory authority, can issue administrative direction to Assessing Officer. Addition can be made only in the year in which the investment was made as unexplained investment. Assessing Officer cannot make the addition in the year of his choice. Swiss Bank – Base sheet – Authenticity of information not established as regards account in Swiss Bank and base sheet. Addition as unexplained investment and addition on deposit is held to be not sustainable. Completed assessment, no addition can be made in the absence of incriminating material found in the course of search. Merely on the basis of statement u/s 132(4), addition cannot be made. Marriage expenses are withdrawal from bank. Deletion of addition is held to be justified. (AY. 2006-07, 2007-08, 2009-10 to 2012-13)

ACIT v. Parminder Singh Kalra (2021) 90 ITR 419 (Delhi)(Trib.)

S. 153A : Assessment – Search or requisition – No incriminating material was found – Assessment not sustainable – Sales tax subsidy – Capital receipts – Not to be reduced from Book profits. [S. 4, 115JB, 132] 1842

Held that when no incriminating material was found the assessment u/s 153A is held to be not sustainable. Tribunal also held that sales tax subsidy is capital receipts hence not to be reduced from Book profits (AY. 2006-07)

JSW Steel Ltd. v. Dy. CIT (2021) 90 ITR 28 (SN)(Mum.)(Trib.)

1843 **S. 153A: Assessment – Search or requisition – Income from undisclosed sources – On money – Only estimated income element embedded in such receipt can be taxed – 15 % of receipts was accepted by group concerns by Settlement Commission – 15% was accepted as reasonable – Merely on the basis of statement of employee u/s 131 without any incriminating material – Addition cannot be made [S. 131]**

Held that merely on the basis of statement of employee u/s 131 without any incriminating material, addition cannot be made. Tribunal also held that only estimated income element embedded in such receipt can be taxed. Settlement Commission has accepted 15 % of receipts was accepted by group concerns, accordingly 15% was accepted as reasonable.(AY.2013-14, 2014-15, 2015-16, 2016-17)

Ekta Housing Pvt. Ltd. v. Dy. CIT (2021) 89 ITR 56 (Mum.)(Trib.)

1844 **S. 153A : Assessment – Search or requisition – No incriminating materials – Addition cannot be made. [S. 143(1), 143(3)]**

Held that no addition or disallowance can be made in assessments framed under section 153A of the Act in respect of assessments concluded on the date of search, unless any incriminating materials were found during the course of search relatable to such assessment year, enabling the Assessing Officer to disturb the stand taken by him earlier either in the intimation under section 143(1) of the Act or in the scrutiny assessment under section 143(3) of the Act. (AY.2011-12 to 2017-18)

Sinnar Thermal Power Ltd. v. Dy CIT (2021) 89 ITR 263 (Mum.)(Trib.)

1845 **S. 153A: Assessment – Search or requisition – No incriminating material was found – Addition cannot be made merely on the basis of post dated cheques without any corroborative evidence. [S. 132]**

Held that no corroborative evidence had been brought by the Revenue on post-dated cheques based on the first search. The Commissioner (Appeals) as well as the Assessing Officer had failed to establish that the assessee-company was involved in unexplained or unaccounted money transactions. Addition was held to be not valid. (AY.2011-12)

Elite Realtech Pvt. Ltd. v. ACIT (2021) 88 ITR 401 (Delhi)(Trib.)

1846 **S. 153A: Assessment – Search or requisition – No additions can be made in case of completed Assessments under search, without any incriminating evidence. [S. 132, 143(1), 143(3)]**

The Hon'ble Tribunal held that no assessment proceedings were pending against Assessee on the date of search, and it was not a case of abated assessment. Upon perusal of the assessment, it is evident that learned AO has not referred to any incriminating material against the Assessee and the additions made therein are also not based on any incriminating material. The business expenditure claimed that is sought to be disallowed was already claimed in the original return of income. Hence the additions are set aside. (AY. 2008-09 to 2014-15)

Sir Pratap Heritage Hotels (P) Ltd v. ACIT (2021) 209 TTJ 1 (UO)(Jodhpur)(Trib.)

S. 153A : Assessment – Search – Unproved expenditure – No incriminating material was found – Ad-hoc expenditure of fifty percent of expenditure is held to be not sustainable. [S.132] 1847

Dismissing the appeal the Tribunal held that that when no incriminating material was found, ad-hoc expenditure of fifty percent of expenditure is held to be not sustainable. (AY. 2008-09)

ACIT v. Arvind Srinivasan (2021) 86 ITR 84 Chennai)(Trib.)

S. 153A : Assessment – Search or requisition – No incriminating material – Addition not sustainable – Share application money – Share premium – Identity of share holder established – Addition was held to be not valid [S. 68] 1848

Held that the additions made in the order passed under section 153A read with section 143(3) of the Act were not based on any incriminating material found during search and as the assessment for the assessment year 2011-12 had not abated, the additions made by the Assessing Officer had to be deleted.(AY. 2011-12)

Sensitive Vanijya P. Ltd. v. ACIT (2021)86 ITR 99 (Kol.)(Trib.)

S. 153A: Assessment – Search – Protective assessment – Protective assessment cannot be converted in to substantive assessment without invoking jurisdiction under section 147 of the Act. [S. 143 (3) 147, 154, 245D(4)] 1849

Held that Protective assessment cannot be converted in to substantive assessment without invoking jurisdiction under section 147 of the Act. Once an assessment has been framed by Assessing Officer, he becomes functus officio and whenever Assessing Officer wishes to modify and/or enhance assessment, he is required to reassume jurisdiction under Act after satisfying conditions as contained in section 154 or section 147 of the Act. (AY. 2013-14)

DCIT v. Pallavi Mishra (Smt.)(2021) 191 ITD 13 (Jaipur)(Trib.)

S. 153A : Assessment – Search – Unexplained money – Foreign Bank account – HSBC, Geneva, Switzerland – Information was not provided as per Article 26 of DTAA which came in to effect from 1-4-2011 – Addition as unexplained Swiss Bank deposits or interest earned was deleted – DTAA-India-Switzerland. [S.69A, 132, Art. 26] 1850

Pursuant to search the Assessing Officer in assessment year 2006-07 held that the assessee had not declared Swiss bank account in his return of income and funds of this account were also not disclosed by assessee. The Assessing Officer passed the assessment order on basis of information received and made addition of amount lying in bank account maintained with HSBC, Geneva, Switzerland for assessment year 2006-07 and interest on deposit for subsequent years. On appeal the assessee had placed on record letter dated 26-6-2015 issued by Swiss Competent Authority addressed to Government of India in which it was specifically mentioned that information as required could be provided from 1-4-2011, as prior years were not covered by temporal scope of article 26 of amended DTAA between India and Switzerland. The Tribunal held that as the Swiss Authorities had not provided any information to revenue Authorities in India about assessee's bank account with HSBC, Geneva, Switzerland for assessment years under appeal and there was no incriminating material available on record to make any addition in any assessment years against assessee. Addition was deleted. (AY. 2006-07 to 2011-12)

Bhushan Lal Sawhney v. DCIT (2021) 190 ITD 225 / 91 ITR 565 / 212 TTJ 357 / 203 DTR 249 (Delhi)(Trib.)

1851 **S. 153A : Assessment – Search – Valuation report – Valuation report cannot be held to be incriminating material – Addition held to be not valid – DDIT (Inv)/ADIT (Inv) was empowered to make reference to Valuation Officer inserted by section 132(9D) only after 1-4-2017 by an amendment by Finance Act, 2017. [S. 132, 132(9D), 142A]**
Held that valuation report cannot be held to be incriminating material hence addition was held to be not valid. Tribunal also held that DDIT (Inv)/ADIT (Inv) was empowered to make reference to Valuation Officer inserted by section 132(9D) only after 1-4-2017 by an amendment by Finance Act, 2017. (AY. 2008-09 to 2013-14)
ACIT v. Narula Educational Trust (2021) 189 ITD 31 / 86 ITR 365 211 TTJ 39/ 205 DTR 95 (Kol.)(Trib.)

1852 **S. 153A : Assessment – HSBC Bank Geneva – No addition can be made without any incriminating documents seized in the Course of Search-When the information is not provided by Swiss Competent Authority – No addition can be made as undisclosed asset in Swiss Account – Addition was deleted – Penalty was quashed – DTAA-India-France. [S.90, 132(4), 153B(1)(a), Art.26]**
The Hon'ble Delhi ITAT held that the Swiss Competent Authority vide letter dated June 26, 2015 addressed to the Government of India specifically mentioned that information as required could be provided from F.Y. 2011-2012, thus the prior years are not covered by temporal scope of Article 26 of the Amended Double Taxation Avoidance Agreement between India and Switzerland. Therefore, such information could be provided from April 01, 2011, and no such information could be provided prior to April 01, 2011. Therefore, Swiss Authorities have not provided any information to Revenue Authorities in India about assessee's bank account with HSBC, Geneva, Switzerland for assessment years under appeals i.e., A.Ys. 2006-2007 to 2011-2012. Thus, there is no incriminating material available on record to make any addition in any assessment years. (AY. 2006 -07 to 2011-12)
Bhushan Lal Sawhney (Late, Shri), through his L.R / Wife Smt. Sneh Lata Sawhney v. Dy. CIT (2021) 190 ITD 225 / 91 ITR 565 / 212 TTJ 357 / 203 DTR 249 (Delhi)(Trib.)

1853 **S. 153A : Assessment – Search – Cash seized – Failure to produce material – Addition is held to be justified [S.132]**
A search was conducted under section 132 in case of assessee-transporter wherein certain cash amount was seized Assessing Officer taxed said cash under section 153A of the Act. In appeal, assessee claimed that cash seized from it belonged to a firm, however it was found that there was negative cash balance in case of said firm during relevant period. Tribunal up held the addition. On appeal dismissing the appeal Court held that since assessee did not produce any material despite opportunity being afforded to show that amount seized during search belonged to alleged firm, impugned assessment was justified. (AY. 2004-05)
Blue Lines v. ACIT (2021) 431 ITR 144 / 276 Taxman 388 / 199 DTR 277 / 319 CTR 661 (Karn.)(HC)

S. 153A : Assessment – Search – Return filed after date of search – Assessing officer has the jurisdiction to make the assessment whether any incriminating materials were found /seized in the course of search – Failure to explain source of cash deposit in his account and account of minor son – Addition is held to be justified [S. 68, 132] 1854

Affirming the order of the Assessing Officer the Appellate Tribunal held that where the assessee had filed original return after date of search, Assessing Officer had jurisdiction to make additions in assessment order under section 153A, regardless of whether any incriminating materials were found/seized in course of search action under section 132. Since assessee failed to explain sources, Assessing Officer treated source of cash deposits in bank accounts as being unexplained and made additions on account of unexplained credit -Before Commissioner (Appeals), assessee claimed that above amounts were received from his father who had made heavy withdrawals of cash during year under consideration. Commissioner (Appeals) held that if assessee's plea that sources of deposits in his as well as his son's bank account was out of withdrawals made by his father was accepted, then in that event his father with whom assessee was staying, was left with no sources to meet household expenses from April, 2006 to November, 2006, accordingly up held the addition. Appellate Tribunal also affirmed the order of CIT (A). (AY. 2007-08)

Amit Arora. v. ACIT (2021) 186 ITD 289 (Delhi)(Trib.)

S. 153A : Assessment – Search – Unabated assessment – No incriminating material – Includes assessments for years for which time for issue of notice under section 143(2) has lapsed [S.132, 143(2)] 1855

Allowing the appeal the Tribunal held that the addition had been made under section 153A on the basis of statements of various parties obtained during the survey and search. Additions of unsecured loan had been made on the basis of entries in the regular books of account duly reflected in the assessee's financial accounts. There was no reference to material found during the search in the additions made. Although in these cases the earlier assessments were not done under section 143(3) it was not the case of the Department that there was time for assessment under section 143(3). These assessments were unabated. Therefore, the additions made in these assessment orders without reference to any incriminating material found during search were not sustainable.(AY.2008-09, 2009-10, 2011-12)

Dinesh Salecha v. Dy. CIT (2021) 85 ITR 41 (SN)(Mum.)(Trib.)

S. 153A : Assessment – Search – Dumb documents found in third party premises – Addition is held to be not valid [S. 132, 153(1)] 1856

Dismissing the appeal, the tribunal held that that no incriminating material was found at the premises of the assessee during search proceedings. The provisions of section 153A could not be made applicable if incriminating material is not found at the time of search proceeding. No addition under section 153A was permissible on the basis of incriminating material found from the place of third person or after completion of search proceedings. The documents relied upon by the Assessing Officer found from the premises of S and not from the assessee were dumb documents and addition on such basis under section 153A was not sustainable in the eye of law. No reference had been made by the Assessing Officer to a single incriminating material found during the

course of search at the assessee's premises while making addition under section 153A of the Act. The Assessing Officer had no jurisdiction under section 153A of the Act to reassess for years for which the assessment proceedings were unabated in the absence of any incriminating materials found during the search proceeding from the premises of the assessee.(Ay.2011-12)
Dy. CIT v. Sonal Uday Vora (Smt.) (2021) 85 ITR 276 (Ahd.)(Trib.)

1857 **S. 153A : Assessment – Search – No incriminating material was found – Ad-hoc disallowance of 50 % of expenditure is unsustainable – Addition claim which was made before the CIT (A), order of CIT (A) directing the AO to consider the said claim is held to be valid. [S.250]**
Tribunal held that when no incriminating material was found in the course of search ad-hoc disallowance of 50% of expenditure is unsustainable. Additional claim not filed in revised return or revised profit and loss account,Commissioner (Appeals) can direct Assessing Officer to take into consideration. (AY. 2008-09)
ACIT v. Arvind Srinivasan (2021)86 ITR 84 (Chennai)(Trib.)

1858 **S. 153A : Assessment – Search – Without incriminating material addition is held to be not justified – Addition based on valuation report which was not available on the date of search is held to be not valid [S.132, 132(9D)]**
Allowing the appeal of the assessee the Tribunal held that the authorised officer of the search was empowered by section 132(9D) to make reference to the Valuation Officer only after April 1, 2017 and not before that date. The search of assessee was on March 13, 2014 and the reference to the Valuation Officer was made on July 11, 2014. Thus, on the date when the reference to the Valuation Officer the authorities had no power to refer for valuation of the assets of the assessee pursuant to the search. Followed *Amiya Bala Paul (Smt) v. CIT (2003) 262 ITR 407 (SC)* Tribunal also held that the assessments for assessment years 2008-09 to 2012-13 of the assessee-trust were unabated since they were not pending before the Assessing Officer on the date of search. In the assessment orders for these years, the Assessing Officer had not referred to any material unearthed during search conducted to justify the additions. There was no incriminating material seized during search to justify the addition in these unabated assessments other than the invalid valuation report.(AY.2008-09 to 2013-14)
ACIT v. Narula Educational Trust (2021) 86 ITR 365 (Kol.)(Trib.)

1859 **S. 153A : Assessment – Search – Share application money – No incriminating material was found – Assessment was not abated -addition is held to be bad in law [S. 68,132, 143(3)]**
Allowing the appeal the Tribunal held that as no incriminating material was found in the course of search, assessment was not abated, addition is held to be bad in law. (AY.2011-12)
Sensitive Vanijya P. Ltd. v. ACIT (2021) 86 ITR 99 (Kol.)(Trib.)

S. 153A : Assessment – Agricultural land – No incriminating material was found in the course of search – Addition not sustainable. 1860

Allowing the appeal the Tribunal held that no documents relating to agricultural land taken on lease having been found during the course of search, no addition should have been made in absence of any incriminating material found during the course of search relating to agriculture income. The Assessing Officer had not made any specific reference to the incriminating material found during the search in respect of the additions made by him. Thus, the assessments, so framed, were bad in law and were to be quashed.(AY. 2001-02 to 2007-08)

Mohd. Atique v. ACIT (2021) 86 ITR 4 (SN)(Indore)(Trib.)

S. 153A : Assessment – Search – Brokerage on land transaction – Cash system of accounting – Addition cannot be made when the brokerage was not received. [S.132] 1861

Allowing the appeal of the revenue the Tribunal held that when the assesssee follow cash system of accounting addition cannot be made in respect alleged receipt of brokerage income. (AY. 2009-10)

Navin Malde v. ACIT (2021) 86 ITR 17 (SN)(Indore)(Trib.)

S. 153A : Assessment – Search or requisition – The scope of making assessment of total is limited – Can be only of income that is not disclosed and which is detected or which emanates from material found in search. [S.132] 1862

A search and seizure action was carried out in case of the assessee's group on 25-4-2012. The original return of income was filed u/s 139 on 8-2-2008 and the last day of issuing notice section 143(2) had expired on 30-9-2008 before the date of search and the assessment proceedings therefore were not pending as on 25-4-2012 i.e. the date of search. The Tribunal held that in case of completed assessment and not abated due to initiation of search u/s 132 or making of requisition u/s 132A, the AO has to reassess the total income of the assessee and therefore, the assessment already completed can be tinkered with or disturbed where any incriminating material is found and seized during the course of search or requisition as case may be, indicating undisclosed income of the assessee. Tribunal noted that the Assessing Officer had reassessed the income of the assessee by making the disallowance u/s 40(A)(3) without making any reference to any incriminating material found during the course of search. There was no finding of the Assessing officer or any other material brought on record that the registered sale deeds were found and seized during the course of search or the transactions so represented by such sale deeds were not recorded in the books of accounts as on the date of search. The Tribunal held that once these transactions were duly recorded in the books of accounts and basis the same, the return of income was furnished before the date of search, the said transactions were duly disclosed to the department and thus, doesn't represent any undisclosed transactions so as to constitute incriminating material found during the course of search in case of the assessee. Therefore, the disallowance/addition made by the AO and reassessment completed u/s 153A was undisputedly not based on any incriminating material found or seized during the course of search and seizure action u/s 132 of the Act. The addition was thus deleted. (AY. 2007-08)

Vijayeta Buildcon Pvt. Ltd v. ACIT (2021) 186 ITD 493 / 123 taxmann.com 133 (Jaipur) (Trib.)

1863 **S. 153A : Assessment – Search or requisition – No incriminating material was found – Merely on the basis of statement dummy director addition of share capital as cash credit was held to be not justified [S. 68, 132(4)]**

Tribunal held that when there no incriminating material was found, merely on the basis of statement dummy director addition of share capital as cash credit was held to be not justified. (AY. 2008-09)

Dy. CIT v. Frost Falcon Distilleries Ltd. (2021) 214 TTJ 388 / 207 DTR 1 (Delhi)(Trib.)

1864 **S. 153A : Assessment – Search or requisition – Addition based on rough notings unsustainable in absence of corroborating or substantive evidence – Income offered by way of composite disclosure cannot be added to the income of the assessee [S. 132(4), 153C]**

Tribunal held that the assessee's brokerage firm was conducting operations from various locations on all stock exchanges. The loose sheets which contained rough notings as to some shares against the name of the assessee cannot be held to be the outstanding position of the shares in the hands of the assessee as there are no corroborating or substantive evidences brought on record by the AO. The Hon'ble Tribunal noted that the sheets are not signed by any employee of the brokerage firm and concluded that these are dumb documents consisting of rough notings about the trading transactions carried out or to be carried out by the broker. The search was conducted long back and there is no chance the assessee sold the shares of such magnitude during that period. Tribunal held that that the co-ordinate bench during the first round of litigation admitted the books of accounts as an additional evidence and restored the matter back to CIT(A) to decide the issues on the basis of books of accounts. The Hon'ble Tribunal also acknowledged assessee's contention that the disclosure was made at a stage when the complete books of accounts were not available and it was not possible for the group to determine its correct income from share trading profit, dividend, and capital gain etc and the disclosure was purely on estimation basis. Relying on the co-ordinate bench's ruling in Orion Travels Pvt. Ltd. v. ACIT (ITA No.939/M/2019) held that since the books of accounts are before the Revenue and contains all the information qua the income of the assessee by way of profit on share trading, dividend and capital gain etc and the actual income of the assessee has been assessed by Revenue based on the bank statements and other accounting records the income as offered by way of composite disclosure cannot be added to the income of the assessee. (AY. 1992-93)

Cascade Holdings Pvt. Ltd. v. DCIT (2021) 61 CCH 470 / 213 TTJ 491 (Mum.)(Trib.)

1865 **S. 153A : Assessment – Search or requisition – Carry forward of losses – Late filing of return – Not justified in denying the carry forward of the loss on account of late filing of the return u/s 153A, when the original return was filed u/s 139(1) of the Act. [S. 70, 80, 132, 139(1), 139(5)]**

The Assessee filed the return of income under section 139(1) of the Act on 30.11.2006, declaring loss, within the due date provided under the Act. Subsequently, a search and seizure action under section 132 of the Act was carried out on the premises of the assessee on 01.06.2006 and notice under section 153A of the Act was issued on 30.07.2007, asking the assessee to file return of income for assessment years falling under the search period, including assessment year under consideration, within 16 days of

service of the notice. However, the assessee filed return of income in response to notice under section 153A of the Act on 13.02.2008. The AO noticed that the Assessee had reduced its claim of carry- forward of the losses however the assessment was completed accepting the carry forward of loss claimed by the assessee. Subsequently, notice under section 154 was issued to deny the carry forward of loss on the ground that the return was not filed within the stipulated period of 16 days. Tribunal on going through the facts of the case held that the Ld.AO did not correctly interpret that provision of section 153A. The Hon'ble Tribunal held that invocation of section 153A can be in two situations namely, where assessment proceeding gets abetted and; secondly, where assessment proceeding are not abetted. In the instant case, it was noticed that no assessments were pending as on the date of the search, and therefore, the return of income filed under section 139 could not be treated as non-est. As such proceedings were regular proceedings, the action of the Ld.AO in denying the carry forward of the loss on account of the late filing of the return under section 153A of the Act, was not justified. (AY. 2006-07)
DCIT v. Ngenox Technologies Pvt. Ltd (2021) 213 TTJ 748 / 205 DTR 193 (Delhi)(Trib.)

S. 153A : Assessment – Search or requisition – Unabated assessment – No addition can be made in absence of any incriminating material found during the course of search – Assessment not valid.[S. 132] 1866
Held that addition cannot be made in absence of any incriminating material found during the course of search in respect of unabated assessment. (AY.2007-08 to 2013-14).
N. R. Agarwal Industries Ltd. v. ACIT (2021) 91 ITR 503 (Surat)(Trib.)

S. 153A : Assessment – Search or requisition – Sanction – Assessing Officer passing draft Assessment order and on same day Additional Commissioner granting approval under section 153D for various assessees – Final Assessment Order passed By Assessing Officer on same day – impossible for a person to apply his mind on all cases individually in a single day – Approval illegal and non est- Order is quashed. [S.153D] 1867
Tribunal held, that the Assessing Officer had passed the draft assessment orders on December 30, 2018 and on the same day approval under section 153D was granted by the Additional Commissioner for 67 assessees and final assessment orders were also passed by the Assessing Officer on the same day. The panchnama prepared by the Revenue authorities consisted of 15,800 pages and the replies filed by assessees belonging to the group consisted of about 2000 pages and there were documents belonging to other groups also, approval for which had also been granted along with assessees on the same day through the same approval letter. It was humanly impossible for a person to apply his mind on all cases individually and that too in a single day. Therefore, the approval granted by the Additional Commissioner under section 153D was mechanical in nature and without proper application of mind, illegal and non est and consequential assessments made on the basis thereof were also illegal and deserved to be annulled. (AY.2007-08 to 2013-14)
Naresh Kumar Jain v. Dy. CIT (2021) 91 ITR 682 (Luck)(Trib.)
Navin Jain v. Dy. CIT (2021) 91 ITR 682 (Luck)(Trib.)
Neetu Jain (Smt) v. Dy. CIT (2021) 91 ITR 682 (Luck)(Trib.)
Shrimati Jain v. Dy. CIT (2021) 91 ITR 682 (Luck)(Trib.)
Shrimati Jain v. Dy. CIT (2021) 91 ITR 682 (Luck)(Trib.)

1868 **S. 153A: Assessment – Search or requisition – Unabated assessment No material relating to addition found in search – Addition not sustainable [S. 132, 143(3)]**
Held that the assessments having not abated, the scope of proceedings under section 153A of the Act had to be confined to material found in the course of search. No bank statement was found or seized during the course of search. Since no material on the basis of which the addition has been made was found in the course of search, the additions made by the Assessing Officer in the order of assessment could not have been subject matter of proceedings under section 153A of the Act. (AY. 2006-07, 2007-08)
Rahul Seth v. ACIT (2021) 91 ITR 34 (SN)(Delhi)(Trib.)

1869 **S. 153B : Assessment – Search – Time limit – Assessment was initiated after amendment – Period of one year available – Assessment is not barred by limitation [S. 132, 153B, Expln. (viii)]**
Held that assessment was initiated after amendment. Period of one year available. Assessment is not barred by limitation. (AY. 2006-07, 2007-08, 2009-10 to 2012-13)
ACIT v. Parminder Singh Kalr (2021) 90 ITR 419 (Delhi)(Trib.)

1870 **S. 153C : Assessment – Income of any other person – Search – Notice was issued after considering the objections – Alternative remedy is available – Writ is not maintainable [Art. 226]**
Dismissing the petition the Court held that satisfaction under s. 153C would be in the realm of subjective satisfaction of the concerned AO. The sufficiency or correctness of the documents or material handed over by the other AO to him also could not be gone into by the Court at the stage of admission of writ proceedings. Writ petition was dismissed (AY. 2012-13)
Raju Bhupendra Desai v. ITO (2021) 323 CTR 446 / 207 DTR 129 (Guj.)(HC)
Editorial: SLP of assessee dismissed, Raju Bhupendra Desai v. ITO (2022) 443 ITR 6 (St)(SC)

1871 **S. 153C : Assessment – Income of any other person – Search – Undisclosed investment – Statement recorded of third party – Opportunity of cross examination was not provided – Deletion of addition is held to be justified [S. 69C]**
Dismissing the appeal of the revenue the Court held that the Tribunal was justified in deleting the addition when an opportunity of cross examination was not provided. (AY. 1991-92 to 2001-02)
PCIT v. Janson Investments (P) Ltd. (2021) 208 DTR 105 / (2022) 441 ITR 162 / 324 CTR 203 (Karn.)(HC)

1872 **S. 153C : Assessment – Income of any other person – Search – Survey – No incriminating material was found – Assessment was held to be bad in law. [S. 69A, 132, 133A, 156, Art. 226]**
Allowing the petition the Court held that no incriminating materials concerning the assessee were found in the premises of the two persons against whom search was conducted and the absence of satisfaction note of the Assessing Officer of the persons against whom search was conducted about any such incriminating material against the assessee were not denied. The order only related to disallowance of expenditure under

section 40A(3) that was payable to the cultivators, expenses towards Hamali, i. e., labour charges, unexplained money under section 69A, negative cash and unaccounted stock which was not on account of the discovery of any incriminating materials found in the course of the search concerning the assessee and there was no search warrant under section 132 against the assessee. (AY. 2016-17)
Sri Sai Cashews v. CCIT (2021) 438 ITR 407/ 205 DTR 293/ 322 CTR 426 / (2022) 284 Taxman 593 (Orissa)(HC)

S. 153C : Assessment – Income of any other person – Search – Opportunity of personal hearing – Opportunity of cross examination of persons – Matter was remanded back [Art. 226] 1873
On writ court issued the directions to afford opportunities to assessees to rebut contentions raised against them from and out of materials collected from premises of 'searched person' had not been complied with by Assessing Authority before passing final assessment order, matters were to be remanded back to Assessing Authority for fresh consideration and for providing reasonable opportunity to assessees and thereafter pass order of assessment(s) on merits and in accordance with law. Further, opportunity to cross-examine persons, who had given statement against assessees was also to be provided. Matter remanded. (AY. 2014-15, 2015-16 to 2019-20)(SJ)
Karti P. Chidambaran v. Addl. CIT (2021) 437 ITR 206/ 282 Taxman 112/ 204 DTR 442 / 322 CTR 189 (Mad.)(HC)
Srinidi Karti Chidambaran v. Addl. CIT (2021) 437 ITR 206/ 282 Taxman 112/ 204 DTR 442 / 322 CTR 189 (Mad.)(HC)

S. 153C : Assessment – Income of any other person – Search – Service of notice – Notice without recording satisfaction is held to be not valid – Subsequent notice after valid satisfaction is held to be valid – High court can find out whether proper satisfaction is recorded or not, however cannot consider sufficiency of reasons [S.132, 282, 282A, Rule, 127, 127A, Art. 226] 1874
Court held that notice without recording satisfaction is held to be not valid however, subsequent notice after valid satisfaction is held to be valid. Court also held that High court can find out whether proper satisfaction is recorded or not, however cannot consider sufficiency of reasons. The provisions of section 282 deal with service of notice in general terms and section 282A with the authentication of notices for service by electronic means. In this case, it was not in dispute that the notice dated September 30, 2019 was a valid notice qua the provisions of sections 282 and 282A read with rules 127 and 127A. The issuance of notice dated June 14, 2019 did not vitiate the proceedings in any way.(AY. 2017-18)
6th Sense Infrastructure Pvt. Ltd. v. PDIT (2021) 436 ITR 90 / 203 DTR 177 (Mad.)(HC)

S. 153C : Assessment – Income of any other person – Search – Satisfaction note issued by the Assessing Officer – Notice under section 153C is held to be valid [S.132, 147, 148, 153A, Art. 226] 1875
Dismissing the petition the Court held that the progress made on account of certain facts, events and procedures, which were otherwise contemplated under the provisions

of the Act, could not be construed as without jurisdiction nor to be termed as legal malice. No mala fides or lack of jurisdiction was identifiable nor established. The section 147 proceedings had been initiated for a particular assessment year and only after invoking section 153C, could the Assessing Officer prepare the "satisfaction note" and reopen proceedings for five assessment years. The assessee had to defend his case before the competent authority in the manner known to law. Such an adjudication with reference to the transactions, seizure and impounded materials could not be undertaken by the High Court under article 226 of the Constitution of India. The notice under section 153C was valid. (AY.2014-15, 2015-16)(SJ)
Karti P. Chidambaram v. PDIT (Inv.) (2021) 436 ITR 340/ 204 DTR 18/ 321 CTR 273 (Mad.)(HC)

1876 **S. 153C : Assessment – Income of any other person – Search and seizure – Search upon two persons at air port – Seizure of gold documents in the form of courier receipts – Inter-State transfer of goods for job work or sales – GST – Issue of notice was held to be justified [S. 131(IA), 132(4), 153A, GST, Art, 226]**
Assessee is a Proprietor of concern in the name of Amrut Jewellers. A search u/s 132 was conducted at the Rajkot Air port in the case of one Shri Suresh Kumar of the Jay Mata Di Air Services and one shri Jagdish Prashad of the Bright Courier. Based on the search notice u/s 153C was served on the assessee. The assessee challenged the said notice by filing writ before High Court. Dismissing the petition the Court held that in satisfaction note, it was recorded that version put forth by searched persons that gold being given to them for job work was found not correct. Further, there was complete failure on part of the persons searched producing Forms 402 and 403 respectively of GST which was a statutory requirement for inter-State transfer of goods for job work or sales. Court observed that the materials collected at the time of the search at the airport falls within the ambit of the expression 'belongs to' or 'pertains to' or 'relates to'. Accordingly held that proceedings initiated against assessee under section 153C was justified. (AY. 2012-13 to 2017-18)
Jitendra Mansukhlal Adesara v. ACIT (2021) 280 Taxman 179 / 207 DTR 96 / 323 CTR 284 (Guj.)(HC)

1877 **S. 153C: Assessment – Income of any other person – Search – The materials seized did not indicate any inflation of purchase expenses- Assessment is held to be bad in law. [S.12AA, 132]**
The Assessee was a medical charitable trust registered under section 12AA, running a multi-specialty hospital. A search action was conducted in case of third party who was a supplier of medical, surgical equipment and other accessories to hospital. On the basis of certain documents seized during search, AO concluded that assessee had siphoned off funds through said third party, allegedly resorting to huge inflation of expenses. Accordingly, a notice under section 153C was issued against assessee. Being aggrieved by the additions made by the AO, the Assessee made an appeal before the CIT(A), who allowed the appeals filed by the Assessee. The Tribunal found that materials seized did not establish any co-relation, document wise, with the four Assessment Years under consideration and therefore did not indicate any inflation of purchase expenses by

assessee trust. The Tribunal further noted that the third had approached the Settlement Commission and submitted an application wherein Commissioner stated that there was no supporting evidence of returning cash withdrawn by the third party to the hospital. Relying on the decision of Hon'ble Supreme Court in the case of *CIT v. Sinhagad Technical Education Society (2017) 397 ITR 344/156 DTR 161/297 CTR 441/250 Taxman 225 (SC),* the Hon'ble Madras High Court held that,in absence of any incriminating documents or evidence discovered against assessee, during its search upon the third Party, jurisdiction under provisions of section 153C could not be assumed against assessee. Accordingly, the appeals filed by the Revenue were dismissed. (AY. 2009-10 to 2015-16)
PCIT v. S.R. Trust (2021) 438 ITR 506 / 277 Taxman 133 / 208 DTR 375 / 323 CTR 1047 (Mad.)(HC)

S. 153C : Assessment – Income of any other person – Search – Based on documents seized in the course of search – Reassessment was quashed – Assessing Officer should have invoked provision of section 153C [S. 147, 148] 1878
Held that the additions made on the basis of the documents belonging to the assessee could not be made in the assessment framed under section 143(3) of the Act. The Assessing Officer should have invoked the provisions of section 153C of the Act which was mandatory. Order was quashed. Followed *Glitz Builders and Promoters Pvt Ltd. v. ACIT* (I. T. A. No. 1751/Delhi/2013, dated January 27, 2021).(AY.2006-07, 2007-08)
Fragrance Construction Pvt. Ltd. v. ACIT (2021) 92 ITR 55 (Delhi)(Trib.)

S. 153C : Assessment – Income of any other person – Search and seizure – loose paper in question was found from the possession of searched party – affidavit of searched person filed by the assessee to show that cash payment were made to landowners – deponent was not examined by the AO – No adverse inference can be drawn against the assessee.[S. 132] 1879
It has been held by the appellate tribunal that addition on account of on-money allegedly received by the assessee on sale of land could not be made in the assessment under s. 153C simply on the basis of some vague noting on a nondescript loose paper seized from the possession of the searched person (purchaser) and the statement of the said third party, without cross-examination, more so when the purchaser has filed an affidavit whereby he has affirmed on oath that the cash payments were not made to the assessee but to some old landowners/ Banakhat owners and others who were claiming ownership in the said land and the contents of the affidavit remain uncontroverted. (AY.2013-14)
Kantibhai P. Patel v. DCIT (2021) 211 TTJ 187 / 208 DTR 54 (Ahd.)(Trib.)
Chhotalal P. Patel v. Dy.CIT (2021) 211 TTJ 187 / 208 DTR 54 (Ahd.)(Trib.)

S. 153C : Assessment – Income of any other person – Search – Opportunity of cross examination. Was not given – Addition is not valid – Order passed u/s 143(3) is bad in law – Order ought to have been passed u/s 153C. [S. 132, 143(3), 153A] 1880
Held that the assessee's specific request before the Assessing Officer for cross-examination was not granted. The additions were made solely on the basis of statements

without conducting any independent enquiry. Failure to grant opportunity to cross-examine M was illegal and fatal to the assessment order. The Tribunal also held that the assessment order ought to have been passed under section 153C and not under section 143(3) of the Act. (AY.2003-04 to 2006-07)
Co-Operative Co. Ltd. v. Dy.CIT (2021) 88 ITR 322 (Delhi)(Trib.)

1881 **S. 153C : Assessment – Income of any other person – On money – Settlement Commission – Firm admitting that the surplus belong to the firm and related parties – Amount credited to partner's account – Deletion of addition is held to be justified [S. 132]**
Dismissing the appeal the Tribunal held that when the firm admitting the surplus belong to the firm and related parties, deletion of addition in the assessment of partner is held to be justified.(AY.2014-15 to 2017-18)
Dy. CIT v. Jugal Kishore Garg (Derewala) (2021) 87 ITR 624 (Jaipur)(Trib.)

1882 **S. 153C : Assessment – Income of any other person – Search – Unnamed documents – Statement recorded after conclusion of search cannot be consideration as information for invoking the provision of section 153C of the Act.[S. 131 (IA), 132]**
Held that the documents were unnamed, therefore, on basis of these documents Assessing Authority could not have reached any firm conclusion that these documents belonged to assessee. There being no material with Assessing Officer to form a belief that action under section 153C was required to be taken against assessee, it had erred in assuming jurisdiction under section 153C of the Act. Tribunal also held that statement recorded under section 131(1A) after conclusion of search could not be an information for invoking section 153C of the Act. (AY. 2012-13 to 2014-15)
SBG Infrastructure LLP. v. DCIT (2021) 191 ITD 400 (Ahd.)(Trib.)

1883 **S. 153C : Assessment – Income of any other person – Search – Cash Credits – Addition cannot be made in the absence of any incriminating materials found during search – Addition cannot be made without providing copies of statement recorded and an opportunity of cross examination. [S. 68, 132]**
The Tribunal held that AO made additions without providing copies of statement recorded from said person and also did not provide opportunity of cross examination, even though the Assessee has specifically requested for the same. It was further observed that denial of the same is a serious flaw which renders the order a nullity in as much as it amounted to violation of the principles of natural justice. Similar view had been upheld by Hon'ble Supreme Court in the case of *Kishinchand Chellaran v. CIT [1980] 125 ITR 713 (SC)*. Further, on merits, the Tribunal relied on the decision of Hon'ble Supreme Court in the case of *CIT v. Lovely Exports (P) Ltd [2008] 216 CTR 195 (SC*) and held that the Assessee had discharged its burden cast upon it by Section 68. Once, the Assessee has discharged its initial burden then the burden shifts to the AO to prove otherwise that said sums recorded as unsecured loans in the books of accounts of the Assessee is unexplained credit which represents undisclosed income of the Assessee. Hence, the Tribunal deleted the addition made by the AO and upheld the action of the CIT(A). (AY. 2011-12)
ACIT v. CMG Steels Pvt. Ltd. (2021) 212 TTJ 643 / 205 DTR 6 (Chennai)(Trib.)

S. 153C : Assessment – Income of any other person – Search – No incriminating evidence found – Addition cannot be sustained.[S. 132] 1884

It was held that since no incriminating material was recovered during the course of search and seizure action, the Ld. CIT(A) has wrongly sustained the addition made by the Ld. AO on account of house hold expenses. (AY. 2012-13, 2013-14, 2016-17 to 2018-19)

Harbhajan Kaur (Smt.) v. DCIT (2021) 90 ITR 71 / 212 TTJ 40 (UO)(Chd.)(Trib.)

S. 153C : Assessment – Income of any other person – Search – Addition in the hands of third person based on information obtained during search and seizure proceedings – Primary onus on revenue to prove falsehood of the assessees submissions – No addition can be made merely on basis of suspicion – cogent material required to make addition [S.132 (4)] 1885

On appeal to the Tribunal, it was observed that the amounts written in the said loose paper does not bear any objective details on identity of recipients and is quite vague and muted. There is no post search enquiry conducted after the statement of MGP. The Tribunal further observed that the AO is not entitled to make pure guesses while making an assessment just on the basis of bare suspicion and the presence of a clinching evidence is necessary to make any addition under section 153C. Thus, the Tribunal quashed the additions of amounts unaccounted cash receipts in the hands of the assessee. (AY.2013-14)

Kantibhai P. Patel v. DCIT (2021) 211 TTJ 187 (Ahd.)(Trib.)

S.153C : Assessment – Income of any other person – Setting aside assessment order on ground of lack of jurisdiction for failure by assessing officer of person in respect of who search conducted to record satisfaction note. Department challenged on merits of assessment without challenging jurisdiction. Appeal not maintainable.[S.153A] 1886

Tribunal dismissing the appeal of the revenue held that in the grounds of appeal the Department had challenged the order of the CIT(A) in deleting the addition on the merits. No grounds had been raised by the revenue to challenge the no satisfaction note had been recorded in the case of the person in respect of whom search was conducted for invoking jurisdiction u/s. 153C of the Act. The appeal of the revenue on the merits would not be maintainable in the absence of any challenge to the findings of lower authority with regard to quashing of proceedings u/s.153C in the absence of any satisfaction note recorded by the AO in the case of the person in respect of whom search was conducted. (AY.2012-13)

Dy. CIT v. Aadyant Education Pvt. Ltd. (2021) 87 ITR 18 (SN)(Delhi)(Trib.)

S. 153C : Assessment – Income of any other person – Search Presumption operates only against person from whose possession document found – Loose paper – Statement of person against whom search conducted – Cross examination not allowed – Addition is held to be not justified [S.132(4A), 292C] 1887

Allowing the appeal the Tribunal held that on the basis of loose papers found in the third party premises addition cannot be made for alleged cash payment without giving an opportunity of cross examination. Presumption under section 132 (4) cannot be

applied to making addition in respect of third party when the documents were not seized from the premises of third party. (AY. 2013-14)
Kantibhai P. Patel v. Dy. CIT (2021) 85 ITR 317 (Ahd.)(Trib.)
Chhotalal P. Patel v. Dy. CIT (2021) 85 ITR 317 (Ahd.)(Trib.)

1888 **S. 153C : Assessment – Income of any other person – Search – Deposit made by members – No incriminating material was found – Addition is held to be not sustainable [S.132]**
Tribunal held that the Assessing Officer had not made any specific reference to the incriminating material found during the search. Non reference to the incriminating material by the Assessing Officer was contrary to the settled position of law. The Revenue had not placed on record the satisfaction note by the Assessing Officer of the person in respect of whom the search was conducted recording that the documents belonged to the assessee. In the absence of such recording the assessment so framed was contrary to provision of law. Hence, the assessment so framed under section 153C of the Act was bad in law and deserved to be quashed.(AY.2005-06 to 2007-08)
Taj Grih Nirman Society v. ACIT (2021) 85 ITR 699 (Indore)(Trib.)

1889 **S. 153C : Assessment – Income of any other person – Search – Failure to file return – Assessment valid – Material found and seized during search pertaining to financial year 2007 having no bearing on determination of total income – Additions deleted. [S.132]**
Tribunal held that for the assessment year 2008-09 (from December 7, 2007 to March 31, 2008) to 2010-11, the assessee-firm had filed returns of income under section 139(1) of the Act disclosing income from the business of retail outlet of selling petrol and high speed diesel and therefore, the material found and seized during the search and seizure action pertaining to the financial year 2007 had no bearing on determination of the total income of the assessee when the assessee has already declared the income from such business. The Assessing Officer had passed an identical order by applying the net profit at two per cent after rejecting the books of account but the seized material found during search and seizure action revealed that the assessee was engaged in the business and once the assessee had already declared the income from the business in the return of income filed under section 139(1) the seized material which revealed the details of the transaction of the financial year 2007 up to December 7, 2007 would not be considered incriminating material for determination of the total income of the assessee for these years. Therefore, the additions made by the Assessing Officer in the proceeding under section 153C for the assessment year 2008-09 (from December 7, 2007 to March 31, 2008) to assessment year 2010-11 were not based on any material revealing undisclosed income.(AY. 2005-06 to 2011-12)
Meja Filling Station v. Dy. CIT (2021) 86 ITR 40 (SN)(All)(Trib.)

S. 153C : Assessment – Income of any other person – Search and seizure – Disallowance of expenses – the scope of making assessment of total income in an unabated assessment proceedings is limited – can be only of income that is not disclosed and which is detected or which emanates from material found in search of some other person and which relate to the Assessee. [S.132] 1890

Assessee, Sri Lakshmi Venkateshwara Minerals, was is a partnership firm. The business of the firm was trading in iron ore. There was a search & seizure action conducted on 25-11-2010 in the case of K. Mahesh Kumar, who was one of the partners of assessee firm. Proceedings consequent to search was initiated u/s. 153C of the Act. The AO of the assessee partnership firm and the AO of K. Mahesh Kumar who was subjected to search, was one and the same. During assessment proceedings the assessee could not participate in the proceedings and therefore the AO proceeded to frame the assessment in the absence of proper details from the assessee. The AO made a disallowance of 20% of the expenses claimed in the P&L account for the reason that the details of expenses were not furnished by the assessee during assessment proceedings. AO also noticed that for AY 2008-09 there was a difference in total credit in the books of account and gross receipts from business of Rs. 71,02,418 which was treated as unexplained business receipts and added to total income of assessee. This addition was, however, made on a protective basis. Similar additions were made in AYs 2009-10 and 2010-11 also. Aggrieved the assessee preferred appeals before the CIT(Appeals). The CIT(Appeals) upheld the disallowance of expenses. As far as protective addition CIT(A) deleted the addition as it was confirmed in the hands of K. Mahesh Kumar on substantive basis.

The Tribunal held that the assessment in all the three AYs 2008-09 to 2010-11 have already been completed prior to the date of search in the sense that the return filed by the Assessee was accepted and no assessment u/s.143(3) of the Act was framed within the time contemplated in law. Therefore, the scope of making assessment of total income u/s.153C of the Act in an unabated assessment proceedings is limited and can be only of assessing income that is not disclosed which is detected or which emanates from material found in the course of search of some other person and which relate to the Assessee. Since the impugned addition of disallowance of expenses were not based on any incriminating material found during search, the additions are liable to be deleted. As far as the addition made on protective basis for AY 2008-09 to 2010-11 were concerned, the Tribunal held that the said addition was made not on the basis of any incriminating material found in the search of K. Mahesh Kumar which relate to the Assessee and therefore the said addition can also not be sustained as it is contrary to the provisions of Sec.153C of the Act. There was no basis for protectively assessing the income in the hands of the Assessee and substantively in the hands of K. Mahesh Kumar. There was no material to show that the income declared by K. Mahesh Kumar was either his income or that of the Assessee. From the fact that K. Mahesh Kumar was a Partner in the Assessee firm it cannot be concluded that the income declared by K. Mahesh Kumar in his hands was either his income or the income of the partnership firm in which he was a partner. Tribunal observed that even going by the theory of the AO that there are differences in the credits in the bank account which have to be regarded as undisclosed business receipts, such differences in the credits in the bank account was not found as a result of search in the case of K. Mahesh Kumar. (IT Nos. 1789 to 1791 & 1813 to 1818/Bang/2017; dt.30-09-2020)(AY.2008-09 to 2010-11)

Shree Lakshmi Venkateshwara Minerals v. Dy. CIT (2021) 186 ITD 695 (Bang.)(Trib.)

1891 **S. 153C : Assessment – Income of any other person – Search – No incriminating materials – Addition is not justified – Obsolete provision written off – Allowable as deduction – Provision for liquidated damages – Allowable as deduction [S. 37(1), 143(3)]**
Dismissing the appeal of the revenue the Tribunal held that when, no incriminating materials,addition is not justified. Tribunal also held that obsolete provision written off and provision for liquidated damages is allowable as deduction (AY. 2000-01, 2002-03 to 2006-07, 2008-09 to 2010-11)
Dy. CIT v. HTL Ltd. (2021) 214 TTJ 810 / 63 CCH 502 (Delh)(Trib.)

1892 **S. 153C : Assessment – Income of any other person – Search – Search on 13 th March 2015 – Documents prior to Ist June, 2015 – Not belongs to the assessee – Allegation of information belongs to assessee – All assessment orders are quashed – Assessment u/s 153A can be made only on the basis of material found during the course of search carried out against the assesee – Assessment – Limitation- Time limit for passing order on 31 st March 2017 – Order passed in December 2017 is held to be barred by limitation -Reassessment – Materials discovered during search proceedings for period beyond six preceding assessment years can be used for invoking the provisions of section 147 of the Act – Recorded reasons do not match with actual addition – No addition can be made in the reassessment proceedings – Addition cannot be made – Interest free loans given to partners – Not mandatory to charge interest – Addition cannot be made on notional basis [S.5, 132, 132(3), 147, 148, 153A, 153B]**
Tribunal held that search on 13 th March 2015. Documents prior to Ist June, 2015 are not belongs to the assessee only allegation of information belongs to assessee. All assessment orders are quashed. Tribunal also held that assessment u/s 153A can be made only on the basis of material found during the course of search carried out against the assesee. Search was conducted on 13 th March 2015 and prohibitory order was imposed on certain items. The limitation for passing the order was 31 st March 2017, order was passed in the month of December 2017 is held to be barred by limitation. Prohibitory orders passed in connection with lockers cannot be used for extending the time for the assessment under section 153B of the Act. Order was quashed. Materials discovered during search proceedings for period beyond six preceding assessment years can be used for invoking the provisions oof section 147 of the Act. If recorded reasons do not match with actual addition, no addition can be made in the reassessment proceedings. Interest free loans given to partners it is not mandatory to charge interest as per the partnership deed. Addition cannot be made on notional basis. (AY. 2009-10 to 2015-16)
Hitesh Ashok Vaswani v. Dy. CIT (2021) 214 TTJ 410 (Ahd.)(Trib.)

1893 **S. 153C : Assessment – Income of any other person – Search – Documents found in the premises of third party – Addition on the basis of such documents are held to be not valid [S. 132(4A) 292C]**
On the basis of documents found in the premises of S.P. Bajaj addition cannot be made on the presumption that the documents belongs to the appellant. The provision of section 132(4A)) and section 292C the presumption is that seized documents belong to the person in whose possession they are found cannot be made applicable to the appellant. Addition made on the said documents are deleted. (AY. 2009-10)
Ronak Processors (P) Ltd v. ITO (2021) 209 TTJ 641 / 197 DTR 377 (Jodhpur)(Trib.)

S. 153C : Assessment – Income of any other person – Search – Assessments for 2006-07 and 2007-08 beyond purview of assessment – Amendment with effect from 1-4-2017 that block period for other person would be same six assessment years – prospective – Satisfaction note – Must justify that document found during search does not belong to person in respect of whom search conducted and clearly display reasons based for satisfaction that seized documents belong to another person – Satisfaction of higher forum, Settlement Commission, would prevail over opinion of Assessing Officer – Pen drive seized during search – Addition made on protective basis in hands of assessee on basis of Satisfaction Note that pen drive belonged to assessee – Satisfaction of Assessing Officer of person in respect of whom search conducted defective and not sustainable in law- Order of Settlement Commission gives protection only to applicants before Settlement Commission – Substantive additions deleted – Protective additions cannot survive except in case of finding that income belongs to person in whose hands protective additions are made. [S. 132, 153A, 245D, 245I] 1894

Dismissing the appeal of the revenue the Tribunal held that Assessments for 2006-07 and 2007-08 beyond purview of assessment. Amendment with effect from 1-4-2017 that block period for other person would be same six assessment years is prospective. Satisfaction note must justify that document found during search does not belong to person in respect of whom search conducted and clearly display reasons based for satisfaction that seized documents belong to another person. Satisfaction of higher forum, Settlement Commission, would prevail over opinion of Assessing Officer – Pen drive seized during search.. Addition made on protective basis in hands of assessee on basis of Satisfaction Note that pen drive belonged to assessee. Satisfaction of Assessing Officer of person in respect of whom search conducted defective and not sustainable in law. Order of Settlement Commission gives protection only to applicants before Settlement Commission - Substantive additions deleted. Protective additions cannot survive except in case of finding that income belongs to person in whose hands protective additions are made. (AY.2006-07 to 2011-12)

Dy. CIT v. Dalmia Bharat Sugar and Industries Ltd. (2021) 91 ITR 295 (Delhi)(Trib.)

S. 153C : Assessment – Income of any other person – Search – No incriminating material was found during search – Statement of third party not sufficient to fasten any liability upon – Addition is deleted [S. 131, 132] 1895

The Tribunal held that he Assessing Officer had not brought any material to show that the expenditure was claimed twice through sub-contract works and by the assessee debiting the expenditure separately to the profit and loss account. No evidence was found by the Assessing Officer, except the statement recorded under section 131 of the Act, in spite of conducting the survey in the business premises of the sub-contractor. In the absence of any positive evidence to show that the expenditure was not incurred or debited twice, there was no reason to interfere with the order of the Commissioner (Appeals). (AY.2015-16, 2017-18)

ACIT v. Navaratna Estates (2021) 91 ITR 397 (Vishakha)(Trib.)

ACIT v. Vision Town Planners Pvt. Ltd. (2021) 91 ITR 443 (Delhi)(Trib.)

1896 **S. 153D : Assessment – Search – Approval – Charitable Trust – Siphoning off of funds by founder – Approval given on same day by Additional Commissioner Stationed 250 Kms. away from Assessing Officer's Office – No record regarding movement of files – Approval given without application of mind – Assessment null and void [S. 10(23C) 12AA, 153A]**
Held, that the approval given was in a mechanical manner by the Additional Commissioner to the draft assessment orders passed by the Assessing Officer. The Assessing Officer had passed the draft assessment order on March 30, 2015 in accordance with the order sheet entry which indicated that the Assessing Officer was available in her office at Dehradun. The office of the Additional Commissioner was situated at Meerut about 250 kms. from Dehradun. There was no separate movement register for the purpose of seeking approval of draft order by the Assessing Officer from the Joint Commissioner or Additional Commissioner. There was no other record to suggest that the files containing the draft orders were moved from the office of the Assessing Officer at Dehradun to the office of the Additional Commissioner at Meerut who went through them and gave approval with certain amendments. It was impossible on the part of the Additional Commissioner to have gone through the orders in about more than 100 cases on the very same day and given approval. Even if such approval had been given, it could be said that it was nothing but a technical formality without application of mind. The assessments completed did not stand in the eyes of law and, therefore, were to be treated as null and void. There was no proper approval given under section 153D as a result of which the assessment orders passed by the Assessing Officer were not in accordance with law.(AY. 2008-09 to 2013-14)
Uttarakhand Uthan Samiti v. ITO (2021) 86 ITR 695 (Delhi)(Trib.)

1897 **S. 153D : Assessment – Search – Approval – Search – Charitable Trust – Siphoning off of funds by founder – Approval given without application of mind – Assessment null and void [S. 10(23C), 12AA]**
Allowing the appeal the Tribunal held that the approval given was in a mechanical manner by the Additional Commissioner to the draft assessment orders passed by the Assessing Officer. The Assessing Officer had passed the draft assessment order on March 30, 2015 in accordance with the order sheet entry which indicated that the Assessing Officer was available in her office at Dehradun. The office of the Additional Commissioner was situated at Meerut about 250 kms. from Dehradun. There was no separate movement register for the purpose of seeking approval of draft order by the Assessing Officer from the Joint Commissioner or Additional Commissioner. There was no other record to suggest that the files containing the draft orders were moved from the office of the Assessing Officer at Dehradun to the office of the Additional Commissioner at Meerut who went through them and gave approval with certain amendments. It was impossible on the part of the Additional Commissioner to have gone through the orders in about more than 100 cases on the very same day and given approval. Even if such approval had been given, it could be said that it was nothing but a technical formality without application of mind. The assessments completed did not stand in the eyes of law and, therefore, were to be treated as null and void. There was no proper approval given under section 153D as a result of which the assessment orders passed by the Assessing Officer were not in accordance with law.(AY. 2008-09 to 2013-14)
Uttarakhand Uthan Samiti v. ITO (2021) 86 ITR 695 (Delhi)(Trib.)

S.153D : Assessment – Search – Approval – Approval has to be given each assessment year by proper application of mind – Mechanical approval is held to be bad in law. [S.132] 1898

Tribunal held that the approving authority (jcit) has to give approval for "each" assessment year after applying independent mind to the material on record to see whether the cases are un-abated or abated assessments and their effect. However, the JCIT has granted common approval for all say. Further, he did not have the seized material nor the appraisal report or other material at the time of granting approval. Therefore, the approval granted is merely technical approval just to complete the formality and without application of mind. The approval has been granted without application of mind and is invalid, bad in law and is liable to be quashed.(1813/ Del/2019, dt. 19.01.2021)(Ay. 2010-11)

Sanjay Duggal v. ACIT (Delhi)(Trib.), www.itatonline.org

S. 153D : Assessment – Search – Approval – Prior approval cannot be granted over the phone – Approval on fax/ email can be considered approval in law if it fulfils other requirements of law – Order passed before receiving the approval – Order is null and void [S. 153A] 1899

As per the records of the add. CIT approval letter was dispatched on 27 th July 2016. The Assessing Officer received the letter on 28 th July 2016. The Order was passed on 27 th July 2016. Allowing the appeal the Tribunal held that prior approval cannot be granted over the phone. Approval on fax/ email can be considered approval in law if it fulfils other requirements of law. On facts the order passed before receiving the approval hence the order is null and void.(AY. 2007-08 to 2013-14)

Madan Lal v. Dy. CIT (2021) 214 TTJ 958 / 63 CCH 305 (Amritsar)(Trib.)

S. 153D : Assessment – Search – Approval – Non applicability of mind by the Addl. CIT – Approval was granted without application of mind – Order was quashed [S. 153A] 1900

Tribunal held that the Addl. CIT, had not applied his mind while providing approval under section 153D. Further, the Addl. CIT in the approval had not recorded satisfaction. Addl. CIT merely approved the letter approval which merely stated that "Necessary statutory approval u/s 153D is given to pass the above assessment order as such. Assessment record in this case is returned herewith..." which clearly proves that the Addl. CIT had routinely given approval to the AO to pass the order based on contents mentioned in the draft assessment order without any application of mind and seized materials were not looked at because that was not available before him at the time of granting of approval to the draft assessment order and other enquiry and examination was never carried out. Hence, assessment under section 153A was bad in law. (AY. 2016-17)

Inder International v. ACIT (2021) 213 TTJ 251 / 205 DTR 129 (Chd.)(Trib.)

1901 **S. 154 : Rectification of mistake – Loss return – One day delay in filling of return – Mistake must be obvious – Assessment order passed without considering the delay in filing of return – Mistake which could be rectified – Liberty given to the assessee to file an application before CBDT. [S. 80, 119(2)(b), 139(3)]**

Dismissing the appeal the Court held that the return claiming loss had been submitted with a delay of just one day and even that was caused by a bona fide error. The mistake could be rectified. Court gave liberty to the assessee to file an application under section 119(2)(b) of the Act before the competent authority seeking condonation of delay in filing returns and thereafter carry forward of loss to the subsequent assessment year which were incurred during the assessment year 2004-05. (AY.2006-07)

Kolar and Chickballapur District Co-Op. Bank Ltd. v. ACIT (2021) 439 ITR 678 (Karn.)(HC)

1902 **S. 154 : Rectification of mistake – Expenditure on account of stores and spares – Omission to make addition in the assessment order – Income assessed as income from other sources and not as business income – Rectification is held to be valid [S. 28(1), 37(1), 56]**

Affirming the order of the Tribunal the Court held that the assessee had not been carrying on any manufacturing activity for the assessment year 2004-05, and the rental income received by the assessee for that year could not be treated as business income. In view of the finding, the disallowance of the expenditure on stores and spares by the Assessing Officer was correct. The omission of the Assessing Officer to make the addition while computing the total income was liable to be rectified. The order of rectification was valid.(AY.2004-05)

PTL Enterprises Ltd. v. Dy. CIT (2021) 439 ITR 365 / (2022) 212 DTR 404 / 326 CTR 282 (Ker.)(HC)

Editorial : Affirmed in PTL Enterprises Ltd. v. Dy. CIT (2022) 443 ITR 260 (SC)

1903 **S. 154 : Rectification of mistake – Depreciation – Contractor – Income estimated at 12.5 % of contractual receipts – Debatable – Rectification was held to be not justified [S. 32(1)(ii)]**

Dismissing the appeal of revenue the Court held that deduction of depreciation from gross receipts of income estimated @ 12.5 per cent on main contractual receipts is a debatable question of law and fact. Order of Tribunal is affirmed. Followed *T.S. Balaram, ITO v. Volkart Brothers & Ors. (1971) 82 ITR 50/ 2 SCC 526* (AY. 2008-09)

PCIT v. Engineers Works (2021) 439 ITR 108 / 206 DTR 242 / 323 CTR 485 / (2022) 284 Taxman 138 (AP)(HC)

1904 **S. 154 : Rectification of mistake – Refund – House property and bank interest – Full tax was paid – Assessing Officer is directed to pass order in accordance with law. [S. 143(3), 221(1), 237, Art. 226]**

The assessee was not granted refund though the assessment was completed u/s 143(3) of the Act. The Assessing Officer moved an application u/s 154 of the Act for grant of refund. The Assessing Officer has not passed the order. On writ the High Court directed the Assessing Officer too pass the order in accordance with law.

Sujeev Gandhi v. UOI (2021) 283 taxman 47 (Delhi)(HC)

S. 154 : Rectification of mistake – Interest on refund of tax deducted at source – Directions issued to consider pending applications [S.237, 244A, Art. 226] 1905
The assessee filed rectification u/s 154 for grant of interest on refund of tax deducted at source. The application was not processed by the AO. On writ the court directed the concerned officer to consider the pending applications filed by the assessee under section 154 and take consequential steps.(AY. 2012-13, 2015-16, 2016-17)
Travelport Global Distribution System Bv v. CIT (IT) (2021) 435 ITR 684 (Delhi)(HC)

S. 154 : Rectification of mistake – Revised return declaring lower loss – Assessment based on original return – Rectification order passed by the Assessing Officer based on revised return – Held to be valid [S. 35(2AB), 139(5), 143(3)] 1906
Held that once revised return is filed u/s 139 (5),it replaces the original return and the original return ceased to exist. The Assessing Officer was right in passing the order under section 154 of the Act. (AY. 2014-15)
Dy.CIT v. Zen Technologies Ltd (2021) 92 ITR 21 (SN)(Hyd.)(Trib.)

S. 154 : Rectification of mistake – Excise duty refund Capital receipt – Capital subsidy liable to be excluded – Failure to consider subsequent judgement Supreme Court or Jurisdictional High Court – Mistake apparent from record. [S. 4, 115JB] 1907
Held that not considering the subsequent interpretation of law through the judgment of the Supreme Court or the jurisdictional High Court would constitute a mistake apparent from record. The excise duty refund received by the assessee was to be treated as capital receipt. Capital subsidy was liable to be excluded in computing the book profits under section 115JB of the Act. (AY. 2011-12 to 2014-15)
B. R. Agrotech Ltd. v. ACIT (2021) 90 ITR 77 (SN)(Delhi)(Trib.)

S. 154 : Rectification of mistake – Accumulation of 15% of gross receipts – Assessing Officer issuing intimation considering net revenue – Mistake apparent on record – Ought to have rectified.[S. 11(1)(a), 143(1)] 1908
Held that the Assessing Officer had computed the accumulation at 15 per cent on the net revenue after reducing all the expenditure in the form of application of income for charitable purposes. This was contrary to the law laid down by the Supreme Court. There was a mistake apparent on the face of the record which ought to have been rectified under section 154 of the Act. The Assessing Officer was to allow accumulation under section 11(1)(a) of the Act as claimed by the assessee in the application under section 154 of the Act.(AY. 2014-15)
Bellary Educational Services Trust v. Dy. CIT (E)(2021) 90 ITR 94 (SN)(Bang.)(Trib.)

S. 154 : Rectification of mistake – Excess deduction – Merits of issue could not be adjudicated in rectification proceedings – Deduction allowed while giving effect to the order of Tribunal- Withdrawal of deduction granted earlier on the basis of judgement of Supreme Court decision – Debatable – Order of Rectification is held to be nor valid [S.14A, 36(1)(vii), 147] 1909
Held that the decision of the Supreme Court in Maxopp Investment Ltd. did not overrule the proposition that when interest-free funds are sufficient still disallowances

under rule 8D(2)(ii) needed to be done. The Supreme Court had upheld the view that disallowances under section 14A cannot exceed the exempt income. The decision of the Supreme Court in Maxopp Investment Ltd. did not give a carte blanche to withdraw the relief granted under section 14A. The Supreme Court held that relief granted from disallowances under section 14A on the plank that the investment being stock-in-trade could not be upheld. Hence, no relief could be granted to the assessee on this account. But, it still deserved relief on the other issue for own interest-free funds for the purpose of under rule 8D(2)(ii) and restricting the disallowances with that extent exempt income. These could not be the subject matter of rectification under section 154. Hence, the order passed by the Assessing Officer withdrawing the relief granted under section 14A earlier was not sustainable as the issue was debatable and it was not liable for rectification under section 154. Merits of issue could not be adjudicated in rectification proceedings. (AY. 2006-07, 2008-09)
Union Bank of India v. Dy. CIT (LTU)(2021) 90 ITR 55 (SN)(Mum.)(Trib.)

1910 **S.154: Rectification of mistake – No merger of order passed under Section 143(3) r.w.s 144C(1) with the reassessment order passed under section 147 if issues forming subject matter of assessment order not part of reassessment order which is quashed and assessment order can be rectified by AO with respect to those issues – Rectification cannot be made after CIT(A) has quashed assessment order [S. 115JB, 143(3)]**
If the addition was made under Section 115JB inadvertently, the same can be rectified under Section 154 by the AO and added under Section 143(3) instead of Section 115JB, the mistake being one apparent from the face of the record. It is settled law that there is no merger of the order of assessment with respect to issues not forming part of the reassessment order. Hence, the rectification of the assessment order to that extent is permissible. The rectification of the assessment order cannot be made after the appellate authority namely the Commissioner(Appeals) has quashed the assessment order in appeal. This would amount to acting contrary to the provisions of law and not rectifying but enhancing the assessment.(AY. 2009-2010)
Intelenet Global Services (P) Ltd. v. ACIT (2021) 212 TTJ 182 / 202 DTR 169 (Mum.)(Trib.)

1911 **S. 154 : Rectification of mistake – Intimation – Not reporting income in proper columns – Double taxation – Income cannot be taxed twice – Matter remanded – DTAA-India-United Kingdom [S. 143(1), Art. 13]**
Allowing the appeal the Tribunal held that the assessee had filed the return of income in a negligent and casual manner with errors and omissions. Moreover, income chargeable to tax at a special rate has been reported as nil in both columns, i. e., as provided by the taxpayer as well as computed under section 143(1) of the Act. Despite nil income having been reported in both columns, against serial No. 10, the Assessing Officer in serial No. 22 has computed tax at special rate in both columns for taxpayer as well as under section 143(1) of the Act. Thus, there was an apparent mistake in computing the tax at a special rate without any income having been reported for tax at a special rate. The assessee was at fault for not reporting the income in the proper columns, but the Assessing Officer had also committed apparent mistakes of computing tax without considering the income for special rate. The order of the Commissioner

(Appeals) was to be set aside and the matter restored to the Assessing Officer for deciding the rectification application of the assessee on the merits keeping in view the cardinal principle that the assessee cannot be taxed twice for the same income, one under the head "Profits and gains of business and profession" and other under "Special rate specified in DTAA".(AY.2014-15)
Building Design Partnership Ltd. v. Dy.CIT (2021) 87 ITR 78 (SN)(Delhi)(Trib.)

S. 154 : Rectification of mistake – Expenditure – Allowance – Loss of current year can be set off against income declared u/s 115BBD – Tax on certain dividends received from foreign companies – Debatable cannot be rectified. [S. 115BBD, 143(1)] 1912
The return of the assessee was processed u/s 143(1) and while computing the total income the loss of current year was adjusted. assessee filed an application u/s 154 of the Act. The application was dismissed, which was affirmed by the CIT(A). On appeal the Tribunal held that whether expenditure or allowance,loss of current year can be set off against income declared u/s 115BBD is highly debatable issue hence dismissed. (dt. 22-10-2021)(AY. 2012-13)
Rakesh Kumar Pandita v. ACIT (2021) BCAJ- December – P. 46 (Delhi)(Trib.)

S. 154 : Rectification of mistake – Defect in application – Records – Opportunity must be provided to correct the defect – Every statutory order/decision and relevant facts which went into decision making of punching figures on e-portal at relevant point of time would constitute record for purposes of proceedings under section 154 of the Act – Matter remanded [S.139] 1913
Tribunal held that if there is defect in the application an opportunity must be provided to correct the defect. Tribunal also held that when the return is e-filed, every statutory order/decision and relevant facts which went into decision making of punching figures on e-portal at relevant point of time would constitute record for purposes of proceedings under section 154. (AY. 2015-16)
Amrik Singh Bhullar v. ITO (2021) 190 ITD 355 (Chandigarh)(Trib.)

S.154: Rectification of mistake – No format prescribed for rectification application – A simple letter can be considered as a rectification application even if it does not mention to be a rectification application – substantial justice prevails over technical consideration – Revenue cannot take undue benefit of the negligence of Assessee with regards to his rights – Long term capital gains on sale of property is directed to be excluded [S. 45] 1914
During the reassessment proceedings, the Assessee had filed a letter dated 29/02/2016 through which the Assessee filed a revised return along with reasons wherein it excluded the amount of long-term capital gain declared on the sale of the said property. This gain was earlier offered to tax in the original return and subsequently reopening was conducted by AO to treat the same as short term capital gains. This exclusion of capital gain was done due to the failure on part of the buyer to make the payments pursuant to which the Assessee filed a suit before the Hon'ble Delhi High Court for mediation and conciliation. A settlement deed dated 30/05/2015 was executed between the Assessee and the buyer wherein the Hon'ble Delhi High Court cancelled the deeds

for sale of above mentioned land. However, the lower authorities rejected this relief to the Assessee by relying on the judgment of the Apex court in *CIT v. Sun Engg. Works (P.) Ltd. [1992] 64 Taxman 442/198 ITR 297 (SC)*

The Tribunal held that once the sale transaction is reversed and the asset is owned and held by the Assessee being the seller, ostensibly no capital gain can be said to have accrued to the Assessee at all. The sale of the property was cancelled on 06/06/2015 and therefore, the very basis to exclude the LTCG from taxable income was not available at the time of filing the return of income in response to notice under section 148 and in fact, it became available on account of the change in circumstances during the course of hearing in the reassessment proceedings itself.

Further, the Assessee had also argued that letter dated 29/02/2016 should be considered as a rectification application u/s 154 of the Act. However, the Revenue contended that such letter did not mention to be an application u/s 154 of the Act and therefore, cannot be considered as such.

The Tribunal held that there is no format prescribed under the law for filing a rectification application u/s 154. It observed that what is relevant is that a mistake is brought to the knowledge of the AO. Further, it is a trite law that when substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred. When the substantive law confers a benefit on the Assessee under a statute, it cannot be taken away by the adjudicatory authority on mere technicalities. Hence, too hyper-technical or legalistic approach should be avoided in looking at a provision which must be equitably interpreted and justly administered. The Article 265 of the Constitution of India lays down that no tax shall be levied except by authority of law. Hence, only legitimate tax can be recovered.

An old circular no. 14(XL35) dated 11th April 1955 issued by the CBDT instructs that officers should not take advantage of the ignorance of an Assessee as is one of their duties to assist taxpayer and they should take initiative in guiding the taxpayer. The advice contained in the circular is also legally binding on all the field officers. Therefore, the Tribunal directed the AO to treat the letter dated 29/02/2016 as an application u/s 154 and thereby exclude the long term capital gain on sale of the said property. (AY.2009-10, 2012-13)

Anant Raj v. Dy. CIT (2021) 188 ITD 321 / 212 TTJ 836 / 206 DTR 33 (Delhi)(Trib.)

1915 **S. 154 : Rectification of mistake – Transfer pricing – Adjustment – Order of Tribunal is binding on the Assessing Officer – Rectification of order to make adjustment is beyond jurisdiction and bad in law [S.92C]**

Allowing the appeal of the assessee the Tribunal held that rectification order passed by the TPO with regard to rectification of certain discrepancies in his order, intending to make adjustment on account of AMP expenses in garb of amending his own order, since order of Tribunal was binding on revenue, he could not initiate fresh assessment proceedings. Rectification order was quashed. (AY. 2011-12)

Nikon India (P.) Ltd. v. DCIT (2021) 188 ITD 26 (Delhi)(Trib.)

S. 154 : Rectification of mistake – Tax on income referred in section 68, or section 69 or section 69B or section 69C or section 69D – Search – Surrender of income – Maximum rate of 60 % tax rate cannot be levied – Rectification order was quashed [S. 115BBE 132,] 1916

Assessing Officer completed assessment in case of assessee under section 143(3) at assessed income of Rs. 41.78 lakhs which included income surrendered pursuant to search of Rs. 22.19 lakhs as current year's business income offered to tax, by charging tax and interest at normal rates and raised nil demand. Assessing Officer issued notice under section 154 firstly, on ground that tax rate on surrendered income was to be charged as per provision of section 115BBE and secondly, during assessment proceedings, tax rate on surrendered income had been charged at 30 per cent, however, as per amended provisions of section 115BBE, it should have been charged at 60 per cent. Order of Assessing Officer is affirmed by the CIT (A). On appeal the Tribunal held that there was nothing stated in either pre-amended or post-amended provisions of section 115BBE that where assessee surrenders undisclosed income during search action for relevant year, tax rate has to be charged as per provisions of section 115BBE. Further there was no finding that provisions of section 115BBE had been invoked by Assessing Officer during assessment proceedings and tax rate had been charged at rate of 30 per cent on surrendered income under section 115BBE and thus, action of Assessing Officer in rectifying and increasing rate of taxation from 30 per cent to 60 per cent on undisclosed income in view of amended section 115BBE did not come within purview of section 154. Accordingly action of Assessing Officer in invoking jurisdiction under section 154 was not legally tenable. (AY. 2017-18)

Hari Narain Gattani v. DCIT (2021) 186 ITD 434 / 210 TTJ 771 (Jaipur)(Trib.)

S. 154 : Rectification of mistake – Limitation – Doctrine of merger Notice proposing to rectify Assessing Officer's order giving effect to order of Tribunal on appeal from order of revision by Commissioner – Limitation to be reckoned from date of original assessment order and not of order giving effect to Tribunal's order [S. 80IA, 154 (7), 254(1), 263] 1917

Allowing the appeal the Tribunal held that since computation of deduction under section 80-IA of the Act was never the subject matter of dispute in any proceeding under section 263 or under section 254 or in the Assessing Officer's order under section 143(3) read with section 254 of the Act, limitation under section 154(7) of the Act, would have to be reckoned from the date of the original assessment order, i. e., February 10, 2005. Therefore, rectification order dated March 28, 2012 was barred by limitation under section 154(7) of the Act.(AY. 2002-03)

Karnataka Power Corporation Ltd. v. ACIT (2021) 85 ITR 518 (Bang.)(Trib.)

S. 154 : Rectification of mistake – Surrendered income – Survey – Business income – Increasing the rate of tax from 30 percent to 60 percent and levying surcharge and cess on undisclosed income is held to be not valid [S. 68, 69, 69A, 69B, 69C, 69D, 115BBE, 131, 133A] 1918

In the course of survey excess cash was found. The assessee surrendered the amount and offered as business income while filing the return of income. The income was

assessed u/s 143 (3) of the Act and tax was determined at as per slab rate of taxation applicable to individual at 30%. The Assessing Officer issued the notice u/s 154 of the Act,and passed the order levying the tax at 60% as per section 155BBE of the Act. On appeal CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that since there was no finding in the assessment order that income surrendered is assessable as per section 155BBE of the Act, the order under section 154 is not sustainable. (AY. 2017-18)
Hari Narain Gattani v. Dy.CIT (2021) 199 DTR 121 (Jaipur)(Trib.)

1919 **S. 154 : Rectification of mistake – Adjustment of current year loss – Income declared u/s 158D of the Act – Debatable issue cannot be rectified. [S. 158BD]**
Tribunal held that whether current year loss can be set off from the income declared under section 158BD is highly debatable hence such set off cannot be allowed by way of rectification. (AY. 2012-13)
Rakesh Kumar Pandita v. ACIT (2021) 207 DTR 473 / 91 ITR 65 (SN) / 214 TTJ 918 (SMC) (Delhi)(Trib.)

1920 **S. 158BC : Block assessment – Document seized during search – Statutory presumption that document belongs to person from whose possession seized – Burden on person to rebut presumption – Document disclosing receipt of on-money – Addition is held to be justified [S.132(4A)]**
Dismissing the appeal of the assessee the Court held that, when a Document seized during search, statutory presumption that document belongs to person from whose possession seized. Burden on person to rebut presumption. On facts document disclosing receipt of on-money was found therefore addition is held to be justified. (BP. 1-4-1991 to 29-5-2001)
H. M. Constructions v. ACIT (2021) 431 ITR 196 (Karn.)(HC)

1921 **S. 158BC : Block assessment – Undisclosed income – Incriminating material was found – Explanation was not satisfactory – Addition was held to be justified – Limitation – Panchnama – Limitation starts only from date of third panchnama – Not barred by limitation [S.158BE]**
Dismissing the appeal the Tribunal held that the assessee has not given proper explanation as regards the incriminating documents found in the course of search hence the addition is justified. Tribunal also held that limitation starts only from date of third panchnama hence the assessment order is not barred by limitation. (BP. 1-4-1998 to 23-3-1999)
Abhishek Verma v. Dy.CIT (2021) 86 ITR 460 (Delhi)(Trib.)

1922 **S. 158BC : Block assessment – Undisclosed Income – No incriminating material found during search – Addition cannot be made – Delay in filing return – Interest payable till date of original assessment order – No provision to charge interest beyond date of original assessment. [S. 158BFA(1)]**
Held that when there was no incriminating material was found in the course of search addition cannot be made u/s 158BC of the Act. As regards charging of interest the

Tribunal held that there was no provision under the Act to extend charging of interest beyond the date of completion of the original assessment proceedings. (AY. BP. 1990-2001)
V. Ramprasad Raju v. CIT (2021) 86 ITR 33 (SN)(Bang.)(Trib.)

S. 158BC : Block assessment – Undisclosed Income – No incriminating material found during search – Addition cannot be made – Delay in filing return – Interest payable till date of original assessment order – No provision to charge interest beyond date of original assessment.[s. 158BFA(1)]. 1923
Held that when there was no incriminating material was found in the course of search addition cannot be made u/s 158BC of the Act. As regards charging of interest the Tribunal held that there was no provision under the Act to extend charging of interest beyond the date of completion of the original assessment proceedings. (AY. BP. 1990-2001)
V. Ramprasad Raju v. CIT (2021) 86 ITR 33 (SN)(Bang.)(Trib.)

S. 158BC : Block assessment – Agricultural income disclosed prior to search – Addition cannot be made [S.158BB] 1924
Tribunal held that where agricultural income earned by assessee had already been disclosed by it in its regular return of income prior to search addition cannot be made as undisclosed income. (BP 1-4-1995 to 18-3-2002)
Aerens Infrastructure & Technology (P.) Ltd. v. ACIT (2021) 187 ITD 699 (Delhi)(Trib.)

S. 158BC : Block assessment – Undisclosed Income – Share application money – No incriminating material found during search – Addition is held to be not justified – Interest – Delay in filing return – No provision to charge interest beyond date of original assessment [S.158BFA(1)] 1925
Tribunal held that when no incriminating material was found during search addition cannot be made as undisclosed income. The Tribunal also held that order passed by the Tribunal earlier and the order passed by the Assessing Officer in the set aside proceedings were a continuation of original assessment proceedings. It was not a case of quashing of the original assessment order and initiation of altogether new proceedings. Further, there was no provision under the Act to extend charging of interest beyond the date of completion of the original assessment proceedings. Hence, the view expressed the Commissioner (Appeals) was correct.(BP. 1990-2001)
V. Ramprasad Raju v. CIT (2021) 86 ITR 33 (SN)(Bang.)(Trib.)

S. 158BD : Block assessment – Undisclosed income of any other person – Additions cannot be made merely on the basis of presumptions.[S.69C, 132, 158BC] 1926
Dismissing the appeal of the revenue the Court held that addition cannot be made on mere assumption and not on any material recovered during search and seizure. The Tribunal had recorded a categorical finding that addition cannot be made merely on presumption that assessee had earned undisclosed income and incurred expenses outside books of account. (BP. 1997-98 to 2003-04)
CIT v. Jeet Construction Company (2021) 124 taxmann.com 526 (All.)(HC)
Editorial: SLP of revenue dismissed, CIT v. Jeet Construction Company (2021) 278 Taxman 293 (SC)

1927 **S. 158BD : Block assessment – Undisclosed income of any other person – Notice was issued before receipt of seized material from the Assessing Officer of the searched person – Order was quashed. [S. 132, 132A]**

Tribunal relied on the Hon'ble Supreme Court decision in the case of *Manish Maheshwari v. ACIT (2007) 289 ITR 341 (SC)* wherein it is held that before the provisions of Section 158BD are invoked against a person other than the person whose premises have been searched u/s. 132 or documents and other assets have been requisitioned u/s. 132A, the conditions precedent have to be satisfied. One of the conditions is that the books of account or other documents or assets seized or requisitioned have to be handed over to the AO having jurisdiction on such other person and, thereafter only the AO has to proceed u/s. 158BD against such person. The AO in the instant case has taken recourse to Section 158BD before receipt of the seized material, therefore, the 158BD jurisdictional conditions cannot be said to have been met. Therefore, the entire proceedings u/s 158BD/143(3) are vitiated and quashed. Further, the Hon'ble Tribunal rejected the Revenue's contention that in the second round of litigation before the AO, the assessee has not raised the jurisdictional issue and held that in the first round of litigation, the assessee, apart from challenging the addition on merit had also challenged the validity of the 158BD proceedings for which the Hon'ble Tribunal, while restoring the issue to the file of the AO, had held that the assessee would be entitled to raise all the issues including the issue of jurisdiction, limitation, etc. (BP. 01.04.1986 to 14.08.1996)

Skytone Capital Services Ltd. v. ACIT (2021) 213 TTJ 462 / 205 DTR 313 (Delhi)(Trib.)

1928 **S. 160 : Representative assessee – Association of persons – Corpus donation – Trustees of discretionary trust not assessable as association of persons – Description in returns not relevant. [S. 2(24)(xv), 2(31)(v), 56(2)(vii), 161]**

The assessee-trust received donations from six of its group companies amounting to Rs. 25 crores which were credited to the balance-sheet of the assessee under the head addition to corpus and not routed through the profit and loss account. It filed its return in the status of an association of persons. The Assessing Officer treated the sum of Rs. 25 crores credited directly to the balance sheet as income from other sources and taxed the said receipt which was up held by the CIT(A). On appeal the Tribunal held that a discretionary trust could not be treated as an individual for all purposes of the Act especially when the term individual was not defined under the Act. It held that the amount Rs. 25 crores received by the assessee could not be considered as income from other sources under section 56(2)(vii) read with section 2(24)(xv) of the Act and accordingly, deleted the addition.

On appeal by the Department the Court held that the settlor had created a trust and appointed trustees, to administer the trust for the benefit of certain identified beneficiaries who were top level executives of the S group of companies and who were admittedly individuals. Those individuals had not come together with a common purpose and they did not have any role in the operation or administration of the trust. Therefore, the assessee could not be treated as an association of persons. The Court also held that the trustees were only the representatives of the beneficiaries and the income was required to be taxed in the like manner and to the same extent as it would be in

respect of beneficiaries. All the beneficiaries were individuals and therefore, the assessee in the instant case, having received the perquisite on behalf of its beneficiaries, should be treated as a representative of those beneficiaries and therefore, had to be assessed as an individual. Court also held that Consequently, the contribution of Rs. 25 crores was to be assessed as income under section 56(1) under the head Income from other sources the donation was received by discretionary trust and not relative of individual. (AY.2014-15)

CIT v. Shriram Ownership Trust (2021) 430 ITR 356 / 197 DTR 153/ 318 CTR 233 (Mad.) (HC)

S.163 : Representative assessee – AO passed an order holding Assessee as representative assessee/agent of the non-resident – Tribunal held that Assessee's status mentioned as individual as against representative assessee in the order giving effect to ITAT's directions is a curable defect.[S. 45, 50C, 160(1)), 292B] 1929

Tribunal held that mere mentioning the assessee's status as "Individual" instead of "Representative Assessee of Smt. Pamela Jean Colleco" was a curable defect in terms of S.292B as the assessment order was in substance and effect passed in the status of representative assessee in conformity with and to give effect to the directions of the Tribunal is a curable defects. (AY. 2008-09)

Banwari Lal Sharma v. ITO (2021) 62 CCH 0504 / 213 TTJ 307 (Jaipur)(Trib.)

S. 179 : Private company – Liability of directors – Recovery of tax – Burden on director to prove that non-recovery of dues from company was not due to his gross negligence or misfeasance – Agreement amongst directors not binding on -revenue – Recovery proceedings was held to be valid – Interpretation – Difference between Rights in Personam and Rights in Rem. [S. 246, 264, Art. 226] 1930

Dismissing the writ the Court held that the order passed under section 179(1) of the Act dated January 29, 2018, as well as the order passed under section 264 dated April 1, 2021 clearly demonstrated that only a small part of the demand was recovered despite all possible efforts by the Department including attachment of bank accounts of the group of companies. The memorandum of understanding, settlement deed and arbitral award governed rights in personam and could not bind a statutory authority like the Revenue. The orders were valid. (AY. 2006-07 to 2009-10)

Rajeev Behl v. PCIT (2021) 438 ITR 612 / 206 DTR 390 / 323 CTR 71 / (2022) 284 Taxman 128 (Delhi)(HC)

S. 184 : Firm – Registration – Partnership deed on lesser value stamp paper – Remuneration paid to partners cannot be disallowed and firm cannot be assessed as an AOP 1931

Where the firm is already registered under the Assistant Registrar of Firm, Pune, Maharashtra, PAN has also been allotted as firm and even in the assessment order, the status of the firm is mentioned as that of the partnership firm. Therefore, the Department is accepting all the genuineness of existence of the partnership firm and only for this technical aspect of deed executed in the lessor denomination stamp paper has framed the assessment treating the assessee as AOP. The Revenue Authorities may

call upon the assessee in due course for rectification of this technical defect. In the totality of facts and circumstances and on examination of this issue, the assessee is duly constituted partnership firm. (AY. 2012-13)
Kachhi Heritage v. ACIT (2021) 187 ITD 335 (Pune)(Trib.)

1932 **S. 192 : Deduction at source – Salary – Credit for tax deducted – Collection and recovery of tax – Bar against direct demand on assessee – Failure to deposit the tax in Government treasury by the employer – Credit cannot be denied to the employee – Directed to give credit [S.199, 201, 205, Art. 226]**
Assessee was an employee of Kingfisher Airlines. Airlines deducted TDS on salary made to assessee but did not deposit same in Government treasury. The credit was not given by revenue and demand has been raised with interest. On writ the Court held that TDS having been deducted by employer of assessee, it will always been open for department to recover same from said employer and credit of same could not have been denied to assessee. Court also held that if tax had been recovered the assessee is entitle to refund with the interest. Followed *Devarsh Pravinbhai Patel v. ACIT (SCA Nos. 12965 /12966 of 2018 dt. 24-9-2028, ACIT v. Om Prakash Gattani (2000) 242 ITR 638 (Delhi)(HC)*(AY. 2009-10, 2011-12)
Kartik Vijaysingh Sonavane v. Dy. CIT (2021) 208 DTR 441 / 132 taxmann.com 293 / (2022) 440 ITR 11/ 284 Taxman 278 /324 CTR 111 (Guj.)(HC)

1933 **S. 192 : Deduction at source – Salary – Provision of residential accommodation by employer – Valuation of perquisite – Perquisite – Liable to deduct tax at source – Cannot equated with an accommodation provided by the Central Government – Assessee in default – Bona fide estimate – Penalty cannot be levied – Contrary view of Tribunal. [S. 15, 17(2), 201, 201(IA), ITR, 1962, R. 3(1)]**
On appeal by the assesee the Court held that the assessee is a body controlled by the Central Government, however it cannot be equated as Central Government. The assessee cannot claim that the valuation of perquisites in respect of accommodation provided to employees SI. No 1 of table 1 of Rule 3 does not apply. As regards levy of penalty the Court held that Tribunal in another assessee has taken the view that the view being bona fide estimate penalty cannot be levied. Accordingly the penalty was deleted. (AY. 2007-08 to 2011-12)
Central Food Technological Research Institute v. ITO (2021) 439 ITR 735 / 204 DTR 361 / 322 CTR 225 (Karn.)(HC)

1934 **S. 192 : Deduction at source – Salaries received by Nuns and Priests – Not diverted at source by overriding title – Provision not violative of Article 25 of Constitution – Circular cannot provide exemption from deduction of tax to salaries received by Nuns and Priests – No estoppel against law [S. 4,15, 119, Art. 25]**
Dismissing the writ appeal, that the principle of diversion of income by overriding title had no application to the salary paid to nuns and priests by the Government or any other employer. The right under article 25 of the Constitution is not an absolute or an unfettered right. Article 25 does not provide any immunity from taxation on the basis of religion. If a valid law permits deduction of tax at source, such deduction does not

violate the fundamental right of freedom to practice religion. The mandate of section 192 is clear that tax has to be deducted at source from the salaries payable to nuns and priests. A practice which was contrary to the law of the land, could not be permitted to be continued. It is explicit from a reading of the circular issued on December 5, 1977, that, though the caption mentions the subject as "fees of members of religious congregation", the recital portion of the circular refers only to the fees received by missionaries in contradistinction to salary received by nuns or priests. The circular of 1977 cannot apply to salaries received by nuns or priests from the Government or aided institutions. Further, the clarification issued by the Central Board of Direct Taxes in 2016, pursuant to the direction of the court in these appeals, states in unmistakable terms that the circular does not apply to salaries and pensions received by nuns or priests. The 1944 circular or even the 1977 circular cannot be construed as excluding tax deducted at source from the salaries received by nuns and priests from their respective establishments. Salaries paid to nuns and priests, who are employees of educational institutions, are liable for tax deduction at source.
Provincial Superior v. UOI (2021) 438 ITR 548 / 205 DTR 25 / 322 CTR 233 (Ker.)(HC)

S. 192 : Deduction at source – Salary – Provision of residential accommodation by employer – Valuation of perquisite – Residential Accommodation provided to regular and contract employees on collection of licence fee according to area of quarters and commensurate with salary of employee – Perquisite – Liable to deduct tax at source – [S. 15, 17(2), ITR, 1962, R. 3(1) Art. 12, 226] 1935

Petitioner is an educational institution. The petitioner challenged the provision relating to tax deduction at source,on the ground that the Institution is State within article 12 of the Constitution of India and therefore, in terms of section 17 and sub rule (1) of rule 3 of the said Rules, the value of the accommodation would be licence fees charged and there would be no question of providing any perquisite to the employees, hence not liable to deduct tax at source. Dismissing the petition the Court held that that even if the assessee was treated as State within the meaning of article 12 of the Constitution of India it could not escape the liability to deduct tax at source on the difference between the value of the rent as assessed under rule 3(1) of the 1962 Rules and that collected from the employee by way of licence fee. The ITO's holding that the assessee was not State within the meaning of article 12 of the Constitution of India was not correct. Since the assessee did not provide rent-free accommodation to its employees, it did not fall under clause (i) of sub-section (2) of section 17. However, if there was any concession in the matter of rent respecting the accommodation provided by the assessee to its employees, it would be covered under clause (ii) of sub-section (2) of section 17. Even proceeding on the basis of the assertion of the assessee that it was "State" within the meaning of article 12 would not bring the assessee within the fold of entry 1 (which would be applicable only in a case where the employer was either the Central or the State Government) in the table below sub-rule (1) of rule 3 of the 1962 Rules. Accordingly residential Accommodation provided to regular and contract employees on collection of licence fee according to area of quarters and commensurate with salary of employee/ Perquisite which is Liable to deduct tax at source
National Institute of Technology v. UOI (2021) 434 ITR 361 / 201 DTR 283 / 320 CTR 756 / 278 Taxman 117 (Tripura)(HC)

1936 **S. 192 : Deduction at source – Salary – Leave travel allowance – Failure to deduct at source – Travel to foreign country and as well as to destinations in India in a composite itinerary – Cannot be considered as assessee in default for failure to deduct tax at source [S.10(5)]**

Allowing the appeal of the assessee the Tribunal held that there is no specific bar in the law on the Travel,eligible for exemption under section 10(5) in respect of a sector of overseas travel and in the absence of such a bar, the assessee cannot be faulted for not inferring such a bar. The assessee was bonafide and reasonable cause and the assessee could not be said to have violated the provisions of section 192 of the Act. (ITA No. 1717/Mum/ 2019 dt 27-1-2021)(AY. 2012-13)

State Bank of India v. ACIT (2021) 123 taxmann.com 447 (Mum.)(Trib.)

1937 **S. 194A : Deduction at source – Interest other than interest on securities – Builder – Judgement debt – Compensatory interest failure to hand over possession of flat – TDS was not liable to be deducted. [S. 2(28A), Real Estate (Regulation & Development) Act 2016 (RERA) Art, 226]**

Assessee entered into an agreement with a builder for purchase of two residential flats. Flats booked were not delivered in committed period. Real Estate Regulatory Authority directed builder to refund advance amount paid by assessee with compensatory interest. Builder deducted TDS on amount of compensatory interest paid to assessee. The petition was filed for seeking directions for the recovery of arrears due to the petitioners under a Recovery Warrant dated 15 th October 2018 passed by the Maharashtra Real Estate Regulatory Authority against the respondents. The respondents have paid the compensation in Instalments as per the consent order. Respondent builder deducted the tax at source on the amount of interest payable as per the consent terms. Petitioners moved application before the Court urging that the such amounts could not in law be deducted. Court held that the amount so payable is in the nature of a judgement debt or akin to a judgement debt, the payment of which cannot establish a debtor -creditor relationship between the parties. As such the said sum or any part thereof cannot be liable to tax deducted at source under the relevant provisions of the Income tax Act on interest component. Interim application was allowed. (AY 2021-22)

Sainath Rajkumar Sarode v. State of Maharashtra (2021) 283 Taxman 494 (Bom.)(HC)

1938 **S. 194A : Deduction at source – Interest other than interest on securities – No liability to deduct tax based on the specific exclusion provided to the assessee under section 194A(3)(v) – Provisions would not apply [S. 40(a)(ia), 194A(3)(i)(b), 194A(3)(v)]**

AO disallowed interest paid to various members of the society where interest exceeded 10,000 under section 40(a)(ia) and relied on the provisions of section 194A(3)(i)(b). The CIT(A) relied on provisions of section 194A(3)(v) and held that provisions of section 194A(1) did not apply to income credited or paid by a co-operative society to its members. High Court upheld the tribunal and CIT(A) order relying on the Finance Act 2015, where clause (v) of section 194A(3) was amended to exclude co-operative banks w.e.f 1-6-2015 which indicates that prior to the said date benefit of exemption was available to co-operative banks. (ITA No. 14 of 2017 dt. 7-01-2021)(AY.2013-14,2014-15)

PCIT v. Goa State Co-operative Bank Ltd (2021) 318 CTR 497 / 197 DTR 305 / 110 CCH 54 (Bom.)(HC)

S. 194C : Deduction at source – Contractors – Payment made to agency as per direction of Karnataka Government – Deletion of addition is held to be justified. 1939

Dismissing the appeal of the revenue the Court held that,the Tribunal was right in holding that the assessee was not liable to deduct tax under section 194C on payments made to KHB and RITES for rendering of services in connection with the construction of engineering and polytechnic college buildings in the State of Karnataka (AY.2011-12)

CIT v. Director Of Technical Education (2021) 432 ITR 110 / 280 Taxman 26 (Karn.)(HC)

S. 194C : Deduction at source – Contractors – Advertisement – Liable to deduction u/s 194C and not u/s 194J – Lease rent – Failure to deduct tax at source on rent – Matter remanded [S.194J, 201(1), 201(IA)] 1940

Held that he payment for advertisement in connection with its business fell within the ambit of section 194C and not section 194J. For failure to deduct at source on rent matter remanded to the Assessing Officer.(AY. 2011-12)

Perfect Probuild P. Ltd. v. Dy. CIT (2021) 90 ITR 25 (SN)(Delhi)(Trib.)

S. 194C : Deduction at source – Contractors – Provision is applicable only when assessee has paid or credited any charges covered thereunder – Estimated excessive wastage treated as Making charges – Disallowance cannot be made for failure to deduct tax at source.[S.40(a)(ia)] 1941

On appeal the Tribunal held that :

- Provisions of Sec 194C are applicable when the assessee has paid or credited any charges covered thereunder. When no payment is debited or credited to respective party's accounts, then such payment cannot be considered within the ambit of sec 194C or any other TDS provisions.
- There is no uniform yardstick to quantify the wastage in any process of manufacturing of goods. Further wastage allowed by the assessee to goldsmith is a matter of business prudence/commercial expediency and the same cannot be called upon to question by the AO unless he has evidence to prove that the same is excessive.
- Since assessee has neither debited making charges into P & L a/c nor credited any amount to parties' account, the question of application of sec 194C does not arise.
- Since no Independent evidence has been brought on record by the AO to support his findings, as against assessee having produced necessary evidences to prove that making charges has been separately paid and TDS deducted wherever applicable, the addition cannot be sustained. (AY. 2013-14)

Siva Valli Vilas Jewellers (P) Ltd. v. DCIT (2021) 212 TTJ 101 / 202 DTR 89 (Chennai) (Trib.)

S. 194C : Deduction at source – Contractors – Services on a principal -to principal bases – Payment to drivers – Cannot be treated as assessee in default for failure to deduct tax at source [S. 201(1), 201(A), 204] 1942

Allowing the appeal of the assessee the Tribunal held that Uber B.V. provided lead generation services on a principal-to-principal basis via an app for which service fee was charged and role of assessee company was limited to act as a payment and collection

service provider of Uber B.V., assessee could not be held as assessee-in-default for non-deduction of tax under section 194C in respect of payments made to drivers on behalf of Uber B.V. (AY. 2016-17, 2017-18)
Uber India Systems (P.) Ltd. v. JCIT (TDS)(2021) 188 ITD 362 / 211 TTJ 1 / 202 DTR 129 (Mum.)(Trib.)

1943 **S. 194C : Deduction at source – Contractors – Person responsible for paying – It's the user who is person responsible for paying, and not the intermediary – Intermediary in the instant case is an 'aggregator' and not a service provider and hence cannot be treated as assessee in default. [S. 201(1), 201(IA), 204]**
Assessee Company USIPL appointed by Uber B.V., under an Inter-company service agreement was providing support services viz to act as payment & collection service provider of Uber B.V. for a fixed monthly consideration. It was Uber B.V. who provided lead generation services to driver-partners who were interested in providing transport services to riders (users) through Uber App.
A.O held the assessee company would be a "person responsible for paying" within the meaning of Sec 194C r/w s. 204, and thus was treated as an 'assessee in default', ignoring the observations made in the order u/s 143(3), treating the assessee company as being engaged in business of providing marketing and support services to Uber B.V. and not as a transportation service provider, and passed Order u/s 201/201(1A).
On appeal the Tribunal considered the following facts viz:
a) Role of assessee company is limited to act as a payment and collection service provider of Uber B.V.
b) The assessee company does not have any agreement with the driver-partner.
c) As the transportation service is provided by driver-partner to users directly, for which user is making the payment, so it is the user who is the person responsible for paying and nit the assessee.
d) Also in a situation where user makes direct cash payment to driver-partner the assessee is not even made aware and making them liable for deducting Tax would result in impossibility of performance.

Based on above facts and reasoning it was held that the provisions of section 194C are not applicable and no order could be passed against assessee u/s 201/201(A).(AY. 2016 -17 & 2017-18)
Uber India Systems (P) Ltd v. JCIT (2021) 188 ITD 362 / 211 TTJ 1 / 202 DTR 129 (Mum.) (Trib.)

1944 **S. 194C : Deduction at source – Contractors – Payment of common area maintenance charges for operation and maintenance of Mall – Payment made directly to service providers – Not part of rent paid to owner – Provision of section 194I is not applicable [S.194I, 201(1)]**
Allowing the appeal the Tribunal held that the assessee had paid rent to the owner after deduction of tax at source under section 194-I of the Act and the payment for operation and maintenance was made directly to the service providers after deduction of tax at source under section 194C of the Act. The common area maintenance charges did not form part of the actual rent paid to the owner by the assessee. There was a

separate agreement between the owner, tenant and service provider for common area maintenance and the Commissioner (Appeals) was not right in confirming the order of the Assessing Officer.(AY.2011-12)
Kapoor Watch Co. Pvt. Ltd. v. ACIT (2021) 85 ITR 32 (SN)(Delhi)(Trib.)

S. 194C : Deduction at source – Contractors – Payments for maintenance charges – No failure to deduct tax.[S.194I, 201(1), 201(1A)] 1945

The assessee had rented premises and entered into a tripartite agreement, under which it was liable to pay the rental income to the owner of the premises and common area maintenance charges to the operation/maintenance service provider. It deducted tax at 10 percent for the rent paid u/s 194I and 2 percent for the maintenance charges u/s 194C. According to the AO, the maintenance charges were part of the agreement and essentially a part of rental activity, hence covered u/s 194I and not 194C. It treated the assessee in default u/s 201(1) & (1A) for short deduction and interest.
The Tribunal noted that the maintenance charges were not forming part of the rent paid to the owner of the premises, and payments were made to two separate parties for different services after deducting tax at the source. Thus the assessee cannot be treated in default u/s 201(1) & (1A). (AY. 2011-12)
Kapoor Watch Company (P) Ltd v. ACIT (2021) 209 TTJ 793 / 198 DTR 97 / 85 ITR 32 (Delhi)(Trib.)

S. 194D : Deduction at source – Insurance commission – Insurance Agent – Survey – Foreign travel expenses – Expenses were paid directly to service provided – No amount was paid to the agents – Not liable to deduct tax at source – Order of Tribunal is affirmed [S. 133A, 194J, 201(1), 201(IA)] 1946

Dismissing the appeal the Court held that under section 194D the obligation to deduct is on the person who is paying and the deduction to be made at the time of making such payment. Factually and admittedly no amount had been paid to the agents by the assessee as a reimbursement of expenses incurred by the agent on foreign travel. The assessee had made arrangement for foreign travel for all the agents and paid expenses directly to those service providers. Therefore as no amount was paid to the agents by the respondent, the obligation to deduct Income-tax thereon at source also would not arise. Referred *CIT v. Reliance Life Insurance Co. Ltd. (2019) 414 ITR 551 (Bom.)(HC)*
CIT v. SBI Life Insurance Company Ltd. (2021) 439 ITR 566 / (2022) 285 Taxman 322 (Bom)(HC)

S. 194H : Deduction at source – Commission or brokerage – Sale of prepaid SIM cards to distributors – Discounts given by assessee-telecommunication company on sale of prepaid SIM cards to distributors – Not liable to deduct tax at source 1947

Dismissing the appeal of the revenue the Court held that that no TDS provisions under section 194H were attracted on discounts given by assessee-telecommunication company on sale of prepaid SIM cards to distributors.
CIT(TDS) v. Vodafone Cellular Ltd. (2021) 131 taxmann.com 191 (Bom.)(HC)
Editorial : Notice is issued in SLP filed by the revenue, CIT(TDS) v. Vodafone Cellular Ltd. (2021) 283 Taxman 292 (SC)

1948 **S. 194H : Deduction at source – Commission or brokerage – No principle agency relation ship – Laboratory and testing services – laboratory and testing services to customers through its own and through third party collection centres – Not liable to deduct tax at source. [S. 201 (1), 201(1A)]**

Assessing Officer held that such discount allowed by assessee to collection centres was in nature of commission and assessee was obligated under section 194H to deduct tax at source on same. CIT (A) allowed the appeal of the assessee. On appeal the ITAT has relied upon respondent's own case for Assessment Year 2006-2007 wherein it has held that discount allowed by respondent to the collection centres is not commission and not attracted by the provisions of section 194H for the reason that there is no principal agent relationship between respondent and the collection centre and the relationship between respondent and collection centres is only principal to principal relationship and therefore, provisions of section 194H have no application. On appeal by the revenue the Court held that the provision of section 194H to deduct tax was applicable only to a person who was responsible for paying, at time of credit to account of payee or at time of payment. Since assessee did not perform any act of paying but was only receiving payments from these collection centres, there was no obligation on assessee-company to deduct tax at source under section 194H on discount so allowed.

CIT (TDS) v. Super Religare Laboratories Ltd (2021) 133 taxmann.com 313/ 323 CTR 757/ 208 DTR 21 / (2022) 284 Taxman 657 (Bom.)(HC)

1949 **S. 194H : Deduction at source – Commission or brokerage – Sale of prepaid SIM cards to distributors – Discounts given by assessee-telecommunication company on sale of prepaid SIM cards to distributors- Not liable to deduct tax at source**

Dismissing the appeal of the revenue the Court held that that no TDS provisions under section 194H were attracted on discounts given by assessee-telecommunication company on sale of prepaid SIM cards to distributors.

CIT(TDS) v. Vodafone Cellular Ltd. (2021) 131 taxmann.com 191 (Bom.)(HC)

Editorial : Notice is issued in SLP filed by the revenue, CIT(TDS) v. Vodafone Cellular Ltd. (2021) 283 Taxman 292 (SC)

1950 **S. 194H : Deduction at source – Commission or brokerage – Expenditure on conference of doctors could not treated as commission – Not liable to deduct tax at source [S. 201]**

Dismissing the appeal of the revenue the Court held that the expenditure on conference of doctors could not treated as commission and the assessee is not liable to deduct tax at source. (AY. 2011-12 to 2013-14)

CIT (TDS) v. Intas Pharmaceuticals Ltd (2021) 439 ITR 692 / 283 Taxman 215 / 129 taxmann.com 347/ 205 DTR 185 / 322 CTR 545 (Guj.)(HC)

Editorial : Order of Tribunal in Intas Pharmaceuticals Ltd v. ACIT (200 DTR 177 (Ahd)(Trib.) is affirmed.

1951 **S. 194H : Deduction at source – Commission or brokerage – Trade discount – Newspaper vendors and advertising agencies – Not in the nature of commission- Not liable to deduct tax at source [S.40(a)(ia), 194C]**

Dismissing the appeal of the revenue the Court held that, newspaper vendors and advertising agencies were not agents of assessee. Tribunal is right in holding that the

assessee would not be liable to deduct tax at source on payment made to newspaper vendors and advertising agencies. No disallowance could be made. (AY. 2011-12)
PCIT v. Dempo Industries (P.) Ltd. (2021) 279 Taxman 166 / 205 DTR 489 / 322 CTR 676 (Bom.)(HC)

S. 194H : Deduction at source – Commission or brokerage – Sale of sim cards / recharge coupons at discounted rate to distributors – Not commission – Not liable to deduct tax at source.[S. 201] 1952
Dismissing the appeal of the revenue sale of sim cards / recharge coupons at discounted rate to distributors is not commission, therefore not liable to deduct tax at source. (AY. 2013-14)
CIT v. Idea Cellular Ltd (2021) 125 taxmann.com 171 (Bom.)(HC)
Editorial: SLP granted to the revenue, CIT (TDS) v. Idea Cellular Ltd. (2021) 278 Taxman 188 (SC)

S. 194H : Deduction at source – Commission or brokerage – Credit card holder – Transactions on principal to principal basis – Not liable to deduct tax at source [S.40 (a)(ia)] 1953
Dismissing the appeal of the revenue the Court held that the relationship between the assessee and any other bank was not of agency but that of two independent banks on principal-principal basis. Even assuming that the transaction was being routed to National Financial Switch and Cash Tree, then also it was pertinent to mention that the same was a consortium of banks and no commission or brokerage was paid to it. It did not act as an agent for collecting charges. Hence the provisions of section 194H of the Act were not attracted. (AY. 2011-12)
CIT v. Corporation Bank (2021) 431 ITR 554/ 277 Taxman 207 / 204 DTR 92 (Karn.)(HC)

S. 194H: : Deduction at source – Commission or brokerage – Nationalized Bank – Service charges paid for routing transactions to National Financial Switch and Cash Tree – Not be liable to deduct tax at source. [S. 40(a)(ia)] 1954
The Assessee is a Nationalized bank had filed original return of income which was revised subsequently. The Assessee's case was selected for scrutiny and AO had made various disallowances including the disallowance under section 40a(ia) of the Act in respect of service charges paid to National Financial Switch and Cash Tree. Aggrieved by the said order, the Assessee preferred an appeal before the CIT(A) who partly allowed the appeal. Aggrieved by the same, the Revenue filed an appeal before the Tribunal. However, the Tribunal dismissed the appeal filed by the Revenue. On appeal to the High court, it held that section 194H would apply if the payment was received or is receivable directly or indirectly by a person acting on behalf of another person for services rendered, not being professional and for any services in the course of buying and selling of goods or in relation to any transaction relating to an asset, valuable article or thing. The relationship between the Assessee and the acquiring bank in case of credit card swiping transaction is not of an agency but that of two independent basis and on principal-principal basis. In the present case, even assuming that the transaction was being routed to National Financial Switch and Cash Tree, then also it is pertinent to

mention here that the same is a consortium of banks and no commission or brokerage is paid to it. Thus, it does not act as an agent for collecting charges. Therefore, relying on Hon'ble Delhi High Court decision in case of JDS Apparels (P.) Ltd. (2015) 370 ITR 454 (Delhi)(HC) held that provisions of section 194H of the Act were not attracted in the present case and thus dismissed the Revenue's appeal. (AY. 2011-12)
CIT v. Corporation Bank (2021) 277 Taxman 207 (Karn.)(HC)

1955 **S. 194H : Deduction at source – Commission or brokerage – Telecommunications service provider – Sale of recharge voucher coupons and starter kits and discount to distributors – Principal too principal basis – Not liable to deduct tax at source – Precedent – Tribunal not bound by decisions of High Courts other than jurisdictional High Court.[S. 201(1), 201(IA)]**
Held that the relationship between the assessee and its distributors with reference to sale of recharge vouchers and SIM cards was on principal-to-principal, not principal-and-agent, basis. Therefore, discount on sale of the products by a telecommunication company to its distributors did not amount to commission in terms of section 194H. Consequently, such discounts would not attract tax deduction at source in terms of section 194H and, as such, no default under section 201(1) could be attributed to the assessee. The order of the Commissioner (Appeals) was upheld. Tribunal also held that as the jurisdiction of the assessee fell under the jurisdiction of the Allahabad High Court, decisions of the High Courts of Kerala and Delhi would not bind the assessee. (AY.2008-09, 2009-10)
ITO (TDS) v. Tata Teleservices Ltd. (2021)92 ITR 87 / (2022) 209 DTR 57 / 193 ITD 238 (Delhi)(Trib.)

1956 **S. 194H : Deduction at source – Commission or brokerage – Payment received by agent – Principal to principal – Expenses on doctors and stockists, dealers and field staff – Not liable to deduct tax at source.**
Tribunal held that the payment received by agent on principal to principal, and also Expenses on doctors and stockists, dealers and field staff- Not liable to deduct tax at source. (AY.2011-12 to 2013-14)
Intas Pharmaceuticals Ltd. v. ACIT (TDS) (2021) 186 ITD 642 / 85 ITR 60 / 211 TTJ 64 (Ahd)(Trib.)

1957 **S. 194I : Deduction at source – Rent – VSAT and lease line charges to stock exchange – Not liable to deduct tax at source.**
Held that payment of VSAT and lease line charges to stock exchange is not liable to deduct tax at source. (AY. 2010-11)
DCIT v. Edelweiss Financial Advisors Ltd. (2021) 188 ITD 834 (Ahd.)(Trib.)

1958 **S. 194IA : Deduction at source – Immoveable property – Joint development agreement – Interest free deposit – No transfer of property – Not liable to deduct tax at source. [S. 2(47)(v), 201, 201A, 203A, Transfer of Property Act, 1882, S.53A]**
Held that the assessee was only permitted by landowners to develop scheduled property as residential apartment buildings and it could not be construed as delivery

or possession in terms of section 53 of Transfer of Property Act read with section 2(47)(v), as legal possession of scheduled property continued to remain with possession of landowner. Amount received was refundable security deposit. The assessee could not be held as the assessee-in-default under section 201(1) and 201(1A) for failure to deduct tax at source.(AY. 2014-15)

Prestige Estates Projects Ltd. v. ACIT (2021) 188 ITD 711 / 212 TTJ 23 / 86 ITR 629 (Bang.) (Trib.)

S. 194IA: Deduction at source – Immoveable property – Joint venture development – Refundable security deposit paid to land owners adjustable against sale consideration – Permission to construction – No transfer of immovable property – Not liable to deduct tax at source on refundable security deposit [S. 2(47)(v), 2(47)(vi), 201(1), 201(IA) Transfer of Property Act, 1882 S.53A)] 1959

Allowing the appeal the Tribunal held that the clauses of the joint development agreement showed that legal possession of the property continued to remain with the land owner. The agreement specifically mentioned that the assessee was only permitted by the land owners to enter upon the scheduled property to develop the scheduled property by constructing a residential apartment building according to the terms mentioned therein. The permission to enter by way of licence so granted was specifically stated not to be construed as delivery of possession of the scheduled property in part performance of any contract as defined under section 53A of the Transfer of Property Act, 1882 read with section 2(47)(v) and (vi) of the Income-tax Act, 1961. After obtaining consent from the land owners, the assessee was to take appropriate steps to obtain no objection certificate and other permissions required for undertaking the project within 12 months from the date of the agreement. Nothing was brought on record to show that the assessee got approval of the sanctioned plan vis-à-vis any construction started during the previous year relevant to the assessment year under consideration. In such a case, it could not be said that there was a transfer of immovable property during the relevant assessment year. Even if it was advance payment against the sale consideration, it was not linked to the transfer of immovable property as enumerated in section 194-IA, since the condition laid down in section 2(47)(v) was not satisfied within the meaning of section 53A of the Transfer of Property Act, 1882. The assessee could not be held an assessee-in-default in terms of section 201(1) and (1A) of the Act.(AY.2014-15)

Prestige Estates Projects Ltd. v. ACIT (2021) 86 ITR 629 (Bang.)(Trib.)

S. 194J : Deduction at source – Fees for professional or technical services – Third party administration provided to person offering medical services – Liable to deduct tax on payments made to hospitals – Prior to 1-7-2012 interest payable up to date of payment of taxes by payee [S. 201(1), 201(IA)] 1960

The assessee had entered into agreement with various hospitals for extending medical facilities to policyholders of various companies with whom the assessee has entered into agreements to act as an agent. The assessee made payments on behalf of the insurance company from the float funds available with the assessee, which were provided by the insurance company. The assessee did not deduct tax at source on the payments made

to the hospital. The Assessing Officer treated the assessee as in default under section 201(1) and computed interest under section 201(1A). The Tribunal by an order, inter alia, held that the assessee had made payment to the hospitals towards bed charges, medicines, follow up services, out patient services, etc., which did not fall within the scope of fees for professional services and therefore, directed the Assessing Officer to bifurcate the payments made by the assessee to the hospital into various heads and to confine the demand raised under section 201(1A) of the Act to the payments, which were in the nature of fee for professional services. On appeal the Court held that the assessee was liable to deduct tax at source on payments made to hospitals.(AY.2007-08)
CIT (TDS) v. TTK Healthcare TPA Pvt. Ltd. (2021) 430 ITR 464 / 276 Taxman 194 (Karn.) (HC)

1961 **S. 194J : Deduction at source – Fees for professional or technical services – Remuneration to consultant doctors – Cannot be considered as employees of hospital – Provision of section 194J is applicable and not provision of section 192 of the Act. [S.192]**
Held that consultant doctors cannot be considered as employees of hospital. Provision of section 194J is applicable and not provision of section. 192 of the Act (AY. 2011-12)
DCIT (OSD) v. Sir Hurkisondas Nurrotumdas Hospital & Research Centre. (2021) 191 ITD 429 (Mum.)(Trib.)

1962 **S. 194J : Deduction at source – Fees for professional or technical services – Transaction fee paid to stock exchange – Not liable to deduct tax at source.**
Held that transaction fee could not be said to be a fee paid in consideration of stock exchange rendering any technical services to assessee. Not liable to deduct tax at source. (AY. 2010-11)
DCIT v. Edelweiss Financial Advisors Ltd. (2021) 188 ITD 834 (Ahd.)(Trib.)

1963 **S.194O: Payment of certain sums by e-commerce operator to e-commerce participant – Tax deduction at source – Difficulties faced by assesses – CBDT was directed to consider and dispose representation within a period of sex weeks. [S.119, Art. 226]**
The representation was made before CBDT from time to time highlighting the difficulties faced while complying the provisions of section 194O of the Act. There was no response from the CBDT. On Writ the High Court directed the CBDT to consider and dispose the representation of assessee within a period of six weeks from the date of communication of the order by passing a reasoned and speaking order.
Mjunction Services Ltd. v. UOI (2021) 206 DTR 246 / 322 DTR 968 (Cal.)(HC)

1964 **S. 195 : Deduction at source – Non-resident – Other sums – Amount received for supply of software – Not liable to deduct tax at source – DTAA-India [Art. 12, 9(1)(vi), Art. 12]**
Court held that given the definition of royalties contained in Article 12 of the DTAAs mentioned in paragraph 41 of this judgment, it is clear that there is no obligation on the persons mentioned in section 195 of the Income Tax Act to deduct tax at source, as the distribution agreements/EULAs in the facts of these cases do not create any interest or

right in such distributors/end-users, which would amount to the use of or right to use any copyright. The provisions contained in the Income-tax Act (section 9(1)(vi), along with explanations 2 and 4 thereof), which deal with royalty, not being more beneficial to the assessees, have no application in the facts of these cases. Our answer to the question posed before us, is that the amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers, as consideration for the resale/ use of the computer software through EULAs/distribution agreements, is not the payment of royalty for the use of copyright in the computer software, and that the same does not give rise to any income taxable in India, as a result of which the persons referred to in section 195 of the Income-tax Act were not liable to deduct any TDS under section 195 of the Income Tax Act. The answer to this question will apply to all four categories of cases enumerated by us in paragraph 4 of this judgment.

Engineering Analysis Centre of Excellence P.Ltd v. CIT (2021) 432 ITR 471 / 199 DTR 361/ 319 CTR 497 / 125 taxmann.com 42 (SC)

Citrix Systems Asia Pacific Pte. Ltd v. DIT CIT (2021) 432 ITR 471 / 199 DTR 361 / 319 CTR 497 / 125 taxmann.com 42 (SC)

DIT v. Ericsson A.B. (2021) 432 ITR 471 / 199 DTR 361 / 319 CTR 497 / 125 taxmann. com 42 (SC)

Editorial: CIT v. Alcatel Lucent Canada (2015) 372 TR 476 (Delhi)(HC) affirmed, CIT v. Samsung Electronics Co Ltd (2012) 345 ITR 494 (Karn.)(HC) CIT v. Sunray Computers P.Ltd (2012) 348 ITR 196 (Karn.)(HC), AAR in Citrix Systems Asia Pacific Pte Ltd, Inn re (2012) 343 ITR 1 (AAR) reversed.

S. 195 : Deduction at source – Non-resident – Other sums – seconded employees – Expenses reimbursed – Cannot be considered as fees for technical services – Not liable to deduct tax at source – DTAA-India-UK. [S. 9(1)(vii), 195 (2), 201(1)] 1965

Dismissing the appeal of the revenue the Court held that the assessee for all practical purposes had to be treated as employer of seconded employees and expenses incurred by seconded employees which were reimbursed by assessee was not liable to deduction of tax at source and aforesaid amount could not be considered as 'fees for technical services' as there is no obligation in law for deduction of tax at source on payments made for reimbursement of costs incurred by a non-resident enterprise. The assessee cannot be treated as assessee in default under section 201(1) of the Act. (AY 2005-06)

DIT(IT) v. Abbey Business Services India (P) Ltd. (2021) 279 Taxman 284 / 208 DTR 432 (Karn.)(HC)

S.195 : Deduction of tax at source – Other sums – Tax at source (TAS) not liable to be deducted and no interest payable for failure to deduct TAS. [S. 201(IA)] 1966

Where a transaction takes place between two foreign companies such that the shares of a third company being held by one the companies are purchased from that company and such that the third company is a parent of companies holding assets located in India, no deduction of tax at source ought to be made by the purchaser of the shares since the provision providing for deduction of tax was not in existence when the transaction took place making the deduction at source impossible. The transaction was effected on 11th July, 2008 and Explanation 2 to Section 195 was introduced w.r.e.f from

1st April, 1962 by the Finance Act, 2012. The deduction of tax at source was therefore held to be impossible. Consequentially no interest under Section 201(1A) is payable. (AY. 2009-2010)
DCIT v. WNS Capital Investment Ltd (2021) 211 TTJ 641 / 202 DTR 97 (Mum.)(Trib.)

1967 **S. 195 : Deduction at source – Non-resident – Purchase of shares on 11-7-2008 – Explanation 2 to section 195 which imposes tax withholding obligations on non-residents in respect of payments involving income taxable in India, was introduced by Finance Act 2012 – Not liable to deduct tax at source. [S. 201(IA)]**
Held that a non-resident company purchased shares of another non-resident company having assets in India, it could not be said to have defaulted in not withholding taxes from payments made to non-resident, as, while transaction for purchase of shares in question took place on 11-7-2008, Explanation 2 to section 195 which imposes tax withholding obligations on non-residents in respect of payments involving income taxable in India, was introduced by Finance Act, 2012. (AY. 2009-10)
DCIT v. WNS Capital Investment Ltd. (2021) 190 ITD 344 / 202 DTR 97 (Mum.)(Trib.)

1968 **S. 195 : Deduction at source – Non-resident – Other sums – Distribution of computer software – Ancillary services – Services rendered and amount received outside India – Not royalty – Not liable to deduct tax at source – DTAA-India-Singapore [S.9(1)(vi), Art. 12]**
Allowing the appeal the Tribunal held that sale proceeds on account of distribution of computer software received by assessee did not amount to royalty for use of copyright in computer software, and same would not give rise to any income taxable in India. Not liable to deduct tax at source. (AY. 2017-18)
Autodesk Asia (P.) Ltd. v. ACIT (IT) (2021) 190 ITD 123 (Bang.)(Trib.)

1969 **S. 195 : Deduction at source – Non-resident – Agency Agreement – Principal and agent relationship – Sales commission for services rendered outside India – Not liable to deduct tax at source. [S.5(2), 9(1)(vii), 40(a)(i)]**
On appeal the Tribunal held that:
Fundamental requirement to deduct Tax at source, is that the sum has to be chargeable under the provisions of the Act to cast an obligation u/s 195(1).
Once the relationship is that of principal and agent, the mode of determination of fees as agreed between two parties cannot be construed as a joint venture, to bring the commission paid under the net of Sec 195, more so when the services were rendered outside India and did not fall in category of income received or deemed to be received in India, and consequently the provisions of S. 40(a)(i) cannot be invoked. (AY. 2013-14)
Prime Oceanic Pvt. Ltd v. ITO (2021) 212 TTJ 17 (UO)(Jaipur)(Trib.)

1970 **S. 195 : Deduction at source – Non-resident – Reimbursement of demurrage charges paid by assessee to a non-resident shipping company – Provision is not applicable [S. 172]**
Tribunal held that section 195 would not be applicable to reimbursement of demurrage charges paid by assessee to a non-resident shipping company and that same would be covered by section 172 of the Act. (AY. 2016-17)
Gokul Refoils & Solvent Ltd. v. DCIT (IT) (2021) 186 ITD 711 (Ahd.)(Trib.)

S. 195 : Deduction at source – Non-resident – Interest neither paid nor claimed as an expense not subject to withholding tax – Limitation – Failure to deduct or pay – Order for the financial year 2010-11 was passed seven years after the end of the financial year is held to be barred by limitation [S. 201(1)), 201(IA), 201(3)] 1971

Tribunal dismissed revenue's appeal holding that withholding under section 195 of the Act is not required where annual interest on compulsorily convertible debentures was neither paid to the Cypriot investor by assessee and nor was it claimed as an expenditure. Tribunal also held that the purpose of deduction of tax at source is not to collect a sum which is not a tax levied under the Act, it is to facilitate the collection of tax lawfully leviable under the Act. The Tribunal regarding limitation under section 201 of the Act held that order made after the expiry of seven years from the end of the relevant financial year was not made within a reasonable time. (AY. 2011-12)

DCIT v. Coffee Day Enterprises Ltd (2020) 60 CCH 0512 / 213 TTJ 172 (Bang.)(Trib.)

S. 195 : Deduction at source – Non-resident – Foreign Institutional investor – Rate of tax – Non-convertible debenture – Liable to tax at 15 % – Liable to with hold tax at the rate of 15% – DTAA-India-Singapore [S.115AD, Art. 11(2)(b)] 1972

Two questions answered by the AAR as follows :

(1) The interest earned by the applicant on non-convertible debentures of JKL Ltd is taxable at the rate of 15 per cent. as per article 11(2)(b) of the India-Singapore tax treaty.

(2) JKL Ltd is liable to withhold tax at the rate of 15 % under the provision of section 195 of the Income-tax Act on payment of interest to applicant.

ABC LTD., In re. (2021) 435 ITR 249 (AAR)

S. 195 : Deduction at source – Non-resident – Social Security contribution, Insurance, Relocation cost, etc., Reimbursement cost – Not fee for technical services – Not liable to deduct tax at source – Administration fee liable to deduct tax at source – DTAA-India – Swiss Confederation [S. 9(1)(vii), Art. 12(4)] 1973

AAR held that;

1. The social security, insurance, relocation expenses which are in the nature of committed and obligated payments are in the nature of reimbursements and not for fee for technical services.
2. As admitted by learned authorized representative, the administrative fee paid to KRP was liable for tax deduction at source under section 195 as fees for technical services.

CTBT Pvt. Ltd., In Re (2021) 435 ITR 157 / 280 Taxman 83 (AAR)

S. 195 : Deduction at source – Non-resident – Agreement with Indian Import of cars as completely built up units on principal to principal basis – Title and risk in goods transferred at port of delivery, payment made outside India and transaction complete outside India – No business connection – Not liable to deduct tax at source – DTAA-India-Japan [S.9(1)(i), 195, Art, 5(1)(9)] 1974

The issue before the AAR was "Whether on the facts and circumstances of the case and in law, whether the applicant. i. e. Honda Motor Co. Ltd would be considered to have a permanent establishment ("PE") in India by reason of its business transaction

and related activities with Honda Siel Cars India ltd ("HSCI") under the provisions of India -Japan DTAA ?"

"On the facts and circumstances of the case whether the amount received / receivable by the applicant, i. e. Honda Motor Co Ltd from HSCI as consideration for offshore supply of raw material /components / capital goods and CR-V cars would be liable to tax in India under the provisions of the Act and India-Japan DTAA ?"

"If the answer to question Nos. 1 and 2 above is negative, whether HSCI would be liable to withhold taxes under section 195 of the Act on the payments to be made by HSCI towards the off shore supplies made by the applicant, i.e. Honda Motor Co, Ltd ?"

The application was admitted on 5-5-2012,

The AAR held that

Q.No 1. The applicant, Honda Motor Co Ltd, would not be considered to have a permanent establishment ("PE") in India by reason of its business transaction and related activities with Honda Siel Cars India Ltd ("HSCI") under the provisions of India- Japan DTAA.

Q. No.2. The amounts received / receivable by the applicant from HSCI as a consideration for offshore supply of raw material /components / capital goods and CRV cars would not be liable to tax in India under the provisions of the Act and India-Japan DTAA subject to verifications as mentioned in para 37 of the ruling.

Q. No. 3. Because of answer to question Nos. 1 and 2, the payment to be made by HSCI towards the offshore supplies of parts made by the applicant will not be subjected to withholding of tax under section 195 of the Act. AAR No. 1100 of 2011 dt 23-10-2019 (AR.2009-10)

Honda Motor Co. Ltd., In.re. (2021) 434 ITR 229 (AAR)

1975 **S. 195 : Deduction at source – Non-resident – Wholly Owned Mauritius subsidiary of International Cricket Council – Payment for availing of rights in respect of grant of tickets, boards and branding etc. – Neither royalty nor fees for technical services – Not liable to deduct tax at source – Payments as regards games played in India subject to withholding tax at rates in force at relevant times – DTAA-India-Mauritius [S.10(39) 115A (1)(b)(AA) 115BBA, 194E, Art. 7, 12]**

Questions raised before AAR was ;

Whether the payment to be made by LG Electronics India Pvt Ltd a company incorporated in India to DDI Mauritius Ltd for grant commercial rights under marketing agreement will be taxable in India ?

Whether LG India is obliged to withhold tax on payment to IML for grant of commercial rights under the marketing and advertisement agreement.

Without prejudice to above whether LG India is required to deduct tax at source on the payment to IML for commercial rights under marketing and advertisement agreement at the rate of 10 per cent plus applicable surcharge and cess as per the provisions of section 115A(1)(b)(AA) of the Income -tax Act, 1961 ?

AAR held that payment for availing of rights in respect of grant of tickets, boards and branding etc. Neither royalty nor fees for technical services hence not liable to deduct tax at source. That the payments may constitute "business profits" in the hands of the recipient to which article 7 of the DTAA would apply, but in the absence of any

permanent establishment of the payee in India, they were not chargeable to tax in India. That the liability to deduct tax in respect of the games played outside India was only under section 195 of the Act under which the payment being made should be chargeable under the provisions of this Act, and therefore the payments were not liable to withholding tax under the provisions of the Act. Payments as regards games played in India subject to withholding tax at rates in force at relevant times. That the payment made by the assessee to the Mauritius company under the marketing and advertising agreement was not in the nature of royalty. Therefore, the rate as prescribed in section 115A(1)(b)(AA) could not be applied. The liability of the assessee to deduct tax was under section 194E of the Act in respect of the games played in India and the rate prescribed in this section was 10 per cent which was increased to 20 per cent. with effect from July 1, 2012. Accordingly, the assessee was required to deduct tax at the rate or rates as prescribed in section 194E of the Act at the relevant point of time. The assessee could not deduct tax at source at the rate prescribed under the DTAA even if that rate was beneficial. It was only the recipient who could take the benefit of the DTAA for the beneficial rate under the DTAA.
LG Electronics India P. Ltd., In Re (2021) 433 ITR 332 / 199 DTR 241 / 319 CTR 449 / 281 Taxman 415 (AAR)

S. 197 : Deduction at source – Certificate for lower rate – Interest income – Cryptic order – Assessing Officer cannot ignore the mandate of Rule 28AA – Order was set aside [S.194A, Art. 226] 1976
The petitioner is a loss making company. The petitioner has filed an application before the Assessing Officer to issue a certificate for nil rate as the TDS was to be deducted at 10 % in respect of interest receivable from the group companies. The application was rejected. On writ allowing the petition the Court held that the order of the Assessing Officer is cryptic and it does not give any reasons for rejection. The Court held that the Assessing Officer cannot ignore the mandate of Rule 28AA which is binding on him. The Court set aside the rejection order and directed the Assessing Officer to decide the application within four weeks. Referred *Bently Nevada LIC v. IT (IT)(2019) 311 CTR 677/ 183 DTR 257 (Delhi)(HC), Man Power Group Services India (P) Ltd v. CIT (2021) 430 ITR 399/ 319 CTR 267/ 198 DTR 355 (Delhi)(HC)*
Hero Solar Wind Energy (P) Ltd v. CIT (2021) 205 DTR 230 / 322 CTR 254 / 283 Taxman 53 (Delhi)(HC)
Hero Wind Energy (P) Ltd v. CIT (2021) 205 DTR 230 / 322 CTR 254 / 283 Taxman 53 (Delhi)(HC)

S. 197 : Deduction at source – Certificate for lower rate – Technical inadequacy of the system – Withholding tax certificates was directed to be issued with effective from 1st April, 2019 for FY 2019-20 [S.90(2), Art. 226] 1977
Allowing the petition the Court held that due to technical in adequacy of the system the assessee was not able to up load the forms, the court directed the Assessing Officer to issue certificate with effective from Ist April, 2019 for FY. 2019-20)(FY. 2019-20)
British Airways Plc v. ITO (2021) 198 DTR 369 / 319 CTR 282 (Delhi)(HC)

1978 **S. 197 : Deduction at source – Certificate for lower rate – Mere guess work – Rejection of application was set aside – Matter remanded. [R. 28AA, Art. 226]**
Court held that rejection of application on mere guess work and arbitrary is held to be not justified. Order of rejection was set aside
Camions Logistics Solutions (P) Ltd. v. JCIT (2021) 278 Taxman 400 / 198 DTR 377 / 319 CTR 289 (Delhi)(HC)

1979 **S. 197 : Deduction at source – Certificate for lower rate – Double taxation Avoidance Agreement – Protocol – Common interpretation – Deduction of tax at source – Withholding rate tax in respect of dividend would be 5 percent – DTAA-India–Netherland [S.90, 195, Art. 226]**
In a writ petition filed by the assessee for lower deduction of tax the issue before the High Court was as to what should be the withholding rate of tax in respect of dividend. On an application made for lower deduction of tax at source, the Assessing Officer held that the tax deductible will be at 10 %. On writ the Court held that the Protocol formed an integral part of the Convention. Therefore, plainly read, no separate notification was required, in so far as the applicability of provisions of the Protocol was concerned. The best interpretative tool that could be employed to glean the intent of the contracting States in framing clause IV(2) of the Protocol would be as to how the other contracting State (i.e., the Netherlands) has interpreted the provision. The decree issued by the Kingdom of the Netherlands on February 28, 2012 published on March 13, 2012 clearly showed that the Netherlands had interpreted clause IV(2) of the Protocol appended to the Double Taxation Avoidance Agreement in a manner, which was, that the lower rate of tax set forth in the Double Taxation Avoidance Agreement between India and Slovenia would be applicable on the date when Slovenia became a member of the OECD, i.e., from August 21, 2010, although, the Double Taxation Avoidance Agreement between India and Slovenia came into force on February 17, 2005. Therefore, participation dividend paid by companies resident in the Netherlands to a body resident in India would bear a lower withholding tax rate of 5 per cent. The other contracting State, i. e., the Netherlands had interpreted clause IV(2) in a particular way and therefore in the fitness of things, the principle of common interpretation should apply on all fours to ensure consistency and equal allocation of tax claims between the contracting States. The certificates were not valid. Directed too issue a fresh certificate under section 197 of the Act which would indicate that the rate of withholding tax, in the facts and circumstances of the case would be 5 percent.
Concentrix Services Netherlands B. V. v. ITO (TDS) (2021) 434 ITR 516 / 201 DTR 17/ 320 CTR 361 (Delhi)(HC)
Optum Global Solutions International B. V. v. Dy. CIT (2021) 434 ITR 516 / 201 DTR 17/ 320 CTR 361 (Delhi)(HC)

1980 **S. 197 : Deduction at source – Certificate for lower rate – Issuance of certificate at higher rate than nil rate without recording reasons – Matter remanded [S. 264, ITR, 28AA, Art. 226]**
Allowing the petition the Court held that since the authorities were required to pass an order under section 197 either rejecting the application for such certificate or allowing

such application resulting in issuance of certificates which may be at rates higher than nil as sought for by the assessee, such an order must be supported by reasons. Not only that, a copy of such an order had to be furnished to the assessee so that it could be challenged under section 264 if aggrieved. Not passing an order to that effect or keeping such an order in file without communication would vitiate the certificates. The reasons for not granting nil rate certificates to the assessee were not known. The contemporaneous order required to be passed under section 197 was also not available. The order was set aside and the certificates were quashed. The matter was remanded to the Dy.CIT (TDS) for passing fresh order and issuing consequential certificates under section 197 complying with the requirements of rule 28AA. Matter remanded.(AY.2021-22)

Tata Teleservices (Maharashtra) Ltd v. Dy CIT(TDS) (2021) 430 ITR 273 / 277 Taxman 119/ 198 DTR 345 / 319 CTR 258 (Bom.)(HC)

S. 199 : Deduction at source – Credit for tax deducted – Cable operator – Subscription not shown as income – Tax deducted was paid to Government – Entitle to credit. [S.199(2), Rule 37BA(2)(i)] 1981

Dismissing the appeal of the revenue the Court held that though subscription collected by assessee from various Cable Operators was not income of assessee, same was not shown in profit and loss account, since TDS had been deducted in name of assessee and paid to Government at time of making collections, assessee would be entitled to get credit of same while receiving commission income. (AY. 2009-10, 2010-11, 2011-12)

PCIT v. Kal Comm. (P) Ltd. (2021) 436 ITR 66 / 203 DTR 249 / 321 CTR 771 / 281 Taxman 388 (Mad.)(HC)

S. 199 : Deduction at source – Credit for tax deducted – Buyer deducting tax on entire sum paid – Claimed credit for entire credit for tax deducted – Only part of income was shown as receipt for the year – Matter remanded. 1982

Held that the duty of the Assessing Officer was to decide whether a particular receipt was in the nature of taxable income and raise tax liability corresponding to that. He could not assess a particular receipt as income merely on the ground that tax on such receipt had been deducted by the deductor. The Assessing Officer was required to examine whether the work was performed by the assessee for the entire amount. Without examining that issue, he was not justified in holding the advance amount as taxable receipt of the year. The issue was to be restored to the Assessing Officer. The Assessing Officer shall decide the issue in accordance with law.(AY. 2013-14)

Concrete Technologies Pvt. Ltd. v. ITO (2021) 89 ITR 14 (SN)(Delhi)(Trib.)

S. 199 : Deduction at source – Credit for tax deducted – Income assessable to number of years – Credit for tax deducted at source shall be allowed cross those years in same proportion in which the income was assessable [S. 4, 145, Rule 37BA] 1983

Tribunal held that where income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in same proportion in which income is assessable to tax. (AY. 2007-08)

DCIT v. Sasken Network Engineering Ltd. (2021) 190 ITD 544 (Bang.)(Trib.)

1984 **S. 199 : Deduction at source – Credit for tax deducted – Merged with four companies – Income shown in the return – Form no 26AS reflecting the tax deducted at source of merging companies – Denial of credit is held to be not justified.**
Deductors erroneously filed their TDS returns with PAN of merging entities instead of assessee merged entity. TDS deducted on receipts of assessee company was not reflected in its Form 26AS hence denied the credit though the assessee was entitled to claim credit for tax deducted. (AY. 2012-13, 2014-15)
Metropolis Healthcare Ltd. v. DCIT (2021) 190 ITD 331 (Delhi)(Trib.)

1985 **S. 201 : Deduction at source – Survey – Failure deduct tax at source – Payment to non -residents – Appeal pending before two earlier assessment years – Writ was dismissed – Directed to pursue alternative remedy of appeal. [S. 133A, 201 (1), 201(IA), Art, 226)**
Dismissing the petition the Court held that the assessee has already availed of its remedies of appeal in relation to two assessment years hence the writ was dismissed and directed to avail the appeal proceedings in accordance with law.
BT (India)(P) Ltd v. ITO 323 CTR 661 / 207 DTR 377 (Delhi)(HC)

1986 **S. 201 : Deduction at source – Failure to deduct or pay – Conveyance allowance – Additional allowance – Development Officers – Liable to deduct tax at source [S. 10 (14), 192, 264, Art. 226]**
For failure deduct tax at source on conveyance / additional allowance paid to Development Officer the Assessing Officer held that the assessee was held to be in default. The Assessee file revision application before the Commissioner u/s 264 of the Act, which was dismissed. On Writ, dismissing the petition the Court held that the assessee was liable to deduct tax at source.
Life Insurance Corporation of India v. ITO (TDS) (2021) 205 DTR 429 / 322 CTR 432 / 283 Taxman 573 (Orissa)(HC)

1987 **S. 201 : Deduction at source – Failure to deduct or pay – Recovery of tax – Failure of tenant to remit tax deducted at source from rent – To be recovered from tenant and not assesse. [S.194I, Art, 226]**
Allowing the petition the Court held that to the extent of tax -deducted by the tenant but not remitted to the Department, no demand should be made against the assessees. The balance of tax, if any, which had -escaped payment alone could be recovered from the assessees, by issuing suitable notices. The demand notices issued against the assessees under section 201 were quashed.(AY. 2011-12, 2012-13, 2013-14)
Ashok Kumar B. Chowatia v. JCIT (TDS)(2021) 435 ITR 449 / 204 DTR 449 / 322 CTR 536 / 281 Taxman 405 (Mad.)(HC)

1988 **S. 201 : Deduction at source – Failure to deduct or pay – Payment to Non-residents – Application of recipient admitted and pending before Authority for Advance Rulings – While adjudicating the issue, the Authority will adjudicate the jurisdictional issue of chargeability of tax [S. 201 (1) 201(IA), 245R, Art. 226]**
On writ the Court held that while carrying out the adjudication, the Authority for Advance Rulings would first determine as to whether the remittances in issue were

chargeable to tax and pass a speaking order, after giving a personal hearing, if the order passed was adverse to the interests of the assessee, it would not be given effect for four weeks, and if the authority was of the view that it was necessary to await the decision of the Authority for Advance Rulings in the matter concerning the recipient non-resident, it could take this aspect into account as well.(AY.2012-13, 2013-14)
BT (India)(P) Ltd. v. ITO (2021) 434 ITR 279 / 200 DTR 260 / 320 CTR 178 (Delhi)(HC)

S. 201 : Deduction at source – Failure to deduct or pay – Mere entries in accounts – No accrual of income – Not liable to deduct tax at source [S. 40(a)(i), 40(a)(ia), 192, 194C, 201(IA)] 1989
The assessee made provision for general expenses, however not claimed as deduction while filing the return. The Assessing Officer initiate proceedings under section 201 and 201(IA) of the Act and treated the assessee as assessee -in default of the amount made provision. The order of the Assessing officer is affirmed by the CIT (A) and Tribunal. On appeal allowing the appeal the Court held that In the absence of any accrual of income, there is no obligation on the part of the assessee to deduct tax at source. Court also held that the provisions were created during the course of the year and reversal of entry was also made in the same accounting year. The Assessing Officer erred in law in holding that the assessee should have deducted tax at the rate applicable with interest. The Commissioner (Appeals) and the Tribunal were wrong to confirm the order of the Assessing Officer. The assessee was not liable to deduct tax at source.(AY.2012-13)
Toyota Kirloskar Motor (P.) Ltd. v. ITO (TDS)-LTU (2021) 434 ITR 719/ 205 DTR 395 / 322 CTR 452/ 281 Taxman 527 (Karn.)(HC)

S. 201 : Deduction at source – Failure to deduct or pay – Royalties/fees for technical services – Payment made to US based company towards cost reimbursement on which parties had equal right to use and not paid amount to royalty, levy of interest u/s. 201(1A) is unjustified – DTAA-India-USA [S. 9(1)(vi), 195, 201 (IA), Art. 12] 1990
The AO passed order u/s. 201(1) and held that remittance made by assessee to GTRC was nothing but royalty as per provisions of s.9 (1)(vi) as well as in terms of article 12 of DTAA between India and USA. Held that, when assessee had explained with support of agreement and copies of invoices that payment made was towards cost reimbursement of joint research project on which both parties had equal right to use and did not amount to royalty as per section 9(1)(vi) and not covered under clause 3 of article 12 as royalties and fees for included services of India USA DTAA. Therefore, levy of interest u/s. 201(1A) was not justified.(r.w.s. 195 and 201 and article 12 of DTAA between India and USA)(AY. 2012-13, 2013-14)
Pandit Deendayal Petroleum University-PDPU v. ITO (2021) 189 ITD 110 (Ahd.)(Trib.)

S. 201 : Deduction at source – Failure to deduct or pay – Short Deduction – Order passed beyond two years from end of financial year in which statements of tax deducted at source filed – Order Barred by imitation – Payment to contractor – Matter remanded [S. 194C, 194J, 201(1), 201(IA)] 1991
Tribunal allowed the additional grounds and held that with effect from April 1, 2010 a time limit of two years from the end of the financial year in which the statements of

tax deduction at source were filed has been provided for passing of orders under section 201(1) and (1A). The statements of tax deduction at source had been filed on March 31, 2014. The order under section 201(1) and (1A) having been passed on March 30, 2015 was beyond the period of limitation and was liable to be quashed. Relied on *Tata Teleservices v. UOI (2016)(Guj.)(HC)*. For the assessment year 2010-11 matter remanded to CIT (A) to pass speaking order. (AY. 2012-13, 2013-14)
Dish TV India Ltd. v. Dy. CIT (TDS) (2021) 85 ITR 648 / 199 DTR 97 / 209 TTJ 817 (Delhi) (Trib.)

1992 **S. 201 : Deduction at source – Failure to deduct or pay – Bank – Interest paid to customer – Shown in their respective return – Should not be treated as an assessee-in-default – Matter remanded. [S.194A, 197A, 201(1), 201(1A), Form no 15G, 15H]**
Assessing Officer held that assessee-bank gave interest on deposits without deducting tax at source to its customers. He held that the assessee violated the provision of section 194A and declared assessee as assessee-in-default. CIT (A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that if assessee-bank would file documents as required under first proviso to section 201 before Assessing Officer and Assessing Officer would be satisfied that customers had shown their interest income received from assessee-bank in their respective return of income and had remitted tax on it, then assessee should not be treated as an assessee-in-default and in case assessee would fail to file documents, Assessing Officer would be at liberty to pass order in accordance to law. Matter remanded. Followed *Hindustan Coca Cola Beverages Ltd. v. CIT (2007) 293 ITR 226 (SC).* (AY. 2014-15, 2015-16)
Union Bank of India v. ITO (2021) 186 ITD 761 (Kol.)(Trib.)

1993 **S. 201 : Deduction at source – Failure to deduct or pay – Non-resident – Time – Notice issued more than six years from end of financial year in which transaction took place – Proceedings barred by limitation [S.195, 201(1A)]**
Allowing the appeal the Tribunal held that the transaction took place on April 24, 2010, in the financial year 2010-11 and the Assessing Officer passed the order on March 22, 2018 by issue of notice under section 195 on September 18, 2017. Thus, the action taken by the Assessing Officer was more than six years from the end of the financial year in which the transaction took place and the proceedings initiated by the Assessing Officer were barred by limitation.(AY.2011-12)
Sravan Shipping Services (P.) Ltd. v. Dy. CIT (IT)(2021) 86 ITR 6 (SN)(Vishakha)(Trib.)

1994 **S. 206AA : Requirement to furnish Permanent Account Number – Applicability of provision whose income is below taxable income – Hardship or equity is not relevant in interpreting provisions relating to taxation – Order of single judge was quashed – Appeal of revenue is allowed [S.139A (1)(i) 197A, Art. 226]**
Single Judge while dealing with a challenge to constitutional validity of section 206AA read down section 206AA and held that it is inapplicable to persons whose income is below taxable limit. On appeal by the revenue the Court held that it is trite law that constitutional validity of provision has to be tested on grounds of legislative competence and violation of fundamental rights. Whether hardship or equity is not relevant in

interpreting provisions relating to taxation. Principle of reading down a provision can be applied for limited purpose of making a particular provision workable and to bring it in harmony with other provisions of statute and has to be used keeping in view scheme of Act and to fulfil its purposes. Court held that Single Judge had neither recorded a finding that parliament does not have legislative competence to enact section 206AA nor had recorded a finding that aforesaid provision was violative of fundamental rights, it could not have applied principle of reading down merely on basis of hardship or equity Therefore, conclusion recorded by Single Judge that section 206AA would not be applicable to persons whose income is below taxable limit could not be upheld. Order of single judge was quashed. Followed *Calcutta Guj. Society v. Calcutta Municipal Corporation (2003) 10 SCC 533.*
UOI v. A. Kowsalya Bai (Smt.) (2021) 280 Taxman 175 (Karn.)(HC)

S. 206AA : Requirement to furnish Permanent Account Number – Deduction at source – Short deduction of tax – Non provision of PAN – Section 206AA cannot override DTAA in case of payment made to non-resident [S.90, 195] 1995
The Tribunal relying on the decision of *Dy. DIT v. Serum Institute of India Ltd. [2015] 56 taxmann.com 1 (Pune) (Trib.), Dy. CIT v. Infosys BPO Ltd. [ITA No. 1333 (Bang.) of 2014, order dated 27-9-2019]* and the judgment of Hon'ble Delhi High Court in case of *Danisco India (P.) Ltd. v. UOI [2018] 90 taxmann.com 295/253 Taxman 500/404 ITR 539* held that provisions of Section 206AA of the Act does not override beneficial provisions of DTAA between India and Netherland. Thus, the Assessee was entitled to the benefit of the DTAA and had rightly deducted the tax @ 10% instead of 20% as per Section 206AA of the Income Tax Act, 1961. (AY. 2013-14)
Air India Ltd v. ITO (2021) 190 ITD 388 / 212 TTJ 109 / 201 DTR 257 (Delhi)(Trib.)

S. 206AA : Requirement to furnish Permanent Account Number – Double taxation agreement – Provision of 206AA does not override the provision of double taxation agreement – Tax deducted as per the provision of DTAA is held to be valid – DTAA-India-Czech Republic [S.90, Art. 12] 1996
Held that section 206AA does not override provision of section 90 hence TDS had been deducted rightly by applying tax rate prescribed under DTAAs and not as per section 206AA. (AY. 2014-15)
Jyoti Ltd. v. DCIT (2021) 188 ITD 890 (Ahd.)(Trib.)

S. 215 : Interest payable by assessee – Waiver of interest – Regular assessment means first order / original assessment – Delay not attributable to the assessee the interest is not leviable. [S. 139(8), 143(3), 144, 215(3), ITR, 1962, Rule 40(1)] 1997
The court held that for the AY. 1985 -86,in the regular assessment proceeding was completed on 28 th March 1988, and interest was u/s 215 of the Act. Since the interest u/s 215 was charged in the regular assessment the AO had the power to charge interest u/s 215 while carrying out the reassessment. The court held that if the delay in competition of assessment is not attributable to the assessee the interest can be waived under Rule 40(1) of the Income-tax Rules, 1962. (ITA No. 100 of 2002 dt 30-8-2001)(AY. 1985-86)
Bennett Coleman & Co. Ltd. v. Dy.CIT (2022) 441 ITR 25/ 211 DTR 227/ 325 CTR 545 (Bom.)(HC)

1998 **S. 220 : Collection and recovery – Assessee deemed in default – Adjustment of demand – Pendency of appeal before CIT(A) – Department is entitle to seek pre-deposit of only 20 per-cent of the disputed demand – Directed to refund the amount adjusted in excess of 20 percent of the disputed demand [S. 245, Art. 226]**

The appeal of the petitioner was pending before the CIT(A). The Assessing Officer recovered more than 20 per cent of the tax in dispute. The assessee filed writ and contended that the recovery of more than 20 per cent of tax in dispute is contrary to the office memorandum O.M. No. 404/ 72 /93 -ITCC dt. 29 th February 2016 (2016) 284 CTR 6 (St) as amended by the Office Memorandum No. 404/72 /93 -ITCC dt. 25 th August, 2017. Allowing the petition the Court directed the department to refund the amount adjusted in excess of 20 per cent of the disputed amount. (AY. 2015-16, 2016-17)

Skyline Engineering Contractors (India) (P) Ltd. Dy.CIT (2021) 206 DTR 60 / 322 CTR 745 (Delhi)(HC)

1999 **S. 220 : Collection and recovery – Assessee deemed in default – Waiver of interest – Rejection of application without giving an opportunity of hearing was held to be not justified – Matter remanded [S. 220(2A), Art. 226]**

Assessee filed an application for waiver of interest under section 220(2A) of the Act. Commissioner called for a report from the Assessing Officer and without giving an opportunity of hearing rejected the application. On writ single judge affirmed the order of the Commissioner. On appeal the division Bench held that, Commissioner considered report of Assessing Officer and rejected assessee's request without affording an opportunity of being heard under section 220(2A) of the Act. The order was set aside and remanded the matter to the Commissioner to decide the application for waiver within six weeks from the receipt of the order. (AY. 2016-17, 2017-18, 2018-19)

G. Soman v. ACIT (2021) 439 ITR 755 / 204 DTR 355 / 322 CTR 95 / 131 taxmann.com 170 (Ker.)(HC)

2000 **S. 220 : Collection and recovery – Assessee deemed in default – Interest – Waiver of interest – Non-Co-operation – Film actor – Cash system of accounting – Rejection of waiver application was held to be justified [S.143A, 220(2), 220(2A), Art. 226]**

Dismissing the petition the Court held that when as assessee seeks for waiver of interests the conduct of the assessee throughout the proceedings was vital for the purpose of claiming waiver of interest. The observations made in this regard established that consequent to the notice under section 153A dated March 9, 2011 calling for a return of income within 45 days of the receipt of the notice, the assessee had furnished the return only on July 15, 2011. Other incidents were also recorded to establish that the assessee had not cooperated for the completion of the proceedings. This being the factum established, the assessee had not established that all the three conditions stipulated in the provisions for the purpose of grant of waiver of interest were fulfilled. Contrarily, the reasons furnished in the order for rejection of application for waiver of interest were candid and convincing.(AY.2007-08, 2008-09) (SJ)

R. S. Suriya v. PCIT (2021) 437 ITR 582 (Mad.)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – Stay – Non-speaking order – Order set aside [S. 220(6), Art. 226] 2001

Allowing the petition the Court held that the Assessing Officer should consider all relevant factors having a bearing on demand raised and communicate his decision in form of a speaking order. Since Assessing Officer had passed a non-speaking order, the said order was set aside and remanded back to him. Matter was to be remanded back to him. (AY. 2015-16, 2016-17)

Queen Agencies v. ACIT (2021) 206 DTR 180 / 281 Taxman 147/ 322 CTR 808 (Mad.)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – Stay of demand – Order of Commissioner to pay 20 Per Cent of total demand in 8 instalments – Default in payment of revised instalments – Mere failure of the authorities to recover any amount could not be considered as financial stringency – Writ petition was dismissed [S. 220(3), Art. 226] 2002

Dismissing the petition the Court held that mere failure of the authorities to recover any amount could not be considered as financial stringency of the assessee. Therefore, the contention of the assessee that even a direction to pay the 1 per cent. of the demand raised by the Assessing Officer would cause undue hardship and irreparable loss to it and that the authorities had not been able to recover any part of the demand raised because of its financial stringency could not be accepted. The assessee had failed to comply either with order dated March 1, 2020 or the order dated February 3, 2021. The submission of the assessee that the Principal Commissioner ought to have granted absolute stay lacked bona fides since the Principal Commissioner had considered the request of the assessee and had granted time to make conditional payment in instalments commencing from February 10, 2021, beyond the period indicated by the assessee. The assessee had committed default in payment of the revised first instalment due on February 10, 2021. The order passed by the Principal Commissioner was in exercise of discretionary powers and there was no valid ground to interfere with his order.(AY. 2014-15)

Gorlas Infrastructure Pvt. Ltd. v. PCIT (2021) 435 ITR 243 / 204 DTR 428 T 322 CTR 195 (Telangana)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – Stay of demand – Order of Commissioner to pay 20 Per Cent of total demand in 8 instalments – Default in payment of revised instalments – Mere failure of the authorities to recover any amount could not be considered as financial stringency – Writ petition was dismissed [S. 220(3), Art. 226] 2003

Dismissing the petition the Court held that mere failure of the authorities to recover any amount could not be considered as financial stringency of the assessee. Therefore, the contention of the assessee that even a direction to pay the 1 per cent of the demand raised by the Assessing Officer would cause undue hardship and irreparable loss to it and that the authorities had not been able to recover any part of the demand raised because of its financial stringency could not be accepted. The assessee had failed to comply either with order dated March 1, 2020 or the order dated February 3, 2021. The submission of the assessee that the Principal Commissioner ought to have granted absolute stay lacked bona fides since the Principal Commissioner had considered the request of the assessee and had granted time to make conditional payment in

instalments commencing from February 10, 2021, beyond the period indicated by the assessee. The assessee had committed default in payment of the revised first instalment due on February 10, 2021. The order passed by the Principal Commissioner was in exercise of discretionary powers and there was no valid ground to interfere with his order.(AY. 2014-15)
Gorlas Infrastructure Pvt. Ltd. v. PCIT (2021) 435 ITR 243 / 204 DTR 428 (Telangana)(HC)

2004 **S. 220 : Collection and recovery – Assessee deemed in default – Pendency of appeal – Excess amount recovered – Assessing Officer restrained from recovering balance tax due till disposal of pending appeal [S. 220(6), 237, 244A, 245, Art. 226]**
Allowing the petition the Court held that the amount recovered from the assessee over and above the amount as per instructions, memoranda, circular towards demand of tax for the AY. 2013-14 pending in appeal would be returned to the assessee with interest and the refund of amounts over and above the amount as per circulars, instructions and guidelines issued by the Central Board of Direct Taxes may not be adjusted towards tax demand for the AY. 2013-14 till disposal of the appeal. Having regard to the instructions, circulars and memoranda issued from time to time, which were not disputed by the Department, it would be expedient that the Assessing Officer refrained from recovering tax dues demanded for the AY. 2013-14 and a restraint was called for.(AY. 2012-13 to 2019-20)
Vrinda Sharad Bal v. ITO (2021) 435 ITR 129 / 201 DTR 425 / 320 CTR 785 (Bom.)(HC)

2005 **S. 220 : Collection and recovery – Assessee deemed in default – Failure to grant credit for tax deducted at source – Directed the Commissioner to effect necessary correction / deletion of outstanding demand shown online with in four weeks from date of receipt of order. [Art. 226]**
In response to various recovery notices the furnished all necessary information to Assessing Officer requesting him to grant credit of TDS deposited and cancel demand raised. However, respondent authority neither gave credit nor stated any reason for not giving credit and issuing notices for recovery. The assessee filed writ petition and sought quashing of impugned recovery notices and direction to respondent to delete demand raised on account of short payment. Revenue submitted that outstanding demand in subject was under verification and correction/deletion of demand was under process and assessee had not been pressed to pay said demand, therefore, petition filed was premature, not correct and required to be quashed. High Court directed the Commissioner to effect necessary correction/deletion of outstanding demand shown online within a period of four weeks from date of receipt of this order. (AY. 2009-10)
Sharp Engineers v. ITO (2021) 280 Taxman 29 (Guj.)(HC)

2006 **S. 220 : Collection and recovery – Assessee deemed in default – Attachment of residential property, commercial property and five bank accounts – TRO was directed to lift attachment over commercial property and release said property to deposit amount of tax payable under resolution scheme – Direct Tax Vivad se Vishwas Act, 2020. [S. 222, Art. 226]**
Against outstanding demand of approx. 1 crore in respect of tax and penalty, TRO attached one residential property, one commercial property and five bank accounts of assessee. Assessee had made an application for release of attachment over commercial property

in order to pay amount of tax to Income - tax department in case of company in which assessee was a director as said company had applied under Direct Tax Vivad se Vishwas Act, 2020. However the revenue has not accepted the request. Writ petition was filed before the High Court. Allowing the petition the Court held that the value of residential property alone was approx. 3 crores which would be sufficient to clear outstanding demand raised against assessee and if attachment over commercial property would be lifted in order to pay outstanding demand to department, there would not be any prejudice to department as it would be fully secured by continuing attachment over residential property and five bank accounts. Therefore in order to achieve real purpose of resolution scheme and in interest of justice, TRO would be directed to lift attachment over commercial property and release said property to deposit amount of tax payable under resolution scheme.
Amitkumar Mathurdas Kaneria v. TRO (2021) 280 Taxman 272 (Guj.)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – Attachment of residential property, commercial property and five bank accounts – TRO was directed to lift attachment over commercial property and release said property to deposit amount of tax payable under resolution scheme – Direct Tax Vivad se Vishwas Act, 2020. [S. 222, Art. 226] 2007

Against outstanding demand of approx. 1 crore in respect of tax and penalty, TRO attached one residential property, one commercial property and five bank accounts of assessee. Assessee had made an application for release of attachment over commercial property in order to pay amount of tax to Income - tax department in case of company in which assessee was a director as said company had applied under Direct Tax Vivad se Vishwas Act, 2020. However the revenue has not accepted the request. Writ petition was filed before the High Court. Allowing the petition the Court held that the value of residential property alone was approx. 3 crores which would be sufficient to clear outstanding demand raised against assessee and if attachment over commercial property would be lifted in order to pay outstanding demand to department, there would not be any prejudice to department as it would be fully secured by continuing attachment over residential property and five bank accounts. Therefore in order to achieve real purpose of resolution scheme and in interest of justice, TRO would be directed to lift attachment over commercial property and release said property to deposit amount of tax payable under resolution scheme.
Amitkumar Mathurdas Kaneria v. TRO (2021) 280 Taxman 272 (Guj.)(HC)

S. 220 : Collection and recovery – Assessee deemed in default – Stay of demand – Pendency of appeal – Failure to appear cross examination – Demand is kept in abeyance [S.69A, 220(6), Art. 226] 2008

During pendency of said appeal, assessee filed an application under section 220(6) for stay of demand before ITO who granted same subject to payment of 20 per cent of outstanding demand. The assessee filed writ petition ND contended that total demand was to be kept in abeyance till disposal of appeal by Commissioner (Appeals) as the Assessing Officer made the addition on the basis of third party and he failed to appear for cross examination and also due to financial hardship. Allowing the petition the Court held that on facts, entire demand was to be kept in abeyance till disposal of appeal on merits by Commissioner (Appeals). (AY 2012-13)
Dilipkumar P. Chheda v. ITO (2021) 435 ITR 101/ 202 DTR 33 / 278 Taxman 106 (Bom.) (HC)

2009 **S. 220 : Collection and recovery – Assessee deemed in default – Stay – Pendency of appeal before CIT (A) – Entire demand was kept in abeyance till the disposal of appeal on merits by CIT (A) [S. 147, 156, 220(6), Art. 226]**

The assessment was reopened and huge demand was raised. The assessee preferred an appeal before the CIT (A) and made an application before the Assessing Officer to stay of demand till the disposal of appeal. The Assessing Officer rejected the stay application and directed to pay 20% of tax in dispute. Aggrieved by the order of the Assessing Officer the assessee filed writ petition before high Court. Allowing the petition the Court held that the revenue ought to have considered the case prima facie balance of the petitioner. Accordingly directed the revenue to keep the demand in abeyance till the disposal of appeal and directed the CIT (A) to dispose the appeal with in a period of four months from the date of receipt of an authenticated copy of the order and till the disposal of appeal within the said period, notice of demand was kept in abeyance. (WP No. 812 of 2020 dt 12-3-2020) (AY. 2012-13)

Mayur Kanjibhai Shah v. ITO (2021) BCAJ – April – P. 66 (Bom.)(HC)

2010 **S. 220 : Collection and recovery – Assessee deemed in default – Stay – Mere grant of stay of demand the assessee cannot be absolved from mandatory levy of interest. [S.220(2)]**

Dismissing the appeal of the revenue the Court held that it is well settled law that mere grant of stay does not prevent running of interest. Therefore, interest under section 220(2) was chargeable upon assessee even during period of stay of demand granted by Assessing Officer as interest is mandatorily leviable under section 220(2). (AY. 2007-08)

CIT v. Canara Bank (2021) 277 Taxman 414 (Karn.)(HC)

2011 **S. 220 : Collection and recovery – Assessee deemed in default – Waiver of interest – All three conditions to be satisfied cumulatively – Order rejection of waiver is held to be justified [S. 132, 153A, 153C, 220(2A), 234A, 234B, 234C, Art.226]**

The assessee's applications for waiver of interest before the Commissioner were rejected. On a writ dismissing the petition the Court held that none of the conditions as enumerated in section 220(2A) had been complied with by the assessee enabling him to seek waiver of interest. No substantial material was placed on record with the applications seeking waiver of interest or in this court for countering the observation of the Commissioner regarding the income from other sources. The orders under challenge were not vitiated nor was there gross error apparent on the face of record, much less, erroneous or without application of mind. The tax with interest was paid in the years 2018 and 2019 though the assessments were completed way back in the year 2018. Sections 234A, 234B and 234C deal with charging of interest for default of furnishing return of income, payment of advance tax and interest on the deferment of the advance tax. The aforementioned proceedings had not been disputed by the assessee except the modification in the appeal preferred, against the assessment orders. The demand of interest raised by the Department was in accordance with the statutory provisions of the Act, which the assessee had failed to countenance with any direct and cogent evidence, except bald and vague plea of hardships. From the cumulative reading of the contents of the applications it was revealed that the applications were filed just to avail

of the remedy as provided under the Act, whereas the conditions enumerated therein were mutually to be complied with and not exclusively under section 220(2A). (AY. 1999-2000, 2001-02 to 2007-08)
G. Soman v. ACIT (2021) 431 ITR 369 / 198 DTR 340 / 320 CTR 556 / 278 Taxman 135 (Ker.)(HC)

S. 221 : Collection and recovery – Penalty – Tax in default – Mistake in specifying Assessment year for which penalty was levied – Not curable defects – Levy of penalty s held to be bad in law [S 292B] 2012
Allowing the appeal the Court held the assessee had committed a default in respect of the assessment year 2007-08 and did not pay the tax on account of financial hardship. However, the authorities under the Act had taken into account the facts in respect of the assessment year 2007-08 and had held the assessee to be in default in respect of the assessment year 2008-09 and had levied the penalty under section 221 of the Act in respect of the assessment year 2008-09. The mistake could not be condoned under section 292B of the Act under which only clerical error or accidental omissions can be protected. The order of penalty was not valid.(AY.2008-09)
SSS Projects Ltd. v. Dy. CIT (2021) 432 ITR 201 (Karn.)(HC)

S. 222 : Collection and recovery – Certificate to Tax Recovery Officer – Auction – Cash deposited was treated as unexplained investment – Amount forfeited to government account – Only in case of reauction is successful the assessee would get the benefit of sale proceeds. [Second Schedule, R. 57, 58, Art. 226] 2013
Court held that as per rules 57 and 58 of second Schedule, if auction purchaser did not pay balance amount of instalment and auction fails, then property is required to be resold for recovery of tax and amount already paid is to be forfeited to Government and not credited to assessee as, in case, reauction is successful then assessee would have benefit of sale proceeds. Appeal was dismissed.
Ashwani Kumar v. ITO (2021) 282 Taxman 470 (P & H)(HC)

S. 225 : Collection and recovery – Stay of proceedings – Requirement to pay 20 Per Cent of disputed demand – Non-Speaking order – High-pitched assessment – Matter remanded to Principal Commissioner. [Art. 226] 2014
Court held, that the Principal Commissioner's order was a non-speaking order without considering either the question of high-pitched assessment or genuine hardship to the assessee and it was incumbent upon him to decide on the application for stay considering those two questions. The order dated February 26, 2020 was quashed on this limited ground and the assessee should be heard afresh on the merits of its application for stay and exemption from deposit of the minimum of 20 per cent. of the demand. The assessee's application for stay was restored for reconsideration in accordance with the decision in *Flipkart India (P) Ltd. v. ACIT (2017) 396 ITR 551 (Karn.)(HC)* Instruction No. 1914 and the subsequent Official Memorandum/Circular dated February 29, 2016.
Shri Jihveshwar Urban Co-Op. Credit Society Ltd. v. PCIT (2021) 430 ITR 90 (Karn.)(HC)

2015 **S. 226 : Collection and recovery – Modes of recovery – Appeal pending before CIT (A) – Deposited 20 % of tax in dispute – Stay was granted till the disposal of appeal by CIT (A) [S. 225, Art. 226]**

On writ against the issue of notice to the bank of the assessee the Court held that there was absolutely no justification for the Respondents to recover the amount of Rs.13,77,638/- from the Petitioner by issuance of the impugned notice to the Karnataka Bank. The record indicates that the Respondents had, with themselves, an amount of Rs.5.32 lakhs which corresponds to more than 20% of the demanded amount for the Assessment Year 2017-18. At the highest, the Respondents could have inquired with the Petitioner as to whether this amount could be adjusted since the Petitioner had already informed the Department about the filing of the Appeal. Stay was granted till disposal of appeal by the CIT (A). (AY. 2014-15)

Siolim Urban Co-op Credit Society Ltd. v. CIT (2021) 198 DTT 228 / 319 CTR 213 (Goa) (Bom.)(HC)

2016 **S. 226 : Collection and recovery – Modes of recovery – Stay of recovery – Pendency of appeal before CIT(A) – Alternative remedy – Directed to approach the Assessing Officer for stay – Writ is not maintainable [S. 220(6), 246, 246A, Art. 226]**

The assessee filed an appeal before the CIT(A) which was pending for final disposal. For stay of recovery the assesee filed writ before the High Court. Dismissing the petition the Court held that the assessee could approach the Assessing Officer under section 220(6) of the Act. Merely because of some apprehensions in the minds of the assessee, it cannot be stated that the Assessing Officer would not decide the issue in the proper perspective. The Assessee directed to file application under section 220(6) of the Act. (AY.2018-19)

Aiman Education and Welfare Society v. NFAC (2021) 439 ITR 651 / (2022) 284 Taxman 62 (Mad.)(HC)

2017 **S. 226 : Collection and recovery – Garnishee proceedings – Criminal proceedings against assessee with reference to particular amount – Money in excess in Bank can be adjusted towards tax dues of assessee. [S. 226(4), Code of Criminal Procedure code, 1973, S. 451, 457, Indian Penal Code 1860, S 120B, 420, Art. 226]**

The petition was filed before the Court to transfer money in excess in Bank which can be adjusted towards tax due of the assessee. Court held that according to the status report filed by the Bureau, the amounts transferred by the Russian company to the assessee in the London account, in relation to the transaction totalled to a sum of USD 2,15,71,843.90. However, the amount which was frozen and received in India was beyond the amount in relation to transaction with the Russian company. The amount received in excess of the amount received from the Russian company by the assessee qua the transaction could not be prima facie termed as case property or the proceeds of the crime liable to be confiscated or for compensation in case the assessee were charged and convicted. Consequently the Special Judge was to retain the amount received in lieu of the frozen amount of USD 2,15,71,843.90 along with the interest accrued thereon

from the date of receipt till date and transfer the balance amount along with the interest accrued thereon received in the account to the Income-tax Department.
Ravina and Associates Pvt Ltd. v. Central Bureau of Investigation (2021) 439 ITR 667 / 208 DTR 25/ 323 CTR 908 (Delhi)(HC)

S. 226 : Collection and recovery – Modes of recovery – Stay – Deposit of portion of demand need not be insisted [S. 220(6), Art. 226] 2018
When the appeal was pending before CIT (A) the asseee was directed to pay 20 percent of total demand. On writ single judge reduced the payment to 10 per cent. On appeal the division bench directed the Department to keep in abeyance, the recovery proceedings under section 226 and collection of the tax assessed, pending disposal of the appeals before the Commissioner (Appeals). The order of the single judge limiting the payment to an amount of 10 per cent. of the demand, till the disposal of the appeals was set aside.(AY. 2016-17)
Angadippuram Service Co-Operative Bank Ltd. v. CIT (Appeals) (2021) 437 ITR 78/ 323 CTR 231 (Ker.)(HC)
Editorial: Single judge order, Kodur Service Co-Operative Bank Limited, Pattikkad Service Co-Op. Bank Limited v. CIT(A)(2021) 437 ITR 76 / 323 CTR 233 (Ker.)(HC) Angadipuram Service Co-Operative Bank Ltd. v. CIT(A)(2021)437 ITR 76 (Ker.)(HC) Kadannamanna Service Co-Operative Bank Limited v CIT(Appeals)(2021)437 ITR 76 (Ker)(HC)

S. 226 : Collection and recovery – Modes of recovery – Pendency of appeal – Stay was granted till disposal of appeal pendency of appeal [S. 246A, Art. 226] 2019
On a writ High Court directed the Department to keep in abeyance the recovery proceedings and collection of tax assessed, pending disposal of such appeals.
Electricity Board Employees Co-Operative Society Ltd. v. ITO (2021) 437 ITR 272 (Ker.) (HC)

S. 226 : Collection and recovery – Modes of recovery – Appeal pending before CIT (A) – Deduction – Co-operative Society – Recovery proceeding was stayed till the outcome of pendency of appeal [S.80P, 246A, Art. 226] 2020
During pendency of those appeals, the Assessing Officer required the assessees to pay 20 per cent of the demand and then apply for stay of demand. On writ allowing the petitions, that the recovery proceedings under section 226 pursuant to the assessment orders were to be kept in abeyance till disposal of the pending appeals filed by the assessees under section 246A before the Commissioner (Appeals).
Poothrikka Service Co-Operative Bank Ltd v. ITO (2021) 437 ITR 273 (Ker.)(HC)
Vadavucode Farmers Service Co-Operative Bank Ltd. v. ITO (2021) 437 ITR 273 (Ker.)(HC)
Mamala Service Co-Operative Bank Ltd. v. ITO (2021) 437 ITR 273 (Ker.)(HC)

2021 **S. 226 : Collection and recovery – Modes of recovery – Attachment by income tax department – Priority of debts – Mortgaged property – Secured creditors – Income-Tax Department does not have priority of Income-tax dues – Secured creditors have priority over Income – Tax Department – The order of attachment was held to be not valid. [Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 13(2), 13(4), Art. 226]**

Court held that the charge of a secured creditor would have priority over Government dues under the Income-tax Act, 1961. There is no provision in the Income-tax Act which provides for any paramountcy of the dues of the Income-tax Department over secured debt. The Revenue could not come in the way of the petitioner's rights as secured creditor. The order of attachment was not valid.

Edelweiss Asset Reconstruction Co. Ltd. v. Tax Recovery Officer (2021) 438 ITR 568 / 205 DTR 1/ 322 CTR 137 (Bom.)(HC)

2022 **S. 226 : Collection and recovery – Modes of recovery – Appeal effect to orders – direction was issued to cancel the demands and also issue refunds with interest. [S. 244A, 271(1), Art. 226]**

The assessee filed writ petition seeking directions to the Principal Commissioner to pass orders to implement the orders of the Commissioner (Appeals) and the Tribunal for the assessment years 1995-96, 2005-06, 2006-07 and 2008-09 and cancel the demands and also for refund for the assessment year 2003-04 together with statutory interest under section 244A of the Income-tax Act, 1961 as the penalty imposed under section 271(1)(c) had been quashed by the Tribunal. High Court directed respondent No. 2 to decide the applications and letters by way of a reasoned order after giving an opportunity of hearing to the assessee. (AY.1995-96, 2003-04, 2005-06, 2006-07 and 2008-09)

Silicon Graphics Systems (India) Pvt. Ltd. v. PCIT (2021) 438 ITR 397 (Delhi)(HC)

2023 **S. 226 : Collection and recovery – Modes of recovery – Garnishee notice – Aggrieved person – Tax payable by defaulter – Person who has received the garnishee notice is not aggrieved person – He cannot challenge the notice he has to comply the notice by depositing dues of defaulter to income-tax department [Art. 226]**

Petitioner challenged the notice issued under section 226 of the Act. Dismissing the petition the Court held that the petitioner could not be construed as an aggrieved person, and he had to comply with the notice by depositing income tax dues of defaulter to department. (AY. 2015-16)

Kavin Kumar Kandaswamy v. CCIT (2021) 282 Taxman 163 (Mad.)(HC)

2024 **S. 226 : Collection and recovery – Modes of recovery – Attachment of property – Sale proclamation – Appeals pending before appellate authorities – Stay was granted by paying 15 Per Cent of demand and expenses incurred by Department for newspaper notifications- Proceedings was kept abeyance for a period of five months. [Art, 226]**

The petitioner filed writ against attachment and sale proclamation. The Court recording the undertakings of the petitioner to pay 15 per cent of the demand within four weeks and to pay the cost incurred for publication in newspapers by the Department so far and his further undertaking to pay a sum of Rs. 50,000 within seven days the court

directed the Department to keep all proceedings in abeyance for a period five months. (AY.2011-12, 2012-13)(SJ)
K. S. Santhosh Kumar v. ITO (2021) 432 ITR 209 (Mad.)(HC)

S. 226 : Collection and recovery – Modes of recovery – Attachment of Bank account – Alternate remedy – Writ petition is dismissed [S.156, 226(3), Art. 226] 2025
sDemand notice was issued against the assessee. As the tax was not deposited a notice was issued under sub-section (3) of section 226 for attachment of the bank account. On writ the court held that the facts adverted to by the Department were not contradicted and therefore, the relief sought for quashing of the bank account attachment notice was rendered infructuous. Since the assessee had already availed of the remedy of statutory appeal against the assessment order, no interference in the writ petition under article 226 of the Constitution of India was called for merely on the contention that there were over 600 appeals pending and that for non-availability of the appellate authority there was no likelihood of early hearing.(AY.2017-18)
Shriram Adarsh Shiksha Samiti v. ITO (2021) 430 ITR 205 (MP)(HC)

S. 234A : Interest – Default in furnishing return of income – Search and seizure – the interest u/s. 234B is to be levied only on the additional tax levied on the enhanced income determined u/s. 153A, r.w.s.143 of the Act [S. 143(3), 153A, 234B] 2026
With regard to levy of interest u/s.234A and 234B of the Act, the Tribunal held that interest u/s. 234A is chargeable from the date of expiry of the Notice period given u/s. 153A of the Act to the date of completing the assessment u/s. 153A r.w.s. 143(3) of the Act u/s. 139 of the Act. It further held that the interest u/s. 234B is to be levied only on the additional tax levied on the enhanced income determined u/s. 153A, r.w.s.143 of the Act and therefore the period of charge should be from the date of determination of income u/s. 143(3) r.w.s. 153A to the determination of increased total income u/s. 153A, r.w.s. 143(3) of the Act. (AY. 2013-14, 2014-15, 2016-17)
Ahmed Shareef v. Dy. CIT (2021) 189 ITD 522 (Bang.)(Trib.)

S. 234B : Interest – Advance tax – Tax deductible at source – Amount received without deduction of tax at source – Interest on short fall not leviable for assessment prior to financial year 2012-13 – Proviso introduced with effect from 1-4-2012. [S.191, 209(1)(d)] 2027
The proviso to section 209(1)(d) inserted by the Finance Act, 2012 (with effect from April 1, 2012 and applicable to cases of advance tax payable in the financial year 2012-13 and thereafter) makes it clear that the assessee cannot reduce the amounts of Income-tax on sums paid to it by the payer without deduction of tax at source, while computing its liability for advance tax. The proviso is in the nature of an exception to section 209(1)(d), as an assessee, who has received any income without deduction or collection of tax at source, is made liable to pay advance tax in respect of such income. The liability for payment of interest as provided in section 234B is for default in payment of advance tax. While the definition of "assessed tax" under section 234B pertains to tax deducted or collected at source, the preconditions of section 234B, viz., liability to pay advance tax and non-payment or short payment of such tax, have to be satisfied, after which interest can be levied taking into account the assessed tax. Therefore, section

209 of the Act which relates to the computation of advance tax payable by the assessee cannot be ignored while construing the contents of section 234B and section 234B cannot be read in isolation without reference to the other provisions of Chapter XVII. There are provisions in the Act enabling the Revenue to proceed against the payer who has defaulted in deducting tax at source. (AY. 1988-89 to 2008-09)
(Editorial note Decision in *DIT v. Jacabs Civil Incorporated (2011) 330 ITR 578 (Delhi) (HC),* affirmed) Decision in DIT (IT) v. Alcatel Lucent.U.S.A. Inc (2014) 2 ITR-OL 276) Delhi)(HC), reversed.)
DIT v. Mitsubishi Corporation (2021) 438 ITR 174 / 205 DTR 465 / 322 CTR 569/ 283 Taxman 273 (SC)
DIT v. Mastercard International Inc (2021) 438 ITR 174/ 205 DTR 465/ 322 CTR 569/ 283 Taxman 273 (SC)
CIT v. Western Atlas International Inc. (2021) 438 ITR 174/ 205 DTR 465/ 322 CTR 569/ 283 Taxman 273 (SC)
CIT v. Mastercard International Inc (2021) 438 ITR 174/ 205 DTR 465/ 322 CTR 569/ 283 Taxman 273 (SC)
CIT v. Sahara India Mutual Benefit Co.Ltd (2021) 438 ITR 174/ 205 DTR 465/ 322 CTR 569/ 283 Taxman 273 (SC)
DIT (IT) v. Calyon Bank (2021) 438 ITR 174/ 205 DTR 465/ 322 CTR 569/ 283 Taxman 273 (SC)
DIT (IT) v. De Beers UK Ltd (2021) 438 ITR 174/ 205 DTR 465/ 322 CTR 569/ 283 Taxman 273 (SC)
CIT (IT) v. National Petroleum Construction Co (2021) 438 ITR 174/ 205 DTR 465/ 322 CTR 569/ 283 Taxman 273 (SC)
CIT (IT) v. Fox Networks Group Asia Pacific Ltd (2021) 438 ITR 174/ 205 DTR 465/ 322 CTR 569/ 283 Taxman 273 (SC)
CIT (IT) v. Helix Energy Solutions Group Inc (2021) 438 ITR 174/ 205 DTR 465/ 322 CTR 569/ 283 Taxman 273 (SC)
Alcatel -Lucent Italia SPA v. ADIT (2021) 438 ITR 174/ 205 DTR 465/ 322 CTR 569/ 283 Taxman 273 (SC)
Alcatel -Lucent France v. ADIT (2021) 438 ITR 174/ 205 DTR 465/ 322 CTR 569/ 283 Taxman 273 (SC)
Alcatel -Lucent USA Inc v. ADIT (2021) 438 ITR 174/ 205 DTR 465/ 322 CTR 569/ 283 Taxman 273 (SC)
Alcatel -Lucent Enterprise v. ADIT (2021) 438 ITR 174/ 205 DTR 465/ 322 CTR 569/ 283 Taxman 273 (SC)
Alcatel -Lucent Deutschland AG v. ADIT (2021) 438 ITR 174/ 205 DTR 465/ 322 CTR 569/ 283 Taxman 273 (SC)
Alcatel Canada Inc v. ADIT (2021) 438 ITR 174/ 205 DTR 465/ 322 CTR 569/ 283 Taxman 273 (SC)
Alcatel Lucent World Services Inc v. DIT (IT) (2021)438 ITR 174/ 205 DTR 465/ 322 CTR 569/ 283 Taxman 273 (SC)

S. 234B : Interest – Advance tax – Tax deducted at source – Non-resident – Payer deducted tax at source – Levy of interest is held to be not justified. 2028

Dismissing the appeal of the revenue the Court payer, who was required to make payments to assessee-non-resident, had deducted tax at source, question of payment of advance tax by assessee (payee) would not arise and, therefore, it would not be permissible for revenue to levy interest under section 234B upon assessee. Followed *DIT(IT) v. Texas Instruments Incorporated (2020) 275 Taxman 614 (Ker.)(HC)*(AY. 2011-12)

CIT v. IBM Singapore (P) Ltd. (2021) 131 taxmann.com 189 (Karn.)(HC)

Editorial : Notice issued in SLP filed by the revenue against High Court order, CIT v. IBM Singapore (P) Ltd. (2021) 283 Taxman 288 (SC)

S. 234B : Interest – Advance tax – Non-Resident – Entire tax was deductible at source – Not permissible to charge interest. [S. 9(1)(1)] 2029

Dismissing the appeal of the revenue the Court held that assessee being a non-resident company, entire tax was to be deducted at source on payments made by payer to it and there was no question of payment of advance tax, hence it would not be permissible for revenue to charge any interest under section 234B of the Act. (AY. 2013-14)

CIT (IT) v. ZTE Corporation (2021) 130 taxmann.com 128)Delhi)(HC)

Editorial : SLP of revenue dismissed, CIT (IT) v. ZTE Corporation (2021) 282 Taxman 304 (SC)

S. 234B : Interest – Advance tax – Non-resident – Entire tax was to be deducted at source – Not liable to charge any interest. 2030

Dismissing the appeal of the revenue the Court held that, the assessee being non -resident and entire tax was to be deducted at source. The assessee is not liable to charge any interest. Followed *DIT (IT) v. GE Pakaged Power Inc. (2015) 373 ITR 65 (Delhi))HC).* (AY 2009-10)

CIT(IT) v. SMS Mavac UK Ltd. (2021) 129 taxmann.com 91 (Delhi)(HC)

Editorial : SLP is granted to the revenue; CIT(IT) v. SMS Mavac UK Ltd. (2021) 281 Taxman 364 (SC)

S. 234B : Interest – Advance tax – Non-Resident – No advance tax payable – Interest not leviable up to assessment year 2012-13 – Interest could be levied from assessment year 2013-14 onwards [S. 209(1)(d)] 2031

Tribunal held t hat the amendment to the provisions brought with effect from April 1, 2012 by the proviso below section 209(1)(d) of the Act was applicable from the assessment year 2013-14. The Assessing Officer was not to charge interest under section 234B of the Act up to the assessment year 2012-13. Interest could be levied in accordance with the provisions of law from the assessment year 2013-14 onwards. (AY.2009-10 to 2016-17)

Huawei Technologies Co. Ltd. v. Add.DIT (IT)(2021) 85 ITR 170 / 187 ITD 782 (Delhi)(Trib.)

S. 234B : Interest – Advance tax – Book profits – Capital gains before close of financial year – Directed to recompute interest [S.115JB, 234C] 2032

Tribunal held that as the assessee had earned capital gains on March 30, 2012, that is, before the close of the year, interest was chargeable under section 234B, which arose

only at the close of the financial year. The Assessing Officer was directed to recompute the interest chargeable under sections 234C and 234B. (AY.2012-13)
Shipra Estate Ltd. v. ACIT (2021) 86 ITR 245 (Delhi)(Trib.)

2033 **S. 234C : Interest – Deferment of advance tax – No default on the part of the assessee in payment of advance tax as per returned income – Levy of interest is not justified.**
The Hon'ble Tribunal held that Interest u/s. 234C is leviable on default in payment of advance tax instalment on returned income, but in the present case it is done on assessed income. Thus, when there is no default on the part of the assessee in payment of advance tax as per returned income, such interest levied is not justified. (AY. 2013-14)
Sumitomo Corporation v. DCIT(IT) (2021) 213 TTJ 137 (Delhi)(Trib.)

2034 **S. 234D : Interest on excess refund – Order of Assessment on 31-3-2006 – Reassessment order on 26-12-2008 – Interest could not be levied. [S. 2(40), 143(3), 147, 153A]**
Dismissing the appeal the Court held that the assessment order dated December 26, 2008 under section 143(3) read with section 147 was not the first assessment, as the assessment was made under section 143(3) dated March 31, 2004, which fact was not disputed. Since the assessment framed under section 143(3) read with section 147 dated December 26, 2008, was not the assessment made for the first time, it could not be regarded as a "regular assessment" for the purposes of section 234D and therefore, no interest could be levied on the assessee.(AY. 2001-02)
CIT v. United India Insurance Co. Ltd. (2021) 438 ITR 301 / (2022) 284 Taxman 598 (Mad.)(HC)

2035 **S. 234D : Interest on excess refund – Provision applicable only from 1-6-2003.**
Court held that the provision for imposition of interest is a substantive provision. It is settled law that in the absence of any express words used in the provision making levy of interest retrospective, it can only be prospective, i. e., from the date on which it came into force. A reading of the provisions of section 234D of the Income-tax Act, 1961, makes it clear that there is no indication in the language employed in the entire section that Parliament intended to make this levy of tax on excess refund retrospectively. On the contrary, after inserting this provision in the Act, it is specifically stated that it comes into effect from June 1, 2003..(AY. 2000-01 to 2002-03)
CIT v. S. R. A. Systems Ltd. (2021) 431 ITR 294 / 199 DTR 57 / 320 CTR 511 / 280 Taxman 164 (Mad.)(HC)

2036 **S. 234E : Fee-Default in furnishing the statements – Tax deducted tax at source and deposited same on 18-5-2015 i.e. prior to amendment to section 200A(1) on 1-6-2015 – Statement of TDS was filed on 23-6-2016 – late fees could not be as default was prior to amendment. [S. 195, 200A(1)]**
Assessee deducted tax at source under section 195 and assessee deposited same on 18-5-2015 i.e., prior to amendment to section 200A(1), wherein clause (c) was inserted with effect from 1-6-2015 – Statement of TDS, was filed on 23-6-2016. Assessing Officer levied Late fee for delayed filing of TDS statement. CIT (A) affirmed the order of the Assessing Officer. Allowing the appeal the Tribunal held that since default was prior to

impugned amendment, there was no merit in charging late fee under section 234E since impugned amendment was prospective in nature. (AY. 2013-14 to 2015-16)
Franchise India Brands Ltd. v. CPC-TDS (2021) 186 ITD 338 (Delhi)(Trib.)

S.234E : Fee – Default in furnishing the statements – Prior to 1-6-2015 – No fee can be levied [S.200A] 2037
Tribunal held that no fee can be levied under section 234E in terms of section 200A where date of filing of TDS statement and date of intimation are much prior to 1-6-2015. (AY. 2014-15)
Govt. Girls Sr. Secondary School v. ACIT (2021) 186 ITD 24 (Delhi)(Trib.)

S.234E : Fee – Default in furnishing the statements – Delay in filing TDS statement up to 1 June 2015 would not attract fee under section 234E since amendment to section 200A of the Act enabling the AO to make adjustment on account of late filing fee while processing TDS return is prospectively effective from 1 June 2015. However, in case the delay is continuing from prior to 1 June 2015, fees shall be leviable from 1 June 2015 up to the date of filing the TDS return. [S. 200A] 2038
Tribunal held that in the present case, the quarterly TDS return for the fourth quarter of FY 2014-15 was belatedly filed by the assessee on 27.06.2015 and subsequently processed on 30.06.2015 i.e. both filing and process of return happened after the amendment was brought in the statute. However, since the delay is continuous and extends beyond 1 June 2015, the delay from the period 1 June 2015 up to the date of the TDS Return i.e. 27 June 2015 will attract the levy of fees u/s 234E of the Act while there shall be no levy of fees for the period prior to 1 June 2015.
Vkare Bio Sciences Pvt. Ltd. v. DCIT(TDS), (2021) 213 TTJ 889 / 206 DTR 257 (Delhi)(Trib.)

S. 237 : Refunds – Commercial establishment – Appeal was decided in favour – Directed to refund the amount with interest with in four weeks – If there are no provision for payment of interest then the interest shall became payable at 12 % p.a. on the amount due after expiry of four weeks. [Wealth-tax Act, 1957, S. 2(ea)(i), 34A, Art. 226] 2039
The petitioner owned commercial properties and had given on leave and licence basis. The AO held that the commercial properties are liable to wealth tax. On appeal the CIT (A) has held that the assessee was not liable for wealth tax. When the appeal was pending the assessee has paid the wealth tax as per the Assessment order. The request for the refund of tax paid was not entertained. The Assessee filed the writ petition for not granting of refund. The Court held that the Appellate Authority rightly held that the AO's finding that the commercial properties should be used by assessee in his own business otherwise would form a part of the total wealth of assessee was erroneous. The exemption under section 2(ea)(i)(5), is to any property in the nature of commercial establishments or complexes and it does not provide anywhere that such commercial properties should be used by assessee for his own purpose. As the asseesse's appeal for the assessment year 2005 -06 having been decided in favour of assessee rejection of refund for the Assessment years 2006-07 to 2009-10 was not sustainable. The Court directed to refund the amount with interest with in four weeks. If there are no provision

for payment of interest then the interest shall became payable at 12 % p.a. on the amount due after expiry of four weeks. (AY. 2006-07, 2007-08, 2008-09, 2009-10)
Mohandas Isardas Chatlani v. ITO (2021) 439 ITR 577 / 205 DTR 102/ 322 CTR 365 (Bom.)(HC)

2040 **S. 237 : Refunds – Refund was erroneously refunded to another company – Notice was issued to the department [Art. 226]**
The revenue has refunded the amount to CLC Industries Ltd instead issuing the refund in the name of CLC & Sons. On writ the notice was issued to the department. The matter was listed for hearing on 8-4-2021.
CLC & Sons (P) Ltd v. Dy. CIT (2021) 281 Taxman 17 (Delhi)(HC)

2041 **S. 237 : Refunds – Additions were deleted in appeal – Refund not granted – Notice is issued to the revenue [Art. 226]**
Assessee filed petition seeking refund of tax along with up-to-date interest on assertion that although assessee had succeeded both, in quantum appeal, as well as the penalty proceedings, amount had not been refunded. Notice issued to revenue and matter to be listed on 21-05-2021. (AY. 2009-10)
Make My Trip -India-(P.) Ltd. v. Dy. CIT (2021) 280 Taxman 142 (Delhi)(HC)

2042 **S. 237 : Refunds – Computation of amount of tax refund – Alternative remedy – Writ is not maintainable [Art.226]**
Dismissing the writ petition the Court held that a dispute regarding computation of amount of tax refund generated by department, assessee was to be directed to avail statutory remedy available in law. (AY 2011-12)
Sarita Puri v. PCIT (2021) 278 Taxman 373 (Delhi)(HC)

2043 **S. 237 : Refunds – Excess deposit of advance tax – Mistake in the preparation of challan – Refund can be claimed only after due course of law. [Art. 226]**
Dismissing the petition the Court held that, it was not the case of the assessee that excess amount deposited towards advance tax was illegally collected by the department as would entitle her for the refund of the same without following the due process prescribed under Chapter XIX of the Act of 1961 read with Rule 41 of the Rues of 1962. Accordingly the petition was dismissed. (WP.No. 17791 / 2020 dt 17-12-2020)
Seema Jain (Smt) v. PCIT (2021) The Chamber' s Journal – February – P. 170 (MP)(HC)

2044 **S. 239 : Refunds – Limitation –Advance tax – Excess advance tax deposited for the assessment year 2000-1 – Refund claim was made in the year 2021 – Stale claim – Rejection of claim is held to be justified. [Art. 226]**
Dismissing the petition the court held that the assessee could not seek refund of excess advance tax deposited by it for assessment year 2000-01 in year 2021 as it was a stale claim. (AY. 2000-01)
Harbux Singh Sidhu v. Dept. of Income tax (2021) 282 Taxman 118 / 204 DTR 193/ 321 CTR 709 (Delhi)(HC)
Editorial : SLP of assessee dismissed, Harbux Singh Sidhu v. Dept. of Income tax)2022) 443 ITR 1 (St)(SC)

S. 239 : Refunds – Limitation – Advance tax paid – Excess amount paid – Not entitle to refund of the amount before completion of previous year. [S. 119(2)(b), Rule 41, Art. 226] 2045

Assessee paid more advance tax than required. Realising mistake filed an application before Principal Chief Commissioner for refund of excess amount of tax immediately claiming that money was required for solemnizing marriage of her daughter. The application was rejected. Assessee has filed writ against rejection of application. Rejecting the application the Court held that as per provisions contained under section 239 read with rule 41(2) claim for refund could be made only on completion of previous year which in instant case would be after 31-3-2021. Since excess amount of advance tax deposited by assessee was not illegally collected by revenue, assessee would not be entitled to refund of same without following due procedure prescribed under rule 41. (AY 2021-22)

Seema Jain v. PCIT (2021) 278 Taxman 48 / 201 DTR 124 / 320 CTR 507 (MP)(HC)

S. 240 : Refunds – Appeal – No part of the refund can be withheld in relation to the income-tax demands which are ether quashed by appellate authority or Tribunal or stayed. [S.244A] 2046

Notice of motion was taken by the department seeking modification or recall of order dated 4-9-2019 passed by the Honourable Court in respect of non-releasing of refund of Rs 43-25 crores. Dismissing the notice of motion the Court held that no part of the refund can be withheld in relation to the income -tax demands which are ether quashed by appellate authority or Tribunal or stayed. (NM (L) No. 487 of 2019, WP No. 2146 of 2019 dt 1-10-2019)

Vodafone Idea Ltd v. Dy.CIT (2021) 126 taxmann.com 184 (Bom.)(HC)

Editorial : SLP of revenue is dismissed on the ground of delay. Dy.CIT v. Vodafone Idea Ltd. (2021) 279 Taxman 446 (SC)

S.240 : Refunds – Appeal effect was not given for eight months – Court directed to pass appeal effect order and to grant refund along with interest [S.154, 244A, Art. 226] 2047

Assessee made an application for refund, however appeal effect was not given for eight months. The assessee filed writ petition praying for rectification order. Allowing the petition the Court held that since revenue had delayed by eight months to pass appeal effect, directed the Assessing Officer to grant refund along with interest to assessee on immediate basis. (AY. 2011-12)

Agilent Technologies India (P.) Ltd. v. ACIT (2021) 277 Taxman 153 (Delhi)(HC)

S. 240 : Refunds – Refund due to the assessee as per the order passed by settlement commission – AO is bound to issue refund. [S. 199, 245C, 245D(4)] 2048

In this case the Hon'ble Appellate Tribunal held that order passed by the Income Tax Settlement Commission under S.245D(4) of the Act even de hors the filing of return under s. 139 is an order passed under 'other proceedings un this Act' for the purposes of s. 240 of the Act. Thus, if any refund becomes due to the assessee after passing of the order by the Income Tax Settlement Commission, the AO under s. 240 of the Act is obliged to issue such refund without even waiting for the assessee to lodge a formal claim. (AY. 2014-15)

ACIT v. North American Coal Corporation India Pvt. Ltd (2021) 211 TTJ 907/ 201 DTR 241 (SMC)(Pune)(Trib.)

2049 **S. 241A : Refunds – Withholding of refund in certain cases – Notice issued u/s 143 (2) – Refund cannot be withheld – Directed to refund the amount within ten days of receipt of copy of judgement. [S. 143(1), 143(2), Art. 226]**

Allowing the petition the Court held that reading of Section 241A shows that mere issuance of scrutiny notice under Section 143 (2) cannot stall remittance of refund to assessee. Refund can only be stalled if conditions stipulated in Section 241A, are fulfilled, i.e., A.O. records his reasons in writing as to why release of refund is likely to affect interests of Revenue and that this step of A.O. receives imprimatur with the approval of his superior officer, i.e., Principal Commissioner or Commissioner as case may be. On facts of the case the revenue has brought nothing on record to show that an order under Section 241A has been issued with prior approval of competent authority. The revenue was directed to remit amount determined in its order dated 02.10.2019 to petitioner along with interest as required under provisions within ten days of receipt of copy of judgement.

Ingenico International India (P) Ltd. v. Dy. CIT (2021) 200 DTR 1 / 319 CTR 665 (Delhi) (HC)

2050 **S.241A : Refunds – Withholding of refund in certain cases – Order must be in writing and prior approval is mandatory – Withholding of refund without recording of reasons was held to be not valid. [S.143(1), 244A, Art. 226]**

Allowing the petition the Court held that for withholding the refund the order must be in writing and prior approval of competent authority is mandatory. The withholding of the refund for the assessment year 2017-18 was not sustainable and therefore, was set aside and quashed. The assessee was entitled to refund with interest till the actual date of refund Relied on *Maple Logistics Pvt Ltd. v. PCIT (2020) 420 ITR 258 (Delhi)(HC) Vodafone Idea Ltd. v. Dy.CIT (Bom)(HC))*(AY.2017-18)

Mcnally Bharat Engineering Company Ltd v. ACIT (2021) 437 ITR 265 / 282 Taxman 427/ 205 DTR 178/ 322 CTR 329 (Cal.)(HC)

2051 **S. 241A: Refunds – Withholding of refund in certain cases – Determination of tax liability not in domain of High Court except when an appeal is preferred – On going assessment cannot be challenged by filing writ petition – High Court does not have jurisdiction to consider liability to tax. [S.260A Art. 226]**

Dismissing the petition against determination of tax liability under section 241A of the Act. The court held that the statute provides statutory remedies in the form of appeals against the final determination of by such authority. In such statutory scheme, under section 260A, appeal lies to the High Court against orders of the Income-tax Appellate Tribunal. High Court in a writ petition does not have jurisdiction qua the determination of tax and this jurisdiction is exercised by the Court in exercise of powers under section 260A of the Act, only on a substantial question of law arising and not otherwise. When the Court has not been empowered to assessee the tax liability in the first instance, it would ordinarily not form a prima facie view of what it is not finally empowered to do. (AY 2018-19)

GE Capital Mauritius Overseas Investments v. Dy.CIT (2021)433 ITR 270 / 200 DTR 153 320 CTR 162 (Delhi)(HC)

S. 244A : Refunds – Interest on refunds – Tax deduction at source – Directed to complete the process of refund along with applicable interest within a period of two weeks from the receipt of the order [S. 143(1), Art. 226] 2052

The petitioner filed the return of income claiming the refund of tax deducted at source. Petitioner did not receive any intimation under section 143(1) of the Act from the respondents and consequently did not receive any refund, it has been compelled to file the present writ petition seeking the reliefs for refund of tax deducted at source as per return of income. The court directed the revenue to complete the processing of the refund claim of the petitioner and thereafter, release the due refund amount to the petitioner alongwith applicable interest in accordance with law within a period of two weeks from the date of receipt of a copy of this order. (AY. 2019-20)

Tata Communications Ltd v. UOI (2021) 201 DTR 185 / 320 CTR 683 (Bom.)(HC)

S. 244A : Refunds – Interest on refunds – Interest granted earlier – Directed not to charge the interest [S. 220(2)] 2053

Held that the interest under section 244A of the Act was paid by the Department for the delay caused in giving refund due to the assessee. Interest on the interest paid under section 244A of the Act not being provided under the statute, the Tribunal rightly held that the Assessing Officer shall recompute the interest chargeable under section 220(2) of the Act by reducing only the principal amount of tax from the refund granted earlier and not charge interest on the interest granted earlier under section 244A.(AY.1997-98)

CIT v. ABB Ltd (2021) 439 ITR 554 / (2022) 284 Taxman 350 (Karn.)(HC)

S. 244A : Refunds – Interest on refunds – Assessment – Reassessment – Fresh assessment – Order giving effect – Assessing Officer not passing order giving effect within time specified – Assessee entitled to additional interest – Directed to compute the interest with in eight weeks – Failure to comply the direction the Department was to pay to the assessee extra interest, at the rate of 1.5 per cent per month to be recovered personally from the erring officials of the Department [S. 2(8), 2(40), 153(5), 244A(IA), 254, Art. 226] 2054

Allowing the petition the Court held that Instructions were issued by the Central Board of Direct Taxes (see F. No. 279/MISC/M-42/2011-ITJ dated May 24, 2011) long before section 244A(1A) was brought on to the statute book making the right to interest on delayed refund a substantive right.

This was a case of the assessment having been set aside only on specific issues. In respect of issues where there was a definitive holding, section 153(5) would apply and the Assessing Officer had to pass an order giving effect within the time specified thereunder read with second proviso thereto. In respect of issues which had been set aside, the Assessing Officer had to pass orders giving effect following the principles already settled.

Court observed that the contention of the Department that any order giving effect to the order of the Tribunal would result in redetermination of the assessee's total income and therefore constitute a fresh assessment, if accepted, would inexorably lead to the result that the Department can invariably retain the refund determined, without the liability to pay the additional interest in terms of section 244A(1A) for the delayed

period and the absurd conclusion that every order giving effect has to be considered as a fresh assessment or reassessment and therefore be outside the purview of section 153(5) and consequently any delay in granting actual refund would also be outside the ambit of section 244A(1A). This would defeat the very object for which this provision was brought on the statute book. The court quashed the order, permitted the assessee to submit a fresh claim for additional interest at the rate of 3 per cent per annum for the period envisaged in section 153(5) read with section 244A(1A) within eight weeks, and directed the respondents to compute the interest amount till date and pay it to the assessee within eight weeks next following. If there was delay in complying with these directions, the Department was to pay to the assessee extra interest, at the rate of 1.5 per cent per month to be recovered personally from the erring officials of the Department. (AY. 2008-09)

Wipro Ltd. v. JCIT (2021) 438 ITR 581 / 205 DTR 434 / 322 CTR 757 /130 taxmann.com 84 (Karn.)(HC)

2055 **S. 244A : Refunds – Interest on interest – Tribunal was not right in allowing the interest on interest on interest [S.237]**

Allowing the appeal of the revenue the Court held that the Tribunal was not right in allowing the interest on interest. AO is directed to follow the ratio laid down in *CIT v. Gujarat Fluoro Chemicals)2013) 358 ITR 291(SC) and CIT v. H. E. G. Ltd. (2010) 324 ITR 331 (SC).*(AY. 1997-98)

CIT v. Upasana Finance Ltd. (2021) 435 ITR 172 / 282 Taxman 79 (Mad.)(HC)

2056 **S. 244A : Refunds – Interest on refunds – Un paid amount of tax the assessee entitle to interest this would not amount to granting interest on interest. [S.244A(1)(b)]**

Tribunal held that refund is to be adjusted the correct amount of interest payable thereof to be computed as per the directions of the CIT(A) only the balance amount to be adjusted against the tax paid. Accordingly, unpaid amount is the tax component and therefore the assessee would be entitled for claiming interest on the tax component remaining unpaid. This would not amount to granting interest in interest. (ITA No. 473/ Mum/ 474 /Mum/ 2016 /1120 /Mum /2016/1121/Mum/ 2016 dt 11-9-2020)(AY. 2007-08, 2008-09)

Garsim Industries Ltd v. DCIT (2021) BCAJ – January -P. 47 (Mum.)(Trib.)

2057 **S. 244A : Refunds – Interest on refunds – Settlement commission – Total amount refunds determined by the ITSC which has been granted after delay of 98 months – Eligible to receive the interest [S. 240, 245D(4)]**

The Settlement Commission passed the final order u/s 245D(4) in March 2008. The total amount of refunds determined by the ITSC which was granted to the assessee after a delay of 98 months, the assessee is eligible to receive interest under section 244A of the Act. (AY. 1994-95 to 1997-98)

Kotak Mahindra Bank Ltd. v. ACIT (2021) 214 TTJ 738 / 208 DTR 363 / (2022) 193 ITD 34 (Mum.)(Trib.)

S. 244A : Refunds – Interest on refunds – TDS credit claimed as appearing in Form 26AS – Short credit granted by AO – Matter remanded to verify Form No. 26AS and grant interest. [Form No 26AS] 2058

Tribunal held that from perusal of the documents produced it can be seen that the amounts reflected towards TDS in Form No. 26AS and the calculation of the AO while giving the credit to lesser amount is not proper. Remanded the matter to the file of AO directing to adjudicate this issue properly and grant the claim of the credit of TDS after verifying the Form No. 26AS along with interest u/s 244A. (AY. 2013-14)

Sumitomo Corporation v. DCIT(IT) (2021) 213 TTJ 137 (Delhi)(Trib.)

S. 245 : Refunds – Set off of refunds against tax remaining payable – Adjustment refunds in excess of 20% of outstanding is contrary to instruction No 1914 of 21-3-1996 – Assessing Officer was directed to refund amount adjusted in excess of 20 per cent of disputed demand [S. 220, Art. 226] 2059

The Assessing Officer had adjusted in excess of 20 per cent, of refund due against the tax liability. The Assessee filed writ petition and contended that the adjustment was contrary to guidelines contained in Instruction No. 1914, dated 21-3-1996. Allowing the petition the Court held that order under section 245 for adjustments of refunds did not give any special/particular reason as to why any amount in excess of 20 per cent of outstanding demand was recovered from assessee and department was entitled to seek pre-deposit of only 20 per cent of disputed demand. Assessing Officer was directed to refund amount adjusted in excess of 20 per cent of disputed demand. (AY. 2017-18)

Eko India Financial Services (P.) Ltd v. ACIT (2021) 205 DTR 113 / 322 CTR 201 / 283 Taxman 584 (Delhi)(HC)

S. 245 : Refunds – Set off of refunds against tax remaining payable – Stay of demand – Adjustment of refund without giving an intimation in writing is held to be bad in law. [Art. 226] 2060

Allowing the petition the Court held that adjustment of refund against demands for assessment years 2015-16 and 2016-17 without following the mandatory prior requirement of intimation under section 245 before making adjustment and fact that there was stay for recovery of outstanding demand for said assessment years 2015-16 and 2016-17, impugned adjustment of refund was unjustified. Followed *Suresh B. Jain v. A.N. Shaikh, ITO (1987) 165 ITR 151 (Bom.)(HC)*(AY. 2019-10)

Jet Privilege (P.) Ltd v. Dy.CIT (2021) 205 DTR 145 / 322 CTR 684 / 131 taxmann.com 119 (Bom.)(HC)

S. 245 : Refunds – Set off of refunds against tax remaining payable – Stay of recovery proceedings – Order adjusting refund against tax dues not justified – Unconditional stay of recovery proceedings granted [S. 226 Art. 226] 2061

Allowing the writ the Court held that order adjusting refund against tax dues not justified. Unconditional stay of recovery proceedings granted refunds against tax remaining payable. The order passed by respondent No. 2 was hereby set aside to the extent it put a condition of adjustment of future demands arising to the assessees. There court directed unconditional stay of the demand against the application filed by

the assessee dated July 10, 2019 till the final disposal of the appeal pending before the Tribunal.(AY. 2012-13)
Sun Pharmaceutical Industries Ltd. v. Dy. CIT (2021) 438 ITR 357 / 206 DTR 108 / 322 CTR 787 (Guj.)(HC)

2062 **S. 245 : Refunds – Set off of refunds against tax remaining payable – The Dept has not complied with the requirements of s. 245 of the Act – It is difficult to appreciate the stand of the Dept that the order passed by the high court would not cover/operate over the matters and orders passed by the ITAT, Union of India being not a party to the matter – Such a justification from and the approach of, the authorities is difficult to be approved of which is not in fitness of stature, especially of the state department, which is supposed to act like a model litigant – Directed to refund the amount with interest with in four weeks. [S. 220(6), Art. 226]**
Refund was adjusted without following the requirement of section 245 of the Act. The assessee filed writ against adjustment of refund. Allowing the petition the Court held that although the respondents purport to contend that proper procedure had been followed, record does not bear that there had been any communication made to the petitioner as to its submissions being not acceptable before or at the time of making the adjustment. Decisions in the cases of *A. N. Shaikh v. Suresh Jian (1987) 165 ITR 86 (Bom.)(HC) Hindustan Unilever Ltd v. Dy.CIT (2015) 377 ITR 281 (Bom.)(HC) and Milestone Real Estate Fund v. ACIT (2019) 415 ITR 467 (Bom.)(HC)* relied on, on behalf of the petitioner have not been met with by the respondents nor it is the case of the respondents that any other course could be adopted for adjustment of refund. There is stark absence of material showing compliance of requirements viz: application of mind to contentions on behalf of the petitioner, reasoned order and its communication to the assessee. The facts and circumstances lend lot of substance to submissions advanced on behalf of the petitioner that there is absence of compliance of requirements under section 245 of the Act, coupled with observations of high court in the decisions relied upon on behalf of the petitioners. Writ petition was allowed and the respondents directed to refund the amount to the petitioner for AY 2019-20 as determined under intimation under section 143 (1) of the Act dated 17th January, 2021 with interest thereon, as per law, within a period of four weeks from the date of receipt of this order. (AY. 2019-20)(WPNO. 732 of 2021 dt 6-4-2021)
Tata Communication Ltd. v. UOI (2021) 435 ITR 632 / 320 CTR 686 / 281 Taxman 162 / 201 DTR 188 (Bom.)(HC)

2063 **S. 245 : Refund – Set off of refunds against tax remaining payable – Stay of recovery proceedings – Prior intimation regarding proposed adjustment.**
Court under Office Memorandum F. No. 404/72/93-ITCC dated February 29, 2016 issued by the Central Board of Direct Taxes clarifying Instruction No. 1914 dated March 21, 1996, the Assessing Officer can, while granting stay of the demand, reserve the right to adjust refunds arising, if any, against the demand, to the extent of the amount required for granting stay subject to provisions of section 245. The Office Memorandum is binding on the Income-tax authorities. Court also held that once an absolute stay of recovery of demand of tax is granted to the assessee, it is improper and inappropriate for

the Revenue to recover the money through adjustment of refunds. A stay order passed by an appellate or higher authority must be respected and no deviancy or breach should be made.(AY. 2017-18)
TSI Business Parks Hyderabad Pvt. Ltd. v. ADIT (CPC) (2021) 431 ITR 654 / 201 DTR 171/ 320 CTR 642 / 278 Taxman 297 (Telangana)(HC)

S. 245C : Settlement Commission – Settlement of cases – Conditions – Manner of acquiring the income had been explained – Additional income was disclosed – Order of settlement Commission rejection of application was set aside – Directed the Interim board to decide the matter in accordance with law. [S. 56(2)(vii), 132(4A), 245D, 292C, Art. 226] 2064
The application of the petitioner was rejected by the Settlement Commission at the stage of admission. On writ the Court held that the petitioner has explained the manner of acquiring the income which was supported with the material. Settlement Commission has overlooked all these aspects while rejecting the application. The Settlement Commission was dealing with first stage of admission of the case wherein no prejudice may be caused to the revenue if such application were to be entertained while on the contrary a rejection of the application at this stage closes door to the declarant, for ever Order of Settlement Commission. Was set aside. The Court also observed that the Settlement Commission has been disbanded and at present replaced by an Interim Board,the matter be placed before the Interim Board for further proceedings, in accordance with law. (AY. 2012-13 to 2018-19))
Indu Srivastava v. ITSC (2021) 206 DTR 265/ 323 CTR 174 (2022) 440 ITR 280 (All.)(HC)

S. 245C : Settlement Commission – Settlement of cases – Income and source must be disclosed – Non-Co-operation of assessee – Rejection of application was held to be justified [Art, 226] 2065
Dismissing the petition the Court held that the Settlement Commission made a finding that the assessees had clearly suppressed the facts relating to foreign bank accounts. Various other details regarding the source of deposits and the sources of the income which had been derived were also not disclosed. This being the factum established, the assessees had not complied with the conditions stipulated under section 245C. Non co-operation of the assessees for arriving settlement was also recorded. Rejection of application was held to be justified.(AY. 2005-06 to 2014-15)(SJ)
Arun Mammen v. ITSC (2021) 438 ITR 378 (Mad.)(HC)
Kandathil M. Mammen v. ITSC (2021) 438 ITR 378 (Mad.)(HC)

S. 245C : Settlement Commission – Settlement of cases – search and seizure – Undisclosed income – Mala fide intention – Failure to disclose true and full disclosure – Settlement commission ought to have rejected the application [S. 132, 153A, 245D(4), Art, 226] 2066
Allowing the petition the Court held that there was no true and full disclosure of additional income in the application filed by ML under section 245C. There was a vast difference between the amount disclosed in the application and the amount finally determined by the Settlement Commission. The Settlement Commission had not only

taken up the task of an adjudicating authority but had also failed to note that ML had not made a true and full disclosure of the income which had not been disclosed before the Assessing Officer. The Settlement Commission ought to have rejected the applications because the intention of the assessees was only to take a chance by not disclosing truly and fully the correct additional income which was not disclosed at the time of filing of original returns under section 139 and to take advantage of the limited scope of enquiry in the proceedings before the Settlement Commission. The orders passed under section 245D(4) by the Settlement Commission were quashed. Applied *Ajmera Housing Corporation v. CIT (2010) 326 ITR 642 (SC)(AY.2003-04 to 2008-09)(SJ) (W.P.No.2417 dt. 27-5-2021)*
CIT v. ITSC (2021) 437 ITR 52 (Mad.)(HC)

2067 **S. 245C : Settlement Commission – Settlement of cases – Conditions – Subsequent additional statements could not be relied upon in order to satisfy requirements of S/245C and ITSC has exceeded its jurisdiction in setting aside such issue as regular assessment has to be made in such case. [Art. 226]**
Held by the High Court that, (i) an application for settlement cannot be entertained when there are discrepancies and doubt arising as regards true and full disclosure of income by the Assessee approaching ITSC (ii) in order to satisfy requirements of Section 245C of the Act, Assessee has to disclose true and full income at the time of making application and if the Assessee revised its offer before ITSC by declaring additional undisclosed income and ITSC had considered said revised offer then such subsequent additional statements could not be relied upon in order to satisfy requirements of provisions u/s 245C and ITSC has exceeded its jurisdiction hence regular assessment was to be made (WP No.3297 of 2014, dt 11-08-2021)(AY. 2012-13)
CIT v. ITSC (2021) 127 taxmann.com 367 (Mad.)(HC)

2068 **S. 245C : Settlement Commission – Settlement of cases – Not maintaining proper accounts – No finding that there had been full and true disclosure of income – Order of settlement commission is not valid – Writ is maintainable against the order passed u/s 245C of the Act. [S.245D, Art. 226]**
Allowing the petition the Court held that the very finding of the Settlement Commission that the assessees had not kept proper books of account in all the three cases would be sufficient to arrive at the conclusion that an application under section 245C had not been filed with full and true disclosure of income. The Settlement Commission recorded a finding that the assessee had not kept proper books of -account in all the three cases and settled the issues. Such a settlement was -improper and not in consonance with the provisions of the Act. The order of settlement was not valid. The maintainability of a writ petition is to be considered with reference to the mixed question of law and fact, and not merely on the ground that the Settlement Commission under the Income-tax Act, passed an order of settlement. Writ is maintainable. (SJ)
CIT v. Akash Fertility Centre and Hospital (2021) 435 ITR 380/ 202 DTR 228/ 321 CTR 243 (Mad.)(HC)
Editorial : Revised by Division bench in Akash Fertility Centre and Hospital v. CIT (2021) 438 ITR 240/ 206 DTR 1/ 322 CTR 240 (Mad.)(HC)

S. 245C : Settlement Commission – Settlement of cases – Failure to disclose full and true income – Additional income- Order admitting the application is held to be erroneous [S.132, 153A, 245D(4), Art. 226] 2069

Allowing the petition of the revenue the Court held that the Principal Commissioner was able to establish that the assessee had not approached the Settlement Commission with true and full disclosure of its income and during the course of the proceedings had offered additional income. The findings of the Settlement Commission would also confirm that and such offer of additional income was sufficient for the purpose of arriving a conclusion that the assessee had filed the application without disclosing its true and full income. The Settlement Commission ought to have rejected the application at the stage when it had found that the assessee did not disclose the true and full facts which was not done. The order passed under section 245D(4) by the Settlement Commission was quashed.(AY. 2007-08 to 2012-13)(SJ)

PCIT v. Rasi Seeds (P.) Ltd (2021) 435 ITR 111 / 205 DTR 363 / 322 CTR 506 (Mad.)(HC)

S. 245C : Settlement Commission – Settlement of cases – Subsequent offer of additional income – No full and true disclosure of income – Application is not valid. [Wealth-tax Act, 1957, S. 17, 22D(1)] 2070

Allowing the writ of the revenue the Court held that the offer of the additional income would be sufficient for the purpose of arriving a conclusion that the assessee filed an application under section 245C of the Act without disclosing true and full income. The Settlement Commission had committed an error apparent in allowing the application in violation of the provisions of the Act. Order passed admitted the application by Settlement Commission was quashed.(AY. 1999-2000 to 2005-06)(SJ)

CWT v. ITSC (2021) 435 ITR 583 (Mad.)(HC)

S. 245C : Settlement Commission – Settlement of cases – No full and true disclosure of income – Rejection of application is held to be valid [S. 245D, Art. 226] 2071

Dismissing the petition the Court held that the findings of the Settlement Commission were unambiguous and specific facts and circumstances were also relied on by the Settlement Commission to arrive at a decision regarding true and full disclosure by the assessee. The assessee was not able to establish that he had approached the Settlement Commission with clean hands and the element of true and full disclosure as contemplated under section 245C had not been established before the Settlement Commission and therefore, there was no perversity or infirmity as such in respect of the findings arrived. The rejection of the application for settlement of cases was justified. (SJ)

Sridhar Anand v. ITSC (2021) 435 ITR 435 / 280 Taxman 411 (Mad.)(HC)

S. 245C : Settlement Commission – Settlement of cases – Full and true disclosure of income – Not disclosing the income discovered during search – Acceptance of application is held to be not valid – Writ petition is held to be maintainable – Order is held to be perverse. [S.132, 153A, 245D, Art. 226] 2072

Allowing the writ petition of the revenue the Court held that in the instant case, the assessee having knowledge about the search and having received notice under section 153A of the Act, ought to have submitted all such particulars along with the application

including the undisclosed income recovered by the Department in the application itself. The assessee had not filed any details regarding the undisclosed income recovered by the Department in her application under section 245C of the Act and therefore, the very application for settlement was certainly not entertainable and the Department had, prima facie, established that the assessee had not approached the Settlement Commission with clean hands. The assessee had not truly and fully disclosed her income and more specifically, the undisclosed income recovered during the search was not made available before the Settlement Commission along with the application. This would be sufficient to reject the application by the Settlement Commission. Contrarily, the Settlement Commission proceeded by adjudicating the issues on the merits on the presumption that the Settlement Commission can pass an assessment order, which is otherwise not permissible under the provisions of section 245C of the Act. Thus, the order passed by the Settlement Commission was perverse and not in consonance with the provisions of the Income-tax Act, 1961. The order was not valid.(AY.2007-08 to 2013-14)(SJ)
CIT v. ITSC (2021) 434 ITR 546 / 205 DTR 305/ 322 CTR 517 (Mad.)(HC)

2073 **S. 245C : Settlement Commission – Settlement of cases – Full and true disclosure of income – Not disclosing the income discovered during search – Acceptance of application is held to be not valid – Writ petition is held to be maintainable – Order is held to be perverse. [S.132, 153A, 245D, Art. 226]**
Allowing the writ petition of the revenue the Court held that in the instant case, the assessee having knowledge about the search and having received notice under section 153A of the Act, ought to have submitted all such particulars along with the application including the undisclosed income recovered by the Department in the application itself. The assessee had not filed any details regarding the undisclosed income recovered by the Department in her application under section 245C of the Act and therefore, the very application for settlement was certainly not entertainable and the Department had, prima facie, established that the assessee had not approached the Settlement Commission with clean hands. The assessee had not truly and fully disclosed her income and more specifically, the undisclosed income recovered during the search was not made available before the Settlement Commission along with the application. This would be sufficient to reject the application by the Settlement Commission. Contrarily, the Settlement Commission proceeded by adjudicating the issues on the merits on the presumption that the Settlement Commission can pass an assessment order, which is otherwise not permissible under the provisions of section 245C of the Act. Thus, the order passed by the Settlement Commission was perverse and not in consonance with the provisions of the Income-tax Act, 1961. The order was not valid.(AY.2007-08 to 2013-14)(SJ)
CIT v. ITSC (2021) 434 ITR 546 (Mad.)(HC)

2074 **S. 245C : Settlement Commission – Settlement of cases – Full and true disclosure of income – Not disclosing the income discovered during search – Acceptance of application is held to be not valid – Writ petition is held to be maintainable- Order is held to be perverse. [S.132, 153A, 245D, Art. 226]**
Allowing the writ petition of the revenue the Court held that in the instant case, the assessee having knowledge about the search and having received notice under section

153A of the Act, ought to have submitted all such particulars along with the application including the undisclosed income recovered by the Department in the application itself. The assessee had not filed any details regarding the undisclosed income recovered by the Department in her application under section 245C of the Act and therefore, the very application for settlement was certainly not entertainable and the Department had, prima facie, established that the assessee had not approached the Settlement Commission with clean hands. The assessee had not truly and fully disclosed her income and more specifically, the undisclosed income recovered during the search was not made available before the Settlement Commission along with the application. This would be sufficient to reject the application by the Settlement Commission. Contrarily, the Settlement Commission proceeded by adjudicating the issues on the merits on the presumption that the Settlement Commission can pass an assessment order, which is otherwise not permissible under the provisions of section 245C of the Act. Thus, the order passed by the Settlement Commission was perverse and not in consonance with the provisions of the Income-tax Act, 1961. The order was not valid.(AY.2007-08 to 2013-14)(SJ)
CIT v. ITSC (2021) 434 ITR 546 (Mad.)(HC)

S. 245C : Settlement Commission – Settlement of cases – Finance Bill 2021 – Denial of right to file an application before Settlement Commission- Order of single judge modified interim stay of proceedings of notices were granted, subject to final outcome of the writ petition [S. 143(2), 153B, 153C Art. 226] 2075

The petitioner received notices dated January 14, 2020 and November 23, 2020 under sections 153C and 143(2) of the Income-tax Act, 1961. The Finance Bill, 2021 repealed section 245C with effect from February 1, 2021. Since the assessee was denied the statutory right to move for settlement of its case and the Settlement Commission did not receive the application, the assessee filed a writ petition. The single judge directed the Settlement Commission to receive the application of the assessee for settlement filed under section 245C but declined to grant stay of proceedings on the notices. On appeal On appeal the Court held that the Department, as on date, had not challenged the order of the single judge directing receipt of the application of the assessee under section 245C. Accordingly the order was to be modified a interim stay was to be granted against the notices during the pendency of the writ petition, the interim order granted would not in any manner, restrict the discretion available to the authorities under Chapter XIX-A either to admit or process the application of the assessee for settlement, or withdraw and summon the assessment files to the office of the Settlement Commission from the office of the Assessing Officer, and the interim order and corollary thereto were subject to the final outcome of the writ petition.
Blossom Gold Collection P. Ltd. v. UOI (2021) 433 ITR 10 / 202 DTR 57/ 321 CTR 205 (Ker)(HC)

S. 245D : Settlement Commission – Settlement of cases – No procedural error committed by Settlement Commission – Order of single judge allowing the writ petition of the revenue was set aside- Order of settlement commission was affirmed. [S. 245D(4), Art. 226] 2076

Single judge allowed the writ petition of the revenue. On appeal allowing the appeal the Court held that the findings rendered by the Settlement Commission was not a concession

extended by the Commissioner (Departmental representative), but in fact, accepting the verification report which was submitted. Therefore, the Department, on a wrong premise that the Settlement Commission had recorded that a concession was given, had filed a writ petition which was unnecessary, as the Commission had not recorded any concession, but taken up the matter, considered the case of the assessee as well as the Department, and settled the case based upon the increased offer made by the assessee. On a cumulative reading of the order, it was clear that one of the disputes which was subject matter of the settlement proceedings was unaccounted excess stock. On account of the stand taken by the Department as well as the assessee the Commission had directed verification of the data from the impounded computer server. There was no procedural error committed by the Settlement Commission, warranting interference by the court. The order of the Settlement Commission was not to be construed as a concession given by the Commissioner (Departmental representative), but a finding rendered by the Commission with regard to the verification of the data from the impounded computer server. Therefore, when there was no procedural irregularity the order of the Settlement Commission, which had attained finality and given effect, it need not be interfered with. The order allowing the writ petition filed by the Department was set aside.

G. Rajam Chetty and Sons v. CIT (2021) 439 ITR 687 / 323 CTR 760 (2022) 285 Taxman 525 (Mad.)(HC)

Editorial : Decision of single judge in CIT v. (ITSC) (2021) 439 ITR 684 /283 Taxman 44 (Mad.)(HC) set aside.

2077 **S. 245D : Settlement Commission – Settlement of cases – Granted immunity based on wrong facts – Order was quashed and remitted back for fresh consideration [S. 245C, Art. 226]**

Allowing the writ petition of the revenue the Court held that Settlement Commission based on certain incorrect details accepted assessee's contention that customer's gold weighing 14499.40 gm. was wrongly shown as assessee's gold in absence of customer's signature in delivery challan and granted immunity in favour of assessee causing prejudice to interest of revenue, said order was to be quashed and matter was to be remitted back for fresh consideration. (AY. 2012-13)(SJ)

CIT v. ITSC (2021) 283 Taxman 44 (Mad.)(HC)

Editorial : Writ appeal is allowed and order of single judge is set aside. G. Rajam Chetty & Sons. v. UOI (2022) 285 Taxmann 525 (Mad.)(HC)

2078 **S. 245D : Settlement Commission – Settlement of cases – Full and true disclosure – Settlement commission has considered the case of the assessee as well as the Department, and settled the case based upon the increased offer made by the assessee – There is no procedural error committed by the Commission – Order of single judge was set a side [S. 245C, Art. 226]**

The writ petition was filed by the revenue against the order of Settlement commission. Single judge allowed the writ petition. On appeal the Court held that the Commission has not recorded any concession, but taken up the matter, considered the case of the assessee as well as the Department, and settled the case based upon the increased offer made by the assessee. Thus, there is no procedural error committed by the Commission,

warranting interference by the Writ Court. In a writ proceedings, the Court is not expected to re-appreciate the facts. As there is no procedural error committed by the Commission, the order of the Commission does not call for any interference. *CIT v. ITSC (WP. No. 3297 of 2014, dt. 11th Aug, 2021)* set aside.
G. Rajam Chetty & Sons v. CIT (2021) 323 CTR 760 / 208 DTR 51 (Mad.)(HC)

S. 245D : Settlement Commission – Settlement of cases – Full and true disclosure – Settlement commission has considered the case of the assessee as well as the Department, and settled the case based upon the increased offer made by the assessee – There is no procedural error committed by the Commission – Order of single judge was set a side [S. 245C, Art. 226] 2079

The writ petition was filed by the revenue against the order of Settlement commission. Single judge allowed the writ petition. On appeal the Court held that the Commission has not recorded any concession, but taken up the matter, considered the case of the assessee as well as the Department, and settled the case based upon the increased offer made by the assessee. Thus, there is no procedural error committed by the Commission, warranting interference by the Writ Court. In a writ proceedings, the Court is not expected to re-appreciate the facts. As there is no procedural error committed by the Commission, the order of the Commission does not call for any interference. *CIT v. ITSC (WP. No. 3297 of 2014, dt. 11th Aug, 2021)* set aside.
G. Rajam Chetty & Sons v. CIT (2021) 323 CTR 760 / 208 DTR 51 (Mad.)(HC)

S. 245D : Settlement Commission – Settlement of cases – Procedure – Application – Directed to file additional income – Entitle to immunity from penalty and prosecution [S. 153CA, 245C, 245D(4), Art. 226] 2080

The petition is in the business of jewellery and diamonds. On directions of ITSC, Commissioner submitted a verification report based on which assessee was directed to offer additional income by way of further disclosure. ITSC passed order under section 245D(4) and granted assessee immunity from penalty and prosecution. Revenue filed the writ petition and contended that since assessee disclosed additional income during pendency of settlement proceedings and full and true disclosure was not made by assessee at first instance, order passed by ITSC was to be set aside. Single judge allowed the petition of the revenue and set aside the order of Settlement Commission. On appeal the division Bench held that the additional income was offered with view to bring quietus to matter and in spirit of settlement and further disclosure pursuant to verification report submitted before ITSC which was a further report under section 245D could not be construed to non-suit assessee that full and true disclosure was not made before ITSC. The petitioner is entitle to immunity from penalty and prosecution. (AY. 2007-08 to 2012-13)
P. Suman (Smt.) v. CIT (2021) 205 DTR 385/ 322 CTR 655 / 130 taxmann.com 249 (2022) 440 ITR 214 / 285 Taxman 587 (Mad.)(HC)

2081 **S. 245D : Settlement Commission – Settlement of cases – Application – Full and true disclosure – Opportunity of being heard – Settlement Commission directed to get Forensic Science Laboratory (FSL) report – Order was passed without giving an opportunity of hearing and without waiting for FSL report – Order of Settlement Commission was set aside – Directed to pass the order after getting FSL report and an opportunity of hearing [S. 245C, 245D(4), Art. 226]**

The assessee filed petition before settlement commission. The assessee filed an application for withdraw of the application. The Settlement Commission directed for FSL report relating to documents which were made a basis for making the addition. The Settlement Commission without giving an opportunity of hearing and without waiting for FSL report passed the order. On writ the Court held that the Settlement Commission was not justified passing the order without giving an opportunity of hearing and without waiting for FSL report. The Order of Settlement Commission was set aside and directed to pass a fresh order after giving an opportunity of hearing. (AY. 2007-08 to 2012-13)

Gupta Trademart (P) Ltd. v. Dy.CIT (2021) 439 ITR 407 /205 DTR 401 / 322 CTR 477 [2022] 285 Taxman 632 (Raj.)(HC)

Rajendra Gupta v. Dy.CIT (2021) 439 ITR 407 / 205 DTR 401/ 322 CTR 477 [2022] 285 Taxman 632 (Raj.)(HC)

2082 **S. 245D : Settlement Commission – Settlement of cases – twenty seven issues accepted by the assessee – Writ challenging only one issue is held to be not maintainable. [S.245D(4), 245I, Art. 226]**

Dismissing the writ petition the Court held that the Settlement Commission had passed a detailed order on 27 issues and the assessee was challenging the order of the Settlement Commission in respect of one issue only. Twenty seven of the issues were decided to the satisfaction of the assessee and regarding one issue, the court could not modify the Settlement Commission's order or quash the issue alone. It had to be construed for all purposes that the issue had not been settled by the Settlement Commission and the competent authority of the Income-tax Department was bound to proceed further in respect of the issue, which was not settled before the Settlement Commission.

Orchid Pharma Ltd. v. ITSC (2021) 438 ITR 427 / 208 DTR 369/ 283 Taxman 507 (Mad.) (HC)

2083 **S. 245D : Settlement Commission – Settlement of cases – Procedure – Application – Survey – Principle of natural justice not violated – Court cannot substitute findings of Settlement Commission – Order of Settlement Commission affirmed. [S. 133A, 245C, 245D(4), ITSC R. 9, Art. 226]**

Dismissing the petition the Court held that the Commissioner had failed to establish that the Settlement Commission had acted in any manner contrary to or in violation of any provisions of law in the course of the settlement proceedings or in passing the order or that it was not legal and valid or without jurisdiction and in disregard of the materials available before it. The asseee himself had ad mitted that the assessee had disclosed the undisclosed income though under compulsion upon survey under section 133A and prayed for further enquiry to find out material against the assessee for contradicting the

claim of the assessee which showed that its report under rule 9 of the 1997 Rules, had no sufficient materials and had no substance for rejection of the claim made under the settlement application filed by the assessee. Writ petition was dismissed.(AY. 2012-13)(SJ)
PCIT v. Settlement Commission (IT and WT)(2021) 438 ITR 258 / 206 CTR 33/ 322 CTR 583 (Cal.)(HC)

S. 245D : Settlement Commission – Settlement of cases – Procedure – Application – Court can only examine the decision making process and not the decision it self – Order of single judge was set aside – Interest – Only up to date of order of admission of application and not up to date of order of settlement [S. 245D(4), ITSC Rules, R.9, Art. 226] 2084

Allowing the appeals against the order of single judge the Court held that, it was too late for the Department to contend that the Settlement Commission should not have settled the cases in respect of the assessment year 2012-13 especially when this was never the ground raised by it either in the report filed under rule 9 of the 1997 Rules or in the subsequent report filed to the reply given by the assessees. a report under rule 9 of the 1997 Rules was filed and based on that, the Department suggested four additions and thereafter, the case was proceeded with and the matter was settled. Therefore, there was no necessity to remand the matter. The interest under section 234B had to be charged on the income settled by the Settlement Commission and in terms of the decision of the Supreme Court in *Brij lal v. CIT (2010) 328 ITR 477 (SC)* and would be chargeable up to the date of order of admission of the application under section 245D(1) of the Act and not up to the date of the order of settlement under section 245D(4) of the Act.(AY. 2012-13)
K. Velusamy-Major (HUF) v. PCIT (2021) 438 ITR 488 / 208 DTR 352 (Mad.)(HC)
S. Chandralekha (Smt) v. PCIT (2021) 438 ITR 488 / 208 DTR 352 (Mad.)(HC)
Editorial : Decision of the single judge in PCIT v. K. Velusamy-Major (HUF) (2021) 438 ITR 477 / 208 DTR 358 (Mad.)(HC), PCIT v. S. Chandralekha (Smt) (2021) 438 ITR 477/ 208 DTR 358 (Mad.)(HC) set aside.

S. 245D : Settlement Commission – Settlement of cases – Procedure – Application – Writ petition was filed after long gap of time – Addition made by the Settlement Commission was accepted and consequential order was passed – Order of single judge was set aside [S. 132, 153C, ITSC(P) Rules 1997, R.9, Art. 226] 2085

Court held that the grounds raised by the Revenue, in the writ petitions, were the same grounds, which were raised in the report filed under rule 9 of the Income-tax Settlement Commission (Procedure) Rules, 1997, and were the subject matter of consideration by the Settlement Commission and by a detailed speaking order the Settlement Commission considered the objections of the Revenue in the report and recorded reasons why the case was required to be settled. In more than one place, the Settlement Commission had recorded that the applications filed by the assessees contained full and true disclosure. There was no allegation that the Revenue did not have adequate opportunity to place the materials before the Settlement Commission. The judge in his order had not recorded any finding that the Settlement Commission contravened the provisions of the Act nor was there any finding supported by material that the common order passed by the Settlement Commission suffered from patent illegality. In such circumstances, the

common order passed by the Settlement Commission ought not to have been interfered with and that too, after a long delay. The matter was allowed to rest and the assessees' case was settled and they paid taxes and the seized jewellery was returned to the assessees. The order of the single judge was liable to be quashed.(AY.2006-07 to 2012-13
Akash Fertility Centre and Hospital v. CIT (2021) 438 ITR 240/ 206 DTR 1/ 322 CTR 240 (Mad.)(HC)
T. Kamaraj v. CIT (2021) 438 ITR 240/ 206 DTR 1/ 322 CTR 240 (Mad.)(HC)
K. S. Jeyarani v. CIT (2021) 438 ITR 240/ 206 DTR 1/ 322 CTR 240 (Mad.)(HC)
Editorial : Decision of the single judge in CIT v. Akash Fertility Centre and Hospital (2021) 435 ITR 380 (Mad.)(HC) reversed.

2086 **S. 245D : Settlement Commission – Settlement of cases – Settlement of cases – Application – Retraction of statement – Order passed by the Settlement commission rejecting the application was affirmed [S. 245C, 245D(4), Art. 226]**
Dismissing the petition the Court held that Settlement Commission had made a categorically finding that there was no cogent reason given for retracting statements made on three different occasions except for a vague assertion that he was unaware of financial implications of statements made during course of search and immediately thereafter. Findings of Settlement Commission were unambiguous and there was no perversity or infirmity in respect of said findings. Order of Settlement Commission was affirmed.
P. Udaya Shankar v. ITSC (2021) 281 Taxman 134 (Mad.)(HC)

2087 **S. 245D : Settlement Commission – Settlement of cases – Proceedings stood completed only formal order to be pronounced – Finance Bill, 2021 – Directed to pass formal order on or before 31-3-2021 [S. 245D(4), Art. 226]**
Petitioner prayed for writ of mandamus commanding Settlement Commission to pass an order under section 245D(4) in accordance with law. Allowing the petition the Court held that contents of the Finance Bill 2020-21 (2021) 430 ITR 74 (St)(120) and the relevant provisions therein but as the said bill has not still been enacted, the position which stands is to be taken as in the absence of the contends of the said Bill. Since facts stated by petitioners could only be verified by Settlement Commission, it may be left at discretion of Settlement Commission to take a decision whether such facts were correct or not and if they were found to be correct, it may proceed to pass/ issue appropriate formal orders. However, if such facts were not found to be correct, Commission would be free to proceed in accordance with law in its own wisdom and discretion.
Dilip Bhimjibhai Mavani v. ITSC (2021) 280 Taxman 145 (Guj.)(HC)

2088 **S. 245D : Settlement Commission – Settlement of cases – Jurisdiction of Court – Doctrine of Forum Conveniens – Principal Commissioner and the Deputy Commissioners were with in jurisdiction of Karnataka High Court – Writ petition was dismissed on the ground of forum conveniens [Art. 226]**
Writ petitions were filed against the order of the Settlement Commission under section 245D(4) of the Income-tax Act, 1961 rejecting the application filed by the assessees for settlement of case. The Principal Commissioner objected that the writ petitions were not

maintainable on the ground that Principal Commissioner and the Deputy Commissioner were within the jurisdiction of the Karnataka High Court. Dismissing the petition the Court held that since the Principal Commissioner and the Deputy Commissioner had raised objection regarding the jurisdiction on the ground that at the time of admission they were located outside the jurisdiction and within the jurisdiction of the Karnataka High Court, the writ petitions were dismissed on the ground of forum conveniens.(AY. 2008-09 to 2015-16)

Ess and Ess Infrastructure Pvt Ltd. v. ITSC (2021) 435 ITR 671 / 281 Taxman 340/ 207 DTR 374 / 323 CTR 598 (Mad.)(HC)

S. 245D : Settlement Commission – Settlement of cases – Failure to produce the material – Rejection of application is held to be valid [S. 245D(4), Art. 226] 2089

Assessee challenged order passed by Settlement Commission rejecting application filed by it under section 245D(4). Dismissing the petition the Court held that entire findings of Settlement Commission revealed that certain contra materials were produced by Department before Settlement Commission and disputed statements were also made, all such disputed statements and evidences could not be adjudicated by High Court, hence, writ petition was to be dismissed. (AY. 2007-08 to 2013-14)

K.S. Thirumalaivasan v. Chairman, ITSC (2021) 280 Taxman 423 / 203 DTR 313 (Mad.) (HC)

S. 245D : Settlement Commission – Settlement of cases – Jurisdiction – Power – Search and seizure – Order of penalty consequential to search – Assessment and penalty are part of same proceedings – Levy of penalty by the Assessing Officer is held to be not valid – Order levying the penalty was quashed. [S. 132, 133A, 153A, 245A(b), 245C, 269ST, 271DA Art. 226] 2090

After the search operation the assessee filed settlement petition before the Settlement commission which was admitted. The Assessing Officer however proceeded to pass a penalty order under section 271DA of the Act. The assessee filed writ before the High Court, allowing the petition the Court held that both the notices under section 153A as well as under section 271DA for violation of section 269ST, had their origin in the search, seizure and survey conducted qua the assessee, as evident from a bare reading of the notice under section 271DA. Both were part of the same case. The proceedings for violation of section 269ST according to the notice dated September 30, 2019, were a result of what was found in the search and survey qua the assessee and were capable of being treated as part and parcel of the case taken by the assessee by way of application to the Settlement Commission. The Settlement Commission had exclusive jurisdiction to deal with the matter relating to violation of section 269ST also and the Assessing Officer, on November 4, 2019 did not have the jurisdiction to impose penalty for violation of section 269ST on the assessee. His order was without jurisdiction and liable to be set aside and quashed. (AY.2018-19)

Tahiliani Design Private Limited v. JCIT (2021) 432 ITR 134/ 201 DTR 409/ 320 CTR 846/ 280 Taxman 11 (Delhi)(HC)

2091 **S. 245D : Settlement Commission – Settlement of cases – Educational institution – Application is allowed to be proceeded with – Settlement Commission have exclusive jurisdiction to perform functions of Income-tax authority as provided under section 245F of the Act – Withdrawal of exemption by Director General (Inv) was held to be not valid. [S. 10 (23C)(iv), 132, 153A, 245C, 245F(2) Art. 226]**

Assessee charitable trust was granted approval under section 10(23C)(iv) A search was conducted on assessee pursuant to which a notice under section 153A was issued. In pursuance of notice, assessee filed an settlement application under section 245C before Settlement Commission which was accepted. Based on initiation of proceeding under section 245C before Settlement Commission, DGI (Inv) issued a show cause notice to assessee proposing for withdrawal of approval granted to it under section 10(23C)(iv). He, further, proceeded to pass an order effecting withdrawal of approval under section 10(23C)(iv) of the Act. The assessee filed writ petition and contended that when issue regarding violation of conditions of section 10(23C) by assessee was pending before ITSC, DGI (Inv) had no jurisdiction to issue said show cause notice in view of bar under section 245F(2). Settlement commission had completed proceedings and passed an order under section 245D in favour of assessee. Writ petition filed against order of Settlement Commission was also set aside. Allowing the petition the Court held that proceedings before Settlement Commission on which DGI(Inv) placed reliance to issue said show cause notice did not exist on facts, impugned show cause notice issued by DGI (Inv) for withdrawal of approval under section 10(23C) and subsequent order passed withdrawing such approval under said section were unjustified and same were to be quashed. When application under section 245C made by trust is allowed to be proceeded with Settlement Commission, then Settlement Commission have exclusive jurisdiction to perform functions of Income-tax authority as provided under section 245F of the Act. Accordingly the order of DGI (Inv) was quashed. (AY. 2005-06 to 2011-12)

Adhiprasakthi Charitable, Medical, Educational & Cultural Trust v. DGI (Inv)(2021) 277 Taxman 355/ 202 DTR 201/ 321 CTR 235 (Mad.)(HC)

2092 **S. 245D : Settlement commission – Settlement of cases – Second application is maintainable – Order of Settlement commission cannot be neither in violation of any statutory provisions of the Income-tax Act nor is there any defect in the decision making process – Writ of the revenue was dismissed. [S. 132, 245C, 245HA, Art. 226]**

The assessee filed settlement application under section 245C before the Income-tax Settlement Commission (ITSC) disclosing additional income. Application was rejected for non-payment of taxes on the additional income disclosed in the settlement application. Subsequently the assesseee filed on more application which was accepted by the Settlement commission. Department has filed writ petition against the order of the settlement commission. Dismissing the petition the Court held that here is no bar for filing of a second application before the ITSC, when the earlier application was 'not allowed' to be proceeded with under section 245D(1). Section 245K(2) prohibits a subsequent application, only when the assessee had earlier made an application under section 245C and such an application has been 'allowed' to be proceeded with under section 245D(1). In contrast, there is no provision under the Income-tax Act, debarring the assessee from subsequently making an application after his original application was 'rejected' under section 245D(1) and 'not allowed' to be proceeded with. The

fundamental requirement of the application under section 245C(1) is that the full and true disclosure of the income has to be made, along with the manner in which such income was derived. What requires to be taken into account by the ITSC is as to whether the assessee had explained the manner in which the additional income which was not disclosed before the Assessing Officer, has been disclosed in the application or not and whether, such a disclosure is a full and fair disclosure. This would basically be a factual aspect. Court held that there is neither in violation of any statutory provisions of the Income-tax Act nor is there any defect in the decision making process. Accordingly the writ petition was dismissed (AY. 2007-08 to 2011-12)
CIT v. Adhiparasakthi Charitable Medical, Educational & Cultural Trust (2021) 277 Taxman 333/ 202 CTR 175/ 321 CTR 210 (Mad.)(HC)
CIT v. Bangaru G. 2021) 277 Taxman 333/ 202 CTR 175/ 321 CTR 210 (Mad.)(HC)

S. 245D : Settlement Commission – Settlement of cases – After a period of one year from settlement, revenue could not be allowed to raise said technical plea, as with mere change of Revenue Officer, opinion cannot be allowed to change. [S.245C, 245D(4), Art. 226] 2093
In writ petition, revenue challenged order passed by Settlement Commission only on basis of a single observation made in order that it was not practicable for Commission to examine records and investigate cases for proper settlement. Dismissing the petition the Court held that settlement was just, fair and proper and in interest of revenue and stood accepted without any protest or demur. After a period of one year from settlement, revenue could not be allowed to raise said technical plea, as with mere change of Revenue Officer, opinion cannot be allowed to change.(AY. 1999-2000 to 2005-06)
CIT v. ITSC (2021) 276 Taxman 124 (Patna)(HC)

S. 245R : Advance rulings – Settlement of cases – Application – Pendency of proceedings – Issue of notice u/s 143 (2) – Application is not barred for entertaining the application. [S. 143(2), 245R(2)] 2094
AAR held that notice under section 143(2) merely asking for certain information from assessee issued prior to filing of application before AAR will not constitute bar in terms of clause (i) to proviso to section 245R(2), on AAR entertaining and allowing the application. Application was allowed.
Centrient Pharmaceuticals Netherlands B.V. In re (2021) 200 DTR 37 (AAR)

S. 245R : Advance rulings – Settlement of cases – Procedure – Application – Notice – Questions raised in application are not pending before Income-Tax Authority – Issue of notice is not bar to application for this year – Application was admitted. [S. 142(1), 143(2)] 2095
AAR held that the specific question in respect of the nature of services rendered under the agreement or about the taxability of receipts for the services did not form part of any of the questionnaire or notices. Therefore, such notices issued prior to the filing of the application could not be a bar in terms of clause (i) of the proviso to section 245R(2) of the Act, to admission of the application. (AY. 2016-17)
Centrient Pharmaceuticals Netherlands, B. V., IN RE (2021) 436 ITR 54 / 319 CTR 672 (AAR)

2096 **S. 245R : Advance rulings – Application – Transfer of shares in Indian Company by Non-Resident Companies to another Non-Resident Company – On facts, transactions prima facie to avoid capital gains tax in India – Applications not maintainable. [S.245Q, 245R(2)]**

The Question raised before the AAR are :

(i)Whether on the facts and circumstances of the case, the applicant is chargeable to tax inn India on the capital gains arising from transfer of shares in Vortex Capex Ltd (VCL) and the revenue authorities should refund to CCOM the tax deducted at source by Aura Atlantic Sec. Ltd from payment of the sale price made to the applicant ?

(ii) Whether on the facts and circumstances of the case, the applicant could be subjected to tax under the provisions of section 115JB of the Act ?

AAR held that on facts, transactions prima facie to avoid capital gains tax in India, applications are not maintainable

Capex Com Ltd., In Re (2021) 435 ITR 456 (AAR)

Capex Communications Ltd., In Re (2021) 435 ITR 456 (AAR)

2097 **S. 245R : Advance rulings – Capital gains on transfer of LLP interest in an Indian LLP – DTAA-India-Netherlands – Application admitted [S. 245R(ii), Art. 13]**

The question raised by the applicant was " Whether on the facts,in law and in the circumstances of the case, the Applicant is liable to any capital gains tax on transfer of Limited Liability Partnership (LLP) interest (LLP Interest) in an Indian LLP. i.e. Conversant Software Development and Campaign Management Services LLP (EPSIN) to Commission Junction Holdings B.V (NVCJN) under the provisions of the Act.?

Department has raised objection to admissibility of application on ground that it involves determination of fair market value of property. AAR held that only question of principle of taxability' that is to be decided and not mechanism of computation of capital gains and Assessing Officer will be free to determine fair market value of property in case it is held that applicant is liable to pay capital gains tax. Accordingly on fact, question of capital gain arising in application cannot be held to be barred by clause (ii) of proviso to section 245R. Application is admitted.

ADS Apollo Holdings B.V., In re (2021) 280 Taxman 113 (AAR)

2098 **S. 245R : Advance rulings – Domestic companies – Tax on distributed profits – Beneficial provision of DTAA – DTAA-India-Singapore [S.1150, 245R(2), Art. 10]**

Applicant sought advance ruling on application of beneficial provision of India-Singapore DTAA in respect of Dividend Distribution Tax (DDT) on dividend paid/payable to non-resident shareholder. Application was admitted under section 245R(2).

Comstar Automotive Tech (P.) Ltd., In re (2021) 279 Taxman 122 (AAR)

2099 **S. 245R : Advance rulings – Capital gains tax – Transfer of shares on receipt of dividend in kind – Application is admitted – DTAA-India-Luxembourg [Art. 10, 13]**

Application made by the applicant whether it is liable to pay any capital gains tax on transfer of shares and on receipt of dividend in kind is admitted.

Alliance Data Lux Financing S.A.R.L., In re (2021) 279 Taxman 5 (AAR)

S. 245R : Advance rulings – Salaries paid to seconded employees in India whether qualify as non-resident – Credit for deduction of tax at source – DTAA-India-Japan [Art. 15(1), S. 192] 2100

Petitioner seeks to know whether it is required to deduct income-tax at source under section 192 on salary paid to such employees in India who qualify as non-residents in India The application is admitted under section 245R(2).

BMW India (P.) Ltd., In re (2021) 436 ITR 287/ 279 Taxman 110 / 203 DTR 396 / 321 CTR 836 (AAR)

S. 245R : Advance rulings – Dividend to non-resident shareholders Dividend Distribution Tax (DDT) – DTAA-India-France [Art. 11, 115-0, 245R (2), Art. 11] 2101

Applicant has filed present application to know whether dividend declared or distributed or paid by applicant-Indian company will be taxable in hands of recipient non-resident shareholders as per Article 11 of India-France Double Taxation Avoidance Agreement. Application is admitted.

Bureau Veritas Consumer Product Services India (P.) Ltd., In re (2021) 279 Taxman 378 (AAR)*

S. 245R : Advance rulings – Notice u/s 143 (2) – Whether the consideration for offshore supply of 4DX equipment to PVR under Strategic Alliance Agreement is liable to tax in India – Application admitted – DTAA-India-Korea [S. 9(1)(i), 143(2), 245R(2), Art. 5, 12] 2102

Applicant has filed advance ruling application to know whether consideration received for supply to PVR is liable to tax in India. Department submitted that as notice u/s 143(2) was issued to assessee prior to filing of advance ruling application, said application cannot be admitted. AAR held that notice under section 143(2) was issued in response to CASS selection reason of 'refund claim' and specific question in respect of SAA entered into by applicant with PVR was never raised by Assessing Officer in any of notices or questionnaire issued before filing of present application. AAR held that on facts, such notice could not attract automatic rejection route under section 245R(2)(i) and, thus, application is admitted under section 245R(2).

CJ 4DPLEX Co. Ltd., In re (2021) 436 ITR 452 / 204 DTR 211/ 321 CTR 741/ 279 Taxman 8 (AAR)

S. 245R : Advance rulings – Dividend receivable from Indian subsidiary – Beneficial provision of DTAA- DTAA-India-Slovenia-Columbia-Lithuania-Protocol – France [S.245R(2), Art, 10(2)(a)] 2103

Applicant filed an application seeking advance ruling on application of beneficial provision of DTAA in respect of dividend receivable by it from its Indian subsidiary. Application was admitted.

Delta Plus Group S.A., In re (2021) 436 ITR 452 / 279 Taxman 330 (AAR)

S. 245R : Advance rulings – Delay in disposing the application – Application for withdrawal of application is allowed – Dismissed as withdrawn [S.35AD, 245Q(1), 245R(2)] 2104

Application filed by applicant under section 245Q(1) was admitted vide order under section 245R(2) Applicant made an application for withdraw application as there

had been inordinate delay in disposal of application due to COVID-19 pandemic and applicant had decided to pursue its claim for deduction under section 35AD Act. AAR held that since applicant did not wish to pursue application, it was to be dismissed as withdrawn.
G.R. Infraprojects Ltd., In re (2021) 279 Taxman 327 (AAR)

2105 **S. 245R : Advance rulings – Deduction at source – Payment made to foreign company for acquisition of shares whether liable to deduct tax at source – Application admitted. [S. 9(1)(i), 195, 245R(2)]**
Whether the applicant is required to deduct tax under section 195 on payment made by it to foreign company for acquisition of shares and gains arising to it on transfer of shares is taxable in India. The application is admitted.
OC Oerlikon Corporation AG, In re (2021) 436 ITR 186 / 279 Taxman 1/ 199 DTR 39/ 319 CTR 386 (AAR)

2106 **S. 245R : Advance rulings – Notice u/s. 143 (2) – Beneficial provisions of DTAA for determination of Dividend Distribution Tax (DDT) rate on dividend to non-resident shareholder – Application is admitted – DTAA-India-Netherlands [S. 90, 115-0, 143 (2), 245N, 245Q, 245R(2)**
Where application for advance ruling was filed prior to issue of notice under section 143(2) and thus, questions raised by applicant were not already pending before Income-tax Authorities, clause (i) of proviso to section 245R(2) was not found attracted. Applicant had sought advance ruling on application of beneficial provisions of DTAA for determination of Dividend Distribution Tax (DDT) rate on dividend to non-resident shareholder, there was no design to avoid tax by any illegal or improper means, hence, clause (iii) of proviso to section 245R(2) was not attracted. Application was admitted.
Signify Innovations India Ltd., In re (2021) 436 ITR 274 / 279 Taxman 116 / 203 DTR 390/ 321 CTR 621 (AAR)

2107 **S. 245R : Advance rulings – Withdrawal of application – Pendency of appeal before Appellate Tribunal [S.245R(2)]**
Applicant has filed an application for withdrawal of application filed before AAR on ground that it had also filed an appeal for assessment year 2011-12 before Tribunal involving issues identical to ones raised in instant application and Tribunal had disposed of said appeal in favour of applicant. Application is allowed to be withdrawn.
Soregam SA, In re (2021) 279 Taxman 404 (AAR)

2108 **S. 245R : Advance rulings – Withholding tax on dividend payable to non-resident shareholder – Application admitted – DTAA-India-Netherland [S.195, 245R(2), Art 10**
Applicant filed an application seeking advance ruling on application of beneficial provision of DTAA in respect of Merely because applicant had raised question regarding advantage of DTAA or Most Favoured Nation clause in respect of withholding tax on dividend payable to non-resident shareholder, it could not be considered as a transaction designed to avoid tax. Application was to be admitted under section 245R(2).
Philips India Ltd., In re (2021) 279 Taxman 329 (AAR)

S. 245R : Advance rulings – Capital gains – Merger – Application was allowed to be withdrawn. 2109

Applicant filed an application seeking permission of Authority to withdraw the application. Application was disposed of as withdrawn.

Total Gaz Electric Holdings Finance SAS, In re (2021) 279 Taxman 332 (AAR)

S. 245R : Advance rulings – Business Income – Off shore supply – No pending proceedings – Amounts received/receivable by applicant from 'DLTPL' are liable to tax in India – Application admitted. [S.9(1)(i), 245R(2)] 2110

The applicant raised the question before the AAR regarding the amounts received/ receivable by applicant from 'DLTPL' are liable to tax in India. AAR held that questions raised in present application are in respect of contract with DLTPL dated 6-9-2018, which could not have been pending in Assessment years 2014-15 & 2015-16 as relevant assessment year for this contract is Assessment year 2019-20, objection of revenue regarding pending proceeding is not found correct, and, this, application is admitted under section 245R(2)

CTCI Corporation, In re (2021) 279 Taxman 483 (AAR)

S. 245R : Advance rulings – Whether service charges received by assessee towards provision of GDC HQ related services was liable to be taxed as fee for technical services – Application admitted-DTAA-India-UK [S. 9(1)(i), 245R(2), Art. 13] 2111

Application of the asseessee is admitted on the issue whether service charges received by assessee company towards provision of GDC HQ related services was liable to be taxed as fee for technical services under article 13 of India UK-DTAA.

Fujitsu Services Ltd In re (2021) 279 Taxman 482 (AAR)

S. 245R : Advance rulings – Dividend to non-resident shareholders Dividend Distribution Tax (DDT) – DTAA-India-Netherlands [S. 115-0, 245R(2)] 2112

Applicant has filed present application to know whether dividend declared or distributed or paid by applicant-Indian company will be taxable in hands of recipient non-resident shareholders. Application is admitted

RBS Services India (P) Ltd in re (2021) 279 Taxman 480 (AAR)

S. 245R : Advance rulings – Applicant is not found to be real owner of the transactions – Transactions were designed prima facie for avoidance of tax – Application is rejected – DTAA-India-Israel [S. 9(1)(i), 9(1)(vi), 9(1)(vii), 245N(a)(ii), 245R(2)] 2113

The question raised before the AAR was, "Whether the applicant is justified in its contention that amount due /received from Ranbaxy Laboratories Limited ('Ranbaxy India') is in the nature of 'business profits' and is not chargeable to tax in India under the provisions of the Act in the absence of business connection India under the provisions of the Act in the absence of business connection in India as per section 9 (1)(i) of the Act or under the provisions of article 7 read with article 5 of the India -Israel Double Taxation Avoidance agreement ('DTAA') in the absence of permanent establishment in India ?"

"Whether the applicant is justified in its contention that amount due/ received from Ranbaxy India is not taxable as 'royalty' or 'fees for technical services 'both under the Act or under the relevant provisions of India -Israel DTAA read with Protocol thereto ?
"The application was admitted on 6-7-2015,
The AAR held that the applicant is not found to be real owner of the transactions and income did not accrue in its hand but it was only a case of application of income of BP USA to the applicant. Further, the basic condition of the transaction of the non -resident arising out of the transaction with a resident as stipulated under section 245N(a)(ii) was not fulfilled as the transactions of the applicant were not on account but towards application of income of BP USA. The transactions were also hit by the mischief of clause (iii) of the section 245R(2) of the Act, as they were designed prima facie for avoidance of tax. Accordingly the application is rejected.(AY.2016-17)(AAR.No. 1476 of 2013 dt 25-10-2019)
BP Israel, In re (2021)434 ITR 283 (AAR)

2114 **S. 245R : Advance rulings – Questions raised in application pending before Income-Tax Authority for different years – Application not maintainable [S. 245R (2)]**
AAR held that the questions raised in the application were in respect of the amounts received by the assessee from ABC India for the services rendered under agreements effective from April 1, 2019 and the first year in which these services would be subject to examination by the Department would be assessment year 2020-21. The proceedings pending before the Department were for earlier assessment years. The additions made by the Assessing Officer were confirmed by the Commissioner (Appeals) and the issues were pending before the Tribunal. The questions raised in the application were in respect of the issues which were already pending before the Income-tax authority in different years. Therefore, the bar under clause (i) of the proviso to section 245R(2) was squarely attracted and the application was not to be admitted. (AAR No. 10 of 2020 dt.17-2-2021)(AY.2012-13 to 2016-17)
XYZ INC. In re. (2021) 434 ITR 49 / 200 DTR 17 / 320 CTR 270 (AAR)

2115 **S. 245R : Advance rulings – Application Jurisdiction of authority – Issue of notices prior to filing of application – Questions raised in notices and questionnaires not connected with questions raised in application – Bar not attracted and application to be admitted for hearing [S.1150, 142 (1), 143(2), 245R(2)]**
The AAR held that the questions raised in notices and questionnaires not connected with questions raised in application. Issue of dividend distribution tax did not appear in any of the questions. The claim for the refund of excess dividend distribution tax was made by letter after the filing of the application which would not create any pendency on the date of application filed earlier. Thus, the questions raised in the present application were not pending before the Income-tax authority on the date of filing of the application and the bar in terms of clause (i) of the proviso to section 245R(2) was not attracted. The application was to be admitted under section 245R(2) of the Act. (AAR No. 25 of 2018 dt. 2-2-2021)(AY.2016-17)
Mitsui Kinzoku Components India P. Ltd., In Re (2021)433 ITR 137/ 199 DTR 33/ 319 CTR 252 /124 Taxmannn.com 150 (AAR)

S. 245R : Advance rulings – Jurisdiction Of Authority – Issue involved in applications pending before Income-Tax Authority – Applications Barred [S.245R (2)] 2116

Dismissing the applications the AAR held that issue involved in applications pending before Income-Tax Authority hence the applications Barred in terms of clause (i) of the proviso to section 245R(2) was attracted and the applications were not to be admitted.

Whessoe Engineering Ltd., In Re (2021) 433 ITR 124 / 199 DTR 99 / 320 CTR 150/ 279 Taxman 493 (AAR)

S. 245R : Advance rulings – Application – Maintainability – Pendency of proceedings – Notice under Section 143(2) issued prior to filing of application – Application not maintainable – Issue pending in single year renders application for another ineligible for admission [S.80IA, 143(2), 245R(2)] 2117

AAR held that the return of the assessee for assessment year 2018-19 was initially selected for scrutiny on ten specific issues, one of the issues being "deduction claimed for industrial undertaking under section 80-IA / 80-IAB / 80-IAC / 80-IB / 80-IC / 80-IBA / 80-ID / 80-IE / 10A / 10AA". The notice under section 143(2) for assessment year 2018-19 was issued prior to the filing of the present application. In the application, the questions raised were in respect of the assessee's eligibility for deduction under section 80-IA of the Act. Thus, the question raised in the application was already pending before the Income-tax authority. The issue of pendency could be brought to the notice of the Authority even in the course of hearing. The fact regarding prior issue of notice under section 143(2) for the assessment year 2018-19 was not mentioned by the assessee in its application filed before the Authority. As the notice was received prior to the filing of the application the assessee should have disclosed this fact in the application. That as for the assessment year 2019-20, in the questions raised before the Authority no assessment year was mentioned. The eligibility for deduction under section 80-IA had to be decided in the first year of claim. Once the claim was found eligible in the first year of claim the assessee was entitled to deduction in all the subsequent years. Further, it was not necessary that the issues raised in the application should be pending in all the years involved. Even if the issue was pending in a single year, it made the application ineligible for admission under clause (i) of the proviso to section 245R(2) of the Act. The bar in terms of clause (i) of the proviso to section 245R(2) was attracted and the application could not be admitted.(AY. 2018-19, 2019-20)

Graphite India Ltd., In Re (2021) 431 ITR 597 / 198 DTR 233/ 319 CTR 148/ 279 Taxman 371 (AAR)

S. 245R : Advance rulings Non-Resident – Capital gains – Proposed transfer without consideration – Liability To Tax On Capital Gains Arises In Hands Of Transferor – Tax Leviable In India On Capital Gains From Alienation Of Indian Shares – Tax Required To Be Deducted At Source – DTAA-India-Switzerland [S.9(1)(i), 45, 47 (ii), 92B, 195, Art. 23(1)(b)] 2118

AAR held that the transaction between non-resident entities was an international transaction, within the meaning of Explanation (ie) below section 92B, as admittedly the share transfer transaction was a sequel to business reorganization. The transaction related to shares in the Indian company or asset situated in India and in terms of section 9(1)(i) read with Explanation 5 the transaction would give rise to income deemed to accrue or arise in India. Proposed transaction would liable to capital gains tax in

the hands of transferor and liable to deduct tax under section 195 of the Act and the applicant could seek set-off of Swiss taxes, if any, under article 23(1)(b) of the Double Taxation Avoidance Agreement between India and Switzerland.
Mettler Toledo Gmbh, In Re (2021) 431 ITR 87 (AAR)

2119 **S. 245R : Advance rulings – Transaction include more than one related transaction – Payment for offshore supply made outside country in foreign currency – Income did not accrue or arise in India – Employees who had signed contracts not dependent agents – Income from offshore supply of equipment not taxable in India – DTAA-India-Japan – No power to review order – Department not raising objection at time of admission of application – Authority cannot review order of admission. [S. 9(1)(1), 245N(a), General Clauses Act, 1897, S. 13, IT Rule, 44E(4), Art. 5]**
AAR held that the expression "a transaction" appearing in section 245N(a) of Act, would include more than one transaction. However, the application must be in respect of a related set of transactions. If the facts are not identical and are totally different, such transactions may not be clubbed in one application. Whether the transactions emanate out of the same or related set of activities or contract or are disparate are dependent on the facts and circumstances of each case and the Authority may examine this issue in that context. Payment for offshore supply made outside country in foreign currency. Income did not accrue or arise in India. Employees who had signed contracts not dependent agents. Income from offshore supply of equipment not taxable in India – DTAA-India-Japan. AAR has no power to review order. Department not raising objection at time of admission of application. Authority cannot review order of admission.
Nippon Steel Engineering Co. Ltd., In Re (2021) 431 ITR 453 (AAR)

2120 **S. 246A : Appeal – Commissioner (Appeals) – Pendency of appeal – Recovery of tax – Direction was issued to expedite the disposal of appeal and restraint against recovery of demand until disposal of appeal [S. 143(3), 144B, 156, 226, Art. 226]**
Allowing the petition the Court held that the main issues for consideration in the appeal before the Commissioner (Appeals) under section 246A were limited largely to the inclusion of unsecured loans and share capital as part of the total income of the assessee, the court directed the expeditious disposal of the pending appeal after providing a reasonable opportunity to the assessee, including a personal hearing if so requested. Until such time, the Department was restrained from recovering the demand pursuant to the assessment order under section 143(3) read with section 144B.
Omkara Assets Reconstruction Private Limited v. ACIT (2021) 436 ITR 40 (Mad.)(HC)

2121 **S. 246A : Appeal – Commissioner (Appeals) – Stay of demand – 20 % of demand was not paid – Court directed to defer the recovery of demand till disposal of the appeal. [S.80P, 226]**
During the pendency of the appeal, the Assessing Officer rejected the assessee's application for stay of the demand on the ground that the assessee did not pay the mandatory sum of 20 per cent of demand before filing the application for stay of demand. On writ the court directed to stay of demand till disposal of the appeal by the Commissioner (Appeals)
Thaniyam Panchayath Service Co-Operative Bank Ltd. v. ITO (2021) 436 ITR 266 (Ker.)(HC)

S. 246A : Appeal – Commissioner (Appeals) – Appealable orders – Appeal would be maintainable in respect of subject matter which do not pertain to grounds under section 263 of the Act.[S. 43, 251, 263] 2122

Assessing Officer made disallowance on account of privilege fee paid by assessee to State Government under section 43B of the Act. During pendency of appeal filed by assessee before Commissioner (Appeals), a notice under section 263 was issued by Commissioner on ground that leave salary contribution and electricity charges paid by assessee were allowed as deduction by Assessing Officer without any examination CIT (A) without examining appeal preferred by assessee regarding disallowance of privilege fee dismissed same as being infructuous. Order of CIT (A) affirmed by the Tribunal. On appeal High Court held that Commissioner (Appeals) ought to have adjudicated appeal on merits regarding disallowance of privilege fee under section 43B and, accordingly, impugned order passed by Commissioner (Appeals) was to be quashed and matter was to be remanded back to him to decide accordance with law. (AY. 2004-05)

Karnataka State Beverages Corporation Ltd. v. ACIT (2021) 277 Taxman 58 (Karn.)(HC)

S. 246A : Appeal – Commissioner (Appeals) – Appealable orders – Mandatory E-Filing of appeal – Manual appeal filed in time but E-Filed with delay – Appellate Tribunal remanding matter with direction to condone the delay – Order of Appellate Tribunal is affirmed.[R.45] 2123

Dismissing the appeal of the revenue the Court held that the Tribunal was right in holding that there was no delay in filing of e-appeal by the assessee to the Commissioner (Appeals) and remitting the case back for disposal on the merits and thereby condoning the delay in filing of appeal before the Commissioner (Appeals) even though no e-appeal was filed by the assessee as mandated under rule 45 of the Income-tax Rules, 1962 or no petition was filed for condonation of delay before the Commissioner (Appeals).(AY. 2013-14)

CIT v. Annapurani Hariharan (Smt.) (2021) 431 ITR 213 (Mad.)(HC)

S. 246A : Appeal – Commissioner (Appeals) – Appealable orders – Return held as defective – Appeal dismissed as not maintainable – Mismatch between income shown in return and 26AS – Order set aside to decide on merits [S. 139(9), 142(1))(i), 143(1), 237] 2124

Held that the Assessing Officer could not have treated the return as invalid under section 139(9) because of mismatch between the figure of income shown in the return and that in form 26AS and, secondly, if at all he did so on a wrong footing, he ought to have issued notice under section 142(1)(i) for enabling the assessee to file its return so that a regular assessment could take place to determine the correct amount of income and the consequential tax or refund. But the assessee had been deprived by the Deputy Commissioner (CPC) of any legal recourse to claim the refund. Considering the intent of section 237 and the unusual circumstances of the case, the order passed by him was akin to an order refusing refund under section 237 making it appealable under section 246A(1)(i). The order was set aside and the matter remitted to the file of the Commissioner (Appeals) for disposing of the appeal on the merits after allowing a reasonable opportunity of hearing to the assessee.(AY.2016-17)

Deere and Co. v. Dy. CIT (IT)(2021) 92 ITR 564/ 214 TTJ 1035/ (2022) 209 DTR 116 (Pune) (Trib.)

2125 **S. 246A : Appeal – Commissioner (Appeals) – Appealable orders – Protective assessment converted into substantive assessment – Recovery proceedings – Appealable order [S. 143(3), 153A, 156]**

Held that the order passed by Assessing Officer whereby protective assessment had been converted into substantive assessment and raising demand is an appealable order. (AY. 2013-14)

DCIT v. Pallavi Mishra (Smt.) (2021) 191 ITD 13 (Jaipur)(Trib.)

2126 **S. 246A : Appeal – Commissioner (Appeals) – Appealable orders – Draft assessment order – Appeal is not maintainable [S.144C(1), 144C(13)]**

An order under section 144C(1) is only a draft of the proposed of assessment and not an order of assessment, therefore no appeal lies against draft assessment order, though wrongly mentioned of section 144C(13) of the Act. Tribunal held that the learned CIT(A)) took an unimpeachable view in treating the appeal against the draft order as defective. Accordingly the appeal was dismissed. (AY. 2016-17)

Sandvik Mining & Construction Tools AB v. ACIT (2021) 214 TTJ 523 / 63 CCH 440 / 207 DTR 115 (Pune)(Trib.)

2127 **S. 249 : Appeal – Commissioner (Appeals) – Form of appeal and limitation – e-filing of appeals – Right of appeal is a statutory and valuable right and such right should not be denied on technical ground.[S. 246A]**

Dismissing the appeal of the revenue the Court held that since there were several technical issues in e-filing of appeals in addition to unawareness among assessees regarding procedure for e-filing of appeals, benefit could be given in assessee's favour especially when right of appeal is a statutory and valuable right and, hence, it should not be denied on ground of technicalities. (AY 2009-10)

CIT v. Sri Vasavi Gold & Bullion (P) Ltd. (2021) 278 Taxman 352 (Mad.)(HC)

2128 **S. 249: Appeal – Commissioner (Appeals) – Form of appeal and limitation – Appeal could not be dismissed on a technical ground of not filing the same electronically. [S.251, Limitation Act, 1963, S. 5]**

Right to appeal is a substantive right. An appeal should not be rejected on technical grounds. Where the law had been amended in 2016 requiring the assessees to e-file its appeals before the CIT(A) but the assessee filed a manual appeal, however, in the same year e-filing of the same appeal was done along with an application for condonation of delay, CIT(A) ought to have admitted and decided the appeal on merits and not dismissed the same on a technical ground. (AY. 2008-09, 2009-10, 2013-14)

CIT v. A.A. Antony (2021) 431 ITR 207/ 197 DTR 425 / 318 CTR 691 / 125 taxmann.com 170/ 278 Taxman 256 (Mad.)(HC)

CIT v. Ravi Prabakar (2021) 431 ITR 207/ 197 DTR 425 / 318 CTR 691 / 125 taxmann.com 170/ 278 Taxman 256 (Mad.)(HC)

PCIT v. Srinivasan. K.G. (2021) 431 ITR 207/ 197 DTR 425 / 318 CTR 691 / 125 taxmann.com 170/ 278 Taxman 256 (Mad.)(HC)

S. 250 : Appeal – Commissioner (Appeals) – Failure to appear before CIT(A) – Dismissal of appeal in limine – Order set aside – CIT(A) is directed to decide appeal on merits [S. 250(6), 251] 2129

Held that dismissal of the appeals in limine, which is not permissible under law. Therefore, the Commissioner (Appeals) was to decide the appeals afresh on the merits by way of speaking orders as per procedure provided under section 250(6) of the Act. The assessee shall be given an opportunity of being heard on the merits.(AY.2006-07, 2008-09, 2009-10)

Rakesh Gupta v. Dy. CIT (2021) 92 ITR 63 (SN)(Delhi)(Trib.)

S. 250 : Appeal – Commissioner (Appeals) – Procedure – E. Filing of appeal with effect from 1-3-2016 – Dismissal of appeal – Matter remanded to CIT (A) for providing an opportunity to file appeal in electronic mode and decide in accordance with law – Appeal decided ex-parte was also set aside. [S. 254(1), R. 45] 2130

Held that dismissal of appeal for not filing the appeal on electronic mode was set aside. Appeal decided ex-parte on merit was also set aside. CIT(A) was directed to accept the appeal on electronic mode and also decide on merit in accordance with law.(AY.2006-07, 2008-09, 2010-11)

Metalysst Forgings Ltd v. ACIT (2021) 89 ITR 12 (SN)(Delhi)(Trib.)

S. 250 : Appeal – Commissioner (Appeals) – Procedure – Ex Parte Order – Dismissal of appeal in Limine without speaking order – Order set aside and remanded for disposal afresh. [S. 250(6)] 2131

Held that the appeals of the assessees had been dismissed in limine and not by speaking orders. Hence, the orders were unsustainable in law. Even otherwise, after having appointed a chartered accountant whose submissions had been noticed by the Commissioner (Appeals), the belief that the assessees shall be represented was well founded. The assessees having appointed counsel could not be faulted for lack of proper representation before the authority. Accordingly, in the interests of substantial justice, the orders of the Commissioner (Appeals) were to be set aside and the appeals remanded to him for disposal afresh.(AY. 2010-11)

Monika (Smt.) v. ITO (2021) 89 ITR 54 (SN)(Chd.)(Trib.)
Urmila Devi (Smt.) v. ITO (2021) 89 ITR 54 (SN)(Chd.)(Trib.)

S. 250 : Appeal – Commissioner (Appeals) – Procedure – Ex Parte Order – Dismissal of appeal in Limine without speaking order – Order set aside and remanded for disposal afresh. [S. 250 (6)] 2132

Held that the appeals of the assessees had been dismissed in limine and not by speaking orders. Hence, the orders were unsustainable in law. Even otherwise, after having appointed a chartered accountant whose submissions had been noticed by the Commissioner (Appeals), the belief that the assessees shall be represented was well founded. The assessees having appointed counsel could not be faulted for lack of proper representation before the authority. Accordingly, in the interests of substantial justice,

the orders of the Commissioner (Appeals) were to be set aside and the appeals remanded to him for disposal afresh.(AY. 2010-11)
Monika (Smt.) v. ITO (2021) 89 ITR 54 (SN)(Chd.)(Trib.)
Urmila Devi (Smt.) v. ITO (2021) 89 ITR 54 (SN)(Chd.)(Trib.)

2133 **S. 250 : Appeal – Commissioner (Appeals) – Procedure – Principle of natural justice – Written submission – Right to be heard was not waived – Order was set aside [S. 254 (1)]**
Held that mere making available of written submissions cannot be unilaterally so interpreted to mean that right to be heard has been waived off. It is duty of adjudicating authority to ensure that waiver so made is consciously made and with full knowledge and understanding that right to be heard exists. Order was set aside to decide on merit to decide on merit in accordance with law. (AY. 2011-12)
Sukhvinder Pal Singhs v. ITO (2021) 191 ITD 715/ 206 DTR 109/ 213 TTJ 880 (SMC) (Delhi)(Trib.)

2134 **S. 250 : Appeal – Commissioner (Appeals) – Procedure – Reference to DVO – Failure to deal with various issues raised by the assessee – Matter remanded [S.44F, 69A, 142A, 250(6), 254(1)]**
Held that Commissioner (Appeals) upheld additions without passing speaking order. The assessee had not maintained books of account of said business as income of assessee was assessed on presumptive basis and same was accepted by Assessing Officer Question of validity of reference made by Assessing Officer to DVO without rejecting assessee's books of account and other issues raised by assessee were not adjudicated upon by Commissioner (Appeals), matter was to be remanded for fresh consideration. (AY. 2009-10)
Prince Rai v. ITO (2021) 191 ITD 144 / 213 TTJ 598/ 207 DTR 6 (SMC)(Jabalpur)(Trib.)

2135 **S. 250 : Appeal – Commissioner (Appeals) – Procedure – Common order – Failure to mention Assessment year 2014-15 – Matter remanded. [S. 154, 254(1)]**
Held since Commissioner (Appeals) failed to mention issues raised in assessment year 2014-15 in common order, matter was to be remanded back to Commissioner (Appeals) to pass a speaking order, for assessment year 2014-15. (AY. 2014-15)
Sachin R. Tendulkar v. ACIT (2021) 191 ITD 478 (Mum)(Trib.)

2136 **S. 250 : Appeal – Commissioner (Appeals) – Cryptic order – Audit of accounts – Business – Unexplained trade receivables – Matter remanded. [S.44AB]**
Held that the Commissioner (Appeals) had not called for a remand report from the Assessing Officer. No reason had been given by the Commissioner (Appeals) for granting relief to the assessee. Accepting the contentions of the assessee without conducting any enquiry was not sustainable in the eyes of law. The findings given by the Commissioner (Appeals) were cryptic and without any reasons, and hence were to be set aside. The Commissioner (Appeals) was to decide afresh after examining all the evidence brought on record by the assessee during the appellate proceedings and pass a reasoned order. (AY. 2012-13)
DCIT v. N E Television Network Pvt. Ltd. (2021) 91 ITR 59 (SN)(Delhi)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Free trade zone – Modification of claim – Revised return was not filed – Commissioner (Appeals) has no power to entertain modification of claim without filing revised return [S.10A, 10B, 139, 246A] 2137

The claim of assessee under section 10B was disallowed by the Assessing Officer. On appeal before the CIT (A) the assessee modified the claim from section 10B to section 10A which was allowed. Order of CIT (A) was affirmed by the Tribunal. On appeal by the revenue the court held that the acceptance of the case of the assessee under section 10A by the Commissioner (Appeals), without there being a revised return having been filed was illegal and untenable. Without a revised return being filed by the assessee the claims could not be modified. (AY. 2011-12)

PCIT v. Paragon Biomedical India (P.) Ltd. (2021) 438 ITR 227 / (2022) 484 Taxman 479 (Ker.)(HC)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Stay – Natural justice – Stay application was rejected without providing an opportunity of hearing – Order was set aside [S. 220 (6), Art. 226] 2138

Allowing the petition the Court held that since Commissioner (Appeals) without providing an opportunity to petitioner had passed the order rejecting the stay application in contravention of principles of nature justice. Order was set aside.(AY. 2017-18)

Hubli Advocates Urban Co-op. Credit Society v. PCIT (2021) 281 taxman 634 / 208 DTR 261 (Karn.)(HC)

S. 251 : Appeal – Commissioner (Appeals) – Powers – New claim – Can be made before the Appellate Authority though neither claimed in the original return nor filed the revised return. [S.139] 2139

Held that the assessee is entitle to make the new claim before the Appellate Authority though neither claimed in the original return nor filed the revised return. Appeal of revenue was dismissed. (AY. 2010-11)

PCIT v. Karnataka State Co-operative Federation Ltd. (2021) 280 Taxman 452 (Karn.)(HC)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Doctrine of merger – CIT(A) dismissed appeal as being infructuous basis notice issued u/s 263 by CIT on grounds unrelated to that before CIT(A) – CIT(A) ought to have adjudicated appeal on merits hence matter remanded back to CIT(A).[S.263] 2140

Held by the Court that taking into account the fact that appeal is maintainable in respect of the subject matter, which does not pertain to grounds covered in notice under section 263 of the Act, the CIT(A) ought to have adjudicated the appeal on merits and in respect of the grounds, which were not the subject matter of notice under section 263 of the Act. Matter remanded back to CIT(A). (ITA No. 102 of 2012 dt. 21-09-2020)(AY. 2004-05)

Karnataka State Beverages Corporation Ltd. v. ACIT (2020) 121 taxmann.com 89 / (2021) 277 Taxman 58 (Karn.)(HC)

2141 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Additional evidence – Fair market value – Directed to admit additional evidence corrigendum issued by Valuer to valuation report [S. 56(2)(viib), 254(1)]**

Held that the additional evidence furnished by the assessee was in the nature of corrigendum issued by the valuer, who was constrained to issue the corrigendum as there was an error in the original valuation report. The corrigendum issued shall form part of the original valuation report. There was no reason to reject it. Accordingly, the original report and corrigendum shall constitute the full report and had to be examined by the Assessing Officer. The order passed by the Commissioner (Appeals) was to be set aside and the matter restored to the Assessing Officer for examination with the direction to take into account the full report.(AY. 2015-16)

I Brands Beverages Pvt. Ltd. v. Dy. CIT (2021) 89 ITR 49 (SN)(Bang.)(Trib.)

2142 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Order of reassessment was quashed for want of valid prior sanction of PCIT – Direction to issue fresh reassessment notice was quashed and set aside [S. 147, 151, 250]**

Held that under section 251 of the Act, the Commissioner (Appeals) is empowered to confirm, reduce, enhance or annul the assessment. In the present case, the Commissioner (Appeals) annulled the assessment and further directed to issue notice under section 148 of the Act. No such power had been granted by the Act. The direction of the Commissioner (Appeals) was in excess of the jurisdiction conferred by section 251 of the Act, and was liable to be set aside.(AY. 2011-12)

Munish Chander Khurana v. ITO (2021) 89 ITR 4 (SMC)(SN)(Delhi)(Trib.)

2143 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Additional evidence – Where the AO has not been provided adequate opportunity to go through the additional evidence, the admission and examination of the additional evidence by Ld. CIT(A) is completely inadequate. [S. 254(1), Rule 46A of Income-Tax Rules, 1962]**

During the year under consideration, the assessee issued shares at a premium by way of preferential and equity allotment which the AO held as unjustifiable due to the assessee's negative earnings per share. Consequently, the AO made additions of the capital raised under section 68 of the Act. On appeal to the Ld. CIT(A), the assessee argued that it was not given a proper opportunity of being heard and submitted certain evidence which he could not before the AO. The Ld. CIT(A) accepted the additional evidence noting that the AO did not provide his comments despite the matter being remanded to him. The appellant proceedings were concluded with the Ld. CIT(A) deleted the additions relying on the additional evidence.

On further appeal, the Hon'ble Tribunal observed that the AO was not provided with adequate time to provide his comments on the additional evidence. Further, the additional evidence provided to the AO for his comments consisted of bank statement along with the annual report and confirmation of the share subscribers but the Ld. CIT(A)'s order also mentioned of a share subscription agreement between the subscribers, the assessee company and its promoters being filed which was not provided to AO. This agreement was one of the basis of the Ld. CIT(A)'s favourable order and it was not provided to the AO for his comments. Accordingly, the Hon'ble Tribunal held that the admission of the share subscription agreement was in violation of Rule

46A of the Income-Tax Rules, 1962. The Hon'ble Tribunal further went on to hold that the rule of natural justice applies equally to Assessees and the Revenue and that the Ld. CIT(A) has committed an error by not affording the AO an opportunity of being heard and provide his comments. Finally, the Hon'ble Tribunal observed that the Ld. CIT(A) has neither effectively assessed the reasonability of the premium charged by the Assessee nor established the genuineness of the transaction. Accordingly, the matter was remanded back to AO for verification of the Assessee's claim considering the additional evidence. (AY. 2009-10)
DCIT v. Pipal Tree Ventures Pvt. Ltd. (2021) 210 TTJ 258 (Mum.)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Enhancement – No jurisdiction to travel beyond record – Appeal against cash credits – Enhancement cannot be made for making estimate commission of 2 Per Cent of commission.[S. 68, 251(1)(a)] 2144
Held that Commissioner (Appeals) has no jurisdiction to travel beyond record when the issue was regarding addition of cash credits, the Commissioner (Appeals) cannot enhance and make addition on account of estimate of commission at 2 Per Cent without issuing show cause notice, which is gross violation of principle of natural justice (AY.2012-13 to 2014-15)
ITO v. Angel Cement Pvt. Ltd. (2021) 88 ITR 616 (Delhi)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Amounts not deductible – Deduction at source – Non-resident – Reimbursement of expenses – Cost of allocation – Not passed reasoned order – Matter remanded to CIT (A). [S. 9(1)(vii), 40(a)(i), 195, 250, 254(1)] 2145
Held that since no reasons were recorded by Commissioner (Appeals) in support of his finding in deleting disallowance made by Assessing Officer under section 40(a)(i) of the Act. Matter remanded to file of CIT (A) for fresh adjudication. (AY. 2009-10)
DCIT v. Barclays Global Services Centre (P.) Ltd. (2021) 191 ITD 84 / 89 ITR 40 (SN) (Pune)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Jurisdiction – Direction of DGIT not to pass the during pendency of explanation – Order passed without following the direction and jurisdiction was set aside [S. 120, 246A] 2146
Tribunal held that the Commissioner (Appeals) passed order, ignoring binding directions given by DGIT, it resulted in serious lapse on his part in administering justice. Order was set aside. Followed United Commercial Bank Ltd v. Workman 1951 SCR 380, where in the Court held that jurisdictional defect strikes at the very authority of the Court to pass any decree and such defects cannot be cured even by consent. *ACIT v. Globus Construction (P) Ltd ITA No. 1185 (Delhi) of 2020 dt. 8-1-2021* (AY. 2007-08 to 2015-16)
DCIT v. GMR Energy Ltd. (2021) 188 ITD 480 / 213 TTJ 109/ 204 DTR 256 (Bang.)(Trib.)

S. 251: Appeal – Commissioner (Appeals) – Powers – Enhancement – Commissioner has no power of enhancement, in respect of Matter which do not arise from the order of assessment, or are out of the proceedings before the AO [S.36(1)(iii)] 2147
Assessment u/s 143(3) was completed by making addition on account of disallowance u/s 14A. On Appeal the entire disallowance was deleted. However Commissioner

(Appeals) by invoking sec 251(1)(a), enhanced the income by disallowing interest u/s 36(1)(iii) on the ground that was totally different from the ground in show cause notice. On appeal the Tribunal held that the enhancement was without jurisdiction and contrary to principles of natural justice, as no reasonable opportunity was given to assessee to rebut the reason because of which such enhancement was made. Tribunal also held that while taxing the Income from a new source which was not the subject matter of Assessment or has not been considered by A.O, the right manner to tax such new source would be by invoking section 147,148 or sec 263, since there is no such power available to commissioner. Followed *CIT v. Raj Bhadur Harduty Motilal Chmaria (1967) 66 ITR 443 (SC), CIT v. Sardari lal & Co (2001) 251 ITR 864 (FB)(Delhi)(HC)*(AY. 2013-14)
Trimurti Buildcon Pvt Ltd v. ITO (2021) 87 ITR 505 / 211 TTJ 249 (Jaipur)(Trib.)

2148 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Enhancement – Non application of mind – The AO to examine the documents and decide accordance with law.**
Tribunal held that The Commissioner (Appeals) had originally proposed an enhancement of the purchase price of the assessee by Rs. 4.9 crores and, on receiving the assessee's reply, had made an addition of Rs. 20 crores. He had not conducted proper enquiry or applied his mind. As a result, his order was set aside and remanded to the file of the Assessing Officer for verification of the details given by the assessee. (AY.2016-17)
United Teleservices Ltd. v. ACIT (2021) 86 ITR 36 (SN)(Kol.)(Trib.)

2149 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Orders passed by CIT(A) after compulsory retirement as well as in case of assessee not covered within his jurisdiction are illegal, bad in law and non-est since it issue goes to the root of the matter – Orders set aside to the files of the respective Jurisdictional CIT(A) to decide afresh in accordance with law [S. 120]**
Relying on the decision of the Hon'ble Supreme Court in the case of *United Commercial Bank Ltd. v. Workman 1951 SCR 380, Kanwar Singh Saini v. High Court of Delhi 2012 (4))SCC 307, 2011 (10) SCALE 725 and Fatma Bibi Ahmed Patel (2008) 6 SCC 789],* the Hon'ble Tribunal remanded the matter back to the file of the respective CIT(A)s holding that impugned orders suffered from jurisdictional defect which is not curable having been passed by the ld. CIT(A) after his compulsory retirement, when he was functus officio, which also included orders passed in case of assessees not covered under his jurisdiction are not sustainable in the eyes of law, hence, nullities. Orders set aside to the files of the respective Jurisdictional CIT(A) to decide afresh in accordance with law. (AY. 2009-10, 2010-11, 2015-2016)
ACIT v. Globus Construction Pvt. Ltd. (2021) 213 TTJ 101 / 204 DTR 249 (Delhi)(Trib.)

2150 **S. 251 : Appeal – Commissioner (Appeals) – Powers – Business expenditure – Confirmed by the CIT(A) by adopting different reasoning than that of Assessing Officer – Order set aside to the Assessing Officer for fresh order as per law after providing reasonable opportunity of hearing [S. 37(1), 40(a), 254(1)]**
The assessee claimed deduction of expenses which was disallowed by the Assessing Officer on the ground that the assessee had not deducted tax at source as per section 40(a) of the Act. On appeal the CIT(A) dismissed the appeal and confirmed the addition

by adopting a reasoning which is different from the Assessing Officer on the basis that the assessee was unable to produce evidence to show that the expenditure has been incurred wholly and exclusively for the purpose of business and no evidence was produced. On appeal the Tribunal held that by adopting different reasoning than that of Assessing Officer there is violation of right of limited finality. Order was set aside to the Assessing Officer for fresh order as per law after providing reasonable opportunity of hearing. (AY. 2010-11, 2011-12, 2012-13)
Energy Infratech Pvt. Ltd. v. DCIT (2021) 210 TTJ 309 / 199 DTR 145 (Delhi)(Trib.)

S. 251 : Appeal – Commissioner (Appeals) – Powers – Enhancement – Commissioner (Appeals) cannot introduce new source of income – Assessment to be confined to items of income which were subject matter of original assessment. [S. 251(1)(a)] 2151
Held that Commissioner (Appeals) cannot introduce new source of income. Assessment to be confined to items of income which were subject matter of original assessment. (AY.2007-08 to 2013-14)
N. R. Agarwal Industries Ltd. v. ACIT (2021) 91 ITR 503 (Surat)(Trib.)

S. 253 : Appellate Tribunal – Delay of 310 days – Inadvertence mistake on part of Chartered Accountant – Delay in filing appeal was condoned [S. 260A, Limitation Act, 1963, S.5] 2152
There was delay of 310 days in filing an appeal before the Appellate Tribunal due to inadvertent mistake of the Chartered Accountant. Tribunal refused to condone the delay. On appeal the Court held that facts and circumstances of case the assessee should not suffer on account of inadvertence on part of her Chartered Accountant. Order of Tribunal was quashed and the Tribunal was directed to hear the case on merit. (AY. 2009-10)
Premalatha Pagaria v. ITO (2021) 283 Taxman 68 (Karn.)(HC)

S. 253 : Appellate Tribunal – Delay of 2554 days – Reason for delay was not satisfactory – Order of tribunal was affirmed. [S.254(1), Art. 226] 2153
The Tribunal rejected the assessee's prayer for condonation of delay of 2554 days in filing the appeal before CIT (A) on the ground that the explanation given by the assessee for the delay was not satisfactory. On Writ dismissing the petition the Court held that no error was committed by the Tribunal in declining to condone the delay of 2554 days in the assessee filing an appeal under section 253 before it against the order dated October 4, 2011 of the Commissioner (Appeals). The extraordinary delay of 2554 days could not be condoned on the weak explanation given by the assessee.(AY.2009-10)
Regional Institute of Education (National Council Of Educational Research and Training) v. CCIT (2021) 437 ITR 192 (Orisa)(HC)

S. 253 : Appellate Tribunal – Remand report in favour of assessee – Department is not aggrieved party – Appeal dismissed [S. 11, 12, 13, 246A, 250, 254(1)] 2154
Held that in the remand report the Assessing Officer gave a finding that there is no violation of provisions. The Tribunal held that the department could not be held an

aggrieved party where the Assessing Officer files a favourable remand report before the CIT (A).(AY. 2011-12)
ACIT v. Nalgonda Dicocese Society (2021) 92 ITR 22 (SN)(Hyd.)(Trib.)

2155 **S. 253 : Appellate Tribunal – Order of CIT(A) quashing the reassessment proceedings in the absence of valid sanction under section 151 not challenged before Appellate Tribunal – Appeal not maintainable on merits of the case. [S. 143(2), 147, 151, 253(2)]**
In this case the department did not challenge the order of the first appellate authority in quashing of reassessment proceedings in the absence of fresh tangible material and sanction under section 151 of the Act is invalid. Thus, the order of the Ld. CIT(A) on these questions becomes final and any result of department appeal cannot change the fate of departmental appeal. The revenue appeal would not be maintainable and is liable to be dismissed on this ground alone. (AY.2007-08 to 2010-11)
ACIT v. SG Portfolio (P) Ltd (2021) 211 TTJ 970 / 201 DTR 393 (Delhi)(Trib.)

2156 **S. 253 : Appellate Tribunal – Monetary limits – Penalty – Exception provided in para 10(e) of Circular No. 17 of 2019 (2019) 426 ITR 106 (St), applicable only for quantum proceedings and cannot be applicable for penalty proceedings – Appeal is not maintainable. [S. 254(1), 271(1)(c)]**
Dismissing the appeal of the revenue the Tribunal held that penalty and quantum assessment proceedings are distinct and separate. The exception provided in para 10(e) of the circular is applicable only for the quantum proceedings and cannot be made applicable for penalty proceedings. Therefore, in the light of Circular No. 17 of 2019 (2019) 426 ITR 106 (St), the appeal of the Revenue was not maintainable.(AY.2009-10)
Dy.CIT v. Aluvind Architectural Pvt. Ltd. (2021) 88 ITR 421 (Mum.)(Trib.)

2157 **S. 253 : Appellate Tribunal – Death of assessee – Mandatory to file a revised form 36- Failure to do so appeal shall stand abated – Liberty is given to the parties to file application for revival along with revised Form No 36 in accordance with law [S.254 (1), ITAT R, 26, Form No. 36]**
During the course of the hearing, Counsel for the Assessee informed that the Assessee had expired. Neither the legal hairs were brought on record nor revised Form 36 were filled by the revenue and on behalf of assessee, despite grant of various opportunities by the Tribunal. The Hon'ble bench relied on the judgement of *Shri Ram Chand Arora v. DCIT* in IT(SS)A No. 03/Agr/2001 and dismissed the appeals filed by the revenue/ assessee, as both the parties failed to file revised form 36 by bringing on record the legal heirs of deceased SH Chironjilala Shivhari. Both the parties are, however, granted liberty to file the application of revival along with revised form 36 parties Rule 26 of Income Tax (Appellate Tribunal) Amendment Rules, 2012. (AY. 2003-04 to 2008-09 & 2003-04 to 2009-10)
ACIT v. Chironji Lal Shivhare (2021) 189 ITD 692 (Agra)(Trib.)

2158 **S. 253 : Appellate Tribunal – Delay of 654 days – Change in management – Sufficient cause – Delay was condoned. [S. 253(5), 254(1)]**
The Tribunal observed that was a delay in filing the present appeal and the period of delay as computed by the Registry was 654 days. Tribunal observed that in the instant

case, it had been stated in the affidavits submitted that there has been a change in the management of the company and the tax matter pertaining to the period prior to change of management, it was decided that the same would be handled by the erstwhile management, however, due to change of management and lack of diligence on part of erstwhile employees, the appeal could not be filed. It had been further stated that the matter came to light of the present management on 11-7-2018 when an enquiry was made by the Assessing officer for payment of outstanding demand and thereafter, the appeal papers were prepared and appeal was submitted before the Registry on 20-8-2018 though with a delay of 654 days. The Tribunal was of the view that there was no culpable negligence or malafide on the part of the assessee company in delayed filing of the appeal and as soon as it came to know of the old tax matter pertaining to the period prior to change of the management, it took steps and filed the present appeal. Therefore, the Tribunal believed that there was sufficient and reasonable cause for condoning the delay in filing the present appeal and where substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserved to be preferred. Therefore, in exercise of powers under section 253(5) of the Act, Tribunal condoned condone the delay in filing the present appeal as it was satisfied that there was sufficient cause for not presenting the appeal within the prescribed time. (AY. 2007-08)

Vijayeta Buildcon Pvt. Ltd v. ACIT (2021) 186 ITD 493 / 123 taxmann.com 133 (Jaipur) (Trib.)

S. 254(1) : Appellate Tribunal – Duties – Depreciation – Total franchisee – Accrual basis – Cryptic order – Non application of mind – Order set aside and remanded to the Tribunal for fresh consideration.[S. 32, 43, 43(5), 43B, 260A] 2159

Allowing the appeal of the revenue the Tribunal held that the Tribunal has neither taken note of the relevant statutory provisions nor has assigned any reasons as to how the order of Chennai Bench is applicable to the facts of the case. The order passed by the Tribunal is bereft of any reasonings and suffers from the vice of non application of mind. The Tribunal which is a final fact finding authority has to assign reasons in support of decision. The order is cryptic and cannot be sustained in the eye of law. The order was quashed and matter was remanded to the Tribunal for fresh consideration to decide the matter on merits by a speaking order. (AY. 2009-10)

PCIT v. GMR Sports Pvt. Ltd. (2021) 201 DTR 1 / 322 CTR 590 (Karn.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Order of Tribunal remanding the matter was set aside and directed to decide on merit. [S.144C(13), 260A] 2160

On appeal the Court held that the order dated 24.11.2015 passed by the DRP is an order reducing the variation proposed in the draft assessment order dated 25.02.2015. Accordingly the Tribunal was not right in holding that the DRP exceeded its jurisdiction in passing the order. In any event, the order passed by the DRP was not impugned before the Tribunal rather what was impugned was the assessment order dated 28.12.2015 passed under Section 144C(13) r/w Section 143(3) of the Act. Therefore, the Tribunal was required to consider on merits whether the said assessment order was justified or not. Matter remanded to Tribunal to decide on merit.(AY. 2011-12)

India Trimmings (P) Ltd v. Dy. CIT (2021) 197 DTR 342 / 319 CTR 317 (Mad.)(HC)

2161 **S. 254(1) : Appellate Tribunal – Duties – Order passed without any reasons – Failure to reply the addition was up held by the CIT (A) – Tribunal set aside the order – High Court reversed the order of the Appellate Tribunal [S.69, 153A]**

Assessee engaged in sale and purchase of land was issued notice under section 153A but on failure of filing any reply despite several opportunities Commissioner (Appeals) upheld additions. Tribunal set aside the order of the CIT (A). On appeal by the revenue the High court held that order passed by Tribunal setting aside order of Commissioner (Appeals) without giving any cogent reason was arbitrary and unreasonable. The order of the CIT (A) was affirmed. (AY. 2005-06 to 2010-11)

PCIT v. Ashokji Chanduji Thakkor (2021) 130 taxmann.com 130 (Guj.)(HC)

Editorial : SLP of assessee dismissed, Ashokji Chanduji Thakkor v. PCIT (2021) 282 Taxman 307 (SC)

2162 **S. 254(1) : Appellate Tribunal – Duties – Provisions for transitional liability on leave fare concession/Home travel concession, silver jubilee awards to employees and on resettlement Expenses – Submissions not considered – Matter remanded to Tribunal [S. 36, 37(1), 253]**

Allowing the appeal the Court held that the Tribunal had not adverted to the submissions of the assessee and the order passed by the Tribunal was liable to be quashed. The matter was remitted to the Tribunal to afford an opportunity of hearing to the parties and to consider the submissions made by them.(AY2008-09)

State Bank of India v. JCIT (2021) 436 ITR 653 (Karn.)(HC)

2163 **S. 254(1) : Appellate Tribunal – Duties – Capital gains – Penny stock – Tribunal, without finding an error in approach of Assessing Officer could not have remanded back matter to Assessing Officer for fresh consideration. [S. 10(38), 45]**

Allowing the appeal of the revenue the Court held that when the Assessing Officer examined and disallowed exemption claimed by assessee under section 10(38) in respect of long-term capital gains arising out of sale of shares on ground that company in which assessee invested was a penny stock company, which was affirmed by the Commissioner (Appeals). Tribunal, without finding an error in approach of Assessing Officer could not have remanded back matter to Assessing Officer for fresh consideration. (AY. 2010-11)

CIT v. Pinky Devi (Mrs.)(2021) 281 Taxman 609 (Mad.)(HC)

2164 **S. 254(1) : Appellate Tribunal – Duties – Charitable Trust – Accumulation of income – cryptic order – Non-application of mind – Matter remanded [S. 11(4A)]**

Allowing the appeal the Court held that since Tribunal had not recorded any reasons whether or not assessee had complied with twin conditions mentioned in section 11(4A), order passed by Tribunal was cryptic and suffered from vice of non-application of mind and therefore, finding of Tribunal could not be sustained. Matter remanded. (AY. 2011-12)

PCIT (C) v. Moogambigai Charitable and Educational Trust (2021) 281 Taxman 500 (Karn.) (HC)

S.254(1) : Appellate Tribunal – Duties – Tribunal has to follow decision of Co-ordinate Bench [S. 10B] 2165

It is a settled proposition of law that a co-ordinate Bench of the Tribunal is required to follow the earlier decisions and in case there is a difference of opinion, the matter may be referred to a larger Bench. (AY. 2007-08 to 2011-12)

Marmon Food and Beverage Technologies India (P.) Limited v. ITO (2021) 435 ITR 327/ 205 DTR 153 (Karn.)(HC)

CIT v. GE India Technology Centre Pvt. Ltd. (2021) 435 ITR 327 / 205 DTR 153 (Karn.) (HC)

S. 254(1) : Appellate Tribunal – Duties – Research in the chamber – Order on basis of material not supplied – Royalty – Purchase of space Failure to deduct tax at source – Matter remanded to decide it fresh in accordance with law. [S.9(1)(vii), 195, 201(1), 201(IA)] 2166

Held, that in the first round of litigation the Tribunal had relied upon material which was not supplied to the assessee. The documents which were supplied either by the assessee or by the Revenue were certainly looked into, but the research material on the basis of which the so-called research was carried out by the Tribunal, was not brought on record. The subsequent order was based upon the first order passed by the Tribunal. Therefore all the cases were remanded to the Tribunal. (AY. 2007-08 to 2013-14)(AY. 2007-08 to 2015-16)

Google India Private Ltd v. CIT (2021) 435 ITR 284 / 201 DTR 129 / 320 CTR 622 (Karn.) (HC)

Google Ireland Limited v. CIT (2021) 435 ITR 284 / 201 DTR 129/ 320 CTR 622 (Karn.) (HC)

PCIT v. Google India Private Ltd. (2021) 435 ITR 284/ 201 DTR 129/ 320 CTR 622 (Karn.) (HC)

Editorial : Order in Google India Pvt. Ltd. v. Addl. CIT (2017) 60 ITR 40 (SN)(Bang.) (Trib), Google India Pvt. Ltd. v. JCIT (2018) 194 TTJ 385 (Bang.)(Trib.) are set aside.

S. 254(1) : Appellate Tribunal – Duties – Ex-parte order – Order passed without considering the application for an adjournment filed by the son and without application of mind – Order of Tribunal set aside and remanded back for fresh consideration. [S.143(3)] 2167

On appeal before Tribunal, appellant sought an adjournment but Tribunal heard matter ex parte and dismissed appeal of assessee. Allowing the appeal the Court held that as on date of hearing before Tribunal, somebody appeared with letter signed by appellant seeking adjournment, however Tribunal did not consider said letter on pretext that there was no power of attorney executed by the assessee. Court also observed that Tribunal without properly adverting to relevant facts involved in case and without application of mind had disposed of matter. Matter was to be remanded back to Tribunal for fresh consideration in accordance with law. (AY. 2013-14)

Harish Wadhwa v. ITO (2021) 280 Taxman 171 (Karn.)(HC)

2168 **S. 254(1) : Appellate Tribunal – Duties – Transfer pricing – Arm's length price – Method for determination of Berry ratio – Tribunal had not given its own reasons for upholding said order of TPO, its order was to be set aside and matter was to be remanded. [S.92C]**

Assessee applied CUP method to benchmark said transaction of import. TPO rejected CUP method and proceeded to determine ALP of assessee's transaction using Berry Ratio for reason that assessee was not just a trader and there was also value added service by assessee and, further, 50 per cent of materials such as battery and other related materials were purchased by assessee from domestic market and other independent enterprises. Tribunal upheld that Berry ratio was MAM. On appeal the Court held that since Tribunal had not given its own reasons for upholding order of TPO for accepting berry ratio as MAM and rejecting CUP method adopted by assessee, order of Tribunal was set aside and; matter was to be remanded back to Tribunal for fresh adjudication.

Socomec Innovative Power Solutions (P) Ltd. v. Dy. CIT (2021) 279 Taxman 351 (Mad.) (HC)

2169 **S. 254(1) : Appellate Tribunal – Duties – Transfer pricing – Arm's length price – Order passed in a cryptic and cavalier manner – Matter was remanded back to Tribunal. [S. 92C]**

Court held that Tribunal directed exclusion of a comparable by placing reliance on co-ordinate bench decision, however failed to consider findings of Transfer Pricing Officer and Dispute Resolution Panel and even failed to refer material brought on record by Transfer Pricing Officer and in a cryptic and cavalier manner recorded a finding in favour of assessee, order passed by Tribunal was to be quashed and matter was to be remitted to Tribunal for decision afresh.

PCIT v. EDS Electronics Data Systems India (P) Ltd. (2021) 278 Taxman 19 / 319 CTR 705 (Karn.)(HC)

2170 **S. 254(1) : Appellate Tribunal – Duties – Order passed in a cryptic and cavalier manner – Matter was remanded back to Tribunal. [S.40(a)(ia), 194I]**

Allowing the appeal of the revenue the Court held since Tribunal had not dealt with issue on merit and in a cryptic and cavalier manner had upheld deletion of disallowance and dismissed appeal preferred by revenue, impugned order was to be set aside and matter was to remanded back to Tribunal to adjudicate appeal on merit. (AY 2006-07)

PCIT v. Mahalingam (2021) 278 Taxman 254 (Karn.)(HC)

2171 **S. 254(1) : Appellate Tribunal – Duties – Telescoping of expenses – Benefit of matching principle – Appeal of revenue – Contention not considered by Tribunal – Matter remanded to Tribunal. [S. 40A(3), 132, 153A, 253]**

On appeal by the assessee the Tribunal held that the assessee was entitled to take a plea with regard to the matching principle and since the assessee had not been heard on such issue, the order passed by the Tribunal in so far as it pertained to the appeal filed by the Department was quashed and the matter was remitted to the Tribunal. Matter remanded.(AY.2008-09)

H. Nagaraja v. ACIT (2021) 434 ITR 97 (Karn.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Has to consider factual and legal aspects raised before it – Carbon credit – Sale of carbon credit – Capital receipt – Order of Tribunal held to be perverse [S.4, 80IA] 2172

The task of an appellate authority under the taxing statute, especially a non-departmental authority like the Tribunal, is to address its mind to the factual and legal basis of an assessment for the purpose of properly adjusting the taxpayer's liability to make it accord with the legal provisions governing his assessment. Since the aim of the statutory provisions, especially those relating to the administration and management of Income-tax is to ascertain the taxpayer's liability correctly to the last pie, if it were possible, the various provisions relating to appeal, second appeal, reference and the like can hardly be equated to a lis or dispute as arises between two parties in a civil litigation. Finding of the Tribunal was wholly erroneous and perverse. The Tribunal was expected to apply the law and take a decision in the matter and if the Commissioner (Appeals) or the Assessing Officer had failed to apply the law, then the Tribunal was bound to apply the law. The receipt by way of sale of carbon credits had been held to be a capital receipt. Therefore, it was of a little consequence to the claim made by the assessee under section 80-IA of the Act or in other words, the question of taking a decision as to whether the deduction was admissible under section 80-IA of the Act was a non-issue. Receipt from sale of carbon credits is a capital receipt. Referred *Hukumchand Mills Ltd v. CIT 1967) 63 ITR 232 (SC), CIT v. Mahalakshmi Textile Mills Ltd (1967). 66 ITR 710 (SC), CIT v. S. Nelliappan (1967) 66 ITR 722 (SC)* where in the Courts have referred the duties of the Tribunal (AY.2011-12)

S. P. Spinning Mills Pvt. Ltd. v. ACIT (2021) 433 ITR 61 / 199 DTR 193 / 323 CTR 410 (Mad)(HC)

S. 254(1) : Appellate Tribunal – Duties – Tribunal is not justified in deleting the addition without assigning reasons – Order of Tribunal is set aside. 2173

Allowing the appeal of the revenue the Court held that the Tribunal while testing the correctness of the order passed by the Commissioner (Appeals), was required to examine as to whether there was any error of fact or law committed by the Commissioner (Appeals). In the assessee's case, both before the Assessing Officer and the Commissioner (Appeals), the assessee could not reconcile the difference and for the first time, the assessee attempted to do so before the Tribunal. Without examining the fact situation, the Tribunal ought not to have granted relief especially when the assessee could not reconcile the difference before either before the Assessing Officer or the Commissioner (Appeals). The order of the Tribunal was not valid. (AY.2010-11)

CIT v. Ananya Infra Structure Pvt. Ltd. (2021) 432 ITR 371 / 279 Taxman 468 / 203 DTR 132/ 323 CTR 812 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Charitable purpose – Questions concerning relations between employers and employees in Southern India in order to protect their interests – No finding as regards the activity of the trust whether commercial – Matter remanded to the Assessing Officer [S. 2(15), 11] 2174

Assessing Officer denied same on ground that assessee received aggregate income of more than Rs. 10 lakhs in nature of fees and, as such, it would come within purview

of second proviso under section 2(15). Tribunal affirmed the order of the Assessing Officer denied benefit of section 11 to assessee taking view that substantial sums of money were received by assessee from conducting conferences and seminars which were open to persons other than its members, and this being major activity of assessee as projected in its Annual Report, it could not be considered as an activity incidental to its main objects. On appeal the Court held that since lower authorities had not rendered any finding that activity carried out by assessee was a commercial activity, benefit of exemption could not have been denied to assessee. A Whether, accordingly order of Tribunal was to be set aside and matter was to be remanded to Assessing Officer to take fresh decision. Referred CBDT Circular No. 11/2008, dated 19-12-2008 (AY. 2009-10)
Employers Federations of Southern India v. CIT (E) (2021) 277 Taxman 266 (Mad.)(HC)

2175 **S. 254(1) : Appellate Tribunal – Duties – Free trade zone – Not deciding the grounds raised by observing that the academic – Tribunal directed to decide the ground on merit [S. 10A]**

Assessee provided software development services. It claimed deduction under section 10A. Assessing Officer denied benefit of deduction to some units on ground that these were not set up in accordance with STPI scheme. It was further held that income earned by assessee in nature of recruitment fee should be excluded from eligible profits. On appeal, Commissioner (Appeals) partially allowed relief to assessee, however, Commissioner (Appeals) denied relief in respect of recruitment fees on ground that such activity had no nexus with activity of export of computer software. Tribunal affirmed said order without deciding grounds raised by assessee and held that same were academic. On appeal the Court held that Tribunal ought to have adjudicated grounds raised by assessee on merits instead of holding same to be academic and not deciding accordingly. Matter remanded to Tribunal. (AY. 2005-06)
Ntt Data Global Delivery Services Ltd. v. ACIT (2021) 277 Taxman 143 (Karn.)(HC)

2176 **S. 254(1) : Appellate Tribunal – Duties – Property held for charitable purposes – Purchase of gold bullion – Application of income – Matter remanded to the Tribunal. [S. 11(5), 12AA, 13(1)(d)]**

Assessee is an educational charitable trust registered under section 12AA. During year, assessee purchased gold bullion. Tribunal held that purchase of gold by assessee was not application of funds for object of trust but an investment in violation of section 11(5). On appeal it was contended that as per proviso (iia) to section 13(1)(d) it could hold such gold bullion for a period of one year from end of previous year in which same was acquired, thus, there was no violation of section 11(5). High Court held that the Tribunal has not dealt with the issue in their order. Accordingly the matter was remanded (AY. 2010-11)
Sri Venkkaliamman Educational and Charitable Trust v. Dy. CIT (2021) 277 Taxman 257 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Business expenditure – Commission payments – Order passed without considering the material and application of mind – Matter remanded to Tribunal 2177

Allowing the appeal the Court held that the order passed by the Tribunal was cryptic and suffered from the vice of non-application of mind. The matter was Matter remanded. (AY. 2009-10, 2010-11)

B. Fouress (P.) Ltd. v. Dy. CIT (2021) 431 ITR 344 / 279 Taxman 412 (Karn.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Allowing the expenditure without examining the evidence – Perverse order – Matter remanded. [S.37(1), 132, 153A] 2178

Allowing the appeal of the revenue the Court held that The finding recorded by the Tribunal that the Assessing Officer had not made any independent enquiry was perverse. On the basis of meticulous appreciation of material available on record, the Assessing Officer had recorded the conclusions. The Tribunal had not dealt with the conclusions of the Assessing Officer and in a cryptic and cavalier manner had allowed the appeal preferred by the assessee. The Tribunal had also failed to appreciate that in fact, the burden was on the assessee to establish the genuineness of the transaction. The order of the Tribunal was liable to be quashed. Matter remanded to the Tribunal.(AY. 2007-08)

CIT v. Anantha Refinery Pvt. Ltd. (2021) 431 ITR 64 / 319 CTR 205 / 198 DTR 241 / 278 Taxman 208 (Karn.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Deletion of disallowance without giving reasons – Order not valid – Matter remanded. [S.40(a)(ia)] 2179

Allowing the appeal of the revenue the Court held that the Tribunal had merely recorded its conclusion and had not assigned any reasons in support of the conclusion. The Tribunal was directed to decide the claim of the assessee under section 40(a)(ia) of the Act afresh on the basis of the material available on record and on the basis of the reasoning assigned by the Assessing Officer as well as Commissioner (Appeals)]. The Court also observed that It is well settled in law that even a quasi-judicial authority is required to assign reasons in support of its order. (AY. 2008-09)

PCIT v. Subex Technologies Ltd. (2021) 431 ITR 592 / 280 Taxman 294 (Karn.)(HC)

S. 254(1) : Appellate Tribunal – Duties – Delay in filing appeal – Tribunal cannot dismiss appeal for non-prosecution. [S.253, 254(2), ITAT R. 24, Art. 226] 2180

Appellate Tribunal dismissed the appeal for non-prosecution on December 12, 2014. The assessee filed a miscellaneous application on May 23, 2017 for recall of the order. The Tribunal declined to condone the delay and restore the appeal and dismissed the appeal for non-prosecution. On a writ the Court held that the order passed by the Tribunal declining to condone the delay and restore the appeal and its order dismissing the appeal for non-prosecution were quashed and set aside. The original appeal filed for the assessment year 2006-07 was to be restored.(AY. 2006-07)

Dolphin Metal (India) Ltd. v. ITO (2021) 431 ITR 666 / 280 Taxman 21 (Guj.)(HC)

2181 **S. 254(1) : Appellate Tribunal – Duties – Free trade zone – Grounds not adjudicated on merits – Matter remanded [S. 10A, 260A]**

Assessee is engaged in business of providing software development services, professional services and had claimed deduction u/s 10A of the Act. AO denied benefit of deduction to some units on ground as these were not set up in accordance with STPI scheme and also held that the income earned by the Assessee in the nature of recruitment fee should be excluded from the eligible profits of the business of the Assessee. On Assessee's appeal to CIT(A), it allowed partial relief and denied the relief in respect of the recruitment fee on the ground that such activity has no nexus with the activity of export of computer software. On Assessee's appeal to Tribunal, the Tribunal upheld the CIT(A) order and did not decide the grounds raised by the assessee and held that the same are academic. Aggrieved by the same, the Assessee preferred an appeal before High Court. The High Court held that Tribunal ought to have adjudicated the grounds raised by the Assessee on merits instead of holding the grounds to be academic and not deciding the same. Thus, the High Court remanded the matter back to Tribunal for adjudication. (ITA No. 526 Of 2017 dt. 19-11-2020)(AY. 2005-06)

Ntt Data Global Delivery Services Ltd. v. ACIT (2021) 123 taxmann.com 226 / 277 Taxman 143 (Karn.)(HC)

2182 **S. 254(1) : Appellate Tribunal – Duties – Property held for charitable purposes – Purchase of gold bullion – Tribunal has not dealt with the contention of assessee – Matter remanded to Tribunal[S. 11, m13 (1)(d)(iia)]**

Assessee, an educational charitable trust, purchased a gold bullion and contended that as per proviso (iia) to section 13(1)(d) it could hold such gold for a period of one year from end of previous year in which same was acquired, thus, there was no violation of section 11(5). Since Tribunal did not dealt with such contention of assessee and passed an order holding such purchase to be in violation of section 11(5), said order was to be set aside and matter was to be remanded. (T C No 890 of 2019 dt. 24-09-2020)(AY. 2010-11)

Sri Venkkaliamman Educational and Charitable Trust v. DCIT (2020) 122 taxmann.com 81 / (2021) 277 Taxman 257 (Mad.)(HC)

2183 **S. 254(1) : Appellate Tribunal – Duties – Adducing additional evidence – assessee filed additional evidence – Tribunal passed order without dealing with application to file additional evidence – order set aside – Matter remanded – Tribunal directed to first dispose the application for additional evidence and then pass order on merits for the appeal. [S.260A, ITAT R. 29]**

The appellant had filed an application for admission of additional evidence in terms of rule 29 of the Income-Tax (Appellate Tribunal) Rules, 1963 (hereinafter referred to as the 'ITAT Rules') on 14th January 2019. On 17th January 2019, the Tribunal concluded its hearing in the said appeal. Thereafter, on 22nd January 2019, the appellant filed its synopsis/written submissions. On 28th February 2019, the Tribunal passed the impugned order without dealing with the application filed by the appellant for admission of additional evidence under Rule 29. After the impugned order had been passed by the Tribunal, the appellant preferred an application for rectification dated 8th May 2019 under section 254(2). However, till date no order has been pronounced by the Tribunal

on the application filed. The High Court in the view of the case of Jyotsna Suri [2003] 128 Taxman 33 held that the Tribunal was bound to decide the application under Rule 29 and thereafter to dispose of the appeal on merits. (ITA No. 211 of 2020, CM APPL No.32045-32047 of 2020, dt. 22-12-2020)
HL Malhotra & Co. (P.) Ltd. v. DCIT (2021) 431 ITR 148 / 278 Taxman 239 / 125 taxmann.com 70 / 203 DTR 192/ 321 CTR 257 (Delhi)(HC)

S. 254(1) : Appellate Tribunal – Duties – Condonation of delay of 317 days – Delay was condoned and CIT(A) is directed to hear the appeal on merits [S.250] 2184
Appeal of the assessee was dismissed for not appearing before him. Restoration application was filed before the CIT (A), which was not decided by the CIT (A).Assessee has filed appeal against the orginal order before the Tribunal by making an application for condonation of delay of 317 days. Tribunal refused to condone the delay. On appeal the Court held that since explanation offered by assessee was convincing and acceptable appeals were to be restored on file of Commissioner (Appeals) to be heard and decided on merits and Tribunal was not right in refusing to condone delay of 317 days without considering restoration application filed by assessee before Commissioner (Appeals). (AY. 2013-14, 2014-15)
UFX Ventures (P.) Ltd. v. ACIT (2021) 276 Taxman 448 / 198 DTR 500 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Duties Document not filed due to mistake of counsel – Dismissal of appeal – Not justified. 2185
Allowing the appeal the Court held that,it is trite law that for the fault committed by counsel, a party should not be penalized. Accordingly, that due to inadvertence, the senior chartered accountant engaged by the assessee could not comply with the directions of the Tribunal to file documents. The Tribunal, in fact, should have adjudicated the matter on the merits instead of summarily dismissing it. The order of dismissal was not valid.(AY.2016-17)
Swetha Realmart LLP v. Dy CIT (2021) 430 ITR 159 (Karn.)(HC)

S. 254(1) : Appellate Tribunal – Powers – Remand of case – Power to be used only in exceptional cases – Order of remand was set aside. 2186
Allowing the appeal of the revenue the Court held that on the facts of the case, the Tribunal was not right in setting aside the well reasoned order passed by the Assessing Officer for re-examination, especially when the Assessing Officer had duly examined all the material placed while passing the assessment order which was affirmed by the Commissioner (Appeals). Order of Commissioner (Appeals) is restored. (AY.2015-16)
PCIT v. Prabha Jain (2021) 439 ITR 304 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Powers – Revision – Revision order set aside by the Tribunal on the basis of material produced before it which was not produced before the Commissioner was held to be not valid – Order of Tribunal set a side and matter remanded to the Commissioner to decide a fresh in accordance with law. [S. 12AA, 263] 2187
In the revision proceedings the assessee has not appeared. On appeal before the Tribunal considering the material produced before it the Tribunal set aside the order

of Commissioner. On appeal by revenue the High Court set aside the order of Tribunal and remitted the matter to Commissioner to decide a fresh in accordance with law. (AY. 2013-14)
CIT v. Love in Action Society (2021) 208 DTR 257 / 323 CTR 1011 / (2022) 442 ITR 358 (Ker.)(HC)

2188 **S. 254(1) : Appellate Tribunal – Powers – Order of remand by Tribunal without reasons – Held to be not justified. [S.115JB]**
On appeal the Court held that while passing the order, the Tribunal had not adverted to the reasoning assigned by the Commissioner (Appeals). The order of remand was not justified. Substantial question of law was answered in favour of the assessee. (AY. 2010-11)
Golden Gate Properties Ltd. v. Dy. CIT (2021) 435 ITR 258 (Karn.)(HC)

2189 **S. 254(1) : Appellate Tribunal – Powers – Remand of matter – Power must be exercised judiciously – Remand was held to be not valid – Order of CIT (A) allowing the claim is affirmed. [S 80JJA, 250(4)]**
Allowing the appeal the Court held that t the Tribunal was required to examine was whether the Commissioner (Appeals) had, scrupulously, verified the material placed before him before allowing the deductions claimed by the assessee. The Tribunal, however, instead of examining this aspect of the matter, observed, incorrectly, that because an opportunity was not given to the Assessing Officer to examine the material, the matter needed to be remanded to the Assessing Officer for a fresh verification. The judgment of the Tribunal deserved to be set aside. The fresh claims made by the assessee, as allowed by the Commissioner (Appeals), were to be sustained. (AY. 2007-08)
International Tractors Ltd. v. Dy. CIT (LTU)(2021) 435 ITR 85 / 203 DTR 81/ 323 CTR 650 (Delhi)(HC)
Editorial : Order in Dy. CIT (LTU) v. International Tractors Ltd. (2018) 67 ITR 538 (Delhi)(Trib.) is set aside.

2190 **S. 254(1) : Appellate Tribunal – Powers – Reassessment order was quashed on grounds being without jurisdiction – Tribunal has no jurisdiction to adjudicate on merits and remanding the same to the Assessing Officer. [S. 35, 148, 260A]**
Allowing the appeal of the assessee the Court held that since Tribunal had set aside reassessment order itself as same being without jurisdiction, it was not justified in adjudicating matter on merits and remanding same to Assessing Officer for computation of deduction under section 35(1)(iv). (AY. 2006-07)
Hindustan Aeronautics Ltd. v. ACIT (2021) 279 Taxman 217 (Karn.)(HC)

2191 **S. 254(1) : Appellate Tribunal – Powers – Order of remand case is not valid – Remand without considering additional grounds is held to be not valid.**
Allowing the appeal the Court held that the Tribunal being the last fact finding authority, is under the legal obligation to record correct findings of fact. Where all the evidence had been produced and the Commissioner (Appeals), after full investigation of the evidence and examination of the accounts, has given a definite finding on the

question in issue, the Tribunal's order of remand is not justified. Court also held that where additional grounds have been raised before the Tribunal, it would be necessary to deal with these grounds and then record a finding that despite the contention advanced by the assessee, the matter requires to be reconsidered de novo by the Assessing Officer. If no such finding is given the order of remand would not be justified. Matter remanded to the Tribunal.(AY.2014-15)
Ratanchand Manoharmal v. ITO (2021) 434 ITR 573 / 281 Taxman 513 (Mad.)(HC)

S. 254(1) : Appellate Tribunal – Powers – Ex parte order – Tribunal is required to dispose of the appeal on merits after hearing the respondent – Order passed by Tribunal holding that the Assessee is not interested in prosecuting the appeals is unsustainable. [ITAT R. 24] 2192
On appeal the High Court that the Tribunal was not justified in dismissing the appeals in limine for non-appearance of the Assessee holding that the assessee is not interested in prosecuting the appeals; Tribunal was duty bound to decide the appeals on merits after hearing the Revenue. Matter remanded back to CIT(A).(ITA No. 12 to 14 of 2020, dt. 24-11-2020)(AY. 2002-03, 2003-04)
Daryapur Shetkari Sahakari Ginning and Pressing Factory v. ACIT (2021) 432 ITR 130 / 319 CTR 70 / 198 DTR 125 (Bom.)(HC)

S. 254(1) : Appellate Tribunal – Powers – No power to dismiss on ground of non -prosecution – Duty to dispose appeal on merits – Tribunal was directed to restore the appeal and decide on merit [S. 253, ITAR, 1963, R. 24, Art. 265] 2193
On the date of hearing fixed by the Tribunal, the Authorised representative has filed an adjourned matter. The matter was adjourned however on the appointed day neither the assessee nor representative were present. The Tribunal, dismissed the appeal for want of prosecution. On a writ the Court held that the Tribunal could not have dismissed the appeal filed by the assessee for want of prosecution and it ought to have decided the appeal on the merits even if the assessee or its counsel was not present when the appeal was taken up for hearing. The Tribunal was directed to restore the appeal and decide it on the merits after giving both the parties an opportunity of being heard. Court also observed that Article 265 of the Constitution of India mandates that no tax can be collected except by authority of law. Appellate proceedings are also laws in the strict sense of the term, which are required to be followed before tax can legally be collected. Similarly, the provisions of law are required to be followed even if the taxpayer does not participate in the proceedings. No assessing authority can refuse to assess the tax fairly and legally, merely because the taxpayer is not participating in the proceedings. Hence, dismissal of appeals by the Income-tax Appellate Tribunal for non-prosecution is illegal and unjustified. (AY.2009-10)
Rabindra Kumar Mohanty v. Registrar, ITAT (2021) 432 ITR 158 / 208 DTR 35/ 323 CTR 592 (Ori)(HC)

S. 254(1) : Appellate Tribunal – Powers – Power to remand must be exercised judicially – Order of Tribunal is affirmed [S.260A] 2194
Dismissing the appeal of the assessee the Court held that the Tribunal upon reconsideration of the factual position, found no justifiable reason to accept the prayer

of the assessee to remand the matter to the Assessing Officer and also rightly observed that the assessee could not fill up the gaps and blanks by seeking a remand. Further, the Tribunal also agreed with the submission of the Revenue that there was a likelihood of tinkering with the evidence in the meantime and if the remand were permitted, it would be prejudicial and detrimental to the interests of the Revenue. Court also observed that an order of remand is not for the asking and superior courts should be slow in remanding a case to the authority, unless it is shown that the case warrants reconsideration on the material already available or when an important legal issue was not considered and that cannot be considered by the court because disputed facts have to be gone into. Otherwise, the prayer for remand should be rejected.(AY.1994-95)
Tatia Sky Line and Health Farms Ltd. v. ACIT (2021) 432 ITR 123 / 279 Taxman 18 (Mad.) (HC)

2195 **S. 254(1) : Appellate Tribunal – Powers – Deduction at source – Tribunal admitted the additional evidence and remanded the matter to decide afresh – Order of Tribunal is affirmed [S.40(a)(ia)]**
Assessee filed an appeal against the remand order passed by the Tribunal. High Court affirmed the order and also modified the direction of the Appellate Tribunal in case, the Commissioner (Appeals) deems it appropriate, he shall be at liberty to seek the remand report from the Assessing Officer and, thereafter, to decide the matter afresh in accordance with law. (AY. 2006-07)
C.S. Raghoji (Bellary) v. Dy. CIT (2021) 277 Taxman 61 (Karn.)(HC)

2196 **S.254 (1): Appellate Tribunal – Powers – Additional ground – Appeal – High Court – Matter remanded to Tribunal by High Court Additional ground was raised when the matter remanded to Appellate Tribunal – Additional ground can be raised – Tribunal is justified in admitting the additional grounds – No question of law – Amalgamation – Merger – Non exiting Company – Issue of notice and Assessment – When a company is merged with another company after the filing of return but before original assessment order is passed and the original order and subsequent order in pursuance of remand from high court, in passed in the old name, is it a curable defect u/s 292B of the Income-tax Act, 1961. Matter referred to larger Bench of Delhi high court on a difference of opinion. [S. 143(2), 143(3), 144C, 254(1), 260A, 292B, ITAT R. 11)]**
The matter related to the appellant which had merged with another company after the return was filed and even though the notice u/s 143(2) was issued in the correct name but by the time the assessment order was passed, the company having been merged, it was contended by the appellant that the assessment was a nullify and defect was not curable.
This was second round of litigation as in the 1st round, the matter went upto the high court and was remanded to ITAT for fresh adjudication and till that time the appeals were filed by the Company itself in old name. Before the Tribunal the assessee made application under Rule 11 of the ITAT Rules 1963, seeking admission of the additional ground of appeal i.e. "The assessment order passed under section 143(3) read with section 144C of the Act is void ab initio, as the assessment was undertaken in the name of non -exiting entity." Tribunal held that since all material necessary for adjudication

of the additional ground was available on record and no fresh examination of facts was required to be undertaken, the additional ground raised by the respondent - Assessee was admitted and adjudicated.

The Delhi High Court was confronted of two substantial question of law i) whether on a remand from high court, the ITAT could have considered the question of nullify of assessment order as an additional ground since during original ITAT proceedings, no such ground was taken and in remand the ITAT did not have the jurisdiction to enlarge the scope of enquiry beyond the direction issued by the Court. Court held that when the matter was set aside and directed the ITAT to decide the appeal " afresh in the light of directions issued to examine all the grounds including the one regarding the existence of an international transactions involving AMP expenses". The aforesaid direction cannot be said to be of limited remand and was open remand and thus ITAT was entitle to allow the additional ground urged before it and allow the appeal solely on the basis thereof. Accordingly the first question was dismissed.

As regards the second question,

ii) whether in a situation like this the notice having been issued correctly, the defect was curable. The assessee relied on plethora of decision including the decision of Maruti Suzuki of Supreme Court.

Honourable Mr. Justice Rajiv Sahai Endlaw noted that Delhi High Court in *Savita Kapila v. ACIT (2020) 426 ITR 502 (Delhi)(HC)* case had noted that issuance of notice in a correct name is a sine qua non and in this case notice was issued in correct name. The court also noted that if the order was held to be nullity then even the 1st appeal was also bad in law.

However, Honourable Mr. Justice Sanjeev Narula heavily relied on the decision of *PCIT v. Maruti Suzuki India Limited (2019) 416 ITR 613 (SC)* and held that even though the company may have filed appeal itself in old name, that could not have revived the procedural defect.

Thus, on a difference of opinion, the matter has been referred to larger bench.

When the companies are merged/amalgamated, observance of procedural law is very important and the outcome will be keenly awaited. (Case laws *PCIT v. Maruti Suzuki India Limited (2019) 416 ITR 613 (SC) PCIT v. Maruti Suzuki India Limited (Successor of Suzuki Powetrain India Limited)(2017) 397 ITR 681 (Delhi)(HC), (b) Spice Entertainment Limited v. CIT (2012) 247 CTR (Delhi)(HC) 500 (Civil Appeal 285/2014 where against was dismissed on 2nd November, 2017), (c) CIT v.. Dimension Apparels (P) Ltd. (2015) 370 ITR 288 (Civil Appeal 4317/2014 where against was dismissed on 2nd November, 2017), (d) CIT v. Norton Motors (2005) 275 ITR 595 (P & H)(HC), (e) CIT v. Harjinder Kaur (2009) 222 CTR (P&H) 254 and (f) Sri Nath Suresh Chand Ram Naresh v. CIT (2006) 280 ITR 396 (All)(HC).*(AY. 2009-10, 2010-11)(ITA NO. 115 /2019 /119/ 2019 dt 18-5-2021)

PCIT v. Sonny Mobile Communications India Pvt Ltd (Delhi)(HC).www.itatonline.org

S.254(1): Appellate Tribunal – Powers – Request for adjournments of six months on account of COVID-19 pandemic was rejected – Lat opportunity was granted. 2197

Adjournments cannot be granted routinely but in view of the prevailing situation and the impact of COVID-19, a last chance/adjournment was granted to the Revenue. Adjournment of six months to be granted to the Revenue was rejected.(AY. 2014-2015)

DCIT v. Saroj Kumar Poddar (2021) 212 TTJ 250 / 90 ITR 223/ 203 DTR 81 (Kol.)(Trib.)

2198 **S. 254(1) : Appellate Tribunal – Power – Pandemic – Request for an adjournment of six months was rejected – Directed to fix the hearing on 24-5-2021.**
Held that both parties were citing pandemic as reason for either early disposal of matter or for seeking postponement of adjudication of matter and present request was made by department for an adjournment for a further period of six months after three adjournments, department's present request was highly unreasonable and unwarranted. Tribunal held that request for adjournment on specious plea of general condition prevailing in this country, could not be granted. (AY. 2014-15)
DCIT v. Saroj Kumar Poddar (2021) 191 ITD 660 / 90 ITR 223 (Kol.)(Trib.)

2199 **S. 254(1) : Appellate Tribunal – Powers – Delay in filing an appeal before CIT (A) – Wrong advice – Delay of more than 1213 days was condoned – Remanded to the office of CIT (A) to decide on merit. [S. 234E, 250]**
CIT (A) has dismissed the appeals of the assessee on the ground that the delay in filing of appeals were not properly explained. On appeal the Tribunal after following the ratio in *Collector of Land Acquisition v. Mst. Katiji & Others AIR 1987 1353 (SC)*, condoned the delay and remanded the matter to the file of CIT (A) to decide on merit. (AY. 2013-14 to 2016-17)
Solaron Sustainability Services Pvt. Ltd. v. ACIT (CPC) TDS (2021) 87 ITR 28 (SN)(Bang.)(Trib.)

2200 **S. 254(1) : Appellate Tribunal – Powers – Delay of 124 days – Mistake of counsel – Supported by affidavit – Delay was condoned – Ex parte order passed by the Commissioner (Appeals) was set aside and directed him to decide on merits [S. 251]**
Tribunal held that the assessee had demonstrated bona fide reasons and sufficient cause for non-filling of appeal within time limit, therefore, impugned delay of 124 days was to be condoned. CIT (A) has dismissed the appeal by observing that the assessee neither attended appellate proceedings nor filed any adjournment application. Tribunal held that since Commissioner (Appeals) did not pass order under challenge on merit, impugned order was to be set aside and case was to be remanded back to him for passing afresh decision on merits. (AY. 2013-14)
Kashmir Road Lines v. DCIT (2021) 186 ITD 454 (Amritsar)(Trib.)

2201 **S. 254(1) : Appellate Tribunal – Powers – Even if no revised return filed, Assessee can claim exemption before appellate authorities – Claim under section 54F which was made first time before Appellate Authority, admitted and directed the Assessing Officer to allow the claim in accordance with law [S.54F]**
Tribunal held that even if no revised return filed, Assessee can claim exemption before appellate authorities. Claim under section 54F which was made first time before Appellate Authority,admitted and directed the Assessing Officer to allow the claim in accordance with law. (AY.2006-07)
Thimmareddy Krishnareddy v. ITO (2021) 85 ITR 22 (SN)(Bang.)(Trib.)

S. 254(1) : Appellate Tribunal – Powers – Additional evidence – Non-consideration of additional evidence placed on record would cause prejudice to assessee — Commissioner (Appeals) to admit additional evidence. [R. 46A, ITATR, 29] 2202

Held that the additional evidence submitted by the assessee at this stage for the first time was necessary for deciding the appeal. Even otherwise, all the documents placed on record by the assessee by way of additional evidence before the Commissioner (Appeals) were necessary to adjudicate the controversy between the parties. Moreover, in case the additional evidence placed on record by the assessee was allowed, no prejudice shall be caused to the rights of the Revenue. Whereas, in case the additional evidence was not considered the rights of the assessee shall be prejudiced. Therefore, the Commissioner (Appeals) was directed to admit additional evidence. (AY.2008-09)

Sanjay Matai v. ITO (2021) 91 ITR 597 (Jaipur)(Trib.)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Recalling the order is beyond the scope and ambit of the powers of the Tribunal – Tribunal has no power to recall its earlier order – Order recalling the order was quashed and set aside – Where Tribunal decides merits erroneously remedy of aggrieved party is to appeal before High Court – DTAA-India-Sweden-USA [S. 195(2) 254(1), 260A, Civil Procedure Code, 1908, Order XLVII Rule 1, Art. 12(3), Art. 226] 2203

Assessee filed an application under Section 195(2) to make payment to non-resident company for purchase of software without deduction of TDS. The Assessee contended that it was for purchase of software and Ericsson A.B. had no permanent establishment in India and in terms of DTAA between India and Sweden & USA, amount paid is not taxable in India. Assessing Officer passed an order rejecting the Assessee's application holding that consideration for software licensing constituted under Section 9(1)(vi)and under Article 12(3) of DTAA is liable to be taxed in India and accordingly directed assessee was liable to deduct tax at rate of 10% as royalty. Assessee after deducting tax appealed before CIT(A) who decided the issue in favour of the assessee. On appeal by the revenue the ITAT allowed Revenue's appeal and held that payments made for purchase of software are in nature of royalty. The assessee filed a miscellaneous application before the ITAT which was allowed and the appeal was recalled. Revenue preferred writ petition before High Court. High Court has dismissed the writ petition. On appeal the Supreme Court held that powers under Section 254(2) are akin to Order XLVII Rule 1 CPC. While considering application under Section 254(2), Appellate Tribunal is not required to re-visit its earlier order and to go into detail on merits. Powers under Section 254(2) are only to rectify/correct any mistake apparent from record. On the facts a detailed order was passed by ITAT when it passed an order on 06.09.2013, by which ITAT held in favour of Revenue. If Assessee was of opinion that order passed by ITAT was erroneous, either on facts or in law, in that case, only remedy available to Assessee was to prefer an appeal before High Court, which as such was already filed by Assessee before High Court, which Assessee withdrew after order passed by ITAT dated 18.11.2016 recalling its earlier order dated 6-9-2013. Merely because Revenue might have in detail gone into merits of case before ITAT and merely because parties might have filed detailed submissions, it does not confer jurisdiction upon ITAT to pass order de hors Section 254(2) of the Act. The powers under section

254(2) are only to correct and/ or rectify the mistake apparent on record and not beyond that. Observations that merits might have been decided erroneously and ITAT had jurisdiction and within its powers it may pass an order recalling its earlier order which is an erroneous order, cannot be accepted. If the order passed by the Tribunal was erroneous on merits, in that case the remedy available to the assessee was to prefer an appeal before the High Court. Accordingly common judgment and order passed by High Court as well as common order passed by ITAT recalling its earlier order was quashed and set aside.

CIT v. Reliance Communications Ltd (2021) 323 CTR 873 / 208 DTR 113/ (2022) 440 ITR 1/ 284 Taxman 517 (SC)

CIT v. Reliance Telecom Ltd. (2021) 323 CTR 873 / 208 DTR 113/ (2022) 440 ITR 1/ 284 Taxman 517 (SC)

Editorial : CIT v. ITAT (Reliance Communications Ltd.) (2017) 85 taxmann.com 42 (Bom.)(HC)(WP (L) No. 708 of 20017, WP No. 1406 & 1432 of 2017 dt. 8-8-2017 was set aside

2204 **S. 254(2): Appellate Tribunal – Rectification of mistake apparent from the record – Additional grounds – Order can be rectified on account of mistake of the counsel for the parties [S. 253, Art. 226]**

At the time of hearing the counsel for the assessee inadvertently, failed to bring to the notice of the Tribunal that issue raised inn ground no Nos. 6 and 7 of the grounds of appeal. The assessee filed the miscellaneous application which was rejected on the ground that there was no mistake in the order of the Tribunal. On writ allowing the petition the Court held that, the amendment to the order of the Tribunal under section 254(2) could also be made, if it was triggered on account of a mistake of the counsel for the parties. This power would also extend to a situation where the assessee's counsel withdrew the appeal, for the reason that, the issue concerning the transfer pricing adjustment in respect of the assessment year 2011-12 stood resolved. The order passed by the Tribunal in the miscellaneous application was to be set aside. The Tribunal was directed to adjudicate the issues pertaining to the additional grounds raised by the assessee. Relied on *CIT (Asst) v. Saurashtra Kutch Stock Exchange Ltd (2003) 305 ITR 227 (SC), S. Nagaraj v. State of Karnataka (1993 Suppl.. 4SCC 595* (AY.2011-12)

Federal Mogul Goetze (India) Ltd v. ACIT (2021) 439 ITR 204 /(2022) 285 Taxman 129 (Delhi)(HC)

2205 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – lease rent – Tribunal followed order of earlier year and not followed the Judgement of Supreme Court – Miscellaneous application was dismissed – Order rejecting miscellaneous application was set aside – Non -consideration of judgement of Supreme Court is a mistake apparent on record – Matter remanded to Tribunal to decide on merits in accordance with law [S. 37(1), 200A]**

The assessee claimed deduction of lease rental paid on cars taken on financial lease as revenue expenditure. The AO disallowed the expenditure. CIT (A) allowed the appeal. On appeal by the revenue the assessee relied on the decision of Supreme Court in *I.C.D.S Ltd v. CIT (2013) 350 ITR 527 (SC)*. The Tribunal allowed the appeal of the revenue following the earlier order of the Tribunal in assesse's own case for

the Assessment year 2013-14. The assessee filed miscellaneous application and relied on the judgment of Supreme Court in *CIT v. Saurashtra Kutch Stock Exchange Ltd. (2008) 305 DTR 227 (SC)* for the proposition that non-consideration of a decision of the Jurisdictional High Court or the Honourable Supreme Court is a mistake apparent from records. Tribunal dismissed the miscellaneous application. On appeal High Court held that The Tribunal can take a stand that the issue is debatable and for doing so the Tribunal should record the reasons as to what are the other decisions on the very same point which may not support the case of the assessee. Accordingly the order rejecting the miscellaneous application filed by the assessee was held to be not justified. Order of Tribunal was set aside and Directed the Tribunal to decide on merit in accordance with law. (AY. 2004-05)
Philips India Ltd v. PCIT (2021) 323 CTR 992 / 208 DTR 211 (Cal.)(HC)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Duties – High Court directed the Appellate Tribunal to upload the daily order sheets and revised cause list on its website – System in this regard be put in place by the ITAT, if not already there as expeditiously as possible, preferable within three months [S. 253, 254(1), 255, ITAT Rules, 1963 19, 20, Art. 226] 2206
The Miscellaneous application of the assessee was heard on 14-2-2020 and it was listed for further hearing on 28-2-2020. However on 28-2-2020 the natter was not shown in the cause list. On enquiry it was informed that the matter was listed on 21-2-2020 and the matter was dismissed on 27-2-2020. The petitioner filed writ petition before the High Court and contended that the petitioner did not get adequate and fair opportunity to represent the case and the petitioner was under bonafide belief that his case will be take up on 28-2-2020 as pronounced in the Court on the last date of hearing, i.e. on 14-2-2020. Allowing the petition the Court directed the Tribunal ton hear the miscellaneous application afresh. The Court also observed that non -publication of daily order sheets and revised cause list on the website by the ITAT results in inconvenience to the litigants in general and to the lawyers in particular. The Court also directed the Appellate Tribunal to upload the daily order sheets and revised cause list on its website. System in this regard be put in place by the ITAT, if not already there as expeditiously as possible, preferable within three months
Ankit Kapoor v. ITO (2021) 205 DTR 21/ 322 CTR 208 / (2022) 440 ITR 386 (Delhi)(HC)

S. 254(2): Appellate Tribunal – Rectification of mistake apparent from the record – Divergent view whether appeal will lie against the dismissal of miscellaneous application – Order of single judge and Tribunal was was set aside – Directed the Tribunal to consider the additional ground. [S. 132, 153A, 254(1), 260A, Art. 226] 2207
The assessee filed writ against the dismissal of miscellaneous application. The learned single judge dismissed the writ on the ground that Article 226 of the Constitution of India prohibited from assuming the role of an Appellate Court. On appeal the division bench held that there are divergent view whether appeal will lie against the dismissal of miscellaneous application. Order of single judge and Tribunal was set aside. Directed the Tribunal to consider the additional ground. Referred *Chem Amit v. ACIT (2005) 272 ITR 397 (Bom)(HC), Viswas Promoters (P) Ltd. v. ITAT (2010) 323 ITR 114 (Mad)(HC)*

and Madhav Marbles and Granites v. ITAT (2014) 362 ITR 647(Raj.)(HC) (AY. 2006-07 to 2011-12)
Moidu's Medicare (P) Ltd. v. Dy. CIT (2021) 198 DTR 37 / 319 CTR 187 (Ker.)(HC)
Editorial : Single Judge order Moidu's Medicare (P) Ltd. v. Dy. CIT (2021) 198 DTR 48 / 319 CTR 197 (Ker.)(HC)

2208 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – No power of review – Rejection of application was held to be valid. [S. 254(1)), 260A, Art. 226]**
Dismissing the review application, that the review application was never admitted and it had been heard on five earlier occasions of which, on one occasion there was no representation and the matter was directed to be posted for dismissal and on the remaining four occasions, it was adjourned at the request of the applicant. All the grounds raised in the review application could be contended in a regular appeal and there was no error apparent on the face of the order to exercise review jurisdiction under article 226.
Southern Roadways Limited v. Dy. CIT (2021) 437 ITR 369 (Mad.)(HC)

2209 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Non-consideration of a judgement of High Court – Not a mistake apparent from the record [S.260A]**
Allowing the appeal of the revenue the Court held that non consideration of a judgment of High Court cannot be construed as mistake apparent on record. The remedy open to the assessee is to file an appeal against the order. Appeal of revenue was allowed. (AY. 2005-06)
CIT v. Sical Logistics Ltd. (2021) 281 Taxman 352 / 206 DTR 462 / 323 CTR 435 (Mad.) (HC)

2210 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Limitation – Actual date of receipt of order of Tribunal [S.253, 268]**
The order of Tribunal was passed on 19-9-2018 and the order was served on 5-12-2018. The rectification application was filed on 3-6-2019. The Tribunal held that there was delay of 66 days in filing the application and declined to entertain the application stating that being a creature of statute it did not have any power to pass an order under section 254(2) beyond a period of six months from the end of the month in which the order sought to be rectified was passed. On appea allowing the appeal, that the Tribunal was wrong in not applying the exclusion period in computing the period of limitation and rejecting the application of the assessee filed under section 254(2) as barred by limitation. The order was passed on September 19, 2018, and the copy of order was admittedly served upon the assessee on December 5, 2018. Therefore, the Tribunal should have excluded the time period between September 19, 2018, to December 5, 2018, in computing the period of limitation. Court also observed that if section 254(2) of the Income-tax Act, 1961 is read with sections 254(3) and 268 which provides for exclusion of the time period between the date of the order and the date of service of the order upon the assessee, no hardship or unreasonableness can be found in the scheme of the Act. (AY.2009-10)
Anil Kumar Nevatia v. ITO (2021) 434 ITR 261/ 203 DTR 92/ 278 Taxman 235 / 321 CTR 368 (Cal.)(HC)

S. 254(2): Appellate Tribunal – Rectification of mistake apparent from the record – Contradiction in earlier order – No error apparent on record – Tribunal wrongly recalled the order – Failure by Tribunal to consider applicability of explanation to Section 271(1)(c) – Rectification is held to be not valid [S. 271(1)(c)] 2211

Allowing the reference application of the assessee the Court held that the Tribunal was wrong in allowing the rectification application filed by the Department on the basis of a decision rendered subsequent to the order that was sought to be rectified. The reasoning of the Tribunal was erroneous. A decision taken subsequently in another case was not part of the record of the case. A subsequent decision, subsequent change of law, or subsequent wisdom that dawned upon the Tribunal, were not matters that would come within the scope of "mistake apparent from the record" before the Tribunal. The Tribunal had not found that there was any mistake in the earlier order apparent from the record warranting a rectification. The only reason mentioned was that there was a contradiction in the orders passed and no rectification application had been filed by the assessee in the subsequent case. The satisfaction of the Tribunal about the existence of a mistake apparent on the record was absent. The Department's further contention was for the proposition that the reason for filing the rectification application was on account of the omission of the Tribunal to consider the Explanation to section 271(1)(as it then stood). Even though the order of rectification issued by the Tribunal did not refer to any such contention having been raised, such contention had no basis. Penalty was levied under section 271(1)(c)(i)(a)(as it then stood), while the Explanation applied to the cases covered by section 271(1)(c)(i)(b)(as it then stood). In such view also the rectification application filed by the Department could not have been allowed by the Tribunal. Relied on *Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale (1960) AIR 1960 SC 137* (AY.1982-83)

P. T. Manuel and Sons v. CIT (2021) 434 ITR 416 (Ker.)(HC)

S. 254(2): Appellate Tribunal – Rectification of mistake apparent from the record – Jurisdiction limited to correcting error apparent on face of record – Tribunal cannot review its earlier order or rectify error of law or reappreciate facts [S. 253, 254(1), 260A] 2212

Dismissing the petition the Court held that the Appellate Tribunal, in its own way, had discussed qua ground No. 3 issue relating to the addition made on account of suppression in the value of closing stock and had recorded a particular finding. If the assessee was dissatisfied, then it had to prefer an appeal under section 260A and if the court was convinced then it could remit the matter to the Tribunal for fresh consideration of ground No. 3. As regards the findings recorded by the Tribunal, so far as ground No. 3 was concerned, the assessee could seek appellate remedies. The power to rectify an order under section 254(2) is limited. Referred *Master Construction co. (P) Ltd. v. State of Orissa (SC) and Satyanarayan laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale (1960) AIR 1960 SC 137*

Vrundavan Ginning and Oil Mill v. Assistant Registrar (2021) 434 ITR 583/ 205 DTR 46 / 323 CTR 1067/ (2020) 284 Taxman 410 (Guj.)(HC)

2213 **S. 254(2): Appellate Tribunal – Rectification of mistake apparent from the record – Tribunal has the power to rectify errors in its order. [S.36 (1)(iii)]**

The question raised by the revenue was whether the Tribunal has acted in contravention of the provisions of section 254 (2) of the Act while passing the order dated December 6, 2017 on an application for rectification filed by the assessee. Court held that the Tribunal had recorded a finding in its order that there had been no adjudication of the claim for disallowance of processing charges and capitalization of Rs. 9,77,23,650. The Tribunal had therefore decided the claim of the assessee on the merits. Since, the omission on the part of the Tribunal was an error apparent on the face of the record, the Tribunal rightly invoked the provisions of section 254(2). The Tribunal had rightly deleted the disallowance.(AY.2010-11)

Coffeeday Global Ltd. v. Add. CIT (2021) 433 ITR 321/ 202 DTR 217 / 322 CTR 336 (Karn.) (HC)

PCIT v. Amalgamated Bean Coffee Trading Co. Ltd. (2021) 433 ITR 321/ 202 DTR 217 322 CTR 336 (Karn.)(HC)

2214 **S. 254(2): Appellate Tribunal – Rectification of mistake apparent from the record – Duty of Tribunal to decide on merits – Dismissal of first application for restoration was dismissed for non-prosecution – Dismissal of second application by invoking amendment – Dismissal was held to be not Valid – Appeal restored to original position [ITATR, 1963, 24, Art. 226]**

The assessee filed an application for recall of the order which was dismissed in limine. The assessee filed another application on February 26, 2018, for recall of the order dated February 7, 2018, which was also dismissed by an order dated December 23, 2020 on the ground that a second application was not maintainable. On a writ allowing the petition the Court held that, there was no adjudication by the Tribunal of the appeal on the merits. Its order dated December 10, 2015 dismissing the assessee's appeal was for non-prosecution and not on merits, as it was required to do notwithstanding the non-appearance of the assessee when the appeal was called for hearing, was violative of rule 24 of the Income-tax (Appellate Tribunal) Rules, 1963 and thus void. The action of the Tribunal, of dismissing the appeal for non-prosecution instead of on the merits and of refusal to restore the appeal notwithstanding the applications of the assessee was not merely an irregularity. The Tribunal had erred in dismissing the first application of the assessee filed in March, 2017, for restoration of the appeal invoking the amendment to section 254(2) requiring application thereunder to be filed within six months and in not going into the sufficiency of the reasons given by the assessee for non-appearance. The application filed by the assessee in March, 2017, invoking rule 24 of the 1963 Rules was within time and could not have been dismissed applying the provisions of limitation applicable to section 254(2). The Tribunal was to restore the appeal filed by the assessee to its original position as immediately before December 10, 2015.(AY.2008-09)

Pradeep Kumar Jindal v. PCIT (2021) 432 ITR 48 / 200 DTR 141/ 320 CTR 326 / 279 Taxman 14 (Delhi)(HC)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Delay of 3052 days – Period of limitation would commence from date when affected party got knowledge of decision in question and it would not commence from date when order was passed – Tribunal cannot dismiss the appeal for non appearance, it has to decide on merits – Cost of Rs 10,000 was imposed on the assessee for each year of appeal. [S.254(1), 260A] 2215

Tribunal by an order dated 1-2-2013 dismissed assessee's appeal against an assessment order making addition to income of assessee for default of appearance by assessee. On 19-11-2019 Tax Recovery Officer proceeded to attach immovable properties of assessee for tax recovery. Thereafter, on 30-12-2019 assessee filed an application before Tribunal to set aside its order dated 1-2-2013 and rehear appeal on merits along with an application for condonation of delay of 3052 days in seeking restoration of appeal Tribunal dismissed both of these applications. On appeal the Assessee contended that Tribunal was not justified in dismissing appeal of assessee merely for absence of any representation on behalf of assessee. It further contended that period of limitation would begin to run from date when assessee got knowledge of order i.e. on 19-11-2019 and not from date of passing of order. On appeal the Court held that Tribunal has to dispose of an appeal on merits and it cannot dismiss same solely on account of non-appearance of a party, thus, impugned order of Tribunal dismissing assessee's appeal merely for default of appearance was unjustified and same was to be set aside. Court also held that period of limitation prescribed in section 254(2) would commence from date when affected party got knowledge of decision in question and it would not commence from date when order was passed. Accordingly period of limitation would commence only from 19-11-2019 which was date of obtaining knowledge of order dated 1-2-2013 and, accordingly, impugned application filed by assessee was not barred by limitation. Court also held that from December 2019 till March 2020, the applicant had taken various steps in its attempt to have the appeals restored. The present appeals have been filed on 22-6-2020 in the midst of the lockdown. The aforesaid events are thus found sufficient to condone the delay subject to imposing costs on the applicant. Accordingly the delay in filing each appeal stands condoned subject to costs of Rupees Ten thousand per appeal to be paid to the Revenue within a period of three weeks. The applications are allowed and disposed of in aforesaid term. (AY. 2002-03 to 2004-05)

Daryapur Shetkari Sahakari Ginning and Pressing Factory v. ACIT (2021) 277 Taxman 155/ 200 DTR 417/ 320 CTR 456 (Bom.)(HC)

S. 254(2): Appellate Tribunal – Rectification of mistake apparent from the record – Ex Parte order – Limitation – Notice was not served though change of address was intimated – Rejection of application for recall of order on ground of bar of limitation – Limitation period would not start from date on which order was pronounced by Tribunal and it would start from point when said order came in knowledge of assessee – Order quashed and set aside – Matter remanded to Tribunal. [S.253, 254(1), Art. 226] 2216

The assessee filed an application under section 254(2) of the Act, for recall of the ex parte order remanding the matter to the Assessing Officer to decide the matter afresh after examining all the documents, including additional evidence as well as books of account, bills and vouchers, etc. The Tribunal held that it had no power to condone

the delay in filing the application under section 254(2) as the assessee had filed the application after six months from the end of the month in which the ex parte order had been passed. On a writ petition contending that the assessee had changed its address and shifted to new premises and this fact was mentioned in the appeal filed by the assessee in form 35 against the order passed by the Dy Commissioner and the assessee was never served in the appeal filed by the Department before the Tribunal. On writ allowing the petition, that the course adopted by the Tribunal at the first instance, by dismissing the appeal for non-prosecution, and then refusing to entertain the application The assessee was never served in the appeal filed by the Department before the Tribunal. The Tribunal had erroneously concluded that the miscellaneous application filed by the assessee was barred by limitation under section 254(2) inasmuch as the assessee had filed the application within six months of actual receipt of the order. If the assessee had no notice and no knowledge of the order passed by the Tribunal, the limitation period would not start from the date the order was pronounced by the Tribunal. The order dismissing the application filed by the assessee under section 254(2) was quashed and on the facts the ex- parte order whereby the matter was remanded to the Assessing Officer was set aside. The Tribunal was directed to hear and dispose of the appeal on the merits.

Pacific Projects Ltd. v. ACIT (2021) 430 ITR 522 / 278 Taxman 396 / 198 DTR 129 / 319 CTR 333 (Delhi)(HC)

2217 **S. 254(2): Appellate Tribunal – Rectification of mistake apparent from the record – Sufficient cause – Ex-parte order to be set aside even if appeal was decided on merits [S. 253, 254(1), ITATR, 1963, R. 25, Art. 226]**

Allowing the petition the Court held that the assessee had given a sufficient and cogent explanation for non-appearance of its representative, which, however, the Tribunal had failed to take into account but went into the question of the merits of the ex parte decision, by delving into the correctness of the order. The Tribunal had failed to appreciate that the assessee sought the recall of the order dated July 24, 2018 and restoration of the appeal, and not the rectification of any mistake apparent on record. The merits of the case could not have been gone into at the stage of deciding an application under rule 25. The proviso to rule 25 deals with a situation where the Tribunal had passed an ex-parte order, due to non-appearance of the respondent, even though the order was passed on the merits. The reasoning given in the order in question was beyond the scope and ambit of rule 25. The sufficiency of the cause, which was the only factor to be examined, had been ignored by the Tribunal. If sufficient cause was shown, the Tribunal was obligated to consider it and make an order setting aside the ex-parte order, irrespective of the fact that the final order had decided the appeal on the merits. Accordingly the appeal of the Department before the Tribunal was restored. (AY.2009-10)

Kalra Papers Pvt Ltd v. ITO (2021) 430 ITR 291 / 279 Taxman 194 / 204 DTR 146/ 321 CTR 524 (Delhi)(HC)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – For computing the period of limitation the date of service of the order to be considered and not the date of the order [S.254(3)] 2218

Allowing the appeal the Court held that For computing the period of limitation the date of service of the order to be considered and not the date of the order and directed the Tribunal hear the miscellaneous application on merit and dispose the same with in six weeks from the date of communication of the High court order. (ITA No. 28 of 2020 dt 23-12-2020)

Anil Kumar Nevatia v. ITO (2021) The Chamber's Journal – February – P. 165 (Cal.)(HC)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Order of Supreme Court extending limitation for purposes of all laws – Miscellaneous application filed on 28-9-2020 was admitted as filed within extended due date – Glaring and patent mistakes – Tribunal order was recalled and matter was directed to be heard afresh. 2219

Order of Supreme Court extending limitation for purposes of all laws. Miscellaneous application filed on 28-9-2020 was admitted as filed within extended due date. Glaring and patent mistakes – Tribunal order was recalled and matter was directed to be heard afresh. Followed Cognizance for Extension of Limitation, In re. (2020) 424 ITR 314 (SC) and Cognizance for Extension of limitation, In re (2020) 220 Comp Cas 454 (SC)(AY. 2015-2016)

Shiv Edibles Ltd v. ACIT (2021) 90 ITR 669 (Jaipur)(Trib.)

S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Order of the Tribunal, accepting the withdrawal of the appeals, passed on incorrect facts which were mistakenly represented and admitted by assessee's counsel has resulted in an error in such Order and is liable for rectification [S. 263] 2220

The Tribunal held that the Order of the Tribunal having passed the Order accepting the request for withdrawal of appeals on the basis of mistaken representation made by the assessee's counsel that the appeals did not survive under a wrong impression that the related assessment has been set aside by the CIT for de novo assessment in his order under Section 263, whereas the CIT had directed to examine specific issues, same has resulted in an error in the Order which is liable for rectification under Section 254(2) of the Act. Therefore, the Order of accepting the withdrawal has been recalled and the appeal needs to be adjudicated on merits. (AY. 2006-07 & 2008-09)

Motia Construction Ltd. v. DCIT (2021) 212 TTJ 398 / 90 ITR 103 / 203 DTR 365 (Chd.) (Trib.)

S. 254(2): Appellate Tribunal – Rectification of mistake apparent from the record – Limitation period is to be counted from date of service of order and not from date of order. 2221

Held that for workability of scheme of section 254(2) limitation period is to be counted from date of service of order and not from date of order. On fact that there was no evidence of service of order and that there was no reason to dispute or doubt statement made by assessee including on affidavit, MA deserved to be decided on merits. (AY. 2005-06)

Techknoweledgy Interactive Partners P. Ltd. (2021) 190 ITD 643 / 205 DTR 1/ 213 TTJ 1 (Mum.)(Trib.)

2222 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – Unexplained investment – Service of notice u/s 143(2) – Miscellaneous application of revenue to rectify the mistake was dismissed [S. 143(2)]**
Dismissing the petition the Tribunal held that the Tribunal has no jurisdiction to review its own order in garb of rectification under provision of section 254(2) of the Act. (AY. 2014-15)
ITO v. Mohd. Akram (2021) 190 ITD 575 (SMC)(Luck.)(Trib.)

2223 **S. 254(2): Appellate Tribunal – Rectification of mistake apparent from the record – Industrial undertaking – Infrastructure development – Interest on income tax refund and interest on fixed deposits – No power of review – Rectification application was rejected [S.80IA]**
Dismissing the application the Tribunal held that whether interest on income tax refund and interest on fixed deposits can be taken in to while computing the deduction under section 80IA being debatable, it cannot be considered as mistake apparent on record. Rectification application was dismissed. (AY. 2012-13)
Gateway Terminals India Pvt. Ltd. v. DCIT 190 ITD 220 (Mum.)(Trib.)

2224 **S.254 (2) : Appellate Tribunal – Rectification of mistake apparent from the record – Transfer pricing – Arm's length price – Most appropriate method – Application to Tribunal to direct the TPO to adopt a specific method was rejected [S. 254(1), 92C]**
Held that when the matter remanded to find out most appropriate method and then find out ALP of international transaction, selection of any of methods was open before TPO, who could reshuffle existing data or require assessee to make good deficiencies in existing data and proceed with determination of ALP of international transaction. Miscellaneous application to direct the TPO to adopt a particular method of accounting was rejected. (AY. 2009-10)
Carraro India (P.) Ltd. v. DCIT (2021) 188 ITD 915 (Pune)(Trib.)

2225 **S. 254(2): Appellate Tribunal – Rectification of mistake apparent from the record – Delay in filing miscellaneous application – Ex parte order – ill health – Delay was condoned [ITATR, 24]**
Held that due to ill health and also previous tax consultant of assessee had not attended tax matter satisfactorily. Application against ex parte order passed on account of non-prosecution, keeping in view of rule 24 of Income-tax Appellate Tribunal, 1963, delay in filing Miscellaneous Application was to be condoned. Referred Dolphin Metal (India) Ltd v. ITO (SPA No 7163 of 2019 dt. 16-2-2021 (Guj.)(HC). (AY. 2012-13)
Rameshbhai V. Prajapati v. DCIT (2021) 188 ITD 773 (Ahd.)(Trib.)

2226 **S. 254(2): Appellate Tribunal – Rectification of mistake apparent from the record – Delay in filing miscellaneous application – Ex parte order – ill health – Delay was condoned [ITATR, 24]**
Held that due to ill health and also previous tax consultant of assessee had not attended tax matter satisfactorily. Application against ex parte order passed on account of non-prosecution, keeping in view of rule 24 of Income-tax Appellate Tribunal, 1963, delay in filing Miscellaneous Application was to be condoned. Referred *Dolphin Metal (India) Ltd v. ITO (SPA No 7163 of 2019 dt. 16-2-2021 (Guj.)(HC)*. (AY. 2012-13)
Rameshbhai V. Prajapati v. DCIT (2021) 188 ITD 773 (Ahd)(Trib.)

S. 254(2): Appellate Tribunal – Rectification of mistake apparent from the record – Ex-parte order was passed 30-3-2010 – Order was not served on the assessee – The assessee came to know the passing of order on the issue of TRO notice dated 21-1-2020 – The order was down loaded from the Official website of the ITAT and Miscellaneous application was filed with in six months of date of downloading of the order – The limitation period to be counted from the date of communication or knowledge, actual or constructive – Miscellaneous application was allowed – Ex parte order was recalled and Registry was directed to fix the appeal for hearing on merit. [S. 254 (1), ITAT R. 24] 2227

The assessee moved miscellaneous application to recall the order as the impugned order was never served upon the assessee. The assessee contended that they came to know the passing of order on the issue of TRO notice dated 21-1-2020. The assessee there after down loaded from the Official website of the ITAT and Miscellaneous application was filed with in six months of date of downloading of the order. The Assessee relied on the ratio of judgement in *Golden Times Services (P) Ltd v. Dy.CIT (2020) 422 ITR 102/ 271 Taxman 123 (Delhi)(HC)* for the proposition that the limitation period to be counted from the date of communication or knowledge, actual or constructive of the order sought to be rectified. Honourable Tribunal allowed the miscellaneous application of the assessee and Ex parte order was recalled. Registry was directed to fix the appeal for hearing on merit. (MA No. 69/Mum/ 2021 (Arising ITA No 350/Mum / 2009 dt 6-8 -2021 (AY. 2005-06)

Techknoweledgy Interactive Partners P. Ltd v. ITO (Mum.)(Trib.) www.itatonline.org

S. 254(2): Appellate Tribunal – Rectification of mistake apparent from the record – No power to review its own order. 2228

Tribunal Held, that there was no mistake apparent from the record, and therefore, the miscellaneous application moved by the Department was not maintainable. The Department was seeking to get the order passed by the Tribunal reviewed which was not permissible as the Tribunal has no power to review its order and the right forum for redressal of the grievance on any special question of law arising from the order of the Tribunal would be the High Court u/s.260A of the Act. (AY.2008-09, 2010-11, 2012-13).

Dy.CIT v. Sanjay Singal (2021) 87 ITR 468 (Chd.)(Trib.)

Dy.CIT v. Aarti Singal (Smt) (2021) 87 ITR 468 (Chd.)(Trib.)

S. 254(2): Appellate Tribunal – Rectification of mistake apparent from the record – Hearing concluded on 23-7-2019 and order was passed on 18-10-2019- Monetary limit prescribed Circular Nos. 3 of 2018 dated 11-7-2018 ie. 20 lakhs would apply and not circular No 17 of 2019 dated 18-8-2019 wherein the monitory limit of Rs 50 lakhs was fixed. [S. 268A] 2229

Dismissing the petition the Court held that Tribunal, hearing was concluded on 23-7-2019 - Order was passed on 18-10-2019. Accordingly the monitory limit as per circular No. 17 of 2019 dated 18-8-2019 would not apply. On merit the Tribunal held that all submissions and explanations by assessee and department had been summarized and then a finding had been arrived at and, thus, issue had been decided by Tribunal after considering facts in entirety available on record and full opportunity had been given

to assessee to make submissions, no mistake apparent from record being pointed out, rectification of Tribunal's order was not warranted. (AY. 2004-05, 2005-06)
Dorf Ketal Chemical India (P.) Ltd. v. DCIT (2021) 186 ITD 681 (Mum.)(Trib.)

2230 **S. 254(2) : Appellate Tribunal – Rectification of mistake apparent from the record – The Tribunal has consciously adjudicated a case instead of referring it to a special bench as desired by the assessee, it is not open to him to try achieving the same under the garb of 254(2) proceedings – Miscellaneous application is rejected.**
The assessee filed a miscellaneous application to have the order reversed and referred to the special bench. The miscellaneous application was disposed by the Tribunal holding that its powers are restricted to rectifying only such errors as are glaring and which are inherently incapable of the two views being taken in respect of the same and an error of judgement cannot be subjected to rectification u/s 254(2) of the Act. What the assessee seeks by way of the miscellaneous application is the review of the Hon'ble Tribunal's order which is beyond the powers of the Hon'ble Tribunal. Accordingly, the assessee's miscellaneous application was dismissed. (AY. 2009-10)
Sale Mohammed Padamsee & CO. v. PCIT (2021) 213 TTJ 895 / 206 DTR 102 (Mum.) (Trib.)

2231 **S. 254(2A): Appellate Tribunal – Stay – Provision for automatic vacation of stay on completion of 365 days, whether or not assessee responsible for delay in hearing appeal – Discriminatory and arbitrary – Proviso to be read to provide for vacation of stay on expiry of periods in question only where delay attributable to assessee – The expression "permissible" policy of taxation would refer to a policy that is constitutionally permissible. If the policy is itself arbitrary and discriminatory, such policy will have to be struck down. [Art. 14, 226]**
In appeals before the Court was an important question as to the constitutional validity of the third proviso to section 254(2A) of the Income -tax Act, 1961 The Court held that the second proviso was introduced by the Finance Act, 2007 to mitigate the rigour of the first proviso to section 254(2A) of the Act in its previous avatar. Ordinarily, the Appellate Tribunal, where possible, is to hear and decide appeals within a period of four years from the end of the financial year in which such appeal is filed. It is only when a stay of the order under challenge before the Appellate Tribunal is granted, that the appeal is required to be disposed of within 365 days. So far as the disposal of an appeal by the Appellate Tribunal is concerned, this is a directory provision. However, so far as vacation of stay on expiry of the period is concerned, this condition becomes mandatory so far as the assessee is concerned.
Consequently, the third proviso to section 254(2A) of the Act has to be read without the word "even" and the words "is not" after the words "delay in disposing of the appeal". Any order of stay shall stand vacated after the expiry of the period or periods mentioned in the section only if the delay in disposing of the appeal is attributable to the assessee. The issue in appeal before the Court was as to the constitutional validity of the third proviso to section 254(2A) of the Income-tax Act, 1961. Court also observed that,the Challenges to tax statutes made under article 14 of the Constitution of India can be on grounds relatable to discrimination as well as grounds relatable to manifest arbitrariness.

These grounds may be procedural or substantive in nature. The expression "permissible" policy of taxation would refer to a policy that is constitutionally permissible. If the policy is itself arbitrary and discriminatory, such policy will have to be struck down. Referred *State of M.P. v. Bhopal Sugar Industries Ltd (1964) 52 ITR 443 (SC)*(AY.2008-09) *Dy. CIT v. Pepsi Foods Ltd. (2021) 433 ITR 295 / 200 DTR 185/ 320 CTR 1/ 282 Taxman 10 (SC)*

Editorial : Decisions in Pepsi Foods Ltd v. ACIT (2015) 376 ITR 87 (Delhi)(HC) and ITO v. Ail Girishbhai Darji (2017) 10 ITR-OL 434 (Guj.)(HC) affirmed. Dy. CIT (TDS) v. Vodafone Essar Gujarat Ltd. (2015) 376 ITR 23 (Guj.)(HC) impliedly approved, CIT v. Maruti Suzuki (India) Ltd. (2014) 362 ITR 215 (Delhi)(HC) impliedly disapproved.

S. 254(2A) : Appellate Tribunal – Stay – Delay in disposal of appeal is not attributable to assessee in any manner – Tribunal can grant extension of stay of demand beyond 365 days in deserving cases – No substantial question of law. [S.260A] 2232

Dismissing the appeal of the revenue the Court held that where delay in disposal of appeal is not attributable to assessee in any manner, Tribunal can grant extension of stay of demand beyond 365 days in deserving cases. Followed *CIT v Carrier Air Conditioning & Refrigeration Ltd (2016) 387 ITR 441 (P&H)(HC)*(AY 2012-13)

PCIT v. Honda Motorcycle and Scooter India (P) Ltd. (2021) 121 taxmann.com 93 (P&H) (HC)

Editorial : SLP of revenue dismissed, PCIT v. Honda Motorcycle and Scooter India(P) Ltd. (2021) 281 Taxman 361 (SC)

S. 254(2A) : Appellate Tribunal – Stay – Justified in imposing condition upon assessee to pay Rs. 20 crores for granting stay against outstanding demand of Rs. 269.96 crores [S. 220, Art. 226) 2233

Tribunal granted stay subject to deposit only an amount of Rs. 20 crores in two instalments. Assessee filed an instant writ petition against such condition for stay of demand. High Court held that the assessee had paid till date Rs. 116.09 crores out of total tax demand of Rs. 386.05 crores, thus, balance amount payable stood at Rs. 269.96 crores. Tribunal was justified in imposing condition upon assessee to pay Rs. 20 crores for granting stay against outstanding demand of Rs. 269.96 crores. (AY 2011-12 to 2014-15)

Slum Rehabilitation Authority v. UOI (2021) 436 ITR 172 / 200 DTR 9/ 278 Taxman 315 / 323 CTR 637 (Bom.)(HC)

S. 254(2A) : Appellate Tribunal – Stay – Rejection of stay petition – No perversity or erroneous approach on part of Tribunal in not granting interim order – Order of Tribunal is affirmed. [S.254(1), Art. 226] 2234

The assessee filed stay petition before the Tribunal, which was rejected by the Tribunal. On writ the Court held there was no perversity in the order, the rejection. of stay petition is held to be proper ad justified (AY. 2013-14)

Sporting Pastime India Ltd. v. Assistant Registrar, Chennai (2021) 277 Taxman 19 (Mad.) (HC)

2235 **S. 254(2A) : Appellate Tribunal – Stay – Paid more than 51 percent of disputed tax – Stay granted [S. 201(1), 254(1)]**

The Tribunal has to see that the assessee has made payment of at least 20% of the disputed demand including interest, fee, penalty, etc. In the present case the payment already made by the assessee is about 51% of the total disputed demand of tax and interest Therefore, the amended provisions of first proviso to section 254(2A) of the Act is also satisfied. Stay Granted.

Goldman Sachs Services Private Limited v. DCIT (2021) 187 ITD 488 (Bang.)(Trib.)

2236 **S. 254(2A): Appellate Tribunal – Stay – Demand on account of ALP adjustment for assignment of call or put options vested by assessee to its Mauritius based group concern, inasmuch as it put said group concern at an undue advantage of buying Vodafone India shares at a price much below market rate without any corresponding benefit to assessee – Stay granted on impugned tax demand subject to deposit of 20 per cent tax and furnishing of corporate guarantee from AE.[S. 220]**

The Tribunal granted a stay on collection of the impugned tax and interest demands on the following conditions:-

(i) the assessee will pay approximately 20% of the disputed tax demand, within 30 days;

(ii) the assessee will furnish a corporate guarantee from an associate company, which has unencumbered assets in India in excess of the balance disputed demands;

(iii) the assessee will fully cooperate in expeditious disposal of the appeal in question, as also other appeals which are tagged and clubbed with this appeal, and in case of any lapses on the part of the assessee in this regard, this stay shall stand vacated. (AY. 2014-15)

Vodafone India Services Ltd v. ACIT (2021) / 212 TTJ 760 / 204 DTR 89 (Mum.)(Trib.)

2237 **S. 254(2A): Appellate Tribunal – Stay – Interim stay order by High Court – Revenue Authorities have taken a conscious decision not to recover the outstanding amount – Stay petition is dismissed as infructuous. [S. 220(6)]**

Tribunal held that interim stay order by High Court, revenue Authorities have taken a conscious decision not to recover the outstanding amount. Stay petition is dismissed as infructuous. (AY 2018-19)

Grasim Industries Limited v. DCI (2021) 211 TTJ 153 / 200 DTR 265 (Mum.)(Trib.)

2238 **S. 255 : Appellate Tribunal – Powers – Tribunal cannot transfer case from Bench falling within jurisdiction of a particular High Court to Bench under jurisdiction of different High Court – Writ is maintainable – Appeal is not maintainable [S. 127, 254(1), 255, 260A, ITATR, 1963, R. 4. Art. 226]**

An order dated August 20, 2020 passed by the President of the Tribunal under rule 4 of the Income-tax (Appellate Tribunal) Rules, 1963 directing that the appeals be transferred from the Bangalore Bench of the Tribunal to be heard and determined by the Mumbai Benches of the Tribunal at Mumbai. On a writ petition against the order, a preliminary objection was raised regarding maintainability of the petitions. The Court held that the writ petition was maintainable because the petitioner had no other statutory remedy. Having regard to the mandate of clause (2) of the article 226 of the Constitution, the

Bombay High Court had jurisdiction to entertain the petitions. Court also held that the fact that the assessee may have expressed no objection to the transfer of the assessment jurisdiction from the Assessing Officer at Bangalore to the Assessing Officer at Mumbai after assessment for the assessment years covered by the search period, could not be used to non-suit the petitioner in his challenge to the transfer of the appeals from one Bench of the Tribunal to another Bench in a different State and in a different zone. The two were altogether different and had no nexus with each other. That the orders dated March 19, 2020 and August 20, 2020 were wholly unsustainable in law.(AY. 2005-06 to 2008-09)
MSPL Limited v. PCIT (2021) 436 ITR 199 / 202 DTR 117 / 321 CTR 1 (Bom.)(HC)

S. 255 : Appellate Tribunal – Cross objection – Jurisdiction issue can be raised before ITAT, without filing cross objection – Matter remanded to Tribunal for fresh consideration of appeals instituted by revenue after permitting assessee to raise issue of non-compliance with in jurisdictional parameters of section 153C of the Act – Delay of 248 days in filing cross objection was condoned. [S.153C, 253, 254(1), 260A (7), ITAT R, 27, Form. 36A, Code of Civil Procedure, 1908 rule 2 of Order II, Limitation Act, 1963 Limitation Act, 1963, S. 5] 2239

The Assessing Officer made an addition u/s 2 (22)(e) of the Act. On appeal the CIT (A) deleted the addition. Revenue filed an appeal before the Tribunal. The assessee filed cross objection with condonation delay of 248 days raising the jurisdictional issue under section 153C of the Act. ITAT allowed the appeal of the revenue and dismissed the cross objection. assessee filed an appeal before the High Court and the question before the High Court was whether it was open to the appellant/assessee to have supported the orders of the Commissioner (Appeals), based on the ground that the jurisdictional parameters prescribed under section 153C of the I.T. Act were not fulfilled, even without the necessity of filing any cross objections. High Court set aside the order of the Tribunal and matter was to be remanded to Tribunal for fresh consideration of appeals instituted by revenue after permitting assessee to raise issue of non-compliance with in jurisdictional parameters of section 153C of the Act. Delay of 248 days in filing cross objection was condoned. (AY. 2006-07 to 2011-12)
Peter Vaz v. CIT (2021) 436 ITR 616/ 204 DTR 376 / 322 CTR 121 128 taxmann.com 180 / 281 Taxman 171 (Bom.)(HC)
Edgar Braz Afonso v. CIT (2021) 436 ITR 616 / 204 DTR 376/ 322 CTR 121 /128 taxmann.com 180 / 281 Taxman 171 (Bom.)(HC)

S. 260A : Appeal – High Court – Central Board of Direct Taxes Circulars – Question was not argued before Tribunal – Appeal is not maintainable [S.80IC, 268A] 2240

Dismissing the appeal the Court held that once the Department had not raised the plea of applicability of clause 10(c) of the Board's Circular No. 3 of 2018, dated July 11, 2018 it could not be allowed to raise such plea in the appeal before the court. No such ground was raised by the Department before the Tribunal requiring it to decide the matter on the merits in view of clause 10(c) of Circular No. 3 of 2018, July 11, 2018. The Tribunal had correctly held that the appeal was not maintainable in view of the mandate of Circular No. 17 of 2019, dated August 8, 2019. No question of law arose.(AY. 2012-13)
PCIT v. Surya Textech (2021) 439 ITR 215 / (2022) 211 DTR 153/ 325 CTR 350/ 285 Taxman 309 (HP)(HC)

2241 **S. 260A : Appeal – High Court – Dismissal of appeal on monetary limit of less than 50 lakhs – Rectification application of the revenue was allowed on the ground that the issue under consideration falls under exception clause of the Circular – Recall of the order is held to be justified – Appeal of assessee was dismissed [S.254(2), 268A]**

Appeal of the revenue was dismissed by the Tribunal as withdrawn on the ground that the tax effect was less than 50 lakhs. Revenue filed miscellaneous application before the Tribunal on the ground that the issue in involved under consideration falls under exceptional clause of the circular. Tribunal allowed the miscellaneous application of the revenue and fixed for hearing on merit. The Assessee filed an appeal against the order of the Tribunal, recalling of the order. Dismissing the appeal the Court held that it being the fundamental principle for administration of justice that an act of the Court shall prejudice no man (actus curiae neminem gravabit). Tribunal has not decided the issue on merit. Order of Tribunal was affirmed.

Seema Bhattacharya (Smt) v. PCIT (2021) 197 DTR 353 (MP)(HC)

2242 **S. 260A : Appeal – High Court – Order transferring case – Every order Writ is maintainable – Appeal is not maintainable [S. 127, 255, Art. 226]**

Court held that a careful reading of section 260A(1) would go to show that an appeal shall lie to the High Court from every order passed in appeal by the Tribunal if the High Court is satisfied that the case involves a substantial question of law. The expression every order in the context of section 260A would mean an order passed by the Tribunal in the appeal. In other words, the order must arise out of the appeal, it must relate to the subject matter of the appeal. An order related to transfer of the appeal, would be beyond the scope and ambit of sub-section (1) of section 260A.

Clause (2) of article 226 makes it clear that the power to issue directions, orders or writs by any High Court within its territorial jurisdiction would extend to a cause of action or even a part thereof which arises within the territorial limits of the High Court notwithstanding the fact that the seat of the authority is not within the territorial limits of the High Court.

Court held that order transferring the case the writ petition was maintainable because the petitioner had no other statutory remedy. Having regard to the mandate of clause (2) of the article 226 of the Constitution, the Bombay High Court had jurisdiction to entertain the petitions. (AY. 2005-06 to 2008-09)

MSPL Limited v. PCIT (2021) 436 ITR 199 / 202 DTR 117/ 321 CTR 1 (Bom.)(HC)

2243 **S. 260A : Appeal – High Court – Territorial jurisdiction of High Court – Transfer of case – Pendency of proceedings – Ahmadabad Tribunal decided the appeal – Appeal was filed at Allahabad High Court – Jurisdiction vest with Gujarat High court – Appeal was dismissed. [S. 120, 127(2)]**

The case of the assessee was transferred from Ahmadabad to Noida by order dated 29 th December 2020. The appeal of the assessee for the assessment year 2012 -13 was decided by the Appellate Tribunal on 12 th November, 2020 Assessment order was passed on 28th Dec. 2017 CIT (A) decided the appeal on 31st Jan., 2019. Appellate Tribunal decided the appeal on by the Tribunal on 12th Nov., 2020. On the dt. 29th Dec, 2020, the assessment case of the assessee for asst. yr. 2012 13 was not pending Even if one were to apply the principle of appeal being continuation of the assessment, the fact

that the Revenue has chosen to file the instant appeal in June, 2021, it cannot be relied to contend that proceeding was pending on 29th Dec, 2020. Therefore jurisdiction to hear the appeal would continue to vest with the Gujarat High Court and not before the Allahabad High Court. The appeal has been wrongly instituted before Allahabad High Court. Accordingly the appeal was dismissed (AY. 2012-13)
PCIT v. Dileep Kumar (2021) 323 CTR 998 / 208 DTR 110 (All)(HC)

S. 260A : Appeal – High Court – Tax effect is more than Rs.1 crore – Appeal restored. 2244
Upon verification of record, it was ascertained that tax effect involved in appeal was more than Rs. 1 crore which was above monetary limit as prescribed. Appeal was restored.
CIT v. Gujarat Lease Financing Ltd. (2021) 280 Taxman 449 (Guj.)(HC)

S. 260A : Appeal – High Court – Sanction – Issue which was not raised before the Appellate Tribunal or CIT(A) cannot be raised first time before the High Court – Appeal of the revenue is dismissed [S.143(1), 147, 151] 2245
In the appeal the revenue urged that the assessment was completed u/s 143(1) and notices for reassessment was issued within four years period the sanction was required. Appellate Tribunal allowed the appeal on the ground that the sanction was obtained of the CIT,instead of JCIT hence the reassessment was quashed. Dismissing the appeal of the revenue the Court held that since the foundational facts sought to be urged in the present appeals are diametrically opposite to the case,, the appeal is not maintainable. (AY. 2006-07)
PCIT v. Sursh Kumar Gupta (2021) 207 DTR 307 (Delhi)(HC)

S. 260A : Appeal – High Court – Jurisdiction issue was not raised before lower Authorities – Cannot be raised first time before High Court – Only if the finding of fact of the Tribunal is perverse can the question of correctness of the order in appeal arise. [S.92(4), 260A] 2246
TPO passed an order with a direction to the AO to compute the total income in accordance with section 92(4). Since, the assessee had not objected to any orders passed by all hierarchy authorities it was precluded from raising such a contention before the High Court. Further, having not raised any objection with regard to jurisdiction assessee cannot now state that the entire proceedings are vitiated as it complied with the demand notices. No substantial question of law arises. (AY.2003-04)
POS Hyundai Steel Manufacturing (P.) Ltd. v. CIT (2021) 435 ITR 217 / 320 CTR 241 / 200 DTR 217 / 125 taxmann.com 383 (Mad.)(HC)

S. 260A : Appeal – High Court – Foreign Fluctuation loss – Allowed as deduction – Arguments not taken in appeal cannot be agitated. [S. 37(1)] 2247
Loss arising from fluctuation of foreign exchange rate was claimed as deductible by the assessee following the judgement of the Supreme Court in the case of *CIT v. Woodward Governer India Pvt. Ltd. (2009) 312 ITR 254 (SC)*. In the course of the hearing before the High Court, the department's counsel urged that the conditions set out in Woodward Governer were not satisfied. Held that this allegation of the department's Council was not urged in the appeal and could, therefore, not be gone into by the High Court. It was

further noted that in the year in which fluctuation of foreign exchange rate resulted in gains, the same were offered to tax by the assessee. Accordingly, the department's appeal was dismissed. (AY. 2010-11)
PCIT v. HCL Comnet Systems & Services Ltd. (2021) 433 ITR 251 (Delhi)(HC)

2248 **S. 260A : Appeal – High Court – Remand to Tribunal by High Court – Block assessment – Limitation – Question of limitation can be raised before the Tribunal in remand proceedings- Matter remanded to the Tribunal. [S. 132, 158BC, 254(1)]**
Allowing the appeal the Court held that when the order passed by the Tribunal had been set aside in its entirety by this court, it was open to the assessee to raise the plea of limitation. Since the Tribunal had not adjudicated the issue with regard to limitation, the order passed by the Tribunal in so far as it pertained to the finding with regard to the issue of limitation was quashed and the Tribunal was directed to decide the issue of limitation with regard to the order of assessment passed by the Assessing Officer for the block assessment years 1986-87 to 1996-97. It would be open to the parties to raise all contentions before the Tribunal on this issue.(AY.1986-87 to 1996-97)
Karnataka Financial Services Ltd. v. ACIT (2021) 432 ITR 187 (Karn.)(HC)

2249 **S. 260A : Appeal – High Court – Delay of 342 days – Retirement of Officer – Delay was condoned with cost.**
Allowing the application for condonation of delay of 342 days, the The assessee being a co-operative bank was not going to derive any personal benefit if the delay were condoned. The delay had to be condoned. However, there had been some lethargy on the part of the bank in pursuing the matter.. However, costs were imposed.(AY. 2007-08)
Adarsh Co-Operative Bank Ltd. v. ITO (2021) 431 ITR 71/ 197 DTR 308/ 318 CTR 510 / 279 Taxman 488 (Guj.)(HC)

2250 **S. 260A : Appeal – High Court – Substantial question of law – Additional questions cannot be raised by respondent. [S.144A, 260A(4)]**
Court held that the power of the High Court to frame a substantial question of law at the time of hearing of the appeal other than the questions on which the appeal has been admitted remains under section 260A(4) and this power is subject however to two conditions, namely, (i) the court must be satisfied that the appeal involves such questions ; and (ii) the court has to record reasons therefor. There is a vast difference in cases where a reference is made to the High Court by the Tribunal on an application and an appeal under section 260A of the Act by an aggrieved person. Unless and until the aggrieved person is before the court by way of an appeal, the question of calling upon the court to frame an additional substantial question of law by invoking its power under sub-section (4) of section 260A of the Act does not arise. Accordingly the Court held that the assessee was precluded from raising any contention with regard to the jurisdiction of the Joint Commissioner to issue direction under section 144A of the Act nor anything about the procedure followed by the Assessing Officer pursuant to such direction. The underlying principle was that the Department could not be worse off in its appeal at the instance of the assessee who had not filed an appeal over such finding of the Tribunal. (AY.2014-15)
CIT v. Shriram Ownership Trust (2021) 430 ITR 356/197 DTR 153/ 318 CTR 233 (Mad.)(HC)

S. 261 : Appeal – Supreme Court – Decision of Jurisdictional High Court is binding though the SLP is pending before Supreme Court – Low tax effect – SLP filed by the revenue is dismissed as withdrawn due to low tax effect. [S.14A, R.8D] 2251

In appellate proceedings, Tribunal restricted disallowance under section 14A, read with rule 8D by relying on decision of Jurisdictional High Court. Revenue filed appeal against said order by raising a plea that they had filed an SLP before Supreme Court against decision relied upon by Tribunal - High Court took a view that mere filing of an SLP by revenue to Apex Court, in absence of any stay, would not in any manner impact binding nature of orders of Jurisdictional High Court on all authorities functioning within State - High Court, thus, dismissed revenue's appeal. Revenue sought to withdraw SLP filed against order of High Court due to low tax effect - Whether, on facts, SLP filed by revenue was to be dismissed as withdrawn. (AY. 2006-07)

CIT v. Enercon India Ltd. (2021) 276 Taxman 88 (SC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Limitation – Order to be made within two years – Order passed and dispatched with in two years – Received the copy of order after eight months – Order is valid – Date of receipt is not relevant – Interpretation of taxing statute – The provision of the statute are to be as they are and nothing is to be added or taken away from the provisions of the statute. [S. 263 (2)] 2252

Allowing the appeal of the revenue the Court held that the order was passed by the Commissioner on March 26, 2012 and according to the Department it was dispatched on March 28, 2012. The relevant last date for the purpose of passing the order under section 263 considering the fact that the assessment was for the financial year 2008-09 would be March 31, 2012. The date on which the order was received was not relevant for the purpose of calculating or considering the period of limitation provided under section 263 (2) of the Act. The order passed was with in the period of limitation. Court also observed that the provision of the statute are to be as they are and nothing is to be added or taken away from the provisions of the statute. (AY. 2008-09)

(Editorial: From the judgement of Madras High Court Tax Appeal No 429 of 2019 dt. 3-7-2019)

CIT v. Mohammed Meeran Shahul Hameed (2021) 438 ITR 288 / 322 CTR 867 /206 DTR 209/ 283 Taxman 454 (SC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Book profit – Decommissioning levy, interest on decommissioning fund, interest on R & M fund and interest on R & D fund to profit as per profit and loss account – Revision was held to be not justified when in order passed by Commissioner, there was no mention as to under which category of Explanations (a) to (k) of section 115JB(2) these four items would fall – Order of Tribunal quashing the revision order was affirmed [S. 115JB, 143(3)] 2253

Dismissing the appeal of the revenue the Court held that in order passed by Commissioner, there was no mention as to under which category of Explanations (a) to (k) of section 115JB(2), these four items would fall. Tribunal, on appeal, had also observed that disputed four items were not part of list appearing in section 115JB

and without identifying under which part of list disputed four items would fall, Commissioner could not have exercised revisionary powers. Order of the Tribunal is affirmed. (AY. 2009-10)
CIT, LTU v. Nuclear Power Corporation of India Ltd. (2021) 283 Taxman 549 (Bom.)(HC)

2254 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Under-invoicing-Justice Shah Commission report – Notice based on reports of Serious Fraud Investigation Office (SFIO) – Assessment was completed without proper inquiries – Revision is held to be justified, it was competent for Commissioner to invoke revisional jurisdiction and direct fresh assessment**
Dismissing the appeal of the assessee the Court held that Tribunal held that since only direction was issued for passing fresh assessment, issues raised by assessee could always be gone into by Assessing Officer after granting full opportunity to assessee - Whether since assessment was completed without proper inquiries, it was competent for Commissioner to invoke revisional jurisdiction and direct fresh. Order of Tribunal is affirmed. (AY. 2008-09)
Vedanta Ltd. v. CIT (2021) 279 Taxman 358 (Bom.)(HC)

2255 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Business expenditure – Carry forward of loss – Acceptance of claim Of without application of mind to material on record – Revision of order setting aside the Assessment order is held to be justified. [S.37(1), 72]**
On appeal by the revenue the Court held that the Assessing Officer had allowed the expenses without application of mind and allowed the setoff of carryforward of loss. This was also not a case where the Commissioner had failed to undertake inquiry in the course of the exercise of revisional jurisdiction. It was only in pursuance of such inquiry that the Commissioner had recorded a categorical finding that the assessee had not even claimed payment of any fees from P Ltd. in respect of any technical or management services said to have been rendered by it. This was not a case of some plausible view but a case where the decision was a result of non-application of mind to the materials on record. The Commissioner was justified in setting aside the assessment order under section 263. Ratio in *Malabar Industrial Co. Ltd. v. CIT (2000) 243 ITR 83 (SC)* is explained. (AY.2009-10)
PCIT v. Zuari Maroc Phosphates Ltd. (2021) 432 ITR 316/ 279 Taxman 333 (Goa)(Bom.) (HC)

2256 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Queries raised but order without application of mind and consideration of material provided – Revision of order is held to be valid [S.10B]**
Court held that there was no consideration whatsoever of the information provided by the assessee in the context of its claim. This was a case of no consideration as opposed to mere inadequate consideration. This was a clear case of non-application of mind to the material on record, without even going into the issue whether the material supplied by the assessee was adequate or inadequate to determine its claim for deduction under section 10B. The circumstance that for certain subsequent assessment years the claim

of the assessee for deduction under section 10B of the Act was allowed by the Tribunal was not strictly speaking relevant to determining whether the revision jurisdiction was correctly invoked. Firstly, the view taken by the Tribunal had till date, not attained finality. Secondly, the view was in the context of the subsequent assessment years. It was possible that for a given assessment year the assessee did not fulfil the prerequisites for claiming the deduction under section 10B. From the material on record, it was not possible to say that the Commissioner, in this case, had acted under dictation from any extraneous authority. Although the Commissioner, in invoking revision jurisdiction, had made reference to the report of the Serious Fraud Investigation Office. However, that did not mean that the Commissioner had acted under dictation. Therefore, any subsequent and allegedly changed report of the Serious Fraud Investigation Office would not dent the exercise of jurisdiction by the Commissioner under section 263. The Commissioner was correct in setting aside the assessment order. Followed *Rampyari Devi Saraogi v. CIT (1968) 67 ITR 84 (SC)*(AY.2006-07, 2007-08)
Sesa Starlite Ltd v. CIT (2021) 430 ITR 121/ 318 CTR 197/ 277 Taxman 443 / 206 DTR 315 (Bom.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Order passed without providing adequate opportunity to the assessee was held to be not valid – Revision order which was affirmed by the Tribunal was set aside- directed the Commissioner to pass the order in conformity with the provisions of the Act. [S.254(1)] 2257
Allowing the appeal of the assessee the Court held that the Commissioner is duty bound to give an opportunity of being heard, while exercising the revisionary jurisdiction, to the assessee while enhancing or modifying the assessment or cancelling the assessment or directing for fresh assessment in conformity with the provisions contained under section 263. Accordingly the order passed by the Commissioner, without giving reasonable opportunity to the assessee which was affirmed by the Tribunal was set aside. Directed the Commissioner to pass the order in conformity with the provisions of the Act in conformity with the provisions of the Act. (AY.2014-15)
Ashoka Ispat Udyog v. PCIT (2021) 439 ITR 391 (Orissa)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Violation of principles of Natural justice – Matter remanded to PCIT. [S. 143(3), Art. 226] 2258
Allowing the petition the Court held that when the law specifically requires the giving of an opportunity of being heard, that must be followed lest such failure render the order legally fragile on the anvil of breach of principles of natural justice. The procedure followed by the Principal Commissioner in passing the order without giving an opportunity of hearing to the assessee was in violation of section 263 and in breach of principles of natural justice. The order was set aside and the matter was remitted to the Principal Commissioner.
Narayanachetty Roja v. PCIT (2021) 439 ITR 104 / 323 CTR 861 (AP)(HC)

2259 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Violation of principles of Natural justice – Matter remanded to PCIT [S. 143 (3) Art. 226]**
Allowing the petition the Court held that when the law specifically requires the giving of an opportunity of being heard, that must be followed lest such failure render the order legally fragile on the anvil of breach of principles of natural justice. The procedure followed by the Principal Commissioner in passing the order without giving an opportunity of hearing to the assessee was in violation of section 263 and in breach of principles of natural justice. The order was set aside and the matter was remitted to the Principal Commissioner.
Narayanachetty Roja v. PCIT (2021) 439 ITR 104 / 323 CTR 861 (AP)(HC)

2260 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Amortisation of preliminary expenses – Granted in initial year of expenditure – Deduction cannot be withdrawn in subsequent year. S. 35D]**
Allowing the appeal the Court held that Amortisation of preliminary expenses granted in initial year of expenditure cannot be withdrawn in subsequent year without disturbing the decision in the initial year. Followed, Dy.CIT v. Gujarat Narmada Valley Fertilizers co. ltd (2013) 356 ITR 460 (Guj)(HC).(AY.2008-09)
Subex Ltd. v. CIT (2021) 439 ITR 495 / 2022) 285 Taxman 350 (Karn.)(HC)

2261 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Limitation – Reassessment – Issue which was not subject matter of reassessment limitation has to be computed from the original assessment – Revision was held to be barred by limitation [143(3), 147, 263(2)]**
The assessment was completed u/s 143(3) of the Act on 28 th December 2006. The reassessment was completed on 30 the December 2011. The revision order was passed on 26 th March 2014. The Tribunal held that the issue which was not subject matter of reassessment while computing the limitation the issue which was not subject matter of reassessment limitation has to be computed from the original assessment. Revision was held to be barred by limitation. Relied on *CIT v. Alagendran Finance Ltd (2007)) 293 ITR 1 (SC), Asoka Buildcon Ltd v. ACIT (2010) 325 ITR 574 (Bom.)(HC), CIT v. ICICI Bank Ltd. (2012) 252 CTR 85 (Bom.)(HC)*(AY. 2004-05)
CIT v. Indian Overseas Bank (2021) 207 DTR 202 / (2022) 441 ITR 689 (Mad.)(HC)

2262 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Merger – Subject matter of appeal – Investments written off – Book profit – Issue was not subject matter of appeal – Revision was quashed [S.115JB]**
Dismissing the appeal of the revenue the Court held that the revision was held to be bad in law though the issue of investments written off whether allowable deduction or not was not subject matter of appeal. Revision order was quashed. Followed ITA No. 18/2004 dt 16 -1 -2020 and ITA No. 142 / 2016 dt.22-1-2020 (AY. 2006-07)
CIT, LTU v. Vijaya Bank (2021) 131 taxmann.com 136 (Karn.)(HC)
Editorial : SLP is granted to the revenue, CIT, LTU v. Vijaya Bank (2021) 283 Taxman 295 (SC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Merger – Subject matter of appeal – Investments written off – Book profit – Issue was not subject matter of appeal – Revision was quashed. [S.115JB] 2263

Dismissing the appeal of the revenue the Court held that the revision was held to be bad in law though the issue of investments written off whether allowable deduction or not was not subject matter of appeal. Revision order was quashed. Followed ITA No. 18/2004 dt 16-1-2020 and ITA No. 142 / 2016 dt.22-1.2020 (AY. 2006-07)

CIT, LTU v. Vijaya Bank (2021) 131 taxmann.com 136 (Karn.)(HC)

Editorial : SLP is granted to the revenue, CIT, LTU v. Vijaya Bank (2021) 283 Taxman 295 (SC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Dispute resolution panel – Draft assessment order – No notice of demand attached – Order cannot be revised – No loss to revenue [S.144C] 2264

Dismissing the appeal of the revenue the Court held that the draft assessment order is only a proposed assessment order and there is no demand notice attached to draft assessment order and draft assessment order by itself cannot levy tax on assessee. Revision of draft assessment order is bad in law. (AY. 2010-11)

PCIT v. Apollo Tyres Ltd. (2021) 283 Taxman 388 (Ker.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Prima facie satisfaction was not arrived by the Commissioner – Interim order – Matter was adjourned to 26-8-2021. [Art. 226] 2265

Writ petition was filed against the revision order Whether where there was no prima facie satisfaction recorded by Principal Commissioner on basis of materials available on record that order of Assessing Officer which was sought to be reviewed under section 263 was an erroneous order as Principal Commissioner was yet to arrive at his prima facie conclusion and wanted matter to be examined further in-depth, no action could have been taken against assessee pursuant to proceeding initiated under section 263. Interim order was passed. The matter was adjourned to 26-8-2021 (SJ)

CMJ Breweries (P) Ltd v. UOI (2021) 283 Taxman 226 (Gauhati)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – COVID-19 – Violation of principle of natural justice – Order passed without giving an opportunity of hearing was set aside – Matter remanded [Art. 226] 2266

The PCIT passed the revision order, without giving an opportunity of hearing. On writ allowing the petition the Court held that the procedure followed by the PCIT by passing the order without giving an opportunity of hearing to the assessee is in clear violation of section 263 of the Act and in breach of principle of natural justice. The petition was allowed. PCIT was directed to pass giving an opportunity of hearing within three moths from the date of communication of the order and in accordance with law.

Narayana Chetty Roja v. PCIT (2021) 206 DTR 421 (AP)(HC)

2267 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – Investment in a residential house – More than two houses – Possible view – Revision order was held to be not valid [S.54F]**

Dismissing the appeal of the revenue the Court held that at the time of sale of property, the assessee owned only one residential property as the usage of the property has to be considered whether the property is a residential property or a commercial property. The Assessing Officer therefore, held that the assessee has fulfilled the conditions laid down in section 54F of the Act and is eligible for deduction. The tribunal in its order dated 31.07.2015 has held that the Assessing Officer had all the information and had made enquiries with regard to claim of exemption under Section 54F of the Act. It was further held that the Assessing Officer was of the view that one of the properties was let out for commercial purposes. Therefore, the assessee was eligible for deduction under Section 54F of the Act was one of the possible views which cannot be termed as unlawful or illegal. Appeal was dismissed. (AY. 2005-06)

PCIT v. Hema Krishnamurthy (Smt) (2021) 202 DTR 89 / 322 CTR 347 (Karn.)(HC)

2268 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Search and seizure – Undisclosed investment – Excess stock assessed as business income – Possible view – Revision order held to be not justified. [S.69, 115BBE, 132, 153D, 260A]**

Dismissing the appeal of the revenue the Court held that the Assessing Officer had issued notices calling for explanations from the assessees as to why the excess stock should not be treated as "undisclosed investment" under section 69. In response to the notices, elaborate explanations were offered by the assessees, which were supported by consistent views by various Benches of the Tribunal and the High Courts. The Assessing Officer, upon consideration, had accepted the explanations and taxed the additional income as "business income" at 30 per cent instead of 60 per cent. under section 115BBE. No contrary view either of any High Court or the Supreme Court had been placed to show that the explanations offered by the assessees were either perverse or contrary to law. There was no perversity or lack of enquiry on the part of the Assessing Officer so as to render his decision erroneous under Explanation 2 to section 263. No question of law arose.

PCIT v. Deccan Jewellers P. Ltd (2021) 438 ITR 131/ 206 DTR 257/ 322 CTR 952 / 283 Taxman 578 (AP)(HC)

PCIT v. Deccan Tobacco Company (2021) 438 ITR 131 (AP)(HC)

PCIT v. Dte Exports P. Ltd. (2021) 438 ITR 131 (AP)(HC)

2269 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Two possible view – Interest on fixed deposit – Order of revision is not valid. [S.143(3)]**

Dismissing the appeal the Court held that the Assessing Officer having received a response to his query about the adjustment of interest against inventory, in the assessment years in question, concluded that there was a nexus between the receipt of funds from investors located abroad and the real estate project, which upon being invested generated interest. Thus, it could not be said that the conclusion arrived by the Assessing Officer, that such adjustment was permissible in law, was erroneous. The order of revision was not valid.(AY.2012-13, 2013-14)

PCIT v. Brahma Centre Development Pvt. Ltd (2021) 437 ITR 285 / 205 DTR 249/ 323 CTR 888 (Delhi)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Depreciation – Two possible view – Revision is held to be not valid. [S.32] 2270

Court held that the assessee had filed all relevant documents including copies of agreements entered into with the customers and the assessee had also referred to circulars issued by the Central Board of Direct Taxes clarifying the legal position to claim depreciation on assets under operating lease as well as finance lease. The Assessing Officer being satisfied with the explanation and after conducting a thorough enquiry had allowed the depreciation claimed on assets under lease transactions, but disputed the rate of depreciation claimed by the assessee. Revision was held to be not valid. (AY.2008-09)

PCIT v. Cisco Systems Capital (India) Pvt. Ltd. (2021) 437 ITR 349 / 206 DTR 143 / 323 CTR 563 (Karn.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Unexplained investment – Un secured loans – Enquires were made in detail – Plausible view – Explanation 2 – Revision is held to be not valid [S.68, 69] 2271

Dismissing the appeal of the revenue High court held that since the Assessing Officer has made inquires in details and accepted genuineness of loans received by assessee, such view of Assessing Officer was a plausible view and same cannot to be considered erroneous or prejudicial to interest of revenue. (AY 2013-14)

PCIT v. Shreeji Prints (P) Ltd. (2021) 130 taxmann.com 293 (Guj.)(HC)

Editorial : SLP of revenue dismissed ; PCIT v. Shreeji Prints (P) Ltd. (2021) 282 Taxman 464 (SC)/(2021) 437 ITR 10(ST)(SC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Show cause notice – Writ against the show cause was dismissed [Art. 226] 2272

When an opportunity of hearing given to the asseseee and objection of the assessee is considered, writ filed against show cause notice was dismissed. (AY. 2011-12)

Ayyappa Roller Flour Mills Ltd. v. ITO (2021) 280 Taxman 450 (Ker.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Business income or capital gains – Revision is held to be not justified [S. 28(i), 45] 2273

Allowing the appeal of the assessee the Court held that several notices were issued to assessee and detailed hearings were conducted. Assessing Officer in its order had mentioned details of all properties with dates of purchase and sale and from perusal of same it was evident that properties were brought and sold within a maximum period of 20 months which showed that assessee was engaged in real estate business. Assessing Officer had conducted sufficient enquiry as required under Explanation 2(a) to section 263 of the Act. Revision order is held to be not justified. (AY. 2009-10)

K.R. Satyanarayana v. CIT (2021) 279 Taxman 175 (Karn.)(HC)

2274 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Scientific research – 100 per cent EOUs – Expenditure on R&D claimed under section 35(2AB) had no connection whatsoever with 100 per cent EOUs – Revision is held to be not valid. [S.10B, 35(2AB]**

Dismissing the appeal of the revenue the Court held that, Tribunal is justified in holding that expenditure on R&D claimed under section 35(2AB) had no connection whatsoever with 100 per cent EOUs. Revision is held to be not valid. (AY. 2008-09)

CIT v. Bosch Ltd. (2021) 279 Taxman 422 (Karn.)(HC)

2275 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Depreciation – Order passed by Assessing Officer relying on the decision of Tribunal – Subsequently reversed by High Court – Revision is not be not valid [S. 32]**

Dismissing the appeal of revenue the Court held that Order passed by Assessing Officer relying on the decision of Tribunal which was Subsequently reversed by High Court. Revision is not be not valid. (AY. 2009-10)

CIT v. Canara Bank (2021) 277 Taxman 215 (Karn.)(HC)

2276 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Deduction granted on a wrong view of the Law – Revision is held to be justified [S.10A]**

Dismissing the appeal of the assessee the Court held that the view taken by the Assessing Officer was erroneous and prejudicial to the interests of the Revenue and was not a plausible view. No reasons had been assigned by the Assessing Officer for holding the assessee eligible for the benefit of deduction under section 10A of the Act. The issue with regard to eligibility of the assessee for deduction under section 10A of the Act for the assessment year 2008-09 beyond a period of ten consecutive years was not the subject matter of order of assessment itself. Therefore, it could not have been the subject matter of the appeal before the Commissioner (Appeals) and thus, there was no bar in invoking the powers under section 263 of the Act. The income of the assessee from staffing, which was not an income from export of computer software was also allowed by the Assessing Officer without any application of mind and without any enquiry. Therefore, the Commissioner had rightly invoked the powers under section 263 of the Act in the fact situation of the case. (AY. 2008-09)

Harman Connected Services Corporation India Pvt. Ltd. v. CIT (2021) 431 ITR 401/ 198 DTR 144 / 319 CTR 24 (Karn.)(HC)

2277 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Assessing Officer taking one of two possible views on issue – Order not erroneous – Commissioner cannot set aside order. [S.80IA, Form 10CCB]**

Court held that the assessee had, filed form 10CCB of the Act with written submissions before the Commissioner, which was acknowledged by him in the order. The court in *CIT v. Ace Multitaxes Systems Ltd. [2009] 317 ITR 207 (Karn)(HC)* had taken a view that the assessee is entitled to deduction under section 80IA of the Act even if the audit report is filed at the appellate stage. Similar view has been taken by the Madras High Court in A. N. Arunachalam. Thus, the view taken by the Assessing Officer with regard to eligibility of the assessee to claim deduction under section 80IA of the Act was one

of the possible views. The order passed by the Commissioner itself disclosed that two views are possible. Hence the order of revision was not valid.(AY. 2003-04)
Sutures India Pvt. Ltd. v. CIT (2021) 431 ITR 332 / 278 Taxman 112 (Karn.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains not chargeable – Investment in Bonds – Amendment to S. 54EC from 1-4-2015 restricting investment in assets from sale consideration on sale of original asset to Rs. 50 lakhs prospective nature- Revision is held to be bad in law. [S.45, 54EC] 2278

Assessee, an individual, derived income from Capital Gains and other sources. Assessees case was selected for scrutiny and notice under S.143(2) of the Act was issued. AO concluded the assessment and accepted the income declared. CIT invoking the powers under S. 263 of the Act held that the Assessee is eligible for deduction under S. 54EC of the Act to the extent of Rs. 50 lakhs whereas he has claimed deduction to the extent of Rs. 1 crore, which is in excess of the limit prescribed under the proviso to section 54EC of the Act and concluded that the Order passed by the AO is erroneous and prejudicial to the interest of the revenue setting aside remitted back the matter to the AO.

On appeal, Tribunal held that the legislature itself has accepted the ambiguity in language of the proviso and has amended the law with prospective effect. It was further held that for prior Assessment Years on interpretation of the provisions, it was possible for the Assessee to claim deduction of Rs. 1 crore by investing Rs. 50 lakhs in each of the Financial Years but within six months from the date of transfer. Thus, it was held that the view taken by the AO was one of the possible views and therefore, the power under S 263 of the Act in the fact situation could not have been exercised by the CIT quashed the order.

On Departments appeal, High Court held that from close scrutiny of S 263 of the Act, it is evident that twin conditions are required to be satisfied for exercise of revisional jurisdiction under S. 263 of the Act. Considering SC decision in *Malabar Industrial Co. Ltd. v. CIT (2000) 243 ITR 83(SC)* it was held that that order of the AO cannot be treated as prejudicial to the interest of revenue. High Court further held that it is axiomatic that the view taken by the AO was one of the possible views and ruled favour of the assessee. (ITA No. 343 of 2015 dt. 19-11-2020)(AY. 2009-10)
CIT v. Neena Krishna Menon (2021) 123 taxmann.com 205 / 277 Taxman 211 (Karn.)(HC)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Banking company – lapsed demand drafts, gift cheques etc. – General Reserve – Write back allowed as business loss- Revision is held to be not valid. [S.28(i)] 2279

The assessee which is a Banking company had kept amount from lapsed demand drafts, gift cheques etc., in its general reserve. Assessee had also credited such amount towards write back of demand drafts, gift cheques, etc. in its profit and loss account and same was claimed as deduction which was allowed as deduction. CIT has held that there was no provision to exclude such amount from taxable income when same was credited by assessee in its profit and loss account to his income, thus, order passed by Assessing Officer was erroneous and was prejudicial to interest of revenue. Tribunal has quashed the order of revision. On appeal dismissing the appeal of the revenue the Court held that the assessee was under an obligation to meet future claims out of general reserve so created. Accordingly the order of the Tribunal is affirmed. (AY. 2007-08)
CIT LTU v. Canara Bank (2021) 276 Taxman 280/ 197 DTR 219/ 318 CTR 80 (Karn.)(HC)

2280 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Commissioner had no power to revise assessment for inadequacy of enquiries or insufficiency of material on record – Order of Tribunal is affirmed – Condonation of delay of 360 days is held to be justified. [S. 254(1)]**

Dismissing the appeal of the revenue the Court held that That the Tribunal was justified on the facts in holding that the Commissioner had no power to revise the assessment under section 263 for inadequacy of enquiries by the Assessing Officer or insufficiency of material on record. Court also held that the Tribunal had rightly quashed the revisional order passed by the Commissioner under section 263 and was justified in condoning the delay of 360 days (AY.2007-08)

CIT v. Cyber Park Development and Constructions Ltd. (2021) 430 ITR 55 / 276 Taxman 460 (Karn.)(HC)

2281 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Unabated assessment – No incriminating materials found during search – Revision was held to be not valid [S. 143(3), 153A]**

Held that the assessment in respect of the relevant assessment year was not pending on the date of search. According to the second proviso to section 153A of the Act, the assessment for the year 2014-15 was an unabated assessment and the Assessing Officer while framing the assessment under section 153A of the Act taking note that there was no incriminating materials seized during search against the assessee qua the relevant assessment year. The assessment order passed by the Assessing Officer under section 153A / 143(3) was neither erroneous nor prejudicial to the interests of the Revenue. Revision order was quashed. (AY.2014-15)

Anjali Jewellers v. PCIT (2021) 92 ITR 35 (Kol.)(Trib.)

2282 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Cash credits – Share application money – Identity, creditworthiness of shareholders and genuineness of transactions established – Revision was held to be invalid [S. 56(2)(viib), 68]**

Held that there had been due and proper application of mind inasmuch as the Assessing Officer had raised direct relevant queries to which the assessee had duly replied as well. The assessee also submitted the computation as to how the assessee derived the amount of the premium which was also admitted by the Commissioner. The assessee also submitted a report of the expert under rule 11UA which fully justified charging premium at Rs. 50 per share. Hence, the Assessing Officer was fully justified in not applying in section 56(2)(viib). There was no valid basis to compute the excessive value of Rs. 1.73 per share which was not supported by any expert report but was based on mere suspicion. Therefore, the assessment order was not erroneous.(AY.2016-17)

Annu Agrotech P. Ltd. v. PCIT (2021) 92 ITR 521 / 214 TTJ 1118/ (2022) 209 DTR 257 (Jaipur)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Order was passed on 29-9-2015 – Period of limitation for revision till 31-3-2018 – Date of dispatch of order to postal authority on 4-4-2018 – Barred by limitation – Date of dispatch should be taken as date of order. [S. 54, 54F] 2283

Held that the order that was sought to be revised was passed on September 29, 2015. The period of limitation for passing the order would be March 31, 2018. But the date of dispatch of the order to the postal authority was April 4, 2018. The date of dispatch had to be considered as the date of the order. Consequently the order was to be treated as barred by limitation and liable to be annulled.(AY.2013-14)

Ashok Kumar Bhavarlal v. ITO (2021) 92 ITR 137 (Bang.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Repeal and savings Exemption was granted under Income-tax Act, 1922 – Assessee must apply for registration under Income -tax Act 1962 to avail of exemption- Revision was held to be justified [S. 11, 12, 12A, 12AA, 13, 297(2)(k), Indian Income-tax Act, 1922, S.4(3)(i)] 2284

Held that the exemption granted to the assessee-trust under section 4(3)(i) of the Act of 1922 was not saved under section 297(2)(k) of the Act. The Assessing Officer had failed to consider various distinguishing features and conditions between section 4(3)(i) of the 1922 Act and section 11(1)(a)/(b) of the 1961 Act which required that the assessee should move an application for registration to the Principal Commissioner or the Commissioner and such trust be granted registration and duly registered under section 12AA of the Act. The Assessing Officer had completely failed to consider the settled position in law that the provisions of section 11 are to be read along with section 12A of the Act and only where the trust had been registered under section 12AA, the exemption could be availed of by the assessee. Revision order by the PCIT was held to be valid. (AY.2011-12)

Bharatpur Royal Family Religious and Ceremonial Trust v. CIT(E)(2021) 92 ITR 690 (Jaipur)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Limitation – No addition was made on the ground mentioned in recorded reasons – Limitation to be reckoned from date of original assessment [S.12AA(1)(b), 147, 148] 2285

The assessment order was passed in the year 2013 and the Commissioner (E) had issued notice under section 263 of the Act on March 11, 2016. Order is barred by limitation. The Assessing Officer had not made any addition on the ground mentioned in the reasons recorded. Where no addition is made on the grounds mentioned in the reasons recorded for reopening of the assessment, the assessment order cannot be said to be erroneous under section 263 of the Act.(AY.2011-12)

Karmae Garchen Trust v. JCIT (2021)92 ITR 365 / (2022) 209 DTR 361 / 216 TTJ 897 (Chd.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Lack of enquiry – Cash deposits – Assessing Officer taking a reasonable view – Revision was held to be not valid [S. 143(3)] 2286

Held that the Assessing Officer had taken a prudent, judicious and reasonable view in accepting the explanation of the assessee after considering the entire material available

on record and the order passed under section 143(3) of the Act could not be held to be erroneous in so far as prejudicial to the interests of the Revenue.(AY.2016-17)
Rameshwar Prasad Shringi v. PCIT (2021) 92 ITR 652 / 214 TTJ 257 (Jaipur)(Trib.)

2287 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Reassessment – Revision in respect of issue not forming subject matter of reassessment – Revision order is barred by limitation. [S. 143(3), 147, 263(2)]**
Held that the reopening of assessment was for the specific purpose of assessing the escaped income. Therefore, in a reassessment proceeding, the Assessing Officer can only assess that income which has escaped assessment. The income which was subject matter of assessment in the original assessment proceedings or which was in the domain of the Assessing Officer in the course of original assessment proceedings certainly could not be considered in the reassessment proceedings. The Principal Commissioner could have exercised the powers under section 263 of the Act only in respect of the original assessment order passed under section 143(3) of the Act and not the reassessment order. The original assessment order had been passed on February 6, 2014 and the order of revision was passed on March 19, 2021. The revisional order was barred by limitation. (AY.2011-12)
Royal Western India Turf Club v. PCIT (2021) 92 ITR 624 (Mum.)(Trib.)

2288 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Loss on trading of shares – Possible view – Revision is not valid – Audit objection – PCIT independently applying mind – Objection is not tenable [S. 143(3)]**
Held that the Assessing Officer in examination of the details of all the scrips had chosen to disallow loss only in respect of three scrips. Hence, the Assessing Officer had taken a possible view on the matter. Merely because he had a different view on the same set of facts the Principal Commissioner could not substitute his view in place of that taken by the Assessing Officer. Tribunal also held that the audit objection was part of the records of the Principal Commissioner at the time of his examination. From the show-cause notice issued by the Principal Commissioner and from the orders of the Principal Commissioner, it was clear that the Principal Commissioner had independently applied his mind for invoking revisional jurisdiction under section 263 of the Act and had not merely been driven by the audit objection. The legal objection of the assessee was not tenable.(AY.2015-16)
Adihemshree Financial v. PCIT (2021)92 ITR 39 (SN)(Mum.)(Trib.)

2289 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Interest on borrowed capital – Order was passed after due verification – Sale of land – Variation with in tolerance limit of 15 per Cent – Revision order was quashed [S. 36(1(iii), 50C), 143(3)]**
Held that the Assessing Officer has passed the order after due verification and valuation variation was with in tolerance limit of 15 per Cent – Revision order was quashed. (AY. 2012-13)
Ashokkumar Govindbhai v. ITO (2021) 90 ITR 262 (Ahd.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Revision based on proposal of Assessing Officer recommending a revision is illegal. [S. 143(3)] 2290

Held that the revision was initiated on the basis of the Assessing Officer sending a proposal to the Commissioner and not on the Commissioner suo motu calling for and examining the record of the assessment proceedings and thereafter considering the assessment order erroneous and prejudicial to the interests of the Revenue. Order was illegal and quashed. (AY.2012-13)

Alfa Laval Lund Ab v. CIT(IT) (2021) 92 ITR 4 (SN) / (2022) 210 DTR 313 (Pune)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Valuation report from Merchant Banker – Fair market value higher than price at which shares issued – Order not erroneous [S. 56(2)(viib), R. 11UA (2)] 2291

Held that the assessee obtained and submitted a report from a merchant banker who is equally qualified to issue such valuation report under rule 11UA(2) and who had determined the fair market value of the shares at Rs. 219.50 per share which was still higher than the value at which the shares were issued by the assessee the order passed by the Assessing Officer could not be held prejudicial to the interests of the Revenue which was an essential condition for invocation of jurisdiction under section 263 of the Act. The order passed by the Principal Commissioner under section 263 was not sustainable. The order passed by the Assessing Officer was to be sustained.(AY.2016-17)

Vinayaka Microns (India) P. Ltd. v. PCIT (2021) 92 ITR 5 (SN)(Jaipur)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Share capital issue of shares at premium – Addition on presumption – Revision was held to be not valid [S. 56(2)(viib), R. 11UA(2)(b)] 2292

Held that the Assessing Officer has examined the applicability of provision of section 56(2))(viib) during the assessment proceedings. Revision is held to be not valid. (AY. 2013-14)

Dada Ganapati Gur Products Pvt Ltd v. PCIT (2021) 92 ITR 408 / 214 TTJ 908 / 207 DTR 105 (Hyd.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Tax deducted at source – Limited scrutiny assessment – Detail verified – No loss to revenue – Revision order was quashed [S. 143(2), 143(3)] 2293

Held that Assessment was selected for limited scrutiny. Assessing Officer going beyond its scope, calling for details of tax deducted at source. Details furnished, after verification order was passed. PCIT in the order not dealing with merits of the case and not showing how the order of the Assessing Officer was prejudice to the interest of revenue. Tax deducted at source was deposited in Government account. There was no loss to revenue. Revision order was quashed. (AY. 2016-17)

Trio Trend Exports P. Ltd v. PCIT (2021) 92 ITR 18 (SN)(Kol.)(Trib.)

2294 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Original assessment allowing the claim u/s 80IA of the Act – Reassessment to disallow excess claim of deduction – Deduction was not subject matter in reassessment – Limitation to be counted from original assessment – Matter dealt with original assessment – Revision was quashed [S.80-IA, 143(3), 147]**

Held that in the reassessment ultimately completed under section 143(3) read with section 147, neither the reasons recorded by the Assessing Officer nor any other material on record demonstrated that the issue relating to claim of deduction under section 80IA was ever a subject matter of dispute in the reassessment proceedings. The Assessing Officer had dealt with this issue of deduction at length in the final assessment order passed under section 143(3) read with section 144C(13). Thus, the same income could not be a subject matter of reassessment under section 147, which was only for assessing a particular income which had escaped assessment. As a result, review of the order by the Principal Commissioner was not valid. Relied on *CIT v. Alagendran Finance Ltd. (2007) 293 ITR 1 (SC)* and *Ashoka Buildcon Ltd. v. ACIT (2010) 325 ITR 574 (Bom.)(HC)* (AY. 2010-11)

Tata Power Co. Ltd. v. PCIT (2021) 90 ITR 554 (Mum.)(Trib.)

2295 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Share capital and share premium- Identity and creditworthiness established – Revision order is held to be not sustainable. [S. 68]**

Held that the assessee had filed all the documents to substantiate the identity, creditworthiness and genuineness of the share subscription. The source of source of the share subscription was also brought to the notice of the Assessing Officer. The revision order was quashed. (AY. 2016-17)

Lovely International Pvt. Ltd. v. ACIT (2021) 90 ITR 52 (SN)(Kol.)(Trib.)

2296 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Penalty Not subjected to search – Penalty cannot be Levied – Revision of order dropping penalty proceedings was quashed.[S. 132, 153C, 271AAB]**

Held, that the penalty under section 271AAB of the Act, can be levied only in the hands of a person against whom the search was conducted. There was no search in the case of present assessee and the assessment in his case was framed under section 153C. Therefore, the very initiation of revision proceedings was not in accordance with law and it could not be sustained and the revision order passed by the Principal Commissioner was liable to be quashed.(AY.2014-15)

D. S. Patil v. PCIT (2021) 89 ITR 483 (Bang.)(Trib.)

2297 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Interest expenditure – Assumption of jurisdiction based on incorrect facts – Revision is held to be in valid [S. 37 (1)]**

Held that the Assessing Officer had enquired about the issue of long-term capital gains on sale of flat and had discharged his duty and therefore, he could not be faulted. The allowing of interest expenditure was on a plausible view and could not be held

erroneous or unsustainable in law. The assumption of jurisdiction by the Principal Commissioner to invoke his revisional powers under section 263 of the Act was invalid and without jurisdiction.(AY.2016-17)
Piyush Mohan Agarwal v. PCIT (2021) 89 ITR 626 (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – No finding that the order is erroneous and prejudicial interest of revenue – Revision was held to be not valid – Disallowance of commission was held to be justified – Once the income is accepted in the Hand of HUF the said income cannot be assessed in the hands of individual [S. 45] 2298
Held that where the Commissioner had nowhere held in his order that the assessment was both erroneous and caused prejudice to the interests of the Revenue, simultaneously, the order of the Commissioner was not sustainable. Disallowance of commission is held to be justified. Tribunal also held that once the income is accepted in the Hand of HUF the said income cannot be assessed in the hands of individual. (AY. 2007-08)
Nimmala Srinivas (HUF) v. ACIT (2021) 89 ITR 10 (SN)(Hyd.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Depreciation – Lease hold rights – Revision is held to be valid [S. 32(1)(ii)] 2299
The Hon'ble Tribunal held that in order to fall within the realm of 'any other business or commercial rights of similar nature' as contemplated in S. 32(1)(ii) of the Act, and therein to be construed as an "intangible asset" eligible for depreciation under the said statutory provision, the 'right' under consideration would require to cumulatively satisfy a twofold test viz. (i). the right should be a business or commercial right; and (ii) the right though need not answer the description of the six specified intangible assets viz knowhow, patents, copyrights, trademarks, licenses, or franchises, but must be of a similar nature. The claim of the Assessee is thus rejected. (AY. 2012-13)
Goldmohar Design and Apparel Park Ltd v. PCIT (2021) 209 TTJ 863 (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Limited scrutiny – The Revisional jurisdiction u/s 263 cannot be exercised for broadening the scope of jurisdiction that was originally vested with the A.O for limited scrutiny while framing the assessment and enlarging his scope of limited enquiry. [S. 143(3), 147] 2300
Held that the PCIT cannot invoke the jurisdiction under section 263 when there is no adverse finding in the limited scrutiny and in the absence of following the instructions No. 5/ 2016 dated 14-07-2016 issued by the CBDT, revisional jurisdiction under section 263 cannot be exercised. (AY. 2015-16)
Mahendra Singh Dhankar HUF v. ACIT (2021) 212 TTJ 902 / 204 DTR 377 (Jaipur)(Trib.)

2301 **S.263: Commissioner – Revision of orders prejudicial to Revenue – Twin conditions to be satisfied – Assessment order cannot be said to be erroneous in law – Revision was quashed. [S. 54F]**

Where the assessee, an individual, sold one property and purchased two properties, the disallowance with respect to 50% of the investment by the Assessing Officer cannot be said to be an erroneous decision. There must be some material with the Commissioner to revise the assessment order. Also, if the Assessing Officer has made all enquiries it cannot be said that there has been a lack of enquiry. Also, the proviso to Section 54F is not violated- the date of purchase vide registered sale deed and consequent possession is to be taken into consideration which is well beyond the period of one year, and not the agreement of sale. (AY. 2015-2016)

Virendra Singh Bhadauriya v. PCIT (2021) 211 TTJ 452 / 204 DTR 400 (Jaipur)(Trib.)

2302 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Limited scrutiny – Revision directing the Assessing Officer to make fresh assessment on issues not subject matter of limited scrutiny – Revision is bad in law. [S. 142(1), 143(2)]**

Held that the Principal Commissioner had exceeded jurisdiction under section 263 of the Act by directing the Assessing Officer to make fresh assessment on issues which were not the subject matter of the assessment framed on the basis of limited scrutiny. The order passed by the Principal Commissioner under section 263 of the Act was set aside.(AY.2014-15)

Taj Paul Bhardwaj v. PCIT (2021) 88 ITR 352 / 211 TTJ 58 (Chd.)(Trib.)

2303 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Long term capital loss – Audit objection – Assessing Officer depending his view in response to audit query – Revision order is held to be not valid [S. 143(3)]**

Held that the audit party had raised an objection on the very same subject of allowability of long-term capital loss and the Assessing Officer had not accepted it. The revision proceedings had been invoked by the Principal Commissioner under section 263 of the Act on the very same subject, based on the audit objection, which was nothing but borrowed satisfaction. Hence the revision proceedings under section 263 of the Act were bad in law. Merely because the Principal Commissioner was of a different view on the same issue, he could not invoke the revision jurisdiction under section 263 of the Act. Nor would Explanation 2 to section 263 of the Act apply as adequate enquiry had already been made by the Assessing Officer in the original assessment proceedings. (AY.2013-14)

Grasim Industries Ltd. v. PCIT (2021) 88 ITR 47 (SN)(Mum.)(Trib.)

2304 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Revision of reassessment order – Reassessment was farmed without issue of mandatory notice under section 143(2) of the Act – Not curable defects – Revision assessment order which was non est in law is null and void [S. 143 (2), 143 (3), 147, 148, 292BB]**

Held that the Assessing Officer had not issued the mandatory notice under section 143(2) of the Act as found by the Principal Commissioner, the question of section 292BB coming to the rescue of the Assessing Officer to pass the reassessment order

did not arise. The order passed by the Assessing Officer under section 143(3)/147 of the Act being without jurisdiction and, therefore, non est in the eyes of law, the Principal Commissioner could not have exercised his power under section 263 of the Act in respect of a non est order. His order also null in the eyes of law and liable to be quashed. Followed *CIT v. Laxman Das Khandelwal (2019) 417 ITR 325 (SC)*(AY.2010-11) *Khushi Commotrade Pvt. Ltd. v. PCIT (2021) 88 ITR 14 (SN)(Kol.)(Trib.)*

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Issue subject matter of appeal – Commissioner is not barred from exercising power of revision – Interest free funds – Direction was modified – Failure to deduct tax at source – Production expenses – Revision was held to be valid [S. 36(1)(iii)), 40(a)(ia), 263, Expln. 1(c)] 2305

Held that Commissioner is not barred from exercising power of revision though the issue is subject matter of appeal before CIT(A). As regards utilization of interest free funds, the direction of the Commissioner was modified. In respect of failure to deduct tax at source in respect of production expenses. Revision was held to be valid. (AY.2013-14, 2014-15)

MAD Studios Pvt. Ltd. v. PCIT (2021) 88 ITR 37 (SN)(Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Substantial expansion – Initial assessment year – Order not erroneous – Revision was held to be not valid [S. 80IC] 2306

Tribunal held that the assessment for this assessment year was a scrutiny assessment under section 143(3) and detailed explanations were available in the Income-tax record. When the assessee took a specific plea in its reply that it had made substantial expansion in the assessment year 2011-12 and it had produced those details, the Commissioner ought to have considered them and recorded a categorical finding how the assessment order was erroneous. The assessment year 2011-12 was to be construed as a fresh initial year and the assessee had rightly claimed exemption under section 80-IC and the Assessing Officer had rightly granted it. The Commissioner failed to point out any error to establish that the assessment order was erroneous and that the order of the Assessing Officer could not be sustained. The revision was not sustainable. (AY.2015-16)

Rasna Pvt. Ltd. v. PCIT (2021) 87 ITR 58 (SN)(Ahd.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Housing projects – Principle of consistency applied to an order under section 263 of the Act as well-Revision was barred by limitation – Issue was not subject of reassessment proceedings – Assessing Officer adopting permissible view – Revision is held to be invalid [S.80IB(10), 263(2)] 2307

Held that rule of consistency be applied even in respect of revision proceedings. The original order was framed under section 143(3) of the Act on March 26, 2013, it could have been revised under section 263 of the Act up to March 31, 2015 by the Principal Commissioner. The Principal Commissioner having revised the original assessment on March 3, 2020 his order was in violation of the provisions of section 263(2) of the

Act. Relied on *CIT v. Alagendran Finance Ltd (2007) 293 ITR 1 (SC)*. revision order was also quashed on the ground that the Assessing Officer had adopted one of the courses permissible in law and even if it has resulted in loss to the Revenue, the decision of the Assessing Officer could not be treated as erroneous and prejudicial to the interests of the Revenue. The assumption of jurisdiction exercising revisional jurisdiction by the Principal Commissioner was "null" in the eyes of law and liable to be quashed. (AY.2010-11)
Nilkanth Developers v. PCIT (2021) 88 ITR 11 (SN)(Surat)(Trib.)

2308 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Examining the issue in the course of assessment proceedings – No discussion in the assessment order – Order is not erroneous – Interpretation – Provision inserted from date in midst of financial year – Procedural aspect – Prospective in nature.**
Held that even though the Assessing Officer did not discuss the issue of taxability of receipt he did make inquiry on it, sought clarifications from the assessee, applied his mind and got satisfied about its non-taxability on the basis of the view taken by him in the assessment order under section 143(3) for the immediately preceding assessment year, namely, 2010-11, when the order for the immediately preceding assessment year passed under section 143(3) treating the amount of headquarters fees as not chargeable to tax was available on record before the Assessing Officer, he was well justified in adopting such a possible view on the non-taxability of the amount for the year under consideration as well. Such an assessment order could not be construed as erroneous as well as prejudicial to the interests of the Revenue. (AY. 2011-12)
Nalco Company, USA v. CIT (2021) 86 ITR 564 / 210 TTJ 369 / 200 DTR 275 (Pune)(Trib.)

2309 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Deemed dividend – Order was passed after considering the reply and application of mind – Revision is held to be bad in law [S. 2(22)(3), 143(3)]**
Allowing the appeal of the ssessee the Tribunal held that the Assessing Officer has passed the order after considering the submission of the assesee and application of mind. When two views possible and power cannot be exercised in respect of inadequate inquiry. (AY. 2007-08)
Eicher Motors Ltd v. CIT (2021) 86 ITR 530 (Delhi))(Trib.)

2310 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Investment in new pant or machinery – Possible view –When an amendment is made to clarify or remove the hardship, the same is to be treated as clarificatory and it should be applied with retrospective effect – Revision is held to be not valid [S. 32AC, 143(3)]**
The Assessing Officer allowed deduction u/s 32AC of the Act, in the original assessment proceedings in respect of asset acquired earlier but installed during the year. The PCIT revised the order. On appeal the Tribunal held that the AO has taken one possible views and if the PCIT is not in agreement with him the revision is not justified. The Tribunal also held that the same is to be treated as clarificatory and it should be applied with retrospective effect. (AY. 2014-15)
Nuclear Power Corporation of India Ltd v. CIT (2021) The Chamber's Journal – November – P. 100 (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Reference to dispute resolution panel – Order passed without complying the mandatory procedure prescribed u/s 144C is non -est – Order which is a nullity and non-est cannot be a revised. [S. 144C, Art. 14, 21] 2311

The assessment order was passed without following the mandatory provision of section 144C of the Act. PCIT passed the revision order setting aside the assessment order. On appeal the Tribunal held that since the mandatory provision of the section 144C of the Act was not complied with, the assessment order itself becomes a nullity in the eyes of law and is non -est. The Tribunal held that when the foundation itself for the assumption of revisionary jurisdiction does not exist,PCIT could not have exercised his revisionary jurisdiction in respect of null and void assessment order. Order of revision was quashed. Followed *Mohan Jute Bags Mfg. Co v. PCIT (ITA No. 416/ Kol/ 2020 AY. 2014-15)(dt. 17-11-2021* (AY. 2014-15)

Manorama Devi Jaiswal v. ITO (2021) BCAJ- December – P. 46 (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Revision order passed on the basis of recommendation of Assessing Officer has no statutory sanction – Order is bad in law [S. 143(3)] 2312

Allowing the appeal the Tribunal held that it is a trite that a power which vests exclusively in one authority can't be invoked or caused to be invoked by another, either directly or indirectly. The AO recommending a revision to the CIT has no statutory sanction and is course of action unknown to the law. Revision order on the basis of proposal of Assessing Officer is bad in law and set aside. (dt. 2-11-2021)(AY. 2012-13)

Alfa Laval Lund AB v. CIT (2021) BCAJ- December – P. 47 (Pune)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Allotment letter prior to AY. 2014-15 – Registration was on 9th December, 2014 – Provision of section 56(2)(vii)(b)(ii) is not applicable – Revision is held to be not valid [S. 56(2)(vii)(b)(ii)] 2313

Tribunal held that flat was allotted vide allotment letter dt. 6-3-2009 and it was signed on 11-11-2009, the registration was done on 9th December, 2014. The Tribunal held that mere fact that the flat was registered in the year 2014, falling in AY. 2015-16,the amended provisions of section 56(2)(vii)(b)(ii) could not be applied. (dt. 14-9-2021)(AY. 2015-16)

Naina Sarf v. PCIT (2021) BCAJ- November – P. 34 (Jaipur)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Limited scrutiny – Order passed by the Assessing Officer cannot be revised on an issue which was not taken up in limited scrutiny [S. 143(2)] 2314

Held that order passed by the Assessing Officer cannot be revised on an issue which was not taken up in limited scrutiny on the ground that what Assessing Officer could not have done directly the Commissioner cannot invoke revision jurisdiction. Relied on CBDT instruction No. 2/ 2014 dt. 26-9-2014. Referred, Sanjib Kumar Khemka (ITA No. 1361/kol/2016 dt 2-6-2017 (AY. 2011-12), Chengmari Tea Co Ltd (ITA No. 812 /Kol/ 2019 dt 31-1-2020(AY. 2014-15)

Spotlight Vanijya Ltd v. PCIT (2021) BCAJ- June -P. 27 (Kol.)(Trib.)

2315 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Limited scrutiny – Order passed by the Assessing Officer cannot be revised on an issue which was not taken up in limited scrutiny [S. 68, 115JB, 143(2)]**

The assessment was selected under limited scrutiny for examination of two issues viz. (1) Low income in comparison to high loan / advances /Investment in shares appearing in balance sheet and (ii) Minimum Alternate Tax (MAT) liability mismatch. The Assessing Officer completed the assessment. PCIT issued show cause notice for revision on the ground that the AO did not verify the capitalisation of interest paid and passed the revisional order. On appeal the Tribunal held that the AO is not empowered to do certain acts directly, the revisionary authority certainly cannot direct the AO to do so indirectly by exercising power u/s 263 of the Act. Revision order was quashed. Relied on CBDT instruction No. 20/ 2015 dt. 29-12-2015 (2016) 380 ITR 36 (St), CBDT instruction No 5 of 2016 dt. 14-7-2016 (2016) 385 ITR 56 (St)) and also relied on *Su-Raj Diamond Dealers Pvt Ltd v. PCIT (2020) 185 DTR 1 / 203 TTJ 137 (Mum.)(Trib.)(2020) 185 DTR 1 / 203 TTJ 137 (Mum.)(Trib.)(dt. 22-10-2021)*(AY. 2015-16)

Antaiksh Realtors Pvt Ltd v. ITO (2021) BCAJ- December – P. 48 (Mum.)(Trib.)

2316 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Commissioner has not pointed out any error for the relevant assessment year – Revision is held to be not valid [S.40(a)(1), 92CA]**

Allowing the appeal the Tribunal held that the Commissioner was taking a particular view on assessment order passed for earlier assessment year 2009-10 and, thus, he was finding fault with assessment order passed for year 2009-10 and had not actually pointed out any error in assessment order passed for concerned assessment year 2010-11. Reassessment order was quashed. (AY. 2010-11)

3M India Ltd. v. CIT (2021) 191 ITD 480 / 90 ITR 57 (SN)(Bang.)(Trib.)

2317 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Share capital and share premium – Amount assessed after revision was less than the amount assessed earlier assessment order – Second revision on the ground that amount assessed was less than original assessment was held to be not justified.[S.68, 133(6), 143(3)]**

PCIT passed the revision order and directed Assessing Officer to carry out proper examination of books of account and bank accounts of assessee as well as investors. Assessing Officer passed an order under section 263 determining total income of assessee at lesser amount by deleting addition under section 68 on ground that source of fund, identity, genuineness and creditworthiness of share applicants were verified and found in order. PCIT issued another notice under section 263 on ground that income determined as per impugned order under section 263 was less than total income as assessed under earlier original assessment order under section 143(3), therefore, impugned assessment order was prejudicial to interest of revenue. On appeal the Tribunal held that Share applicant companies had responded to notices under section 133(6) and also appeared before Assessing Officer and furnished copy of I.T. return/ acknowledgement, copy of annual audited accounts, balance sheet and profit & loss account statement and copy of bank statement, etc. so as to prove genuineness of transactions. The, Assessing Officer had taken a plausible view in his first order passed

under section 263. Such a view could not be termed as erroneous insofar as it was prejudicial to interest of revenue. Second time merely because total income determined by Assessing Officer in revision order was less than income determined in original assessment proceedings, was unjustified quashed. (AY. 2012-13)
Nextgen Vyapaar (P) Ltd. v. PCIT (2021) 190 ITD 795 (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – GSR expenses – Donation made to two trusts registered u/s 80G(5)(vi) of the Act – Revision was held to be not valid [S. 37(1)), 80G(5)(vi)] 2318
Held that since donation on account of CSR was made by assessee to charitable trusts which were duly registered under section 80G(5)(vi), assessee was entitled to claim deduction under section 80G in respect of such contribution. Since action of Assessing Officer in allowing claim under section 80G was a plausible view, impugned invocation of revision jurisdiction under section 236 was unjustified. (AY. 2016-17)
JMS Mining (P.) Ltd. v. PCIT (2021) 190 ITR 702 / 91 ITR 80 (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Transporter – Failure to deduct tax at source – Objection not considered – Revision was held to be bad in law [S.40(a)(ia), 194C(6), 194C(7)] 2319
In response to show cause notice u/s 263 the assessee has brought to notice of PCIT that no disallowance could be made under section 40(a)(ia) even if there was a violation under section 194C(7). The PCIT set aside the assessment order. On appeal the Tribunal held that PCIT could not have set aside assessment order under section 263 without meeting assessee's objections legally. Order PCIT was held to be unsustainable in law. (AY. 2014-15)
Jenirich Agro Products (P.) Ltd. v. DCIT (2021) 190 ITD 308 (Chennai)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Capital gains – Genuineness of transaction was verified by the Assessing Officer – Revision was held to be not valid [S. 10(38), 45] 2320
Allowing the appeal of the assessee the Tribunal held that the Genuineness of transaction was verified by the Assessing Officer in the original assessment proceedings. Revision was held to be not valid (AY. 2014-15)
Satish Kumar Lakhmani v. PCIT (2021) 190 ITD 73 (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Exempt income – Expenses was verified in the original assessment proceedings – Revision was held to be not valid [S.14A, R.8D] 2321
Allowing the appeal the Tribunal held that the Assessing Officer has examined the details of expenses in the course of assessment proceedings. Revision was held to be not valid. (AY. 2015-16)
Shringar Marketing (P.) Ltd. v. PCIT (2021) 190 ITD 16 (Kol.)(Trib.)

2322 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Draft assessment order was prepared and served – It is not open to the Assessing Officer to revisit the draft assessment order – Revision is held to be valid [S. 92C, 144C(3)]**

The Tribunal held that the Assessing Officer on his own cannot revisit his conclusions at the stage of passing the final order under section 144C(3). The order of the Assessing Officer was erroneous as also prejudicial to the interest of the assessee. Revision was held to be justified. (AY.2011-12)

Galaxy Surfactants Ltd. v. ACIT (2021) 190 ITD 741/ 88 ITR 39 (SN)/ 211 TTJ 858/ 201 DTR 381 (Mum.)(Trib.)

2323 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – No expenditure claimed – Added to work in progress – No prejudice to revenue – Revision was held to be not valid [S. 145]**

Tribunal held that action under section 263 could be taken if twin conditions viz. impugned order should be erroneous, and it should be prejudicial to the interest of the Revenue. In the present case, when the assessee has not claimed any expenditure, then where is the prejudice to the Revenue; where is the loss to the Revenue. Veracity of such expenditure taken to the work-in-progress could be examined in the year when sales will be made. This plea has been specifically raised by the assessee before the CIT, but the CIT did not record any finding, even did not consider it. Order of the Commissioner is not sustainable. (AY.2014-15)

Kaushikbhai P. Patel v. PCIT (2021) 88 ITR 20 (SN)(Ahd.)(Trib.)

2324 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Co-Operative Societies – Interest from Co-operative banks – Deduction – Possible view – Revision is held to be not valid [S.80P(2)(d)]**

Assessing Officer had made enquiries on allowability of deduction under section 80P(2)(d) and passed assessment. The view of Assessing Officer a reasonable and possible view, order passed by Assessing Officer was not erroneous and, thus, revision was unjustified. (AY. 2014-15)

Bardoli Vibhag Gram Vikas Co.Op. Credit Society Ltd. v. PCIT (2021) 189 ITD 601 (Surat) (Trib.)

2325 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Purchase and sale of shares – Bogus sales – Possible view – Revision was quashed [S. 68]**

Tribunal held that since Assessing Officer had called for and verified all details and documents in connection with purchase and sale of shares in question and after examining same, had taken a possible view that transactions were genuine, revision of assessment order is bad in law. (AY. 2015 -16)

Hill Queen Investment (P.) Ltd. v. PCIT (2021) 189 ITD 139 (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Unexplained moneys – When during scrutiny assessee had submitted all relevant details regarding loans and advance and explained that said advance was returned back in next year, AO after due verification passed order, invocation of revision was unjustified. [S.69A] 2326
Held that, when assessee had furnished all relevant details regarding loan and advances given and explained that said advance was returned back in next year and also furnished copy of ledger account, further, assessee had also submitted all evidence and explained services in relation to sales provided by such two persons to whom it paid commission along with copy of sales register, profit and loss account and confirmation of parties before AO. It was again furnished in revision proceedings and that nothing was found wrong against those documents. Revision was held to be not justified. (AY. 2014-15)
Nilkanth Stone Industries v. PCIT (2021) 189 ITD 718 (Surat)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Order passed u/s 143(3) r/w sec 153B, after approval from Jt CIT u/s 153D – Revision of Order passed by PCIT is nullity and void ab initio – Admissibility of documents seized from third party – No corroborative evidence brought on record – Considered as inadmissible evidence in proceedings u/s 263. [S. 143 (3), 153B, 153D, Indian Evidence Act, 1872, S.65B(4)] 2327
Tribunal held that PCIT has no jurisdiction to proceed u/s 263 against the Order passed u/s 143(3) r/w sec153B, when there is no revision of approval of Jt CIT u/s. 153D. In the assessee's case, copies of documents, emails and power point presentations were found from the computer of 3rd party being an ex-employee. Furthermore, no incriminating documents or material were found from the possession of assessee.
In revision proceedings PCIT considered the said documents seized from third party as evidences and proceeded with the proceedings u/s 263.
Tribunal held that PCIT having proceeded without any corroborative evidences, nor has obtained certificate u/s 65B(4) of the Evidence Act to prove the contents of seized documents, the same is not admissible in evidence, the order u/s 263 is perverse (AY. 2017-18)
Abha Bansal (Smt) v. PCIT (2021) 212 TTJ 545/ 89 ITR 324 / 208 DTR 265 (Delhi)(Trib.)
Basant Bansal v. PCIT (2021) 212 TTJ 545/ 89 ITR 324 / 208 DTR 265 (Delhi)(Trib.)
Roop Kumar Bansal v. PCIT (2021) 212 TTJ 545/ 89 ITR 324/ 208 DTR 265 (Delhi)(Trib.)
Pankaj Bansal v. PCIT (2021) 212 TTJ 545/ 89 ITR 324 / 208 DTR 265 (Delhi)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Deduction under section 54F – The documents furnished based on inquiry during Assessment – Revision is held to be not valid [S.54F] 2328
On appeal Tribunal held, that PCIT failed to make out a proper case for revision of the Order passed u/s 143(3), and overturned the order, citing following reasons:

- Firstly, various objections raised by PCIT has no relevance in the matter, in granting deduction u/s 54F
- Also the observation of the PCIT, that A.O failed to enquire and verify the issues is not correct, more so, when the assessee on an inquiry furnished all the details, and necessary evidences to corroborate the claim was filed during assessment proceedings which was evident from the order sheet entries

- Mere doubt cannot lead to revision of an order unless it is proved that AO failed to apply his mind, or that his view was wrong in facts or in law
- AO having examined the issue, and being convinced, and not making any disallowance the order passed u/s 143(3) cannot be said to be erroneous and prejudicial order (AY. 2014-15)

Shivratan ShriGopal Mundada v. ACIT (2021) 212 TTJ 793 / 88 ITR 42 (SN)/ 202 DTR 441 (Pune)(Trib.)

2329 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – eligibility of loss being carried forward – Issue which is beyond the scope of rectification – Commissioner cannot revise under section 263 of the Act. [S. 154]**

Where, the Assessing Officer allowed the rectification application of the assessee claiming losses to be carried forward. The PCIT held that the AO had not examined this claim in sufficient detail, the loss cannot be allowed to be carried forward. The Tribunal held that the quantification of loss, which is well beyond the limited scope of "mistake apparent on record" under section 154 of the Act could not have been disturbed in the proceedings under section 154 of the Act, and what cannot be done under section 154 of the Act, cannot be done under section 263 read with section 154 of the Act either. The impugned revision order is vitiated in law. (AY. 2012-13)

Cargo Service Centre India Pvt Ltd v. Dy.CIT (2021) 208 DTR 81/ (2022) 192 ITD 392/ 215 TTJ 193 (Mum.)(Trib.)

2330 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Bad debts – Claim was allowed without verification – Revision is held to be justified [S. 36(1)(vii)]**

Held that the claim of bad debt was allowed without verification hence revision was held to be justified (AY. 2014-15)

Jalgaon People's Co-op Bank Ltd. v. PCIT (2021) 188 ITD 608 (Pune)(Trib.)

2331 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Investment in shares has been accepted as part of corpus over four decades – Interest income qualified for exemption – Assessing Officer has adopted ab course permissible in law – Revision is held to be not valid [S. 11(5), 13(1)(d), 13(2)(h), 13(3)]**

Allowing the appeal of the assessee the Tribunal held that, investment in shares has been accepted as part of corpus over four decades. Interest income qualified for exemption. Assessing Officer has adopted a course permissible in law. Revision is held to be not valid. (AY. 2014-15)

Sir Ratan Tata Trust v. DCIT (2021) 188 ITD 151 (Mum.)(Trib.)

2332 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – All details were on record – Payment of remuneration to managing trustee of major philanthropic trust was accepted in earlier years – Investment in shares by assessee-trust had been accepted as part of corpus of trust for over four decades by department and CBDT had also accepted same while notifying assessee-trust under section 10(23C)- Revision is held to be not valid [S.10(23C), 11, 13(2)]**

Allowing the appeal the Tribunal held that all details were on record. Payment of remuneration to managing trustee of major philanthropic trust like assessee and an

important part of India's most prestigious and credible business house, was not at all so unusual as to warrant further inquiries about its reasonableness more so when similar payments to him did not invoke provisions of section 13(2) in earlier years. Investment in shares by assessee-trust had been accepted as part of corpus of trust for over four decades by department and CBDT had also accepted same while notifying assessee-trust under section 10(23C), it was not at all unreasonable on part of Assessing Officer not to question whether or not investments in shares were part of corpus; Commissioner was clearly in error in invoking powers under section 263 on ground that Assessing Officer failed to examine investments of trust complying with provisions of sections 11(5) and 13(1)(d). Revision order was quashed. (AY. 2014-15)
Sir Dorabji Tata Trust v. DCIT (2021) 188 ITD 38 / 197 DTR 289/ 209 TTJ 409 (Mum.) (Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – remuneration to working partners – as per partnership deed, remuneration is paid as per the provisions of s. 40(b)(v) and taxed at 30% in the hands of individual partner, same as the assessee firm – Assessment order framed is not erroneous and there is no prejudice to the interest of revenue. [S.40(b)(v)] 2333

PCIT found that the remuneration to the working partners of the Assessee Partnership firm was neither quantified nor quantifiable as per the Partnership deed. He relied on the CBDT circular no. 739 dated 25.03.1996 and observed that no deduction u/s 40(b)(v) will be admissible. He therefore invoked s. 263 holding that the assessment order passed is erroneous as well as prejudicial to the interest of revenue.
The Tribunal observed that clause 5 of the partnership deed proves that remuneration paid by the assessee firm to its working partners is as per the provisions contained u/s.40(b)(v) of the Act, out of the total income tax assessment of the firm in the relevant assessment year, out of the total income of remuneration so calculated to the partners shall be in equal proportions. Following judicial precedents and considering that revenue has not disputed the above facts, it held that the assessment order is not erroneous.
The Tribunal also held that remuneration paid to individual partners has been taxed at 30%, the same rate to which income of the assessee firm was to be taxed, the assessment order is therefore, not prejudicial to the interest of the Revenue. Order u/s 263 is not sustainable and appeal of the assessee is allowed. (AY. 2015-16)
Altmash Exports v. PCIT (2021) 87 ITR 22 (SN)(Delhi)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Order of Assessing Officer was in consonance with the view taken by the Tribunal, revision order was quashed. [S. 2(14), 2(29A), 2(47), 251] 2334

Assessee claimed a Long-Term Capital Loss, disallowed by AO, but covered by assessee's own case, hence allowed. Further, error in computing short-term capital gain arising from sale of flats without taking into stamp duty amount into consideration by AO was sought to be rectified by the CIT(A). PCIT revised the order of the AO. On appeal Tribunal held that the order of Assessing Officer was in consonance with the view taken by the Tribunal, revision order was quashed. (AY 2014-15)
Peerless General Finance & Investment Company Limited v. DCIT (2021) 87 ITR 281 / 211 TTJ 823 / 211 TTJ 823 (Kol.)(Trib.)

2335 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Order of Transfer pricing Officer-Part of assessment record -Can be revised [S.92CA]**
Order of Transfer pricing Officer is based on reference of Assessing Officer and therefore, it is also part of assessment record and can be revised by Commissioner. (AY. 2010-11)
Agro Tech Foods Ltd. v. DCIT (2021) 187 ITD 763 / 211 TTJ 715 / 201 DTR 297 (Hyd.) (Trib.)

2336 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Short term capital gain-Settlement Commission- Issue considered by the Settlement Commission – Revision order will be without jurisdiction [S.45, 245C(1), 245D(4), 245I]**
During pendency of matter before Settlement Commission, in revisional proceedings, Commissioner set aside assessment order and directed for de novo assessment proceedings. On appeal the Tribunal held that since issue of short-term capital gain earned by assessee on sale of shares had already been considered by Settlement Commission and assessee had offered additional income on which tax at appropriate rate was payable, such issue could not be raised again in revisionary proceedings as there was no prejudice caused to Revenue. (AY. 2015-16)
Gunjan Garg v. JCIT (2021) 187 ITD 467 (Delhi)(Trib.)

2337 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Non furnishing of approval – Revision is held to be not valid. [S.35(2AB), R. 6(7A)(b)]**
Assessee was engaged in business of manufacture and sale of animal feed supplements and veterinary drugs. Assessee claimed deduction under section 35(2AB). Assessing Officer allowed the claim. PCIT passed the revision order on the ground that assessee did not furnish approval granted by Department of Scientific and Industrial Research (DSIR) in Form 3CL before Assessing Officer in support of its claim made under section 35(2AB) till date of completion of assessment, thus, assessee was not entitled to deduction under section 35(2AB). On appeal the Tribunal held that prior to 1-7-2016, Form 3CL granting approval by prescribed authority in relation to quantification of weighted deduction under section 35(2AB) had no legal sanctity and it was only with effect from 1-7-2016 with amendment to rule 6(7A)(b) that quantification of weighted deduction under section 35(2AB) got significance, therefore, assessee was to be allowed deduction under section 35(2AB) and; accordingly, impugned invocation of revision jurisdiction under section 263 was unjustified. (AY. 2015-16)
Provimi Animal Nutrition India Pvt. Ltd. v. PCIT (2021) 187 ITD 214 / 85 ITR 9 (SN) (Bang.)(Trib.)

2338 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – On the date of transfer more than one residential house – Deduction allowed without verification – Revision order was set aside and directed the AO to pass the order in accordance with law [S.54, 54F]**
Assessing Officer allowed the claim under section 54F of the Act. Commissioner revised the order. On appeal the Tribunal held that since there was a failure on part of Assessing Officer to make necessary enquiry, Commissioner was justified in invoking

jurisdiction under section 263 for remanding order for de novo consideration. Tribunal also held that even if deduction claimed in return was under section 54F, claim of assessee should be considered under provision of section 54 if same was meant as one made under section 54 of the Act. (AY. 2013-14)
Lokesh M. v. PCIT (2021) 187 ITD 342 (Bang.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – limited scrutiny – No jurisdiction to go beyond reason for which the case was selected for limited scrutiny – Revision to consider other aspects is held to be without jurisdiction [S.143 (3)] 2339

Allowing the appeal the Tribunal held that in view of CBDT Instruction No. 7/2015, 20/2015 and 5/2016 and CBDT letter dated 30-11-2017, it was established that Assessing Officer could not go beyond reason for selection of matter for limited scrutiny. Accordingly revision order to consider other aspects is held to be without jurisdiction (AY. 2015-16)
Balvinder Kumar v. PCIT (2021) 187 ITD 454 / 212 TTJ 391/ 203 DTR 155 (Delhi)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Penalty dropped by Assessing Officer on consideration of replies – Revision order directing the Assessing Officer to initiate penalty proceedings was quashed [S. 132(4), 153A, 153C, 271AAB] 2340

Aseesee's Employer subjected to search wherein certain information pertaining to assessee also found and assessee also gave a declaration u/s 132(4) admitting the same to be his. Upon being satisfied that it is a fit case for assessment u/s 153C, AO issued notice and later concluded the assessment making certain additions. Penalty proceedings were initiated u/s 271AAB but were later dropped on considering the replies by the assessee. PCIT in exercise of his powers u/s 263 held that the dropping of penalty was erroneous and prejudicial to the interests of revenue since penalty was automatic u/s 271AAB. Accordingly he set aside the decision of the AO and directed him to revive the proceedings. On Appeal the ITAT held that penalty u/s 271AAB can only be levied on a person who was subject to search and in whose case assessment in concluded u/s 153A not on any other person. Accordingly when assessment order is passed u/s 153C, the question of levying penalty under the said section does not arise. Therefore even though the reasons for dropping the penalty was not specified in the order sheet, there can still be nothing erroneous and prejudicial to revenue's interests in dropping the proceedings when penalty could not have been levied at all under that section. Hence the very initiation of Revision proceedings u/s 263 itself cannot be sustained in law and the Revision order deserves to be quashed. (ITA No. 1809/Bang / 2018 dt 19-4-2021)(AY. 2014-15)
D.S. Patil v. PCIT (Bang.)(Trib.) www.itatonline.org

2341 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Loss – Carry forward and set-off – Revision is held to be valid – Assessing Officer in giving effect to allow such set off for assessment year 2015-16 by passing a consequential order – [S.115JB, 143(3)]**

Tribunal held that revision is held to be valid, however, the working made by the Principal Commissioner regarding the excess set off of loss pertaining to the assessment year 2009-10 alleged to be wrongly allowed by the Assessing Officer was not correct and this matter should have been left open by him to the Assessing Officer for making the working on the basis of actual loss pertaining to the assessment year 2009-10 as determined in the relevant assessment.(AY.2015-16)

Infinity Infotech Parks Ltd. v. Dy. CIT (2021)85 ITR 1 (SN)(Kol.)(Trib.)

2342 **S. 263 : Commissioner – Revision of orders prejudicial to revenue -Gift deed not registered – Gift of immoveable property from daughter – Revision is held to be without jurisdiction**

Allowing the appeal the Tribunal held that the effect of failure to register the gift instrument, would be that the transfer of the flat would not be recognized in the eyes of law, if there arose a dispute between the donor and the donee regarding the validity of the gift. In such a case no transfer of flat takes place, and the assessee's capital account would get reduced by the cost of the flat gifted and it would get reflected in the capital account of the donor. In such an event, there would be no prejudice caused to the Revenue, on account of failure by the Assessing Officer to appreciate the legal effect of non-registration of the gift instrument. The revision was without jurisdiction and not sustainable.(AY. 2015-16)

Krishna Murari Poddar v. PCIT (2021) 85 ITR 101 (Kol.)(Trib.)

2343 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Scope of Explanation 2(a) – Mere lack of necessary enquiries cannot lead to revision-Reassessment is held to be bad in law. [S.11, 12, 13]**

The ITAT held that for invoking Explanation 2(a) to section 263 Commissioner cannot only rely about lack of necessary inquiries and verifications but must give an objective finding that Assessing Officer has not conducted, at stage of passing order which is subjected to revision proceedings, inquiries and verifications expected, in ordinary course of performance of duties of a prudent, judicious and responsible public servant that Assessing Officer is expected to be. When investment in shares by assessee-trust had been accepted as part of corpus of trust for over four it was not at all unreasonable on part of Assessing Officer not to question whether or not investments in shares were part of corpus. Provisions under section 263 could not be put into service to make some roving and fishing inquiries. (AY. 2014-2015)

JRD Tata Trust v. JCIT (2021) 85 ITR 431 (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Stamp valuation – Date of agreement – Date of registration – Possible view – Revision is held to be not valid [S.43CA] 2344

The assessment was completed u/s 143(3) of the Act. PCIT passed the revision order stating that the agreement does not mention allotment of the flat, the allotment letter is not part of registered agreement, not file any evidence having filed the allotment letter with stamp Duty Authority, agreement does not mention the booking amount paid and there is contradiction in date mentioned in allotment letter and the commencement certificate. Accordingly the Assessing Officer was directed to pass fresh order. On appeal the Tribunal held that, the Assessing Officer has taken a possible view after inquiring in to the matter and appreciating the facts and documents filed by the assessee, since the Assessing Officer has taken possible view revision order is held to be not valid.(ITA No. 4308/Bang / 2019 dt 11- 1- 2021)(AY. 2014 -15)

Ranjana Construction Pvt Ltd v. PCIT (2021) BCAJ-March -P. 39)(Bang.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Jurisdictional issue of reassessment can be challenged in an appeal against revision proceedings – Appeal – Appellate Tribunal – Power – Revision order was quashed.[S. 143(3), 147, 253, 254(1)] 2345

The Assessment was reopened and the assessee has not challenged the said order. The revision order was passed by the PCIT. On appeal before the Tribunal, the assessee challenged the reassessment proceedings as bad in law and without jurisdiction. Allowing the appeal of the assessee the Tribunal held that jurisdictional issue of reassessment can be challenged in appeal against revision proceedings. Tribunal held that Assessing Officer's belief of escapement of income was based on wrong assumption of facts and therefore the reassessment order was nullity and consequently the revision order was quashed. Referred *Westlife Development Ltd v. PCIT (ITA No.688/Mum/ 2016 dt 24-6-2016, Krishna Kumar Saraf v. CIT (ITA No. 4562/ Del/ 2011 dt.24-9-2015), Classic Flour & Food Processing (P) Ltd v. CIT (ITA Nos. 764 to 766 /Kol/2014 dt 5-4-2017)*. (AY. 2010-11)

Concord Infra Projects (P) Ltd. v. PCIT 214 TTJ 892 / 208 DTR 1 (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Surrender of capital gains in revised return – Failure to levy penalty – Explanation 2 to section 263 was not referred – Revision is held to be not valid. [S. 139(5), 143(3), 271(1)(c)] 2346

The Assessing Officer has not levied the penalty in respect of capital gain offered in the revised return in the course of assessment proceedings. The PCIT passed the revision order for failure to levy penalty in respect of income surrendered. On appeal the Tribunal set aside the revision order passed by the PCIT.(AY. 2015-16)

Davinder Kaur Bains v. PCIT (2021) 214 TTJ 1159 / (2022) 209 DTR 47 (Asr.)(Trib.)
Gurbachan Singh Bains v. PCIT (2021) 214 TTJ 1159 / (2022) 209 DTR 47 (Asr.)(Trib.)

2347 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Limited scrutiny – Opportunity of being heard – Violation of principle of natural justice – Order was quashed – The prayer of departmental representative to remand the case to the file of the PCIT was rejected. [S. 143(3)]**

PCIT has issued show cause notice on 25 th March 2021 fixing the date of hearing on 26 th March 2021 /The Assessee made an application for an adjournment on 26 th March 2021 and prayed for 15 days time. The PCIT passed the order on 27th March 2021, without considering the adjournment application. The Tribunal quashed the order passed u/s 263 of the Act. The prayer of departmental representative to remand the case to the file of the PCIT was rejected (AY. 2016-17)

Dee Vee Projects Ltd. v. PCIT (2021) 214 TTJ 660 / 207 DTR 452 (Raipur)(Trib.)

2348 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Valuation of flats purchased on the basis of registered valuer- Failure to refer to District valuation Officer – Revision is held to be not valid [S. 55A, 56(2)(vii)(b), 143 (3)]**

The assessee purchased the flats for Rs 60 lakhs as per the agreement dt. 6 th Feb, 2013. The valuation fixed by the stamp authority was Rs. 80, 812, 150. the Fair market value of the flats was much less than Rs. 67, 57, 600 by relying on the estimate of a registered valuer. The Assessing Officer agreed with the estimate of registered valuer. PCIT passed the order directing the Assessing Officer to frame a fresh assessment and call for valuation from the competent authority as mentioned under section 55(2) of the Act in relation to the deed of sale agreement and conveyance. On appeal the Tribunal held that Assessment order was not erroneous for not referring the valuation of flats to the DVO by referring to cl.(b) of section 55(2)(vii) as sub-cl.(ii)) thereof was not in existence in the year 2013 when the transfer of flats took place. (AY. 2015-16)

Monoj Kumar Biswas v. PCIT (2021) 214 TTJ 340 /63 CCH 380 / 207 DTR 145 (Kol.)(Trib.)

2349 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Nature and source of deposits examined during assessment proceedings – Order cannot be held as erroneous – Order is set aside [S. 143(3)]**

Allowing the appeal of the assessee the Tribunal held that the Assessing Officer has examined nature and source of deposits in savings account made during the relevant year and also opening and closing balances cash in hand which are reflected in the balance sheet. Revision order is held to be not justified. (AY. 2015-16)

Ram Bharos Shashi v. ITO (2021) 214 TTJ 9 (UR) / 63 CCH 373 (Jodhpur)(Trib.)

2350 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Exemption on sale and purchase of agricultural lands – Revision was held to be not valid – Lack of opportunity – Fresh opportunity of passing the order after giving the assessee an opportunity of hearing cannot be given – Order was quashed. [S.2(14)(iii), 54B]**

Allowing the appeal the Tribunal held that the agricultural land situated is outside the Municipal limits, it is not deemed as capital asset under section 2(14)(iii) and there is no liability of capital gains. Capital gains accrued on sale of land has been invested in purchase of land which is used for agricultural purposes. The Assessing Officer has examined the claim and allowed the exemption u/s 54B of the Act. Revision is not valid.

Tribunal also held that the order was passed the very date of hearing that too after the appointed time of hearing. It is. Case of total lack of opportunity to the assessee to defend to case, such defect being incurable, the revisionary order passed is quashed. (AY. 2016-17)
Ramdev Mandhani (HUF) v. ITO (2021) 214 TTJ 1024 / 208 DTR 438 (Raipur)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Trading loss – Rental income – Income from house property – Income from other sources – Specific query was raised during assessment proceedings – Revision was held to be not valid. [S. 22, 24, 28((i), 56] 2351
Allowing the appeal of the assessee the Tribunal held that, when specific query was raised during assessment proceedings as regards details relating to share trading loss. Merely having a different opinion upon the treatment of any receipt cannot be the basis for revision. Revision order is quashed. (AY. 2012-13)
Shree Balkrishna Commercial Co. Ltd. v. PCIT (2021) 214 TTJ 1057 / 63 CCH 515 / 208 DTR 425 (Delhi)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Payment to doctors – Consultation fees – No evidence brought on record to show that the payment was freebies – Expenses on exempt income – Submission was accepted by the Assessing Officer in the course of assessment proceedings -Revision is held to be not valid [S. 14A, 37(1)] 2352
Allowing the appeal of the assessee the Tribunal held that revenue has not brought any evidence to show that the payment to doctors was in the nature of freebies. Tribunal also held that the submission of the assessee as regards expenses incurred for exempt income was accepted by the Assessing Officer in the original assessment proceedings. Revision is held to be not valid. (AY. 2013-14)
SRL Diagnosties Ltd v. PCIT (2021) 214 TTJ 929 (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Sources of cash deposits – Verified in the proceedings u/s 147 – Revision was set aside. [S. 68, 147] 2353
Relying on the decision of Hon'ble Delhi High Court in the case of *CIT v. Sunbeam Auto Ltd. (2009)31 DTR 1 (Delhi)(HC)*, the Hon'ble Tribunal adjudicating the matter in favour of assessee, held that inadequacy of enquiry cannot be sufficient ground for initiation of proceedings under section 263 of the Act. Where proceedings under section 147 of the Act were initiated for verification of the sources of cash deposits into bank account and the AO after considering the submissions made by the Assessee and after applying his mind concluded that there was no malfeasance on behalf of the Assessee, it cannot be said that the AO made insufficient enquiries during assessment and took an unreasonable and unplausible view. Accordingly, the order is quashed. (AY. 2015-16)
Mahabir Prasad Ajirma v. PCIT (2021) 213 TTJ 610 / 206 DTR 361 (Raipur)(Trib.)

2354 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Additional income disclosed in the course of survey – Land development expenses – Revision order is held to be not valid. [S. 133A]**

Tribunal held that the assessee had submitted all the necessary documents and explanations which was accepted by the ld. AO after due application of mind and verification. AO worked as an adjudicator as well as an investigator and therefore the order under section 143(3) was not erroneous. Tribunal also observed that the ld. PCIT's contentions were merely based on suspicion and conjecture. As a result, the impugned proceeding was quashed. (AY. 2014-15)

Rudra Developers v. PCIT (2021) 213 TTJ 715 (Surat)(Trib.)

2355 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Explanation was submitted on various issues during the course of assessment proceedings – Revision order was quashed.**

Tribunal held that various issues were duly examined during the course of assessment proceedings. The power of revision of orders passed by the AO u/s. 263 of the Act is in the nature of supervisory jurisdiction which is permissible to be exercised only when the twin conditions are satisfied that the order passed by the AO is erroneous and further on account of order being erroneous, prejudice has been caused to the interest of revenue. The record of the assessment proceedings was not examined by the Principal CIT in its entirety and objectivity. The order u/s 263 cannot be sustained as the assessment order passed by the AO cannot be said to be erroneous or prejudicial to the interest of revenue, and accordingly the order made u/s 263 is quashed. (AY. 2012-13)

Shree Maruti Nandan Guwar Gum (P) Ltd. v. PCIT (2021) 213 TTJ 65 (UO)(Jodhpur)(Trib.)

2356 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Detailed questionnaire was issued by the Assessing Officer – Order cannot be said to be erroneous [S.143(3)]**

Tribunal held that detailed questionnaire was issued by the Assessing Officer. Order cannot be said to be erroneous. (AY. 2016-17)

PI Industries Ltd v. PCIT (2021) 213 TTJ 686 / 206 DTR 73 (Jodhpur)(Trib.)

2357 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Merger – Nationalised bank – CIT(A) has held that S. 115JB is not applicable to assessee – Revision is not valid – Deduction of bad debts – Order was passed after considering detailed submissions – Revision is not valid – Assessment made without reference to TPO – Revision order is valid. [S. 36(1))(vii), 36(1)(viia), 92CA, 115JB, 144C]**

Tribunal held that CIT (A) has taken the view that S. 115JB is not applicable to assessee hence revision is not valid. As reagards deduction of bad debts the Order was passed by the Assessing officer after considering detailed submissions hence revision is not valid. On the adjustment of transfer pricing the assessment was made without reference to TPO hence the revision order is valid. (AY. 2014-15)

Bank of India v. JCIT (2021) 210 TTJ 626 (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Cost of improvement – Freehold conversion charges stamp duty, etc – Revision was held to be not valid – Indexation erroneously taken at 852 instead of 785 – Revision is held to be valid [S.45, 48] 2358

Tribunal held that the revision is held to be not justified as regards cost of improvement charges paid for freehold conversion charges stamp duty, etc. Tribunal also held that Indexation erroneously taken at 852 instead of 785. Revision is held to be valid. (AY. 2012-13)

Sanjay Majumdar v. PCT (2021) 210 TTJ 137/ 199 DTR 17 (All)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Loss returned was accepted in scrutiny assessment – Revision order of rectification is held to be not valid – Quantification cannot be disturbed in revision proceedings [S. 72, 143(3), 154] 2359

Assessee filed its return for relevant year with a loss of which was subjected to scrutiny assessment. The assessee moved a rectification application which was decided by Assessing Officer in assessee's favour. Commissioner revised rectification order under section 263 by holding that since Assessing Officer did not examine assessee's claim for carry forward of loss in sufficient detail, loss could not be carried forward. Tribunal held that once a loss had been disclosed in income tax return, and such a loss had not been disturbed in scrutiny assessment proceedings, such a loss was to be treated as accepted, and quantification thereof could not have been disturbed. Revision of rectification order was quashed. (AY. 2012-13)

Cargo Service Centre India (P.) Ltd. v. DCIT (2021)) 208 DTR 81/ (2022) 192 ITD 392 / 215 TTJ 193 (Mum.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Purchase and sale of properties – Stock in trade – Rental income is assessed as business income – Disallowance of depreciation and vehicle expenses – Revision order was quashed. [S. 28(i), 32, 37(1), 56, 143(3)] 2360

Allowing the appeal of the assessee the Tribunal held that the assessee was not finding the buyer to sell the property which was kept as stock in trade. The business was not closed. Depreciation and vehicle expenses are allowable as business expenditure. Revision order is quashed. (AY.2014.15)

Noor Resorts Pvt. Ltd. v. PCCIT (2021) 209 TTJ 380 /198 DTR 161 (Chd.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Limitation – Issue was not subject matter of assessment u/s 153C – Original order on 28-3-2016 – Revision order passed on 9-12-2020 – Barred by limitation [S.80IA, 143(3), 153C] 2361

The PCIT passed the revision order in respect of claim u/s 80IA which was allowed in the original assessment proceedings by the Assessment order u/s 143(3) dt 28-3-2016. Due to search action proceedings were initiated u/s 153C of the Act. The claim of section 80IA was not subject matter of proceedings u/s 153C of the Act. Revision order was passed on 19-12-2020. The Tribunal held that the revision order is barred by limitation. (AY. 2013-14)

Seyad Shariat Finance Ltd v. PCIT (2021) 206 DTR 282 / 91 ITR 4 (SN) / 213 TTJ 897 (Chennai)(Trib.)

2362 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – DCF Method – Valuation of shares Assessment order was passed considering the point wise reply to the notice u/s 142(1) and 143(2) of the Act – Revision is held to be not valid [S. 56(2)(viib) R. 11UA(2)(b)]**

Allowing the appeal the Tribunal held that the Assessee has filed point wise reply to the notice u/s 142(1) and 143(2) of the Act of the Act. After application of mind the Assessing Officer passed the order. The revision order is held to be bad in law. (AY. 2013-14)

Dada Ganpati Gaur Products (P) Ltd. v. PCIT (2021) 207 DTR 105 (Chd.)(Trib.)

2363 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Revision order was quashed – Assessment order passed consequent of revision order is quashed [S. 32(1)(ii), 143(3)]**

Held that when the revision order was quashed. Assessment order passed consequent of revision order could not be sustained. (AY.2012-13)

Dy.CIT v. Mumbai Nasik Expressway Ltd. (2021) 91 ITR 486 (Mum.)(Trib.)

2364 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Trust deed providing for its dissolution on beneficiary attaining age 18 – Revenue was informed about dissolution of Trust – Notice issued in name of trust after extinguishment of trust – Not curable defects – Notice illegal and Order to be quashed.[S. 143(3), 292B]**

According to the trust deed, all the trust property including accumulation in the form of yearly income and other accretions to the trust property were to vest with the sole beneficiary after her attaining 18 years of age or March 31, 2015, whichever was later, along with all the rights of ownership, use, possession and dispossession thereof. Since the beneficiary completed the age of 18 years on March 9, 2015, the trust was in existence during the assessment year 2016-17 but not after March 9, 2015, as it stood dissolved or extinguished on March 31, 2015. The notice issued by the PCIT to the assessee on March 15, 2021 was made to a non-existing and expired trust. As a result, the order passed by the PCIT was illegal and not a procedural irregularity which could be cured under section 292B of the Act. (AY.2016-17).

Bhavya RPG Trust v. PCIT (2021) 91 ITR 135 (Delhi)(Trib.)
Varnika RPG Trust v. PCIT (2021) 91 ITR 135 (Delhi)(Trib.)
Dhruv Gupta (Manish Dhruv Trust) v. PCIT (2021) 91 ITR 135 (Delhi)(Trib.)

2365 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Mistake committed by consultant in declaring wrong turnover in service tax returns – Assessing Officer making addition of profit element embedded in undisclosed receipts at 8 Per Cent. – Order of revision not valid. [S. 143(3)]**

Held that there was no undisclosed turnover/receipts as alleged by the Assessing Officer on the basis of wrong figures shown in the service tax returns and the turnover declared in the Income-tax return was correct. Since the assessee was a Government contractor and the entire turnover and receipts were liable to deduction of tax at source, he had added the profit element embedded in the undisclosed receipts calculated at 8 per cent. to the total income of the assessee. The view taken by the Assessing Officer was a

possible view and it was not permissible for the Principal Commissioner under section 263 to substitute his own view for the possible view taken by the Assessing Officer. Therefore, the order passed under section 263 was not sustainable. (AY.2015-16)
Gopal Chandra Manna v. PCIT (2021) 91 ITR 193 (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue - Set off of brought forward business loss – No excess unabsorbed depreciation allowed while computing book Profit – Issue of show-cause notice beyond period of two years from date of original assessment Order – Revision barred by limitation – Revision quashed. [S. 115JB] 2366

Held that issue was not a subject matter of discussion either in the original assessment proceedings under section 143(3) or in first round of 263 proceedings. When an issue which was not subject matter of any other proceedings, the period of limitation was to run from the original assessment order passed under section 143(3) of the Act for the purpose of invoking jurisdiction under section 263 of the Act. The original assessment order was passed on December 22, 2009 and the Principal Commissioner could issue a show-cause notice on or before March 31, 2012. The Principal Commissioner had issued the show-cause notice on February 9, 2015, which was clearly beyond the period of two years provided under the Act. Therefore, assumption of jurisdiction by the Commissioner on this issue for revision of assessment order under section 263 of the Act was clearly barred by limitation, bad in law and liable to be quashed. (AY.2007-08)
India Cements Ltd v. Dy.CIT (2021) 91 ITR 541 (Chennai)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Interest expenditure allowed after conducting enquiry – Revision is held to be not valid. [S. 143(3)] 2367

Tribunal held that the Principal Commissioner had wrongly asserted that the Assessing Officer did not examine the balance-sheet of the assessee and did not enquire into the commercial expediency of withdrawal of fund by the partners. The facts and figures assumed by the Principal Commissioner were found to be erroneous. The Assessing Officer had discharged his duty as an investigator. And his view as an adjudicator was based on the relevant material placed on record. While passing the assessment order the Assessing Officer did not follow a view which could be said to be "unsustainable in law". Therefore, the action of the Principal Commissioner was without jurisdiction and "null" in the eyes of law. (AY.2015-16)
P. S. Srijan Height Developers v. PCIT (2021) 91 ITR 246 (Kol.)(Trib.)

S. 263 : Commissioner – Revision of orders prejudicial to revenue – Proceedings for rectification was dropped – Revision based on audit objection – Revision is not sustainable.[S. 24B, 154] 2368

The Principal Commissioner set aside the assessment order and directed the Assessing Officer to investigate the issue and pass a speaking order. This approach of the Principal Commissioner was erroneous as the law is clear that the Principal Commissioner either he can make enquiry himself or cause such enquiry to be made but such exercise is to be made before passing the order under section 263 of the Act. Admittedly,

proceedings under section 154 of the Act were dropped by the same Assessing Officer who had requested for exercising powers under section 263 of the Act by the Principal Commissioner and the revision by the Principal Commissioner was based upon the audit objections. The Principal Commissioner did not dispose of the objection of the assessee that assessment order passed by the Assessing Officer was without jurisdiction. The exercise of power under section 263 of the Act by the Principal Commissioner was not in accordance with law and his order deserved to be quashed.(AY. 2012-13)
Ashish Dham v. PCIT (2021) 91 ITR 75 (SN)(Delhi)(Trib.)

2369 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Reassessment – Revision notice a verbatim copy of reasons recorded by Assessing Officer for reopening assessment – Assessing Officer Accepting returned income after verifying explanation – Revision by PCIT not sustainable. [S. 143(3), 147]**
The show-cause notice issued by the Principal Commissioner under section 263 of the Act was a verbatim copy of the reasons recorded by the Assessing Officer under section 147 of the Act. During the reassessment proceedings under section 147 of the Act, the Assessing Officer had carried out a detailed enquiry and the assessee had duly explained that separate portfolios for trading and investments were maintained by the assessee. The transactions were carried out in separate dematerialised accounts and shares were received in these separate accounts. As the assessee had duly explained that separate portfolios were maintained and trading and investments transactions were carried out in a separate accounts from the very beginning and that there was no bar for the assessee to carry out both the trading and investment activities, the order passed under section 263 of the Act by the Principal Commissioner was not sustainable and was to be quashed.(AY. 2011-12 to 2014-15)
Chandravadan Desai v. PCIT (2021) 91 ITR 78 (SN)(Kol.)(Trib.)

2370 **S. 263 : Commissioner – Revision of orders prejudicial to revenue – Show cause notice and discussion restricted too share application money – Reassessment order not erroneous and prejudicial to revenue -Revision order was quashed. [S. 68, 147, 148]**
Held that the assessee had submitted copies of the balance-sheet, Income-tax return, company master data available on the website of the Ministry of Corporate Affairs of the investor company which had details of its directors and shareholders and other relevant details as well as confirmation from the investor company. The Assessing Officer had directly called for information from the investor company under section 133(6) and verified it with the books of account of the assessee-company. Therefore, it could not be held that the Assessing Officer had failed to carry out proper verification of the transaction under consideration. There was no legal and justifiable basis to interfere with the findings of the Assessing Officer as the necessary enquiries and examination as reasonably expected had been carried out by the Assessing Officer and he had taken a prudent, judicious and reasonable view after considering the entire material available on record. The order so passed under section 143(3) read with section 147 could not be held erroneous in so far as prejudicial to the interests of the Revenue. The order passed by the Principal Commissioner under section 263 was not sustainable.(AY. 2011-12)
Majestic Stock Pvt. Ltd. v. PCIT (2021) 91 ITR 71 (SN)(Jaipur)(Trib.)

S. 264 : Commissioner – Revision of other orders – Reasoned order – DTAA-India-USA [S. 110-O, Art 10(2), Art. 226] 2371

The assessee has filed revision application on the ground that beneficial rate of 5 per cent prescribed under article 10(2) of the India -Mauritius DTAA shall prevail over the DDT rate of 15 percent as provided under section 115 -O of the Act. Commissioner dismissed the application without giving any reasons. On writ the matter was remanded back to the PCIT for passing speaking order. (AY. 2018-2019)

Xchanging Technology Services India (P) Ltd v. PCIT (2021) 323 CTR 918 / 207 DTR 429 (Delhi)(HC)

S. 264 :Commissioner – Revision of other orders – Option of the assessee either to file an appeal or to file a revision – Sale of agricultural land – Capital gains – Matter remanded to the Assessing Officer to decide in accordance with law. [S.2(14)(ii), 2(47), 48, 246A, Art. 226] 2372

The assessee sold agricultural land and claimed exemption in respect of capital gains. The Assessing Officer denied the exemption. The assessee filed revision application before the Commissioner under section 264 of the Act. Commissioner rejected the application on merit. The assessee filed writ before the High Court. Single judge held that the assessee should have filed an appeal before the Commissioner of Income tax (Appeals) under section 246A of the Act and dismissed the petition. On appeal the division bench held that the observations of Single Judge made with regard to the assessees herein exercising their option to file a revision under s. 264 and not file an appeal under s. 246A, cannot be sustained. Court also held that before applying s. 48, it is necessary to ascertain whether the subject matter of transfer, namely immovable property or land is agricultural land or not-On perusal of the order of the AO, it is found that the provisions of ss. 2(14)(ii) and 2(47) have not been applied to the facts of the case Although, there is a detailed discussion with regard to the nature of the transaction, as to whether it is a transfer or not, there is no application of mind as to whether the subject lands are capital asset or not. Revision petition was maintainable. Court set aside the order of the Commissioner and remanded to the concerned AO to consider the case of the assessee in accordance with law. (AY. 2006-07)

Nataraju (HUF) v. PCIT (2021) 323 CTR 480 / 207 DTR 249 (Karn.)(HC)

Editorial : Order of single judge in Nataraju (HUF) v. PCIT (2018) 406 ITR 342 / 254 Taxman 357 / 304 CTR 665/ 167 DTR 100 (Karn)(HC), set a side.

S. 264 : Commissioner – Revision of other orders – Delay in filing revised return claiming benefit under – Substantive benefit cannot be denied on ground of procedural formality – Delay was condoned and directed to pass a speaking order with in a period of three months from the date of receipt of a copy of the order. [S. 80JJAA, 139 (5), 288(2), Art. 226] 2373

The AO rejected the claim u/s 80JJA of the Act as there was delay in filing revised return for the purpose pf claim u/s 80JJAA of the Act. The assessee filed revision application under section of the Act, which was rejected. On writ allowing the petition the Court held that denial of substantive benefit could not be justified since the assessment itself was reopened by the Assistant Commissioner and he had not

given the benefit while reassessing the income of the assessee. It was precisely for dealing with such situations powers had been vested with superior officers like the Commissioner under section 264. The Commissioner ought to have allowed the revision application filed by the assessee under section 264 and the assessee was entitled to partial relief. Accordingly, the order of the Commissioner was set aside and the Assistant Commissioner directed to pass appropriate orders on the merits ignoring the delay on the part of the assessee in filing the revised return under section 139(5) and failure to furnish the audit report.(AY. 2004-05)
Craftsman Automation P. Ltd. v. CIT (2021) 435 ITR 558 (Mad.)(HC)

2374 **S. 264 : Commissioner – Revision of other orders – Return filed and assessed as resident – Scope is narrower than appeal – Revision application made to be assessed as Non-resident – Writ is not maintainable – Circular and Act – In case of conflict of provisions of Act will prevail [S.2(42), 6(1)(a), 144, 147, 154, Art. 226]**
Dismissing the petition the court held that the assessee himself had claimed in his return as resident and it was an admitted position from his own documents filed before the authorities that he had stayed in India during the relevant financial year for 182 days for treating him as resident within the meaning of section 6(1)(a) read with section 2(42). He had not filed any reply to the notice issued under section 148 nor at any point of time had he challenged such notice before the court or filed any application for rectification of the order under section 154 for the assessment made under section 147 / 144 by which the assessee was held "resident" or an appeal before the Commissioner (Appeals) against the order. The assessee had invoked the provision of revision under section 264, the scope of which was much narrower than the appeal. Circulars and notifications upon which the assessee relied were in conflict with section 6(1) and if there was a conflict between a circular or notification and an Act the Act would prevail. The order passed by the Commissioner in exercise of his revisional jurisdiction under section 264 confirming the order of assessment under section 147 / 144 treating the assessee as resident was held to be valid.(AY. 2004-05)
Tapas Kumar Basak v. ADIT (IT)(2021) 438 ITR 197 / 322 CTR 971 (2022) 284 Taxman 224 (Cal.)(HC)

2375 **S. 264 : Commissioner – Revision of other orders – Dismissal petition as premature without giving any reasons – Matter remanded and directed to pass a reasoned order. [Art. 226]**
On writ against the dismissal order the Court held that the Principal Commissioner had dismissed the assessee's revision petition under section 264 without giving any reason on the merits, except stating that the petition was premature. He had neither applied his mind to the controversy at hand nor passed a reasoned order. The order dismissing the revision petition was set aside and the matter was remitted to the Principal Commissioner for passing a reasoned order.(AY.2016-17)
Riso India Private Limited v. PCIT (2021) 437 ITR 174 / 205 DTR 78 / 322 CTR 840 (Delhi) (HC)

S. 264 : Commissioner – Revision of other orders – Subject matter of appeal – Revised return – CIT (A) dismissed the appeal on the ground that the admitted tax was not paid – Rejection of revision application was held to be not justified – Matter remanded [S. 246, Art. 226] 2376

Allowing the petition the Court held that once an appeal is considered as non est in eye of law, any order impugned in such appeal cannot be considered as subject of an appeal as there is no ascertainment or adjudication of issues raised in appeal on its merits. Accordingly the Court held that where Commissioner (Appeals) rejected appeal of assessee as void ab initio as it had failed to pay admitted tax as per return of income voluntary filed, it could not be considered as a matter having been subject of an appeal to oust or prevent Commissioner from exercising power of revision conferred on him under section 264 of the Act. Matter remanded to Commissioner to decide the matter on merits. (AY. 1997-98)

S. Ravinder v. CIT (2021) 282 Taxman 205/ 203 DTR 322/ 321 CTR 346 (Telangana)(HC)

S. 264 : Commissioner – Revision of other orders – Export of computer software – Omitting to claim exemption in return – Rejection Of Rectification – Revision application was rejected on the ground that delay in filing the revised return – Rejection of revision application was held to be not justified- Directed to allow the claim made u/s 154 of the Act. [S. 139 (5), 143 (1), 154, Art. 226] 2377

The assessee received the intimation dated March 28, under section 143(1) on May 18, 2008. Since the time limit for filing a revised return under section 139(5) had expired on March 31, 2008, it filed a rectification application under section 154. The Assessing Officer rejected the rectification application on the ground that the assessee ought to have filed a revised return on or before March 31, 2008.The assessee filed revision application which was rejected. The assessee filed second revision petition which was also rejected. On writ allowing the petition the Court held that the rejection of the revision application filed by the assessee under section 264 was not justified as the Officers acting under the Income-tax Department were duty bound to extend the substantive benefits that were legitimately available to an assessee. The rejection of the application for rectification by the Assessing Officer under section 154 was unjustified, since the assessee was entitled to the substantive benefits under section 10B and the delay, if any, was attributed on account of the system. Even if the intimation dated March 28, 2008 was dispatched on the same day after it was signed, in all likelihood, it could not have been received by the assessee on March 31, 2008 to file a revised return on time. The assessee was entitled to rectification under section 154 of the Act. (AY. 2006-07)

L-Cube Innovative Solutions P. Ltd. v. CIT (2021) 435 ITR 566 (Mad.)(HC)

S. 264 : Commissioner – Revision of other orders – Appeal filed after expiry of time limit – Revision application is held to be valid [S.143(1)(a), 246A, 264(4), Art. 226] 2378

Allowing the petition the Court held that the assessee had not filed an appeal against the order under section 143(1) under section 246A of the Act and the time of 30 days to file the appeal had also admittedly expired. Once such an option had been exercised, a plain reading of the section suggested that it would not then be necessary for the

assessee to waive such right. That waiver would have been necessary if the time to file the appeal had not expired. The application for revision was valid. Order of PCIT was set aside and directed to hear the application afresh on merits after giving an reasonable opportunity to the assessee. (AY.2018-19)

Obiter dicta : Where errors can be rectified by the authorities, the whole idea of relegating or subjecting the assessee to the appeal machinery or even discretionary jurisdiction of the High Court, is uncalled for and would be wholly avoidable. The provisions in the Income-tax Act for rectification, revision under section 264 are meant for the benefit of the assessee and not to put him to inconvenience.

Aafreen Fatima Fazal Abbas Sayed v. ACIT (2021) 434 ITR 504 / 202 DTR 1/ 280 Taxman 429 / 321 CTR 583 (Bom.)(HC)

2379 **S. 264 : Commissioner – Revision of other orders – Rejection of application on ground of bar of limitation – Failure to decide revised capital gains – Matter remanded to decide the issue on section 50C [S. 50C, 54, Art. 226]**

The Principal Commissioner rejected application was barred by limitation however, he decided the merits of the application as well but did not record any finding as regards the assessee's contention with respect to section 50C. On writ the matter was remitted to the Principal Commissioner for adjudicating the issue with regard to section 50C without reopening the issue with regard to limitation. Matter remanded.

Prabhudas Veljibhai Chaudhari v. PCIT (2021) 431 ITR 246 (Guj.)(HC)

2380 **S. 264 :Commissioner – Revision of other orders – Fringe Benefits Tax – Claim for refund based on order of Tribunal – Commissioner bound by circular – Limitation does not apply to CBDT for passing order u/s 119- Principle of fairness and reasonableness is constitutional mandate – CBDT is directed to entertain the application for grant of refund. [S.115WD(4), 119, Art. 14, 164]**

In an appeal before the Tribunal for the assessment Year 2006 -07 the Tribunal by an order dt. 29 2-1016 held that the statutory contribution made to superannuation fund was outside the ambit of fringe benefits tax. The assessee filed revised return for the AY. 2007 -08 and claimed exemption in the revised return which was not considered. The Assessee has filed revision application before the Commissioner u/s 264 of the Act, which was rejected. The assessee filed writ against the rejection of order under section 264 of the Act. Opposing the petition the Department contended that that Circular No. 9 of 2015, dated June 9, 2015 (2015) 374 ITR 25 (St) issued by the Central Board of Direct Taxes which stated that a claim for refund would not be entertained beyond six years from the end of the assessment year for which the claim was made was binding on the Principal Commissioner, and that the claim could have been considered only by the Board and not by the Principal Commissioner were sustainable. However, the Principal Commissioner had not taken note of the spirit of the court's order dated June 12, 2019, wherein it had stated that if the assessee was not liable to pay any fringe benefits tax, then, the Department ought to have refunded it. The Income-tax Department being an arm of the State was bound by the constitutional mandate enshrined in article 14 of the Constitution of India and the principles of fairness and reasonableness. Though any taxing statute would have to be construed strictly and there was no scope for applying

equitable principles, the assessee's case was not one of tax liability. According to the legal position prevailing, the assessee was not liable to have made any payment of fringe benefits tax in respect of contribution towards superannuation fund. Circular No. 9 of 2015, dated June 9, 2015 issued by the Board was no doubt binding on the authorities including the Principal Commissioner, but a court was not bound by such a circular. Section 119 did not have any limitation. The assessee was permitted to file an appropriate application before the Central Board of Direct Taxes. Since as on date there was no tax liability on the part of the assessee the application would be entertained by the Board without reference to limitation and orders passed. If any refund was ordered in the pending appeal by the Department the question of paying any interest by the Department would not arise.(AY.2007-08)

Karur Vysya Bank Limited v. PCIT (2021) 432 ITR 622/ 281 Taxman 532 / 207 DTR 54/ 323 CTR 429 (Mad.)(HC)

S. 264 : Commissioner – Revision of other orders – Deduction at source – Certificate for lower rate – Determination of rates without following prescribed procedure — Order is held to be not valid – Order passed with approval of Commissioner – Revision is not maintainable – No alternative remedy – Writ is maintainable [S.197, 264 (2), R.28AA Art. 226] 2381

On writ the Court held that the Assessing Officer in his order that approval of higher authorities was taken on the online TRACES portal. Consequently, since the order was passed after an approval from the Commissioner, it could not be challenged by way of a revision petition before the Commissioner under section 264. Notification No. 8 of 2018 dated December 31, 2018 issued by the Central Board of Direct Taxes mandates that the decision under section 197 with effect from December 31, 2018 has to be taken by the Commissioner, i. e., after a conscious application of mind. The assessee had no alternate remedy and so the writ petition was maintainable. Court also held tha the Assessing Officer cannot ignore the mandate of rule 28AA and proceed on any other basis as the Government is bound to follow the rules and standards it had itself set on pain of the action being invalidated. Consequently, the order was not valid and was liable to be quashed. (FY. 2020-21)

Manpowergroup Services India Pvt. Ltd. v. CIT (TDS)(2021) 430 ITR 399 / 277 Taxman 108/ 198 DTR 355/ 319 CTR 267 (Delhi)(HC)

S. 268A : Appeal – Instructions – Issue involved having cascading effect – Fee – Default in furnishing the statements – Does not fall with any criteria prescribed in clause 10 of Circular No 3 of 2018 dated July, 11, 2018 (2018) 405 ITR 29 (St), as amended by circular dated August 20, 2018 (2018) 407 ITR 7(St) – Alternative remedy – Writ against the order of Tribunal deleting the addition is held to be not maintainable. [S. 234E, 254(1), 260A, 268A(4) Art. 226] 2382

Revenue filed writ petition challenging the order of Tribunal wherein the Tribunal deleted levy of fee under section 234E of the Act for default in furnishing the statements. Dismissing the petition the Court held that an appeal against an order passed by the Appellate Tribunal under section 234E of the Act was maintainable under section 260A. The circular dated August 8, 2019 (2019) 416 ITR (St.) 106) of the Central Board

of Direct Taxes provides that no appeal shall be filed in the High Court in respect of an assessment year or years or years in which the tax effect is less than the monetary limit of Rs. one crore. The tax effect involved in the writ petition was below the monetary limit of Rs. one crore as prescribed in Circular No. 17. On the facts of the case, none of the exceptions as laid down by the Supreme Court in the case of *Radha Krishan Industries v. State of Himachal Pradesh (2021) 88 GSTR 229 (SC), 2021 SCC Online SC 834*, principles governing the excise of writ jurisdiction by the High Court in the presence of alternative remedy had been fulfilled. Referred, Whirpool Corporation v. Registrar of Trade Marks Mumbai (1998) 8 SCC 1
CIT v. Emsons Exim Pvt. Ltd. (2021) 439 ITR 607 (Bom.)(HC)

2383 **S. 268A : Appeal – Instructions – Monetary limits – Exceptions – Special order – Penny stock cases – Organized tax evasion activity – Special order of Board is required in cases involving organized Tax evasion Activity – Appeal was dismissed [S.260A]**
Dismissing the appeal of the revenue the Court held that unless the revenue produces a special order by the Board for filing an appeal considering the merit of each case, the appeal is not maintainable. Circular No. 17/2019 dt 8-8-2019 (2019) 416 ITR 106(St). Circular No. 3 of 2018 dated July 11, 2018 ([2018] 405 ITR (St.) 29), Circular No. 5 of 2019, dated February 5, 2019 ([2019] 411 ITR (St.) 7)
Dy. CIT v. Vijay Pal Singh (2021) 130 Taxmann.com 291 (Chhattishgarh)(HC)
Editorial : SLP of revenue dismissed, Dy. CIT v. Vijay Pal Singh (2021) 282 Taxman 377 (SC)

2384 **S. 268A : Appeal – Instructions – Monetary limits – Bogus long term capital gains – CBDT Circular No. 23/2019 dated 6-9-2019 and Office Memorandum No. 279 dated 16-09-2019 issued by CBDT – Apply prospectively – Dismissal of miscellaneous application by the Tribunal was held to be justified [S. 254(2), 260A]**
The revenue has filed Miscellaneous application urging that CBDT Circular No. 23/2019 dated 6-9-2019 and Office Memorandum No. 279 dated 16-09-2019 issued by CBDT both providing that cases involving organized tax evasion scam through bogus long term capital gain/short term capital loss on penny stocks were not subjected to monetary limits prescribed for filing appeals, would apply all pending appeals. Miscellaneous application was rejected by the Appellate Tribunal. On appeal the High Court up held the order of the Tribunal and held that the circular No.23/2019 dated 6-9 -2019 should be read along with the office memorandum dated 16 -9 -2019, in respect of appeals to be filed pursuant to such special orders of CBDT and shall apply to all the appeals filed on or after 16 -9 -2019 by the revenue, where the tax effect may be low but the appeal could still be filed by the revenue on merits. Therefore CBBDT circular would apply prospectively to appeals filed on or after 16-09-2019 and same would not apply retrospectively to pending appeals.
PCIT v. Anand Natwarlal Sharda (2021) 281 Taxman 300 (Guj.)(HC)

S. 268A : Appeal – Appellate Tribunal – Monetary limits – Less than Rs 50 lakhs – Appeal is not maintainable. [S. 253] 2385

Held that tax effect in appeal filed by revenue was less than Rs. 50 lakhs. Appeal not maintainable. (2012-13)

DCIT v. Edelweiss Financial Advisors Ltd. (2021) 188 ITD 834 (Ahd.)(Trib.)

S. 269UD : Purchase by Central Government of immoveable properties – Transfer of property by charitable Trust – Sanction of Charity Commissioner should be taken in to account – Adequate opportunity was not given – Notice and pre-Emptive purchase was held to be not valid. [S. 269UC, 269UL, Bombay Public Trust Act, 1950, S. 36, Art. 226] 2386

Allowing the petition the Court held that the show-cause notice was bereft of any materials or details. It did not contain any material to show why the Appropriate Authority felt that an order under section 269UD(1) was required to be made. A reply was filed on April 22, 1993 on behalf of the transferor trust and the petitioner, the buyer. In the order the Appropriate Authority had relied upon a valuation report. Admittedly the report was not provided to the petitioner. Moreover, the Appropriate Authority had given six sale instances but none of these details were provided to the petitioner with the show-cause notice or at any stage. The Court also observed that the approval of Charity Commissioner ensures reasonableness of the agreement of sale and it was a factor which has to be borne in mind by the Income-tax Authorities while exercising its power under section 269UD of the Act. Referred *Madhukar Sundelal Sheth v. S. K. Laul (1992) 198 ITR 594 (Bom)(HC)*. The order under section 269UD was not valid. The Appropriate Authority was directed to issue no objection certificate under sub-section (1) of section 269UL of the Act to the petitioner within four weeks of receiving a copy of this order. If there is no such authority, this order should be considered as a "no objection certificate" for the transfer.

Jugal Kishore Jajodia v. S. C. Prasad, Chief Engineer (2021) 439 ITR 132 (Bom.)(HC)

S. 269UD : Purchase by Central Government of immoveable properties – Leasehold rights in property – Central Government in possession of property after expiry of lease – Central Government is Liable to pay Municipal taxes on property [S. 269UD(1), Art.285, Mumbai Municipal Corporation Act, 1888, S. 139] 2387

Court held that when the property is purchased by the Central Government as per section 269UD(1) of the Act the lease hold right in property is in possession of Central Government it is the liability of the Central Government to pay Municipality taxes on property. However under article 285(1) of the Constitution of India, the property of the Union, shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State. Thus, the taxes and charges levied by the Mumbai Municipal Corporation on the suit premises would fall within the ambit of the taxes by a local authority, provided it was held that the suit premises were the property of the Union of India. The question whether the leasehold interest which the Union of India had acquired in the suit premises, by virtue of the provisions contained in section 269UD(1) of the Act qualified for exemption under article 285(1) of the Constitution of India, could not be examined in this proceeding, especially in the absence of the Municipal Corporation, which had levied the taxes..

Thus it was necessary to modulate the relief in such a way that the defendants got an opportunity to pursue their stand that the suit premises were exempt from payment of taxes, with the municipal authorities and in the event of failure to obtain a favourable order of exemption, direct the defendants to pay the municipal taxes and charges, as accumulated up to date, and continue to pay them as they fell due till the disposal of the suit.

Plaza Diamond Properties Pvt Ltd v. CCIT (2021) 435 ITR 595 (Bom.)(HC)

2388 **S.270AA: Immunity from imposition of penalty, etc. – Application accepted the assessee cannot file an appeal or revision application – Application is rejected there is no bar – Matter remanded. [S. 246A, 264, 270AA(4), Art. 226]**

The petitioner filed an application under section 270AA(4) of the Act for waiver of penalties. The application was rejected. The assessee filed an revision application before Commissioner under section 264 of the Act. Commissioner rejected Petitioner's application on the ground that sub-section 6 of section 270(AA) specifically prohibits revisionary proceedings under section 264 of the Act against the order passed by Assessing Officer under section 270(AA)(4) of the Act. On writ the Court held that where an assessee makes an application under section 270AA(1) and such an application has been accepted under section 270AA(4), assessee cannot file an appeal under section 246A or an application for revision under section 264 against order of assessment or reassessment passed under section 143(3) or section 147. However, this does not provide for any bar or prohibition against assessee challenging an order passed by Assessing Officer, rejecting its application made under section 270AA(1) of the Act. Order of Commissioner was set aside and directed to decide the matter in accordance with law. (AY. 2017-18)

Haren Textiles (P.) Ltd v. PCIT (2021) 206 DTR 465 / 323 CTR 14 / 284 Taxman 58 (Bom.) (HC)

2389 **S. 271(1)(c) : Penalty – Concealment – Non-striking off of the irrelevant part while issuing notice under section 271(1)(c) of the Income-tax Act – Order is bad in law – Assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness. [S.274]**

While dealing with the issue of non-striking off of the irrelevant part while issuing Notice under section 271(1)(c) of the Income-tax Act, 1961 the Court held that the assessee must be informed of the grounds of the penalty proceedings only through statutory notice. An omnibus notice suffers from the vice of vagueness. *CIT v. Kaushalya (Smt)(1995] 216 ITR 660 (Bom.)(HC)* distinguished *Ventura Textiles Ltd. v. CIT [2020] 426 ITR 478 (Bom.)(HC)* distinguished. *Dilip N. Shroff v. JCIT [2007] 291 ITR 519 (SC)* followed. (AY. 2006-07, 2007-08) ITA No. 51 & 57 of 2012 dt. 11-3-2021.

Mohd. Farhan A. Shaikh v. ACIT (2021) 434 ITR 1/ 200 DTR 65/ 320 CTR 26/ 280 Taxman 334 / 125 taxmann.com 253 (Panji)(FB)(Bom.)(HC)

Editorial: Followed in Shrivallabh V. Shete v. DCIT ITA No.538-39/PUN/2018 dated May 18, 2021, Vijay Mohan Harde v. ACIT ITA No.588/PUN/2017 dated May 17, 2021, and ACIT v. Shri Vithalrao Rangnathrao Ambarwadikar ITA No.1547/PUN/2017 dated April 26, 2021

S. 271(1)(c) : Penalty – Concealment – Not striking off the irrelevant limb- Levy of penalty is held to be bad in law. [S.274]. 2390

Where in the notice issued under section 274 of the Act, the irrelevant limb (concealment of income or furnishing of inaccurate particulars of income) was not struck off, the penalty proceedings were bad in law and were to be quashed.

PCIT v. Goa Dourado Promotions Pvt. Ltd. (2021) 433 ITR 268 (Panji)(Bom)(HC)

S. 271(1)(c) : Penalty – Concealment – Not striking off the irrelevant limb- Penalty is held to be bad in law. [S. 274] 2391

Dismissing the appeal of the revenue the Court held that where in the notice issued under section 274 of the Act, the irrelevant limb (concealment of income or furnishing of inaccurate particulars of income) was not struck off, the penalty proceedings were bad in law and were to be quashed.

PCIT v. New Era Sova Mine (2021) 433 ITR 249 (Panji)(Bom)(HC)
PCIT v. New Ear Vaglar Mine (2021) 433 ITR 249 (Panji)(Bom)(HC)
PCIT v. New Era Keli Mine (2021) 433 ITR 249 (Panji)(Bom)(HC)

S. 271(1)(c) : Penalty – Concealment – Not recording satisfaction – Not striking irrelevant portion in the notice – Levy of penalty is not valid [S. 260A] 2392

Dismissing the appeal of the revenue the Court held that the Assessing Officer has not recorded satisfaction and even not – striking irrelevant portion in the notice, hence the deletion of penalty is held to be valid. Relied on *CIT v. Shri Samson Perinchery (2017 392 ITR 4 (Bom)(HC) Pr. CIT v. New Era Sova Mine (2020) 420 ITR 376 (Bom)(HC)*

PCIT v. Golden Peace Hotels and Resorts (P.) Ltd (2021) 124 taxmann.com 248 (Bom.)(HC)

Editorial : SLP of revenue dismissed, PCIT v. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 277 Taxman 595 (SC)/ (2021)) 437 ITR 9 (ST)(SC)

S. 271(1)(c) : Penalty – Concealment – Alleged wrong claim of deduction – Claim was allowed – Deletion of penalty is held to be justified. [S.. 10B] 2393

Dismissing the appeal of the revenue the Court held that the assessee had correctly claimed the deduction under section 10B which was ultimately allowed and, therefore, there was no question of levy of penalty. Referred *CIT v. Sesa Goa Ltd (2021) 436 ITR 17 (Bom)(HC)*(AY.2009-10)

PCIT v. Sesa Goa Ltd. (2021)439 ITR 188 (Panji Bench)(Bom.)(HC))

S. 271(1)(c) : Penalty – Concealment – Quantum of penalty – Penalty to be on basis of tax sought to be avoided and not on total tax liability. 2394

Court held that the penalty of 100 per cent of the tax sought to be evaded worked out was the amount payable as penalty on tax sought to be avoided and not on total tax liability (AY. 2010-11)

Kite Maker v. ITO (2021) 438 ITR 353 (Ker.)(HC)

2395 **S. 271(1)(c) : Penalty – Concealment – Non striking off of irrelevant portion – Order of Tribunal confirming the penalty notice was set aside [S. 274]**
Allowing the appeal the Tribunal held that validity of the order of penalty must be determined on the basis of the initiation of penalty proceedings. Notice was issued in the printed format without non-striking off irrelevant portion. Defects being ex facie apparent in the notices issued, the ignition of proceedings being vitiated, the order of the Tribunal confirming the order of the authorities was set aside. (AY.2003-2004-05)
P.M. Abdulla v. ITO (2021) 323 CTR 1077 / 208 DTR 93 (Karn.)(HC)

2396 **S. 271(1)(c) : Penalty – Concealment – Furnishing inaccurate particulars of income – Deletion of penalty is held to be justified.**
Dismissing the appeal of the revenue the court held that the observations of Supreme Court in Department's Special Leave Petition that sum in question not income of assessee. Tribunal was right in upholding order of Commissioner (Appeals) deleting Penalty. (AY. 1991-92, 1992-93, 1993-94)
CIT v. T. Jayachandran (2021) 436 ITR 269 / 283 Taxman 435 (Mad.)(HC)

2397 **S. 271(1)(c) : Penalty – Concealment – New claim – Change in accounting method – Not a case of concealment of income or furnishing of inaccurate particulars – Deletion of penalty is held to be justified [S. 132, 145, 153A]**
Dismissing the appeal of the revenue the court held that claim made due to change in accounting method which was given up in quantum proceedings cannot be considered as concealment of income or furnishing of inaccurate particulars of income. Order of Tribunal is affirmed (AY. 2007-08)
PCIT v. Taneja Developers and Infrastructure Ltd. (2021)435 ITR 122 / 201 DTR 234/ 320 CTR 775 (Delhi)(HC)

2398 **S. 271(1)(c) : Penalty – Concealment – Failure to file return – Deemed concealment – Survey- Returns filed after receipt of notice under section 148 of the Act – Explanation 3 is satisfied – Levy of penalty is justified [S.133A, 148, 153, 274]**
Held that the filing of returns was subsequent to the issue of notice under section 148 after the survey under section 133A, subsequent to which the audit of accounts was completed and the consequent returns were filed. The assessee could not take shelter in the contention that the words "who has not previously been assessed under this Act" which were a part of Explanation 3 to section 271(1)(c) prior to April 1, 2003 and were omitted thereafter, stating that he was an existing assessee even prior to the amendment and therefore the amended Explanation was not applicable to him. Levy of penalty is held to be justified. (AY. 1999-2000 to 2001-02)
Dharampal R. Pandia v. Dy. CIT (2021) 435 ITR 301/ 202 DTR 356/ 321 CTR 341 (Mad) (HC)

2399 **S. 271(1)(c) : Penalty – Concealment – Alternative remedy – Writ will not lie [S. 68, 144, 246A, Art. 226]**
Dismissing the appeal the Court held that instead of filing a statutory appeal as provided under section 246A the assessee had directly invoked the writ jurisdiction under article

226 against the penalty proceedings on the basis of the assessment order being made final without availing of the alternative efficacious remedy as provided under the Act. The assessee was relegated to statutory remedy of appeal under the Act. (AY 2016-17)
Nikeshkumar Bhupendrabhai Shah v. UOI (2021) 433 ITR 7 (Guj.)(HC)

S. 271(1)(c) : Penalty – Concealment – Notice – Not mentioning the specific charge for concealment of income or furnishing inaccurate particulars of income – Deletion of penalty is held to be justified. 2400
Dismissing the appeal of the revenue the Court held that the notice issued by the Assessing Officer was bad in law if it did not specify under which limb of section 271(1)(c) the penalty proceedings had been initiated, i.e., whether for concealment of particulars of income or for furnishing of inaccurate particulars of income.(AY.2004-05, 2005-06, 2008-09, 2010-11)
PCIT v. Sahara India Life Insurance Co. Ltd. (2021) 432 ITR 84 (Delhi)(HC)

S. 271(1)(c) : Penalty – Concealment – Quantum addition challenged in appeal to High Court – Substantial question of law – Debatable – Levy of penalty is held to be not justified [S.260A] 2401
Dismissing the appeal of the revenue the Court held that penalty proceedings are an outcome of assessment and if the assessment itself is debatable, the penalty proceedings cannot survive. The levy of penalty cannot be a matter of course. It can only be levied in cases where the concealment of income has been proven. If the quantum order itself has been challenged and the court has framed substantial questions of law in the appeal preferred by the assessee, it shows that the alleged concealment is not final and the issue is disputable. Consequently, the penalty levied by the Assessing Officer cannot survive in such a case. (Referred *CIT v. Nayan Builders and Developers (2014) 368 ITR 722 (Bom)(HC) Gujarat CIT v. Prakash S. Vyas (2014) 272 CTR 353 / (2015) 232 Taxman 352 (Guj)(HC), CIT v. Advaita Estate Development Pvt Ltd (ITA No. 1498 of 2014 dt 17 -2 2017 (Bom(HC) www.itatonline.org CIT v. Liquid Investment and Trading Co (ITA No. 240/2009 dt 5-10-2010 (Delhi)(HC), CIT v. Aditya Birla Power Co Ltd (ITA No. 851 of 2014 dt 2-12-2015 (Delhi)(HC), CIT v. Liquid Investment Ltd (ITA No. 240/2009 dt 5-10-2010 (Delhi)(HC) CIT v. Thomson Press India Ltd (ITA No. 426, 440 /2013 dt 3-3-2014 (Delhi) (HC)*(AY. 2004-05, 2005-06)
PCIT v. Harsh International Pvt. Ltd. (2021) 431 ITR 118 (Delhi)(HC)

S. 271(1)(c) : Penalty – Concealment – Long term capital gains – Sale of land – Failure to discloses – Information through AIR – Explanation was not bonafide – Levy of penalty is held to be justified- Question of defects in the notice was not allowed to be raised first time before the High Court. [S.143(2), 260A, 274] 2402
During scrutiny assessment, Assessing Officer noticed that assessee had not shown long term capital gain [LTCG] on sale of lands and short term capital gain (STCG] on sale of windmill in return of income. On being asked to explain, assessee filed letter admitting The AO levied the penalty which was up held by the Tribunal. On appeal the Court held that since assessee replied to notice understanding notice to be a notice for concealment of any income or furnishing any inaccurate particulars,

it could not permitted to raise a contention before Court for first time alleging defect in notice Whether voluntary disclosure does not release assessee from mischief of penalty proceedings under section 271(1)(c). Court also held that even otherwise since information came to Department through AIR, forwarded by Registration Department and after verifying same, only when notice was issued under section 143(2), assessee, for first time stated that due to inadvertence, it did not disclose particulars relating to capital gains, it was clear that assessee did not act bonafidely and, therefore, penalty under section 271(1)(c) was rightly levied. (AY. 2012-13)
Gangotri Textiles Ltd. v. Dy. CIT (2021) 276 Taxman 356 (Mad.)(HC)
Editorial : SLP of assessee rejected, Gangotri Textiles Ltd. v. Dy. CIT (2022) 443 ITR 360(St)(SC) / [2022] 286 Taxman 357 (SC)

2403 **S. 271(1)(c) : Penalty – Concealment – Notice must specify whether there has been concealment of income or furnishing of inaccurate particulars of income – Levy of penalty is held to be not valid. [S,274]**
Allowing the appeal the Court held that the notice did not specifically mention as to whether the assessee had concealed particulars of his income or furnished inaccurate particulars or both hence levy of penalty is held to be not valid. Followed *CIT v. S. I. Paripushpam (2001) 249 ITR 550 (Mad)(HC)*(AY.2013-14)
Babuji Jacob v. ITO (2021) 430 ITR 259/ 277 Taxman 502 (Mad.)(HC)

2404 **S. 271(1)(c) : Penalty – Concealment – Rejection of claim for deduction – Reduction of loss does not result in income – Penalty levied was deleted. Levy of penalty**
Allowing the appeal of the assessee the Court held that the assessee was absolutely bona fide in filing the revised return and disclosing income and had also made a bona fide claim to deduction in the form of administrative expenses and interest or finance charges. Even if these expenses were not allowed, the assessee could not be blamed for filing inaccurate particulars or concealment of income. Whatever it had to file was already on the record of the assessing authority, right with the original return. The authorities had not arrived at any figures or disclosures from any material outside the record, which was furnished to them by the assessee. Therefore, concealment or filing of inaccurate particulars had not been proved. Penalty could not be imposed.(AY.2010-11)
Rattha Citadines Boulevard Chennai Pvt. Ltd. v. Dy CIT (2021) 430 ITR 7/ 279 Taxman 262 (Mad.)(HC)

2405 **S. 271(1)(c) : Penalty – Concealment – Tax audit disclosing the disallowance of expenses under section 43B – Inadvertently left out while computing the income – Penalty levied was deleted [S. 43B]**
Held that due to inadvertently the assessee had not shown in the computation of income amount disallowable under section 43B though the said amount was disclosed in the tax audit report. Levy of penalty was deleted. Followed *Price Waterhouse Coopers P. Ltd v. CIT (2012) 348 ITR 306 (SC)*(AY. 2013-14)
Core Metal Krafts Ltd v. ACIT (2021) 92 ITR 379 (Chd.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Disallowance of expenditure of annual exchange service charges – Levy of penalty is held to be not warranted. [S. 37(1)] 2406

Held that claim that the expenditure on account of annual exchange service charge was revenue expenditure could, by no stretch of imagination, be said to be ex facie bogus. Disallowance thereof could not lead to the conclusion that the assessee was guilty of furnishing of inaccurate particulars of income or concealment of income. The conduct of the assessee was not contumacious so as to warrant levy of penalty under section 271(1)(c) of the Act.(AY. 2011-12)

Aanya Real Estate Pvt. Ltd. v. Dy. CIT (2021) 90 ITR 5 (SN)(Mum.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Set off of unabsorbed depreciation and business losses – Making full disclosure – Penalty not sustainable. [S.115JB] 2407

Held that the assessee had made full disclosure in the return of income while computing the book profits under section 115JB of the Act. The manner of computation may not be in accord with the view of the Assessing Officer, but that would not attract penalty provisions under section 271(1)(c). No penalty could have been levied on such disallowance or addition.(AY. 2004-05)

ASIT C. Mehta Investment Intermediates P. Ltd. v. Dy. CIT (2021) 90 ITR 7 (SN)(Mum.)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Neither assessment order nor penalty notice specifying the charge – Revised return was filed before issue of notice u/s 142(1) and 143(2) of the Act – Claiming only statutory deduction- Levy of penalty was held to be not valid. [S.11(2), 12A, 142(1), 143(2), 274] 2408

Held that in the notice issued under section 274 read with section 271(1)(c) of the Act, the inappropriate words had not been struck off and there was no specific charge as to concealment of income or furnishing of inaccurate particulars of income. The assessment order also did not specify whether the charge was for concealment of income or furnishing of inaccurate particulars of income. The penalty levied under section 271(1)(c) was not sustainable and had to be deleted. Tribunal also held that the assessee had not furnished inaccurate particulars of income as the revised return was filed during the course of assessment proceedings before this as pointed out by the Assessing Officer in the notices under sections 142(1) and 143(2). The assessee had claimed the statutory deductions or exemptions only. Thus, section 271(1)(c) was not attracted.(AY. 2009-10)

Jamnalal Bajaj Foundation v. Dy. CIT (E) (2021) 90 ITR 87 (SN)(Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Builder – Estimation of profit – Levy of penalty was held to be not justified. 2409

Held that Estimation of profit by the Assessing Officer cannot justify Levy of penalty (AY. 2013-14)

V. B. Builders v. Dy. CIT (2021) 90 ITR 4 (SN)(Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Disclosing full facts – Levy of penalty is held to be not justified [S. 54F] 2410

Held that the assessee had declared the full facts ; the full factual matrix or facts were before the Assessing Officer while passing the assessment order. It was another matter

that the claim based on such facts wereå found to be inadmissible. This was not the same thing as furnishing inaccurate particulars of income as contemplated under section 271(1)(c) of the Act. Levy of penalty is held to be not justified (AY. 2007-08)
Villo Noshir Anklesaria (Mrs.) v. ACIT (2021) 89 ITR 31 (SN)(Pune)(Trib.)

2411 **S. 271(1)(c) : Penalty – Concealment – Furnishing inaccurate particulars of income – Assessee intimated Assessing Officer well in advance of inadvertence of including receipt – Assessing Officer did not specify in notice whether notice is issued for concealing income or furnishing inaccurate particulars. [S. 143(2)]**
The Assessing Officer must clearly specify whether he is imposing penalty proceedings for inaccurate particulars of income or concealment of income. Also, when the assessee wrote to the Assessing Officer well in advance before the Section 143(2) notice was issued that the interest income was inadvertently not included then the Assessing Officer cannot initiate penalty proceedings against the assessee.(AY. 2009-2010)
FCI Asia Pte Ltd. v. DCIT (2021) 212 TTJ 9 (UO)(Delhi)(Trib.)

2412 **S. 271(1)(c) : Penalty – Concealment – Not specifying the charge – Levy of penalty is held to be not valid – Legal issue – Additional ground was admitted – Penalty provision u/s 271AAA is not applicable to search cases conducted after 1-7-2012 [S. 132, 254(1), 271AAA, 271AAB, 274]**
Additional ground on legal issue is admitted and penalty levied without specifying the charge was deleted. The Tribunal also held that the penal provisions of section 271AAA were not at all applicable to the facts of the case since the search was conducted on the assessee after July 1, 2012. (AY.2007-08 to 2012-13, 2014-15)
Balaji Telefilms Ltd. v. Dy. CIT (2021)88 ITR 270 (Mum.)(Trib.)
Elite Realtech Pvt. Ltd. v. ACIT (2021)88 ITR 401 (Delhi)(Trib.)
Silicon Graphics Systems (India) Pvt. Ltd. v. Dy. CIT (2021)88 ITR 389 (Delhi)(Trib.)
Add. CIT v. Airports Authority of India (2021)90 ITR 48 (Trib.)(SN)(Delhi)(Trib.)
Dy. CIT v. Preity Zinta (Ms)(2021)90 ITR 84/ 213 TTJ 673 (SN)/ 206 DTR 89 (Mum.)(Trib.)
Eagle Flask Industries Pvt. Ltd. v. Dy. CIT (2021) 90 ITR 89 (SN)(Pune)(Trib.)
ITO v. Maharashtra State Co-Operative Credit Societies Deposit Guarantee Corp. Ltd. (2021)90 ITR 36 (SN)(Pune)(Trib.)
Pradeep Sood v. Dy. CIT (2021) 90 ITR 44 (SN)(Delhi)(Trib.)
Royal Western India Turf Club v. PCIT (2021)92 ITR 624 (Mum.)(Trib.)
Equipment Ltd. v. Dy. CIT (2021)92 ITR 10 (SN.)(Delhi)(Trib.)
Pal Synthetics Ltd. v. Dy. CIT (2021)92 ITR 50 (SN)(Mum.)(Trib.)
Samal Infra Projects P. Ltd. v. ITO (2021)92 ITR 9 (Trib.)(SN)(Delhi)(Trib.)

2413 **S. 271(1)(c) : Penalty – Concealment – Denial of exemption u/s 11 – High Court admitted the appeal – Not specifying the specific limb of section 271(1)(c) – Penalty not leviable [S. 11, 13, 260A]**
Allowing the appeal the Tribunal held that the AO has not specified specific limb of section 271 (1)(c) by ticking of any one of the charges in the notice, penalty is not leviable. Tribunal also held that mere denial of exemption u/s 11 for contravention of

section 13(1)(d) penalty is not leviable, more so as the High Court had admitted appeal against denial of exemption u/s 11 of the Act. (AY. 2010-11)
Jamsetji Tata Trust v. ACIT (2021) 198 DTR 46 (Mum.)(Trib.)
Interocean Shipping (India) Pvt. Ltd. v. DCIT (2021) 91 ITR 63 (SN.(Delhi)(Trib.)
S. D. Constructions v. ACIT (2021) 91 ITR 43 (SN)(Kol.)(Trib)
Transgulf Frozen Foods Containers Pvt. Ltd. v. ACIT (2021) 91 ITR 22 (Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Arm's length price – Adjustment of transfer pricing – Disallowance of expenditure – Penalty not leviable. 2414
Dismissing the appeal the Tribunal held that adjustment of transfer pricing adjustment and disallowance of expenditure levy of penalty is held to be not justified. (AY.2010-11)
ACIT v. IKEA Trading (India) P. Ltd. (2021) 87 ITR 12 (SN)(Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Not specifying the limb of section – Penalty proceedings is not sustainable [S. 274] 2415
Allowing the appeal the Tribunal held that the Assessing Officer had not mentioned under which limb of section 271(1)(c) of the Act penalty was to be levied against the assessee. According to section 274 of the Act, no order imposing a penalty shall be passed unless the assessee has been heard or has been given a reasonable opportunity of being heard. The Assessing Officer had issued invalid and defective notices under section 271(1)(c) of the Act read with section 274 of the Act and the entire penalty proceedings were vitiated and liable to be quashed.(AY. 2009-10 to 2012-13)
Glory Lifesciences Pvt. Ltd. v. ACIT (2021) 87 ITR 48 (SN)(Delhi)(Trib.)
Singh Consultancy Pvt. Ltd. v. ITO (2021) 87 ITR 60 (SN)(Delhi)(Trib.)
Opinder Singh Marwah v. ACIT (2021) 89 ITR 431 (Delhi)(Trib.)
Bhushan Lal Sawhney. v. DCIT (2021) 190 ITD 225/ 91 ITR 565 / 212 TTJ 357/ 203 DTR 249 (Delhi)(Trib.)
Texmaco Rail and Engineering Ltd. v. Dy. CIT (2021) 85 ITR 267 (Kol.)(Trib.)

S.271(1)(c) : Penalty – Concealment – Addition on basis of which penalty levied deleted. 2416
Penalty proceedings for concealment of particulars of income or filing inaccurate particulars of such income were also initiated and penalty under section 271(1)(c). The Commissioner (Appeals) deleted the penalty.
Tribunal confirmed the view of the CIT(A) and deleted the penalty. (AY 2012-13)
Dy. CIT v. Anurag Dalmia (2021) 87 ITR 51 (SN)(Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Additional ground – delay in filing cross objection – Legal ground can be raised first time before Appellate Tribunal – Not specifying the charge – Failure to strike out inappropriate words in notice – Penalty is bad inn law. [S.274] 2417
Dismissing the appeal and allowing the cross-objections, the Tribunal held that the ground raised in the cross-objections being a legal ground could be raised by the assessee before the Tribunal for the first time. In the circumstances of the case, the delay in filing the cross-objections was to be condoned. Relied on *National Thermal Power co. Ltd. v. CIT (1998) 229 ITR 383 (SC)*. The Tribunal also held that the show-

cause notice issued under section 274 of the Act did not specify whether the charge against the assessee was for concealing particulars of income or furnishing inaccurate particulars of income. The Assessing Officer had not struck out the inappropriate words in the show-cause notice under section 274 of the Act. In these circumstances, the imposition of penalty could not be sustained.(AY.2005-06 to 2007-08)
ACIT v. C. Aswathanarayana (2021) 85 ITR 74 (SN)(Bang.)(Trib.)

2418 **S. 271(1)(c) : Penalty – Concealment – Claim pending before High Court – Levy of penalty is not proper [S.80P]**
Dismissing the appeal of the revenue the Tribunal held that for the assessment year 2011-12 the finding of the Commissioner (Appeals) deleting the penalty levied under section 271(1)(c) of the Act was confirmed by the Tribunal holding that since the appeal of the assessee on its eligibility for the deduction under section 80P was pending for decision before High Court, till disposal of such appeal, the bona fides of the assessee in claiming deduction under section 80P of the Act could not be ruled out and hence penalty under section 271(1)(c) of the Act could not be sustained. The cancellation of the penalty by the Commissioner (Appeals) was proper. (AY.2009-10)
Dy. CIT v. Vidisha Bhopal Kshetriya Gramin Bank (2021) 85 ITR 40 (SN)(Indore)(Trib.)

2419 **S. 271(1)(c) : Penalty – Concealment – Capital or revenue – Claiming deferred revenue expenditure – Levy of penalty is held to be not justified.**
Allowing the appeal of the assessee the Tribunal held that it was not the case of the Department that the assessee had concealed any income or expenditure but only that it had claimed the expenses as deferred revenue expenses whereas according to the Assessing Officer, the expenses had to be treated as capital expenses allowing the depreciation. It was not a case of concealment of income nor of furnishing of any inaccurate particulars but only of difference of opinion between the assessee and the Assessing Officer in respect of the treatment to be given to a particular expenditure. Further the assessee did not stand to gain much by this differential treatment also. The essential ingredients to attract the provisions under section 271(1)(c) of the Act did not exist in this case.(AY.2006-07)
Indo Hongkong Industries (P.) Ltd. v. Dy. CIT (2021) 85 ITR 53 (SN)(Delhi)(Trib.)

2420 **S. 271(1)(c) : Penalty – Concealment – Book profit – Bonafide mistake in calculation – Not specifying the charge – levy of penalty is not justified. [S. 10(38), 115JB]**
Allowing the appeal the Tribunal held that the Assessing Officer had failed to specify in the show-cause notice issued under section 271(1)(c) if the assessee had filed inaccurate particulars of income or had concealed the particulars of income. The Assessing Officer himself was not aware as to whether he was issuing notice to initiate the penalty proceedings either for "concealment of particulars of income" or "furnishing of inaccurate particulars of such income". The notice incorporated both the limbs of section 271(1)(c) and was vague and ambiguous. When the charge was to be framed against any person so as to move penal provisions against an assessee, the assessee was required to be specifically made aware of the charges to be levelled against him. When the notice did not specify the limb of section 271(1)(c) under which it was issued,

penalty proceedings initiated under section 271(1)(c) were not sustainable. Tribunal also held that bonfide mistake in calculation levy of penalty is held to be not valid.. (AY. 2008-09)
Sampark Hotels (P.) Ltd. v. Dy. CIT (2021) 86 ITR 44 (SN)(Delhi)(Trib.)

S. 271(1)(c) : Penalty – Concealment – Ad hoc disallowance – Penalty is not sustainable. 2421
Held that the Assessing Officer had failed to make out a case of furnishing of inaccurate particulars of income by the assessee so as to levy penalty. The penalty levied by the Assessing Officer and sustained by the Commissioner (Appeals) was liable to be deleted. (AY. 2012-13)
My Guest House Accommodations Pvt. Ltd. v Dy. CIT (2021) 91 ITR 45 (SN)(Delhi)(Trib.)

S. 271AA : Penalty – Failure to keep and maintain books of accounts – Documents – Specified domestic transactions (SDTs) – 2 per cent of value of SDTs Exceeded qualifying amount of Rs. 5 crores- Transaction with relative was only to Rs. 1.80 lalks – Term relative as given in section 2(41), which will prevail for understanding connotation of term relative under section 40A(2)(b) over one given in Explanation to section 56(2)(v) of the Act – Levy of penalty was held to be not justified. [S. 2(41), 40A(2)(b), 56(2(v),92BA, 92D, 92E] 2422
In tax Audit report of the assessee the Auditor reported four payments have been made to persons specified under section 40A(2)(b) which exceeded qualifying limit of Rs. 5 crore, but it did not maintain documents and information in terms of section 92D. The Assessing Officer levied the penalty under section 271AA of the Act. On appeal the CIT (A) up held that penalty relying on the definition of term 'relative' in Explanation to section 56(2)(v) of the Act. On appeal the Tribunal held that term relative as given in section 2(41), which will prevail for understanding connotation of term 'relative' under section 40A(2)(b) over one given in Explanation to section 56(2)(v) of the Act. On the facts since assessee's transactions were not with relatives in term of definition of section 2(41), same would not qualify as SDT under section 92BA and there could be no question of any penalty under section 271AA of the Act. Only transactions with husband, wife, brother or sister or any lineal ascendant or descendant of individual will get enveloped under section 40A(2)(b) of the Act. (AY. 2011-12)
Anita Sunil Mahajan (Smt.) v. ACIT (2021) 191 ITD 272 / 89 ITR 52 (SN)/ 213 TTJ 370/ 205 DTR 25 (Pune)(Trib.)

S. 271AAA: Penalty – Search and seizure – Addition made on ad-hoc basis based on average gross profit rate, which does not relate directly to any undisclosed income unearthed during search – Penalty not sustainable. [S.132, 133A] 2423
Search & Seizure action u/s 132 and survey u/s 133A was conducted at business premises, residential premises and in other associated cases. It was found that there is a difference in stock when a physical inventory was taken as compared to the books of account of the Assessee. When the Assessee was asked to show cause as to why the addition should not be made, the Assessee submitted that the discrepancy was on account of technical problem in the new ERP software installed by the Assessee. The

submission was not accepted by the AO who proceeded to make an addition by taking average gross profit rate at 3.68% for the last 3 years. Subsequently, penalty u/s 271AAA was levied, which was confirmed by the CIT(A). On appeal to the Tribunal, apart from the above facts, it was observed that the Assessee company had moved a petition before the Company Law Board to extend the date for adoption of audited accounts, which was accepted by the Company Law Board. Therefore sufficient explanation was provided by the Assessee. Also the amount of addition was not related to any undisclosed income unearthed during the course of search. Therefore the penalty is set aside. (AY. 2010-11)
Ace Steel Fab (P) Ltd. Kashyap & Co. v. DCIT (2021) 87 ITR 52 (SN)(Delhi)(Trib.)

2424 **S. 271AAB: Penalty – Search initiated on or after Ist day of July 2012 – Search not conducted, penalty cannot be levied. [S. 132(4), 133A, 153C, 260A]**
Dismissing the appeal the Court held that no penalty under section 271AAB could be imposed when search was not conducted. No substantial question of law (AY.2016-17)
PCIT v. Silemankhan and Mahaboobkhan (2021) 437 ITR 260 / 282 Taxman 403 / 206 DTR 469/ 323 CTR 112 (AP)(HC)

2425 **S. 271AAB: Penalty – Search initiated on or after Ist day of July 2012 – Undisclosed income – Possession of undisclosed jewellery not undisclosed income – Penalty not leviable [S. 132]**
Allowing the appeal of the assessee the Tribunal held that possession of undisclosed jewellery is not undisclosed income. Penalty not leviable.(AY.2015-16)
Shiv Bhagwan Gupta v. ACIT (2021) 87 ITR 93/ 211 TTJ 111/ 200 DTR 65 (SMC)(Pat)(Trib.)

2426 **S. 271AAB : Penalty – Search initiated on or after Ist day of July 2012- Undisclosed income — Surrendering additional business income – Levy of penalty at 10 Per Cent on undisclosed income – No further appeal filed against order – Penalty justified – Difference in valuation – Not undisclosed income – Levy of penalty is not justified [S.132 (4), 153B (1)(b)]**
Tribunal held that once the assessee had surrendered the amount during the course of search, there was no basis to state that there was no undisclosed income. The Assessing Officer made the assessee aware of the charge against it and the assessee was granted an opportunity to refute the charge and file its explanations and submissions. Therefore, the assessee was liable for penalty under section 271AAB(1)(a) at 10 per cent. on the undisclosed income. There was no infirmity in the initiation of penalty proceedings and consequent penalty order passed by the Assessing Officer. In respect of the difference in valuation of stock of Rs. 57,87,509 the Assessing Officer had merely gone by the surrender statement where the stock had been valued at the market price as on the date of search and had not examined the matter from the perspective of determining any excess stock and the cost of such stock which was not recorded in the books of account. There was no finding that there was any excess stock which had been physically found and which had not been recorded in the books of account. The difference between the stock of goods as shown in the books and as found at the time of search was on account of valuation of such stock at the market value instead of cost and it could not be the

basis to hold that it represented undisclosed income so defined in the Explanation to section 271AAB of the Act. Therefore, the penalty levied was unsustainable.(AY. 2015-16)
Sumati Gems v. Dy. CIT (2021) 85 ITR 579 (Jaipur)(Trib.)

S.271D : Penalty – Takes or accepts any loan or deposit – Whatsapp messages – Employee and promoter of group – Receipt of cash not proved – Penalty cannot be levied. [S. 269SS] 2427
Held that merely on the basis of Whatsapp messages between Employee and promoter of group adverse inference cannot be drawn on the basis of presumptions. Penalty levied for violation of section 269SS of the Act was deleted.(AY.2013-14, 2014-15, 2015-16, 2016-17)
Ekta Housing Pvt. Ltd. v. Dy. CIT (2021) 89 ITR 56 (Mum.)(Trib.)

S. 271G : Penalty – Documents – International transaction – Transfer pricing – Manufacture of high end jewellery – Not maintained documents as required due to practical difficulties – Levy of penalty is held to be not valid. [S.92D(3), Rule 10D(3)] 2428
Dismissing the appeal of the revenue the Tribunal held that since there were practical difficulties involved in furnishing segmental details of AE transactions and non-AE transactions in diamond industry levy of penalty was held to be not valid. (AY. 2013-14)
DCIT v. Kama Schachter Jewellery (P.) Ltd. (2021) 189 ITD 21 / 213 TTJ 537/ 205 DTR 180 (Mum.)(Trib.)

S. 271G : Penalty – Documents – International transaction – Transfer pricing – Diamond business – Maintaining primary books of account and documents – Transactions accepted to be at Arm's Length – Failure by Transfer Pricing Officer to determine Arm's Length Price independently by applying one of prescribed methods – Deletion of penalty is justified. 2429
Held that the assessee had maintained primary books of account and documents in respect of its business activity. The international transactions carried out by the assessee with its associated enterprises had also been well documented and supported by the benchmarking done by the assessee under the transactional net margin method. Further, the assessee had made substantial compliances before the Transfer Pricing Officer and furnished all possible information, data and documents. The only lapse was that the assessee failed to furnish the segmental profitability of the associated enterprises and non-associated enterprises transactions which would be explained by the fact that it was practically difficult to maintain these details considering the nature of the assessee's business. Finally the transactions had been accepted to be at arm's length. If the Transfer Pricing Officer was not satisfied with the benchmarking of the assessee under the transactional net margin method, nothing prevented him from rejecting the assessee's benchmarking and proceed to determine the arm's length price independently by applying any one of the prescribed methods. The blame for failure on the part of the Transfer Pricing Officer to determine the arm's length price could not be fastened on the

assessee. The order deleting the penalty under section 271G called for no interference. (AY. 2012-13)
ACIT v. Dharmanandan Diamonds (P.) Ltd. (2021) 91 ITR 40 (SN) / (2022) 193 ITD 133 (Mum.)(Trib.)

2430 **S. 272A : Penalty – Failure to answer questions – Sign statements – Furnish information – Delay in filing TDS return – Tax deducted at source was deposited on time- No loss to revenue – Levy of penalty was held to be not justified [S.272(2)(k)]**
Tribunal held that the assessee has deposited the tax deducted at source on time hence merely because there was delay in filing of TDS return levy of penalty was held to be not justified (AY. 2011-12)
Maharashtra Jeevan Pradhikaran v. JCIT (TDS)(2021) 190 ITD 147 /88 ITR 30 (SN)(Pune) (Trib.)

2431 **S. 272A : Penalty – Failure to answer questions – Sign statements – Furnish information – Delay in filing return – Hospitalization of managing trustee – Reasonable cause – Assessing Officer is directed to delete the penalty [S. 12AA, 139, 272(2)(e), 273B]**
Held that the assessee neither intentionally filed the return belatedly nor derived any benefit by filing belated return. There was no loss to revenue to the Government on account of non filing return within due dates as the assessee was having excess of expenditure over the income of the relevant year. Delay was due to hospitalization of the managing trustee. The Assessing Officer was directed to delete the penalty. (AY. 2007-08 to 2010-11)
National Institute of Women Child & Rural Health Trust v. JCIT (2021) 208 DTR 433 (Chennai)(Trib.)

2432 **S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Failure to pay self assessment tax – 80% of tax was paid prior to filing of complaint – Delayed payment could not be construed as an attempt to evade tax. [S.140A, 276(2) 276CC, 278E, Code of Criminal Procedure, S. 482]**
Prosecution launched by the Assistant Commissioner filed complaint against petitioners-directors of assessee-company for offence punishable under sections 276C(2) and 278E on ground that assessee-company had failed to pay self-assessment tax and such non-payment reflected intention/motive of assessee-company to evade payment of tax. Allowing the petition the Court held that the assessee-company had paid 80 per cent of tax prior to filing of complaint for offence punishable under section 276C(2) and voluntarily declared its intention to pay remaining tax, such delayed payment could not be construed as an attempt to evade tax. Court held that prosecution initiated was illegal and tantamount to abuse of process of law and prosecution was quashed. (AY.2016-17, 2017-18)
Ganga Devi Somani v. State of Gujarat (2021)437 ITR 323 / 282 Taxman 165 / 204 DTR 114/ 321 CTR 640 (Guj.)(HC)

S. 276C: Offences and prosecutions – Wilful attempt to evade tax – Bogus purchase – Estimate of 12.5 per cent of Bogus Purchase upheld by CIT(A) and ITAT – No penalty was levied – High Court held that prima facie ingredients of offenses are satisfied – Assessee has wilfully and intentionally evaded his tax liability – Writ petition to quash the prosecution was dismissed. [S. 148, 279(1), Art. 226 Code of Criminal Procedure, 1973, S. 482] 2433

The petitioner filed writ petition challenging the sanction of prosecution against the petitioner under section 276(1) of the Income-tax Act, 1961. Dismissing the petition the Hon'ble High Court held that where the Ld. Assessing Officer made an addition of 12.5 percent of purchases as bogus purchases and the same was upheld by the CIT(A) and ITAT. The Petitioner has wilfully and intentionally evaded his tax liability. The prima facie ingredients of the offense under section 276C(1) of the Income-tax Act, 1961 are satisfied. Writ petition to quash the prosecution was dismissed. (C.WP. No. 2698 of 2021 dt. December 07, 2021)

Nayan Jayantilal Balu v. UOI (Bom.)(HC) www.itatonline.org

S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Mere failure to pay income tax based on self assessment would not constitute offence – Proceedings was quashed [S. 27C(2), 276CC, 278E] 2434

Assessee filed its return of income based on self-assessment. Subsequently the assessee has paid the tax with interest. Penalty imposed was challenged and pending before Appellate Authority. The prosecution was launched against the petitioner. The petitioner filed petition to quash the complaint and further proceedings. Allowing the petition the Court held that there was no concealment of any source of income or furnishing of inaccurate particulars regarding any assessment or payment of tax by assessee. There was only a failure on part of assessee to pay tax in time which was later on paid after availing instalment facility with interest. Mere failure to pay income tax based on self assessment would not constitute offence under section 276C(2). Proceedings were to be set aside.

Forzza Projects (P.) Ltd. v. PCIT (2021) 279 Taxman 459 (Ker.)(HC)

S. 276C : Offences and prosecutions – Wilful attempt to evade tax – No evidence that transactions resulted in liability to tax, interest or penalty – Prosecution not valid – Special Court gets jurisdiction only on complaint by competent Authority it cannot take Special cognizance of Offences [S. 132, 280B, 280D, Code of Criminal Procedure, 1973, S. 200, 245] 2435

The Special Court discharged the responded. The revenue has filed revision petitions before the High Court. Dismissing the Revision petitions the Court held that, the only circumstance relied on by the complainant in support of the alleged charges was that, during the search action, certain unaccounted loan transactions with several persons or entities were detected and it was ascertained that the respondent had advanced huge amount of loan to these persons or entities and the unaccounted financial transactions were not disclosed in his returns of income for the relevant years and that the respondent had received huge amount of interest on the unaccounted loan. These allegations, even if accepted as true, did not prima facie constitute offences under section 276C(1) of the Act. Tax, penalty or interest could be evaded provided tax or penalty is chargeable or imposable in respect such transactions. That the complaints were lodged by the authorized officer directly before the special court and

the records of the proceedings indicated that on receiving the complaints, the special court straightaway issued summons to the accused without taking cognizance of any of the offences. As the prosecution initiated against the respondent was bad in law and contrary to the procedure prescribed under the Code of Criminal Procedure and the provisions of the Income-tax Act, the revision petitions are liable to be dismissed. Court also held that the Special Court gets jurisdiction only on complaint by competent authority, Special Court has no original jurisdiction to take cognizance of the offences under Chapter XXII of the Income tax Act unless the accused is committed for trail. Relied, *D.K. Shivkumar v. ITO (2020) 421 ITR 529 (Karn.)(HC)*
ITO v. D. K. Shivakumar (2021) 434 ITR 367 / 200 DTR 273/ 320 CTR 182 (Karn.)(HC)

2436 **S. 276C : Offences and prosecutions – Wilful attempt to evade tax – False statement – Assessee had been forced to upload returns by mentioning that entire amount of tax as otherwise returns would not have been accepted by software system – It could not be said to be misstatement- Delayed payment of tax would not amount to evasion of tax – All directors of Company cannot be automatically prosecuted for any violation of Income-tax Act – Held, yes – Whether there has to be specific allegations made against each of Directors who is intended to be prosecuted- At time of taking cognizance of an offence and issuance of process, Court taking cognizance is required to pass a sufficiently detailed order to support conclusion to take cognizance and issue process – The income -tax Department was directed to consider the provisions of a facility in its software to upload income -tax returns with actual amount paid and for the system to accept the returns even though the complete amounts had not been paid. [S. 277, Code of Criminal Procedure, 1973 Code of Criminal Procedure, 1973, S. 191, 202 (2), 292]**
On a criminal petition filed, the High Court held that for an offence to be said to be committed u/s 277, the misstatement is required to be wilful made with a mala fide or dishonest intention in order to prosecute the assessee. That delayed payment of income tax would not amount to evasion of tax, so long as there is payment of tax, more so for reason that in returns filed there is an acknowledgement of tax due to be paid. That all directors of company cannot be automatically prosecuted without specific allegations made against each of directors who is intended to be prosecuted for any violation of tax laws. Such specific allegation would have to amount to an offence and satisfy the requirement of that particular provision under which the prosecution is sought to be initiated and preliminary investigation has to be concluded, more so when the prosecution is initiated by the Income Tax Department who has all the requisite material in its possession. That at time of taking cognisance and issuance of process, Court taking cognisance is required to pass a sufficiently detailed order to support conclusion to take cognisance and issue process. Accordingly the Court held that the prosecution initiated by the revenue was misconceived and not sustainable. (AY. 2013-14) Obiter Dicta : The income -tax Department was directed to consider the provisions of a facility in its software to upload income -tax returns with actual amount paid and for the system to accept the returns even though the complete amounts had not been paid.
Confident Projects (India)(P.) Ltd. v. Income Tax Department, Bengaluru, (2021) 433 ITR 147/ 279 Taxman 46/202 DTR 411 / 321 CTR 169 (Karn.)(HC)
Editorial: SLP of revenue dismissed, Income Tax Department, Income Tax Department v. Confident Projects (India)(P.) Ltd (2022) 443 ITR 5 (St)(SC)

S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Concealment of income – Failure to disclose capital gains – Application for quashing of proceedings was rejected. [S. 45, 278E, CPC, S. 313] 2437

The assessee did not disclose short term capital gains in the return of income. The Assessing Officer made addition and also prosecution under section 276C of the Act. The assessee moved application before the High Court for quashing the prosecution proceedings. Dismissing the petition the Court held the order of assessment had nothing to do with prosecution proceedings under section 276C and same were separate and distinct from assessment proceedings. Accordingly on facts, impugned proceedings against assessee were justified and same was to be upheld. The trial Court was directed to complete the trial within a period of six months from the date of receipt of copy of this Order. (AY. 2008-09)

Rohit Kumar Nemchand Piparia v. Dy. DIT (2021) 435 ITR 674/ 201 DTR 149/ 322 CTR 109/ 277 Taxman 549 (Mad.)(HC)

S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Failure to file return – Refund due to assessee – Abuse of process of law – Prosecution was quashed. [S 139 (1), 276C(1)(i), 276CC Cr.P.C, S.482] 2438

The return filed by the petitioner in the year 2013-14 shows that tax payable by the petitioner is nil and he is also claiming for refund of the tax payable have been adjusted against the advance tax payable and tax deducted at source for the assessment year 2013-14. The return filed by the petitioner for the year 2013-14 shows that tax payable by the petitioner and his claiming for refund of the tax payable have been adjustable against the advance payable and the source for the assessment year 2013-14. The revenue launched prosecution against the assessee under section 276C(1)(i) and section 276CC of the Act. The assesee moved application before the High Court to quash the prosecution proceedings. Allowing the petition the Court held that considering the facts of the case launching of prosecution is nothing but clear abuse of process of law, it could not be sustained. (AY. 2013-14)

Rajkumar Thiyagarajan v. Income Tax Department, Madurai (2021) 277 Taxman 437 (Mad.)(HC)

S. 276C : Offences and prosecutions – Wilful attempt to evade tax – Quantum and penalty appeal was pending – Prosecution is stayed until final judgement was delivered by Tribunal in pending appeal. [S.143 (3), 156, 271 (1)(c) Code of Criminal Procedure, S.482] 2439

The quantum and penalty appeal was pending before the Tribunal Principal Commissioner initiated criminal proceedings under section 276C(2) against assessee for evading tax. The assessee filed petition. Court held that when the demand raised by the Department is not crystallized as the appeal preferred by the petitioner is pending adjudication on merits. Considering the aforesaid factual scenario and since the petitioner has already deposited a substantial part of the demand raised by the Department, this Court is of the opinion that the continuation of the prosecution against the petitioner for the same allegations could not be permitted. Court also observed that the passing of this order will not preclude the Department from considering the case

of the petitioner under the "Vivad se Vishwas Scheme" in view of the object of the scheme and particularly when the petitioner has already deposited a substantial part of the demand. (AY. 2011-12)
Hemal Manubhai Patel v. State of Gujarat (2021) 277 Taxman 323 / 200 DTR 57/ 321 CTR 505 (Guj.)(HC)

2440 **S. 276C : Offences and prosecutions – Wilful attempt to evade tax – False statement – Verification – Abetment – Only the concerned AO can file a complaint against the accused unless some strong incriminating material is found in the course of search/ survey on a third party – Complaint filed by Director of Income-Tax – not justified – Prosecution not valid [S. 133A, 136, 277, 278, 279, Code of Criminal Procedure, 1973, S.195, Indian Evidence Act, 1872, S.65B, Indian Penal Code, 1860, S.193, 196]**
The assessee contended that the intention of the Legislature is to prosecute only where concrete materials are unearthed during the search or survey. It is stated in Circular No. 24 of 2019 ([2019] 417 ITR (St.) 5) that the prosecution under section 276C(1) shall be launched only after the confirmation of the order imposing penalty by the Appellate Tribunal. The object of the statute discernible under section 276 is that to maintain a complaint by the Deputy Director, the material seized or collected during search should unerringly point towards the accused. On revision petition the Court held that ordinarily, it is only the concerned AO who completes the assessment/reassessment, who is competent to file a complaint and proceed under section 276C and 277 for wilful evasion of tax or filing false verification. The Deputy Director, who had carried out search/survey in the case of a third party and wherein statements were recorded which loosely pertain to the accused, could not initiate the proceedings against the accused only on the basis of such statements, without any further incriminating material being seized which pertains to the accused. That showing of ignorance by one of the assesses by maintaining that only her husband was aware of the return such conduct could not be construed as abetment to attract the offence under section 278. (AY. 2014-15, 2015-16)
Karti P. Chidambaram v. Dy. DIT (Inv) (2021) 431 ITR 261/ 197 DTR 33 / 318 CTR 113 / 122 taxmann.com 146 (Mad.)(HC)
Srinidhi Karti Chidambaram (Smt.) v. Dy. DIT (Inv)(2021) 431 ITR 261 / 197 DTR 33 / 318 CTR 113 / 122 taxmann.com 146 (Mad.)(HC)

2441 **S. 276CC : Offences and prosecutions – Failure to furnish return of income – Failure to file the return on due date – Wilful attempt to evade tax – Presumption of culpable mind – Burden is on the assessee to prove that the failure was not wilful [S. 276C, 278E, Form No 26AS, Code of Criminal Procedure, 1973, S. 482]**
The assessee is a salaried employee he had taxable income however he has not filed his return of income as mandated u/s 139(1) or under extended time u/s 139(4) of the Act. The show cause notice was issued for failure to file the return. The department was of the view that the assessee has deliberately has not filed the income tax return within stipulated time. The department launched prosecution under section 276C(1) and section 276CC of the Act. The Assessee approached the High court under section 482 Code of Criminal Procedure to quash the proceedings. Dismissing the petition the Court held that it cannot presume that the assessee is innocent of any offences complained.

It was for the assessee to establish such innocence is the court where the trail is to be conducted. The Court directed the assessee to concentrate on the efforts to be put in during the Course of trail. The submission of the assessee was rejected and the petition was dismissed. Relied on *Sai Enterprises v. ACIT 2014 (5) SCC 139.*
Raman Krishna Kumar v. DCIT (2021) 439 ITR 521 / 131 taxmann.com 341 / (2022) 284 Taxman 108 (Mad.)(HC)

S. 276D : Offences and prosecutions – Failure to produce books of accounts – Documents – Three separate complaint were part of same transaction – Clubbing of complaints and joint trail was allowed [S.276C(1), 277, Code of Criminal Procedure, 1973, S.200] 2442
Assessee filed application requesting clubbing of three complaints and joint trial. Magistrate denied said request on ground that foreign funds were kept but same were not declared in income-tax return for each assessment year, and each would be a distinct offence. Allegations made in all three complaints were similar. First complaint was filed on assumption that assessee held an undisclosed foreign account and two subsequent complaints were filed to arrive at a figure to facilitate first complaint. Court held that these three complaints were part of same transaction and, thus, application of assessee for clubbing of complaints and joint trial was to be allowed. (AY. 2006-07, 2007-08)
Paraminder Singh Kalra v. CIT (2020) 429 ITR 577/ 196 DTR 433/ 318 CTR 211 / (2021) 279 Taxman 316 (Delhi)(HC)

S. 279 : Offences and prosecutions – Sanction – Chief Commissioner – Failure to file return within stipulated time – Issue of summons was only for one year – Reasons Remanded to the Commissioner for fresh consideration [S.139(1), 279(2), Art. 226] 2443
The commissioner proposed for launching prosecution for delay in filing of return. The assessee moved application for compounding which was rejected. On writ allowing the petition the court held that the reason stated by the assessee for failure in filing the return of income under section 139(1) in time by the assessee for the assessment year 2013-14 had not been considered in the proper perspective by analysing before rejecting the reasons.. The reason cited by the assessee, after giving him an opportunity, could once again be considered in the proper perspective and accordingly, a fresh order could be passed by the Chief Commissioner. The order was set aside and the matter was remanded back to the Chief Commissioner for reconsideration. (AY.2013-14)
Mahalingam Chandrasekar v. CCIT (2021) 439 ITR 698 (Mad.)(HC)

S. 281 : Certain transfers to be void – Transfer to defraud revenue – Mortgages – Pendency of recovery proceedings – Transaction or transfer became void – Doctrine of the priority of Crown debts – Disputed factors cannot be adjudicated by the High court in a writ petition.[S. 222, Schedule II Rule. 11, Recovery of Debts and Bankruptcy Act, 1983, S. 31B, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S. 26E, Art. 226, 265, 268A] 2444
The petitioner Bank challenged the recovery proceedings initiated by the Tax Recovery Officer under section 226 of the Act against the tax defaulter by filing the writ petition

on the ground that the tax defaulter has mortgaged the property to Bank and the Bank has the first charge on the mortgaged asset of the tax defaulter. Dismissing the petition the Court held that the mortgages are made during the pendency of the income -tax proceedings hence transactions are void under section 281 of the Act and any such mortgage or attachment made by Bank during pendency of the income tax proceedings, cannot be a ground to claim priority based on the provisions of the SAFAESI Act or DRT Act. Court also held that the disputed facts cannot be adjudicated by the High Court under writ jurisdiction, and it is for the petitioner Bank to establish the details regarding the mortgage and the pendency of income tax proceedings by filing an appropriate application under Schedule II Rule 11 of the Rules. (SJ)
Janata Sahakari Bank Ltd v. Tax Recovery Officer (2021) 204 DTR 401/ 322 CTR 162 (Mad.)(HC)

2445 **S. 281 : Certain transfers to be void – Property mortgaged to bank before passing of assessment order – Auction sale – Transfer of property not void [S. 226, Sch. II, R. 11, Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, S.13, 26e, Art. 226]**
Allowing the petition the Court held that, section 281 of the 1961 Act did not constitute a declaration of charge much less, one which was preferential to the Department. The thrust of section 281 of the 1961 Act was only a protection to a bona fide purchaser in cases where an errant assessee sought to alienate the property to circumvent anticipated recovery of outstanding arrears payable by him to the Income-tax Department. Nothing in section 281 of the 1961 Act would support the submission that it, by itself creates a positive charge of property. The charge in this case was created by the Income-tax Department only after March 27, 2017 when the property was attached under rule 48 of the Second Schedule to the 1961 Act and duly communicated to the Sub-Registrar. The mortgage by the bank was on February 10, 2014 and that by the Income-tax Department was on March 27, 2017 only. The subsequent attachment therefore, failed in view of section 26E of the 2002 Act, the provisions of which had since been notified on January 24, 2020 and the benefit was available to the petitioners.(AY.2012-13, 2013-14)(SJ)
Corporation Bank v. CIT (2021) 437 ITR 528 / 205 DTR 353 / 322 CTR 151 (Mad.)(HC)
Union Bank of India v. Sub-Registrar (2021) 437 ITR 528 / 205 DTR 353 / 322 CTR 151 (Mad.)(HC)

2446 **S. 281 : Certain transfers to be void – Recovery of tax – Family settlement – Pendency of proceedings – Transfer of property is void – Order of attachment is held to be valid [S.158BD, 226(3) Art. 226]**
Dismissing the petition the Court held on the facts of the case what was evident was that the so-called transfer of the undivided share in the land by the two brothers namely the paternal uncles of the petitioner in favour of the petitioner's father had not been proved. In any case such transfer would be contrary to section 281 of the Act, inasmuch as notice under section 158BD had been initiated against the Hindu undivided family of Milapchand Dada as early as July 9, 2001. The family arrangement pursuant to which transfers were allegedly effected had to be declared void. There was a recovery certificate issued for the same property in favour of the bank. (AY. 1997-98, 1998-99, 2003-04)
Apoorva Dadha v. TRO (2021) 436 ITR 225 (Mad.)(HC)

S. 281 : Certain transfers to be void – Recovery of tax – Attachment of property – Death of seller before executing sale of house property – Attachment of property for recovery of due from firms in which legal heirs were partners for periods subsequent to sale agreement – Tax recovery officer cannot declare transfer void – Non -release of registered sale deed by sub -registrar is not valid [S. 226, Art. 226] 2447

Allowing the petition the Court held that the transfer of the property was on account of the final culmination of the litigation by the order of the Supreme Court. There was only a delay in the execution of the sale deed due to the pendency of the proceedings as the third and fourth respondent's mother (since deceased) declined to execute the sale deed under the sale agreement dated June 30, 1994. The subsequent tax liability of the fourth respondent and her husband for the assessment years 2012-13 and 2013-14 could not be to the disadvantage of the petitioner, since the petitioner had been diligently litigating since 2004. Therefore, the benefit of the decree in a contested suit could not be denied merely because the seller or one of the persons had incurred subsequent tax liability. The benefit of a decree would date back to the date of the suit. Therefore, the communication dated July 6, 2018 which required the petitioner to obtain clearance could not be countenanced. The tax liability of the firms of which S and her husband were partners arose subsequent to the commitment in the sale agreement dated June 30, 1994. The Sub-Registrar was directed to release the sale deed dated June 29, 2018 and to cancel all the encumbrances recorded against the property in respect of the tax arrears of the firms of the fourth respondent S and her husband.

J. Manoharakumari v. TRO (2021) 436 ITR 42 (Mad.)(HC)

S. 281 : Certain transfers to be void – Property transferred prior to passing of assessment orders – Attachment – Order of PCIT was set aside – Tax Recovery Officer is competent authority to pass appropriate order – Matter remanded to the Tax Recovery Officer. [S. 221 (1) Sch. II, R. 11, Art. 226] 2448

On writ petition allowing the petition, that the issue as to whether the petitioner fell within the proviso to section 281 was to be decided by the Tax Recovery Officer who was the competent authority under rule 11 of the Second Schedule to the Act to pass an appropriate order. The order of the Principal Commissioner declining to lift the order of attachment of the property in question did not state that there were any pending proceedings on the date when the sale was made and completed in favour of the petitioner on May 6, 2011. The assessments for the AY.s 2005-2006 to 2010-2011 of the vendor of the property in question were completed only on March 30, 2013, December 31, 2011 and March 31, 2013. The orders also did not indicate whether the vendor of the property had either failed to file the returns required under section 139(1) or to file a revised return under section 139(4) or 139(5) or had failed to comply with the notices issued under section 142(1) or 143(2) or comply with the directions issued under section 142(2A). Therefore, without seeing the content of the assessment orders and the background, the relief claimed by the petitioner could not be granted in a petition under article 226 of the Constitution of India contrary to the mandate of rule 11 of Schedule II. The order of the Principal Commissioner was set aside and the matter was remitted to the Tax Recovery Officer.(AY. 2005-06 to 2010-11)

K. Ilango v. PCIT (2021) 435 ITR 713 / 323 CTR 800 (Mad.)(HC)

2449 **S. 281B : Provisional attachment – Mere apprehension on the part of the respondents that huge tax demands are likely to be raised on completion of assessment is not sufficient – Attachment of fixed deposit was quashed. [S.153A, Art. 226]**

The fixed deposits of petitioner was attached invoking section 281B of the income -tax Act. On the ground that huge tax demands are likely to be raised. The assessee challenged the order by filing writ petition. Allowing the petition the Court held that mere apprehension on the part of the respondents that huge tax demands are likely to be raised on completion of assessment is not sufficient for the purpose of passing a provisional order of attachment. Exercise of power for order of provisional attachment must necessarily be preceded by formation of an opinion by the authorities that it is necessary to do so for the purpose of protecting the interest of Revenue. Before the order of provisional attachment, the CIT must form an opinion on the basis of the tangible material available for attachment that the assessee is not likely to fulfill the demand payment of tax and it is therefore necessary to do so for the purpose of protecting the interest of the *Revenue-Radha Krishan Industries v. State of Himachal Pradesh & Ors (2021) SCC Online SC 334* followed. Order passed by the respondent was quashed.

Indian Minerals & Granite Co. v. Dy. CIT (2021) 323 CTR 352 / 207 DTR 164 (Karn.)(HC)

2450 **S. 281B : Provisional attachment – Mere apprehension that huge tax demand was anticipated is not sufficient – Writ is maintainable against provisional attachment [S. 226, Art. 226]**

Allowing the petition the Court held that Held, that the before passing an order of provisional attachment, the authorities must form an opinion on the basis of tangible material available that the assessee is not likely to fulfil the demand payment of tax and it is therefore necessary to pass an order of provisional attachment for the purpose of protecting the interest of the Government revenue. In addition to these mandatory requirements, it is also incumbent upon the authorities to come to a conclusion based on tangible material that without the provisional attachment, it is not possible to protect the interest of revenue. On the facts the provisional attachment order was cryptic, unreasoned, non-speaking and laconic, and the same deserved to be quashed. Relied on *Radha Krishan Industries v. State Of Himachal Pradesh (2021) 88 GSTR 228 (SC)*.

Sree Raghavendra Enterprises v. Dy. CIT (2021) 438 ITR 643 (Karn.)(HC)

2451 **S. 292B : Notice not to be invalid on certain grounds – Notice issued in the name of a dead person is a nullity. [S.153C]**

A notice issued under section 153C of the Act in the name of a dead person is void and cannot be saved by section 292B. The fact that the AO did not have knowledge of the death at the time of issuing the notice is immaterial as even when subsequently the fact of the death was informed to the AO there was substantial period of time within which a fresh notice could have been issued in the name of the legal heir, but that exercise was not done. Issue of notice on dead assessee and consequent proceedings would be without jurisdiction and null and void. (AY. 2011-12, 2018-19)

Bhupendra Bhikhalal Desai v. ITO (2021) 320 CTR 289/ 200 DTR 313 / 130 taxmann. com 196 (Guj.)(HC)

Editorial : SLP of revenue dismissed, ITO v. Bhupendra Bhikhalal Desai (2021) 283 Taxman 189 / 283 Taxman 376 (SC)

Black Money (Undisclosed Foreign income and Assets) and imposition of tax Act, 2015

S. 2(11) : Undisclosed foreign assets – Offences and prosecution- Failure to file return – Beneficial owner – Information under provisions of Exchange of Information article of India-Singapore Double Taxation Avoidance Agreement – Mentioning details of his passport as an identification document, did not necessarily, in absence of any other corroborative evidence of beneficial ownership of assessee over asset, lead to taxability in hands of assessee under Black Money Act-Deletion of addition was affirmed. [S. 2(12, 3, /4, 5, 10(1), 50, Benami Property (Prohibition)Act 1988, S. 2(12), Prevention of Money Laundering Act] 2452

Assessing Officer received information under provisions of Exchange of Information article of India-Singapore Double Taxation Avoidance Agreement that assessee was beneficial owner of bank account in Singapore which showed credit of Rs. 5.66 crores which Assessing Officer brought to tax as undisclosed foreign income and assets under Black Money Act. Assessee denied beneficial ownership stating though he had put his signature on account opening form of overseas bank account, but said account belonged to a foreign company, whose sole shareholder and director was his son. The assessee claimed that he had been named as beneficial owner only out of gratitude and respect and he had never contributed any funds either to trust or his son's company and had also not received any money on account of said company. Tribunal held that mere account opening form where assessee was mentioned as beneficial owner of account mentioning details of his passport as an identification document, did not necessarily, in absence of any other corroborative evidence of beneficial ownership of assessee over asset, lead to taxability in hands of assessee under the Black Money Act. On the facts the Assessing Officer could not show any evidence that assessee was owner/ beneficial owner of sum lying in overseas bank account and assessee having given an overwhelming evidence of fact that money belonged to his son, Assessing Officer was not justified in making additions in hands of assessee. Order of CIT (A) deleting the addition was affirmed. (AY. 2016-17)

ACIT v. Jatinder Mehra. (2021) 190 ITD 611 / 212 TTJ 681/ 204 DTR 161 (Delhi) (Trib.)

S. 2(11): Undisclosed asset located outside India – Applicability of the Statute – Accounts not in existence at the Black Money Act, 2015 came into force – The new legislation operates for those accounts and assets too – Bank account in whatever way its is described is an asset in sense that it gives ownership credit balance ,in books of bank in that account – Undisclosed foreign bank account per se can indeed be treated as an asset – Interest leviable – DTAA-India-Singapore Bank account in whatever way its is described is an asset in sense that it gives ownership credit balance, in books of bank in that account – Undisclosed foreign bank account per se can indeed be treated as an asset – Interest leviable – DTAA-India-Singapore. [S. 2(15), 5(1)(i), 5(1)(ii)), 8(b), 10(1), 40(1), 40(2), BMR 3(e), 3(2), ITACT, 1961, S. 132,132(4), 133A, 139(1), 234A, 234B, 234C] 2453

Based on the intelligence inputs It was found that during the period 2008-2011 certain bank accounts abroad were maintained and operated by assessee and his wife. None

of these accounts was reflected in the income tax return filed by the assessee or his wife. The assessee denied and did not volunteer any information abut bank accounts. Search and seizure operation was carried out on 17 th March 2016 on resident and commercial premises of the assessee. During the search and seizure operations, some of the material collected by the investigation wing was confronted to the assessee the assessee denied the same. As per the BMA Act the notice was issued to the assessee on the alleged credit aggregating 999.75 crores in the undisclosed offshore company. The Assessee submitted that the BMA was not applicable to the assessee because it applied only from 1-4-2016 on wards. i.e. the assessment year 2016-17. On 28-3-2019 as the assessment proceedings under the BMA were on the verge of completion, the assessee finally owned up the bank accounts and explained that all the investments were made out of borrowings from the same bank and that there was no collateral security given to the bank against the loan availed and that on maturity or redemption, the bank has take back the loan along with interest and credit the difference to the account which was actual gain. The Assessing Officer held that the assessee was the beneficial owner of off shore entity Gold Jewel Corporation British Virgin Island (CJC-BVI) and bank accounts maintained in the UBS, AG, Singapore branch (UBS, AG Singapore) and it was not a condition precedent for taxation under the BMA that the asset must continue to be held at the point of time when it was being brought to tax . On appeal CIT(A) accepted explanation of the assessee so far as credit of amount received on redemption of investment was concerned and was of the view that once it was not in dispute that the amount was received on account of investment held earlier, it could not be said that the amount was unexplained. However he confirmed the remaining addition in respect of the balance amounts approving the line of reasoning adopted by the Assessing Officer. On appeals by the assessee as well as the Assessing Officer to the Tribunal. The Tribunal held that relevant point of time for taxation, under BMA, of an undisclosed foreign asset is point of time when such an asset comes, to notice of Government, it is immaterial as to whether it existed at point of time of taxation, or, for that purpose, even at point of time when provisions of BMA came into existence. Thus, a bank account abroad or any unaccounted asset abroad, which did not exist as at point of time when BMA came into force, i.e. 1-7-2015, could be assessed under said legislation as what would be brought to tax would only be income clearly discernible from bank account in question and not value of asset itself .Further, a bank account, in whatever way it is described, is an asset in sense that it gives you ownership of credit balance, in books of bank, in that account. Therefore, an undisclosed foreign bank account per se can indeed be treated as an asset under section 2(11) of the Act. (AY. 2017-18)

Rashesh Manhar Bhansali v. ACIT (2021) 214 TTJ 529 / 208 DTR 97/ (2022) 193 ITD 141 (Mum)(Trib.)

Editorial: Appeal is pending for admission Rashesh Manhar Bhansali v. Add.CIT (ITA No. 1966 of 2022) (Bom.)(HC)

S. 10(1): Assessment – Notice under section 10(1) jurisdictionally defective and violative of the principles of natural justice on account of simultaneous proceedings under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and Income-Tax Act, 1961 – Order was quashed [S. 2(11), 4(3), 14, 59] 2454

Tribunal held the notice issued under section 10(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 to be jurisdictionally defective and violative of the principles of natural justice on account of simultaneous proceedings under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and Income-Tax Act, 1961. Tribunal examined the definition of 'undisclosed asset' in the Black Money (Undisclosed Foreign Income and Assets) and Impositions of Tax Act, 2015 and held that the assets which constitute part of income tax proceedings and have been assessed in such proceedings shall be excluded from the definition of 'undisclosed income'. The Hon'ble Tribunal also held that the doctrine of double prejudice will rescue such assessee who have been subjected to simultaneous proceedings for same assets/income under the two legislations, i.e. the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and Income-Tax Act, 1961.

Further, the Tribunal also observed that the learned CIT(A) erred in ignoring the findings of co-ordinate bench of the Hon'ble Tribunal in the assessee's own case with regard to the same assets and the bank account, under the wealth-tax proceedings, wherein it was held that the trust in question was set up the relative and the assessee is not the sole beneficiary of the trust nor the substantial owners of the assets and thereby shifting from the co-ordinate bench's decision, violating the principle of approbate and reprobate. The Hon'ble Tribunal also observed that ownership of the assets cannot be thrust upon an assessee. (AY. 2016-17)

Yashovardhan Birla v. CIT(A), 213 TTJ 904 / 207 DTR 297 (Mum.)(Trib.)

The Direct Tax Vivad Se Vishwas Act, 2020

2455 **S.2(1)(a): Appellant – Pendency of appeal – Condonation of delay – Appeal Of Declarant Should Be Pending – Order condoning delay passed on 23-2-2021 – Appeal of declaration deemed to be pending on specified date 31-1-2020 – Declaration Valid – Directed the Designated Authority to accept the declaration. [S. 2(n) – Taxation and other Laws (Relaxation of certain Provisions)**

The application of the petitioner was rejected on the ground that there was no valid was pending as on the specified date. On writ allowing the petition the Court held that the Tribunal condoned the delay by a speaking order on February 23, 2021. The effect of the delay condoned by the appellate authority was that there was no delay at all in preferring the appeal and the appeal preferred by the assessee would relate back to the original date of filing of appeal, which would in other words mean that under the Direct Tax Vivad se Vishwas Act, the assessee would fall into the bracket of the definition of appellant in whose case, the appeal preferred before the Tribunal was pending as on the specified date, i. e., January 31, 2020. The last date for declaration was finalised as March 31, 2021 and in the case of the assessee, his declaration had been filed, once the delay was condoned, before the said date of declaration in forms 1 and 2. The declaration was in time. The order rejecting the declaration was not valid.(AY.1991-92 to 1994-95)

Maheshbhai Shantilal Patel v. PCIT (2021)439 ITR 112 /2022) 284 Taxman 694 (Guj)(HC)

2456 **S. 2(1)(a): Appellant – Pendency of appeal – Appeal was filed along with condonation of delay – Wrongly equated with admission of appeal with pendency – Appeal would be pending as soon as it is filed and up until such time it is adjudicated upon and a decision is taken qua the same.- Order of rejection was held to be bad in law [S. 3, 4(1), Art. 226]**

The petitioner filed an appeal before the CIT(A) along with condonation of delay. When the appeal was pending the consonance with provisions of Section 3 read with Section 4(1) of 2020 Act, Assessee, filed Form nos.1 and 2. Assessee's request for processing of forms filed under 2020 Act was rejected. On writ allowing the petition the Court held an appeal would be pending in context of Section 2 (1) (a) of 2020 Act when it is first filed till its disposal. Section 2(1)(a) of 2020 Act does not stipulate that appeal should be admitted before specified date, it only adverts to its pendency. When Forms 1 and 2 were filed by Assessee, Revenue no.3/CIT(A) was seized of appeal, which included, a plea for condonation of delay. Therefore, order of rejection is bad in law. (AY. 2011-12)

Shyam Sunder Sethi v. PCIT (2021) 200 DTR 49/ 319 CTR 652 (Delhi)(HC)

2457 **S. 2(1)(a)(i): Appellant – Pending appeal – Appeal was filed on 29th March 2013 and numbered – High court condoned the delay – The Rejection of application was quashed – Entitle to file Form No-4 in response to Form No 3 [S. 260A, Art. 226]**

The appeal before the High court was filed on 29 th March 2013. The application of the petitioner was rejected referring to FAQ No. 59 of the CBDT Circular No 21 of 2020, dt. 4th Dec, in respect of the taxpayer in whose case, the time limit for sing an appeal has expired before 31st Jan., 2020, but an application for condonation of delay has been

filed and whether such an assessee is eligible to avail DTVSV Scheme. First of all, the question No. 59 cannot be applied to the assessee's case, since while condoning the delay in representation, the Court has held that the appeals were filed before this Court on 29th March, 2013 and the crucial date shall be reckoned as 29th March, 2013 for all purposes Therefore, the assessee's case cannot be brought under the ambit of the case dealt with in question No. 59. Therefore, the order of cancellation of Form 3 dt. 17th Sept, 2021, is not sustainable in law. This order was passed when the miscellaneous petitions were pending before this Court and the matter was adjourned to 15th Sept, 2021 at the instance of the Revenue by order dt. 1st Sept 2021 Thereafter, on earlier occasion, i.e., on 15th Sept, 2021, once again, at the instance of the Revenue, it was adjourned to 21st Sept., 2021 Thus, the order dt. 17th Sept, 2021 rejecting assessee's declaration having been issued when the matter was pending before this Court, that too, without seeking leave of this Court, the order dt. 17th Sept, 2021 is quashed. As a consequence, the assessee would be entitled to file Form 4 in response to Form 3. Delay in filing the appeal was condoned by the High Court.

Precot Meridian Ltd v. Dy. CIT (2021) 323 CTR 272 / 207 DTR 173 (Mad.)(HC)

Precot Meridian Ltd v. Dy. CIT (2021) 323 CTR 279/ 207 DTR 179 (2022) 285 Taxman 570 (Mad.)(HC)

S. 2(1)(a)(i): Person – Pendency of appeal – Application for condonation of delay was pending before CIT(A) – Notice of hearing was issued – Rejection of application on the ground that the appeal was not admitted was held to be not justified – Order of rejection set aside. [S. 2(1))(a))(n), ITAct, S. 246A, 250 Art. 226] 2458

Application of the petitioner was rejected on the ground that delay in filing the appeal was not condoned. On writ allowing the petition the Court held that the CIT(A) himself has addressed a letter asking the petitioner to furnish ground -wise submissions on the grounds of appeal if he was not opting for the VSV Scheme, 2020. This itself would also mean that the delay has been condoned. The order of rejection was set aside. The Designated Authority was directed to process the forms filed by the petitioner. (AY. 2017-18)

Stride Multimedia Pvt Ltd v. ACIT (2021) 439 ITR 141 / (2022) 284 Taxman 684 (Bom.) (HC)

S. 2(1)(a)(i) : Appellant – Pendency of appeal – Condonation of delay – Appeal could be pending even if delay was not condoned, irregular or incompetent – Non availability of order cannot be the reason for not availing the benefit of any provision or scheme to the Citizens – Designated Authority was directed to accept the declaration filed by the petitioner. [Art. 226] 2459

The declaration of the petitioner was rejected on the ground that the appeal was delayed and the delay was not condoned. On writ the Court held that, appeal could be pending even if delay was not condoned, irregular or incompetent.Non availability of order cannot be the reason for not availing the benefit of any provision or scheme to the Citizens Designated Authority was directed to accept the declaration filed by the petitioner. Referred Tirupati Balaji Developers (P) Ltd v. State of Bihar (2004) 5 SCC 1.

Bhaskar Manubhai Mehta v. Designated Authority (2021) 323 CTR 224/ 207 DTR 89 / (2022) 441 ITR 186 / 284 Taxman 678 (Guj) (HC)

2460 **S. 2(1)(a)(i) : Appellant – Pendency of appeal – Condonation of delay – Appeal could be pending even if delay was not condoned, irregular or incompetent – Non availability of order cannot be the reason for not availing the benefit of any provision or scheme to the Citizens – Designated Authority was directed to accept the declaration filed by the petitioner. [Art. 226]**

The declaration of the petitioner was rejected on the ground that the appeal was delayed and the delay was not condoned. On writ the Court held that, appeal could be pending even if delay was not condoned, irregular or incompetent. Non availability of order cannot be the reason for not availing the benefit of any provision or scheme to the Citizens Designated Authority was directed to accept the declaration filed by the petitioner. Referred *CIT v. Shatrusailya Digvijay Singh Jadeja (2005) 197 CTR 590/ 147 Taxman 566 (SC)* (AY. 2013-14)

Tushar Agro Chemicals v. PCIT (2021) 323 CTR 217/ 207 DTR 73 /283 Taxman 72 / (2022)441 ITR 179 (Guj.)(HC)

2461 **S. 2(1)(a)(i): Appellant – Pendency of appeal – Condonation of delay – Order of condonation of delay relates back to the filing of an appeal – Rejection of application was held to be not valid [S.3, 9, Art. 226]**

The application of the petitioner under DTVS Act was rejected on the ground that there is no appeal pending of the petitioner. On Writ the Court held that in view of the Department's own stand that the delay in filing the appeal before CIT (A) has been condoned. The Court held that it is a matter of first principles that the order of condonation of delay relates to the appeal. Court directed the revenue to accept the application of the petitioner as per the provisions of section 3 of the DTVSV Act.

Karan Ventakeshwara Associates v. ITO (2021) 204 DTR 310 / 322 CTR 148 (Bom.)(HC)

2462 **S.2(1)(a)(i) : Appellant – Draft assessment order – Final assessment order was not passed – Eligible under the scheme [ITAct, S.144C Art. 226]**

Allowing the petition the Court held that where a draft assessment order is passed against the assessee under section 144C and the assessee has not filed objections to it and pending a final assessment order, the assessee can file an application under the Direct Tax Vivad Se Vishwas Act, 2020. (AY. 2012-13)

Dongfang Electric Corporation Ltd. v. Designated Authority (2021) 438 ITR 660 / 205 DTR 281/ 322 CTR 353 (Telangana) (HC)

2463 **S.2(1)(a)(i): Appellant – Pending appeal before Appellate Tribunal -Deemed pendency – Condonation of delay – Appeal filed on 25-1-2021 – Declaration was filed on 8-2 -2021 – Delay condoned by Tribunal by order dated 15-2 -2021 – Rejection of application. Was held to be not valid. [S. 2(1)(j)(B), IT Act, 253 (1), 254(1), Art. 226]**

Allowing the petition the Court held that the benefit of deemed pendency of appeal cannot be confined to an application for condonation filed on or before December 4, 2020, as no significance can be attached to the date of issue of the circular, since, what is required to be considered is the pendency of the appeal with an application for condonation and the admission of the appeal as on the date of filing of declaration. Thus, even after December 4, 2020, if an appeal is filed with an application for

condonation of delay and the appeal is admitted by the appellate authority before the date of filing of the declaration, the benefit is to be extended.
On facts the assessee having filed an appeal before the Tribunal with an application for condonation and the Tribunal having heard the matter on February 5, 2021 by condoning the delay, it had to be construed as a "pending" appeal as on the date of filing of declaration on February 8, 2021. As a matter of fact, the Tribunal by order dated February 15, 2021, allowed the appeal of the assessee and remitted the matter back restoring the appeal on the file of Commissioner for fresh adjudication. The natural corollary of the Tribunal accepting the application for condonation was that the appeal before the Tribunal was filed in time, since, such condonation would relate back to the date by which time, the appeal against the order of Commissioner ought to have been filed by the assessee. Thus, an appeal could be stated to be pending before the appellate forum and the assessee would have to be considered as an appellant as defined in section 2(1)(a)(i) of the Act of 2020, and the tax as assessed would have to be considered as "disputed tax", as defined under section 2(1)(j)(B) of the Act of 2020. Alternatively, since the last date for filing declaration had been extended up to March 31, 2021 and the Tribunal, having found cogent reasons to condone the delay and allowed the appeal filed by the assessee and remitted the matter back to the Commissioner by its order dated February 15, 2021, that would automatically revive and restore the appeal, which was dismissed by the Commissioner by his order dated September 18, 2019. Thus, by order of the Tribunal, dated February 15, 2021, the appeal of the assessee before of the Commissioner filed on February 19, 2019 would stand revived, and such restoring of appeal related back to the original date of filing, which was within the "specified date" as per the Act of 2020. Thus, the declaration submitted by the assessee on February 8, 2021 or the revised declaration submitted in forms 1 and 2 on March 31, 2021 could not be considered as "invalid" and liable for "rejection". The rejection of declaration was not valid. Notification No. 21 of 2020, dated December 4, 2020 ([2020] 429 ITR (St.) 1), Notification No. 9 of 2021, dated February 26, 2021 ((2021)432 ITR (St.) 13) up to March 31, 2021. (AY.2011-12)
Boddu Ramesh v Designated Authority (2021)437 ITR 32/ 203 DTR 377 / 321 CTR 464 (Telangana) (HC)

S. 2(1)(a)(ii) : Appellant – Period of limitation for filing an appeal before the High Court was not over – Period of limitation for filing appeal would start from date of receipt of certified copy as per section 260A (2)(a) – Rejection of declaration was held to be not valid – [Income-tax Act,S. 260A(2)(a), Art. 226] 2464
The application of the petitioner was rejected on the ground that appeal was not pending before the appellate Authority as the specified date i.e. on 31st Jan, 2020. On writ the petitioner contended that the certified copy of the order of the Tribunal was not available till October, 2020. Section 260A(2)(a) of the Act provides for 120 days period of limitation from the date of the communication of the order, for preferring the appeal. Even if the certified copy of the order Passed by Tribunal was available on 23rd October, 2019, the petitioner had time to approach High Court till 20 th Feb. 2020. The time limit for filing appeal was not expired. Allowing the petition the Court held that it was easy to grasp that on the specified date on 30 th Jan. 2020, the time for filing

any appeal was still alive. The petition was allowed and the Designated Authority was directed to accept the declaration of the petitioner.
Shwetal Rittulbbhai Vora v. PCIT (2021) 323 CTR 243/ 207 DTR 369 /(2022)441 ITR 669 (Guj) (HC)

2465 **S. 2(1)(a)(ii) : Appellant – Service of order after one year – Rejection of application was set aside. [S. 148, 156, 282, Art. 226]**
Allowing the petition the Court held hat the service of the order ought to have been effected by delivering or transmitting a copy thereof in the manner prescribed under section 282 of the 1961 Act which had not been done until December 15, 2020. The assessment order dated December 22, 2019, had not been served upon the assessee until he obtained a copy on December 15, 2020 and the assessee could not file an appeal against it before the specified date of January 31, 2020 for no fault of his. In such circumstances, the assessee would fall within the term appellant under section 2(1)(a)(ii) of the 2020 Act. Circular No. 9 of 2020, dated April 22, 2020 (2020) 422 ITR (St.) 131. (AY.2012-13)
Ashok G. Jhaveri v. UOI (2021) 438 ITR 652/ (2022) 211 DTR 288/ 325 CTR 302 (Bom) (HC)

2466 **S. 2(1)(j) : Disputed tax – Tax arrear – Amount payable by the assessee could not be increased by withdrawing interest already granted under section 244A of the Act. [S. 2(1)(o), 3, 7, Income -tax, S. 244A, Art. 226]**
The petitioner filed the declaration showing the amount refundable to the petitioner. The Designated Authority reduced the amount of refund adjusting the interest granted under section 244A of the Act. On writ allowing the petition the Court held that the amount payable by the assessee could not be increased by withdrawing interest already granted under section 244A of the Act.
Mantelone Investment Ltd v. CIT (2021) 323 CTR 129/ 207 DTR 79 / (2022) 440 ITR 111 (Bom.) (HC).

2467 **S. 2(b): Appellate forum – Disputed Tax – Pendency of appeal – Declaration cannot be rejected on ground that assessee had offered an amount for taxation – The rejection of the declaration under the 2020 Act was not valid. [S. 2(j)]**
The declaration was rejected on the online portal without giving any opportunity to the assessee observing that there was no disputed tax in the case of the declarant, as the declarant had himself filed a return reflecting the income. On writ allowing the petition the court held that the Department did not dispute that an appeal had been filed by the assessee before the appellate forum. There existed a dispute as referred to under the 2020 Act and the Rules. In such a scenario, the Department's contention that the assessee had offered the income and as such, the tax thereon could not be considered disputed tax, would not align itself with the object and the purpose underlying the bringing in of the 2020 Act. The rejection of the declaration under the 2020 Act was not valid.(AY. 2014-15)
Govindrajulu Naidu v. PCIT (2021) 435 ITR 703/ 201 DTR 241/ 320 CTR 673/ 280 Taxman 392 (Bom)(HC)

S. 2(b): Appellate forum- Tribunal remanded the matter – Pendency of appeal before CIT (A) on specified date – Rejection of order is held to be unsustainable [S.246A, 253, Art. 226] 2468

Allowing the petition the Court held that the preponderance of probability was that the submission of the assessee that the appeal filed before the Commissioner (Appeals) post the remand by the Tribunal was pending adjudication, should be accepted. The Department had not been able to place any material to reach a different conclusion. The claim made by the assessee was backed by an affidavit on oath, and therefore, it could be assumed that what was stated by the assessee was true and correct. Since it had been concluded that the appeal was pending on the specified date, based on the test of preponderance of probability, rejection of forms 1 and 2, filed by the assessee, under the 2020 Act, was unsustainable. The rejection orders were set aside.(AY. 1993-94)

Nalwa Investments Limited v. PCIT (2021) 435 ITR 577 / 282 taxman 221/ 323 CTR 81/ 207 DTR 28 (Delhi) (HC)

S. 3: Amount payable by declarant – Filing of declaration and particulars to be furnished – Appeal of assessee and department appeal – Option is with the declarant to decide which matter to be settled -Clarification issued by the CBDT is binding on the department – The Department was directed to accept the declaration filed by the assessee only in respect of appeal of assessee [S. 4, Art. 226] 2469

The petitioner has filed declaration to settle only the dispute in the appeal filed by the petitioner and not appeal filed by the department. The Designated Authority calculated the tax payable considering the amount in dispute of the appeal of the revenue. On writ the Court held that the option is with the declarant to decide which matter to be settled. Clarification issued by the CBDT is binding on the department. The Department was directed to accept the declaration filed by the assessee only in respect of appeal of assessee (AY. 2006 -07)

Rishab Steel House v. ACIT (2021) 206 DTR 205/ 322 CTR 857 / (2022) 440 ITR 223 (Bom) (HC)

S. 3 : Amount payable by declarant – Disputed tax – Disputed arrears – Interest-Department appeal – Matter remanded to Assessing Officer – Designated Authority demanding 100 per Cent of Disputed tax as payable – Held to be not sustainable. [S. 2(1)(j),2(1)(j) (o), 4,5,6, IT Act, 2(43), 234D, 244A (3), Art. 226] 2470

Court held that the appeal before the Tribunal was not filed by the assessee against the order of Commissioner (Appeals), but by the Department which went to the Tribunal against the order of the Commissioner (Appeals). The court sent the matter back to the Tribunal and what was before the Tribunal was a matter by the Department. Factually as well as in law it was the Department's matter which was revived. The pending appeal being a Departmental appeal the first proviso to section 3 of the 2020 Act would be applicable and only 50 per cent. of the disputed tax could be payable. Followed *Co-Operative Rabobank U. A. v. CIT (IT) (2021) 436 ITR 459 (Bom) (HC)*. Court also observed that from a conjoint reading of sections 2(1)(j)(A), (o)(i), 3, 5 and 6 of the 2020 Act, it was clear that there is no provision in the 2020 Act, which authorises recovery of interest paid earlier by the Department under section 244A of the 1961 Act as disputed

tax. Therefore, there being no statutory mandate for the Designated Authority to recover interest as disputed tax by adding it to the amount of disputed tax in the manner sought to be done the addition of Rs. 7,75,272 to the disputed tax in form 3 was bad in law. The court quashed form 3 issued by the Designated Authority for assessment year 2003-04 and directed the Designated Authority to issue a fresh form 3 to the assessee determining the amount of disputed tax in accordance with the judgment. The Court also observed that while section 6 of the 2020 Act does not permit the Designated Authority to charge interest on tax arrears as defined under the 2020 Act, it may not be correct to say that there is a complete prohibition on recovery, as the restraint to institute proceedings is only in respect of an offence but not for recovery of interest on refund concerned in the present matter. The court observed that it was not necessary to go into whether the Department could have recourse to section 244A(3) of the 1961 Act as contended by the assessee or section 234D of the 1961 Act as contended by the Department, as it was always open for the Department to take steps as per law.(AY.2003-04)

Co-Operative Rabobank U. A. v. CIT (IT) (2021) 437 ITR 639 / 205 DTR 113/ 322 CTR 257/ (2022) 284 Taxman 175 (Bom)(HC)

2471 **S. 3 : Amount payable by declarant – Tribunal remanding the matter to Assessing Officer – High Court remanding the matter to Tribunal – Entitle to lower rate of disputed tax [S. 5, ITAct, S. 253, Art. 226]**

On writ the High Court directed the Tribunal to decide the matter afresh. Meanwhile with the enactment of the Direct Tax Vivad Se Vishwas Act, 2020 on March 17, 2020 ([2020] 422 ITR (St.) 121), the assessee made declaration in form 1 along with an undertaking in form 2 according to the provisions of the 2020 Act. The assessee indicated an amount payable under the 2020 Act as Rs. 7,50,014 which was 50 per cent. of the disputed tax. On January 28, 2021, form 3 was issued by the designated authority indicating the amount payable as Rs. 15,00,029 which was 100 per cent. of the disputed tax. On a writ the Court held that the whole process resurrected under the orders of the High Court was not the proceeding in the Tribunal by the assessee but of the Revenue preferred under section 253 of the Act where the Revenue was the appellant. May be the appeal by the Revenue is revived at the instance of the assessee because of its proceedings in the High Court, but that would by no stretch of imagination make the appeal before the Tribunal an appeal by the assessee under section 253 of the Act. Hence the first proviso to section 3 of the 2020 Act would become applicable and, accordingly, the amount payable by the assessee would be 50 per cent of the amount, viz., 50 per cent of the disputed tax.(AY. 2002-03)

Cooperative Rabobank U. A. v. CIT (IT) (2021) 436 ITR 459 / 203 CTR 281 / 321 CTR 352 / 283 Taxman 22 (Bom.)(HC)

2472 **S. 3 :Amount payable by declarant – Credit for tax paid for correct year – Rectification of application – Rectification directed and credit of tax allowed. [Art. 226]**

Allowing the petition the Court held that, on the materials placed on record, especially by the remitter bank, the court accepted the version of the assessee based on preponderance of probability as nothing was brought on record by the Department to conclude otherwise and the initial onus having been discharged by the assessee.

Accordingly, the Assessing Officer was directed to make suitable rectification in form 3 filed by the assessee under the provisions of the 2020 Act and ensure that the amount in issue, was shown as having been received towards tax qua the assessment year 2003-04.(AY. 2003-04)
GE Capital European Treasury Services Ltd. v. CIT (2021) 436 ITR 495/ 204 DTR 369/ 322 CTR 47/ 282 Taxman 252 (Delhi)(HC)

S.3 : Amount payable by declarant – Search cases – Enhanced rate of tax – Assessment – Income of any other person – No evidence that assessee was involved in alleged bogus transaction – Enhanced rate of tax could not be levied. [S.4,5] 2473
Held, that no search had been initiated in the case of the assessee. There was no allegation that any incriminating material belonging to the assessee was obtained in the course of the search. By order dated January 26, 2021, the designated authority, passed an order in form 3 under section 5(1) of the 2020 Act read with rule 4 of the 2020 Rules, determining the tax payable by the assessee to be Rs. 2,57,67,714 being 125 per cent. of the disputed tax as against Rs. 2,02,69,581 being 100 per cent. of the disputed tax declared by the assessee. The order was not valid. Circular No 21 of 2020 (2020) 429 ITR 1 (St). (AY. 2015-16)
Bhupendra Harilal Mehta v. PCIT (2021)435 ITR 220/ 201 DTR 89/ 320 CTR 483 (Bom) (HC)

S. 4: Filing of declaration and particulars to be furnished – Appeal with drawn as dismissed – Charitable Trust – Collection of capitalisation fee for admission of students [S. 2 (15) 11, 12, 13, 261] 2474
Assessee has availed the benefit of Vivad Se Vishwas Scheme, 2020. The appeal of assessee is dismissed as withdrawn.
Karnataka Chamber of Commerce and Industry v. CIT (2021) 431 ITR 50/ 319 CTR 651 /199 DTR 305/ 278 Taxman 363 (SC)

S. 4 : Filing of declaration and particulars to be furnished – Tax arrears – Interest not excluded – Charge of interests – Rejection of declaration was held to be not valid – Delay was condoned and communication was issued – Rejection of declaration was held to be erroneous. [ITACT, S. 234A, 234B, 234C, Art. 226] 2475
The assessee has filed the declaration for settling the levy of interests levied under section 234A, 234B and 234C of the Act. There was delay in filing of the appeal however the delay was condoned. The declaration was rejected on the ground that the tax arrears does not include interest payable under the 1961 Act On writ the Court held that the assessee was eligible to file the declaration under the 2020 Act for the disputed interest that was charged under section 234A or section 234B or section 234C of the 1961 Act. There is no provision in the 2020 Act to exclude interest charged under sections 234A, 234B and 234C of the 1961 Act. The designated authority was, therefore, not correct in rejecting the declaration of the assessee. The delay was condoned by the CIT (A) hence the rejection order passed by the PCIT was bad in law and he was directed to process the declaration filed by the asseessee under the 2020 Act. (AY.2012-13)
Premlata Mohan Agarwal (Mrs.) v. PCIT (2021) 439 ITR 268/(2022) 284 Taxman 564 (Bom)(HC)

2476 **S. 4: Filing of declaration and particulars to be furnished – Designated Authority – Dispute Resolution – Tax deducted at source – Prepaid taxes – Computer software – Shortcomings in computer programme – Hardships to assessees – Assuring resolution of glitches – Directions issued – The court directed the respondents to file a status report within two weeks. [S. 2(1)(a), Art. 226]**

On writ the Court held that the public at large should be asked to use the new software and programme only after the software has been tested prior in time on a sufficiently large sample base of assessees. The computer software should be flexible enough to incorporate the implementation of the court's orders. For this purpose, if any policy initiative was required, the Director General of Income-tax (Systems) should take up the issue with the Central Board of Direct Taxes. The court suggested to the Director General of Income-tax (Systems) that in the event the ticket could not be resolved by any of the verticals due to constraints or limitations in the system or software, a mechanism should be put in place whereby the issue could be flagged for a policy decision before her. The Director General of Income-tax (Systems) assured the court that her directorate would take steps to improve on both the fronts, namely, co-ordination and feedback and that wherever necessary, improvements in the process shall be carried out and would be able to resolve the glitches in the system and shall revert back with solutions, if possible, within a fortnight. The court directed the respondents to file a status report within two weeks.

Krishan Agarwal v. PCIT (2021)437 ITR 245 (Delhi) (HC)
Qualcomm India Pvt Ltd v. PCIT (2021)437 ITR 245 (Delhi) (HC)
Travelport Global Distribution System Bv v. CIT(IT) (2021)437 ITR 245 (Delhi) (HC)

2477 **S. 4: Filing of declaration and particulars to be furnished – Pendency of appeal – No classification of appeals under the Act – Interpretation of CBDT Circular excluding appeals from orders under Section 143 (1)) of the Act – Portion of circular in conflict with provisions of statute Held to be not valid [S.143(1) Art. 226]**

Allowing the petition the Court held that the answer to question No. 71 in the Circular No. 21 of 2020 (2020) 429 ITR 1 (St) tends to overreach the purpose and intendment underlying the provisions of the Act and the Rules and purports to exclude an otherwise eligible assessee on a ground and reason neither contained in nor reflected from the scheme. The answer to question No.71 in Circular No. 21 of 2020 purporting to exclude appeals against the orders under section 143(1)(a)(i) or (ii) is unsustainable and unacceptable. Held to be not valid.(AY. 2010-11)

Chandrakant Narayan Patkar Charitable Trust v. UOI (2021) 436 ITR 601/ 203 DTR 401/ 321 CTR 404 (Bom)(HC)

2478 **S. 4 : Filing of declaration and particulars to be furnished S. 4 : Filing of declaration and particulars to be furnished – Time limits – Appellant -Disputed tax – Dismissal of appeal by Commissioner (Appeals) as time barred – Tribunal condoning the delay – Declaration was held to be valid- Respondents were directed to accept the revised declaration filed by the petitioner. [S.2 (1)(a)(i), 2(1) (j)(B), ITA, S. 246A, Art. 226]**

Allowing the petition the Court held that even in respect of appeals where time for filing appeal has expired during period 1-4-2019 to 31-1-2020, and an application for condonation of delay is filed before date of issue of Circular No 21/ 2020 dt.4-12 -2020

(2020) 429 ITR 1 (St) and appeal is admitted before filing of declaration, such appeal is to be treated as deemed pending as on 31-1-2020 and benefit is to be extended.
Boddu R amesh v. PCIT (2021) 281 Taxman 587 (Telangana) (HC)

S. 4 : Filing of declaration and particulars to be furnished – Tribunal recalled its order, restored appeal and posted it for fresh hearing- Doctrine of relation back were to be applied- Pendency of appeal of revenue before Appellate Tribunal- Rejection of application is held to be not valid [Art. 226] 2479

Against dismissal of appeal by the Tribunal the miscellaneous application was filed. Tribunal recalled the order and restored revenue's appeal. Assessee filed Forms 1 and 2 with designated authority, under Direct Tax Vivad Se Vishwas Act, 2020. Both Forms 1 and 2 filed by the assessee under 2020 Act were rejected by designated authority. Assessee filed writ petition challenging rejection on basis that revenue's appeal was pending for adjudication on 31-1-2020. Revenue contended that as per FAQ No. 61 to Circular No. 21, dated 4-12-2020 covered MAs pending on 31-1-2020 with respect to appeal dismissed in limine prior to 31-1-2020, hence not eligible. High Court held that Tribunals dismissal order could not be construed as passed in limine since it was based on preliminary assessment of facts, in light of orders of preceding years with no discussion on merits of case. Further fact that Tribunal recalled its order and restored appeal and posted it for fresh hearing, if doctrine of relation back were to be applied, it would have to be said that revenue's appeal was pending on specified date, i.e., 31-1-2020. Therefore, Form Nos. 1 and 2, filed by assessee were to be considered by revenue as per provisions of 2020 Act. (AY. 2011-12)
Bharat Bhushan Jindal v. PCIT (2021) 436 ITR 102/ 201 DTR 251/ 320 CTR 766/ 280 Taxman 327 (Delhi)(HC)

S. 4 : Filing of declaration and particulars to be furnished – Appeal with drawn as dismissed.[S.54B, 260A] 2480

The assessee sought permission to withdraw appeal. Appeal was dismissed as withdrawn. With liberty granted to assessee to restore appeal in event ultimate decision to be taken on declaration filed by assessee under section 4 would turn out not in favour of assessee.
G. Ramkumar v. DY. CIT (2021) 280 Taxman 143 (Mad.)(HC)
Vinay Kumar Maheswari v. ITO (2021) 280 Taxman 32 (Mad.)(HC)

S. 4 : Filing of declaration and particulars to be furnished – Appeal with drawn as dismissed – Liberty is given to restore appeal in event ultimate decision to be taken on declaration filed was in favour of assessee. [S.260A] 2481

Court held that the assessee was to be given liberty to restore appeal in event ultimate decision to be taken on declaration filed by assessee under section 4 was not in favour of assessee.
E. Sankaran v. ITO (2021) 279 Taxman 180 (Mad.)(HC)
PCIT v. P. Kesarimal Jain (Mrs.)(2021) 279 Taxman 182 (Mad.)(HC)
PCIT v. Anil Kumar Jain (2021) 279 Taxman 251 (Mad.)(HC)
Andal Arumugam (Smt.) v. ACIT (2021) 279 Taxman 259 (Mad.) (HC)
CIT v. Bidam Kawar (Smt.) (2021) 279 Taxman 426 (Mad.)(HC)
S. Manoharan v. ACIT (2021) 279 Taxman 226 (Mad.)(HC)

2482 **S. 4: Filing of declaration and particulars to be furnished – Liberty is given to restore the appeal. [S.28(va), 260A]**

Court held observed that assessee had already availed benefit under Vivad se Vishwas Act hence the assessee would be given liberty to restore this appeal in event ultimate decision to be taken on declaration filed by assessee under section 4 of said Act would not be in favour of assessee. (AY 2005-06)

Ashok Giri v. ACIT (2021) 278 Taxman 412 (Mad.) (HC)

Harland Clarke Holding Software India (P) Ltd v. Dy. CIT (2021) 278 Taxman 409 (Mad.) (HC)

Saroj Vinod Kumar Jain v. PCIT (2021) 278 Taxman 375 (Mad.) (HC)

2483 **S. 4 : Filing of declaration and particulars to be furnished – Withdrawal application is allowed – Given liberty to restore this appeal in event ultimate decision to be taken on declaration filed by assessee under section 4 was not in favour of assessee [S. 54F]**

Appeal against assessee was admitted questioning its entitlement to benefits under section 54F. However subsequently, Government of India enacted Direct Tax Vivad Se Vishwas Act, 2020 by way of which assessee had been given an option to put an end to tax disputes which may be pending at different levels. Assessee submitted that it intended to avail benefit of Vivad Se Vishwas Scheme and in this regard was taking steps to file declaration under section 4, in Form No. 1. Allowing the application the Court observed that the assessee was to be permitted to File Form No. 1 and competent authority shall process application/declaration in accordance with Act and pass appropriate orders as expeditiously as possible. Assessee was also given liberty to restore this appeal in event ultimate decision to be taken on declaration filed by assessee under section 4 was not in favour of assessee. (AY. 2012-13)

Chokkalingam Sudhakar v. Dy. CIT (2021) 277 Taxman 312 (Mad.)(HC)

2484 **S. 4: Filing of declaration and particulars to be furnished – Remand of matter – Withdrawal application is allowed – Given liberty to restore this appeal in event ultimate decision to be taken on declaration filed by assessee under section 4 was not in favour of assessee**

An appeal was admitted against assessee, however subsequently, Government of India enacted Direct Tax Vivad Se Vishwas Act, 2020 by way of which assessee had been given an option to put an end to tax disputes which may be pending at different levels. Thus, if a declarant files declaration in respect of tax arrears in accordance with provisions of section 4, then, amount payable by declarant shall be determined in terms of section 3(a-c).Assessee already having filed a declaration as per section 4, department was to process its application at earliest in accordance with said Act. Court also observed that the assessee was also to be given liberty to restore this appeal in event ultimate decision to be taken on declaration filed by assessee under section 4 was not in favour of assessee. (AY. 2014 – 15)

CIT v. J. Ashok Kumar (2021) 277 Taxman 434 (Mad.)(HC)

S. 4: Filing of declaration and particulars to be furnished – Withdrawal application is allowed – Given liberty to restore this appeal in event ultimate decision to be taken on declaration filed by assessee under section 4 was not in favour of assessee. [S.254 (1) 2485
Appeal was admitted against the set aside order of the Tribunal. Assessee filed declaration under section 4. Revenue filed instant appeal against order of Tribunal. Court held that since assessee had already filed declaration under section 4, instant appeal was to be disposed of by directing department to process application at earliest in accordance with Act and communicate decision to assessee at earliest. The assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration filed by the assessee under section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the assessee by filing a Miscellaneous Petition for Restoration, the Registry shall place such petition before the Division Bench for orders. (AY. 2015 – 16)
CIT v. Rikhabchand Vinod Kumar (2021) 277 Taxman 431 (Mad.)(HC)

S. 4: Filing of declaration and particulars to be furnished – Settlement of Disputes – The Designated Authority cannot reject the declaration filed under section 4(1) of the DTVSV Act, when the declarant's case does not fall under section 4(6) and in any of the disqualifications mentioned in section 9 of the said Act. [S. 4(1), 4(6),9, ITAct, S. 264, Art. 226] 2486
Pending the application u/s 264 of the Act, the Petitioner preferred to settle the litigation under DTVSV Act, 2020. On filing the declaration u/s 4(1) of DTVSV Act, 2020, the Petitioner was asked to justify his claim that there is a 'disputed tax' when there is no 'disputed income' as per the relief sought in the applications filed u/s 264 of the Act. The Petitioner responded to the same and submitted that as per section 2 (1)(a)(v), an assessee whose application is pending on the specified date is an 'appellant' for the purpose of DTVSV Act, 2020. The disputed tax in such cases is defined in section 2(1)(j)(F) as the amount of tax payable by the appellant, if such application for revision was not accepted. In the Petitioner's case there are 'tax arrears' as per the definition in section 2(1)(o) of the DTVSV Act, 2020. Thus, the Petitioner determined the amount payable u/s 3(a) of DTVSV Act, 2020. The Designated Authority did not appreciate the said explanation of the Petitioner and rejected the declaration without assigning any reason for the same. On writ the Court held that the Designated Authority cannot reject the declaration filed under section 4(1) of the DTVSV Act, when the declarant's case does not fall under section 4(6) and in any of the disqualifications mentioned in section 9 of the said Act. High Court directed the Designated Authority to act upon the declaration of the Petitioner in Form 1 as per law within a period of two weeks. (AY. 1987-88 to 1998-99)
Sadruddin Tejani v. ITO (2021) 434 ITR 474/ 320 CTR 121 / 200 DTR 353 / (Bom) (HC)

2487 **S. 4: Filing of declaration and particulars to be furnished -Settlement of Disputes – Ex parte order set aside to the Tribunal – Assessee Bound By Undertaking Given To File Application Under Vivad Se Vishwas Scheme [IT Act, S. 253, 254(1)]**

On allowing the Writ petition to recall the Ex parte order passed by the Tribunal on merits the Court held that the assessee was bound by the undertaking given by it that it would apply under the Vivad Se Vishwas Scheme in the event the appeal was restored. The order of the Tribunal dated November 6, 2020 passed in the miscellaneous application and the ex parte order dated July 24, 2018 were set aside. The appeal of the Department before the Tribunal was restored.(AY.2009-10)

Kalra Papers Pvt. Ltd. v. ITO (2021) 430 ITR 291 (Delhi)(HC)

2488 **S.4: Filing of declaration and particulars to be furnished – Disputed tax – Pendency of Appeal before High Court – Permission to withdraw the appeal was granted – Given liberty to restore the appeal in the event the ultimate decision is taken on the declaration is against the assessee. [S.260A]**

Parliament of India enacted the Direct Tax Vivad Se Vishwas Act, 2020 (422 ITR 121 (St) to provide for resolution of disputed tax matters and matters connected therewith or incidental thereto. The Act received the assent of the President on March 17, 2020 and was published in the Gazette of India on March 17, 2020. In terms of the Act, the assessee has been given an option to put to an end to tax disputes which may be pending at different levels either before the first appellate Authority, or before the Tribunal or before the High Court or before the Supreme Court. The assessee has made an application to withdraw the appeal and desires to avail the benefit of the Vivad Se Vishwas Scheme. The Court granted the permission to withdraw the appeal and given liberty to restore the appeal in the event the ultimate decision is taken on the declaration is not in favour of the assessee under section 4 of the said Act. If such prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the assessee by filing miscellaneous petition for restoration, the Registry shall place such petition before Division Bench for orders.

Bhimaas Engineering and Projects Pvt Ltd v. Dy CIT (2021) 430 ITR 519 (Mad) (HC)
Ind Mark Properties P.Ltd v. ACIT (2021) 430 ITR 500 (Mad) (HC)

2489 **S. 5: Time and manner of payment – Declaration accepted and Form 3 issued specifying demand — Revocation of Form 3 without affording adequate opportunity to be heard — Principles of natural justice violated — Revocation of Form 3 is held to be not valid [Art. 226]**

Allowing the petition the Court held that the Department had sought to withdraw the benefit granted to the assessee under the Act entailing adverse consequences without affording the assessee sufficient opportunity of hearing or making submissions. Considering that form 3 had already been issued on the declarations and undertaking filed by the assessee, any action thereon entailing adverse consequences, ought to have afforded the assessee with a fair and reasonable opportunity to explain its case, which the Revenue had ex facie failed to offer. The order of revocation of form 3 was not valid.(AY. 2011-12)

Mahendra Corporation v. PCIT (2021)436 ITR 527/ 321 CTR 415/ 282 Taxman 150/ 203 DTR 425 (Bom) (HC)

S. 9(a)(ii) : Act not to apply in certain cases – Tax arrear – Prosecution has been instituted on or before the date of filing of declaration – Wilful attempt to evade tax -Tax deduction at source – Prosecution – Q. 73 of CBDT Circular 21 of 2020 dated 4/12/2020 (2020) 429 ITR 1 (St) would stand set aside and quashed. [Art. 14, Art. 226] 2490

The petitioner sought a declaration that the clarification given by CBDT to question No.73 vide circular No. 21 of 2020 dated December 04, 2020 is violative of Article 14 of the Constitution of India and thus is arbitrary and ultra vires to the provisions of the Direct Tax Vivad se Vishwas Act, 2020 (VSVA) and the Direct Tax Vivad se Vishwas Rules, 2020.

For the assessment year 2015-16, petitioner's subsidiary (before merger) had filed return of income under section 139(1) of the Act. The balance of self-assessment tax after deduction of TDS was paid by the petitioner after the due date for filing of the return. The department issued notice to the petitioner to show cause as to why prosecution should not be initiated against the petitioner under section 276-C(2) of the Act for alleged wilful attempt to evade tax on account of delayed payment of the balance amount of the self-assessment tax. Subsequently a case was instituted in the 38th Metropolitan Magistrate's Court at Ballard Pier.

The Ld. AO made certain disallowances towards workmen's compensation and other related expenses for the AY 2015-16 vide order under section 143(3) of the Act. The disallowances were upheld by the CIT(A). The Petitioner preferred an appeal before the ITAT and the matter was pending before the ITAT.

The CBDT issued impugned circular No.21/2020 dated 04.12.2020 giving further clarifications in respect of the VSVA. Question No.73 contained therein is when in the case of a tax payer prosecution has been initiated for a particular assessment year, with respect to an issue which is not in appeal, would he be eligible to file declaration for issues which are in appeal for the said assessment.

The Petitioner was prosecuted for delay in payment of self-assessment tax however was treated as ineligible to settle a matter under VSVA for another issue.

Court held that from a reading of the statement of objects and reasons what is deducible is that the purpose for introduction of the Vivad se Vishwas Bill was to reduce tax disputes pertaining to direct taxes.

The exclusion referred to in section 9(a)(ii) of VSVA was in respect of tax arrear relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration. Thus, what section 9(a)(ii) postulates is that the provisions of the Vivad se Vishwas Act would not apply in respect of tax arrear relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration. Therefore, the prosecution must be in respect of tax arrear relating to an assessment year.

The interpretation given by respondent No.2/CBDT in the answer to question No.73 is not in alignment with the legislative intent which has got manifested in the form of section 9(a)(ii) of VSVA.

To hold that an assessee would not be eligible to file a declaration because there is a pending prosecution for the assessment year in question on an issue unrelated to tax arrear would defeat the very purport and object of the Vivad se Vishwas Act. Such an interpretation which abridges the scope of settlement as contemplated under the Vivad se Vishwas Act cannot be accepted.

Therefore, Q. 73 of CBDT Circular 21 of 2020 dated 4/12/2020 would stand set aside and quashed. (AY. 2015-16)
Macrotech Developers Limited v. PCIT (2021) 434 ITR 131 / 200 DTR 121/ 320 CTR 79 / 280 Taxman 37 (Bom.)(HC)

2491 **S. 9(a) (ii) : Act not to apply in certain cases – Tax arrear – Prosecution has been instituted on or before the date of filing of declaration- Wilful attempt to evade tax -Tax deduction at source – Prosecution – Q. 73 of CBDT Circular 21 of 2020 dated 4/12/2020 (2020) 429 ITR 1 (St) would stand set aside and quashed. [Art. 14, Art. 226]**
The petitioner sought a declaration that the clarification given by CBDT to question No.73 vide circular No. 21 of 2020 dated December 04, 2020 is violative of Article 14 of the Constitution of India and thus is arbitrary and ultra vires to the provisions of the Direct Tax Vivad se Vishwas Act, 2020 (VSVA) and the Direct Tax Vivad se Vishwas Rules, 2020.
For the assessment year 2015-16, petitioner's subsidiary (before merger) had filed return of income under section 139(1) of the Act. The balance of self-assessment tax after deduction of TDS was paid by the petitioner after the due date for filing of the return. The department issued notice to the petitioner to show cause as to why prosecution should not be initiated against the petitioner under section 276-C(2) of the Act for alleged wilful attempt to evade tax on account of delayed payment of the balance amount of the self-assessment tax. Subsequently a case was instituted in the 38th Metropolitan Magistrate's Court at Ballard Pier.
The Ld. AO made certain disallowances towards workmen's compensation and other related expenses for the AY 2015-16 vide order under section 143(3) of the Act. The disallowances were upheld by the CIT(A). The Petitioner preferred an appeal before the ITAT and the matter was pending before the ITAT.
The CBDT issued impugned circular No.21/2020 dated 04.12.2020 giving further clarifications in respect of the VSVA. Question No.73 contained therein is when in the case of a tax payer prosecution has been initiated for a particular assessment year, with respect to an issue which is not in appeal, would he be eligible to file declaration for issues which are in appeal for the said assessment.
The Petitioner was prosecuted for delay in payment of self-assessment tax however was treated as ineligible to settle a matter under VSVA for another issue.
Court held that from a reading of the statement of objects and reasons what is deducible is that the purpose for introduction of the Vivad se Vishwas Bill was to reduce tax disputes pertaining to direct taxes.
The exclusion referred to in section 9(a)(ii) of VSVA was in respect of tax arrear relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration. Thus, what section 9(a)(ii) postulates is that the provisions of the Vivad se Vishwas Act would not apply in respect of tax arrear relating to an assessment year in respect of which prosecution has been instituted on or before the date of filing of declaration. Therefore, the prosecution must be in respect of tax arrear relating to an assessment year.
The interpretation given by respondent No.2/CBDT in the answer to question No.73 is not in alignment with the legislative intent which has got manifested in the form of

section 9(a)(ii) of VSVA.

To hold that an assessee would not be eligible to file a declaration because there is a pending prosecution for the assessment year in question on an issue unrelated to tax arrear would defeat the very purport and object of the Vivad se Vishwas Act. Such an interpretation which abridges the scope of settlement as contemplated under the Vivad se Vishwas Act cannot be accepted. Therefore, Q. 73 of CBDT Circular 21 of 2020 dated 4/12/2020 would stand set aside and quashed. (AY. 2015-16)

Macrotech Developers Limited v. PCIT (2021) 434 ITR 131 / 200 DTR 121/ 320 CTR 79 / 280 Taxman 37 (Bom) (HC)

List of important dates and events under the Direct Tax Vivad Se Vishwas Act, 2020

Sr. No.	Date	Particulars
1.	January 31, 2020	Specified date as defined under the VSVA
2.	February 1, 2020	The Union Finance Minister Nirmala Sitharaman during her budget speech on February 1, 2020 (2020) 420 ITR 115 (St) (146) proposed to introduce a scheme at para 126 of the speech.
3.	February 5, 2020	The Bill is formally presented before the Parliament.
4.	February 12, 2020	The Cabinet approved certain amendments with a view to widen the scope of the Bill.
5.	March 4, 2020	Central Board of Direct Taxes (CBDT) vide Circular No. 7 of 2020 (2020) 422 ITR 8 (St) provided clarifications on provisions of VSV in the form of FAQs.
6.	March 4, 2020	VSV Bill, 2020 (2020)421) ITR (St) 21 passed in the Lok Sabha
7.	March 5, 2020	Press Release: CBDT issues FAQs on Direct Tax Vivad se Vishwas Scheme, 2020.
8.	March 13, 2020	VSV Bill, 2020 receives a nod from the Rajya Sabha
9.	March 17, 2020	VSV Bill, 2020 receives a nod from the President
10.	March 17, 2020	VSVA (2020) 422 ITR 121 (St) comes into force
11.	March 18, 2020	VSV Rules, 2020 are notified (2020) 423 ITR 1 (St) Notification of designated Authority (S.120(1), 120(2) (2020) 422 ITR 152 (St)
12.	April 22, 2020	CBDT issues Circular No. 9 of 2020 (2020) 422 ITR 131 (St) thereby Circular 7 of 2020 stands withdrawn.
13.	June 30, 2020	Cut-off date for beneficial payment under the VSVA extended by Finance Ministry in view of COVID-19 as per Press Release dated March 24, 2020. (Previously the date was March 31, 2020)
14.	October 28, 2021	CBDT issues Circular No. 18 of 2020 dated October 28, 2020 428 ITR (St) 104 relaxing the period of 15 days from the date of issuance of Form 3 to make the payment under the Scheme
15.	December 4, 2020	CBDT issues Circular 21 of 2020 (2020) 429 ITR (St) 001with a view to provide further clarifications

Sr. No.	Date	Particulars
16.	December 31, 2020	Cut-off date for declaration & beneficial payment under the VSV Act, 2020 extended by CBDT, vide Notification No. 35 of 2020 dated June 24, 2020 (2020) 425 ITR (St) 26
17.	March 31, 2021	Cut-off date for beneficial payment under the VSV Act, 2020 extended by CBDT, vide Circular No. 18 of 2020 dated October 28, 2020 (2020) 428 ITR (St) 104.
18.	January 31, 2021	Cut-off date for declaration under the VSV Act, 2020 extended by CBDT, vide Press Release dated December 30, 2020 and Notification No. 92 of 2020 dated December 31, 2020 (2021) 430 ITR (St) 30.
19.	February 01, 2021	Finance Bill, 2021 (2021) (430) ITR (St) 74 wherein certain provisions of VSVA are proposed to amended, to exclude any Writ/SLP against the Order of the Settlement Commission. Clarification on the amendments is contained in the Memorandum Explaining the provisions in the Finance Bill, 2021 (2021) 430 ITR (St) 214.
20.	February 28, 2021	Cut-off date for declaration under the VSV Act, 2020 extended by CBDT, vide Notification No. 04 of 2021 dated January 31, 2021 431 ITR (St) 18
21.	March 04, 2021	CBDT Circular No. 3 of 2021 dated March 04, 2021, (2021) 432 ITR (St) 10 wherein Ld. Assessing Officers are directed to pass orders giving consequential reliefs.
22.	March 23, 2021	CBDT Circular No. 4 of 2021 dated March 23, 2021, (2021) 432 ITR (St) 50 wherein, the term "search cases" arising from FAQ 70 contained in Circular No. 21 of 2020, is clarified.
23.	March 31, 2021	Cut-off date for declaration under the VSV Act, 2020 extended by CBDT, vide Notification No. 09 of 2021 dated February 26, 2021 (2021) 432 ITR (St) 13.
24.	April 30, 2021	Last date for beneficial payment under the VSV Act, 2020 extended by CBDT, vide Notification No. 09 of 2021 dated February 26, 2021
25.	June 30, 2021	Last date for beneficial payment under the VSV Act, 2020 extended by CBDT, vide Notification No.39 of 2021 dated April 27, 2021
26.	August 31, 2021	Last date for beneficial payment under the VSV Act, 2020 extended by CBDT, vide Notification No.75 of 2021 dated June 25, 2021 (2021) 435 ITR (St) 25

Sr. No.	Date	Particulars
27.	September 30, 2021	Last date for beneficial payment under the VSV Act, 2020 extended by CBDT, vide Notification No. 94 of 2021 dated August 31, 2021 (2021) 437 ITR (St) 13
28.	October 31, 2021	Last date for beneficial payment under the VSV Act, 2020 extended by CBDT, vide Notification No.75 of 2021 dated June 25, 2021(2021) 435 ITR (St) 25

Income Declaration Scheme, 2016 – Finance Act, 2016, S.181 (2016) 381 ITR 9 (st.) 35, (2016) 381 ITR 169 (St) 236

S.191 : Tax paid under the Scheme shall not be refunded – Failure to pay full amount of tax according to declaration- Declaration would be non est – Part payment cannot be forfeited – Amount must be returned to the assessee [S.183(1), 187(3), 181, Art. 265] 2492
Allowing the petition the Court held that when the scheme itself contemplates that a declaration without payment of tax is void and non est and the declaration filed by the assessee would not be acted upon (because section 187(3) says the declaration filed shall be deemed never to have been made under the Scheme), the question of retention of the tax paid under such declaration will not arise. The provisions of section 191 cannot have any application to a situation where the tax is paid but the entire amount of tax is not paid. The scheme does not provide for the Revenue to retain the tax paid in respect of a declaration which is void and non est. Article 265 of the Constitution of India, provides that no tax shall be levied or collected except by authority of law. This would mean there must be a law, the law must authorise the tax and the tax must be levied and collected according to the law. Court held that the assessee was entitled to an adjustment by giving credit to the amount paid under the Income Declaration Scheme. (AY. 2016-17)
Pinnacle Vastunirman Pvt. Ltd. v. UOI (2021) 438 ITR 27/ 206 DTR 227 / 323 CTR 159 (Bom) (HC)

S.191 : Tax paid under the Scheme shall not be refunded – Failure to pay full amount of tax according to declaration – Declaration would be non est – Part payment cannot be forfeited – Amount must be returned to the assessee [S.183(1), 187(3), 181, Art. 265] 2493
Allowing the petition the Court held that when the scheme itself contemplates that a declaration without payment of tax is void and non est and the declaration filed by the assessee would not be acted upon (because section 187(3) says the declaration filed shall be deemed never to have been made under the Scheme), the question of retention of the tax paid under such declaration will not arise. The provisions of section 191 cannot have any application to a situation where the tax is paid but the entire amount of tax is not paid. The scheme does not provide for the Revenue to retain the tax paid in respect of a declaration which is void and non est. Article 265 of the Constitution of India, provides that no tax shall be levied or collected except by authority of law. This would mean there must be a law, the law must authorise the tax and the tax must be levied and collected according to the law. Court held that the assessee was entitled to an adjustment by giving credit to the amount paid under the Income Declaration Scheme. (AY. 2016-17)
Pinnacle Vastunirman Pvt. Ltd. v. UOI (2021) 438 ITR 27/ 206 DTR 227 / 323 CTR 159 (Bom)(HC)

2494 **S.191: Tax paid under the Scheme shall not be refunded – Paid two instalments – Default in paying final instalment – Not entitle to get the refund already pad. [S. 183, 185 Art. 226]**

The assessee made a declaration under the Income Declaration Scheme, 2016 and paid two instalments, however he applied for extension of time for payment of the last instalment of the tax and surcharge and penalty under the Scheme before the Commissioner as well as before the Central Board of Direct Taxes. The Commissioner conveyed to the assessee that he had no authority to grant any such extension of time. The Central Board of Direct Taxes had not yet replied to the assessee. The assessee filed writ petition dismissing the petition, the Court held that the instant case was not one of illegal recovery of tax by the Revenue, or in other words, any tax paid by the assessee under mistake of law. This was a case of default on the part of the assessee, and the consequences of the default were themselves provided under the Scheme in the form of section 191. Writ petition was dismissed.

Yogesh Roshanlal Gupta v. CBDT (2021) 432 ITR 91 /199 DTR 81/ 319 CTR 389 / 280 Taxman 278 (Guj.)(HC)

Editorial: On appeal, the honourable Supreme Court directed that the assessee be given benefit of the amounts deposited towards first two instalments while reckoning the tax liability of the assessee after revised assessment, Yogesh Roshanlal Gupta v.CBDT (2022) 442 ITR 31 (SC)

Kar Vivad Samadhan Scheme, 1998 — Finance (No. 2) Act, 1998, Section 89

S.89 of Finance (No.2) Act 1998 – KVSS – Tax Arrears – Adjustment of refund – Refund amount first to be adjusted towards arrear of tax and not penalty – Direction issued to grant certificate. [S. 87 (e), 87) (f),90(1),96, ITACT, 140A, Art. 226] 2495

The assessing authority adjusted the amount towards arrears for the assessment year 1986-87. However, the order was silent as to whether the amount was adjusted towards tax arrears or penalty. On a writ allowing the petition the Court held that if Circular F. No. 149/145/98-TPL dated September 3, 1998 ([1998] 233 ITR (St.) 50) issued by the Central Board of Direct Taxes had been properly implemented, there was no reason for the assessing authorities to adjust the tax refund amount first to the penalty rather than the arrears of tax. The authorities were directed to adjust the tax refundable to the assessee for the year 1996-97 to the tax arrears instead of penalty and accordingly compute the amount payable by the assessee under section 90(1) of the 1998 Act and grant certificate. (AY. 1996-97)

Best India Tobacco Suppliers Pvt. Ltd. v. CIT (2021) 438 ITR 234 / 204 DTR 187 / 321 CTR 735 (AP) (HC)

Securities Transaction Tax-
Finance (No. 2) Act, 2004

2496 **S. 98 of Finance Act 2004 : Securities Transaction tax – Short collection of tax – Interest and penalty – Purchase or sold through a broker registered with the stock exchange – Stock exchange was not liable to any interest and penalty. [S. 15, 99, 104, Securities Transaction Tax Rules, 2004, R. 3]**

The Tribunal held that the STT is collected through a member broker under a particular client code. The client code is provided by the brokers and not by the stock exchange. Responsibility of the stock exchange is to ensure firstly that STT is collected as per s. 98, secondly, it has been determined in accordance with s. 99 read with r. 3 and Explanation thereto, and lastly, such STT collected from the purchaser or seller is credited to the Central Government as provided under s.100. Tribunal further held that the stock exchange can only ensure determination of the value of taxable securities transaction purchased and provided sold through a client code at the prescribed rate. However, there is no mechanism provided enabling the stock exchange to collect STT beyond the client code. If a broker had not taken any separate client code then the stock exchange cannot be held responsible. Such failure could not be ascribed to the stock exchange because the client codes were not provided by the stock exchange but by the member broker. Dismissing the appeal of the revenue the Court held that under the statute Stock Exchange was not liable for any alleged short deduction of STT and therefore, no fault can be prescribed to the Stock Exchange, so has to hold it to be in default for short collection of STT.(FY. 2005-06)

PCIT v. National Stock Exchange (2021) 323 CTR 1025 (Bom.) (HC)

Wealth-Tax Act, 1957

S. 2(ea) : Asset – Lack of evidence to support the land being vacant as of the cut-off date and evidence to the contrary, issue set aside to the file of AO for verification, whether the particular asset can be brought to tax under the Wealth Tax Act [S. 16(3)] 2497

The Assessee held immovable asset, the value of which during the relevant AY 2008-09 was more than Rs. 15 lakhs. The Assessee had not filed return of wealth for the AY 2008-09. Therefore, the assessment has been reopened under s. 16(3) of the WT Act, 1957 ('the Act').

The AO noticed that the Assessee is the owner of an asset on which a residential house originally existed. In the relevant AY, the Assessee entered into a joint development agreement ('JDA') and as a consequence, the building was demolished, and the asset became a vacant land as on 31st March 2008 and 31st March 2009.

The Assessee contended that there was a building on the land as on the valuation date i.e., on 31st March 2008 and 31st March 2009 and only after the JDA, the building was demolished between April 2009 to March 2010. Therefore, there was a building on the land as on 31st March 2008 and 31st March 2009 and hence, land cannot be included in the definition of asset as defined under s. 2(ea) of the Act. Upon further appeal to the CWT(A), the CWT(A)upheld the findings of the AO.

The Hon'ble Tribunal after much scrutiny observed that, for the impugned AY 2007-08 and 2008-09, the land was not a vacant urban land and the existing building was demolished, is not supported by any evidence. It restored the matter to the AO for his verification on whether building is used for own residential purpose or business purpose or the same has been let out during the relevant previous year. Further also held that simply on the ground that there was a building in the impugned land, the same cannot be excluded from the ambit of wealth-tax, & that the AO needs to verify above facts before concluding whether a particular asset comes under the definition of asset as defined under S. 2(ea) of the Act or not. (AY. 08-09; 09-10)

Giridhari Govindas (HUF) v. ACIT (2021) 209 TTJ 953 (Chennai)(Trib.)

S. 2(ea) : Asset- Lack of evidence to support the land being vacant as of the cut-off date and evidence to the contrary, issue set aside to the file of AO for verification, whether the particular asset can be brought to tax under the Wealth Tax Act [S. 16(3)] 2498

The Assessee held immovable asset, the value of which during the relevant AY 2008-09 was more than Rs. 15 lakhs. The Assessee had not filed return of wealth for the AY 2008-09. Therefore, the assessment has been reopened under s. 16(3) of the WT Act, 1957 ('the Act').

The AO noticed that the Assessee is the owner of an asset on which a residential house originally existed. In the relevant AY, the Assessee entered into a joint development agreement ('JDA') and as a consequence, the building was demolished, and the asset became a vacant land as on 31st March 2008 and 31st March 2009.

The Assessee contended that there was a building on the land as on the valuation date i.e., on 31st March 2008 and 31st March 2009 and only after the JDA, the building was demolished between April 2009 to March 2010. Therefore, there was a building on the land as on 31st March 2008 and 31st March 2009 and hence, land cannot be included

in the definition of asset as defined under s. 2(ea) of the Act. Upon further appeal to the CWT(A), the CWT(A)upheld the findings of the AO.
The Hon'ble Tribunal after much scrutiny observed that, for the impugned AY 2007-08 and 2008-09, the land was not a vacant urban land and the existing building was demolished, is not supported by any evidence. It restored the matter to the AO for his verification on whether building is used for own residential purpose or business purpose or the same has been let out during the relevant previous year. Further also held that simply on the ground that there was a building in the impugned land, the same cannot be excluded from the ambit of wealth-tax, & that the AO needs to verify above facts before concluding whether a particular asset comes under the definition of asset as defined under S. 2(ea) of the Act or not. (AY. 08-09; 09-10)
Giridhari Govindas (HUF) v. ACIT (2021) 209 TTJ 953 (Chennai)(Trib.)

2499 **S. 2(ea) : Assets – Stock in trade – Entries in books of account not relevant to decide nature of asset – Lands held as stock in trade – Not liable to be assessed as assets liable to be wealth-tax Act. [S. 17]**
Held that entries in the books of account are not relevant criteria to decide the nature of asset or income or expenses. What is relevant is the nature of assets and intention of the assessee to hold such assets in the business of the assessee. From the intent and conduct of the assessee, it was clear that those lands were held in the business of the assessee as stock-in-trade and further, profits derived from sale of the land were rightly assessed under the head income from business or profession. The Assessing Officer having accepted the income declared from sale of land under the head profits and gains from business erred in considering those lands as investments under the definition of assets under section 2(ea) of the Act.(AY. 2008-09, 2009-10)
D. Jayaraman v. ACWT (2021) 90 ITR 81 (SN)(Chennai)(Trib.)

2500 **S. 2(ea): Asset – Land under acquisition by Government – Not includible**
Held that following the order of the Tribunal in the case of the assessee's co-owner, where the issue with respect to chargeability of above assets to wealth-tax had been decided, the two plots under acquisition and the land acquired by the Government of India could not have been included in the net wealth of the assessee.(AY. 2009-10, 2013-14)
Yudhishthira Kapur v. ACWT (2021) 90 ITR 90 (SN)(Delhi)(Trib.)

2501 **S. 2(e)(a): Assets – Vacant Urban land – Not vacant land – Existing building was demolished – Semi finished building – Matter remanded for re verification.**
Tribunal held that the wealth Tax Officer has not gone in to the aspect of whether the building is used for own residential purposes or business purposes or same has been let out during the relevant previous year, unless the facts are examined simply on the ground that there was a building in the land the same cannot be excluded from the ambit of wealth tax. Matter remanded to the Assessing Officer. (AY. 2008-09,2009-10)
Giridhari Govindas (HUF) v. ACIT (Wealth Tax) (2021) 209 TTJ 953 (Chennai)(Trib.)
Govindas Purusothamadass v. ACIT (Wealth Tax) (2021) 198 DTR 185(Chennai)(Trib.)

S. 5(i): Exemption – Asset – Urban land – Property held under trust – Land leased to educational institution – Building constructed – Lands cannot be held to be vacant lands – Not liable to wealth-tax. [S. 2(ea)(v), IT Act, S. 11, 13(1)(c)] 2502

Tribunal held that the assessee leased the land to educational institution and building is constructed thereon, the lands cannot be held to be vacant lands,therefore not liable to wealth -tax. (AY. 2011-12, 2012-13, 2013-14, 2014-15, 2015-16)

S. Peter v. ACIT (2021) 210 TTJ 1006 / 200 DTR 100 (Chennai)(Trib.)

S. 7 : Value of assets – Assets seized – Possession of revenue Authorities – Value of assets cannot be included in net wealth – The court directed that the Department shall forthwith release 85,617 grams of gold, jewellery, cash and other valuable articles as per the panchanama and hand it over to the petitioners being the legal heirs of the assessee [S.7(1), ITAct, S.132] 2503

On reference the Court held that the seizure of the gold had taken place on December 7, 1965, and from that date onwards the gold was in the custody of the Collector of Central Excise, Jaipur. The gold was not smuggled nor was it foreign marked gold. The gold was indigenous which the original assessee had acquired over a period of years and had kept with him for future security. The original assessee paid the penalty of Rs. 25,000 as directed under rule 126L(16) of the Gold Control Rules, 1962 (corresponding to section 74 of the Gold Control Act, 1968) for seeking return, release and investment of the seized gold in the Gold Bond Scheme. However, the gold was not released, nor invested till date thereby rendering the valuable right of the assessee completely infructuous. The original assessee would not be liable to wealth-tax assessment on the value of the seized gold if the assessments were made on any date after October 20, 1965.The court directed that the Department shall forthwith release 85,617 grams of gold, jewellery, cash and other valuable articles as per the panchanama and hand it over to the petitioners being the legal heirs of the assessee.(AY. 1961-62 to 1975-76, 1979-80 to 1984-85, 1986-87 to 1993-94, 1994-95 and 1995-96, 1996-97 to 1998-99)

Nirajkumar N. Rungta v. CWT (2021)435 ITR 179/ 201 DTR 289/ 320 CTR 289 (Bom) (HC)

S. 7 : Value of assets – Assets seized – Possession of revenue Authorities – Value of assets cannot be included in net wealth – The court directed that the Department shall forthwith release 85,617 grams of gold, jewellery, cash and other valuable articles as per the panchanama and hand it over to the petitioners being the legal heirs of the assessee [S.7(1), IT Act, S.132] 2504

On reference the Court held that the seizure of the gold had taken place on December 7, 1965, and from that date onwards the gold was in the custody of the Collector of Central Excise, Jaipur. The gold was not smuggled nor was it foreign marked gold. The gold was indigenous which the original assessee had acquired over a period of years and had kept with him for future security. The original assessee paid the penalty of Rs. 25,000 as directed under rule 126L(16) of the Gold Control Rules, 1962 (corresponding to section 74 of the Gold Control Act, 1968) for seeking return, release and investment of the seized gold in the Gold Bond Scheme. However, the gold was not released, nor invested till date thereby rendering the valuable right of the assessee completely infructuous. The original assessee would not be liable to wealth-tax assessment on the

value of the seized gold if the assessments were made on any date after October 20, 1965.The court directed that the Department shall forthwith release 85,617 grams of gold, jewellery, cash and other valuable articles as per the panchanama and hand it over to the petitioners being the legal heirs of the assessee.(AY. 1961-62 to 1975-76, 1979-80 to 1984-85, 1986-87 to 1993-94, 1994-95 and 1995-96, 1996-97 to 1998-99)
Nirajkumar N. Rungta v. CWT (2021)435 ITR 179/ 201 DTR 289/ 320 CTR 289 (Bom) (HC)

2505 **S. 7: Value of assets – Asset sold 28 days after valuation date – Value determined at guideline value on date of sale is not proper – Valuation to be at market value on valuation date – Dispute as to extent of landholding – Matter remanded. [S. 7(1),**
Held that the guideline value fixed by the stamp duty authorities was not relevant to decide the value of any asset, other than cash, as on the valuation date. The Assessing Officer has to adopt market value as on valuation date Dispute as to extent of land holding, matter remanded to the file of the Assessing Officer to ascertain the facts. (AY. 2011-12)
Jagannathan Sailaja Chitta (Mrs.) v. WTO (IT) (2021) 91 ITR 17 (SN)(Chennai) (Trib.)

2506 **S.17 : Wealth escaping assessment – Reassessment – Provisions in pari materia with provisions of Income-Tax Act, 1961 – Law laid down by Supreme Court in Income-tax Matter is applicable to wealth tax proceedings – Matter remanded to pass speaking order. [S.17(1), 18(1)(c), IT Act, S.147, Art. 226]**
Allowing the petition the Court held that the provisions of section 147 of the Income-tax Act, 1961 and section 17 of the Wealth-tax Act, 1957 as far as the reopening of the assessments are concerned are pari materia. Therefore decision of the Supreme Court in *G. K. N. DRIVESHAFTS (INDIA) LTD. v. ITO (2003) 259 ITR 19 (SC)* was to be applied even for re-opening of assessment under the 1957 Act. The order passed under section 18(1)(c) of the 1957 Act was set aside and the matter was remitted to the ITO to pass a speaking order on merits accordingly. Matter remanded.. (AY. 2008-09, to 2010-11)
Bharani Hospitals Pvt. Ltd. v. ITO (2021)435 ITR 107/ 204 DTR 397/ 322 CTR 719 (Mad) (HC)

2507 **S.17: Wealth escaping assessment – Non-supply of reasons – Off-shore irrevocable discretionary trusts – Reassessment proceedings null and void owing to non-supply to the assessee of the reasons recorded – Off shore trust assets including immovable property in Singapore and London were not vested in the assessee and such assets held through offshore corporate vehicles are exigible only in the hands of such vehicles and not in the hands of the assessee- Deposits in offshore banks do not constitute an asset and hence are excluded from chargeability to tax under Wealth-tax Act- ITSC commission order is not binding on wealth tax proceedings.[S. 2(ea), 2(m)]**
Tribunal held that the assessee is not liable for wealth-tax on funds lying in offshore bank accounts, financial interests in various companies, and properties held abroad.
The Hon'ble Tribunal also observed that that the ownership in foreign entities (in which assessee was alleged to have beneficial interest), were held by off-shore irrevocable discretionary trusts of which the assessee was one of the beneficiaries. Per the Tribunal, offshore assets held by the offshore irrevocable discretionary trust of which the assessee

is one of the beneficiary, who happens to be bestowed with right to appoint /re-appoint the trustees, does not inherit the right or control over the trust or the entities controlled by the trust. Tribunal also held that 'assets' u/s 2(ea) of the Wealth-tax Act, 1957, does not cover offshore assets of an offshore trust and accordingly the assessee is not liable for wealth-tax. Tribunal rejected the Department's reliance on order of the Hon'ble ITSC (involving the issue of beneficial ownership over properties in Singapore and London and other off-shore assets) in the assessee's own case and clarified that the issue dealt by ITSC relates to income-tax and not wealth-tax. On the binding nature of ITSC's order, Hon'ble Tribunal held that it is up to the discretion of the Tribunal to consider the findings of ITSC depending upon the facts of the case. (AY. 2007-08 to 2013-14)
Yashovardhan Birla v. DCIT, (2021) 213 TTJ 761 / 206 DTR 137 (Mum) (Trib.)

Interpretation of Taxing statues, precedents.

2508 **Interpretation of Taxing statutes – Legislative powers – Challenges Discrimination or arbitrariness can be substantial or procedural – Such policy can be struck down [art. 14, S. 254(2A)]**

While interpreting the third proviso of section 254(2A) of the Act, wherein the section provided automatic vacation of stay on completion of 365 days, the Court held that challenges to tax statutes made under article 14 of the Constitution of India can be on grounds relatable to discrimination as well as grounds relating to manifest arbitrariness. These grounds may be procedural or substantive in nature. The expression permissible policy of taxation would refer to a policy that is constitutionally permissible. If the policy is itself arbitrary and discriminatory, such policy will have to be struck down. Referred *Suraj Mall Mohta and Co v. A.V Visvanathan Sastri (1955) 1 SCR 448, Kunnathat Thatehunni Moorrpi Nair v. State of Kerala (1961) 3 SCR 77 (5 -Judge decision), UOI v. A.Sanyasi Rao (1996) 3 SCC 465, Shyayara Bano v.UOI (2017) 9 SCC 1 (5 -Judge decision) (5 -Judge decision), State of M.P v. Bhopal Sugar Industries Ltd (1964) 52 ITR 443 (SC) Dy. CIT v. Pepsi Foods Ltd. (2021)433 ITR 295 / 200 DTR 185/ 320 CTR 1 (SC)*

2509 **Interpretation of taxing statutes – Retrospective provision for the removal of doubts – Cannot be presumed to be retrospective if it alters or changes law as it stood – Ambiguity in language to be resolved in favour of assessee.**

A retrospective provision in a Taxing Act which is for the removal of doubts cannot be presumed to be retrospective, even where such language is used, if it alters or changes the law as it earlier stood. This being the case, Explanation 3C is clarificatory. It explains section 43B(d) as it originally stood and does not purport to add a new condition retrospectively. Relied on *Sedco Forex International Drill. Inc. v. CIT (2005) 279 ITR 310 (SC)*

Any ambiguity in the language of Explanation 3C to section 43B shall be resolved in favour of the assessee. Relied on *Cape Brandy Syndicate v. IRC [1921] 1 KB 64* and *Vodafone International Holdings BV v. UOI (2012) 341 ITR 1 (SC)*.

M. M. Aqua Technologies Ltd. v. CIT (2021) 436 ITR 582/ 204 DTR 337/ 321 CTR 753/ 282 Taxman 281 (SC)

2510 **Interpretation of taxing statutes – Royalties – Double Taxation Avoidance agreements – Liberal construction – DTAA-India-Singapore [S. 9(1) (vi), 195, Art. 3, 12 (3), 30]**

Court observed that while interpreting double taxation avoidance agreements with other States have to be interpreted liberally with a view to implement the true intention of parties. Mere position taken by India with respect to OECD commentary do not alter the DTAA's provisions, unless the latter are actually amended by way of bilateral re-negotiation. The OCED Commentary on article 12 of the OECD Model Tax Convention in the DTAAs will continue to have persuasive value as to interpretation of the term "royalties " contained therein.

Engineering Analysis Centre Of Excellence P. Ltd. v. CIT (2021) 432 ITR 471/199 DTR 361/ 319 CTR 497 (SC)

Citrix Systems Asia Pacific Pte. Ltd v. DIT CIT (2021) 432 ITR 471/199 DTR 361/ 319 CTR 497 / 125 taxmann.com 42 (SC)

DIT v. Ericsson A.B. (2021) 432 ITR 471/199 DTR 361/ 319 CTR 497 / 125 taxmann.com 42 (SC)

Interpretation of taxing statutes – Proviso – Ratio decidendi. 2511

Proviso cannot be used to cut down language of main enactment. Ratio decidendi alone binding and not what may seem logically to follow from it. [S. 2(19), 80P(2)(a), 80P(4)]

Mavilayi Service Co-Operative Bank Ltd. v. CIT (2021) 431 ITR 1/ 318 CTR 609 / 197 DTR 361 (SC)

Interpretation of taxing statutes – Precedent – Commissioner (Appeals) and Tribunal must follow decision of High Courts. 2512

If the judgments and orders of the High Courts are applicable to the facts and circumstances of a case pending before the Commissioner (Appeals), he must follow them without any deviation. Similarly the Tribunal must also follow the judgments and orders of the High Courts.

Anjuman – E – Himayat – E – Islam v. ADIT (2021) 436 ITR 139 / 201 DTR 337 (Mad) (HC)

Allied laws.

Advocates Act, 1961

2513 **S. 34 : Power of High Courts to make rules – Punishment of Advocates for misconduct – Independent Bar and Independent Bench form the backbone of the democracy – The Legal profession cannot be equated with any other traditional professions -It is not commercial in nature and is noble one considering the nature of duties to be performed and its impact on society – The role of a lawyer is indispensable in the system of delivery of justice – He is bound by the professional ethics and to maintain the high standard [S. 9, 33, 34,35, 37, Constitution of India, Art. 32, 226, Madras High Court Rules, 1970 Rules, 14A, 14B, 14C, 14D]**

The petition was filed under Article 32 of the Constitution of India, questioning the vires of Rules 14A, 14B and 14D of the Madras High Court Rues, 1970 made by the Madras High Court under Section 34(1) of the Advocates Act, 1961. Allowing the petition and quashing the impugned provisions, the Supreme Court held that, Rules framed by the High Court appear to be encroaching on the disciplinary power of the Bar Council. The summary of the ratio is as under ;

-The confidence and reverence and positive thinking is the only way. It is pious hope that Bar Council would improve upon the function of its Disciplinary Committees so as to make the system more accountable, publish performance audit on the disciplinary side of various Bar Councils.

-Independent Bar and Independent Bench form the backbone of the democracy. In order to preserve the very independence, the observance of the constitutional values, mutual reverence and self- respect are absolutely necessary. Bar and the Bench are complementary to each other. Without active cooperation of the Bar and the Bench, it is not possible to preserve the rule of law and its dignity. Equal and even -handed justice is the hallmark of the judicial system. The protection of basic structure of the Constitutional rights is possible by the firmness of the Bar and the Bench and proper discharge of their duties and responsibilities. We cannot live in a jungle raj.

-The legal profession cannot be equated with any other traditional professions. It is not commercial in nature and is a noble one considering the nature and duties to be performed and its impact on the society.

- The role of a lawyer indispensable in the system of delivery of justice. He is bound by the professional ethics and to maintain the high standard. His duty is to the court, to his own client, to the opposite side, and to maintain the respect of the opposite party counsel also.

- The high values of the noble profession have to be protected by all concerned at all costs and in all the circumstances cannot be forgotten even by the youngsters in the fight of survival in formative years. The nobility of the legal profession requires an advocate to remember that he is not over attached to any case as advocate does not win or lose a case, real recipient of justice is behind the curtain who is at the receiving end. As a matter of fact, we do not give to the litigant anything except recognising his rights. A litigant has a right to be impartially advised by a lawyer. Advocates are not supposed to be money guzzlers or ambulance chasers. A lawyer should not expect any favour from

the Judge and should not involve by any means in influencing the fair decision -making process. It is the duty to master the facts and the law and submit the same preciously in the court, his duty is not to waste the courts time. (WPNo 612 of 2016 dt 28-1-2019)
R. Muthukrishnan v. Registrar General High Court of Judicature at Madras (2019) 16 SCC 407

S. 35 : Punishment for Advocates for misconduct – Advocate advising his client that appeal pending before Supreme Court will not succeed at all – is a professional Misconduct – Needs to be proceeded with. 2514

Advocate appearing in matter or instructing litigant who is party before Supreme Court of India would not be in apposition to prejudge outcome of proceedings or speculate about outcome thereof. Prima face, this is bordering on professional misconduct and needs to be proceeded with. Suo Motu initiated the proceedings and directed the respondent to file an affidavit and disclose the name of the Advocate from India who had advised the respondent
Madhvendra L. Bhatnagar v. Bhavna Lall (2021) 2 SCC 775

Appellate Tribunal and other Authorities (Qualifications Experience and other Conditions of Service of Members) Rules, 2020 – Constitutional validity – Directions are issued. [Art. 323-A] 2515

The main issues raised in the writ petition are that the 2020 Rules are unconstitutional as :

(a) The Search -cum Selection Committees provided for in the 2020 Rules did not confirm the principles of judicial dominance.
(b) Appointment of persons without judicial experience to the posts of judicial Members/ Presiding Officer/ Chairpersons is in contravention to the earlier judgements of this Court.
(c) The term of office of the Members for four years is contrary to the earlier decisions of this Court.
(d) Advocates are not being made eligible for appointment to most of the tribunals
(e) Administrative control of the executive in matters relating to appointment and conditions of service of the principles of separation of powers and independence of judiciary and demonstrates non-application of mind.

Court directed to constitute a National Tribunal Commission (NTC) which shall act as independent body to supervise the appointment and functioning of Tribunals to conduct disciplinary proceedings against members of tribunals and to take care of administrative and infrastructural needs of tribunals in an appropriate manner.
Judicial dominance in the composition of Search and Selection Committees held is required to ensure independence of Tribunals.
Chair person of the selection committee shall be by retired judge of the Supreme Court or a retired judge of a High Court nominated by the Chief Justice of India.
Advocates with an experience of at least 10 years eligible for appointment as judicial members.
Appointments shall be made with in three months from the dare of present judgement and shall not be subject matter of challenge on the ground that they are not in accord with the judgement herein etc. (WP No 804 of 2020 dt 27-11-2020)
Madras Bar Association v. UOI (2021) 7 SCC 369

2516 **Appellate Tribunal and other Authorities (Qualifications Experience and other Conditions of Service of Members) Rules, 2020 – Constitutional validity – Directions modified [Art. 323-A]**

As per the modification suggested by the Attorney General modification was made as regards re appointment, composition and terms etc (Misc. A No. 111 of 2021 in WP no 804 of 2020 dt 25-1-2021

Madras Bar Association v. UOI (2021) 7 SCC 409

Chartered Accountants Act, 1949

2517 **S. 22 : Professional or other misconduct – Merger – High court appointed the Auditor and report was accepted – Rejection of complaint of the petitioner against the chartered Accountant by the Disciplinary Committee of ICAI is held to be justified. [Art. 226]**

High Court of Karnataka appointed Chartered Accountant (respondent No. 3) for purposes of verification of books and papers of three transferor companies in connection of a merger scheme and to submit his report. High Court accepted report and had sanctioned merger- Petitioner filed a complaint against Respondent No. 3 alleging that Respondent No. 3 had committed professional misconduct and submitted incorrect reports after scrutiny of books and papers of certain companies- ICAI, however rejected said complaint. Dismissing the petition the Court held that there was no infirmity in view taken by Disciplinary Committee of Institute of Chartered Accountants that as Respondent No. 3 was appointed by Karnataka High Court and reports were submitted to the Karnataka High Court, it was only High Court of Karnataka, which could take a view on reports submitted by Respondent No. 3.

Wholesale Trading Services (India) (P.) Ltd. v. ICAI (2021) 280 Taxman 299 (Delhi)(HC)

Constitution of India

2518 **Art.32 : Remedies for enforcement of rights conferred by this part – COVID -19 -Waiver of interest – Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters. In assessing the propriety of the decision of the Government the court cannot interfere even if a second view is possible from that of the government. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.**

The present Petition had been preferred under Article 32 of the Constitution of India by the Small Scale Industrial Manufactures Association, Haryana for an appropriate writ, direction or order directing the Union of India and others to take effective and remedial measures to redress the financial strain faced by the industrial sector, particularly MSMEs due to the Corona Virus Pandemic.

The reliefs of the Petitioners has been summarised as under:

i) a complete waiver of interest or interest on interest during the moratorium period;
ii) there shall be sector-wise relief packages to be offered by the Union of India and/ or the RBI and/or the Lenders;

iii) moratorium to be permitted for all accounts instead of being at the discretion of the Lenders;
iv) extension of moratorium beyond 31.08.2020;
v) whatever the relief packages are offered by the Central Government and/or the RBI and/or the Lenders are not sufficient looking to the impact due to Covid-19 Pandemic and during the lockdown period due to Covid-19 Pandemic;
vi) the last date for invocation of the resolution mechanism, namely, 31.12.2020 provided under the 6.8.2020 circular should be extended.

Held:

In catena of decisions and time and again this Court has considered the limited scope of judicial review in economic policy matters. It is further observed that in the case of a policy decision on economic matters, the courts should be very circumspect in conducting an enquiry or investigation and must be more reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself. It is further observed that it is not the function of the Court to amend and lay down some other directions. The function of the court is not to advise in matters relating to financial and economic policies for which bodies like RBI are fully competent. The court can only strike down some or entire directions issued by the RBI in case the court is satisfied that the directions were wholly unreasonable or in violative of any provisions of the Constitution or any statute. It would be hazardous and risky for the courts to tread an unknown path and should leave such task to the expert bodies. This Court has repeatedly said that matters of economic policy ought to be left to the government.

Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters. In assessing the propriety of the decision of the Government the court cannot interfere even if a second view is possible from that of the government. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.

Even the government also suffered due to lockdown, due to unprecedented covid-19 pandemic and also even lost the revenue in the form of GST. Still, the Government seems to have come out with various reliefs/packages. Government has its own financial constraints. Therefore, no writ of mandamus can be issued directing the Government/ RBI to announce/declare particular relief packages and/or to declare a particular policy. That there shall not be any charge of interest on interest/compound interest/penal interest for the period during the moratorium from any of the borrowers and whatever the amount is recovered by way of interest on interest/compound interest/ penal interest for the period during the moratorium, the same shall be refunded and to be adjusted/ given credit in the next instalment of the loan account. (WP (C) 476 of 2020 dated March 23, 2021)

Small Scale Industrial Manufactures Association (Regd.) v. UOI and others (2021) 125 taxmann.com 336 (SC) / LL 2021 SC 175.www.itatonline.org

2519 **Art.141 : Law declared by Supreme Court to be binding on all courts – Covid -19 – Limitation – Extension of period – Order dated March 8, 2021 restored with clarifications – Period from March 15, 2020 till March 14, 2021 excluded and further clarification given [Art. 142, Arbitration and Conciliation Act, 1996 S, 23(4), 29, Commercial Courts Act, 2015, S. 12A, Negotiable Instruments Act, 1881,S.138,any other law, which prescribes limitation]**

The Supreme Court took suo motu cognizance of the difficulties that might be faced by litigants in filing petitions or applications or suits or appeals or all other proceedings within the period of limitation prescribed under the general law of limitation or under any special laws and directed extension of the period of limitation in all proceedings with effect from March 15, 2020 till further orders. Further orders were passed on March 8, 2021 taking into consideration the reduction in prevalence of the covid-19 virus and normalcy being restored. By an order dated April 27, 2021 the first order was restored and it was clarified that the period from March 14, 2021 till further orders would be excluded in computing limitation period prescribed in various laws. Since the situation was near normal, the court considered restoration of the order dated March 8, 2021. The court was of the view that the order was only a one-time measure, in view of the pandemic and was not inclined to modify the conditions contained therein. The following directions were issued : (a) In computing the period of limitation for any suit, appeal, application or proceeding, the period from March 15, 2020 till March 14, 2021 shall stand excluded. Consequently, the balance period of limitation remaining as on March 15, 2020 if any, shall become available with effect from March 15, 2021. (b) In cases where the limitation would have expired during the period between March 15, 2020 till March 14, 2021 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from March 15, 2021. In the event the actual balance period of limitation remaining, with effect from March 15, 2021 is greater than 90 days, that longer period shall apply. (c) The period from March 15, 2020 till March 14, 2021 shall also stand excluded in computing the periods prescribed under sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) to section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe periods of limitation for instituting proceedings, outer limits (within which the court or Tribunal can condone delay) and termination of proceedings. (d) The Government of India shall amend the guidelines for containment zones, so that regulated movement is allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements. Cases referred

Cognizance for extension of Limitation, In Re (2020) 220 Comp Cas 447 (SC), Cognizance for extension of Limitation, In Re (2020) 220 Comp Cas 365 (SC), Cognizance for extension of Limitation, In Re (2020) 220 Comp Cas 127 (SC)

Cognizance for extension of Limitation, In Re (2021) 438 ITR 296 (SC)

Art. 141 : Law declared by Supreme Court to be binding on all courts – Covid-19 – Limitation – State and Central Acts – Directions issued for exclusion of period from March 15, 2020 to March 14, 2021 – Remaining period to apply from March 14, 2021- [Arbitration and Conciliation Act, 1996 S, 23(4), 29A, Commercial Courts Act, 2015, S.12A, Negotiable Instruments Act, 1881, S.138] 2520

The Supreme Court taking cognizance suo motu of the situation arising from difficulties arising out of the Covid-19 pandemic that might be faced by litigants across the country in filing actions within the period of limitation prescribed under the general law of limitation or under any special laws (both Central or State), and on March 27, 2020 extended the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from March 15, 2020 till further orders and this order was extended from time to time. In view of the considerable improvement in the situation, since the courts and Tribunals were functioning either physically or by virtual mode the court took the view that the order dated March 15, 2020 had served its purpose.

The court therefore issues the following directions :

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from March 15, 2020 till March 14, 2021 shall stand excluded. Consequently, the balance period of limitation remaining as on March 15, 2020, if any, shall become available with effect from March 15, 2021.

2. In cases where the limitation would have expired during the period between March 15, 2020 till March 14, 2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from March 15, 2021. In the event the actual balance period of limitation remaining, with effect from March 15, 2021, is greater than 90 days, that longer period shall apply.

3. The period from March 15, 2020 till March 14, 2021 shall also stand excluded in computing the periods prescribed under sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) to section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe periods of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

4. The Government of India shall amend the guidelines for containment zones. (Suo Motu W.No. CA 3 of 2020 dt 8-3-2021)

Cognizance for extension of limitation, In Re (2021) 432 ITR 206 (SC)

Art. 224A: Appointment of retired judges at sittings of High Courts – Appointment of Ad hoc Judges -To clear backlog of cases pending in High Courts crossed 57 lakhs with ratio of vacancies of 40% – General guidelines to excise power in transparent manner – [Constitution of India Art. 224A] 2521

The Chief Justice of High Court may appoint any person who has held the office of a Judge of that Court or of any other High Court to sit and act as ad hoc Judge of the High Court for that State for the period of two to three years under Article 224A primarily for filling up of vacancies and to curtail mounting arrears of the cases. The court laid down guidelines for when A. 224A can be activated –

(a). If the vacancies are more than 20% of the sanctioned strength.

(b.). The cases in a particular category are pending for over five years.
(c.) More than 10% of the backlog of pending cases are over five years old.
(d). The percentage of the rate of disposal is lower than the institution of the cases either in a particular subject matter or generally in the Court.
(e.) Even if there are not many old cases pending, but depending on the jurisdiction, a situation of mounting arrears is likely to arise if the rate of disposal is consistently lower than the rate of filing over a period of a year or more. The court also enumerated an embargo situation where it observed that the recourse to Article 224A is not an alternative to regular appointments and clarified that if recommendations have not been made for more than 20% of the regular vacancies then the trigger for recourse to Article 224A would not arise. (WP No. 1236 of 2019 dt 20-4-2021)
Lok Prahari Through its General Secretary S.N. Shukla IAS (Retd.) v. UOI AIR 2021 SC 2039 / 2021 SCC OnLine SC 333.

Consumer Protection Act, 2019

2522 **S. 101 : Power of Central Government to make rules – Appointment of Judicial Members – Adjudicating Members – State Consumer Commission – District Consumer Forums – Tribunals – Appointment Process, Minimum experience – 20 years for appointment of President and 15 years for members of state Commission – Unconstitutional and violative of Article 14 of the Constitution of India – Advocate with 10 years of experience at the Bar eligible for appointment as Members in Tribunals – Rules – Struck down.[Consumer Protection Rules, 2020, Rule 6 3(2)(b), 4(2)(c), 6(9), Art. 14]**
The Court struck down Rule 6(9) that conferred power upon the Selection Committee to determine its own procedure for selection of President and Members of the District and State Commission. The court referred to the case of All Uttar Pradesh Consumer Protection Bar Association (2018) 2 SCC 225 and held that it would lead to wide variation in standards as well as a great deal of subjective, bureaucratic and political interference, and finally it will result in denial of justice which will be in violation of Article 14 of the Constitution of India. The Rules 3(2)(b) and 4(2)(c) of the Rules of 2020 prescribing a minimum experience of not less than 20 years for appointment of President and Members of State Commission and experience of not less than 15 years for appointment of Presidents and Members of District Commission, are unconstitutional and violative of Article 14 of the Constitution of India. The court relied on *Madras Bar Association v UOI, (2021) SCC Online SC 463 2020 [W.P. (Civil) No. 502 of 2021 dt. 14-7-2021]* whereby the Supreme Court held that Advocates with at least 10 years of experience at the bar eligible for appointment as Members in Tribunals. The court quashed the vacancy notice inviting applications for the post of Members of the State Commission and President and Members of the District Commission. The Union of India was directed to provide new Rules that substitute for the old Rules within four weeks from the date of the judgment and order. (WP No 10096 of 2021 dt.14-9-2021)
Vijaykumar Bhima Dighe v. UOI (2022) 3 BomCR 110 / 3 MhLJ 302 (Bom)(HC) www.itatonline.org / 2021 SCC OnLine Bom 11940

Contempt of Courts Act, 1971

S. 13: Contempts not punishable in certain cases – Advocates – Professional standards, ethics, and duties – Duty to avoid publicity – Judicial independence and courage – Media Trial – Trail by media – Judicial decisions cannot be influenced by opinions expressed in media. [Advocates Act,1961, S. 35, General Clauses Act, 1897, S. 3(22), Art. 19(1)(a),19(2), 32, 226] 2523

Statutory rules prohibits advocates from advertising. In fact, to cater to the press / media, and present distorted versions of the court proceedings is sheer misconduct and contempt of court which has became very. Hunger for cheap publicity is increasing which is not permitted by the noble ideas cherished by the great doyens of the Bar. Role of a lawyer is indispensable in the system of delivery justice. A lawyer is under obligation to do nothing that shall detract from the dignity of the Court. He should all times pay deferential respect to the judge, and scrupulously observe the decorum of the courtroom. His duty is to court, to his own client, to the opposite side, and to maintain the respect of opposite party counsel also.

Court has to decide cases as per law without taking into consideration whether it will be praised or criticized. The judges have to be well versed in laws and impartial towards friends and foes. Court always has to be ready for its fair criticism. The judges have to be impartial towards crime of voice. Showing magnanimity, instead of imposing any severe punishment, Court is sentencing the contemnor with a nominal fine of Rs. 1 (Rupee one)

Prashant Bhushan and another,In re (2021) 3 SCC 160

Customs Act, 1962.

S. 124 : Show cause notice before confiscation of goods etc – Reasonable opportunity of being heard – Natural justice – It is a settled proposition that when a law requires a thing to be done in a particular manner, it has to be done in the prescribed manner and proceeding in any other manner is necessarily forbidden- Order is set aside. [Art. 226] 2524

By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 23.09.2020 passed by the Joint Commissioner of Customs/ Respondent No. 3 and further seeks a direction to the respondents to release the imported goods of the petitioner.

Petitioner had imported smart plugs. It was stated that the imported smart plugs were used for extension socket purposes and since the same does not generate any wi-fi or bluetooth signal, petitioner claims that no import licence from the Wireless Procurement Cell, Department of Information and Technology, Government of India was required. Petitioner also got the product tested to certify that the technical features of the product did not fall under licensing requirement.

The apprising officers raised objection regarding requirement of import licence with respect to the imported products. Thereafter office of respondent No.3 scheduled a personal hearing through video conferencing which was attended by the authorised representative of the petitioner. The authorised representative told respondent No.3 that

all the three declarations were already provided to the apprising officers and therefore requested that the imported goods be released forthwith. However, no recording of personal hearing was communicated to the petitioner.
Thereafter respondent No.3 passed the impunged order in original rejecting the unit price of the goods as declared by the petitioner and directed that the same be redetermined. Accordingly, petitioner was directed to pay the resultant differential duty along with applicable interest.
Aggrieved by the order being in violation of principles of Natural Justice, the present Writ is filed.
Court held that,No notice in writing under section 124(a) of the Customs Act was given to the petitioner before passing the impugned order in original which not only confiscated the goods but also imposed penalty on the petitioner. From a reading of the impugned order in original, it does not appear that the procedure laid down for rejection of declared value and redetermination of value was followed.
It is a settled proposition that when a law requires a thing to be done in a particular manner, it has to be done in the prescribed manner and proceeding in any other manner is necessarily forbidden.
The impugned order in original is clearly unsustainable in law being in violation of the principles of natural justice as well as the statutory provisions as alluded to hereinabove.
Impugned Order set aside and direct that the proper officer may proceed with the matter afresh, if he is so inclined, by following the mandate of section 124 of the Customs Act and Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.(WP(L) No. 3933 of 2020 25-3-2021)
SYSKA LED Lights Pvt. Ltd. v. UOI (2021) 377 ELT33 / MANU/MH/0932/2021 (Bom) (HC) www.itatonline.org

Goods and Service Tax Act, 2017 (IGST).

2525 **S. 13(8)(b) : Constitutional validity – Service provider – Deeming fiction – Export of service – The export of service by the petitioner as intermediary would be treated as intra-state supply of services under section 13(8)(b) read with section 8(2) of the IGST Act rendering such transaction liable to payment of central goods and services tax (CGST) and state goods and services tax – Split judgements while deciding upon the Constitutional validity of section 13(8)(b) and section 8(2) of the Integrated Goods and Service Tax Act, 2017 (IGST). – Matter referred to Chief Justice. [S.8(2)]**
The petitioner was a service provider. It provided service to customers located outside India. These overseas customers were engaged in manufacture and / or sale of goods. Such overseas customers would have or not have establishments in India. However, Petitioner provided services only to the principal located outside India and in lieu thereof receives consideration in convertible foreign currency from the principal located outside India.
Section 13 of the IGST Act deals with situations where the location of the supplier or the location of the recipient is outside India. While sub-section (2) generally provides that the place of supply of services shall be the location of the recipient of services, exceptions are carved out in sub-sections (3) to (13). As per sub-section (8), the place of

supply of the services mentioned therein shall be the location of the supplier of services which is intermediary services in terms of clause (b).
Thus, by way of a deeming fiction, in the case of intermediary services where the location of the recipient is outside India, the place of supply shall be the location of the supplier of services which is in India, thus bringing into the tax net what is basically export of services. Therefore, the export of service by the petitioner as intermediary would be treated as intra-state supply of services under section 13(8)(b) read with section 8(2) of the IGST Act rendering such transaction liable to payment of central goods and services tax (CGST) and state goods and services tax (SGST).
Held:
Judgement per Justice Ujjal Bhuyan held that by artificially creating a deeming provision in the form of section 13(8)(b) of the IGST Act, where the location of the recipient of service provided by an intermediary is outside India, the place of supply has been treated as the location of the supplier i.e., in India. This runs contrary to the scheme of the CGST Act as well as the IGST Act besides being beyond the charging sections of both the Acts. Therefore, section 13(8)(b) of the Integrated Goods and Services Tax Act, 2017 is ultra vires the said Act besides being unconstitutional.
Judgement per Justice Abhay Ahuja held that when there is a specific provision dealing with the case of Petitioner viz. Section 13 (8)(b) of the IGST Act, which has been enacted pursuant to the powers under Article 269A (5) of the Constitution of India, the challenge appears to be without substance. Further, section 8(2) and section 13(8)(b) have different purposes. Section 8 deals with nature of supply whereas Section 13 deals with place of supply, Section13 (8) (b) cannot be linked with Section 8 (2) of the IGST Act. Therefore, the challenge with reference to the charging sections of Acts which operate in different fields in respect of supplies of different natures appears to be unnecessary, Hence Section 13 (8) (b) is not ultra vires Section 9 of the CGST Act and MGST Act. In view of such difference in opinion, registry was directed to place the matters before Hon'ble the Chief Justice on the administrative side for doing the needful. (WP NO.2031 OF 2018 dated June 09, 2021)
Dharmendra M. Jani v. UOI & Ors (2021) (5) BomCR 279 / (2021) 87 GST 117 / MANU/MH/1438/20212021 (Bom) (HC) www.itatonline.org / 2021 SCC OnLine Bom 839

Lawyers in individual capacity – Legal consultancy services – Service tax and GST – Notice issued to lawyers to prove that they are individual lawyers – Notice was quashed – Directed the GST Commissioner to instruct its subordinate offices not to issue such notices [Art. 226] 2526
Allowing the writ petition the court held that advocates are not liable to pay service tax or GST, yet notices continue to be issued to them by the GST Commissionerate. The Court expressed the concern that practicing advocates should not have to face harassment on account of the department issuing notices calling upon them to pay service tax / GST when they exempted from doing so and in the process and having to prove they are practicing advocates. The Commissionerate directed to instruct its subordinate officers not to issue such notice. (W. P. (C) 2777 of 2020 dt. 31-3-2021)
Devy Prasad Tripathy 2021 (47) G.S.T.L. 462 (Orissa) (HC)

Limited liability Partnership Act, (6 of 2009)

2527 **S. 58(1) : Registration and effect of conversion – The identity of the firm as a legal entity changes – Stamp duty and registration fee cannot be levied upon conversion of a partnership firm to LLP- The Transfer of assets of firm to LLP is by operation of law. [S. 55, 58 (4)(b), Registration Act, 17, Stamp Act, S.3, H.P Tenancy and Land Reforms Act,(8 of 1974) S.118]**

Court held that on conversion of a registered partnership firm to an LLP under the provisions of LLP Act, all moveable and immoveable properties of erstwhile registered partnership firm, automatically vest in the converted LLP by operation of S. 58 (4) (b) of the LLP Act. The transfer of assets of firm to LLP is by operation of law. Being statutory transfer, no separate conveyance / instrument is required to be executed for transfer of assets, therefore stamp duty and registration fee cannot be levied upon conversion of a partnership firm to LLP. Therefore, permission under S. 118 of the H.P.Tenancy and Land Reforms Act for recording such change of name in the revenue documents, cannot be made dependent upon deposit of stamp duty and registration fee. (CWP No. 4019 0f 2020 dt.7-1-2021)

Sozin Flora Pharma LLP v. State of Himachal Pradesh AIR 2021 Himachal Pradesh 44

The Limitation Act, 1963

2528 **S. 5: Extension of prescribed period in certain cases – First appeal- Appellate Court cannot decide appeal unless application for condonation of delay is decided in favour of the appellant. [CPC, 1908, Rule 11, 13, O. 43]**

Court held that learned Additional District Judge is required to decide first the application under section 5 of Limitation Act, unless the application for condonation of delay filed along with it is decided in favour of the appellant, appeal cannot be decided on merit. Order of Additional District judge is set a side with the direction to decide the application filed under section 5 of the Limitation Act first before proceeding further in the pending first appeal. Followed S.V.Matha Prasad v. Lalchand Meghraj (2007) 14 SCC 772, AIR 2007 SC (Supp) (MP No. 3930 of 2019 dt.1 -3 2021)

Ramesh and ors v. Laxmi Bai AIR 2021MP 56/ AIR Online 2021 MP 98

2529 **S.18 : Effect of acknowledgement in writing – The principle of S. 9 of the Limitation Act, namely, that when time begins to run, it cannot be halted, except by a process known to law, has to be strictly adhered to. S. 18 of the Limitation Act, which extends the period of limitation depending upon an acknowledgement of debt made in writing and signed by the corporate debtor, is also applicable to the Insolvency and Bankruptcy Code since S. 238A uses the expression "as far as may be" governing the applicability of the Limitation Act. An entry made in the books of accounts, including the balance sheet, can amount to an acknowledgement of liability within the meaning of Section 18 of the Limitation Act. The notes annexed to or forming part of the balance sheet, or the auditor's report, must be read along with the balance sheet. [S.9, 14, Companies Act, 2013, S. 2(40), 92, 128, 129, 134, 137, Insolvency and Bankruptcy Code, S,238A]**

Under S. 18 an acknowledgement of liability signed by the party against whom the right is claimed gives rise to a fresh period of limitation. Under Explanation (b) to the Section

the word 'signed' means signed either personally or by an agent duly authorised. A company being a corporate body acts through its representatives, the Managing Director and the Board of Directors. Under S. 210 of the Companies Act it is the statutory duty of the Board of Directors to lay before the Company at every annual general body meeting a balance sheet and a profit and loss account for the preceding financial year. S. 211 directs that the form and contents of the balance sheet should be as set out in Part I of Schedule VI. The said form stipulates for the details of the loans and advances and also of sundry creditors. The balance sheet should be approved by the Board of Directors, and thereafter authenticated by the Manager or the Secretary if any and not less than two directors one of whom should be the Managing Director. (See S. 215). The Act also provides for supply of copies of the balance sheet to the members before the company in general meeting. Going by the above provisions, a balance sheet is the statement of assets and liabilities of the company as at the end of the financial year, approved by the Board of Directors and authenticated in the manner provided by law. The persons who authenticate the document do so in their capacity as agents of the company. The inclusion of a debt in a balance sheet duly prepared and authenticated would amount to admission of a liability and therefore satisfies the requirements of law for a valid acknowledgement under S. 18 of the Limitation Act, even though the directors by authenticating the balance sheet merely discharge a statutory duty and may not have intended to make an acknowledgement. (CA.no 3228 of 2020 dt 15-4-2021)
Asset reconstruction company (India) limited v. Bishal Jaiswal & Anr. AIR 2021SC5249 / 6 SCC 366 / 166 SCL82 (SC) www.itatonline.org (SC)

The Negotiable Instruments Act, 1881

S.138 : Dishonour of cheque for insufficiency, etc, of funds in the account – Courts are inundated with complaints filed under Section 138 of the Negotiable Instruments Act, 1881 – The cases are not being decided within a reasonable period and remain pending for a number of years – This gargantuan pendency of complaints filed under s. 138 of the Act has had an adverse effect in disposal of other criminal cases – Concerned with the large number of cases pending at various levels, a Larger Bench of the Supreme Court has examined the reasons for the delay in disposal of the cases – The Bench has issued important directions which will expedite the hearing and disposal of the cases. [S. 140, 141, 142] 2530

Chapter XVII inserted in the Negotiable Instruments Act, containing Sections 138 to 142, came into force on 01.04.1989. Dishonour of cheques for insufficiency of funds was made punishable with imprisonment for a term of one year or with fine which may extend to twice the amount of the cheque as per Section 138. Section 139 dealt with the presumption in favour of the holder that the cheque received was for the discharge, in whole or in part, of any debt or other liability. The defence which may not be allowed in a prosecution under Section 138 of the Act is governed by Section 140. Section 141 pertains to offences by companies. Section 142 lays down conditions under which cognizance of offences may be taken under Section 138. Over the years, courts were inundated with complaints filed under Section 138 of the Act which could not be decided within a reasonable period and remained pending for a number of years.

(In Re: expeditious trial of cases under section 138 of n.i. act 1881. (cr.l) no.2 of 2020 dt. 16-4-2021. The Supreme Court reached following conclusions :

The upshot of the above discussion leads us to the following conclusions:

a) The High Courts are requested to issue practice directions to the Magistrates to record reasons before converting trial of complaints under Section 138 of the Act from summary trial to summons trial.

b) Inquiry shall be conducted on receipt of complaints under Section 138 of the Act to arrive at sufficient grounds to proceed against the accused, when such accused resides beyond the territorial jurisdiction of the court.

c) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.

d) The Court recommended that suitable amendments be made to the Act for provision of one trial against a person for multiple offences under Section 138 of the Act committed within a period of 12 months, notwithstanding the restriction in Section 219 of the Code.

e) The High Courts were requested to issue practice directions to the Trial Courts to treat service of summons in one complaint under Section 138 forming part of a transaction, as deemed service in respect of all the complaints filed before the same court relating to dishonour of cheques issued as part of the said transaction.

f) Judgments of this Court in Adalat Prasad (supra) and Subramanium Sethuraman (supra) have interpreted the law correctly and we reiterate that there is no inherent power of Trial Courts to review or recall the issue of summons. This does not affect the power of the Trial Court under Section 322 of the Code to revisit the order of issue of process in case it is brought to the court's notice that it lacks jurisdiction to try the complaint.

g) Section 258 of the Code is not applicable to complaints under Section 138 of the Act and findings to the contrary in Meters and Instruments (supra) do not lay down correct law. To conclusively deal with this aspect, amendment to the Act empowering the Trial Courts to reconsider/recall summons in respect of complaints under Section 138 shall be considered by the Committee constituted by an order of the Court dated 10.03.2021.

h) All other points, which were raised by the Amici Curiae in their preliminary report and written submissions and not considered herein, would be the subject matter of deliberation by the aforementioned Committee. Any other issue relating to expeditious disposal of complaints under Section 138 of the Act shall also be considered by the Committee.

Suo Motu Writ Petition (Crl.) No.2 Of 2020 In Re: Expeditious Trial Of Cases Under Section 138 Of N.I. Act 1881 (2021) AIR 2021 SC 1957 / 2 BomCR(Cri) 667 (SC) www.itatonline.org (SC)

Motor Vehicles Act 1988.

S. 168 : Compensation – Concession by Counsel is not binding upon court – Waiver of rights of clients – Estoppel, Acquiescence and waiver. 2531

Any concession in law made by counsel would not bind parties, as advocates cannot throw away legal rights or enter into arrangements contrary to law. Referred *Director of Elementary Education v. Pramod Kumar Sahoo (2019) 10 SCC 674.*
Kirti v. Oriental Insurance Co Ltd (2021) 2 SCC 166

Prohibition of Benami Property Transactions Act, 1988

S. 2(9) : Benami transaction – Property held in spouse's name – Notice issued was stayed. [S.24] 2532

On writ against show cause notice the Court held that section 2(9) as amended in 2016 does not include property held by individual in spouse's name or in name of any children of such individual where consideration had been paid out of legitimate source of income of individual concern. Revenue authorities issued notice to petitioner in respect of three apartment properties and certain plots of lands, holding petitioner as benamidar – However, no conclusion was arrived at by Revenue authorities in relevant show cause notice under section 24(1) that properties in question, allegedly held by petitioner as benamidar, were procured by beneficial owner not from his known source of income. Since a prima facie case was made against said notice; and said notice was stayed.
Mallika Chamua v. Union of India (2021) 277 Taxman 574 (Gauhati)(HC)

S. 2(9) : Benami transaction – Property held in spouse's name – Notice issued was stayed. [S.24] 2533

On writ against show cause notice the Court held that section 2(9) as amended in 2016 does not include property held by individual in spouse's name or in name of any children of such individual where consideration had been paid out of legitimate source of income of individual concern. Revenue authorities issued notice to petitioner in respect of three apartment properties and certain plots of lands, holding petitioner as benamidar – However, no conclusion was arrived at by Revenue authorities in relevant show cause notice under section 24(1) that properties in question, allegedly held by petitioner as benamidar, were procured by beneficial owner not from his known source of income. Since a prima facie case was made against said notice; and said notice was stayed.
Mallika Chamua v. UOI (2021) 277 Taxman 574 (Gauhati)(HC)

2534 **S. 3 : Prohibition of benami Transactions – Purchase of agricultural land – Act not applicable to companies – Action under Act should be taken within reasonable period – Provisional attachment order was set aside [S. 2(12), 2(24), 19(1)(b), 23, 24(4), Limitation Act, 1963, Rajasthan Land Revenue Act, 1956, S 90B Art. 226]**

The Initiating Officer passed the order holding that Petitioners are benamidar on the ground that the share holders are beneficial owners. The Petitioner challenged the said order. Allowing the petition the Court held that, once land had been surrendered, order been passed by the Development Authority under section 90B of the Rajasthan Land Revenue Act, 1956 and the land had been converted from agricultural to commercial use and registered lease deed had been executed by the Development Authority in favour of the company, the transaction was not a benami transaction. Moreover the proceedings initiated after ten years of the purchase were highly belated. The action of the respondents in attaching the commercial complex which had been leased out to the company by the Development Authority was illegal and unjustified and without jurisdiction.

Kalyan Buildmart Pvt. Ltd.. v. Initiating Officer, Dy. CIT (Benami Prohibition) (2021)439 ITR 62 /(2022) / 285 Taxman 335 (Raj.)(HC)

2535 **S.4. Prohibition of the right to recover property held as Benami – It was imperative for Single Judge to weigh evidence to conclusively decide that plaintiff could not succeed in their claim that defendant No. 1 was holding suit premises in a fiduciary capacity for benefit of family members. Matter was to be remanded back [S. 3(b), 4(1), 4(3)(b), Order VII, Rule11 of the Code of Civil Procedure, 1908]**

Plaintiffs, claiming to be successors-in-interest of deceased, instituted a suit for partition and permanent injunction against defendant No. 1, brother of deceased, claiming that plaintiffs were collectively entitled to share in suit premises. Plaintiff's claim was that suit premises was purchased by their deceased father in name of defendant no. 1 and exclusive contribution being made by their father and said property was meant for benefit of all family members. Defendant No. 1 filed application under Order VII Rule 11 CPC for rejection of suit on ground that deceased did not own any property, nor was there any HUF. Single Judge held that only pleadings were completed but no issues were framed and no stage of evidence was arrived and there was no occasion for Court to determine as to whether defendant No. 1 stood in a fiduciary capacity vis-a-vis his deceased brother. Court held that suit before Single Judge could not have been out rightly rejected. It was imperative for Single Judge to weigh evidence to conclusively decide that plaintiff could not succeed in their claim that defendant No. 1 was holding suit premises in a fiduciary capacity for benefit of family members. matter was to be remanded back.

Neeru Dhir v. Kamal Kishore Dhir (2021) 276 Taxman 265 (Delhi)(HC)

2536 **S. 24(3) : Benami Transactions – Amendment Act 2016 – Jurisdictional High Court declaring amendment to have no retrospective effect – Operation of order stayed by Supreme Court – Binding precedent – Interpretation – Effect of stay order by Supreme Court – The authorities were not to take any further steps in the matter till the disposal of these writ petitions and the petitioners shall not sell, otherwise**

transfer, deal with, encumber or part with possession of the properties in question till the disposal of the writ petitions – An order of stay in a pending appeal before the Supreme Court does not amount to any declaration of law but is only binding upon the parties to the proceedings and at the same time, such interim order does not destroy the binding effect of the judgment of the High Court as a precedent because while granting the interim order. [S.24(5), 26(7), Art. 226]

The petitioner, in writ petitions, challenged a set of show-cause notices issued under sub-section (3) of section 24 of the Prohibition of Benami Property Transactions Act, 1988. The fundamental point of contention was the unconscionable and illegal "retrospective applicability" of the 1988 Act.

Held, that the judgment rendered by the Division Bench of the High Court in *Ganpati Dealcom Pvt. Ltd v. UOI (2020) 421 ITR 483 (Cal)(HC)* which had interpreted the amendment Act of 2016 to the 1988 Act to be prospective in nature. In *Joseph Isharat v. Rozy Nishikant Gaikwad (2017) (5) ABR 706 (Bom) (HC) and in Niharika Jain v. UOI 2019 SCC Online Raj 1640* had returned similar findings of law. In so far as the operation of the amendment Act of 2016 to the 1988 Act was concerned, that is, that the amendment Act of 2016 would apply prospectively. However, on a special leave petition against the judgment of the High Court, the Supreme Court had passed an order stating that the operation of the impugned order in so far as it holds the 2016 amendment of the Benami Transactions Act, 1988 was prospective in nature, shall remain stayed. Hence the reference referred to in section 24(5) of the 1988 Act shall not be treated as final but only as provisional during the whole period the writ petitions were pending before High Court. Subject to its result, the reference would be treated as final. Thereafter, time to pass the adjudication order under section 26(7) of the 1988 Act would start to run. Hence, the authorities were not to take any further steps in the matter till the disposal of these writ petitions and the petitioners shall not sell, otherwise transfer, deal with, encumber or part with possession of the properties in question till the disposal of the writ petitions. Court observed that the effect of an order of stay in a pending appeal before the Supreme Court does not amount to any declaration of law but is only binding upon the parties to the proceedings and at the same time, such interim order does not destroy the binding effect of the judgment of the High Court as a precedent because while granting the interim order, the Supreme Court had no occasion to lay down any proposition of law inconsistent with the one declared by the High Court. The decision of the High Court will have the force of binding precedent only in the State or territories on which the court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, as best, have only persuasive effect.

Deific Abode LLP v. UOI (2021) 437 ITR 397 (Cal.)(HC)

Railways Act, 1989

2537 **S. 20D : Hearing of objections – Opportunity of being heard – Substantive right – Natural Justice – Audi Alteram Partem – Not mere formality – Until the order is communicated to the person affected by it, it cannot be regarded as anything more than being provisional in character [Constitution of India, Art. 14, 19, 300A Land Acquisition Act, 1894, S. 5A]**

Honourable Supreme Court interpreting the section 20D of the Railways Act, 1989 has held that right of hearing of objections is mandatory and substantive right and must be strictly followed and non compliance with the same would invalidate acquisition proceedings. Court also observed that in administrative or executive function communication of the Government orders are mandatory, merely writing something on the file does not amount to an order, until the order is communicated to the person affected, it cannot be regarded as anything more than being provisional in character. (CA No. 6270 of 2019 dt.13-8-2019)

Nareshbhai Bhagubhai & Ors v UOI (2019) 15 SCC 1

Registration Act, 1908

2538 **S. 17: Documents of which registration is compulsory – Effect of non-registration of documents required to be registered – Deed of Family Settlement – Merely recording of past transaction – Registration not mandatory – It may not require to be stamped. [S. 49, Code of Civil Procedure, 1908, Ord. 13, R. 3]**

Court held that the transaction or the past transactions cannot be proved by using the Khararunama as evidence of the transaction. That is, it is to be noted that, merely admitting the Khararunama containing record of the alleged past transaction, is not to be, however, understood as meaning that if those past transactions require registration, then, the mere admission, in evidence of the Khararunama and the receipt would produce any legal effect on the immovable properties in question. Further held that, Khararunama, being record of the alleged transactions, it may not require to be stamped. (CA (No.) 6141 of 2021, dt 1-10-2021)

Korukonda Chalapathi Rao & Ors v. Korukonda Annapurna Sampath Kumar 2021 SCC OnLine SC 847; MANU/SC/0757 /2021 (SC) / 2021(4)RCR (Civil)433 (SC)

Specific Relief Act 1963

2539 **S. 12 : Specific performance of part of contract – Suit for specific performance – Cross objection – If cross-objection is not filed the respondent losses that benefit when appellant withdraws appeal [S. 20, Civil Procedure Code, 1908, O. 41, R. 22]**

Party to appeal can attack findings which are against it without filing cross objections. Additional benefit that is accrued on filing cross objections is that even if appellant withdraws appeal, still other party can maintain cross-objections. If cross-objection is not filed the respondent losses that benefit when appellant withdraws appeal. (Appeal Suit No 998 of 2020 dt 23-4-2021)

Hyderabad Potteries Pvt Ltd v. Debbad Visweswara Rao AIR 2021 Telengana 161 (HC)

Reference to Finance Bill, Circulars, Notifications and Articles

Finance Bill, 2021 :
Budget Speech of Minster of Finance for 2021 -2022
Part A (2021) 430 ITR 33 (St)
Part B (2021) 430 ITR 54 (St)
Finance Bill, 2021, (2021) 430 ITR 74 (St)
Notes on Clauses (2021) 430 ITR 160 (St)
Memorandum explaining the provisions
in the Finance Bill, 2021 – (2021) 430 ITR 214 (St)

Notice of amendments (As Introduced in
lok Sabha) in respect of Finance Bill, 2021 – (2021) 430 ITR 33 (St)

List No. 2 – (2021) 432 ITR 39 (St)

Finance Act, 2021 (Act.No 13 of 2021)
Received Assent on 29th March 2021 – (2021) 431 ITR 52 (St)
Finance Act, 2021 : Corrigendum – (2021) 432 ITR 144 (St)

Taxation Laws (Amendment) Act, 2021 – (2021) 436 ITR 60 (St)
Tribunal Reforms Act, 2021 – (2021) 436 ITR 63 (St)
Taxation Laws (Amendment) Bill, 2021 – (2021) 436 ITR 20 (St)

Circulars / Notifications

Circular No 1 of 2021 dt.15 -1-2021
Sub : Amount of remuneration prescribed
under 9A(3) (m) of the Income-tax Act, 1961 – (2021) 430 ITR 1(St)

Circular dated 11 th January, 2021 – Order under section 119 of the Income -tax Act, 1961 (All Gujarat Federation of Tax Consultants v. UOI (2021) 17 ITR -OL. 2001 (Guj) (HC) – Rejection of further extension. - (2021) 431 ITR 13 (St)

Circular No 2 of 2021 dated 3rd March, 2021 – Residential status of certain individuals under income -tax Act, 1961 - (2021) 432 ITR 2 (St)

Circular No 3 of 2021 dated 4th March 2021 - Circular under section 10 of the Direct Tax Vivad Se Vishwas Act, 2020 -Reg (Consequential order under the Act) - (2021) 432 ITR 10 (St)

Circular No 4 of 2021, dated 23rd March, 2021 – Clarifications on provision of the Direct Tax Vivad Se Vishwas Act, 2020 -Reg (Modification FAQ 70 of Circular 21 of 2020, Search and Seizure) - (2021) 432 ITR 50 (St)

Circular dated 23rd February, 2021 – Instructions under section 119 of the Income -tax Act, 1961, read with section 6 and section 84 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act,2015 regarding handling of Income -tax cases and black money cases – Regarding - (2021) 432 ITR 11 (St)

Circular No 5 of 2021, dated 25th March 2021 – Order under section 119 of the Income -tax Act, 1961- (S.44AB, Rule 6G form No 3CD, Audit Report abeyance till 31st March, 2022) - (2021) 432 ITR 51 (St)

Circular No.8 of 2021 dated 30-04-2021 - Extension of time lines related to certain compliances by the Tax payers under the Income -tax Act, 1961 - (2021) 433 ITR 405 (St.)

Circular No. 9 of 2021 dated 20th May, 2021 – Extension of time limits of certain compliances to provide relief to tax payers in view of the severe pandemic - (2021) 434 ITR 49 (St)

Circular No. 10 of 21, dated 25th May, 2021 – Clarification regarding the limitation time for filing of appeals before the CIT (Appeals) under the Income -tax Act, 1961 - (2021) 439 ITR 1 (St)

Circular No. 11 of 2021, dated 21st June, 2021 - Circular regarding use of functionality under section 206AB and 206CCA of the Income -tax Act, 1961
- (2021) 435 ITR 19 (St)

Circular No.12 of 2021, dated 25th June, 2021 – Sub- Extension of time limits of certain compliance to provide relief to tax payers in view of the severe pandemic – - (2021) 435 ITR 22 (St.)

Circular No.13 of 2021, dated 30th June, 2021 – Guidelines under section 194-O of the Income -tax Act, 1961 - (2021) 436 ITR 1 (St)

Circular No. 14 of 2021, dated 2nd July, 2021 – Guidelines under Section 9B and sub -section (4) of section 45 of the Income -tax Act, 1961 - (2021) 436 ITR 25 (St)

Circular No.15 of 2021, dated 3rd August 2021 – Extension of time lines for electronic filing of various Forms under the Income -tax Act, 1961 - (2021) 436 ITR 32 (St)

Circular No. 16 of 2021, dated 29th August 2021 – Extension of time lines for electronic filing of various Forms under the Income -tax Act, 1961 - (2021) 437 ITR 1 (St)

Circular No. 17 of 2021, dated 9th September 2021 – Extension of time lines for filing of income -tax returns and various reports of audit for the assessment year 2021-22 - (2021) 437 ITR 6 (St)

Circular No. 18 of 2021, dated 25th October, 2021 – Clarification regarding section 36(1) (xvii) of the Income -tax Act, 1961 inserted vide Finance Act, 2015 - (2021) 438 ITR 53 (St)
Circular No. 19 of 2021, dated 26th October, 2021 – Guidelines under clause (26FE) of section 10 of the Income -tax, Act 1961 - (2021) 438 ITR 53 (St)

Circular No. 20 of 2021, dated 25th November,2021 - Subject : Guidelines under sub-section (4) of section 194-O, sub section (3) of section 194Q and sub -section (1-1) of section 206C of the Income-tax, 1961 -reg. - (2021) 439 ITR 2 (St)

Circular of 2021 dated , 10 th June , 2021- Guidelines for compulsory selection of returns for Complete Scrutiny during the financial year 2021 -22 -Conduct of assessment proceedings in such cases – Regarding -(2022) 441 ITR 10 (St.)

Order dated 24th September, 2021 – Order under section 119(2)(a) of the Income-tax Act, 1961 – Regularisation of returns of income verified through Electronic Verification Code (EVC) which are otherwise required to be verified through Digital Signature (DSC) as per rule 12 of the Income -tax Rules 1962 - (2021) 438 ITR 4 (St)

Order dated 28th September 2021 – Order under section 119 of the Income -tax Act, 1961 – Order under section 119 (2)(b) of the Income -tax Act, 1961 for filing applications for settlement before the Interim Board for Settlement - (2021) 438 ITR 5 (St)

Order dated 30th September 2021 – Order under section 119 of the Income-tax Act, 1961 – Processing of returns with refund claims under section 143(1) of the Income -tax Act 1961, beyond the prescribed time limits in non- scrutiny cases - (2021) 438 ITR 6 (St)

Notifications :

Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 : Notification under section 3(1) : Amendments – Notification No.S.O. 4805(E), dated 31 st December, 2020 (2020) 428 ITR 104 (St) (2021) 430 ITR 30 (St)

Taxation and other Laws (Relaxation and Amendment of certain Provisions) Act, 2020 : Notification under section 3 (1) : Amendments - Notification No. S.O. 1703 (E), dated 27th April, 2021 (2021) 434 ITR 11 (St) (Also refer (2021) 430 ITR 30 (St), (2021) 432 ITR 14 (St) (2021) 432 ITR 141 (St)

Notification under section 48, Expln. (vi) : Cost of inflation index for 2021 -22 specified for purposes of computation of capital gains. Notification No. S.O. 2336 (E), dated 15th June, 2021 (2021) 434 ITR 72 (St)

Notification under section 269T: Payment received in cash providing Covid treatment to patients – Notification No. S.O. 1803(E), dated 7th May, 2021 (2021) 435 ITR 18 (St)

Taxation and Other laws (Relaxation and Amendment of certain Provisions) Act, 2020 : Notification under section 3(1) : Amendments – Notification No.S.O. 2580 (E), dated 25th June, 2021 (Notification No. 74 / 2021 /F. No 370142/35/2020 -TPL (2021) 435 ITR 24 (St)

Press Notes / Releases -Government extends certain timelines in light of raging pandemic, dated April 24, 2021 (2021) 436 ITR 15 (St)

Government grants further extension in timelines of compliances. Also announces tax exemption for expenditure on Covid treatment and ex-gratia received on death due to Covid- Dated 25-6-2021 (2019) 436 ITR 16 (St)

Notifications :
Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 : Notification under section 3(1)) : Amendments Notification No.S.O.4805 (E), dated 31 st December, 2020 (2021) 430 ITR 30 (St)

Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 : Notification under section 3(1)) : Relaxation of certain provisions of specified Act : Amendments. Notification No. S.O. 966 (E), dated 27 th February, 2021 (2021) 432 ITR 14 (St)

Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 : Notification under section 3(1)) : Partial modifications. Notification No. S.O. 1432 (E), dated 31 th March, 2021 (2021) 432 ITR 141 (St)

Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 : Notification under section 3(1)) : Amendments – Notification No. S.O. 1703 (E),dated 27 Th April, 2021 (2021) 434 ITR 11 (St)

Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 : Notification under section 3(1)): Notification under section 3(1): Amendments -Notification No. S.O. 3814 (E), dated 17 th September, 2021 [Notification No 113/ 2021 /F. No.370142/35/2020 -TPL -Part- 1] (2021) 437 ITR 16 (St)

S.90: Agreement between the Government of the Republic of India and the Government of the Islamic Republic of Iran for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income (2021) 433 ITR 1 (St)

S.90: Notification under section 90(1) : Protocol, amending the agreement between the Government of the Republic of India and the Government of the Kyrgyz Republic for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income. (2021) 439 ITR 12 (St)

Schemes :

Faceless Penalty Scheme 2021 (Notification No. S.O.118 (E) dt. 12 -1 -2021 (2021) 430 ITR 2 (St)

Faceless Penalty Scheme, 2021 : Dirctions - Notification No. S.O. 117 (E), dt. 12 -1 -2021 -Directions (2021) 430 ITR 14 (St)

Faceless Assessment (Ist Amendment) Scheme, 2021 S. 143 (3A)- (Notification No. S.O. 741(E), dated 17 th February, 2021. (2021) 431 ITR 1 (St)

E. Assessment Scheme, 2019:Amendments - Notification No.S.O 742 (E) dated 17 th February, 2021 - S.143 (3B) – Notification No. S.O. 742 (E), dated 17 th February, 2021 (2021) 431 ITR 7 (St)

Face less Appeal (Amendment) Scheme, 2021 (2021) 432 ITR 143 (St)

Vivad se Vishwas Act, 2020 : Direct Tax Vishwas Act, 2020: Notification under section 3: Dates for filing declaration and amount payable by declarant notified – Notification No. S.O. 4804(E), dt 31 st December, 2020. -ie. 31 -1 -2021 (2020) 428 ITR 104 (St) – Notification No. 92 / 2020 /F.No 370142/35/2020 -TPL) (2021) 430 ITR 30 (St)

Direct Tax Vivad Se Vishwas Act, 2020 : Notification under section 3 :Dates for filing declaration and amount payable by declarant notified : Amendment Notification No.S.O. 471 (E), dated 31 st January 2021 (2021) 431 ITR 18 (St)

Direct Tax Vivad se Vishwas Act, 2020: Notification under section 3: Dates for filing declaration and amount payable by declarant notified (Notification No. S.O. 964(E), dated 26 th February 2021 (2021) 432 ITR 13 (St)

Direct Tax Vivad Se Vishwas Act, 2020 : Notification under section 3 : Amendments-Notification No. S.O. 2581 (E), dated 25 th June, 2021 (2021) 435 ITR 25 (St)

Direct Tax Vivad Se Vishwas Act, 2020 : Notification under section 3 : Dates for filing declaration and amount payable by declarant notified : Amendments - Notification No. S.O. 3536 (E), dated 31 August, 2021 -Notification No.94/2021/F. No IT (A) /01/2020-TPL (Part-1 – (Part -1) (2021) 437 ITR 13 (St)

e-Settlement Scheme 2021 – (2021) 438 ITR 56 (St)

Articles

Section wise

S.2(14): Personal effects – Taxability on sale of Cattle's – Raghuver Poonia, Jaipur, Co -Author Siman Bharti Student, JECRC University, Jaipur www.itatonline Org.18-1 -2021

S. 2 (42C): Amendment in section 2 (42C) in relation to capital gains chargeable on slump sale as provided u/s 50B – D.C. Agarwal (2021) 277 Taxman 25 (Articles)

S. 9(1)(i): Government withdraws the retrospective application of 'Indirect Transfer' related provisions – Is it too late ? Sanjv Kunar Chasudhary (2021) 281 Taxman 43 (Mag.) / 129 taxmann.com 343 (Article)

S. 9(1)(i): 2012 Retrospective tax on indirect transfers: Retrospectivity to go ; tax to stay - Srinivasan Anand G. (2021)281 Taxman 29(Mag.) 129 taxmann.com 95 (Article)

S. 9(1)(i): Income deemed to accrue or arise in India - Business connection - Impact Of Significant Economic Presence (SEP) On Indian Businesses- By CA Vidhan Surana And CA Satish Jethvani, Dt. June 5th, 2021 www.itatonline.org

S.9B: Issues arising with regard to taxability in case of Dissolution of firms and other entities under the amended provisions - Pankaj R. Toprani,Advocate (2021) 436 ITR 1 (Journal)

S.9B: Notwithstanding new section 9B, substituted section 45(4)) and new section 48(iii), there will be no capital gains on tax liability on the retirement of a partner from the firm - S.K Tyagi Advocate (2021) 434 ITR 23 (Journal)

S.9B: Section 9B, section 45(4) and Section 48(iii) of the Income -tax Act, 1961 – S. Ramasubramanian (2021) The Chamber's Journal – September - P. 29

S.9B: Constitutional Validity of Section 45(4) and 9B of the Income -tax Act, 1961 – V. Sridharan & Neha Sharma (2021) The Chamber's Journal – September - P. 29

S.9B: Section 45 (4) and interplay between sections 9B and 45(4) – Parful Poladia & Vinod Ramachandran (2021) The Chamber's Journal – September - P. 14

S.9B: Taxation on Dissolution or Reconstitution of partnership – Gautam Doshi (2021) The Chamber's Journal – September - P. 9
S. 9B: Changes in partnership taxation in case of capital gain by Finance Act, 2021 – K.K Chaithanya (2021) BCAJ – May -2021 -P 34

S.9B: Income on receipt of capital asset or stock in trade – Comprehensive analysis of taxability on distribution of assets by a partnership firm to its partners on its dissolution or distribution – Nitin Goyal (2021) 279 Taxman 1(Mag.) / 127 taxmann.com 94 (Article)

S. 10(17A)(iii): Taxability of rewards to Olympic heroes – Srinivasan Anand G. (2021) 281 Taxman 35 (Mag) /129 taxmann.com 152 (Article)

S. 10(23C) vs 12A- Anomalies in law -Comparative analysis and practical doubts – Immediate attention required - CA Naresh Kumar Kabra.www.itatonline.org 19 -6 -2021

S. 10(26B): Section 10(26B) of the Income -tax Act: Scope of – P.K.Ravindranath Menon and Navaneeth N.Nath (2021) 438 ITR 13 (Journal)

S.10(37): Capital gains arising from transfer of Agricultural land – Issues in Section 10 (37) r.w. Circular 36/2016 dt 25 -10 2016 – Anil Kunar Shah CA www.itatonline.org. 21-1-2021

S. 10(37) : Some Issues Under Section 10(37) Of Income Tax Act, 1961- By CA Anilkumar Shah, Dt. July 12th, 2021 www.itatonline.org

S.10AA: Utilisation of Special Economic Zone Re-investment Reserve created u/s 10AA of the Income -tax Act,1961 CA Ravikant Pathak www.itatonline.org 9 -4 -2021

S.12A: Charitable Trust – Issue in corpus Donation to Charitable Trust not registered u/s 12A/ 12AA /12AB -Part -2 – Anil Kumar Shah CA www.itatonline,org 9-1-2021

S.12AB: New Registration process for NGOs /s 12AB & 80G of Income -tax Act 1961 -CA Rajesh B. Mangla www.itatonline.org 14-5 -2021

S. 12AB: Is Hindi A 'Vernacular Language'?" (Core Issue W.R.T New Process Of Registration Of Charitable Institution Under Income-Tax)- By CA Naresh Kumar Kabra, Dt. May 15th, 2021 www.itatonline.org.

S. 17(2): Perquisite – Treatment of tax on non -monetary sum paid by employer in the hands of employee and in admissibility of the same in the hands of employer – Rohit Kapoor (2021) 278 Taxman 7 (Mag) (Article)

S. 28 (via) : Conversion of stock in trade in to capital asset - Section 28 (via) – Advocate Deepa Khare www.itatonline.org 16 -3 -2021

S. 32 : Rate Of Depreciation On Computer Peripherals And Accessories- By Priyanshi Desai, Dt. November 2nd, 2021 www.itatonline.org

S.36(1)(va): Section 36 (1) (va) with Section 43B – CA Anmol Singh Sodhi www. itatonline.org 21 -3 2021

S. 36(1)(va): Retrospectivity Of Explanation 2 Inserted Below S 36 (1(Va) -By Anadi Varma, Dt. September 17th, 2021 www.itatonline.org

S. 36(1)(va): Employee's Contribution In S 36(1)(Va). Explanation 2. No Retrospectivity?- By Anadi Varma, Dt. October 27th, 2021 www.itatonline.org

S. 40(a)(ii): Allowability of foreign taxes paid as business expenditure under the Income -tax Act, 1961 – A possibility ? Suddeep Das, Ashwath Pai, Chartered Accountants (2021) 283 Taxman 29 (Mag) / 132 taxmann.com 236 (Article)

S.43CA: Transfer of assets - Retrospective Application Of Tolerance Band Of 10% To Sections 43CA, 50C & 56(2).- By CA Milind Wadhwani, Dt. May 17th, 2021 www.itatonline.org

S. 45: Capital gains : Exploring Capital Gains As A Head Of Income- By Arjun Gupta, Dt. September 3rd, 2021 www.itatonline.org

S.45 (4): Notwithstanding new section 9B, substituted section 45 (4)) and new section 48 (iii), there will be no capital gains tax liability on the retirement of a partner from the firm – Advocate S.K.Tyagi (2021) 434 ITR 25 (Journal)

S. 50B: Slump sale – Amendments by Finance Act, 2021 – Abhijeet Shah (2021) BCAJ-July – P. 34

S. 50C: Charitable Trust – Should charity suffer the wrath of section 50C? -K. Chythanya Advocate, Vipul K.V.Kamath CA (2021) BCAJ- August -P. 26

S.50C: Turbulent Safe Harbour !- Prachi Parekh CA www.itatonline.org 25 -1-2021

S.50C: Retrospective Application of Tolerance Band of 10% to sections 43CA, 50C & 56(2) of the Act – CA Miland Wadhwani www.17 -5 -2021 www.itatonline.org

S.50C: A Step forward in curbing Black Money –Advocate Amit Kumar Gupta www.itatonline.org 29 -4 -2021

S.50C: Section 50C of the Income -tax Act and new pandora of litigation – CA Kanj Goel www.itatonlie.org 16 -4 -2021

S.56(2)(viib) : Unfairness and Indian Tax system – (Differential valuation)-K.K.Chythanya Advocate, Vipul Kamath CA (2021) BCAJ -June -P. 20

S. 69B: Amounts of investments, etc, not fully disclosed in books of account - Advocate Amit Kumar Gupta (2021) 431 ITR 49 (Journal)

S.69D: Section 69D amount borrowed or repaid on Hundi – Amit Kumar Gupta, Advocate (2021) 436 ITR 50 (Journal)
S.79 : Which High Court got it right : Karnataka or Delhi ? The battle for correct interpretation of section 79 of the Income -tax Act - Rahul Agarwal and Madhav Goel (2021) 282 Taxman 27 (Mag.) / 130 taxmann.com 340 (Article)

S.80G: Clinch section 80G for CSR expenses -Meenakshi Subramaniam (2021) 282 Taxman 19 (Mag) / 130 taxmann.com 412 (Article)

S.90: Double Taxation Avoidance Agreements (DTAA) in the pandemic era – V.N Murlidhran FCA (2021) 433 ITR 33 (Journal)(Articles)

S.115BAC: Tax on income of individuals and Hindu undivided family – Is the tax liability on total income of Rs 8, 50,000, the same under old scheme vis – A- Vis new regime under section 115BAC ? V.K Subramani (2021) 279 Taxman 31 (Mag.) / 127 taxmann.com 316 (Article)

S. 115BAC: Tax on income of individuals and Hindu undivided family- New regime vs old regime solution to the quandary – CA Milind Wadhwani www.itatonline.org 5-4-2021

S. 115BBE: Income Declared During Survey – Search And Tax Rate U/S 115BBE- By Cas Rajendra Agiwal, Saurabh Kulkarni And Sakharam Sable, Dt. September 2nd, 2021 www.itatonline.org

S.115JB: Redetermination of book profit by AO under section 115JB -Whether permissible – Sanjay Bansal & Amit Prasad (2021) 318 CTR 7(Article)

S. 131 : Power regrading discovery, production of evidence, etc -Advocate Amit Kumar Gupta (2021) 431 ITR 73 (Journal)

S. 132(4): Income Tax Search And Seizure: Importance Of Statement U/S 132(4) Of The Income Tax Act'1961, Retraction Thereof- By CA. Mohit Gupta, Dt. September 25th, 2021 www.itatonline.org

S.132A: Power to requisition books of account,etc. under section 133A of the Income -tax Act, 1961 -Ram Dutt Sharma (Retd Income -tax Officer) www.itatonline.org. 26 -5 -2021

S. 144B : Faceless Assessment –Section 144B(1) & The Ivory Tower Assessments- By Anadi Varma, Dt. December 29th, 2021 www.itatonline.org

S. 144C(1): Assessment orders u/s 144C(1) incurably defective and illegal if they do not comply with non -obstante provisions – Ashutosh Mohan Rastogi, Dhruv Seth, Parash Biswal, advocates (2021) 283 Taxman 1 (Mag)/130 taxmann.com 413 (Article)

S.147: Reassessment Proceedings, Statutory remedy vs. Writ of Certiorari – CA Milind Wadhwani www.itatonline.org 10 -5 -2021

S.147: Reassessment – Which way to go ? – Analysis of Explanation 3 to section 147 of the Act - S.Krishnan (2021) 276 Taxman 1 (Articles)

S. 147: Reassessment - Analysis Of Sections 147, 148, 148A, 149 And 151 Of The Income Tax Act, 1961 (Act) As Substituted Vide Finance Act, 2021- By CA Ravikant Pathak, Dt. May 23rd, 2021 www.itatonline.org

S. 148: Reassessment – Settled law that " Final objection" of CAG not law, unsettled - Hemant O. Sharma, Hardayal Singh, Gopal C. Mehta (2021) 279 Taxman 21 (Mag) 127 taxmann.com 210 (Article)

S. 148: Re assessment - Hon. Apex Court Turns Down Govt's Plea To Transfer Cases Relating To S. 148 Notices Issued After 31st March 2021 Pending Before Various HC's To Itself.- By CA Milind Wadhwani, Dt. November 17th, 2021 www.itatonline.org

S. 148: Reassessment In The Calendar Year 2021: Validity Of Notices – Two Set Of Laws & Three Time Zones- By Mr. Shashi Bekal, Advocate, Dt. July 12th, 2021 www. itatonline.org

S. 148A: Practical Overview of section 148A of the Income –Tax Act. 1961- Sameer Bhatia (2021) 320 CTR 13 (Articles)

S.148A: Reassessment - Analysis of sections 147, 148, 148A 149, and 151 of the Income -tax Act, 1061 (Act) as substituted by vide Finance Act 2021 – CA Ravikant Pathak www. itatonline.orrg 23-5 -2021

S.148A: Reassessment – New provisions for reopening of cases – A critical study – S.K Singh and Shashank Singh (2021) 277 Taxman 37 (Articles)

S.153D: Statutory approval Qua application of mind – Section 153D of the Income -tax Act, 1961 - Malay Chaturvedi B.Com LLB. (Head Group Taxation www. itatonlie,org 7 -4 2021

S. 194N: ITDS provision on cash withdrawals from bank -An invalid piece of legislation -CA Sanjay Mody (2021) 431 ITR 62 (Journal)

S.194Q: New TDS from payment of purchase price of goods – Advocate Jignesh R.Shah (2021) 433 ITR 19 (Journal)(Articles)

S.194Q: Deduction of tax at source on payment of certain sum for purchase of goods and section 206 (IH) – Tax collection at source on sale of goods – Rajkamal Shah, Prof. Jimit Doshi (2021) 281 Taxman 19 (Mag) / 129 taxmann.com 39 (Article)

S.194Q: Tax deduction at source on purchase of goods under section 194Q of the Act –CA Eti Jain & CA Parth Mehta wwwitatonline.org 14 -5 -2021

S. 206AA: The payments to non-Residents Controversy – Sanjeeva Narayan CA, (2021) 283 Taxman 35 (Mag) / 132 taxmann.com 199 (Article)

S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record –Scope of S.254(2). Implications of Reliance Telecom Judgment on 3.12.2021- By Anadi Varma, Dt. December 20th, 2021

S.254 (2A): Stay of demand by Tribunal beyond 365 days - Susheel Kumar Gupta (2021) 278 Taxman 25 (Mag.) (Articles)

S. 255: Procedure of Appellate Tribunal-Power of President ITAT to transfer an appeal from one Bench to another outside the head quarters in a different State ! -Advocate Pravin Kumar Bansal and CA Guarv Bansal www.itatonline.org 27 -5 -2021

S. 255(7)): Faceless Income -tax Appellate Tribunal – Does it pass the test of Constitutional Validity ? Aryan Lukka, Law student (2021)) AIFTPJ- December – P. 43 www.itatonline.org

S.260A: Won Yet Lost – Plight of a Respondent – Respondent in an appeal filed u/s 260A of the Act is not entitle to challenge an adverse finding by the Tribunal - Suksgar Syal Advocate www.itatonline.org 23 -1 -2021 August -P. 56

S. 263 : Discretion Given To Cit/ Pcit In Explanation 2 To Section 263-By Rano Jain, Dt. July 22nd, 2021 www.itatonline.org

S. 270A: Penalty for underreporting and misreporting of income – CA R.V.Shah (2021) Dt. September 25th, 2021 www.itatonline.org

S. 270A/ 271 (1)(c) – Penalty u/s 271(1)(c)/ 270A – The specification of limb conundrum – Sanjeeva Narayan, Rahul Chaurasia (2021) 279 Taxman 9 (Mag) / 127 taxmann.com 204 (Article)

S. 271AAB: Penalty where search has been initiated – Advocate Amit Kumar Gupta www.itatonline.org

S.271E: Penalty provisions for failure to comply with section 269T – Advocate Amit Kumnar Gupta (2021) 434 ITR 14 (Articles) (Journals)

S. 281 : Certain transfers to be void – Amit Kumar Gupta (2021) 438 ITR 1 (Journal)

Articles - Subject wise

A

Appeal - Won Yet Lost- The Plight Of A Respondent-Adv. Sukhsagar Syal, www.itatonline.org dt. 23.01.2021

Access to Justice in Tax matters, Tanu Priya, Law Students (2021) AIFTPJ -December P.81

Assessment – Assessment under section 143(1)(a)) and section. 144 – Debatable & Controversies -Navin Kumar Garg, FCA (2021) AIFTPJ – September – 20
Anonymous Donations received by a Trust- R.V.Shah CA (2021) AIFTPJ – September – -P. 20

Alimony & Maintenance and tax treatment of the amount – Narayn Jain Advocate (2021) AIFTPJ -September – P. 25

Alternative Remedy -Writ – Vinay Patkar Advocate (2021) AIFTPJ -September – P. 28

Acquisition – Special purpose acquisition Companies – Accounting and tax issues – Mohan R. Lavi CA (2021) BCAJ – September -P. 24

Affidavit – Advocate, Srikant S. Dikshit (2021) AIFTPJ -June -P. 56

Accountability of Officers – Smt. Premlata Bansal Senior Advocate 2021-AIFTPJ -May -P. 8.www.itatonline.org 2-6 -2021

Appellate Tribunal- Appeal procedures to Income -Tax Appellate Tribunal – Amt Kumar Gupta (2021) 430 ITR 13 (Journal)

Assessment – Failure of assessment machinery -Gopla Nathani (2021) 276 Taxman 41 (Articles)

Authority for Advance Rulings – Proposed amendments in Budget 2021 – Sudeep Das and Ashth Pai (2021) 277 Taxman 29 (Articles)

Appellate Tribunal -Important directions of Hon. MP High Court for Tribunals, Quasi Judicial Fora, Authorities In M.P. In Wake Of Second Covid Wave-By CA Milind Wadhwani, Dt. April 24th, 2021 www.itatonline.org

B

Blog – Judiciary will suffer on account of the Tribunal Reforms (Rationalisation and conditions of service) Ordinance Dr. K. Shivaram Senior Advocate, www.itatonline.org 17-4 -2021

Blog- 80 years of ITAT- Tax Practitioners from across the country salute the Income Tax Appellate Tribunal -Dr. K. Shivaram Senior Advocate, www.itatonline.org 4-2 -2021

Black Money – "Emerging Jurisprudence" as regard the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 – Ruchesh Sinha, Advocate, Anmol Batra, Alok Sinha CAs (2021) 283 Taxman 21 (Mag.) 132 taxmann.com 184 (Article)

Buy back of shares- Tax implications on buy back of shares by a Company, Rano Jain FCA,(2021) AIFTPJ – October – P. 27

Books of Accounts – Maintenance of books of Accounts as required by I.T.Act -Jyoti Ramalingam www.itatonline.org 16-5 -2021

C.

Chamber's Journal – Taxation of Digital Economy (2021) January – P.1 to 100

Chamber's Journal – Finance Bill – 2021 -22 (2021) February – P.11 to 150

Chamber's Journal -ESOPs (2021) March – P. 11 to 124

Chamber's Journal - Recent Supreme Court Rulings (2021) April 11 to 76

Chamber's Journal – Concept of Income under Income -tax Act – (2021) May – P. 13 too 105

Chamber's Journal - (2021) June – Non -Banking Financial Company- (2021) June – P.11-77

Chamber's Journal – Exemptions under GST Law - (2021) July – P. 15 to 120

Chamber's Journal – Recent amendments in Companies Act (2021) August – 13 to 59

Chamber's Journal - – Taxation on Reconstitution of firm – A Paradigm Shift ((2021) September(2021) September 9 to 36

Chamber's Journal – A Tribute to late Shri V.H.Patil (2021) -October- P. 5 to 85

Chamber's Journal – Contemporary Issues in Accounting (2021) November – P. 11 to 58

Chamber's Journal – Crypto Currency : Accounting, tax & Regulatory Aspects (2021) December 11 to 51

Crypto Currencies – Overview – Nirva Savla CA The Chamber's Journal (2021) December - P. 11

Crypto Currencies – Prohibition v. Regulation : How cryptocurrency is regulated across jurisdictions – Sanjay Khan Nagra & Kritika Dobhal Advocates- The Chamber's Journal (2021) December - P. 21

Crypto Currencies – Legal Position in India -Arun Tiwari,Advocate - The Chamber's Journal (2021) December - P. 31

Crypto Currencies – Accounting for Cryptocurrencies -Srividya Vaidison CA- The Chamber's Journal (2021) December - P. 38

Crypto Currencies – Taxation of Cryptocurrencies – Direct Tax Aspects- Sanjay Sanghvi & Raghav Kumar Bajaj Advocates - The Chamber's Journal (2021) December - P. 42

Crypto Currencies – Taxation of Cryptocurrencies -Indirect Tax Aspects – K. Vaitheeswaran Advocate -The Chamber's Journal (2021) December - P. 51

Courts – Guardian of our liberties : Judicial orders can violate Fundamental Rights ? V.Sudhish Pai (2021) 3 SCC 45 (Journal)

Capital gains- Latest legal precedents regarding levy and computation of capital gains under the Income -tax Act, 1961 – S.K.Tyagi (2021) 438 ITR 17 (Journal)

Charitable Trust – Disconnect between charity and income tax exemption -Gopal Nathani (2021) 282 Taxman 16 (Mag.) /130 taxmann.com 477 (Article)

Charitable Trust – Scheme of taxation of a Charitable Trust – G.V.Gopala Rao and Gangadeep Sood (2021) 436 ITR 45 (Journal)

Charitable Trust – Uncharitable amendments for charitable Trusts – Anil Sathe CA (2021) AIFTPJ – October – P. 7

Charitable Trust – Amendments for Charity sector – R.V.Shah CA (2021) AIFTPJ - December -P. 24

Charity – Disconnect between charity and income tax exemption – Gopal Nathani CA (2021) 283 Taxman 5 (Mag.)/ 130 taxmann.com 477 (Article)

Company – The one -Person company – T.C.A Ramanujam and T.C.A.Sangeetha (2021) 436 ITR 38 (Journal)

Capital gains- Capital gains, dividends and interest now to be reported to the Income -tax Department – Narayan Jain (2021) 278 Taxman 28 (Articles)

Cryptocurrency and its likely Tax treatment in India Advocates Arati Sathe and Aditya Ajgaonkar - 2021 -AIFTPJ -May -P 17 www.itatonline.org 5 -6-2021

Capital gains- Supreme Court judgement on joint development agreements -V.N.Murlidhran (2021) 318 CTR 1 (Articles)

Covid – Covid and Direct Taxes – T.C.A Ramanujam and T.C.A Sangeetha (2020) 430 ITR 52 (Journal)

Constitution – Indian Constitution – Relevancy of Judge made law – Dr.M.V.K.Moorthy, Advocate Supreme Court www.itatonline.org 27 -1 -2021

Controversies – Tax Exemption reward – Pardip Kapashi, Gautam Nayak & Bhadreesh Doshi CAs ((2021) BCAJ- January – P.70

Controversies – Taxability of mesne profits - Pardip Kapashi, Gautam Nayak & Bhadreesh Doshi CAs ((2021) BCAJ- February – P.60

Controversies – Rates of tax on Deemed short term capital gains u/ s 50 - Pardip Kapashi, Gautam Nayak & Bhadreesh Doshi CAs ((2021) BCAJ- March – P.50

Controversies – Naming of beneficiaries in trust deed – Explanation to section 164 (1) - Pardip Kapashi, Gautam Nayak & Bhadreesh Doshi CAs ((2021) BCAJ- April – P.69

Controversies – Premium received by land Lord on transfer of Tenancy Rights - Pardip Kapashi, Gautam Nayak & Bhadreesh Doshi CAs ((2021) BCAJ- May – P.67

Controversies – Deduction for penalties and fines under the Motor Vehicles Act, 1988 - Pardip Kapashi, Gautam Nayak & Bhadreesh Doshi CAs ((2021) BCAJ- June. 46

Controversies – Impact of waiver of loan on depreciation claim - Pardip Kapashi, Gautam Nayak & Bhadreesh Doshi CAs (2021) BCAJ- July.68

Controversies – Deduction for contribution by employer to specific Funds- Pardip Kapashi, Gautam Nayak & Bhadreesh Doshi CAs (2021) BCAJ- August. 64

Controversies – Deduction of maintenance charges in computing income from house property - Pardip Kapashi, Gautam Nayak & Bhadreesh Doshi CAs (2021) BCAJ- September.56

Controversies – Business income of a charitable institution - Pardip Kapashi, Gautam Nayak & Bhadreesh Doshi CAs ((2021) BCAJ- October.72

Controversies – Allowability of Portfolio management fees in computing capital gains- Pardip Kapashi, Gautam Nayak & Bhadreesh Doshi CAs (2021) BCAJ- November. 52

Controversies – Taxability of corpus donations received by an unregistered Trust - Pardip Kapashi, Gautam Nayak & Bhadreesh Doshi CAs ((2021) BCAJ- December. 66

Covid -19 Beyond Covid -2019 CA Gopal Nathani www.itatonline.org 10 -6 -2021

Covid -19: Important Directions of Hon M.P High Court for Tribunals Qusai Judicial Fora, Authorities in M.P. in wake of Second wave - CA Milind Wadhwani www.itatonline.org 24 -4 - 2021

Covid -19 – Covid impact and tax residential status : The Conundrum continues - T.P.Ostwal, Kush Vatsraj CAs (2021) BCAJ-April- P. 43

Covid -19 -Covid -19 and Direct Taxes – T.C.A Ramanujam and T.C.A.Sangeetha (2021) 430 ITR 52 (St)

Covid -19 : Beyond Covid-2019- By CA Gopal Nathani, Dt. June 10th, 2021 www.itatonline.org

Dues - Debts- The supremacy battle for claim of dues / debts – Income tax department toppled – Advocate Amit Prasad (2021) 431 ITR 1 (Journal)

Digital Economy – Taxation of Digital Economy (2021) The Chamber's Journal – January – 11-100

Challenges in taxing the Digital Economy – CA.Dinesh Kanabar (2021) The Chamber's Journal – January -P. 11

Precedence of Digital Economy – Ajay Vohra Senior Advocate & Anshul Suchar Advocate (2021) The Chamber's Journal – January -P.19

Equalisation Levy – Bijal Ajinakya & Jugal Mundra Advocates (2021) The Chamber's Journal – January -P.31

Significant Economic Presence – A Toothless Tiger – CA. Riaz Thingana (2021) The Chamber's Journal – January -P. 40

Global measures to counter tax challenges of Digital Economy – CA Milind Khothari & CA Kual Shah (2021) The Chamber's Journal – January -P 46

Amount A under Pillar 1 – CA.Rajendra Nayak (2021) The Chamber's Journal – January -P 54

Amount B under Pillar 1 – CA. Anis Chakravarthy (2021) The Chamber's Journal – January -P 61

Tax Certainty & Administrative propositions under OECD 's Pillar 1 –CA.Hitesh Gajaria & CA.Jitesh Golani (2021) The Chamber's Journal – January -P 68

Organisation for Economic Co -Operation and Development (OECD) Pillar two – GloBE Rules – CA.Milan Shah, CA.Dipna Agte & CA. Aishwarya Garg (2021) The Chamber's Journal – January -P 77

United Model Tax Convention -Draft of Article 12B – Rajat Bansal, IRS (2021) The Chamber's Journal – January -P 92

Reflections on OECD and UN proposals – Mukesh Butani & Tarn Jain Advocates (2021) The Chamber's Journal – January -P. 100.

Capital gains- Supreme Court judgment on taxation of joint development agreements -V.N Muralidhararn (2021) 318 CTR 1 (Articles)

Cryptocurrencies : Trapped in the Labyrinth of legal Corridors (Part -1) – Dr. Anup.P.Shah CA. (2021) BCAJ- July -P. 97

Cryptocurrencies : Trapped in the Labyrinth of legal Corridors (Part -2) – Dr. Anup.P.Shah CA. (2021) BCAJ- August -P. 98

Cryptocurrencies : Trapped in the Labyrinth of legal Corridors (Part -3) – Dr. Anup.P.Shah CA. (2021) BCAJ- September -P. 96

Cryptocurrency And Its Likely Tax Treatment In India- By Arati Sathe And Aditya Ajgaonkar, Advocates, June 5th, 2021 www.itatonline.org

Costs To Be Imposed On A.O, If Orders Are Passed Without Application Of Mind- Hon. Bombay HC- By CA Milind Wadhwani, Dt. October 27th, 2021 www.itatonline.org

Compensation: Issues In Taxability Of Enhanced Compensation/ Interest Thereon- Rural Vs. Urban Agricultural Land-By RANO JAIN, Dt. July 12th, 2021 www.itatonline.org

D.

Democracy – Rule of law in democracy – Justice N.V. Ramana, The Honourable The Chief justice of India (2021) 5 SCC -Journal -P.1

Directors : Vicarious liability of directors to pay the income -tax dues of the company – CS. Dr. M. Govindrajan, Practicing Company Sacramentary and Insolvency Professional (2021) 439 ITR 1 (St)

Double taxation avoidance agreement – the long and short Supreme court judgement – V. N. Muralidharan (2021) 321 CTR 19 (Articles)

Development Agreement - Supreme Court judgment on taxation of joint development agreements- V. N. Muralidharan (2021) 318 CTR 1 (Articles)

Doctrine of manifest -Invoking doctrine of manifest arbitrariness and positive obligation in the filed of taxation – Karan Kumar Khetani (2021) 282 Taxman 13 (Mag) / 129 taxmann.com 283 (Article)

Doctrine of impossibility – A tool of defence in taxation matters -Manoj Nahata (2021) 282 Taxman 1(Mag) /130 taxmann.com 42 (Article) s

Dividend distribution tax – Abolishment of DDT Regime : Favourable or unfavourable to thee business trust ? Sharvari Manapure (2021) 279 Taxman 43 (Mag) / 126 taxmann.com 144 (Article)

Deemed dividend – Taxing deemed income and how far it is justified – Advocate Narayan Jain (2021) AIFTPJ -June – P. 46

Dynamic Jurisdiction – Face less Assessment – Novel Dynamic Jurisdiction vis -a vis Judicial Precedents, Propriety & Decorum – CA Milind Wadhwani www.itatonline.org 27-4 -2021

DTAA-Provisions of DTAA override the provisions of the Income -tax Act, 1961, including TDS, provisions under section 192 to 196 D – S.K.Tyagi, Advocate (2021) 430 ITR 1 (Journal)

Digital Services- Attempting A Treaty provision for taxing Digital Services : The Indirect Tax inspiration - Advocate Taurn Jain (2021) 432 ITR 8 (Journal)

Deemed income - Taxing Of Deemed Income And How Far It Is Justified- By Narayan Jain, LL.M., Advocate, Dt. July 16th, 2021 www.itatonline.org

E.

Expert's opinion – Expert's opinion on tax matters – S. Krishnan (2021) 280 Taxman 43 (Mag.) 127 Taxmann.com 768 (Article)

Exchange Fluctuation – Is surplus due to exchange rate fluctuation chargeable to tax in the case of personal loan ? -V.K Subramani (2021) 280 Taxman 29 (Mag)/ 127 taxmann.com 753 (Article)

Employee stock Option Scheme - (ESOPs), The Chamber's Journal (2021) March – 1-124
-Introduction to Employee Stock Option -Shaunak Dalal & Shalin Divatia CAs, The Chamber's Journal (2021) March – 11-16
-Indian Regulatory Frame work – Shabam Sheikh, Advocate, The Chamber's Journal (2021) March – 17 – 20

- Share -based payment under Ind -As 102 – Dophy D'Souza CA, The Chamber's Journal (2021) March – 21-34
- Employee share -based payments – Valuation Methodologies and Key Considerations – Niraj Garg and Apeksha Kukreja CAs,The Chamber's Journal (2021) March – 35 -45
- EOPs-Income Tax Implications -Umesh Gala & Parth Savla CAs,The Chamber's Journal (2021) March – 46 -80
- Transfer Pricing Aspects of Employees Stock Option Plans (' ESOPs') - Kariahman R. Phataphekar, Jigna Talati and Payal Palejwala CAs, The Chamber's Journal (2021) March – 81 – 100
- Cross Border Tax Aspects of ESOPs – Varsha Bhattacharya & Ashis Sodhani, Advocates, The Chamber's Journal (2021) March – 101 – 113
- Indirect Tax Aspects of ESOPs – Amit Sarkar CA, The Chamber's Journal (2021) March – 114 – 117
- Employee Stock Options – Impact Analysis of Corporate Events -Pooja Patel, The Chamber's Journal (2021) March – 118 – 123
- ESOP – International Perspective – Deepashree Shetty CA, The Chamber's Journal (2021) March – 124 – 174

Employee Stock Option Plan (ESOP) – ESOP allowability and its impact on corporate inc. Sanjiv Kumar Chaudhary (2021) 283 Taxman 7 (Mag)/ 131 taxmann.com 277 (Article)
Exchange of Information – Cannons of Exchange of Information – FCA (London) Piyus Baid www.itatonline.org 24 -5 -2021

Equlisation Levy -Explained CA Satish Jethwani www.itatinline.org 9-4 -2021
Education cess - Education cess is allowable deduction in computing income from profits and gains of business profession -Advocate S.K.Tyagi (2021) 432 ITR 22 (Journal)
ESOP- A Wealth creation and retention tool- Whether discount on ESOP is an allowable deductions – Navneet Singal (2021) 276 Taxman 27 (Articles)

Enforcement Directorate (ED) – Powers of Enforcement Directorate (ED) under Income -tax Act – Demonetisation cases - Maneet Pal Singh (2021) 276 Taxman 36 (Articles)

Economic presence – Concept of " Significant Economic presence" -India's continued guest of ever expanding boundaries of source based taxation - Aseem Chawla, Advocate (2021) 283 Taxman 11(Mag.) /131 taxmann.com 223 (Article)

Exchange information - Canons Of Exchange Of Information-By Piyush Baid, Dt. May 24th, 2021 www.itatonline.org

Evidence : Concept Of Evidence And Income Tax Act- By ANADI VARMA, Dt. September 29th, 2021 www.itatonline.org

F.

Faceless Appeal: Improving Transparency In Taxation – A Practical Guide, Dr. K. Shivaram, Senior Adv. and Mr. Shashi Bekal, Adv.- www.itatonline.org dt. 27.03.2021

Faceless Income Tax Appellate Tribunal – Opacity In The Name Of Transparency- Adv. Aditya Ajgaonkar, www.itatonline.org dt. 04.02.2021

Faceless Regime – Faceless Regime under Income -tax Law : Some issues and way forward (2021) Sanjay Sanghvi, Raghav Bajaj, Advoactes, Ujjval Gangwal CA (2021) BCAJ -July -P. 38

Faceless assessment- Practical Challenges and the way forward – G. V. Gopal Rao, Preeti Kothari & Nihar Tank (2021) 321 CTR 13 (Articles)

Faceless Assessment Scheme- Difficulties faced by the assesses in respect of Face less Assessment Scheme (2021) 437 ITR 1 (Journal) (Article)

Faceless Assessments Or Also Mindless Assessments- By Kidambi Vasantkumar, Advocate, High Court (TS), Dt. May 22nd, 2021 www.itatonline.org

Firm – Taxation of partnership firms under Income -tax Act : Recent amendments – CA. Rajesh Mehta (2021) AIFTPJ – August – P. 20

Finance Act, 2021 – Significant Income -tax related changes applicable for FY. 2021 -12 – Narendra Kayal (2021) 279 Taxman 37 (Mag) / 127 taxmann.com 460 (Article)

Faceless Appeal Scheme – Short comings – Vijay Krishnamurthy (2021) 279 Taxman 17 (Mag.) / 127 taxmann.com 219 (Article)

Faceless Assessment Scheme -Recent rulings on faceless assessment scheme – D.C Agarwal (2021) 280 Taxman 35 (Mag.)/ 127 taxmannn.com 711 (Article)

Faceless Appeal Scheme – Is National Faceless Appeal Centre bound to take note of applicable jurisdictional court decisions ? V.K.Subramani (2021) 281 Taxman 1 (Mag) 127 taxmann.com 837 (Article)

Finance Bill, 2021 – Salient Features of the Finance Bill, 2021 (Relating to Direct taxes) Advocate S.K.Tyagi (2021) 431 ITR 89 (Journal)

Finance Bill, 2021 – Faceless Income Tax Appellate Tribunal- Opacity in the name of Transparency – Aditya Ajgaonkar Advocate www.itatonline.org 4-2 -2021

Finance Bill, 2021 – Charitable Trusts – Amendments in provisions related to Charitable Trust and Institutions in Finance Bill, 2021 – CA Chunauti H. Dholakia www.itatonline.org 3-2 -2021

Finance Bill, 2021 – Few Hidden Time Bombs in that Made in India Tab containing the first paperless Finance Bill, 2021 !! -FCA Mayank Mohhanka www.itatonline.org 1-2 -2021

Finance Bill, 2021-Face less Assessment – Decoding the new Rules of Penalty Shoot -out : Faceless Penalty Scheme, 2021 !! -Mayank Mohanka FCA www.itatonline.org 14 -1 -2021

Finance Bill, 2021 – Amendments to Advance Rulings – Rajan Vora, Heman Chnadriya & Rishab Jalan Cas. (2021) The Chamber's Journal – February – P. 11

Finance Bill, 2021 – Dispute Resolution Committee : A Forum for Small Tax payers – Challenging the Status Qua under the Scheme of Income -tax – Dr.K. Shivaram Senior Advocate & Shashi Bekal Advocate (2021) The Chamber's Journal – February – P. 20

Finance Bill, 2021 – Tax incentives proposed for IFSC ecosystem – Himanshu Mandavia CA (2021) The Chamber's Journal – February – P. 29.

Finance Bill, 2021 – Amendments relating to Financial Services- Manoj Purohit & Snehal Gohil CAs (2021) The Chamber's Journal – February – P. 31

Finance Bill, 2021 – Amendments related to Return filing, assessments,Reassessments and Search Assessments – Dharan Gandhi Advocate (2021) The Chamber's Journal – February – P. 53

Finance Bill, 2021 – TDS /TCS -Proposed Changes -Atul Suraya CA (2021) The Chamber's Journal – February – P. 69

Finance Bill, 2021 – Proposed changes pertaining to Charitable Trusts – Vipin Batavia CA (2021) The Chamber's Journal – February – P. 73

Finance Bill, 2021 -Announcements for Corporates – Kaushik Jhaveri & Raj Kapadia CAs (2021) The Chamber's Journal – February – P. 78

Finance Bill, 2021 – Amendments related to business – Bhadresh Doshi & Aditya Ramachndran (2021) The Chamber's Journal – February – P. 93

Finance Bill, 2021 – Amendments relating to Equalisation levy -Ameya Kunte & Gauri Hasbnis CAs (2021) The Chamber's Journal – February – P. 104

Finance Bill, 2021- Amendments relating to Depreciation on Goodwill – Jagdish Punjabi CA (2021) The Chamber's Journal – February – P. 112

Finance Bill, 2021 – Amendments related to individual Taxation – Shaunak Dalal CA (2021) The Chamber's Journal – February – P. 112

Finance Bill, 2021- Miscellaneous Amendments – Bhavin Shah CA (2021) The Chamber's Journal – February – P. 124

Finance Bill, 2021 – Amendments related to Slump Sale -Vishal Gada, Jay Parmar & Harshil Shah CAs (2021) The Chamber's Journal – February – P. 130

Finance Bill, 2021 – Deciphering the intent of the Finance Bill, 2021 viz -a -Viz Changing Souls -Ashwin Taneja & Sankalp Malik Advocates (2021) The Chamber's Journal – February – P. 138

Finance Bill, 2021 – Faceless Income -tax Appellate Tribunal – A Critical Analysis – V. Sridharan, Ravi Sawana & Sayak Lohade Advocates (2021) The Chamber's Journal – February – P. 146

Finance Bill, 2021 – Rationalization ? of the provision of Transfer of capital asset to partner on dissolution or reconstitution – Abhitan Mehta CAs (2021) The Chamber's Journal – February – P. 150

Foreign Contribution (Regulation)Amendment Act, 2020 – New compliance for NGOs under FCRA -CA Rajesh B.Mangla www.itatonline.org 25 -5 -2021

Face less assessment- Faceless assessments or also mindless assessments – Advocate Kidambi Vasant Kumar www.itatonline.org

Face less Assessment – Efficiency of Officers – Vasant Kunar Kidambi www.itatonline.org 24 -3 -2021

Finance Bill, 2021 – Rationization of provisions of Audit, Presumptive Taxation, issue of notice and Assessment, safe harbor arising from Budget, 2021- CA.Kishor Phadke (2021) AIFTPJ – February -P. 8. www.itatonline.org dt. 1-3 -2021

Finance Bill, 2021 – Reassessment provisions Revisited & Depreciation on good will – Advocate Ajay Singh (2021) AIFTPJ - February – P. 11.www.itatonline.org dt 1-3 -2021

Finance Bill, 2021 – Faceless procedure before -ITAT-Whether Valid -Vice or Virtue Advocate Ajay Wadhwa (2021) AIFTPJ -February -P. 22. www.itatonline.org dt. 3.3.2021

Finance Bill, 2021 – Abolition of Settlement Commission and Constitution of Dispute Resolution Committee -Advocate S.R.Wadhwa (2021) AIFTPJ -February -P. 29. www.itatonline.org dt. 3-3 -2021

Finance Bill, 2021 – Irrationalisation of provision of transfer of capital asset to partner on dissolution or reconstruction – Advocate Rahul Hakani (2021) AIFTPJ – February – P. 34. www.itatonline.org 3-3 -2021

Finance Bill 2021 – Authority for Advance Ruling : Rules of the game altered CA Ketan Ved, CA Urvi Mehta (2021) AIFTPJ – February – P. 43 www.itatonline.org 3-3- 2021

Finance Bill 2021 – Adjudicating Authority Under PBPT Act, 1988 – Advocate Rajendra (2021) AIFTPJ – February – P. 46. www.itatonline.org 9 -3 -2021

Finance Bill, 2021 - Rationalization of Equalization levy & Other measures affecting International Taxation, Relief to start -ups, affordable rental housing CA Paresh P.Shah (2021) AIFTPJ – February – P. 49 www.itatonline.org 9 -3-2021

Finance Bill, 2021 – Proposal relating to Public Charitable Trusts and Institutions- Advocate S.N.Divatia (2021) AIFTPJ – February – P. 55 www.itatonline.org 9 -3 -2021

Finance Bill, 2021 – Amendment proposed in TDS /TCS- How far justified ? Advocate V.P Gupta (2021) AIFTPJ – February – P. 61 www.itatonline.org 9-3 -2021

Finance Bill, 2021 – Important issues on Finance Bill, 2021 : Gist of the views of Experts,- Advocate Shashi Bekal (2021) AIFTPJ – February – P. 66
www.itatonline.org 9-3 -2021

Finance Bill, 2021 - Faceless ITAT -Whether denial of oral hearing is in violation of Principles of Natural Justice - Dr.Ashok Saraf, Senior Advocate www.itatonline.org 20-2 -2021

Finance Bill, 2021 – Liable to tax -Is it a step forward ? CA Ravi Mehta. www.itatonline.org 17-2 -2021

Finance Bill, 2021 – Amendment in relation to charitable Trust and Institutions in Finance Bill,2021- CA. Chunauti H.Dholakia www.itatonline.org dt.3 -2 -2021

Finance Bill 2021 – A few hidden time Bombs in that made in India tab containing the first paperless Finance Bill, 2021 !!! CA Mayank Mohanka www.itatonline.org dt 1-2 -2021

Future and Options transactions – Presumptive taxation and the tax advantages – Advocate Rahul Sarda (2021) 432 ITR 1 (Journal)

Finance Bill, 2021 – Capital gains on dissolution or reconstruction of firm or Association of persons – Minu Agarwal (2021) 319 CTR 10 (Articles)

Finance Bill, 2021 – Changes in equalisation levy by Finance Bill, 2021 – R.Santhanam (2021) 319 CTR 61 (Articles)

Finance Bill, 2021 – Faceless appeals before Income Tax Appellate Tribunal – R. Santhanam (2021) 319 CTR 12 (Articles)

Finance Bill, 2021 – New Board for Advance Rulings in Income tax – S. R. Santhanam (2021) 319 CTR 29 (Articles)

Finance Bill, 2021 – New Dispute Resolution Committee for small and medium tax payers – R. Santhanam (2021) 319 CTR 37 (Articles)

Finance Bill, 2021 – New Scheme of reassessment – Whether sustainable -Minu Agarwal (2021) 319 CTR 57 (Articles)

Finance Bill, 2021 – Provisional attachment to include fake invoices cases – R.Sathanam (2021) 319 CTR 69 (Articles)

Finance Bill, 2021- Sudden abolition of Income Tax Settlement Commission – R. Santhanam (2021) 319 CTR 1 (Articles)

Finance Bill 2021 – Out of box idea for Union Budget 2021 -22 – Srinivasan G (2021) 276 Taxman 19 (Articles)

Finance Bill, 2021 – New definition of "Liable to tax" - A brief study – S.K Singh and Shashank Singh (2021) 277 Taxman 15 (Articles)

Finance Bill, 2021 – Tight regulatory reforms in TDS provisions -V.K Subbramani (2021) 277 Taxman 11 (Articles))

Freedom of Expression is a Citizen's Inalienable Right – Ms.Ravi Doshi (2021) The Chamber's Journal – September – P. 57

Family Settlements: Opening up new vistas – Dr. Anup P.Shah CA (2021) BCAJ -June -P. 87

Firm- Taxation on reconstitution of Firm – A Paradigm Shift – The Chamber's Journal (2021) September – P. 9 to 36

Firm – Section 9B- Taxation on Dissolution or Reconstitution of partnership - Gautam Doshi CA - The Chamber's Journal (2021) September – P.9
Firm – Section 45(4) and interplay between sections 9B and 45(4) – Praful Poladia & Vinod Ramachandran CAs -The Chamber's Journal (2021) September – P. 14.

Firm – Constitutional Validity of section 54(4) and 9B of the Income -tax Act, 1961 – V.Sridhran Senior Advocate, Neha Sharma Advocate - The Chamber's Journal (2021) September – P. 29
Firm – Section 9B,, section 45(4) and section 48(iii) of the Income -Tax Ac.t 1961 – Case Studies- S.Ramasubramanian CA- The Chamber's Journal (2021) September – P. 3

FCRA : New Compliances For Ngos Under Fcra – Foreign Contribution(Regulation) Amendment Act 2020- By CA. RAJESH B. MANGLA, Dt. May 25th, 2021 www.itatonline.org

G.

Guarantors – Personal guarantors of corporate debtors finally in the net of IBC – Sunil Gupta, Senior Advocate,Supreme Court of India (2021) 7 SCC -Journal -P. 1

Global Tax Revolution – T.C.A.Ramanujam and T.C.A Sangeetha (2021) 437 ITR 9 (Journal) (Article)

Why in America Agreed India's Google tax ? T.C A.Ramanujam (Retd Commissioner) and Advocate T.C.A.Sangeetha (2021) 433 ITR 13 (Journal) (Article)

Good will – Good will -No Good – Proposed provisions for taxability of capital gains to partnership forms – Prachi Parekh (2021) 277 Taxman 7 (Articles)

Good Will – Amendments proposed with regard to good will in the Finance Bill, 2021 -S. Krishnan (2021) 277 Taxman 21 (Articles)

What Happened To The Reid And Taylor Brand?- By Anadi Varma., Dt. December 7th, 2021 www.itatonline.org

The Henderson Abuse- By ANADI VARMA, Dt. November 18th, 2021 www.itatonline.org

Fairness Pays And Unfairness Costs Both To The Assessee As Well As Revenue- By KC Aggarwal, Dt. October 2nd, 2021 www.itatonline.org

The Course Traversed By Income Tax Law, Post Independence -By Justice R. V. Easwar, (Former Judge, Delhi High Court), Senior Advocate Assisted By Advocate Aditya Ajgaonkar, Dt. September 23rd, 2021 www.itatonline.org

The Course Traversed By Indirect Tax Law Post Independence- By Satyaranjan C Dharmadhikari, Advocate And Retired Judge High Court Of Bombay, Dt. September 23rd, 2021 www.itatonline.org

GST Gyaan – GST & Income Tax Implications on self -Redevelopment of Tenanted Building – CA. Rajkaml Shah & CA.Ruchita Salian (2021) The Chamber's Journal – September -P. 90

GST- Arrest under goods and services tax is not cake walk for department – Advocate R.P. Singh (2021) 46 G.S.T. L J.45 (Articles)

GST -Attachment of bank Accounts under GST laws (2021) 47 G.S.T.L. P.J 4 (Articles)
GST- Contravention in relation to detention and Seizure under section 129 of the GST Act, 2017 -Meaning of term – CA Ruchit Agarwal (2021) 44 G.S.T. L J. 5 (Articles)

GST- Fake invoicing - Repercussions under GST and Income -tax - CA Arpit Jain (2021) 47 G.S.T. L J.93 (Articles)

GST: Analysis Of Gst Scheme For Export Of Intermediary Services- By Miss Shinjani Agnihotri And Mr. Devansh Jain, Students Of Institute Of Law, Nirma Law University, Dt. November 30th, 2021 www.itatonline.org

H.

Hindu Succession Act, 1956 – Changing dimensions of Hindu Coparcenary and section 6. – Satya Poot Mehrotra Senior Advocate (Former Judge, Allahabad High Court (2021) AIR -November – P.. 241 (Journal)

Hindu Succession Act, 1956 – Scope of section 8 of the Hindu Succession Act, 1956 – P.B.Joshi, Judicial Member (2021) AIR- May – P.97 (Journal)

Hindu Succession Act, 1956 - Female Coparcenary - Shiv Shankar Banerjee, Advocate Supreme Court of India, (2021) AIR – April 65 (Journal)

Hindu Succession Act, 1956 – Ancestral or Self -acquired ? The fire continues to rage -Dr Anup P. Shah CA (2021) BCAJ- January – P.101

Hindu Succession Act, 1956 – Daughter's right in Co parcenary – Part VI – M.L.Bhakta Advocate (2021) BCAJ – March- P.15

Hindu law- The Hindu Marriage Act, 1955- The Rights of an illegitimate Child – Dr.Anup P.Shah CA (2021) BCAJ-March – P.91

Hindi – "Is HINDI a 'Vernacular Language' ?" (Core issue w.r.t. New process of registration of Charitable Institution under Income -tax -CA Naresh Kumar Kabra www.itatonline.org 15-5 -2021

I

Income Tax Appellate Tribunal - President For The Mother Tribunal: An Appeal To Appoint The Regular President For The Income-Tax Appellate Tribunal (ITAT) Amongst The Eligible Nine Vice-Presidents Who Have Served The Institution For Around Two Decades -By Dr. K. Shivaram, Senior Advocate, Dt. October 4th, 2021 www.itatonline.org

The Income Tax Appellate Tribunal – Mr. Patil Calls For A Judicial Audit- By Hon'ble Mr. Justice R.V. Easwar, Former Judge, Delhi High Court And Former President, Income Tax Appellate Tribunal, Dt. September 27th, 2021 www.itatonline.org

Salient Features Of The E-Filing Portal Of The Income-Tax Appellate Tribunal- By Shashi Ashok Bekal, Advocate, Dt. July 19th, 2021 www.itatomline.org

Income -Concept of Income under Income -tax Act –(2021) The Chamber's journal -May – P. 13 to 105

Concept of Income -Overview – Keshav Bhujle (2021) The Chamber's journal -May - 13
Capital receipt vs. Revenue Receipt – Jagdish T.Punjabi (2021) The Chamber's journal -May - 20
Diversion of income by overriding Title -A Primer – Rony Anthony, Sanjay Kumar, Ankit Jain (2021) The Chamber's journal -May - 43
Concept of Mutuality and Relevant Case laws – Anil Sathe & Chaitee Londhe (2021) The Chamber's journal -May - 51
Source v. Residence Basis of Taxation - Kishore Phadke (2021) The Chamber's journal -May - 58

Classification of Income under various Heads 68, 69, whether Needs to be Classified under any particular head – Rohit Adallja & Dhawal Selwadia (2021) The Chamber's journal -May - 66
Legality of Income and Taxation – Vinay Kawdia- (2021) The Chamber's journal -May - 82
Income whether includes loss – Pradeep Kasthala & Ashwin R. - (2021) The Chamber's journal -May – 90.

Income, whether includes income of Others -Provisions dealing with Clubbing of income,Representative Capacity, Legal Heirs, etc.- Praful V. Poladia & Sambhav Mama (2021) The Chamber's journal - May – 95

Real Income, Deemed income, Notional Income – Yogesh Thar, & Anjali Agarwal (2021) The Chamber's journal - May – 105

Real Income, Deemed income, Notional Income – Yogesh Thar, & Anjali Agarwal (2021) The Chamber's journal - June – 85

IFRS-Example 16 of IFRS 9 – Analysis – S. Ramchandran (2021) 321 CTR 1 (Articles)
IFRS-Example 17 of IFRS 9- Analysis – S. Ramchandran (2021) 321 CTR 25 (Articles)
IFRS - Example 18 of IFRS 9 –Analysis – S. Ramachandran (2021) 321 CTR 49 (Articles)

Income tax law – The Course Traversed by Income tax law, Post independence – Justice R.V Easwar, (Former Judge, Delhi, High Court) Senior Advocate, Advocate Aditya Ajgaonkar (20221) AIFTPJ – August -P. 315
Indirect tax – The Course Traversed by Indirect tax Post Independence, Justice Satyaranjan C. Dharmadilkari Former Judge Bombay High Court (2021) AIFTPJ -August -P. 14

Income – When does a receipt become income ? -S. Krishnan (2021) 280 Taxman 1(Mag)/127 taxmann.com 662 (Article)

Interpretation – Principles governing the interpretation of benevolent provisions under the taxing statutes – A Critical Analysis – Amit Prasad, Advocate (2021) 436 ITR 9 (Journal)
Interpretation - Applicability of thee doctrine of Res- Judicata in Income -tax proceedings - Sanjeeva Narayan (2021) 280 Taxman 25 (Mag). 127 taxmann.com 658 (Article)
Interpretation – The function of legal fiction – Shubham Gupta (2021) 278 Taxman 21 (Articles)
Interpretation - Important Legal Terms Employed By Judicial Authorities In Deciding Issues- By CA Milind Wadhwani, Dt. April 20th, 2021 www.itatonline org.

Interpretation - Novel Dynamic Jurisdiction Vis-À-Vis Judicial Precedents, Propriety & Decorum- By CA Milind Wadhwani, Dt. April 27th, 2021 www.itatonline.org
Interpretation -OMIT AND REPEAL-By Anadi Varma, Dt. September 11th, 2021 www.itatonline.org

International Taxation- A case on supreme Court's decision in Engineering Analysis : Critical refinement of India's International Tax law and Policy -Advocate Tarun Jain (2021) 433 ITR 1 (Journal) (Article)

International Taxation – Provisions of DTAA override the provisions of the Income -tax Act, 1961, including TDS provisions under sections 192 to 196D by S.K Tyagi (2021) 230 ITR 1 (Journal)

International Taxation- Taxing the digital economy – The way forward – K.Vaitheeswarn Advocate (2021) BCAJ- January – P.19

International Taxation- The conundrum of 'May be taxed' in a DTAA- Chaithanya K.K. & Sushma Ravindran Advocates (2021) BCAJ- January – P.24
International Taxation – TDS under section 195 in post -Multilateral instruments (MLI) Scenario – Mayur B. Nayak, Traun Kumar G.Singal, Anil D.Doshi Mahesh Nayak CAs (2021) BCAJ – February-P. 58
International Taxation – Taxation of Digital economy – Significant economic presence and extended source rule - Mayur B.Nayak Traun Kumar G.Singal, Anil D.Doshi Mahesh Nayak CAs (2021) BCAJ – March – P. 56
International Taxation- OECD's pillor one proposal – A solution trapped in a web of complexities Shatama Biswas, Snehal Mayacharya CAs (2021) BCAJ – March – P. 24
International taxation- Issues in taxation of dividend income, part -1 Mayur B.Nayak Traun Kumar G.Singal, Anil D.Doshi Mahesh Nayak CAs (2021) BCAJ – April P.75

International taxation- Issues in taxation of dividend income, part -2 Mayur B.Nayak Traun Kumar G.Singal, Anil D.Doshi Mahesh Nayak CAs (2021) BCAJ – May. P.72

International taxation- Introduction and background of MLI, including applicability, compatibility and effect – Advocate K.K Chythanya, CA Vipul Kamath K.V (2021) BCAJ -April – P 14
International taxation- Duel Resident entities – Article 4 of MLI – Shreyas Shah CA (2021)BCAJ – May. 25

International taxation- Anti -Tax Avoidance measures for capital gains : Article 9 of MLI – Naman Shrimal, Vartika Vijay CAs (2021) BCAJ- June -P.15
International taxation- MAP 2.0. – Dispute resolution framework under the Multilateral convention - Sudharshan Rngan Advocate, K.Prasanna CA (2021) BCAJ- August -P 12

International taxation – Analysis of articles 3, 5, &11 of the MLI – Ganesh Rajgopalan CA (2021) BCAJ- September – P. 16

International taxation – Article 13: Artificial avoidance of pe through specific activity exemption - Divya Jokhakar, Jimit Devani Shreyas Shah, Barkha Dave CAs (2021) BCAJ-October – P. 30
International taxation – Article 10-Anti abuse rule for Pes situated in third jurisdictions (Part 1) – Mahesh G.Nayak, Kartik Badiani CAs (2021) BCAJ-December -P.. 31

International taxation- Gifts from Gift City -Dr. Anup P.Shah CA (2021) April BCAJ- 104
International Taxation – Equalisation levy on E-Commerce supply and Services, Part -1 - Mayur B.Nayak Tarun Kumar G.Singhal, Anil D.Doshi Mahesh G. Nayak CAs (2021) BCAJ- July - P 51
International Taxation – Equalisation levy on E-Commerce supply and Services, Part -2 - Mayur B.Nayak Tarun Kumar G. Singhal, Anil D.Doshi Mahesh.G. Nayak CAs (2021) BCAJ-August - P 69

International Taxation – TLA 2021 – A dignified exist from a self -Splashed mess : An analysis of reversal of retrospective amendment - K.K.Chythanya Advocate, Vipul V. Kamath CA (2021) BCAJ -October -P. 12
International Taxation – Two -Pillar Solution to address the tax challenges arising from the digitalisation of the economy – An over view - Mayur B.Nayak Tarun Kumar G.Singhal, Anil D.Doshi Mahesh G. Nayak CAs (2021) BCAJ- November – P. 60
International taxation – Safe harbor rules – An over view (Part 1) Mayur B.Nayak Tarun Kumar G. Singhal, Anil D.Doshi Mahesh G. Nayak CAs (2021) BCAJ-December – P. 74
International taxation – Value chain analysis – Adding value to Arms's length principle – Poonam Rao Shah, Sneha Pai (2021) BCAJ- December – P.. 21

International Taxation- Evolution of Transfer pricing disputes over the past two decades – Pravin Kumar Bansal Advoacte & Bhavya Bnasal Goyal CA (2021)) AIFTPJ -October -P. 23

J.

Justice – Rationalising -" Complete justice" under article 142 - Ninad Laud Advocate Supreme Court of India (2021) 1 SCC 30(Journal)
Judiciary – Judiciary as a Temple of Justice – Justice Ashok Bhushan, Judge Supreme Court of India (2021) 5SCC -J.8
Joint development of real estate - JDA structuring :A 360 -Degree view (2021) BCAJ- May -P. 11
Justice - Access To Justice In Tax Matters - By Miss Tanu Priya, Student Of Army Institute Of Law, Mohali, Dt. November 30th, 2021 www.itatonline.org

The Judiciary Cold-Shouldered For Three Decades – All Hopes On The Auspicious Occasion Of Azadi Ka Amrit Mahotsava- By Dr. K. Shivaram, Senior Advocate, Dt. August 11th, 2021 www.itatonline.org

L.

L. Limitation- Extension of limitation by the Honourable Supreme Court – "Sue Generis" – Haresh Kolichala (2021) AIR—May- P.120 (Journal)
Legal Representatives - No RIP on demise of an assessee – Implications of section 159 – CA Dhinal A.Shah,CA Harshali S.Shah (2021) AIFTPJ -June – P. 41
Liquidation – Tax incidence on distribution of assets in case of Liquidation of a company -FCA Rano Jain www.itatonlie.org 23-6-20021

Locus Standi – Advocate Vinay Patkar 2021 - AIFTPJ – May- P. 13 /www.itatonline.org 5 -6 -2021

Land Mark Cases -Advocate Jignesh R.Shah (2021) 430 ITR 61 (Journal)

Land Mark Cases -Advocate Jignesh R.Shah (2021) 431 ITR 121 (Journal)
Land Mark Cases - Advocate Jignesh R.Shah (2021) 432 ITR 26 (Journal)
Land Mark Cases - Advocate Jignesh R.Shah (2021) 433 ITR 41 (Journal)
Land Mark Cases - Advocate Jignesh R.Shah (2021) 434 ITR 39 (Journal)
Land Mark Cases - Advocate Jignesh R.Shah (2021) 435 ITR 1 (Journal)
Land Mark Cases - Advocate Jignesh R.Shah (2021) 436 ITR 59 (Journal)
Land Mark Cases - Advocate Jignesh R.Shah (2021) 437 ITR 23 (Journal)
Land Mark Cases - Advocate Jignesh R.Shah (2021) 438 ITR 62 (Journal)
Land Mark Cases - Advocate Jignesh R.Shah (2021) 439 ITR 7 (Journal)

Land Mark Judgement of Supreme Court -Payment for purchase of software to non -resident by the Indian resident is not taxable (Engineering Analysis Centre of Excellence P. Ltd v CIT (2021) 432 ITR 471 (SC) -Advocate, S.K.Tyagi (2021) 434 ITR 1 (Journal)

Legal terms : Important Legal terms employed by Judicial Authorities in deciding Issue (Precedent, Per incuriam,Sub -silentio, Obiter dicta, Ratio decidendi) -CA Miland Wadhwani www.itatonline.org 20 -4-2021

M.

Money laundering – Initiation of prosecution, cognizance and trial of offences under Prevention of Money Laundering Act, 2002 – Shashak S.Mangal (2021)438 ITR 56 (Journal)
Money Laundering – Offences of Money -Laundering : Far -Reaching implications of recent amendment – Dr.Dilip K.Sheth CA (2021) BCAJ- January – P.28
Money Laundering – Cognizance of the offences of money -Laundering - Dr.Dilip K.Sheth CA (2021) BCAJ- April -P. 27

Mergers and Acquisitions -Understanding of basic concepts CA Shubham Agarwal www.itatonline.org 11-4 -2021

MAT- Applicability of MAT on dividend income of a Foreign Company – R.V.Shah CA (2021) AIFTPJ – October – P. 13
Merger : Doctrine Of Merger And I.T.Proceedings- By ANADI VARMA, Dt. October 14th, 2021 www.itatonline.oorg

N.

Natural justice - Sharpened Niceties and Nuances Of Natural Justice, Adv. Sanjiv Shah-www.itatonline.org dt. 14.04.2021

NATURAL JUSTICE: IN FOCUS AGAIN- By ANADI VARMA, Dt. November 15th, 2021 www.itatonline.org

Non -Residents – Implications of TDS default in payments to Non- Residents Devendra Jain Advocate, Shashank A. Mehta CA (2021) AIFTPJ – December – P. 17

Negotiable Instruments Act, 1881 – Liability of non -Executive Directors for bounced cheques -Dr. Anup P.Shah (2021) BCAJ- December -P. 118

NBFCs : Is there a level playing filed Yet ? Yoojit Pareek Advocate www.itatonline.org 25 1-2021

O.

The Overseas Citizen of India – OCI : A few changes, but lots of confusion - Dr. Anup P. Shah (2021) BCAJ- May -P. 102

P.

R.

Rewards – Taxability of rewards given to Olympics participants – CA Somil Singh (2021) 437 ITR 14 (Journal) (Article)

Right to Fair Compensation and Transparency in land acquisition, Rehabilitation Act, 2013 (RFCTLARR Act, 2013) – Analysis - S. Krishnan (2021) 281 Taxman 7 (Mag)/ 127 taxmann.com 849(Article)
Reassessment - Notice of reassessment issued as per the old regime after 31 st March, 2021 – Whether valid ? – Ruchesh Sinha, Pramod Gupta, Anmol Batra (2021) 280 Taxman 55 (Mag.)/ 127 taxmann.com 754 (Article)

Real Estate – RCM Provision – GST (2021) AIFTPJ -June – P. 63
Return-Important amendments to the income tax Act as applicable to returns to be filed for assessment year 2021 -22 - CA Prashant Shah (2021) AIFTPJ -June – 19
Refunds : Chapter XIX -Refunds - Advocate Arjun Gupta www.itatonlie.org 13-5 -2021
Residential Status - Change of residential status due to COVID – R. Santhanam (2021) 319 CTR 77 (Articles)

S.

SLP: Dismissal of SLP under article 136 at preliminary stage – Whether immune from passing of speaking orders ?- Sajay Bansal Senior Advocte (2021) 2 SCC 26 (Journal)
Special Bench cases – 80 glorious years of the Income Tax Appellate Tribunal -A Tribute -80 land mark Judgements of Special Benches (2021) AIFTPJ – March – 27 to 228

Search and Seizure- Retraction – Useful points if a statement made during Search is Retracted - Narayan Jain, Advocate, (2021) AIFTPJ – October -P. 16

Search and Seizure – Post Income Tax search and Seizure findings of incriminating material and undisclosed income cannot be pressed for supporting the authorization of an Income tax Search – A study – Mohit Gupta CA, (2021) AIFTPJ – December – P. 29
Search – Provisions of Search under Income -tax Act, 1961 – Amit Kumar Gupta (2021) 438 ITR 49 (Jpurnal)

Special Bench orders – 80 Glories Years of the Income -Tax Appellate Tribunal – A Tribute -80 land mark Judgements of Special Benches (2021) AIFTPJ – March – 27 -230
Search and Seizure – Income Tax Search and Seizure : Importance of statement u/s 132(4) of the Income-tax Act, 1961, Retraction thereof – CA Mohit Gupta (2021) AIFTPJ – August – P. 30

Set off and Carry forward of losses – Certain issue – Niranjan Doshi (2021) 279 Taxman 48 (Mag)/ 127 Taxman.com 449 (Article)

Software – Payment for purchase of software to non-resident by the Indian resident, is not taxable in India (Engineering Analysis Centre of Excellence P.Ltd v.CIT (2021) 432 ITR 471 (SC) -S.K.Tyagi (2021) 434 ITR 1 (Journal)
Software – Software payment Characterized as royalty – A dispute set to rest – Shivam Gupta (2021) 278 Taxman 1 (Mag) (Article)
Software – Scope of the Judgement of Apex court on software, royalty (Center of Excellence Pvt Ltd)- Shweta Gupta (2021) 278 Taxman 13 (Mag.) (Article)

Significant Economic Presence (SEP)- Impact of Significant Economic Presence (SEP) on Indian business – CA Vidhan Surana and CA Satish Jethvani. www.itatonline.org 5-6 -2021

Search Assessments -Back to square one ! CA Anand Eriwal www.itatonline.org 9-3 -2021

Securities Laws – Contradictions between companies Act and Securities laws: Compounded by errant drafting -Jayant M. Thakur CA (2021) BCAJ-March 94

Subsidy -Taxability of subsidy /assistance provided by Central / State Government, under the Income-tax Act, 1961 – Ram Dutt Sharman (Retd Income Tax Officer) www.itatonline.org 12-5 -2021

Securities laws- Contradictions between Companies Act and Securities laws : Compunded by errant drafting -CA Jayant M.Thakur (2021) BCAJ-March -P. 94

Search and Seizure – Meaning of 'Incriminating materials' while framing the search assessment – The practical approach – Ruchesh Sinha, Anmol Batra (2021) 276 Taxman 23 (Articles)

Search and Seizure – Dumb documents – Understanding the gamut of dumb documents unearthed in an Income -tax search and seizure action -Mohit Gupta (2021) 277 Taxman 53 (Articles)

Seizure : Law And Procedure For Release Of Seized Assets Under Income Tax Act-By CA VINAY V. KAWDIA, Dt. October 17th, 2021 www.itatonline.org

Search and Seizure: Admission And Retraction Of Statement Under Search-By Amit Kumar Gupta, Dt. September 29th, 2021 www.itatonline.org

Subsidy : Taxability Of Subsidy/Assistance Provided By The Central/ State Government, Under The Income Tax Act, 1961- By Ram Dutt Sharma, Dt. May 12th, 2021 www.itatonline.org

T.

Tribute – Soli Jehangir Sorabjee – Spirit of liberty – Ingenious and Piercing -Neither Shackled nor Restricted – Madhavi Goradia Divan, Senior Advocate (2021) 7SCC -Journal -P. 17

Tribute – Soli Jehangir Sorabjee – Sentinel of the Constitution – Vikram Raghavan (2021) 7 SCC -Journal -P. 20

Tribute – A Tribute to Late Shri V.H. Patil (2021) The Chamber's Journal – October – P.5 to 85

Technology – Impact of emerging Technology on taxation – Address by Hpnourable Mr Justice Vineet Saran Judge Supreme Court of India (2021) AIFTPJ -December – OP. 7

Technology - Impact of emerging Technology on taxation – Address by Hpnourable Mr Justice Pankaj Mithal Chief Justice of High Court of Jammu & Kashmir (2021) AIFTPJ -December – OP.9

Trust and Institution - Registration of Trusts and institution – A Procedural insight – Sammer Bhatia (2021) 320 CTR 1 (Articles)

Tax planning – Whether tax planning is a commercial decision or tax evasion ? Sanjiv Kumar Chaudhary (2021) 281 Taxman 39 (Mag) / 129 taxmann.com 237 (Article)

TDS &TCS – Recent legal and practical issues pertaining to TDS & TCS – CA Atul T. Suraiya (2020) AIFTPJ- June -P. 14

TDS: The Tale Of 'Arth', 'Shashtri' And The 'New TDS On Perks'- By Mayank Mohanka, FCA, Partner S M Mohanka & Associates Dt. February 6th, 2022, www.itatonline.org

Transfer of Development Rights (TDR) – Up dated and legislative position relating to exemption on receipt, as a result of Transferable Development Rights (TDRs)and also capital gains arising from compulsory acquisition of agricultural land in urban areas – Advocate S.K Tyagi (2021) 431 ITR 27 (Journal)
TDS -No TDS in respect of provision made for expenses for which bills are not received during the year under consideration - S.K.Tyagi (2021) 430 ITR 49 (Journal)

Trust- Taxability of Private Trust's income – Some issues – Dr.Rakesh Gupta CA (2021) BCAJ – February – P. 11

Tribute -Arvind H.Dalal (2021) BCAJ -April – P. 123
Tribute – Bharat ji Agarwal (2021) AIFTPJ -April- P. 4

Tax Administration – Ghost of retrospective taxation haunts India – R. Santhanam (2021)319 CTR 21 (Articles)

Tax Deduction At Source On Purchase Of Goods Under Section 194q- By Eti Jain & Parth Mehta, Dt. May 14th, 2021 www.itatonline.org

TDS : Recent Legal And Practical Issues Pertaining To TDS & TCS- By CA Atul T. Suraiya, Dt. July 24th, 2021 www.itatonline.org

Tax Professional Survey- By Sashi Athota, Dt. January 22nd, 2022 www.itatonline.org

Tenancy Act - Model Tenancy Act – 2021-By Mr. Anubhav Jain (Advocate), Dt. August 9th, 2021

Tenancy Act -Model Tenancy Act-By CA Virupaksh Hipparagi, Dt. July 24th, 2021 www.itatonline.org

V.

Videoconferencing – Courts, Tribunal and Judiciary- COVID -19 – Directions issued -Guidelines for Court Functioning through Videoconferencing during COVID -19 Pandemic, in Re (2021) 5 SCC 454 / and (2020) 6 SCC 686

Vodafone and Cairns – The infamous retrospective taxation – Anmol Mahajan (2021) 277 Taxman 33 (Articles)
Vishwas Act- Right of restoration of appeal vis-a-vis Vishwas Act – Sameer Bhatia (2021) 277 Taxman 1 (Articles)
Valuation – Valuation of contingent consideration – Annand Shah CA (2021) BCAJ-August -P. 36

W.

Will and Testament -Narayn Jain, LLM Advocate (2021) AIFTPJ – August -P. 24
Will : All Should Make Their Will And Testament- By Narayan Jain, LL.M., Advocate, Dt. September 24th, 2021 www.itatonline.org